THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Case No. 2025-000136

Weldon W. Stewart, Jr., #295095 Petitioner,

v.

State of South Carolina, Respondent.

APPENDIX

Weldon W. Stewart, Jr. #295095
Trenton Correctional Institution
84 Greenhouse Road
Trenton, South Carolina 29847
(803) 275-3301
Pro Se Petitioner

Other Counsel of Record:
D. Russell Barlow, II
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3970
Attorney for Respondent

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WITNESSES

Officer: Gurley, Dallas

Agency: Bennettsville Police Department

WARRANT NUMBERS

DIRECT

03 JAN 13 P2:17
FILED UNDERWRITH
CLERK OF COURT
MARLBORO COUNTY, S. C.

767 **ACTION OF GRAND JURY**

10/10/02 True Bill

Preperson of Grand Jury

VERDICT

Guilty of Voluntary Manslaughter

Preperson of Petit Jury 8-1-03 Date

DOCKET NO. 2002-GS-34-1919

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

OCTOBER TERM 2002

THE STATE

vs.

Weldon Stewart Jr.

CDR CODE 116

Indictment for
§16-03-0010, 0020

MURDER

A CERTIFIED TRUE COPY
William B. Sundstrom
CLERK OF COURT
MARLBORO COUNTY

768

STATE OF SOUTH CAROLINA)
County of Marlboro)

INDICTMENT FOR
§16-03-0010, 0020
MURDER

At a Court of General Sessions, convened in October 2002 the Grand Jurors of Marlboro County present upon their oath:

That Weldon Stewart, Jr. in the County of Marlboro on or about December 6, 2000, did, with malice aforethought, kill one [redacted] Allen, to wit: by striking, ~~pushing~~ (pad) ~~and/or burning~~ her and that the said [redacted] Allen did die as a proximate result thereof on or about the 6th day of December, 2000. This is in violation of Section 16-03-0010 of the Code of Laws of South Carolina (1976), as amended.

'03 JAN 13 P 2:17
WILLIAM B. SUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

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

Solicitor

DOCKET NO. 2002-GS-34-1919

ACCERTIFIED TRUE COPY
William B. Sunderburk
CLERK OF COURT
MARLBORO COUNTY

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marlboro County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WELDON W. STEWART, JR.,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Acting Chief Attorney

South Carolina Office
of Appellate Defense
[redacted]
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The judge erred by refusing to instruct the jury on involuntary manslaughter.

STATEMENT OF FACTS

On October 10, 2002, a Marlboro County grand jury indicted Weldon W. Stewart, Jr., for murder and desecration of human remains. The deceased was Stewart's girlfriend, [redacted] Allen. Stewart pleaded guilty to the desecration charge on October 17, 2002. As to the murder charge, Stewart's defense was that Allen had died accidentally when he tripped and fell on top of her.

On June 14, 2002, Stewart waived his right to counsel and elected to represent himself with the assistance of standby counsel. Judge Paul M. Burch presided at Stewart's jury trial July 28 through August 1, 2003. In addition to murder, the judge instructed the jury on voluntary manslaughter and accident. The jury found Stewart guilty of voluntary manslaughter, and the judge imposed consecutive sentences of thirty years for that offense and ten years for the desecration charge.

ARGUMENT

The judge erred by refusing to instruct the jury on involuntary manslaughter.

As previously noted, Stewart's defense was that his girlfriend, [redacted], had died accidentally when he tripped and fell on top of her. Afterwards, Stewart explained, he had panicked and set fire to the body. A pathologist concluded that the cause of death was blunt force trauma to the head. ROA p. 166, lines 8–10. He could not rule out the possibility that this injury could have occurred as the result of a fall. ROA p. 167, lines 23–25.

Stewart gave the police at least three statements. In each of them, he stated that Allen had died as the result of a fall. ROA p. 375, line 11 – p. 376, line 25; ROA p. 381, line 10 – p. 382, line 1; ROA p. 404, line 20 – p. 405, line 19. Stewart himself testified that he was carrying Allen in his arms along a path when he tripped and fell on top of her. ROA p. 557, lines 12–14.

Stewart requested instructions on accident and involuntary manslaughter. ROA p. 678, lines 12–17. The assistant solicitor objected to a charge on involuntary. ROA p. 680, lines 8–17. The judge asked Stewart if he preferred a charge on accident over a charge on involuntary manslaughter. ROA p. 680, lines 22 and 23. Stewart said that he did. ROA p. 680, line 24.

The judge erred by holding that Stewart would not be entitled to instructions on both involuntary manslaughter and accident. The law to be charged to the jury is determined by the evidence presented at trial. State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989). One form of involuntary manslaughter is defined as the unintentional killing of another without malice while engaged in a lawful activity with reckless disregard for the safety of others. State v. Chatman, 336 S.C. 149, 519 S.E.2d 100 (1999). A homicide is excusable on the

ground of accident when (1) the killing was unintentional, (2) the defendant was acting lawfully, and (3) was exercising due care. State v. Goodson, 312 S.C. 2'8, 440 S.E.2d 370 (1994).

Under the facts of this case, the jury could have found that Allen's death was, while perhaps not accidental, the result of Stewart's reckless disregard for her safety and therefore involuntary manslaughter. Accordingly, the judge erred by failing to instruct the jury on that lesser-included offense of murder and voluntary manslaughter.

For this reason, the Court should reverse Stewart's conviction for voluntary manslaughter and remand for a new trial.

Respectfully submitted,

Joseph L. Savitz, III
Acting Chief Attorney

ATTORNEY FOR APPELLANT

This 21st day of October, 2004.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marlboro County
Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WELDON W. STEWART, JR.,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Weldon W. Stewart Jr.states:

1. He is Acting Chief Attorney 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 Paul M. Burch, which was held on 8-1-03, 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 Weldon W. Stewart, Jr.

Respectfully submitted,

Joseph L. Savitz, III
Acting Chief Attorney

ATTORNEY FOR APPELLANT

This 21st day of October, 2004.

CERTIFICATE OF COUNSEL

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

October 21, 2004

Joseph L. Savitz, III
[redacted]
Columbia, SC 29201
[redacted]
Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marlboro County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WELDON W. STEWART, JR.,

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, this 21st day of October, 2004. A copy of the brief and record on appeal has also been served on Weldon W. Stewart, Jr., #295095 at Lee Correctional Institution this 21st day of October, 2004.

Joseph L. Savitz, III
Acting Chief Attorney

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of October, 2004.

(L.S.)
Notary Public for South Carolina
My Commission Expires: March 13, 2007.

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Weldon W. Stewart, Jr., Appellant.

Appeal From Marlboro County
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No. 2005-UP-284
Submitted April 1, 2005 – Filed April 20, 2005

APPEAL DISMISSED

Acting Chief Attorney Joseph L. Savitz III, of Columbia, for Appellant.

Attorney General Henry D. McMaster, Chief Deputy Attorney General John W. McIntosh, and Assistant Deputy Attorney General Salley W. Elliott, all of

Columbia; and Solicitor Jay E. Hodge, Jr., of Cheraw, for Respondent.

PER CURIAM: Weldon W. Stewart, Jr., appeals his conviction of voluntary manslaughter, arguing the trial court erred in refusing to charge the jury on the law of involuntary manslaughter. Stewart filed a motion for an extension of time to file a pro se brief, which was promptly granted. As of the date of this opinion's filing, however, Stewart's pro se brief, which was due on March 30, 2005, has not been received by this court and will therefore not be considered. After a thorough review of the record and counsel's brief 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 conclude Stewart's appeal lacks merit. We therefore dismiss the appeal under Rule 220(b)(2), SCACR, and grant counsel's motion to be relieved.[1]

APPEAL DISMISSED.

HEARN, C.J., KITTREDGE and WILLIAMS, JJ., concur.

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

FORM 5

STATE OF SOUTH CAROLINA County of Marlboro Weldon W. Stewart Jr. 295095 Full name and prison number (if any) of Applicant v. State of South Carolina	IN THE COURT OF COMMON PLEAS 06-34-125 APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee County Correctional Institution Bishopville, SC

2. Name and location of Court which imposed sentence Court of General Sessions, Marlboro County

3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

   (a) 2002-GS-34-1919, Voluntary Manslaughter

   (b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 1, 2003; 30 years

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty yes

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes

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

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. appeal dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. April 20, 2005

ii. _____

iii. _____

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

i. Anders v. California, 386 U.S. 738 (1967)

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

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

(a) My appellant counsel was ineffective.

(b) _____

(c) _____

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

(a) * answer furnished on five additional pages *

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

(a) Appellant counsel was ineffective for failing to raise the following issues on appeal:

I. JURY INSTRUCTION

During a jury charge hearing, the state requested that the court give the jury an instruction on voluntary manslaughter, in addition to murder. Applicant objected to both instructions being given to the jury, and requested that the instruction be submitted to the jury that was supported by the evidence. The court gave the jury instructions on both murder and manslaughter and the jury found Applicant guilty of manslaughter.

The state asserted, as a basis for its requested jury instruction on voluntary manslaughter, that the record contained evidence of heat of passion. However, the record contained no evidence of sufficient legal provocation. If an adequate legal provocation does not exist, the killing, even in the heat of passion is murder and not manslaughter. State v. Norris, 253 S.C. 31, 168 S.E.2d 564 (S.C.1969). Heat of passion alone will not suffice to reduce murder to voluntary manslaughter; both heat of passion and sufficient legal provocation must be present at the time of the killing. Sttate v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (S.C. 2001). To warrant a jury instruction on voluntary manslaughter in a murder prosecution, both heat of passion and sufficient legal provocation must be present at the time of the killing. state v. Cole, 338 S.C. 97, 525 S.E.2d 511 (S.C. 2000).

Law to be charged to jury must be determined from evidence presented at trial. State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (S.C. 2003). The record in this case contains no evidence of sufficient legal provocation, therefore, a jury instruction on manslaughter should not have been given. When the record contains no evidence to support it, a voluntary manslaughter jury instruction should not be given. SState v. Smith, 363S.C. 11, 609 S.E.2d 528 (S.C.App. 2005); State v. Cooley, 342 S.C. 63, 536 S.E.2d 666 (S.C. 2000).

The court committed reversible error by giving a jury instruction on voluntary manslaughter when the record contained no evidence to support the charge.

II. AUTHENTICATION

The trial court admitted two written documents, State's Exhibits 64 and 77, into evidence. The state claimed that Applicant wrote both documents. Applicant objected to the introduction of both documents on the grounds that the authenticity of the documents had not been established and the documents were not relevant to the issues at trial.

As a general rule, the execution or authenticity of a private writing must be established before it may be entered into evidence. Williams v. Milling nelson Motors, 209 s.C. 511, 40 S.E.2d 633 (1946). The authenticity of letters must be established before they may be admitted into evidence. Weir v. Citicorp Natl. Services, 312 S.C. 511, 435 S.E.2d 864 (1993).

The court entered the first document, State's Exhibit 64, into evidence through the testimony of Detective Dallas Gurley. Gurley claimed that Applicant handed her the document, while she was questioning him at the county jail, and that he wrote the document. Tr. p. 463 lns. 3-22; Tr. p. 466 lns. 2-5. When questioned further about her assertion that Applicant wrote the document, Gurley stated, " It looked like the rest of them, so I assumed you wrote it". Tr. p. 466 lns. 2-13.

Witness' original affirmative response to solicitor's suggestion that note had been sent to him in jail by defendant was in nature of a conclusion which would not have qualified the writing without further development of the facts, if any, upon which it was based and where the witness repudiated the conclusion and disclaimed knowledge of source of writing, proffered exhibit should have been excluded. State v. Miller, 260 S.C. 1, 193 S.E.2d 802 (1972).

The state attempted to establish the authenticity of the document through the testimony of Detective Gurley. Gurley testified that Applicant wrote the document. This statement was in the form of a conclusion. Gurley later repudiated this conclusion and stated that she merely "assumed" Applicant wrote the document. Thus, the authenticity of the document was not established.

The state first attempted to enter the second document, State's Exhibit 77, into evidence while cross-examining Applicant. Applicant objected twice. Tr. p. 569 ln. 15-p. 571 ln. 18. The court excused the jury and asked the state to pose the question again. Tr. p. 571

lns. 19-22. The state conceded that it could not pose the question "until I prove the document". Tr. p. 571 ln. 23-p. 572 ln. 1.

Later in the trial, the state attempted to establish the authenticity of the document by recalling Detective Dallas Gurley and having her compare it to other documents. Tr. p. 659 ln. 6-p. 661 ln. 3. One of the documents used in the comparison was State's Exhibit 64, of which the authenticity had not been established. Tr. p. 660 lns. 22-25. Applicant objected. Tr. p. 661 lns. 4-6. The state then attempted to establish the authenticity of the document by having Applicant enter a stipulation that the document was authentic. Tr. p. 662 lns. 1-5. Applicant did not enter this stipulation. Tr. p. 662 lns. 8-10.

The state then attempted to establish the authenticity of the document by calling the mother of the deceased as a witness. The witness claimed that Applicant mailed the document to her residence, but his name was not on the return adress. Tr. p. 665 ln. 10-p. 666 ln. 3. The state then attempted to support the witness' claim that Applicant both wrote the document and mailed it to her residence, by having the witness read portions of the document. Tr. p. 666 lns. 3-13.

A writing standing alone does not of itself constitute evidence; it must be accompanied by competent proof of some sort from which the jury can infer that it is authentic and that it was executed or written by the party whom it purports to be. Williams v. Milling Nelson Motors supra.

After having the witness read portions from the document for purposes of establishing the authenticity of it, the state moved to enter the document into evidence. Tr. p. 666 lns. 14-15. Applicant objected. Tr. p. 666 lns. 16-19. The court admitted the document into evidence.

The authenticity of both documents was never established. It must also be noted that the state submitted several documents to the SLED Question Document Department for analysis, and the handwriting expert, who compared the documents, testified at trial for purposes of establishing the authenticity of the documents. Tr. p. 418 ln. 22-p. 428 ln. 25. However, the state elected not to submit State's Exhibits 64 and 77 to the handwriting expert for comparison.

III. Photograph

During the testimony of Officer Alvin Worsley, the state moved to enter two photographs, State's Exhibits 33 and 34, into evidence. Applicant objected on the grounds that the photographs were not relevant to the issues at trial, that the information contained in the photographs was not being disputed by the defense, and that the probative value of the photographs was outweighed by the danger of unfair prejudice. Tr. p. 339 lns. 1-10; p. 342 ln 15-p. 343 ln. 14. The court admitted one of the photographs, State's Exhibit 34, into evidence.

Under Rule 401, SCRE, relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it it would be without the evidence". The only issue in this case was whether Applicant intentionally or unintentionally caused the death of the deceased. It was undisputed that Applicant desecrated the body of the deceased, by setting it on fire, and that he moved the body prior to desecrating it. The photgraph depicted the location of the desecration of the victim's body and the injuries caused therefrom. The state argued that the act of Applicant desecrating the body of the deceased was relevant to establishing his state of mind. Tr. p. 342 lns. 5-10. This relevance did not extend to the injuries caused by this act. Thus the information contained in the photograph was not relevant to the issues at trial.

Furthermore, the graphic content of the photograph, the fully charred remains of the deceased, had the tendency to emotionally arouse the sympathy, prejudices, and passions of the jury. Although photographs may be used to corroborate other evidence, it is well established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issue at trial. State v. Middleton, 288 S.C. 21, 339 S.E.2d 692 (1986); State v. Edwards, 194 S.C. 10 S.E.2d 587 (1940). There was no relevant information contained in the photograph, and the probative value of the photograph was outweighed by the danger of unfair prejudice.

The court's concluson that the body was placed on a door or platform and could be viewed as a ritualistic-type setting further demonstrated the prejudicial effect of the photograph. Tr. p. 340 lns. 16-21; p. 344lns. 2-7. It was established by the state that the body of the deceased was placed inside a pool liner and that the pool liner

was altered or "shrank from the heat". Tr. p. 341 lns. 13-15. The court's observation that the alteration of the scene, caused by the fire, led him to believe that the body had been placed on top of a door platform and that this could be viewed as a ritualistic-type setting, demonstrated that the photograph had the tendency to mislead the jury or cause the jury to reach its verdict on an improper basis.

IV. HEARSAY

The court, over Applicant's objection, allowed Staton Wright to testify to a hearsay statement he alleged Applicant made to him.

Hearsay is a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted. Player v. Thompson, 259 S.C. 600, 193 S.E.2d 531 (1972); Rule 801(c) SCRE. The court allowed the witness to provide testimony that Applicant told him that the deceased told Applicant, "she had sex with another dude before she had sex with him and didn't shower" afterwhich he claimed that Applicant told him " he flipped". Tr. p. 196 lns. 15-18.

This portion of the witness' testimony was clearly hearsay. The statement was not made by the declarant while testifying at trial and was offered in evidence by the state to prove the truth of the matter asserted, more specifically, the statement was offered in evidence by the state as an attempt to establish that Applicant intentionally caused the death of the deceased.

Hearsay is not admissable except as provided by these rules or other rules prescribed by the Supreme Court of this State or by statute. Rule 802, SCRE. Hearsay evidence is not admissable unless it falls within a recognized exception to the hearsay rule. Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994).

The testimony of the witness did not fall within an exception to the hearsay rule. Furthermore, the witness testified to an alleged statement made by the deceased, which denied Applicant confrontation of the witness against him.

(c) the disposition thereof:

i. N/A

ii.

iii.

iv.

(d) the date of each such disposition:

i. N/A

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.

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

No

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

(a) which grounds have been presented:

i. N/A

ii.

iii.

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

i. N/A

ii.

iii.

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

(a) Appellant counsel was ineffective. this issue

~~(b)~~ could not be raised prior to this application.

(c)

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

(a) your arraignment and plea? No

(b) your trial, if any? No

(c) your sentencing? No

(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 applications with respect to this conviction, which you filed?
No

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

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

i. Joseph L. Savitz III, Acting Chief Attorney; South Carolina Office of Appellant Defense; [redacted]

~~ii.~~ Street, Room 306; Columbia, SC 29201

iii.

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

i. appeal to South Carolina Court of appeals

ii.

iii.

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

Vacate conviction and remand for a new trial.

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

No

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Marlboro)

I, Weldon W. Stewart Jr., 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.

Weldon W. Stewart Jr.

SWORN to and subscribed before me this 17 day of April, 2006.

Barbara Richardson (L.S.)
Notary Public

My Commission Expires: Oct 28, 2013

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

I, Weldon W. Stewart Jr., 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 said proceeding or give security thereof.

Weldon W. Stewart Jr.
Applicant

SWORN or affirmed to and subscribed before me this 17 day of April, 2006.

Barbara Richardson
Notary Public

My Commission Expires: Oct 28 2012

State of South Carolina)
County of Marlboro)
)
Weldon W. Stewart Jr.)
)
v.)
)
State of South carolina)

Certificate of Service

06-34-125

The undersigned applicant hereby certifies that a true copy of his application for Post- Conviction Relief has been seved upon William B. Funderburk, Clerk of Court for Marlboro County, by mailing one copy of the same through the Lee Correctional Institution mailroom, this 17 day of April, 2006.

Respectfully Submitted,

Weldon W. Stewart

Weldon W. Stewart Jr. #295095
Lee Correctional Institution
[redacted]
Bishopville, SC 29010

SWORN TO AND SUBSCRIBED BEFORE ME
this 17 day of April, 2006.

Barbara Richardson
Notary Public for South Carolina
My Commission Expires:
Oct 28. 2017

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2006-CP-34-0125
COUNTY OF MARLBORO)	
)	
Weldon W. Stewart, Jr.,)	
S.C.D.C. No. 295095,)	
)	
Applicant,)	
)	**RETURN**
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

In response to the post-conviction relief application filed April 18, 2006, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Marlboro County Clerk of Court's orders of commitment. The Marlboro County Grand Jury indicted the Applicant at the October 2002 term of General Sessions for murder (2002-GS-34-1919). The Applicant represented himself at trial.[1]

After the State called the case to trial, the Applicant was found guilty of voluntary manslaughter. On August 1, 2003, the Honorable Paul M. Burch sentenced the Applicant to thirty (30) years imprisonment. This sentence was consecutive to a nine (9) year sentence imposed on October 17, 2002 when the Applicant pled guilty to desecration of human remains (2002-GS-34-1918).

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of

[1] Wade R. Crow, Esquire was present as standby counsel during the trial.

Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders[2] brief. The Court of Appeals dismissed the appeal. State v. Stewart, Op. No. 2005-UP-284 (S.C. Ct. App. filed April 20, 2005).

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

II.

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

1. Ineffective assistance of appellate counsel:
   a. Counsel failed to argue the trial judge erred in charging voluntary manslaughter when there was no evidence to support the charge.
   b. Counsel failed to argue the trial judge admitted two documents where the authenticity of the documents had not been established and the documents were not relevant to the issues at trial.
   c. Counsel failed to argue the trial judge admitted photographs that were not relevant to the issues at trial and were graphic in nature.
   d. Counsel failed to argue the trial judge allowed hearsay testimony.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

[2] Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

professional judgment." Strickland v. Washington, 466 U.S. 668, 690, 104 S. Ct. 2052, 2066 (1984). The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

Appellate counsel may render ineffective assistance for failure to present an issue on appeal. However, counsel is not required to raise every non-frivolous claim, but instead may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765, 145 L. Ed. 2d 756 (2000) (citing Jones v. Barnes, 463 U.S. 745, 103 S. Ct. 3308, 77 L. Ed. 2d 987 (1983)).

In assessing a claim of ineffective assistance of appellate counsel, courts apply the Strickland test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced from the failure to raise the issue. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Of course, if an issue is not preserved for appeal, then appellate counsel cannot be ineffective for failing to raise the issue. Legge v. State, 349 S.C. 222, 225, 562 S.E.2d 618, 620 (2002).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland

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

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

[redacted]
Columbia, S.C. 29211

By: _____
Attorneys for Respondent

July 28, 2006

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO WELDON W. STEWART, JR., 295095 Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	IN THE COURT OF COMMON PLEAS 2006-CP-34-0125 AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Weldon W. Stewart, Jr., 295095
Lee Correctional Institution
[redacted]
Bishopville SC 29010

DATED this 28th day of July, 2006.

Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
WELDON W. STEWART, JR.	)	2006-CP-34-0125
PLAINTIFF,	)	TRANSCRIPT OF RECORD
VS.	)	
THE STATE OF SOUTH CAROLINA	)	NOVEMBER 15, 2006
DEFENDANT.	)	

B E F O R E

THE HONORABLE JOHN M. MILLING

A P P E A R A N C E S

Delton W. Powers, Jr. Esquire
Attorney for the Plaintiff

Karen C. Ratigan, Esquire
Attorney for the Defendant

PAMELA OZMENT-CARTEE
CIRCUIT COURT REPORTER

Introduction by the State Page 03

WITNESS	Direct	Cross
Weldon W. Stewart, Jr.	05	17

Closing Statement by Mr. Powers Page 21

Statement by Mr. Stewart Page 23

Closing Statement by Ms. Ratigan Page 24

Decision of the Court, Under Advisement Page 25

Certificate of Reporter Page 28

EXHIBITS

No Exhibits entered

(Whereupon, The Court comes to order, at 9:38 a.m. on November 15, 2006)

The Court: All right, Ms. Ratigan.

Ms. Ratigan: May it please the Court. This is the Weldon Stewart versus the State of South Carolina. Docket number 2006-CP-34-0125. Mr. Stewart was indicted for murder in 2002. He represented himself at a subsequent trial. On August 1, 2003, the jury convicted him, found him guilty of involuntary manslaughter. Judge Burch levied a thirty-year sentence that would be served consecutively to a prior sentence for desecration of human remains.

Mr. Stewart did file an appeal, perfected in the nature of an Ander's Brief, South Carolina Court of Appeals, which dismissed it on April 20, 2005. The State is ready to proceed Your Honor.

The Court: Mr. Powers.

Mr. Powers: Your Honor, I am here on behalf of my law partner, Scott Joye who was originally, not originally, but who was appointed on this case and was made counsel by substitution from another Horry County lawyer.

In this case, Your Honor, for the record, I have discussed with Mr. Stewart at the time of this trial, and, of course, I have an office in Marlboro County, and

I represented a co-defendant, Mr. Stanton Wright, Junior who was originally charged with accessory after the fact of murder. Mr. Stanton cooperated with the police. This case it seems it was about two years before he even came to trial. But, Mr. Wright testified on behalf of the state, and in exchange the charges against him were eventually dismissed.

I attended part of the trial itself, only in the audience. During the time that my client testified I was there for several hours in my representation of Mr. Wright. And, of course, I learned a lot about not only the facts of the case, but about Mr. Stewart. I have told Mr. Stewart. He tells me, and, of course, I want it indicated for the record, by him that he does not feel the fact that I did have some participation in the trial, or in my representation of the co-defendant that that itself does not amount to any sort of conflict. And, that he is satisfied with his decision.

The Court: All right, Mr. Stewart. You have heard the statements that have been given to me by Mr. Powers; is this satisfactory to you that he continues to represent you in this hearing today?

Mr. Stewart: Yes, sir.

The Court: Thank you, very much. Let the record reflect that Mr. Stewart has heard Mr. Powers explain his

prior involvement, and does not have any objection to him assisting him in connection with the matter today.

I have briefly reviewed some of the documentation, and Mr. Stewart it appears that your objections or your contentions in your application are that the appellate counsel was ineffective; is that correct?

Mr. Stewart: Yes, sir.

The Court: Very good. Mr. Powers we will proceed.

Mr. Powers: Thank you, Your Honor. Where do you want him to testify?

The Court: He may simply stay as he is. If you will simply raise your hand for me, you may remain seated.

Weldon W. Stewart, Jr.

First being duly sworn testifies as follows:

The Court: All right, you may examine.

Mr. Powers: Thank you, Your Honor.

Direct Examination by Mr. Powers:

Q. Mr. Stewart you have been convicted of manslaughter and desecration and have been sentenced by Judge Paul Burch back in Marlboro County; is that correct?

A. Yes, sir.

Q. Mr. Stewart, just a brief background. At the time of the trial, you through two or three different judges, you sought different lawyers and they would

not give you one other than the public defender, and you made a choice at some point to represent yourself; is that right?

A. Yes, sir.

Q. Okay. During the trial Mr. Ronnie Crow sat with you and he was there for the limited purpose of answering any questions you had, but did not tell you how to try the case, and wasn't there to assist you, but only there if you needed questions?

A. Yes, sir.

Q. You did your own examination of witnesses, you prepared your own Motions, and you made your own objections?

A. From the point I started representing myself I had everything.

Q. Okay. Because of that you realized that representation, you realized you pretty much got put in a box as far an original Post Conviction Relief Hearing, because you can't file a Post Conviction Relief Hearing against yourself. You understand that?

A. I understand that now.

Q. You understand that now?

A. Yes, sir.

Q. However, looking back at the trial and the record

from the trial, you made several objects both to evidence, jury instruction and other things at that time, which you feel are appealable, and that your appellate counsel should have addressed those issues in your appeal?

A. Yes, sir.

Q. Okay. You received a copy of what is called an Ander's Brief, that the Office of Appellate Defense prepared supposedly on your behalf did you not?

A. Yes, sir, I did.

Q. Okay. And, you are aware that in that Ander's Brief they addressed the issue of whether or not the judge made a mistake or erred by refusing to instruct the jury about the question of involuntary manslaughter as a choice they would have in determining your guilt or innocence?

A. Yes, sir.

Q. How did you find out that you were represented by someone from the Office of Appellate Defense?

A. I received a letter at Lee County Institution informed me that I would be represented by Mr. Salvage, public defense.

Q. Okay. Once you received that information were you allowed to talk to Mr. Savage, or anybody from his office at any time prior to receiving the fact that

your appeal had been denied?

A. I didn't have any correspondence with Mr. Savage.

Q. Did any lawyer from the Office of Appellate Defense come and sit down with you and talk to you about the questions that should be raised on appeal?

A. No, sir.

Q. Since you were the one that raised the issues on appeal, and, of course, this is your life that is at stake, were you familiar with the issues that you objected to, the issues in the transcript, and what mistakes you think your judge made?

A. Yes, sir.

Q. And, nobody asked you about any of those, and other than the issue of involuntary manslaughter, do you have any knowledge that the Office of Appellate Defense addressed the issues which may have granted you a new trial?

A. I was only aware of the involuntary manslaughter.

Q. Do you feel that was the only issue available to you in appeal?

A. No, sir.

Q. Do you feel that the failure of the Office of Appellate Relieve, particularly your lawyer, Mr. Savage, to even talk to you, come see you, or discuss the issues with you that his failure to do

so makes him incompetent as far as the handling of your appeal?

A. Yes, sir.

Q. If you had gone out and hired a lawyer, me or anybody else to handle your appeal, would you have expected that lawyer to sit down and talk to you whether you were in jail, out on the street, either one?

A. Yes, sir.

Q. And, nobody did that?

A. No, sir.

Q. You had no opportunity to help prepare your appeal or to discuss your appeal?

A. No, sir.

Q. Do you know of anybody who would be better suited to help a lawyer prepare your appeal other than you, since you are the one who tried your own case?

A. I think I would have been best suited simply like you said, because I tried the case, and I know which issues I objected on, and which issues I felt objected.

Q. Beside the issues of the question of charging the jury with involuntary manslaughter, you have in your Post Conviction Relief Petition, you have listed, or your application for Post Conviction Relief, you

have listed a number of issues have you not?

A. Yes, sir.

Q. You had so many that they put in here by an attachment; is that correct?

A. Yes, sir.

Q. These issues, I think the first being one as far as the jury instructions, you objected that there was reversible error as to issues not only as to involuntary manslaughter, but as to the determination of facts in the trial? You made that objection during the trial?

A. Yes, sir.

Q. Do you feel that it was incompetence of ineffective counsel on the part of the Office of Appellate Defense by not raising that issue in your appeal?

A. Yes, sir.

Q. You objected to certain evidence that was put in during the trial, particularly as to the authenticity of documents, of private writings, and it appears from the review of the trial transcript that nobody ever authenticated these documents; and you objected at that time. Do you feel that that issue should have been raised on appeal?

A. Yes, sir, it would have helped that particular issue. There were numerous objections.

Q. Do you want to tell us briefly about those?

A. The State attempted to enter those particular documents into evidence a number of times and I objected. Basically, when they actually got admitted into evidence it was during --- The State had called a particular witness I think it was Detective Gurley, and attempted to have her authenticate the documents. I objected once again, and the Court would not allow her to go forward. So, the Court ended up bringing, I thing, the deceased mother. She stated that she had received a letter through the mail, but there was no, nothing to substantiate, and I objected again. But, based on her testimony the Court entered the documents into evidence.

Q. Okay. And, prior to trial, many of these objections were discussed, and they wanted you to stipulate to certain evidence, and you wouldn't do it. Even after that, even the questions that weren't allowed to the jury, rather than having the jury excused from the room, these things were argued in front of the jury, so they heard about it.

Ms. Ratigan: Objection to leading. There is a fair amount of leeway, I understand, but this is getting --

The Court: Ask the questions in a non leading fashion.

Mr. Powers: Excuse me, Your Honor.

Q. Was there any issues considered before the trial began as far as stipulations and objections?

A. I was asked to enter stipulation on certain documents prior to trial, this being at a hearing with Judge Burch in Chesterfield County. It wasn't the documents that I raised in my application. But I was also asked to enter stipulation by the solicitor during the trial for these particular document and I wouldn't enter the stipulation.

Q. Okay. When you made objections during the trial was the jury present?

A. Not on this particular issue they weren't present. They were present the first time. And, I think they were present for most of the objections.

Q. Okay. The judge ruled your way at your first objections, and then allowed the State to raise it again?

A. Well, when I objected the first time I was on the stand. The solicitor was actually reading portions of these supposed letters or something. The solicitor was actually reading portions of the letters, cross examining me, asking me did I wrote

such and such, and he would read a portion of the letter. I objected, and originally the judge said I could not object. So, the solicitor began reading portions from the letter again, I objected again, and at that time the judge asked for the jury to be excused. He asked the solicitor, what was the question again. Then the solicitor conceded that he could not pose the question because he did not have any proof of document, that that document had not been authenticated so he no longer questioned me concerning that document from that point on until later on in the trial when he tried to present some type of proof of the authenticity of the document.

Q. Okay. And, the jury heard these issues?

A. Yes, sir.

Q. The lawyer that was appointed on your appeal, had he come to see you would you have discussed this with him?

A. Yes, sir.

Q. Would you have considered this important as to something that should have been appealed?

A. Yes, sir.

Q. Okay. You also raised in your application the issue of photographs that you had objected to that were placed into evidence. I think your claim is that

the Court erred in allowing, or rather the State allowing these photographs to be put into evidence.

A. Yes, sir.

Q. If a lawyer from the Office of Appellate Defense had come to see you, or had put any work in your case, or had made contact with you, would you have explained to him the relevance of these issues, and why they should have been raised in that appeal?

A. Yes, sir.

Q. But no one came and talked to you about that?

A. No, sir.

Q. All right, sir. Do you feel that these photographs were prejudicial to the jury?

A. Yes, sir.

Q. In what way?

A. Well, this particular issue the judge excused the jury, and it was Officer Worthy testifying that the solicitor wanted actually two photographs. I objected to both of them for reason one, they were not relevant, and they were prejudicial, they were inflammatory, and the judge ruled that he would allow one to be entered and not the other one.

Q. All right, sir. And, these pictures --- One of them was of a burned body was it not?

A. Yes, sir.

Q. And, pictures that seemed to have a right strong reaction from people?

A. Yes, sir. And, my argument about the relevancy was that the pictures could only really be used to prove the other charge, and that is the destruction and desecration of human remains, because nothing else was in dispute concerning the pictures. They basically just showed the injuries from that charge. I objected because I wasn't disputing the location, or the body, or anything of that nature, so the pictures weren't relevant.

Q. Also, I think you raised the issue that even though the young man that I represented, Stanton Wright was allowed to testify as to hearsay when he testified, and you objected to that. Is that an issue that feel that if you had been represented properly during your appeal that issue could have been raised?

A. Yes, sir.

Q. And, you even prepared a right significant amount of case law about that?

A. Yes, sir.

Q. But nobody talked to you about that?

A. No, sir.

Q. All right. There were other issues raised in the

trial such as admissibility of a statement, even prior to the trial, in an in camera hearings. Do you know if the appellate defense, discussed no other issues with you did they not?

A. No, sir.

Q. And, you made objections, and argued those points rather well in the trial, did you not?

A. Yes, sir.

Q. Okay. Do you feel that you had any representation on appeal or that the Ander's Brief on one issue was sufficient to constitute what you felt like was appealable in your case?

A. No, sir. Not considering that the other issues were preserved for appeal.

Q. Okay. And, you have listed several, and there could have been more that a trained lawyer may have found?

A. Yes, sir.

Q. Because, you made more than just these four objections?

A. Yes, sir.

Q. You made many objections during the trial?

A. Yes, sir.

Q. Okay. And, nobody ever discussed anything with you about this?

A. No, sir.

Q. And, that is why you say it is ineffective?
A. Yes, sir.
Q. Okay. Do you realize that if this court were to grant your Petition for Post Conviction Relief in this case, that what they would probably be granting would be a new appeal, and you are seeking a new trial?
A. Yes, sir.
Q. Do you feel that a new trial, if a judge made errors in the case would have gone back to a new trial that the outcome could be different?
A. Yes, sir.
Q. Okay. Are you doing this for any other reason other than you believe this to be ineffective?
A. It is just that appellate counsel was ineffective for failing to raise these issues.
Q. Is there anything else you would want to tell this judge that you feel is to your benefit, or failed to be done that should have been done?
A. No, sir.

Mr. Powers: All right, sir.

Cross examination by Ms. Ratigan:

Q. Mr. Stewart when you stated that no one from Appellate Defense wrote to you, did you write to them?

A. I think I did as far as I remember write asking what particular --- What is the process, asking them if they could inform me of the actual process of my appeal, because I didn't know anything about appeals.

Q. So, you think you wrote them one time about the process?

A. I'm not exactly sure how many times I wrote, but I know I did write both the lawyers and the Court, the Appellate Court.

Q. Do you have any copies of these letters with you?

A. No, ma'am.

Q. Why didn't you submit your own brief to the Court when they asked you to present one?

A. That was --- I originally was preparing my own brief to submit along with my attorney's brief. That was due to the conditions of the institution I was at. I actually did get a continuance for an extension of time to present my pro se brief, but we were constantly on lock down, and I did not have access to the law library, so I didn't want to just keep asking the Court for extensions.

Q. So, you just asked for that one extension?

A. Yes, ma'am.

Q. Now, when you are talking about the authentication

issue with Detective Gurley, are you talking about the document --- Which document, the one titled motive, or the one called calamity; just so the Court is clear?

A. I am talking about the one --- There were actually two documents.

Q. You are objecting to the authentication of both of them?

A. Not the one that you are talking about. I objected to the one --- They said it was a twenty-four page letter, which was mailed to the residence of the deceased family. I am objecting to that one, and the one motive.

Q. Now you testified that two photographs were entered of the body that you found were prejudicial; is that correct?

A. Only one was entered.

Q. So, only one of the photographs were entered. Didn't your application say there were two?

A. The State tried to enter two. I objected to both of them, but the Court only entered one into evidence.

Q. So you objected and the Court partially granted Motion?

A. Yes, ma'am.

Q. Now, when you were talking about Stanton Wright's

hearsay, could you explain to me what that is you are specifically talking about?

A. It is in the transcript on page 196, lines 15 through 18 where he --

The Court: Page 196?

Mr. Stewart: Yes, sir.

Q. So that one statement by Mr. Wright you say was hearsay?

A. Yes, ma'am. Lines 15 through 18.

Q. Anything else?

A. Anything else as far as?

Q. Hearsay with Mr Wright. That one line about the flipping, is that it?

A. Actually the flipping, and when he said that I told him that the deceased told me something.

Q. And, you think that what he said in lines 15 to 18 prejudiced you, so you didn't get a fair trial?

A. Yes, ma'am.

Q. How long was the trial? How many days, do you remember?

A. Five days.

Q. And this one sentence prejudiced you from getting a fair trial?

A. Not that alone. That along with the other issues that I raised. But, I mean, that one statement

being that me saying I told him this, and he was the only person who had this type of accusation against me as far as another guy or something like that, so I think that statement did have a very significant impact on the jury.

Q. Wasn't your argument at trial that it was an accident that your girlfriend had died?

A. Basically, it was unintentional.

Q. And, you asked for an involuntary manslaughter charge, right?

A. Yes, ma'am.

Q. And, do you think that was a good issue to be raised on appeal?

A. Yes, ma'am.

Q. You just wanted there to be additional issues as well?

A. Yes, ma'am.

Ms. Ratigan: I have nothing further, Your Honor.

Mr. Powers: Nothing in reply, Your Honor.

The Court: All right. Mr. Powers any closing statements you would like to make on his behalf?

CLOSING STATEMENTS BY MR. POWERS:

Mr. Powers: Your Honor, just briefly. Mr. Stewart, this being an unusual situation where he represented himself, I may ask that he be allowed to make

a closing statement as well.

Your Honor, one thing the Attorney General and I discussed is that Mr. Stewart did a wonderful job in representing himself. He made a lot of timely objections. Of course, the issue here, and I think it is clear from his testimony, and the lack of any effort we see on the part of the Office of Appellate Defense is that he preserved a lot of issues that some are, or maybe even one or two of them had they been argued by the Office of Appellate Defense certainly could have gotten him back to Court, and could have resulted in a different result on his behalf.

I am sure the Office of Appellate Defense is absolutely overwhelmed, under funded, lacks resources to cover every case as they should. But, I just know as a private attorney for some twenty-nine, almost thirty years, that if somebody had hired me to handle a case this significant, absolutely the first thing I would have done would have been to talk to them to see what their input was. Particularly in a case where they even halfway reviewed this transcript. They would see that there are many issues, many, many objections that were raised, and that the Ander's, the one page Ander's Brief that they submitted, I think in itself shows a lack of preparation, and a lack of effort, and I feel like that

it shows their inefficiency, and that he should be granted a new trial by the ineffective counsel that he received.

He is raising his hand, Your Honor, and I just don't know if it is something that he wants to add to that or not.

The Court: I'll be glad to hear from you Mr. Stewart.

Statement by Mr. Stewart:

Mr. Stewart: I don't know if it would be appropriate at this level to go and explain more issues. I don't know if that is particularly relevant to the actual issues.

The Court: I will be glad to hear from you as to what you think were issues, and an explanation you would like to give about the situation.

Ms. Ratigan: Just for the record I need to object, Your Honor. There is not right to hybrid representation. He has Mr. Powers as his attorney, and the State would object to any type of hybrid representation, and him making any type of legal argument on his behalf.

The Court: All right, so noted. What is it you want to tell me Mr. Stewart about the issues?

Mr. Stewart: Just the four issues that I raised on

Application.

The Court: Yes, sir.

Mr. Stewart: The jury instruction which I was charged with involuntary manslaughter, I think that is also relevant, because I objected to involuntary manslaughter, and as I stated in my application, there was no evidence of sufficient legal provocation from the State. Actually the State actually made was heat of passion. They said there was evidence of heat of passion, but the State never said anything about it being evidence for sufficient legal provocation. And, I did preserve this issue for appeal, because I objected to it. I think that that issue along with other issues would have had --- my appeal would have been very different if it had been raised.

The Court: Ms. Ratigan.

Closing Statement by Ms. Ratigan:

Ms. Ratigan: Just briefly Your Honor. The record is cold by the time Appellate Defense gets it. The State would argue that any input from Mr. Stewart would have been minimum. The fact that he handled the case does not really make that much of a difference, Your Honor. Appellate Defense or Appellate Attorneys that is all they do. They are the ones best suited to determine what the, in their experience, what the best issues for appeal

were. And, in addition to Appellate Counsel, it is not required to raise every meritorious issue. Part of their experience is sifting through the record and pulling out the issues they think have the best likelihood of success on appeal. By Mr. Stewart's own testimony, involuntary manslaughter charge was a good issue. Mr. Stewart's theory at trial was that it was an accident. He presented a lot of evidence to that point, and thought it would make perfect sense that that would be the key issue to be raised on appeal. Mr. Stewart could have filed his own pro se Brief, and raised any and all issues he wished to. By his own admission he asked for one extension, and then decided not to ask for anymore.

Furthermore, Your Honor, if you read Ander's v California, the entire record is before the Court. Not just the issue as raised. The Appellate Court is required to read the entire transcript, and on their own Motion can further explore any issues not raised by Appellate Counsel that they deem to be meritorious.

So, we would state Your Honor, that the applicant has not met his burden of proving that appellate counsel was inefficient.

Decision of The Court:

The Court: All right. Obviously, I am going to have to review some of the transcript; and I have not had

a chance to do that this morning to see what may or may not be in the record. If there had been someone here from Appellate Counsel, they may have been able to offer testimony as to why they chose not to raise certain issues that had been objected to.

I am bothered by, of course, the fact that Mr. Stewart you did not ask for further continuances, or extensions of time so that you could get off of lock down, and submit your own issues in addition to those raised by Appellate Counsel. Now you want to complain that Appellate Counsel did not raise issues.

Plus the fact that under the Ander's Brief, the Court would have conducted its own independent review. But, I am just going to have to look at it. I am not so sure quite frankly that the testimony that you pointed out on page 196 is hearsay testimony, because it is a statement that is alleged to have been made by you out of Court. An admission by a defendant is not hearsay. So, just because something is made out of Court, doesn't make it a hearsay statement. Or, if it is hearsay, there may be various exceptions to hearsay. But, I am just going to have to review the record further, and see what is in there. After I have had a chance to do that I will get back in touch with each of you.

Of course, any Order that I issue in this matter,

you have thirty days in which to appeal my Order.

Ms. Ratigan: Just for the record Your Honor, just so that Mr. Stewart and Mr. Powers is aware, the remedy, the potential remedy for successful application on appellate counsel is a new trial not an acquittal.

Mr. Powers: Thank you, Your Honor.

Ms. Ratigan: Thank you.

The Court: Thank you.

(Whereupon, this hearing was concluded at 10:10 a.m. on November 15, 2006.)

-- End of Transcript--

I, the undesigned Pamela Ozment-Cartee, official court reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record in the above captioned case, relative to appeal, in the circuit court for Darlington County, South Carolina on the 15th day of November 2006.

I further certify that I am neither kin, counsel, nor interested to any party hereto.

April 25, 2007

Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO Weldon W. Stewart, Jr., S.C.D.C. No. 295095, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS C.A. No. 2006-CP-34-0125 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 18, 2006. The Respondent made its return on July 28, 2006. An evidentiary hearing was convened on November 15, 2006 at the Darlington County Courthouse. The Applicant was present and represented by Delton W. Powers, Jr., 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. The Court had before it a copy of the trial transcript, the records of the Marlboro County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the Lee Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment from the Marlboro County Clerk of Court. The Applicant was indicted at the October 2002 term of the Marlboro County Grand Jury for murder (2002-GS-34-1919). The Applicant represented himself at trial, though Wade R. Crow, Esquire was present as standby counsel.

After the State called the case to trial, the Applicant was found guilty of voluntary manslaughter. On August 1, 2003, the Honorable Paul M. Burch sentenced the Applicant to thirty (30) years imprisonment, consecutive to a nine (9) year sentence imposed on October 17, 2002 when the Applicant pled guilty to desecration of human remains (2002-GS-34-1918).

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders[1] brief. The Court of Appeals dismissed the appeal. State v. Stewart, Op. No. 2005-UP-284 (S.C. Ct. App. filed April 20, 2005).

ALLEGATIONS

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

1. Ineffective assistance of appellate counsel:
   a. Failed to argue the trial judge erred in charging voluntary manslaughter when there was no evidence to support the charge.
   b. Failed to argue the trial judge admitted two documents where the authenticity of the documents had not been established and the documents were not relevant to the issues at trial.
   c. Failed to argue the trial judge admitted photographs that were not relevant to the issues at trial and were graphic in nature.
   d. Failed to argue the trial judge allowed hearsay testimony.

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 the witness who testified at the hearing, and to closely pass upon his credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by

[1] Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Appellate Counsel

The Applicant alleges he received ineffective assistance of appellate 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), SCRCP).

A.

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); Sanchez v. State, 351 S.C. 270, 274-75, 569 S.E.2d 363, 365 (2000). 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).

In assessing a claim of ineffective assistance of appellate counsel, courts apply the Strickland test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced from the failure to raise the issue. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Appellate counsel may be ineffective for failure to present an issue on appeal; however, counsel is not required to raise every non-frivolous claim and may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000) (citing Jones v. Barnes, 463 U.S. 745, 103 S. Ct. 3308 (1983)).

B.

The Applicant argued his appellate attorney did not contact him about the case before he filed an Anders brief. The Applicant argued he made several objections at trial, but appellate counsel only briefed one issue – denial of the involuntary manslaughter charge. The Applicant argued appellate counsel should have also raised the following issues: (1) trial judge's decision to charge voluntary manslaughter, (2) authentication of two documents written by the Applicant, (3) admission of prejudicial photographs of victim's body, and (4) hearsay testimony from Stanton Wright. The Applicant stated he knew he could file a pro se brief to raise these issues and admitted that he failed to do so. The Applicant also admitted his defense at trial was accident and that the issue raised in the Anders brief – the trial judge's refusal to charge involuntary manslaughter – was a good issue.

C.

Initially this Court notes that, based upon a review of the trial transcript, it is clear appellate counsel chose to brief the issue with the highest likelihood of success. The Applicant's position at trial was that the victim's death was an accident. The Applicant testified at trial that he picked up the victim (his girlfriend) and that when he fell with her in his arms, she hit her head on something on the ground and died. (Trial transcript, pp.551-55). The Applicant admitted at the PCR hearing that this was his theory. As the defense theory was accident and there was little forensic evidence and no eyewitness testimony to dispute it, clearly the key issue to challenge on appeal would have been the trial judge's refusal to charge involuntary manslaughter. See State v. Crosby, 355 S.C. 47, 51-52, 584 S.E.2d 110, 112 (2003) ("Involuntary manslaughter is . . . the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others."). Appellate counsel

draws upon his or her experience in appellate practice in order to determine the best argument for success on appeal. See Smith v. Robbins, 528 U.S. at 288, 120 S. Ct. at 765. This Court finds, in this case, appellate counsel did just that.

This Court further notes that appellate counsel perfected the appeal by filing an Anders brief. As such, a three-judge panel at the South Carolina Court of Appeals reviewed the entire trial transcript for error. Review was not limited to the sole issue raised by appellate counsel. Anders also provided the Court of Appeals with the opportunity to request briefing on an un-raised issue if one is discovered from a reading of the transcript. See State v. McKennedy, 348 S.C. 270, 279, 559 S.E.2d 850, 855 (2002) ("The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal."). As further briefing was not requested, this Court concludes the entire transcript was reviewed and the Court of Appeals found the trial judge did not commit reversible error.

D.

This Court has conducted a thorough review of the appellate record and concludes the Applicant's grounds for post-conviction relief are without merit.

Voluntary manslaughter

The Applicant argues appellate counsel was ineffective in failing to argue the trial judge erred by charging voluntary manslaughter when there was no evidence to support the charge. Specifically, the Applicant claims there was no evidence of legal provocation.

At trial, the judge admitted (2) statements into evidence that the Applicant gave to police in which he provided varying accounts of what transpired the night of the incident. In his first statement to Officer John Boston, the Applicant stated he and the victim got into an argument

and the victim pulled a knife on him. (Trial transcript, p.375, line 21 – p.376, line 10). In the written statement, the Applicant said the victim pulled a razorblade on him. (Trial transcript, p.381, lines 19-20).

Voluntary manslaughter is the unlawful killing of a human being in the sudden heat of passion upon sufficient legal provocation. See State v. Cole, 338 S.C. 97, 525 S.E.2d 551 (2000). The provocation must be such to render the mind of the ordinary person incapable of cool reflection and produce and uncontrollable impulse to do violence. See id. And assault with a dangerous weapon – as alleged in both of the Applicant's statements to police – would certainly constitute sufficient legal provocation to support the voluntary manslaughter charge. This Court finds the Applicant failed to prove: (1) appellate counsel erred in not briefing the issue of the trial judge's decision to charge voluntary manslaughter and (2) that he was prejudiced by the fact this issue was not briefed.

Authentication

The Applicant argues appellate counsel was ineffective in failing to argue the trial judge erred in admitting two (2) documents. The Applicant argues the authenticity of the documents had not been established and that the documents were not relevant to the issues at trial.

The first exhibit about which the Applicant complains is the State's Exhibit 64, a handwritten document introduced during Officer Dallas Gurley's testimony and titled "Motive." (Trial transcript, pp.463-72; pp.659-65). The second exhibit was the State's Exhibit 77, a letter introduced during testimony of the victim's mother, Soraya Allen, that was written by the Applicant and mailed to her home. (Trial transcript, pp.665-67).

Authenticity for admissibility purposes may be shown by direct or circumstantial evidence. See State v. Wilson, 246 S.C. 580, 586, 145 S.E.2d 20, 22 (1965). As to both

documents, it is sufficient that the witnesses testified they received the documents from the Applicant and that the handwriting appeared to be his. At this point, it became a jury issue to decide if the handwriting was, in fact, the Applicant's. Further, even if the documents were inadmissible, in light of other statements and documents written by the Applicant, neither was prejudicial or grounds for an appeal. This Court finds the Applicant failed to prove: (1) appellate counsel erred in not briefing the issue of the authentication of documents and (2) that he was prejudiced by the fact this issue was not briefed.

Photograph

The Applicant argues appellate counsel was ineffective by not arguing the trial judge erred in admitting the State's Exhibit 34, a photograph of the victim's burned body.

Initially, this Court notes the trial judge only allowed a single photograph of the burned body to be admitted into evidence. The trial judge discussed in detail the reasons for admitting Exhibit 34, as opposed to others, and ultimately admitted it as evidence of the Applicant's state of mind. (Trial transcript, p.338, line 24 – p.344, line 15). The "state of mind" argument was further corroborated by the Applicant's statements – in the document he wrote entitled "The Book of Calamity of the Prophet No Nature" – regarding the desecration of the victim's body as a "burnt offering."[2] (Trial transcript, pp.424-28; pp.455-59).

The admission of evidence is within the sound discretion of the trial judge and will not be overruled on appeal absent a showing of abuse of discretion. See State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). The probative value of this photograph outweighed the danger of unfair prejudice. This Court finds the Applicant failed to prove: (1) appellate counsel erred in not briefing the issue of the admission of photograph of the victim's body and (2) that he

[2] Trial transcript, p.458, lines 7-9.

was prejudiced by the fact this issue was not briefed.

Hearsay

The Applicant argues appellate counsel was ineffective by not arguing the trial judge should not have allowed hearsay testimony from Stanton Wright.

One of the State's witnesses, Stanton Wright, testified about a conversation he had with the Applicant shortly after the murder. Wright said, "[a]s we walked towards the path, [the Applicant] told me that [the victim] said that she had sex with another dude before she and sex with him and she didn't shower. And then he – and then he said that he flipped." (Trial transcript, p.196, lines 15-18). The Applicant did not make a contemporaneous objection to this testimony at trial. Thus, this issue was not preserved for appellate review and counsel cannot be found ineffective for not briefing this particular issue. See Legge v. State, 349 S.C. 222, 225, 562 S.E.2d 618, 620 (2002) (finding if an issue is not preserved for appeal, then appellate counsel cannot be ineffective for failing to raise the issue).

Regardless, the Applicant has failed to present a cognizable evidence or argument this was inadmissible hearsay. Further, even if it were inadmissible, the failure to raise the issue on appeal did not prejudice the Applicant such that the result of the trial would have been different. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625. This Court finds the Applicant failed to prove: (1) appellate counsel erred in not briefing the issue of hearsay testimony from Stanton Wright and (2) that he was prejudiced by the fact this issue was not briefed.

E.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that appellate counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence

that appellate 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 appellate 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

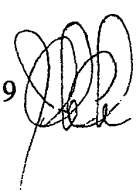
As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

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, sentencing, or appellate proceedings. Appellate counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR 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 227 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:



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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 8 day of January, 2007.

John M. Milling
Presiding Judge
Fourth Judicial Circuit

Darlington, South Carolina.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
	)	2006-CP-34-0125
	)	
WELDON W. STEWART, JR., 295095	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Order of Dismissal** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Delton W. Powers, Jr., Esquire
Joye, Locklair & Powers, PC
[redacted]
Murrells Inlet SC 29576

DATED this 24th day of January, 2007.

Judy A. C. Carey, Legal Assistant
For Respondent

RECEIVED
APR 30 2008
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marlboro County

John M. Milling, Circuit Court Judge

WELDON W. STEWART, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

SUPPLEMENTAL APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
[redacted]
Columbia, S. C. 29211-1589

ATTORNEY FOR PETITIONER

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Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

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TRIAL TRANSCRIPT 1

MR. BLAKE: This isn't a bifurcated trial.

THE COURT: I'm going to give him some leadway. Just don't get too far with it. Go ahead.

MR. STEWART: Just, my grades started slipping lower in the fifth grade. Other than that, I did pretty good. Was doing good at home. Got older.

When I got about 15, I started dating this older lady. She was 27, and she kind of played with my -- played with me a little bit and kind of threw me away. So that was that.

But in school, I was pretty good. Shortly after that relationship, I got with another girl, and she got -- she became pregnant. She was older -- she was a little bit older than me. I was still 15. She was like a high school senior or something. She became pregnant, and she forced herself into an abortion by -- not an abortion, but forced herself into a miscarriage by drinking caster oil, something like that.

And had baby out on the floor and took pictures of it and sent it to me. So that's what happened. Shortly after that, I started -- I had problems with. That -- that really bothered me. Just seeing the pictures and stuff, so I really -- I started -- not getting in trouble, but just to be honest, what I said I was going to do in my opening statement, so I started using a little marijuana. That was how I coped with my pain and stuff like that.

And start acting out a little bit in school, joking around in class and stuff like that and having little disciplinary problems in school. So my parents, they transferred me to [redacted] High School. This was about a month after the thing with the baby.

When I was out at [redacted] High School, I got into some problems with some boys out there, and about ten or 15 of them jumped on me. And what I did was when they told me they were -- four of them jumped on me.

What I did was I took a little kitchen knife to school because I was scared. It was so many of them said they would jump on me, and when they got ready to jump on me, I had nicked one on the arm with it -- with the little kitchen knife and he had to get two stitches, something like that.

They expelled me, and then I went to [redacted] School, and my grades picked up from there. And I went to DJJ for the little thing at the school, the little boy with the arm thing, and after I got back from there, I got in a little bit more trouble, not -- well, just staying out after curfew and stuff like that. I wanted to be grown.

I was like 16, 17, 16 then, so the police came and picked me up. I think I went to the Huddle House and ate and didn't pay for it, and something like that. And they picked me up again, and that's when they took me back to DJJ.

And I went to [redacted] Academy in Georgia from there,

and when I went to [redacted] in Georgia, I was kind of -- it was like a place -- a therapeutic place, and they brought you back like with nature and took you on hiking trips and in the woods and things.

It was a nice camp because they did a lot of like nature type things and they just brought you back in contact with the earth and with everything. And I went there, and it did me a lot of good, but when I came back from there and came back home, I already knew by girlfriend before then. But when I came back from there, that's when I really met -- met her, and we -- we were -- we became friends at first.

We weren't like boyfriend and girlfriend, anything like that. We were just good friends, and I think she was about 12, 12 somewhere in there. And we just became friends. Her parents, they saw me in the church and we knew each other and my parents and they talked about us just being a friend.

And while you were just friends, her parents didn't have a problem with it, not with us just being friends. So I called -- I used to call the house and talk to her on the phone and she used to -- we used to talk in church and sit in church with each other and stuff.

And we just really just became close friends. We were good friends. We talked about everything together, and we did everything together and not everything at that time. Just like watching t.v., watching movies and stuff or on the phone

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on t.v. and stuff like that.

We did little things together, and we were talking, but the thing that really had bothered me when I first met her was that she was young but from what she had told me, it was like older -- older men or boys has taken advantage of her.

Not like she was bad or like fast or anything like people were trying to make her out to be early. They was -- she was young and a lot of them -- it wasn't me -- it wasn't like -- it was before I came into the picture.

Like a few of them had taken advantage of her. Just like the fast talkers, and she was like out with her little friend, [redacted] and her little friends were around out there in [redacted] and stuff like that.

The men that were out there taking advantage of her, so I took her under my wings, so to speak. And I was just trying to teach her, like, how never let people take advantage of her. That's how our relationship started off.

We were just like, we were friends. But I wasn't perfect, and I didn't know how to do certain things, but when we were together, we would just talk, things of that nature. Things got a little bit more serious, and she was like 13 then and she started showing that she liked me -- she kind of liked me and she -- things got a little bit more serious and, eventually, we ended up becoming girlfriend and boyfriend.

That happened March 13, 1999. We became girlfriend and

boyfriend, and when we became girlfriend and boyfriend, a lot of rumors started going around about us sneaking around out the house and sneaking in the -- in the church. And a lot of those rumors started getting back to her parents, and they started disapproving of the relationship because people were talking about us doing this and us doing that.

And her parents started disapproving of the relationship and they talked to my parent, and since my parents and her parents were all in the same church, they all start -- they started working together to try to tell me and my girlfriend that our relationship needed to stop because it wasn't healthy because we were -- all types of rumors going around about us.

But my girlfriend and I was so close that we wouldn't listen. We were hardheaded, so we didn't listen to what our parents told us.

But -- so we kept on talking, and we were real close and around the time -- around the time we started becoming girlfriend and boyfriend, I was real like -- I was having some problems like because they had opened so many old wounds up at [redacted] that I was having real bad nightmares at night.

I was having real bad nightmares at night, every night and I couldn't sleep. And so what my girlfriend would do is she would sit on the phone all the night and hold the phone while I slept. And she wouldn't let me hang the phone up. She'd just say lay the phone by my head. She'd hold the phone

all night. She's stay on the phone all night long while I was sleeping and she would just sit on the phone and listen to me.

And whenever I jumped up or something or something was wrong with me or something, she would push the little buttons on the phone, and I would hear it. And when I would pick up the phone, she'd still be on the phone. She just sat with me like that for two weeks, and eventually the nightmares went away because she helped me out with that.

So that is the type of girl she was. She wasn't like a bad girl like some people -- like she would just go out and have sex and stuff like that with a bunch of people, like some people tried to make her out to be. She wasn't that type of girl. She was a good girl, and some people took advantage of her in the past. She was still a good girl, and we stuck together and every -- when she was with me, I always took care of her.

I never let anything happen to her, ever. You heard her father say in opening statement, I never let anything happen to her. I always took care of her. And that was just how I was, and that was how she was with me. She always took care of me.

If somebody messed with me or anything, she would always help me out. She always helped me out. Anything I needed, she would help me no matter what it was. And I just can't say nothing bad about her.

I'm not here to say anything bad about her. She was just a good girl. You know, everybody had their problem. Everybody makes mistakes, but she was just a good girl. So we continued with our relationship and I ended up getting her pregnant, but it wasn't intended. We didn't mean -- she didn't mean for that to happen, but it happened.

And her parents found out when she was about four months cause she was in school throwing up and stuff. And the little girl, they found out and they started telling other people and they told people in our church.

And the people in our church told her parents and they found out, and so they just did what they felt they had to do for their daughter, I guess. And so they -- but it upset her -- it kind of upset her because she -- my girlfriend was just like she wanted the baby.

She was just like we were married or something. She was just like -- she thought we were married cause she just wanted the baby. And she was real happy about the baby. And she used to rub her stomach and stuff like that all the time and stuff.

And she had already named the baby and everything. And so, I know her abortion or whatever really upset her, and she used to be crying and stuff. She was bleeding for about four weeks. It was like she be just crying and stuff.

But she was just really upset about that. She was just

like crying and screaming and saying she heard baby in her head cry mommy and stuff like that. And, me, I just tried to be there, you know, the best I could. I understood what she was going through, but I didn't because I had lost a baby with another girl.

But I had only seen the baby in a picture, and I think she actually saw the baby pictures far along in her pregnancy that they had to do some type of special process or something she said and they whatever.

But just going into the reason why we met on December 6th 2000. The reason comes from December 1999 cause that's when she had that abortion, and after her abortion, she was real upset, and she just felt that happiness -- her happiness would come from having another baby.

So we started trying to make that baby about February -- February, March 2000. We ran away, went to Connecticut when it was time, ran away and went to Connecticut from Cheraw to Connecticut. We left from church, went from Cheraw to Connecticut and came back home. And her parents pressed charges against me, and I got locked up for about four months, and I came back home because they dropped the charges.

Her mom came out to the jail and talked to me, so they dropped the charges. So we kept trying -- we kept trying to make to baby from when I got out in July on until November 2000. Well, November 2000, we still hadn't succeeded in

making another baby.

So my girlfriend, she was -- her mom -- I don't know when they had brought her, but they brought her a computer -- they had brought a computer, and she was on the internet all the time. She was always on the internet -- looking on the internet for stuff, and she had found this web site, WWW.BABYCENTER.COM. That was the web site.

And what this web site was it gave you all types of information about babies and baby making process and making babies and all types of stuff like that. And what she did when on the web site, and when she found the web site, she called -- not when she found it, but one day she was on it she called my house and got on the phone with me.

And she wanted me to get on the internet and look through the web site with her. So I didn't know the password for our computer at our house, so I had to get my mom to type the password in for me. And my mom came and typed my password in for me. She talked [redacted] on the phone for a little while.

[redacted] was showing her something on the web site, and when my mom got finished talking to her, she put me back on the phone and I got back on the phone with my girlfriend. And we started looking on the web site together and, when we got on the web site, at first we saw some baby making tips.

And one of the tips was that after your finish having

sexual intercourse, that the young lady whatever was suppose to lie down for like an hour or something like that, something about -- I forgot what the reason was, but they're suppose to lie down for an hour. So that was one of the tips. So we kept going through the web site, and we came to this thing called "Ovulation Calculator." Ovulation Calculator, that's what it's called.

And what ovulation calculator does is that -- what you have to do is the girl -- the female or whatever has to type in the date of her last period. And when she types in the date of her last period, she has type in the number of days that it takes for her menstrual cycle to do whatever it does -- I don't know what you call it whatever, but the menstrual cycle to do whatever.

And then once they type in all the information right there, then the ovulation calculator will tell them the three days for the next month that their most likely to get pregnant. And so it was in November of 2000, and my girlfriend and I were on the internet and she typed in her information.

I can't remember the exact number, but I know when she typed in her information in the computer in the ovulation calculator, and it brought out the day for December that she was most likely to get pregnant.

The date was December the 5th, December the 6th, and

December the 7th. So we chose to meet on the 6th because the 6th was the one right in the middle, and we wanted to make sure that we got it right, what we were trying to do, which was both of us have a baby, and just going into December the 6th -- well, December the 5th, I was with Stanton Wright on December the 5th about that whole day -- well, most of the day.

We worked on the radio in his car, and we trying to fix up the radio in his car or take out the radio or something like that. And he and I were together, and as the night went on, we went to our houses and took showers and stuff and got cleaned up.

And after we did that, this was about 9:30, 10 o'clock, somewhere between 9:30 and 10:30. So we went to this girl, Bambi Rollerson's house, and we were with her and her boyfriend and we were talking, and I called -- no, I got Stanton to call -- well, I called them both. I got both to call my girlfriend's house and ask for her for me.

But Bo was like her mother answered the phone. She said she was at a basketball game. So I just Bo -- Bo hung up the phone and a little while later, my girlfriend called back and asked did anybody call her from that house. And I let Bambi-Bambi answered the phone, but Bambi let -- said what my girlfriend said, and I told them it was me. So I got on the phone and I was talking to my girlfriend and she was like

asking me over and over was I coming because we had already planned it in advance.

I was like yeah. I got Bo to bring me. I'm coming. Just be ready. I'm coming. Just be ready. She was like already, and she said she was going to be ready. So I said that what I would do when I got there is I would call her and let her know that I was near the house so she could go ahead and come out.

And what she said she was going to do was she was going to take the ringer off the 921 number. I think it was 921-3066 or something like that. She said she would take the ringer off so that her parents wouldn't hear the phone when I called it.

She would just be sitting there by the room with the -- by the ringer and stuff. So I was with Bo. We left Bambi's house. We dropped Bambi off, and came back. It was me, Bo and Kevin. We all left -- dropped Bambi off. Me, Bo and Kevin went to Kevin's aunt's house, stayed there a little while, and we left there.

We left Kevin there and Bo and I went back to your neighborhood. That's when Bo dropped me off and he left, and when he came back, he had Monique Bright with him because he wanted Monique to come to [redacted] ith us to pick up my girlfriend.

So me, Bo, and Monique Bright, we went to [redacted] to get

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my girlfriend, but I had been -- I had -- that night I was like celebrating because my life was going good. I had just got -- I had just got sworn into the military. I had just graduated from school, high school. My life was going good.

And so I was like -- I was smoking a little marijuana that night. You know, I was just celebrating. I had just been blessed with a little baby daughter. I was happy. So I was laughing and stuff.

And me, Bo, and Monique, we were all laughing, joking around. Bo he was more of a drinker, but Monique and I was smoking. Well, we waited until we get in the front of the house and we started smoking.

And we were just sitting in front of the house at first because I had forget that I was supposed to call my girlfriend and let her know that we were on our way over there -- I mean, that we were near her house. So me and Bo and Monique got drunk, we were just sit in front of the house -- we were just sitting there waiting for her to come out.

And when she didn't come out that's when I remembered that I had to call her, and we went around to the Texaco Station and that's where I called at. And I just let the phone ring three times and hung up, and then, cause I know she was probably sitting by the ringer looking at the light or something to blink.

So when we got -- when we got to the house, we waited for

about a minute, 30 seconds or so. Monique just got out the car, and she walked up towards the house and she came back. And she said, "The girl said she will be out in a minute."

So my girlfriend, she came out the house -- she came out the front door and she had her little boots in her hand. And she had on a black -- she had on a black Chaps fleece. It was black with white letters on it, and she had on a little red -- up under it, she had a red tank -- little like tank top like thing and she had some blue jeans on and she had some peanut butter colored Tims.

And she had this scarf right her -- she had this scarf right here tied around her head. This is my girlfriend's scarf right here. Nobody know that before, this is my girlfriend's scarf right here. She had the scarf tied around her head like -- how she had it -- she had it kind of like tied around her head like that. She didn't have it all the way over here. She just -- it was like tied around her head.

And the hairdo she had -- she had a little hairdo coming out the top of it, whatever, and she had it tied around here like that. But she had that scarf right there on, and she didn't wear a jacket. The reason why she didn't wear a jacket was because she had to sneak by her parents' room and she didn't want her parents to hear her jacket. The little jacket -- her jacket, when you rub up against it, when you walk the jacket made noise.

And the reason why she had her shoes off was because she didn't want her mother and her father to hear that she was sneaking past they're room going to the door. So she had her shoes in her hand, and when she got in the car, she put her shoes on.

We were laughing. I was tickling her because I was -- I was laughing because I was a little -- I was a little under the influence of marijuana. I was under that happy grass what I call it. So I was laughing because I was a little high. I was just laughing. I thought everything was funny to me.

When she got in the car, I was laughing and she was laughing because she was happy, and we did this all the time. This was something we did all the time. This wasn't something that was just new to us.

We snuck around all the time in the middle of the night, almost all the time we had been together. So she pretty much knew the routine. But she just got in the car, and we were laughing and joking and laughing and playing with each other all the way over to [redacted], just laughing and joking, sitting in the back of the car.

Monique and Bo were in the front of the car, and when they dropped us off, they dropped us off down the street because I didn't want to get dropped off right in front of my mother's house. Because my mother had a habit of when I was out the house, of always looking for me and when she'd hear a

car come by the house, she'd get up cause her window is right in front. She get up and looked out the window and stuff like that, see was it me cause I always -- I was always in and out the house in the middle of the night, always.

So my mother is always trying to keep me in the house, but I didn't want to stay, so she was always looking for me. So I didn't want to get caught sneaking my girlfriend in the house, so they dropped us off down the street and we walked around -- we walked around ---

MR. STEWART: May I publish this to the jury? Defendant's Exhibit 13.

MR. BLAKE: I've never seen it before. What is it?

MR. STEWART: My neighborhood.

MR. BLAKE: Did you take it from something like the tax assessor's map? Where did it come from?

MR. STEWART, SR.: It was an aerial photo.

MR. BLAKE: Aerial photo. Did you have it personally made or they just do that sort of thing?

MR. STEWART, SR.: They made it on the computer.

MR. BLAKE: Okay. Is he asking to enter it into evidence or does he just want to publish it?

MR. STEWART: Publish it and show it to the jury.

MR. BLAKE: No objection.

THE COURT: Go ahead.

MR. STEWART: So this is our little neighborhood -- our

little neighborhood right here, and they dropped me and my girlfriend off right here at the corner of [redacted] and [redacted], and we walked down the street right here -- walked down the street right here and went into my house.

My house is somewhere over here, and we went into my house. That's how we went to my house. My girlfriend, she knew -- she knew the routine that we -- that we -- that when we were sneaking around, she had automatically go in -- she went in the back door because my parents room was right at the front of the house.

And I didn't never want to get caught when I was sneaking somebody in the house, I would always take them in through the back door. So my girlfriend she went straight to the back door because she knew where to go at because she -- we had done this before, many times. So she went straight to the back door. I went to the front door and I looked to see if my parents were up and I heard my father snoring so I knew they were sleep.

So I went to the back and I went in my room, and I cut on my t.v., and I had a little Play Station and I put a CD play there. I was playing a song called Bonnie and Shawn because I just liked it because it reminded me of my relationship with my girlfriend how we had been through it all and we stuck together.

So I was playing that and I went to the back door and I

unlocked the back door and let my girlfriend in and she started fussing at me cause I took so long to get to the door. She was just joking and we were laughing and we went in the room -- we went in my room and we stayed in there and did whatever we do trying to make a baby.

And we -- at about 2:30 -- no before we did that, she before we went -- before we laid down for an hour -- for the hour, she told me to go get her something to drink because she was thirsty. And I went and got her something to drink in a little glass -- a little flower pattern glass, and she drunk half of it and give me the other half.

That's how we always did if one of us had something. One took half and gave the other half. And so she drank out the little flower glass and I drink out of it and I put it on the dresser. And then, it was time for us to lay down for an hour, so we laid down on the bed and she was laying there and I was laying there.

And she started -- she was thinking -- she started -- she said something about my baby, but it wasn't like serious -- nothing serious, serious. It was just like yeah, you already got your baby or something like that, but it wasn't like jealousy -- like she was jealous or anything like that -- it just sometimes it upset her that I had went and had a baby on her.

When I had my baby, she was still my girlfriend, when I

got my baby's mother pregnant and all that. Sometimes that bothered her, but it wasn't like a jealousy thing. My girlfriend wasn't like -- well, to me it wasn't like a jealousy thing. I just understood it because she felt that I wasn't loyal to her, and that -- I could understand that.

But we laid down. We went to sleep, and when we woke up, it was about ten minutes after four. It was either ten minutes before four or ten minutes after four. I think it was ten minutes after four, but either way it was, we were late because we had been planning to be out of my house by 3:30. So we were late getting out my house.

So, well, 3:30 no later than 3:45. But we got up, put our stuff on and we ran -- we ran -- well, we didn't run. We walked quickly out of the room. And what we did, we split up. She went out the back door and I went out the front door because what usually happened was when I -- when somebody sneak in my house, I would let them out the back door and lock it back because you can't lock my back door from the outside.

So I had to lock through the inside and got out the front door and meet them outside. But on this a11 night, we were rushing so I forgot to lock the door. We just split up cause she knew the route she was used to going, so we split up.

And she went out the back door and I went out the front door and I came around the house and met her in the back because what we were going to do is we were going to take a

path to get to [redacted] so we could meet Bo.

Now, I wasn't -- I was planning to catch a cab to take her back because I was just planning to get Bo to bring her over there and catch a cab to take her back.

Bo, once he starts -- once he starts getting his little juice in him, he wasn't reliable. So I didn't want to catch a cab going there and a cab coming back because a cab going to [redacted], coming back from [redacted], going back to [redacted], and coming back from [redacted] that was like $100.

And I had just caught a cab going to [redacted] -- well, my girlfriend and this girl name [redacted] Knox, they had came to my house about -- my girlfriend spent the night with [redacted] and they had came to my house about four, three or four weeks before this happened. And then my girlfriend and I, we -- I had tried to go to her house and pick her up about two weeks -- two weeks before this happened.

Her parents, they were all -- the whole family was about to go out of town for Thanksgiving. I remember it was Thanksgiving, and I had went to her house. I had got a cab to try to pick her up, and what happened was the cab broke down in [redacted] and we got there past the Saveway, whatever, a little bit past the Safeway.

The cab broke down. I mean, the cab was out there for like hours, and I was late getting over there. And when I got to my girlfriend's house, she came out in her little -- her

cousin -- what's his name, the boy? BJ was at the door, and he was watching for her and she came to the car and she kissed me but she said she couldn't go because it was too late and she might get caught.

So she remembered when the cab broke down about two weeks before that, so my girlfriend didn't want to catch a cab. She wanted me to go and get Bo and go with Bo back over to [redacted]. That's why she didn't want to catch a cab because we were going through paths in my backyard to get [redacted] because that was the quickest route.

So what -- that's -- we all -- everybody in my neighborhood, we took the path. That's where we went. When we were going from one street to the other, to the other, so we were going through my backyard, and I met her at my fence and she was like I'm not going anywhere until I see the spot were my baby is.

What the spot was -- let me explain the spot. The spot was -- my girlfriend had her abortion. I had -- the same day she had it, well, the first day -- it was like a two day thing. The first day, she called me and let me know how she was doing and stuff, you know, that she was all right and everything.

I don't know how she called me -- how she got -- she always kept calling cards and stuff. I believe called me on a calling card to let me know how she was doing, whatever.

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But that day, what I did was I went out to the my -- that same night that she called me I went out to my yard because I had bought some baby clothes for the baby, anticipating the baby and what I did was I went out to my backyard when she called me -- after she called me, and I had buried the clothes in my backyard back there, and that was like my little -- my little spot -- like my little -- my little memorial to the baby.

And that's where I went out there at night, and like, just sometimes just stayed out there and mourned the loss of our child or whatever. But I never told my girlfriend about the spot. And I call -- I used to call her Shorty, so when I say Shorty, I'm talking about my girlfriend. But I never shown her the spot before. I had never told her about until like a week before this happened.

And so when she said she wanted to see the spot, it kind of -- it kind of threw me because I'm thinking we're already late, so we don't have time. But then she crossed her arms. She was like you're not going anywhere until she sees the spot for her baby.

And that's what she called the baby, her baby. So what I did was I grabbed her hand and I was like all right, then come on then. So we went and we walked in my backyard a little bit and we went to the spot. And I pointed it out like here, here it is right here. And so she started crying -- she started

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crying and stuff. She started crying and she started crying and she was crying real bad.

And I was just hugging her, but at the same time, I was thinking she needed to get home because her parents -- well, her father, I think, got up real early in the morning, like 5:30 or 6:00 or something like that. And 5 o'clock, something like that, go to work and I was trying to get her home before he got up because I didn't want to get caught.

So that's what I was thinking about. But, she was like upset thinking about seeing the spot. When she saw it, she started crying, she was upset about that. And she was like -- I was like come on Shorty, let's go. And she was like you don't rush your time with your baby. Don't rush my time with my baby, like that.

So she was just standing there. I'm like come on Shorty, come on Shorty, let's go, let's go. And she was like no don't rush my time with my baby. So she was standing there and she was crying and crying and crying and then, finally, I got her to come with me because she was walking. She was walking, and we were talking.

Well, I was fussing a little bit. I was fussing and she was crying and I was fussing and when we got about to the path -- close to the path, a few feet from the path, she snatched away from me -- she snatched away from me.

And she started talking about her baby, how she lost the

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baby, and how I did her wrong by having my baby, but it was like a speech she went into sometimes about how I was supposed to be home and I went out and messed with another girl and whatever and got a baby on her and stuff and she was talking about that -- she was talking about that.

And I was talking -- trying to get -- I was trying to put my arms around her and tell her to come on. But every time I tried to put my arms around her, she snatched away from me.

So every time I tried to put -- I tried to put my arms around her again, she snatched away. I tried to put my arms around her again and she snatched away from me. So I was like what's going on? What's wrong with you?

She was just crying and talking about my baby and how she lost her baby and this and that, and this and that, and so what I did was -- I was just -- I was just -- I didn't really -- I didn't really -- I didn't really -- I didn't really think about a thing, but I was just like forget about it, the stupid abortion and come on.

And when I said that, she just like -- she just like froze up, like it shocked her what I had said, shocked her. And she was like what you said like that? What you said? And I was just like I didn't mind it because what it was was that we were so close and I knew what she had went through with her abortion.

And I knew how much it hurt her. It really upset her to

hear me say something and call it stupid like that. So she just got real upset, and that's when she pulled out her little -- her little -- her little -- her little thing she had -- she kept -- her little box cutter.

But it wasn't like a big box cutter. It was like a little neon like -- little neon like thing, and she wasn't trying -- she wasn't -- she did sometimes just when she was having one of her little things, whatever. But it didn't make her bad or nothing. She was just -- that was something she just did around me.

She bought it for me because whenever -- whenever I was like talking to her, another girl or getting smart with her or something, she called that cutting up, so her little speech was whenever I started cutting up, she'd -- she'd cut me up. And so that's why she got her little box cutter.

She never really hurt me with none of them or anything. She nicked me one time but that wasn't nothing. She usually just chase me around with it, usually I just let her chase me around with it, and we'd just sit there and we'd argue, whatever. And then after we argued, we'd just make back up.

I mean, that's what we usually did. We'd argue, we'd fuss, we argued and fussed all the time and then we would just make back up. So when she pulled her little -- when she pulled out her little box cutter, what she did was she just swung it. But she wasn't really -- I don't think she was

trying to cut me. She was just upset. She just swung it.

And what I did was jump back -- not jump back, but lean back cause I was like -- her reach wasn't that long. She had them short arms. She swung it again and I jumped back like that, and when she swung the third time, I grabbed her arm -- I grabbed her arm like right there and kind of like spun around behind her and picked her up, clicked it down, grabbed her hand and clicked it down and spun around behind her.

When I picked her up, I had my arm like that right there because she wasn't that big -- she wasn't that big, so I had my arms like this right here holding her. I was really picking her up with like this arm right here, but I was holding her -- holding her -- holding her still with this arm.

And I was just trying to carry her where we were going because she wasn't acting like she was calm down. She wasn't acting like she was gone go on her own. I was -- so I was get -- just trying to get her home. Because the only thing I was worried about was getting her caught. And the longer we sit out there waiting and arguing and stuff, the better chance it was of us getting caught.

So what I did was I was trying to carry her like through this path. I was trying to carry her through this path and my backyard. Trying to carry her.

MR. BLAKE: No objection.

MR. STEWART: I showed you this in opening statement.

What happened was I was trying to carry her through that path right there. I was trying to go through the path with her, but it wasn't like she was sitting still or nothing like that.

She wasn't standing still like -- just standing there. She was like shaking in my arms. She wasn't like doing it real bad, but was kind of like shake. She wasn't like being still. She was telling me to let her go -- let her go -- let her go.

And I was holding her cause I was trying to take her home, and all it was that -- really it was my fault because it was about a year -- it was exactly the time when she had her abortion, and I should have known better than to show her that spot because that's what set her off. And that's why she was just real upset and real emotional and stuff like that.

And it was my fault. I shouldn't have shown her that spot, but I wasn't really thinking about it when I showed it to her. I just showed it to her. And cause she said she wasn't going nowhere until she saw it.

So I'm trying to carry her and she just -- she just twisting. She's won't -- she's not being still. She's just twisting in my arms and I'm struggling trying to hold on to her and walk through the path at the same time. And it's pitch dark -- it's pitch dark outside.

So what happened, I'm walking through the path and when I

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get -- when I get right there at the path and start walking, my foot get caught on something. My right foot get caught on something and I stumble first and I try to regain my balance and I'm holding her.

But what happened was I fell -- I fell and she was in my arms when she fell and she fell first and I fell on top of her, and then when we fell, I jumped right back up because I was like, all right, so we fell. So what? My girl, she was like -- she fell all the time. You know like, I have seen her fall before harder than that in my opinion, and she just got right back up.

So I was standing there and I was waiting for her to get back up she usual -- usually just jumped right back up. So what happened, she turn over -- she turns over and she sits up, but she doesn't stand up. She just sits up. She doesn't stand up.

And I'm standing there and she's like Stew, help me up, and I'm just like come on Shorty, go ahead. Help yourself up, now. Come on, now. Stop playing. And she like -- because that's what we usually do when we get in an argument.

One person -- one -- the one that starts the argument butters the other one up and then the other plays hard to get. And when the other one playing hard to get, then the other one just make up with them. So I was just playing hard to get. I'm thinking she's going to jump up any minute and just jump

in my arms or something. We're going to kiss and make up, everything is going to be all right.

So she like help me up again. So she didn't have any stress or anything in her voice. So I'm thinking everything all right. She's just buttering up to me right now. I'm playing hard to get and she gone jump up any minute and we're going to hug and going to be all right.

So the third time -- the third time -- the third time -- the third time -- the third time when she called my name it sounded like -- it sounded like she's getting scared, but her voice was low. And what it was the first two times and she just said -- she just like Stew and she sounded real scared.

And she was just like Stew -- she was like Stew, I'm happy. I'm happy. I'm happy. She said, "I'm back to my baby. I'm happy." And she just fell back over.

And when she fell over, that's when I was -- I was looking like because it was like -- it was like strange sounds -- it was like strange sounds coming from her like, I can't even explain what it was. But it didn't sound human. It didn't sound human and what happened was I -- I jumped -- I jumped down -- I jumped kind of like jumped over there where she was and reached in my pocket and grabbed my cigarette lighter and I lit it -- I lit it and I looked at her.

I look at her face and it was like -- it was like a little bit of blood was coming out her mouth -- a little bit

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of the blood was coming out her mouth. And then I looked -- I look in, and that's when I realized something -- I realized then something was wrong with her, but I didn't realize it before.

So what I did is I grabbed her and -- grabbed her and picked her back up. And when I picked her back up, I went to go through the path -- I went to go through the path to go on the other side of the path to [redacted] because that was the closest house right there.

It was closer to [redacted] than it was to my house because my house was all the way back through the field, that little field back there, on back to my house. So when I went to pick her up and take her back to [redacted] - and take her to [redacted] that's when -- that's when -- that's when her urine broke cause I smelled -- I smelled -- I smelled the urine and like bowel move -- bowel -- like a bowel -- like a bowel movement.

And I -- it -- it -- it -- it -- it -- I knew -- I knew it was over. I just knew -- I couldn't say how I know, but I just knew -- I just knew it was over. I knew it was over.

And I just laid her back down. I laid her back down real slow and I jump -- jump -- I jumped down to where she was and I lit my lighter again and I was looking at her. And it was a little bit -- it was a little bit -- it was a little bit of blood coming out her mouth.

And I had that shirt -- I had that shirt on right there.

That was my undershirt and my undershirt -- I was -- I was just sitting there at first. I couldn't move. I just sat there for a minute, just like just sitting there. Like I was shocked. I was like -- cause everything had happened like that.

I was just like what's going on. What's happening -- wasn't happening. So I just sat there for a minute and I didn't do anything. I just sat there, and what I did was when I sat there for a minute and then when I came back to myself a little bit, what I did was -- I was just shaking her at first. I was just shaking her at first. I was just shaking her. I just kept shaking her. I was shaking her so hard that I realized how hard I was shaking her.

And I was screaming like, Shorty, get up. And I was shaking -- I was just shaking her real hard. And then I just stopped shaking her and what I did was I took my shirt -- I took that shirt right there -- cause I lit my lighter again and saw a little blood dripping out my mouth.

And so I wiped it with my shirt and then I took it, and I bent down to her mouth and tried to blow in it -- and blow in it. And when I did, it was like more blood came up to my mouth. So I had the shirt -- I had the shirt on like this right, this right here. I had the shirt on -- the shirt was on like this right here in the front.

So what I did -- I took the shirt like this right here --

pretend this right here is the front. I took the shirt like this right here and did it like that right there. And wiped -- wiped -- wiped -- wiped my mouth off. I wiped my mouth off and then -- then what I did is I got up and I went to find Bo -- I went to find Bo.

And first, I went around to his house. I went around the long way through [redacted] Street around to his house. And I didn't -- I didn't see him at his house, so what I did was I went down the hill -- I went down the hill to -- down Everett and down the hill in our neighborhood. And I got me a Natural Light -- a Natural Light beer and a pack of cigarettes cause I couldn't find my cigarettes -- couldn't find my cigarettes on me.

I just bought a pack earlier that night, but I couldn't find them. And when I got the cigarettes, and I was coming down the little path, that's when I saw Bo coming up -- I saw Bo coming up -- up -- up from on the street. He was coming down the street and I tried to flag him down.

And he slowed down, but he wouldn't stop. He wouldn't stop. He kept going, and when I came out the path that was down the hill by where I got the beer and the cigarettes from, that's when I saw his mom. His mom was coming down the hill. And his mom stopped and she talked to me -- she talked to me, and she was asking me where Bo was or something like that, and I was just I don't know -- I don't know -- I don't know where

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he was at. I don't know and she was just -- she was just like okay.

And his stepfather was in the car too, and they left and ran up the hill and I shotgunned the Ice House right quick and I opened up the pack of cigarettes, and I ran the hill and that's when I saw Bo, when I came around the block. I caught him at his house.

And he was like what's wrong. That's the first thing he said when he saw me, what's wrong. Did you -- did -- did you get -- what did he say? Did you -- did you get caught? Is [redacted] still over there? She need a ride home? You need the car?

He was thinking -- like he was thinking the look on my face was maybe because we got caught or something or she needed like -- I didn't have a way over there or something like that. He was thinking like maybe we got -- something happened like that, but I -- I -- I could tell he was -- see the look on my face, whatever.

So when I talked -- when I talked to Bo, I was just like come on Bo, just come on, just come on and -- and I just -- he was like what's wrong, and I was just like come with me, just come on like that. And he was like what's wrong. He kept asking me what was wrong, and I kept telling him just come on, just come with me.

So we walked down to my house and I went in the house and

I got two flashlights. And I gave him one and we walked the long way because we didn't want my mother to hear us going back in the backyard to try to follow us or anything.

So we walked the long way around the block, and we walked the long way and when we got to the path, we walked through the backyard of [redacted] And when we got to the path, Bo was like what. So I told him to cut on his flashlight, and when he went and cut his flashlight on, the battery was dead or something but it wouldn't come on.

So I had to cut on my flashlight. And I just did like this right here and shined it through the path like that right there. And he was looking but he ain't see anything. He ain't see anything at first because he was just looking straight through the path. He wasn't looking on the ground cause that's when I grabbed his head and I pointed his head down.

He was like looking sideways right here, and I grabbed his point and I pointed his head downward towards the ground and I shined the light again through the path. And when he looked -- he looked again and his head kind of was like jerking back against my hand like that. His head was jerking back against my hand like that.

And he was like that's your girlfriend. I was like yeah, and he kept telling me -- he was like go wake her up, go wake her up, go wake her up. And I was like I tried. I tried, and he was just -- kept screaming go wake her up, go wake her up,

go wake her up like that.

And I was like I tried, I tried and he was like -- he was like -- he said something and I was like -- I kept telling him -- I kept telling him I tried, I tried, I tried. But then he dropped down on his knees and started crying.

And when he dropped down on his knees, he was crying. While he was crying, he said, "What happened, what happened?" And all I told him cause I didn't -- I didn't want to go back through that and be talking about that so all I told him I just kept saying, "Bo, I tripped. I tripped. I tripped." That's all, every time he'd asked me what happened all I said, "I tripped." What happened, Stew? I tripped and that's all I would tell him. I tripped.

And when -- so he was down on the ground crying and I grabbed him and picked him back up off the ground. When I grabbed him and picked him back up, I was like Bo, what we gone do, man? And the first thing he said -- he was like -- no, I'm not saying he said it. It was one of us. One of us was like you got to take her back home -- you got to take her back home -- you got to take her back home.

And then -- so we were like all right. We're going to take her back home, whichever one said it. The other one went along with it -- the other one went along with it, and we went around the block to his house. And got his car and when we got in his car, I was smoking cigarettes back to back because

I was nervous. My nerves were up. 'And I was smoking cigarettes back to back, and he kept trying to talk to me and ask me what happened, but I wouldn't talk to him.

I was just sitting in the car. I was just sitting there and he kept saying you making me nervous. Man, you're making me nervous . What happened? Man, you're making me nervous like that. But I wouldn't talk to him all I'd said -- all I said was, "I tripped." I said that one more time and I wouldn't talk to him anymore.

And he drove around to Monique's house -- well, it was down the hill. He had to go down the hill to Monique's house and when he drove to Monique's house, then what happened was he got out the car. And I just stayed in the car and he went on the porch and I don't know what -- who he talked to when he went on the porch, but he was talking to somebody.

And I was in the car, and I was smoking cigarettes. I just kept smoking cigarettes back to back to back to back to back to back to back to back to back, and ---

THE COURT: Mr. Stewart, I hate to say anything to you. My court reporter has got a tougher job, and you're sitting there repeating the same thing, at least since last time, seven or eight times. Do you understand what you're doing to her?

MR. STEWART: No, sir. I'm sorry.

THE COURT: Please tell us your testimony and cut out the

repetition of everything. Go ahead.

MR. STEWART: So I was in the car. Bo came back to the car and we drove to the path. We drove back -- back to the path. We drove back to the path to [redacted] and we both got out the car and we went around and sat like on the front of the car or something like that. And it was dogs howling everywhere. It was just dogs. They were just howling. They wouldn't stop howling for nothing.

And it was like you can just feel -- you can just feel -- you could just feel like death all back there. There was just dogs howling and it sounded like they were just screaming.

It was unnerving me and it was unnerving Bo. He was nervous and he asked me for a cigarette and I gave him one, and I was still smoking cigarettes.

And he was saying something about what to do or something like that, and I was just sitting there. I wasn't talking to him. And he kept telling me, "You making me nervous, man. Talk to me, man. I'm your friend, man. Talk to me. You making me nervous. Tell me what happened." And I was just sitting there.

I wouldn't tell him what happened, so he -- he -- he became -- he was just like man watch out for a minute. Let me get in the car. Let me get in the car and get something. He was like let me go in the car and get something right quick.

And so I moved off -- I moved off the car -- I moved off

the car where I was sitting at on the front. And he went in the car right quick and he got in the car and he cranked up and pulled off real fast -- pulled off real fast.

And he had a little -- ran into the house because we were in the backyard of this house right here. He almost ran into the house when he pulled off. And then he turned and went to the right and I didn't see him no more after then.

But then, I went back to the path where Shorty was at, and looked at the light again and I looked and I just -- I was like man. But I said, I can't -- I was so scared because I was just like I didn't know -- only -- only -- only thing -- only thing that had me so scared was the fact that I snuck my girlfriend out her house. Nobody didn't know she was with me.

Her parents didn't approve of the relationship. My parents didn't approve of the relationship, and the girl ended up dead. That's the only thing that had me scared to death, and I was just panicking. I was like I didn't know what to do. I didn't know what to do, but when I -- when I -- when I -- when I saw her again, I was just -- I was just -- shook my head and just cause the dogs were still howling.

I ran back in the house. I ran back to my house, ran back around the back of the house, and ran back to my house and I went in the front door -- I went in the front door.

And that's when I went to the back of the house and sat down, and I heard my mother -- I heard my mother talking. She

was just like Jesus, and Jesus and something. I know she was talking about Jesus. It was early in the morning. I know she just kept talking about Jesus. Jesus this and Jesus that, and I heard her.

I was sitting in the recliner in my room. And I was hearing it because she just talking about Jesus, and I was just like "Man, where is Jesus at now. My girlfriend's back there in the yard. Where is Jesus now?" And for a long time, it made me mad when somebody would say something about Jesus around me just remembering that morning and everything -- and everything that happened that morning.

But I was just sitting there, and I know my mom was talking and my father, he came back there and he was rubbed me on my shoulders. And he was rubbing on my head and he was telling me something, but I couldn't understand what he was saying. I couldn't hear him because I was just sitting there.

I was like in a daze and I couldn't hear what he was saying, but I know he was telling me something. And then him and my mother left -- and they left and then I was in the house by myself, but I couldn't stay in there by myself because it was unnerving me staying in there by myself like that because I was thinking about my girl.

So I had to go outside and sit on the front porch and I went outside and sat on the front porch, and I was still smoking my cigarettes and stuff. And I waited until I saw my

mother -- my mother -- my father's car, but my mother was the driver coming back down the street.

And when I saw that, I went -- went in the house right quick because I didn't want to be around my mother too much because I didn't want her to know anything was wrong with me. So I went to the back of the house where my bathroom's at and I went to the bathroom and when I went to the bathroom, I went back to my room and I was just like -- at that point -- at that point I was just like this thing ain't even happening. This did not happen. This did not happen right here. This is not happening.

Shorty is going to get up in the morning. She is going to call me before she goes to school like she always does and this is not happening. This is just not happening. So what I did was I pulled off my boots, my Timberlands and I just laid back -- I laid in the bed. And I just said, "All right. I'm just going to sleep it off. I'm just going to sleep it off.

This ain't even happening. This ain't even reality right here. This is a big nightmare. I'm going to go to sleep, and when I wake up, it's going to be all right. Everything will be back to normal again." So when I went to sleep, I start having nightmares. I start having nightmares when I went to sleep, and I slept -- I didn't sleep for nothing about 30 minutes and it was about 8 o'clock then.

And I got up -- I got up and I went -- and I went to the

bathroom back there in my room -- back there by my room, and I put on my boots. I came back to my room and I put on my boots, and when I put on my boots, I didn't put on my jacket. I didn't put on my jacket. I just put on a little pullover shirt and I put on a little pullover shirt and I went out the front door and went back in the backyard.

When I went back there in the backyard, when I first got to the path, I didn't see my girlfriend at first. So I just like okay, okay, okay. Maybe it didn't happen. So then I went -- I went in the path -- where you come in, it's like an angle and you turn like that.

See when I turned, I'm in the path. I saw her back there in the back. I saw her back in the -- in the back of the path still on the ground and it was broad daylight now. And I walked -- I walk -- I walk over there where she was and kind of sat her up and slid up under her.

And she still had her scarf on and she still had her clothes on, and it wasn't nothing -- it wasn't nothing -- nothing wasn't wrong her, nothing, nothing at all.

Her face wasn't swollen. Her head wasn't swollen. Nothing was wrong with her scarf. She just looked like she was sleeping. It wasn't anything wrong with her at all, not that I can see with my eyes.

But I kind of just slid up under her and sat there. And I was sitting there -- I just sat here -- I just sat there up

under her. I had her head like sitting in my lap and I was just sitting there.

I didn't move. I was just sitting out there and I was just sitting there and it was like I was reflecting. I was just reflecting back through all the things that we used to do and stuff, like how we used to always watch little movies together on t.v. and stuff and how when we went to Connecticut and she had -- she had stayed up in the car and how we made it together all the way to Connecticut with nothing but $30 because we stuck together.

And how she used to just always stick by me and do anything for me and no matter what I did, how she used to always forgive me for it. And even when I fooled around with other girls, how she used to always forgive me and how she used to always be nice. And, sometimes, even when she got mad -- she'd get mad at me and throw her little temper tantrum and stuff, but she was already. It wasn't like a bad thing. She was just -- she just really -- she just really liked me and she loved me and we loved each other.

And we were real close and she couldn't deal with her emotions sometimes so she had a little tantrum whatever. But it wasn't like she was a bad person or that she was out there like that or anything like that.

But I was just reflecting on -- I was just reflecting on everything -- I was reflecting on everything. And I -- my

mind was just slipping. My mind was slipping. The longer I stayed out there, the more my mind was just -- my mind was just slipping.

The longer I stayed out there with her, my mind was just slipping because I couldn't believe -- I couldn't believe what was happening. I couldn't believe how fast it happened. I couldn't believe it was happening to me. I couldn't believe it was happening to my girlfriend.

So I just stayed out there for about three or four hours. I just sat out there, and I was so tired. I was tired, and I was -- I was out of it by then. I was pretty much out of it by then. I was just sitting out there, and I decided, I said, "Look, I'm going to call -- I'm going to call somebody cause I can't take this anymore. I can't take this just sitting out here like this anymore like this."

So when I got ready to slide from up under here, because I was sitting up under her, and I got ready to slid from up under her -- slide from up under her because her head was laying on my lap, that's when the little scarf came -- that's when the scarf came off her head, when I got ready to slide from up under her to go in the house.

So what I did cause I picked the scarf and put it in my back pocket and I went in the house and I went to a phone. And when I went to a phone, it was my intention when I went to the phone to call the police. It was my intention to call the

police. But out of pure habit -- out of pure habit, I looked at the caller ID first.

And when I looked at the caller ID, I saw this number on there and it was on there twice. And I recognized this number right here because my girlfriend, whenever like she was out on the road with her mom and them, she always used their car phone -- their car phone to call me -- their car phone.

And what happened was somebody from her house had called my house twice that morning. I'm not sure what time it was cause

I didn't hear the phone ring because I wasn't in the house. And when I looked at the caller ID, somebody had used the car phone, one of her parents' car phone and they had called my house twice. And when I saw that, I was kind of like what. And I was just like -- it just -- that -- that's -- that -- seeing that right there, that's what threw me over the edge because I was just panicking because up until that point, I had pretty much built enough courage and pretty much forgot about her parents and my parents.

And I was just like all right. I'm going to just call the police. But when I saw the cell phone -- when I saw the cell phone number on the caller ID because like -- like -- well -- well -- like -- well -- well -- well, her parents said my parents put on -- block on the phone and her parents put a block on the phone. So they couldn't call straight through

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with a regular phone. They had to use the cell -- the cell -- I mean, the car phone.

So what appeared on the caller ID was U.S. Cellular and a number. I can't think of the number. I know -- I think it was 333 something or 66 something. Something like that. I can't remember the number exactly, but I know it was on the caller ID.

And when I saw it, I just -- I just lost it. I ran out the house and the first something I saw -- first thing I saw was the gas can and the gas can was on the porch.

No, no. Before I ran out the house, I went and got some sheets out my mother and father's little linen closet in there. And when I ran out the house, I was just planning to move -- to move her somewhere. But when I ran out the house, the first thing I saw was the gas can.

And I was panicking. I was panicking. And when I saw the gas can, I hadn't thought about anything up until that point. I didn't know what I was going to do. I was just there, but when I saw the gas can, the first thing came to my mind was just like -- I don't know what I -- I don't remember what I was thinking.

But only thing came to my mind was just like all I thought about was when somebody gave a cremation. It's just ashes, and the gas can was there, and I was scared. I was panicking. Her mom's number is on the caller ID. I was just

scared. I wasn't even thinking.

And I just went and I got the gas can and I ran in my backyard. And I move -- and I move -- and moved some pool steps from up under the shed -- I moved some pool steps from up under the shed of my backyard. And put them -- I put them out there.

And the pool steps, they were big. They were like some big pool steps. They were about that tall. They were about that tall off the ground. It was some big -- it was some big pool steps. And I filled -- I filled -- I filled -- I filled the pool -- I filled the pool steps up with wood. I went and got some wood from a pile that we had in our yard -- a wood pile we had in our yard.

And I filled the pool steps up with the wood, and what happened after that, I went and wrapped -- and wrapped -- and wrapped my girlfriend up in the sheet. And what I did -- all I did -- all I did then I just moved her over there by -- where the pool steps was.

And I opened up the sheet -- and I opened the sheet back up so she was just like laying on top of the sheet. And the whole -- the whole time I was moving her, I was just explaining to her like, "Shorty, I'm surviving. I'm just trying to survive. Shorty, I'm just trying to survive."

Cause that's what I thought it was, surviving. Because I thought an honor to be with you. To be honest with you, the

way I was thinking, I was thinking -- I was thinking -- another thing -- another thing made me just hesitate.

I was thinking like if it was somebody in my family -- if it was somebody in my family and I didn't approve of the relationship and the person snuck somebody in my family, my sister, my daughter out there, and I didn't approve of the relationship and they ended up dead, how I would feel, just me personally.

I wouldn't care if it was an accident or not. I wouldn't care if it was an accident or not. I'd probably feel like I'd try to hurt them. Whoever it was, they took -- if they -- if I didn't approve of the relationship and they took somebody in my family out and they die, it wouldn't matter if it was an accident or not. I would try to hurt them.

And so that's what I was thinking and just the way that I think -- thinking that's probably the way they think, I was panicked. Because I was thinking -- well, most people think like I think, you know. I was scared. I was panicking. I was just -- I was just -- I was thinking it was more like a survival thing, you know. I was ---

(OUTBREAK ERUPTS IN COURTROOM.)

THE COURT: Ladies and gentlemen, go back to your room.

(JURY EXCUSED TO JURY ROOM AT 3:25 P.M.)

(COURT IN RECESS AT 3:26 P.M. AND RECONVENES AT 4:04 P.M.)

THE COURT: Okay. We're on the record. I've already

warned you one time about the repetitious testimony. Just as I had originally warned you about repetitious questions cause you made it through that.

It's to the point, and the record will clearly reflect what's going on, that you have literally made my court reporter sick.

I don't know what your motive is or whether you're that nervous, but I've got to put a stop to it. The next time I hear you repeat the same testimony back to back, I'm going to send the jury out, and I'm going to find you in contempt. Okay. So you better think about what you're saying.

Everybody in that wants to come in? Sheriff, I need one of your deputies to come over and stand -- at least put a chair behind the rail over here toward the jury box.

I want that jury protected as well as anybody this side of the rail, and whoever you put there, if anybody stands up to make a move, tackle them. Then I'm going to have them brought around and just like I told Mr. Stewart, it's going to be contempt of court. No jury trial, no appeal or anything.

Now, if anybody out there feels that they cannot control their emotions and their behavior, you better be getting out the door now. Sheriff, you tell Madam Bailiff to bring the jury in. Let's get the testimony back on track here.

You know the situation that we had earlier resulted in a broken window in the front of the courthouse and that doesn't

have anything to do with this case, so we'll deal with that later.

(JURY ENTERS COURTROOM AT 4:07 P.M.)

THE COURT: All right. You may continue.

MR. STEWART: I want to publish these to the jury.

THE COURT: Solicitor, have you had a look at all these?

MR. BLAKE: I'm not sure, Your Honor. Your Honor, I believe these are blowups made by SLED.

THE COURT: He asked if he could publish them during his testimony.

MR. BLAKE: Without objection.

THE COURT: You may proceed.

MR. STEWART: Ladies and gentlemen, I want to show you those picture and sit down, just show you the pictures about how my girlfriend and I took from my house to the path. And my room and stuff is there.

This is my room right here and my bed. This is all the sheets and stuff I had on my bed that night. We did -- came and got out the bed and came down through here. This is my room right here. That is the t.v. That's the Play Station down here. We came through here and came out this door. This is the door to my room. We came out the door.

This shows where my girlfriend -- do you remember the carpet in my room? That's my room floor right there, and she came and went straight up the hallway right here.

You see the door. Pay attention to the door to my room right there. That's the door to my room right there. That's the mirror. That's the bathroom right there. Remember my room right next to the -- at the bathroom and she came down into this room right here. This is the little canister right here on the bar -- with this bar right here.

And the little bar is in the corner. The little canister. There is the canister right there on the thing and there is the bar right there.

And she went out the back door and she came -- this is the back door right here, it's a little junkie, but it's a little sliding door. She had to climb over -- she had to climb over a lot of stuff to get out of there because it was a little junkie to get out the back door.

Pay attention to that back door. My route -- this is still the picture of my room. This is where SLED came. These are all the pictures that SLED took. This is when SLED came through and move -- were moving -- they moved stuff around with their picture and stuff.

I came -- I told you -- remember I told you we split up and I came and I went this way. I went up the hallway. This is the door that's open right here. That's the door right there and that's another door that opens.

I came down that hallway right there going to the front of the house. There is the hallway right there. There is the

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mirror right there. There is the mirror. I came down this hall right here. And you see the chair right there, and I came past this chair. This is the front door right here, and I left out to the front door.

Now, first the route -- my girl was going back to the route -- my girl took when she went out the back door. This is the back door. Remember the curtains are on the back windows. This is the back door right here, and she left out the back door. And this is the bathroom window right here. And this is my room window right here. So when she came out, she
came straight down this way.

She came through the back door and went out and when she came out the back door, she had to go down the patio and come down -- pay attention to those two little fence poles right there. She had to come down through there. There are two little fence poles right there. SLED put yellow tape up in these two pictures, but there are two fence poles right there. She had to come down the sidewalk right here.

She was standing at this fence right there waiting on me to come out. She was at this fence right here. Me, I came through the front door down the steps. There is the steps right there, and I came around here because my -- this is the front door right here and this is my mother's and father's window to their room right here.

So what happened, I came down through here and pay attention to this little wood thing right here. This little wood thing right here, I came around and came around back here. And you see, I came down through this area right here and met my girlfriend at the fence. That's the fence right there. That's the fence.

From there, you see this back of the house right there? That's the back of the house. That's the back door right there. My girlfriend came down through here and she -- we met -- the fence is back behind this tree right here -- behind the tree right here.

And what we did, we came around here in this open field right here. This is a big open field. We came around here and I showed you the spot. It's up in this area right here. I showed you the spot, and then when she got through crying and stuff -- well, she was still crying, but when I finally got her walking, we came around through here.

This is the field. The field is still going back further, and the field is going toward the path. This is the picture. It's a big -- it's a big -- it's a big -- big open field right there. And we came down through the field right here and we came towards the part which is over here.

The path is here. This area right here is the field. This is the entrance to the path right here. And right here is the entrance to the path. This is where she had become a

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Weldon W. Stewart, Jr., #295095 Petitioner, v. Warden of Lieber Correctional Institution, Respondent.[1]	Civil Action No.8:09-842-SB-BHH **REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE**

The Petitioner, a state prisoner, seeks relief pursuant to Title 28, United States Code, Section 2254. This matter is before the Court on the Respondent's Motion for Summary Judgment. (Dkt. # 14.)

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(c), D.S.C., this magistrate judge is authorized to review posttrial petitions for relief and submit findings and recommendations to the District Court.

The Petitioner brought this habeas action on March 31, 2009.[2] On July 13, 2009, the Respondent moved for summary judgment. By order filed July 15, 2009, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the Petitioner was advised of the summary judgment dismissal procedure and the possible consequences if he failed to adequately respond to the motion. On September 17, 2009, the Petitioner filed a response opposing the Respondent's Summary Judgment Motion.

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[1]A prisoner's custodian is the only proper respondent in a habeas corpus action. *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004). The Petitioner is currently incarcerated at the McCormick Correctional Institution. (Dkt. # 10.) Therefore, the Warden at McCormick Correctional Institution should be substituted as the proper respondent.

[2]This date reflects that the petition was date stamped as received on March 31, 2009, at the Lieber Correctional Institution mailroom. (Pet. Attach.) *Houston v. Lack*, 487 U.S. 266 (1988)(holding prisoner's pleading is considered filed when filed with prison authorities for forwarding to the district court).

I. PROCEDURAL HISTORY/FACTS

The Petitioner, a state prisoner, is currently incarcerated at the McCormick Correctional Institution. In October 2002, the Petitioner was indicted for the desecration of human remains and murder. (App. 765-68.) The Petitioner represented himself at trial and the Public Defender Wade R. Crow acted as standby counsel. Prior to trial, the Petitioner pled guilty to the desecration of human remains charge. (App. 78.) The Petitioner went to trial on the murder charge. A jury trial was held on July 28 - August 1, 2003, with the honorable Paul M. Burch presiding. The jury found the Petitioner guilty of the lesser included offense of voluntary manslaughter and Judge Burch sentenced the Petitioner to thirty years for the manslaughter and nine years for the desecration charge, to run consecutively. (App. 763.) The Petitioner timely filed a notice of appeal.

Acting Chief Appellate Defender Joseph L. Savitz, III, represented the Petitioner on his direct appeal. On October 21, 2004, Savitz filed with the South Carolina Court of Appeals a petition to be relieved as counsel and an *Anders* brief raising the following issue: The judge erred by refusing to instruct the jury on involuntary manslaughter. (App. 769.) On April 20, 2005, the South Carolina Court of Appeals dismissed the Petitioner's appeal in an unpublished opinion, *State v. Tyler*, Op. No. 05-UP-284 (S.C. Ct. App. 2005). (App. 779.) The remittitur was sent down on May 23, 2005.

On April 18, 2006, the Petitioner filed an application for post -conviction relief ("PCR") raising the following ground for relief: "My appellant counsel was ineffective." (App. 781.) On November 15, 2006, an evidentiary hearing was held before the Honorable John M. Milling. (App. 799.) The Petitioner was present and represented by Delton W. Powers, Jr., Esquire. On January 8, 2007, Judge Milling dismissed the Petitioner's PCR application and denied him PCR. (App. 827.) The Petitioner timely filed a notice of appeal.

Assistant Appellate Defender Katherine H. Hudgins, of the South Carolina Office

of Appellate Defense, represented the Petitioner on his PCR appeal. On October 25, 2007, Hudgins filed a petition to be relieved as counsel and a *Johnson* petition for a writ of certiorari raising the following issue: "Did the PCR judge err in refusing to find appellate counsel ineffective for failing to argue that the trial judge erred in admitting two unauthorized documents into evidence?" On March 13, 2008, the Petitioner filed a pro se responsive brief raising the following issues:

> 1. Did the PCR court err in failing to find appellate counsel ineffective for failing to argue the trial judge erred in giving a jury instruction on voluntary manslaughter?
>
> 2. Did the PCR court err in failing to find appellate counsel ineffective for failing to argue that the trial judge erred in admitting a photograph of the decedent's body into evidence?
>
> 3. Did the PCR court err in failing to find appellate counsel ineffective for failing to argue that the trail judge erred in allowing Staton Wright to provide hearsay testimony?

On June 23, 2008, the Petitioner filed a supplemental pro se response in which he further discussed the voluntary manslaughter issue. On March 18, 2009, the South Carolina Supreme Court denied the petition and granted counsel's motion to be relieved, and the remittitur was sent down on April 3, 2009.

In this federal habeas petition, the Petitioner raises the following grounds for relief, quoted verbatim:

> **Ground One:** Did the trial court deprive me of my constitutional right to due process by failing to instruct the jury on involuntary manslaughter?
>
> **Supporting Facts:** The trial court failed to instruct the jury on the requested jury instruction on involuntary manslaughter. There was evidence presented during the trial which supported the jury instruction and the trial court's failure to instruct the jury on this instruction deprived me of a fair trial.
>
> **Ground Two:** Did appellate counsel deprive me of my constitutional right to effective assistance of counsel?
>
> **Supporting Facts:** Appellate counsel was ineffective for failing to argue on my appeal: 1) the trial judge erred by charging the

> jury on voluntary manslaughter when there was no evidence to support the charge, 2) the trial judge admitted two documents that were not authenticated, 3) the trial judge admitted photographs that were irrelevant and prejudicial, and 4) the trial judge allowed hearsay testimony.

(Habeas Pet.)

II. APPLICABLE LAW

Summary Judgment Standard

Rule 56 of the Federal Rule of Civil Procedure states as to a party who has moved for summary judgment:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Accordingly, to prevail on a motion for summary judgment, the movant must demonstrate that (1) there is no genuine issue as to any material fact; and (2) that he is entitled to summary judgment as a matter of law. As to the first of these determinations, a fact is deemed "material" if proof of its existence or nonexistence would affect the disposition of the case under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. Rather, the non-moving party must demonstrate that

specific, material facts exist which give rise to a genuine issue. *Id.* at 324. Under this standard, the existence of a mere scintilla of evidence in support of the petitioner's position is insufficient to withstand the summary judgment motion. *Anderson,* 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion. *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985).

HABEAS STANDARD OF REVIEW

Since the petitioner filed his petition after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), review of his claims is governed by 28 U.S.C. § 2254(d), as amended. *Lindh v. Murphy*, 521 U.S. 320 (1997); *Breard v. Pruett*, 134 F.3d 615 (4th Cir.1998). Under the AEDPA, federal courts may not grant habeas corpus relief unless the underlying state adjudication:

> 1. resulted in a decision that was contrary to, or involved an unreasonable application of clearly established federal law, as determined by the Supreme Court of the United States; or
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> 2. resulted in a decision that was based on an unreasonable application of the facts in light of the evidence presented at the state court proceeding. 28 U.S.C. § 2254(d)(1)(2).

Federal habeas corpus relief may not be granted unless the relevant state-court adjudication "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings," 28 U.S.C.A. § 2254(d); *Williams v. Taylor*, 529 U.S. 362, 398 (2000). "[A] federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable." *Id*. at 410.

EXHAUSTION AND PROCEDURAL BAR

Exhaustion and procedural bypass are separate theories which operate in a similar manner to require a habeas petitioner to first submit his claims for relief to the state courts. The two theories rely on the same rationale. The general rule is that a petitioner must present his claim to the highest state court with authority to decide the issue before the federal court will consider the claim.

A. Exhaustion

The theory of exhaustion is based on the statute giving the federal court jurisdiction of habeas petitions. Applications for writs of habeas corpus are governed by 28 U.S.C. § 2254 , which allows relief when a person "is in custody in violation of the Constitution or laws or treaties of the United States." The statute states in part:

> (b) (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court, shall not be granted unless it appears that
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> > (A) the applicant has exhausted the remedies available in the courts of the State; or
> >
> > (B) (I) there is either an absence of available State corrective process; or
> >
> > (ii) circumstances exist that render such process, ineffective to protect the rights of the applicant.
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> (2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.
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> (3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.
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> (c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

This statute clearly requires that an applicant pursue any and all opportunities in the state courts before seeking relief in the federal court. When subsections (b) and (c) are read in conjunction, it is clear that § 2254 requires a petitioner to present any claim he has to the state courts before he can proceed on the claim in this court. The United States Supreme Court has consistently enforced the exhaustion requirement.

In South Carolina, a person in custody has two primary means of attacking the validity of his conviction. The first avenue is through a direct appeal and, pursuant to state law, he is required to state all his grounds in that appeal. SCAR 207; *Blakeley v. Rabon*, 221 S.E.2d 767 (S.C. 1976). The second avenue of relief is by filing an application for PCR. S.C. Code Ann. § 17-27-10 et seq. A PCR applicant is also required to state all of his grounds for relief in his application. S.C. Code Ann. § 17-27-90. If the PCR court fails to address a claim as is required by S.C. Code Ann. § 17-27-80, counsel for the applicant must make a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP. Failure to do so will result in the application of a procedural bar by the South Carolina Supreme Court. *Marlar v. State,* 653 S.E.2d 266 (S.C. 2007). Furthermore, strict time deadlines govern direct appeal and the filing of a PCR in the South Carolina Courts. A PCR must be filed within one year of judgment, or if there is an appeal, within one year of the appellate court decision. S.C. Code Ann. § 17-27-45.

When the petition for habeas relief is filed in the federal court, a petitioner may present only those issues which were presented to the South Carolina Supreme Court through direct appeal or through an appeal from the denial of the PCR application, whether or not the Supreme Court actually reached the merits of the claim. If any avenue of state relief is still available, the petitioner must proceed through the state courts before requesting a writ of habeas corpus in the federal courts. *Patterson v. Leeke*, 556 F.2d 1168 (4th Cir. 1977); *Richardson v. Turner*, 716 F.2d 1059 (4th Cir. 1983).

B. Procedural bypass

Procedural bypass is the doctrine applied when the person seeking relief failed to raise the claim at the appropriate time in state court and has no further means of bringing that issue before the state courts. If this occurs, the person is procedurally barred from raising the issue in his federal habeas petition. The United States Supreme Court has clearly stated that the procedural bypass of a constitutional claim in earlier state proceedings forecloses consideration by the federal courts, *Smith v. Murray*, 477 U.S. 527, 533 (1986). Bypass can occur at any level of the state proceedings, if a state has procedural rules which bar its courts from considering claims not raised in a timely fashion. The two routes of appeal in South Carolina are described above, (i.e., direct appeal, appeal from PCR denial) and the South Carolina Supreme Court will refuse to consider claims raised in a second appeal which could have been raised at an earlier time. Further, if a prisoner has failed to file a direct appeal or a PCR and the deadlines for filing have passed, he is barred from proceeding in state court.

If the state courts have applied a procedural bar to a claim because of an earlier default in the state courts, the federal court honors that bar. State procedural rules promote . . . not only the accuracy and efficiency of judicial decisions, but also the finality of those decisions, by forcing the defendant to litigate all of his claims together, as quickly after trial as the docket will allow, and while the attention of the appellate court is focused on his case. *Reed v. Ross*, 468 U.S. 1, 10-11 (1984).

Stated simply, if a federal habeas petitioner can show (1) cause for his failure to raise the claim in the state courts, and (2) actual prejudice resulting from the failure, a procedural bar can be ignored and the federal court may consider the claim. Where a petitioner has failed to comply with state procedural requirements and cannot make the required showing of cause and prejudice, the federal courts generally decline to hear the claim. *Murray v. Carrier*, 477 U.S. 478, 496 (1986).

C. Inter-relation of Exhaustion and Procedural Bypass

As a practical matter, if a petitioner before this court has failed to raise a claim in state court, and is precluded by state rules from returning to state court to raise the issue, he has procedurally bypassed his opportunity for relief in the state courts and in federal court. A federal court is barred from considering the filed claim (absent a showing of cause and actual prejudice). In such an instance, the exhaustion requirement is technically met and the rules of procedural bar apply. *Matthews v. Evatt*, 105 F.3d 907 (4th Cir. 1997)(citing *Coleman v. Thompson*, 501 U.S. 722, 735 n. 1 (1991); *Teague v. Lane*, 489 U.S. 288,297-98 (1989); and *George v. Angelone*, 100 F.3d 353,363 (4th Cir. 1996).

D. Cause and Actual Prejudice

The requirement of exhaustion is not jurisdictional and this court may consider claims which have not been presented to the South Carolina Supreme Court in limited circumstances. *Granberry v. Greer*, 481 U.S. 129, 131 (1987). In order to have such claims considered, a petitioner must show sufficient cause for failure to raise the claim and actual prejudice resulting from the failure, *Coleman*, 501 U.S. at 750, or that a "fundamental miscarriage of justice" has occurred. *Murray*, 477 U.S. 478. A petitioner may prove cause if he can demonstrate ineffective assistance of counsel relating to the default, show an external factor which hindered compliance with the state procedural rule, or demonstrate the novelty of a particular claim. *Id.*

Absent a showing of "cause," the court is not required to consider "actual prejudice." *Turner v. Jabe*, 58 F.3d 924 (4th Cir. 1995). However, if a petitioner demonstrates sufficient cause, he must also show actual prejudice in order to excuse a default. *Murray*, 477 U.S. at 492. To show actual prejudice, the petitioner must demonstrate more than plain error. He is required to prove that specific errors infected the trial and were of constitutional dimensions. *United States v. Frady*, 456 U.S. 152 (1982).

III. DISCUSSION

Ground One

In Ground One, the Petitioner alleges his due process rights were violated because the trial court did not instruct the jury on the lesser included offense of involuntary manslaughter. The Respondent contends that this issue is procedurally barred and fails on the merits. The undersigned agrees.

On direct appeal, the Petitioner raised the issue of whether the trial judge erred by refusing to instruct the jury on involuntary manslaughter. (App. 769.) The South Carolina Court of Appeals dismissed the Petitioner's appeal in an unpublished opinion, *State v. Stewart*, Op. No. 05-UP-284 (S.C. Ct. App. 2005). (App. 779.) The Respondent contends, inter alia, that the Petitioner did not raise this issue in the context of a violation of his federal constitutional due process rights. *See, e.g. State v. McWee,* 472 S.E.2d 235 (S.C. 1996) (holding Eighth Amendment challenge to parole eligibility not preserved because no constitutional basis was raised at trial). Furthermore, the Respondent notes that on appeal, the Petitioner did not mention due process or any federal constitutional basis for his claim. As no federal constitutional issue was raised at trial or on appeal, then any federal constitutional issue is procedurally barred from federal review. *See, e.g. Coleman v. Thompson,* 501 U.S. 722 (1991) (holding issue not properly raised to the state's highest court, and procedurally impossible to raise there now is procedurally barred from review in federal habeas).

Because the Petitioner did not raise this claim as one of a violation of his federal constitutional rights, whether he was entitled to an involuntary manslaughter charge is a n issue involving state substantive criminal law which is not a cognizable or reviewable claim in federal habeas corpus. *Estelle v. McGuire,* 502 U.S. 62, 67-68 (1991) ("It is not the province of a federal habeas corpus court to reexamine state-court determinations on state-law questions.").

Even if the Petitioner had properly raised this issue as involving his federal constitutional due process rights, the claim stills fails. The United States Supreme Court has held that the failure to include jury instructions on a lesser included may present a federal question in capital cases. *See Beck v. Alabama,* 447 U.S. 625, 100 S.Ct. 2382, 65 L.Ed.2d 392 (1980). However, the United States Supreme Court explicitly reserved the question as to whether this ruling extends to non-capital cases. *Id.* at 638 n. 14. There is a split among the circuit courts as to whether the failure to give an instruction on a lesser included offense in a non-capital case presents a federal question. *See Bates v. Bodison,* 2009 WL 2423766 (D.S.C. 2009)(cases cited therein).

The Fourth Circuit has addressed this issue in an unpublished per curiam opinion, *Robinson v. N.C. Attorney Gen.,* 238 F.3d 414 (4th Cir. Dec.7, 2000) (unpublished). In *Robinson,* the court noted that the Supreme Court had not addressed this issue and there was no consensus among the circuit courts on this question. Therefore, the court concluded that extending the holding in *Beck* to non-capital cases would "require the enunciation and retroactive application of a new rule, in violation of § 2254(d)(1) and *Teague v. Lane,* 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989)." *Id.*

As stated above, to warrant federal habeas relief, a state court decision must be contrary to, based upon an unreasonable application of "clearly established federal law as decided by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1), (2). It is Supreme Court precedent, and not that of the circuit courts, that applies pursuant to § 2254. *Bustos v. White,* 521 F.3d 321, 325 (4th Cir. 2008) (stating that "it is Supreme Court precedent, and not Fourth Circuit precedent, to which we look in applying the AEDPA standard of review") (*citing Williams v. Taylor,* 529 U.S. 362, 381-82, 390 n. 15 (2000)). Thus, in the absence of any United States Supreme Court precedent holding that the failure to provide a lesser included offense instruction in non-capital cases implicates a federal right, it cannot be said that the state court violated clearly established federal law as

decided by the Supreme Court of the United States. Accordingly, this claim is without merit and should be dismissed.

Ground Two

In Ground Two, the Petitioner alleges his appellate counsel was ineffective for failing to raise several issues on appeal. The Respondent contends this issue is procedurally barred and without merit. The undersigned agrees.

In *Strickland v. Washington,* 466 U.S. 668 (1984), the United States Supreme Court established a two-part test for determining whether a convicted person is entitled to relief on the ground that his counsel rendered ineffective assistance. The first prong of the test requires that petitioner demonstrate that counsel's performance was deficient and "fell below an objective standard of reasonableness." *Id.* at 688. The second prong requires the petitioner to show that the deficient performance prejudiced the defense. *Id.* at 687. In order to satisfy the prejudice requirement of the two-prong test set forth in *Strickland*, defendant must show that "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Lockhart v. Fretwell,* 506 U.S. 364 (1993).

1. Voluntary Manslaughter Charge

The Petitioner first contends his appellate counsel was ineffective for failing to raise on direct appeal the trial court's decision to charge voluntary manslaughter. "Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." *State v. Cole,* 525 S.E.2d 511 (S.C. 2000). In determining whether voluntary manslaughter should be charged as a lesser offense of murder, the trial court must view the evidence in the light most favorable to the defendant. The charge need not be given "where it clearly appears that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." *State v. Pittman*, 647 S.E.2d 144 (S.C. 2007) (internal citation omitted).

The sudden heat of passion, upon sufficient legal provocation, which mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." *State v. Byrd,* 474 S.E.2d 430, 432 (S.C.1996) (internal quotations omitted). Although words alone may not constitute sufficient legal provocation, words accompanied by some overt, threatening act may be sufficient. *Id*.

At trial, the State requested a charge on voluntary manslaughter based on evidence that the Petitioner had gotten mad at the victim and "flipped." (App. 685.) The Petitioner objected to a jury charge on voluntary manslaughter stating that did not want both murder and voluntary manslaughter or murder and involuntary manslaughter submitted to the jury. *Id.* Importantly, he did not object on the ground that there was not evidence to support a charge of voluntary manslaughter. In his PCR proceeding, the Petitioner raised this issue specifically asserting that evidence of both heat of passion and sufficient legal provocation were required and that the record contained no evidence of provocation. (App. 784; 822.) The PCR court rejected the claim, noting that in the Petitioner's statements to police, the Petitioner had stated that he and the victim had gotten into a fight and the victim had pulled a knife or a razorblade on him. (App. 831-32.) The PCR court found that an assault with a deadly weapon is sufficient legal provocation under state law to support a voluntary manslaughter charge. *Id.* On appeal, the Petitioner argued there was no evidence of provocation and the state court denied certorari.

First, the undersigned notes that at trial the Petitioner did not object on the ground that there was not evidence to support a charge on voluntary manslaughter. Thus, the issue of whether there was evidence to support such a charge was not preserved for appellate review.

Furthermore, in any event, there was evidence which supported a voluntary manslaughter charge. The Petitioner told a number of different versions as to how the victim died. In his opening statement, the Petitioner stated that he was not trying to hurt his girlfriend but was merely trying to get her home, when he accidentally fell on her and killed her. (App. 115-16.) In an oral statement, initially given to an officer, the Petitioner stated that he had an argument with the victim, and they were walking down the path when she fell and did not get up. There was no mention of a knife or the Petitioner holding the victim. (App. 403-05.) In another oral statement given to Officer Boston, the Petitioner said he and the victim got into an argument about another girl, and she pulled a knife on him. He claimed that he grabbed her and was holding her, and she fell, after which he fell on her. (App. 376.) In a written statement, the Petitioner claimed the victim pulled out a razorblade and came at him, and he dodged it twice. He stated he had one of his arms wrapped around her to hold the blade and one around her upper shoulder, and was walking down the path with her when he tripped and fell on top of her. (App. 381.) At trial, the Petitioner claimed that the victim was upset with him and she pulled out a small box cutter and swung it at him. He stated he did not really think she was trying to cut him and he grabbed the victim's arm and started to carry her to meet their ride since he did not think the victim was going to calm down. She was "shaking" and "twisting" in Petitioner's arms and telling him to let her go, when the Petitioner tripped and fell on top of the victim. (Supp. App. 25-29; App. 552-53.)

Stanton Wright testified the Petitioner said he “flipped” after the victim told him she had sex with another guy (App. 196) and Anastaia Love testified that she thought the Petitioner and the victim had been arguing (App. 600). Further, the Petitioner stated he was in a “rage” in his “Calamity” document. (App. 457.)

Clearly, there were inconsistencies in the testimony at trial. However, inconsistencies in the evidence would not deprive a defendant of the benefit of evidence supporting a jury charge on a lesser-included offense. *State v. Knoten,* 555 S.E.2d 391

(S.C. 2001). Here, there was evidence to support voluntary manslaughter, i.e. that the victim was angry with the Petitioner and pulled a knife or box cutter out and swung it at him. It is proper to charge voluntary manslaughter where the defendant and the victim had been in a heated argument prior to the murder. *See State v. Davis,* 298 S.E.2d 778 (S.C. 983) (holding voluntary manslaughter charge was proper where a witness testified that defendant and victim had been fighting); *State v. Gardner*, 64 S.E.2d 130 (S.C. 1951) (holding a charge of manslaughter was warranted where the defendant said his wife "jumped on me" and "me and her got into it" since these expressions could be construed to mean that there was some overt, threatening act or a physical encounter had occurred just prior to the defendant's stabbing of his wife). Therefore, trial counsel was not deficient for requesting a charge on voluntary manslaughter. Further, the petitioner has not shown prejudice. Accordingly, this issue is without merit.

2. Admissibility of Evidence

Next, the Petitioner contends his appellate counsel was ineffective for failing to raise on appeal an issue regarding the admission at trial of two allegedly unauthenticated documents: 1) the "Motive" letter and 2) letters to the victim's mother.

At trial, the "Motive" letter was admitted into evidence and it was attributed to the Petitioner. This letter describes the theories on who killed the victim and suggests witnesses and how they should be questioned. (App. 468-72.) Detective Gurley testified that she received a call from the jailers saying the Petitioner wanted to talk to her. (App. 463.) When she visited the Petitioner, Detective Gurley testified that he gave her the "Motive" letter. The Petitioner objected and argued that he never saw Detective Gurley at the jail, and the "Motive" letter had not been analyzed for a handwriting match like other documents. Detective Gurley stated the Petitioner had handed her the document, and since it looked like the handwriting in the rest of the documents, she assumed he had written it. (App. 463-68.) The trial court allowed the Motive letter into evidence. (App. 468.)

At the PCR hearing, the Petitioner discussed the issue. (App. 810-11.) The PCR

court denied relief, finding that the evidence was sufficient for authentication, and that no prejudice could have resulted given the other evidence and writings admitted at trial. (App. 832-33.)

Authenticity of documents may be established by indirect or circumstantial evidence. *State v. Wilson,* 145 S.E.2d 20 (S.C. 1965). Alleged deficiencies in authentication testimony go to weight, not admissibility. *State v. Freiburger,* 620 S.E.2d 737 (S.C. 2005). *See also United States v. Dozie*, 27 F.3d 95, 98 (4th Cir.1994)(holding that under Rule 901(b)(3), expert opinion as to the authenticity of handwriting is not necessarily required, and where one document is properly authenticated, the jury can compare the writing on that document with the writing on another); United States v. Woodson, 526 F.2d 550, 551 (9th Cir.1975)("In the absence of extreme or unusual circumstances . . ., [there is] no reason why handwriting comparisons cannot be made by [the trier of fact], and conclusions drawn from them, either in the presence or absence of expert opinion.")(citations omitted). Here, there were other documents in evidence which the Petitioner admitted writing and the jury could compare handwriting. Further, the detective testified she personally received the document from the Petitioner after he asked to see her.

Moreover, there Petitioner had not shown any prejudice. The Petitioner has not shown that an expert handwriting analysis witness would have discredited the document. *Hamilton v. Lafler*, 2008 WL 5102243 (E.D. Mich. 2008)(holding in habeas action that petitioner has not shown that he was prejudiced by counsel's conduct failure to produce a handwriting expert given that he has not provided evidence that a handwriting expert would have provided favorable testimony). Additionally, the Petitioner gave multiple versions of events to police and at trial as to how the victim's death happened, and it cannot be said the absence of this one document which theorized an unknown killer raises a reasonable probability of a different result.

As to the letter to the victim's mother, this issue is also without merit. The Petitioner contends his appellate counsel was ineffective for failing to raise an issue regarding the

admission of a letter he wrote to the victim's parents. At trial, while the Petitioner was testifying, the solicitor questioned him about a letter which was sent to the victim's parents. (App. 569-575.) The Petitioner denied writing the letter and objected to the solicitor's refusal to show him the envelope. (App. 570-74.) Later at trial, the State called the victim's mother who testified that she had received the letter. The state moved to admit the letter into evidence and the Petitioner objected asserting there was no envelope or evidence showing the letter was mailed to the victim's parent's house. The trial court overruled the objection finding the Petitioner's objection went to the weight of the evidence and not its admissibility. (App. 665-67.) The PCR court found that the evidence was sufficient for authentication and thus counsel was not deficient for not raising this issue on appeal and that no prejudice could have resulted given the other evidence and writings admitted. (App. 832-33.)

The undersigned notes that when the Petitioner objected to the admission of the letter during the mother's testimony, it was only on the basis that there was no evidence it had been mailed to the mother's house. The Petitioner did not raise any issue as to the authenticity of the letter. Because the Petitioner did not preserve the issue of the authenticity of the letter, appellate counsel was not deficient for failing to raise it on appeal. Furthermore, in any event, as the trial court and PCR Court held, the letter was admissible and the Petitioner's argument regarding the absence of the envelope would merely impact the weight of the evidence and not its admissibility. Accordingly, appellate counsel was not ineffective for failing to raise this issue on appeal.

The Petitioner also contends that appellate counsel was ineffective for failing to raise an issue regarding the admission of a photograph of the victim. At trial, the State offered two photographs of the victim's burned body to show the state of mind of the Petitioner and his actions after the murder. (App. 339, 342.) The Petitioner objected on the ground that the probative value of the photographs was outweighed by their prejudice. *Id*. The State argued they were the least gruesome of approximately fifty photographs and they were

relevant to show the Petitioner's state of mind. *Id.* The Petitioner acknowledged that he had burned the victim's body and pled guilty to the desecration of human remains. (App. 342.) He argued that the photograph was not probative as he did not deny burning the victim's remains. (App. 343.) The court excluded one photograph but allowed the other one into evidence, noting that the probative value outweighed the prejudicial effect, and pointing out that it appeared the body had been placed on a platform in a "ritualistic" manner. (App. 344-45.)[3] The Petitioner raised the issue at PCR. (App. 811-13; 817.) The PCR court denied the Petitioner PCR, finding the photograph was admissible, and additionally no prejudice could have resulted. (App. 833-34.)

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." *State v. Nance*, 320 S.C. 501, 508 (S.C. 1996). "If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." *Id.* "To constitute unfair prejudice, the photographs must create an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one." *State v. Jackson,* 613 S.E.2d 374, 376 (S.C. 2005) (internal quotation omitted). Here, the trial court allowed one photograph which illustrated the state of the mind of the Petitioner who had burned the victim's body and placed it in a ritualistic pose. The trial court did not allow a second offered photo which was apparently taken closer to the body. Since the photo was admissible, appellate counsel could not have been deficient for failing to raise this issue on appeal. The issue should be dismissed or denied.

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[3]At trial, a document referred to as the "Calamity" document was admitted in which the Petitioner notes he "built an altar" and made a "burnt offering" of the victim. (App. 455-59). The trial court noted that while he had not seen the "Calamity" document at the time he ruled that the photograph could be admitted into evidence, after hearing the content of the "Calamity" document, he thought the photograph was unquestionably admissible, since it reflected the "ritualistic type situation" described in the "Calamity" document. (App. 464-65.)

3. Admission of Hearsay

Finally, the Petitioner contends his appellate counsel failed to raise a hearsay issue on appeal. The Petitioner's friend Stanton Wright gave a statement to police. At trial, the solicitor asked Wright to read a portion of it and the Petitioner objected. The trial court overruled the Petitioner's objection. The Petitioner then asked to approach the bench, but the trial court denied the Petitioner's request. Wright then read the part of his statement in which he said that the Petitioner had told Wright that the victim "said that she had sex with another dude before she had sex with [the Petitioner] and she didn't shower." The Petitioner told Wright he then "flipped." (App. 195-200.) During his testimony, Wright became upset on the stand and the trial court sent the jury out. The trial court stated for the record that he had denied the bench conference because he did not want the Petitioner approaching Wright as it was apparent that Wright was upset. The trial court asked the Petitioner what he wished to put on the record. The Petitioner complained that Wright was being coerced or intimidated, and that the solicitor should not be forcing Wright to say what he told others in the past. The judge noted the solicitor's question was proper. (App. 199-200.)

The Petitioner raised this issue in his PCR hearing. The PCR court found that the issue would not have been preserved for appeal because there was no contemporaneous objection, and the Petitioner had failed to show the evidence was inadmissible. (App. 833-34.)

At trial, the Petitioner did not make a specific objection based upon hearsay. He only raised an objection based upon his belief that Wright was being intimidated and coerced. Since the Petitioner did not make a hearsay objection at trial, appellate counsel could not have been deficient for failing to raise a hearsay issue on appeal. *Jackson v. Dugger,* 931 F.2d 712 (11th Cir. 1991) (holding appellate counsel not ineffective for failing to appeal issue not preserved for review; *State v. McWee,* 472 S.E.2d 235 (S.C. 1996) (holding

Eighth Amendment challenge to parole eligibility not preserved because no constitutional basis was raised at trial). Accordingly, this issue is without merit.

The PCR Court's decision was not contrary, nor an unreasonable application of, clearly established federal law. Further, it was not based upon an unreasonable determination of facts in light of the state court record. Accordingly, this habeas petition is without merit and should be dismissed.

IV. CONCLUSION

Wherefore, it is RECOMMENDED that the Respondent's Motion for Summary Judgment (# 18) be GRANTED and the Petition be DISMISSED WITH PREJUDICE.

IT IS SO RECOMMENDED.

s/Bruce Howe Hendricks
United States Magistrate Judge

December 10, 2009
Greenville, South Carolina

The petitioner's attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
[redacted]
Greenville, South Carolina 29603

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

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Weldon W. Stewart, Jr., #295095,

Petitioner,

v.

Warden of Lieber Correctional Institution,

Respondent.

Civil Action No. 8:09-842-SB

ORDER

This matter is before the Court upon Petitioner Weldon Stewart, Jr.'s *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.[1] The record contains the report and recommendation ("R&R") of a United States Magistrate Judge, which was made in accordance with 28 U.S.C. § 636(b)(1) and the local rules of this district. The Petitioner filed timely objections to the R&R, and the matter is ripe for review. See 28 U.S.C. § 636(b)(1) (providing that a party may object, in writing, to an R&R within fourteen days after being served with a copy of that report).

BACKGROUND

The Petitioner is incarcerated at the McCormick Correctional Institution pursuant to orders of commitment of the Marlboro County Clerk of Court. In October of 2002, the Marlboro County Grand Jury indicted the Petitioner, who was 19 at the time of the underlying incident, for the murder of his 15 year-old girlfriend and the desecration of her remains. The Petitioner pleaded guilty to desecration of human remains but proceeded

[1] Because the Petitioner proceeds *pro se*, the Court holds his pleadings to a less stringent standard than those drafted by attorneys and accords them liberal construction. See Estelle v. Gamble, 429 U.S. 97 (1976); Haines v. Kerner, 401 U.S. 519 (1972).

to trial on the murder charge before the Honorable Paul M. Burch from July 28 to August 1, 2003. At trial, the Petitioner represented himself with public defender Wade R. Crow acting as standby counsel. On August 1, 2003, the jury convicted the Petitioner of the lesser-included offense of voluntary manslaughter, and Judge Burch sentenced him to thirty years of imprisonment for voluntary manslaughter and nine years of imprisonment for the desecration of human remains, to be served consecutively.

The Petitioner filed a timely appeal, and acting Chief Appellate Defender Joseph L. Savitz, III, represented the Petitioner on appeal. On October 21, 2004, Savitz filed with the South Carolina Court of Appeals a petition to be relieved as counsel and an Anders brief, raising the following issue: "The judge erred by refusing to instruct the jury on involuntary manslaughter." (Entry 15-2 at 223.) Despite being granted an extension of time, the Petitioner did not timely submit a *pro se* brief, and on April 20, 2005, the court dismissed the Petitioner's appeal in an unpublished opinion. State v. Stewart, No. 05-UP-284 (S.C. Ct. App. 2005); (Entry 15-2 at 231). The court sent down the remittitur on May 23, 2005.

On April 18, 2006, the Petitioner filed an application for post-conviction relief ("PCR"), alleging that his appellate counsel was ineffective. (Entry 15-2 at 234.) The Honorable John M. Milling held an evidentiary hearing on November 15, 2006. The Petitioner appeared with counsel, Delton W. Powers, Jr., and testified. On January 8, 2007, Judge Milling issued an order denying the PCR application and dismissing it with prejudice. (Entry 15-2 at 278-87.) The Petitioner timely filed a notice of appeal.

Assistant Appellate Defender Katherine H. Hudgins of the South Carolina Office of Appellate Defense represented the Petitioner on his PCR appeal. On October 25, 2007, Hudgins filed a petition to be relieved as counsel and a Johnson petition for a writ of

certiorari raising the following issue: "Did the PCR judge err in refusing to find appellate counsel ineffective for failing to argue that the trial judge erred in admitting two unauthorized documents into evidence?" (Entry 15-6 at 3.) On March 13, 2008, the Petitioner filed a *pro se* response to the Johnson petition, raising the following issues:

> Did the PCR court err in failing to find appellate counsel ineffective for failing to argue the trial judge erred in giving a jury instruction on voluntary manslaughter?
>
> Did the PCR court err in failing to find appellate counsel ineffective for failing to argue that trial judge erred in admitting a photograph of the decedent's body into evidence?
>
> Did the PCR court err in failing to find appellate counsel ineffective for failing to argue that the trial judge erred in allowing Stanton Wright to provide hearsay testimony?

(Entry 15-7 at 3, 8, and 14.)

On June 23, 2008, the Petitioner filed a supplemental *pro se* response in which he further discussed the voluntary manslaughter issue. On March 18, 2009, the South Carolina Supreme Court denied the petition and granted counsel's motion to be relieved; the court sent down the remittitur on April 3, 2009.

The Petitioner filed the instant § 2254 petition on March 31, 2009, raising the following grounds, quoted verbatim:

> **Ground One**: Did the trial court deprive me of my constitutional right to due process by failing to instruct the jury on involuntary manslaughter?
>
> **Supporting facts:** The trial court failed to instruct the jury on the requested jury instruction on involuntary manslaughter. There was evidence presented during the trial which supported the jury instruction and the trial court's failure to instruct the jury on this instruction deprived me of a fair trial.
>
> **Ground Two:** Did appellate counsel deprive me of my constitutional right to effective assistance of counsel?

> **Supporting Facts:** Appellate counsel was ineffective for failing to argue on my appeal: 1) the trial judge erred by charging the jury on voluntary manslaughter when there was no evidence to support the charge. 2) the trial judge admitted two documents that were not authenticated, 3) the trial judge admitted photographs that were irrelevant and prejudicial, and 4) the trial judge allowed hearsay testimony.

(Entry 1 at 5-7.)

On July 13, 2009, the Respondent filed a motion for summary judgment. The Magistrate Judge issued an order on July 15, 2009, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising the Petitioner of the summary judgment procedure and the possible consequences of failing to adequately respond to the motion. On September 17, 2009, the Petitioner filed a response in opposition to the Respondent's motion. On December 10, 2009, the Magistrate Judge issued an R&R, recommending that the Court grant the Respondent's motion for summary judgment. The Petitioner filed written objections to the R&R on December 28, 2009.

STANDARDS OF REVIEW

I. Legal Standard for Summary Judgment

To grant a motion for summary judgment, the Court must find that "there is no genuine issue as to any material fact." Fed. R. Civ. P. 56(c). The court is not to weigh the evidence, but rather to determine if there is a genuine issue of fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If no material factual disputes remain, then summary judgment should be granted against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party bears the burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). All evidence should be viewed in the light most favorable to the non-moving party. See

Perini Corp. v. Perini Constr. Inc., 915 F.2d 121, 123-24 (4th Cir. 1990).

II. **The Magistrate Judge's R&R**

This Court is charged with conducting a *de novo* review of any portion of the R&R to which a specific objection is registered and may accept, reject, or modify, in whole or in part, the recommendations contained in that R&R. 28 U.S.C. § 636(b)(1). Any written objection must specifically identify the portion of the R&R to which the objection is made and the basis for the objection. Id.

DISCUSSION

I. **Exhaustion of Remedies Pursuant to 28 U.S.C. § 2254**

Relief under § 2254 may be had only after a habeas petitioner has exhausted his state court remedies. "To satisfy the exhaustion requirement, a habeas petitioner must present his claims to the state's highest court." Matthews v. Evatt, 105 F.3d 907, 911 (4th Cir. 1997), cert. denied, 522 U.S. 833 (1997). Stated plainly, in the interest of giving state courts the first opportunity to consider alleged constitutional errors in state proceedings, a § 2254 petitioner is required to "exhaust" all state remedies before a federal district court can entertain his claims. Thus, a federal habeas court may consider only those issues that have been properly presented to the highest state courts with jurisdiction to decide them.

To exhaust a claim in state court, a person in custody has two primary means of attacking his conviction: filing a direct appeal and/or filing an application for relief under the South Carolina Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10–160. "[W]hen the claim has been presented to the Court of Appeals or the Supreme Court, and relief has been denied, the litigant shall be deemed to have exhausted all available state remedies."

In re Exhaustion of State Remedies in Criminal and Post-Conviction Relief Cases, 321 S.C. 563, 564 (1990).

II. Procedural Default

When a federal habeas petitioner has failed to raise a claim at the appropriate time in state court and has no further means of bringing that issue before the state courts, the claim will be considered procedurally defaulted, and he will be procedurally barred from raising the issue in his federal habeas petition. Smith v. Murray, 477 U.S. 527, 533 (1986). Procedural default can occur at any level of the state proceedings if a state has procedural rules that bar its courts from considering claims not raised in a timely fashion.

III. Relationship Between Exhaustion and Procedural Default

If a federal habeas petitioner has procedurally defaulted his opportunity for relief in the state courts, the exhaustion requirement is technically met and the rules of procedural bar apply. See Matthews, 105 F.3d 907 (citing Coleman v. Thompson, 501 U.S. 722, 735 n.1 (1991), Teague v. Lane, 489 U.S. 288, 297-98 (1989), and George v. Angelone, 100 F.3d 353, 363 (4th Cir. 1996)). Thus, where the state court has not had the opportunity to apply its own procedural bar, the federal court will nevertheless bar the claim where application of the bar is clear. Teague, 489 U.S. at 297-98.

IV. Excusing Procedural Default

Notwithstanding the foregoing, a federal court may consider claims that have not been presented to the highest South Carolina court with jurisdiction in very limited circumstances. Granberry v. Greer, 481 U.S. 129, 131 (1989). First, a federal court will review a procedurally defaulted claim if the petitioner can demonstrate cause for the

default and actual prejudice therefrom, and second, a petitioner can rely on the doctrine of actual innocence. Coleman, 501 U.S. at 750.

"Cause" is defined as "some objective factor external to the defense [that] impeded counsel's efforts to comply with the State's procedural rule." Strickler v. Greene, 527 U.S. 263, 283 n. 24 (1999) (quoting Murray v. Carrier, 477 U.S. 478, 488 (1986)). A petitioner must show reasonable diligence in pursuing his claim to establish cause. Moreover, the claim of cause itself must be exhausted. See Edwards v. Carpenter, 529 U.S. 466 (2000). To establish "actual prejudice," a petitioner generally must show some error. In addition, a petitioner must show an actual and substantive disadvantage as a result of the error, not merely the possibility of harm. Lastly, "actual innocence" is not an independent claim, but a method of excusing default. To prevail under this theory, a petitioner must produce new evidence that was not available at trial to establish his factual innocence. Royal v. Taylor, 188 F.3d 239 (4th Cir. 1999).

V. Habeas Corpus Relief

For those claims adjudicated on the merits, habeas relief is warranted only if a petitioner can demonstrate that the state court adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1).

In Williams v. Taylor, 529 U.S. 362 (2000), the Supreme Court explained that § 2254(d)(1)'s "contrary to" and "unreasonable application" clauses have independent meaning. Id. at 404-05. A federal habeas court may issue the writ under the "contrary to" clause if the state court applies a rule different from the governing law set forth in controlling cases, or if it decides a case differently than the Supreme Court has done on

a set of materially indistinguishable facts. Id. at 405-06. A federal habeas court may grant relief under the "unreasonable application" clause if the state court correctly identifies the governing legal principle from Supreme Court decisions but unreasonably applies it to the facts of the particular case. Id. at 407-08. Factual determinations made by the state "shall be presumed to be correct," and "[t]he applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1).

VI. Analysis

In his motion for summary judgment, the Respondent asserts that the Petitioner's first ground for relief (that the trial court deprived him of his right to due process by failing to instruct the jury on involuntary manslaughter) is (1) procedurally defaulted, (2) not cognizable on federal habeas review, and (3) without merit. Next, the Respondent asserts that the claims asserted in the Petitioner's second ground (that appellate counsel was ineffective for failing to raise several issues on appeal), are all procedurally defaulted and/or without merit. The Petitioner filed a response to the Respondent's motion for summary judgment, opposing all of the Respondent's arguments.

After review, the Magistrate Judge agreed with the Respondent that ground one is procedurally defaulted and that the claim falls on the merits. In addition, the Magistrate Judge agreed with the Respondent that the Petitioner's second ground for relief failed on the merits.

The Petitioner filed timely objections to the R&R, essentially objecting to the R&R "in its entirety." (Entry 27 at 20). Specifically, the Petitioner asserts that none of his claims are procedurally defaulted and that even if they were, he can establish cause and prejudice, as well as actual innocence, to excuse the procedural default. The Petitioner

also asserts that all of his claims succeed on the merits in light of the overwhelming evidence in the record and the applicable law.

A. Ground One

As previously mentioned, the Petitioner asserts that the trial court deprived him of due process by failing to instruct the jury on involuntary manslaughter. After a review of the record, including the Petitioner's filings and the R&R, the Court agrees with the Magistrate Judge that this claim is without merit.[2]

First, as noted by the Magistrate Judge, the Petitioner did not present this issue on appeal in the context of a federal constitutional claim. Nevertheless, even if the Petitioner did properly raise this claim, it still fails on the merits.

In Beck v. Alabama, the United States Supreme Court held that capital defendants have the due process right to receive a jury instruction on a lesser-included offense "when the evidence unquestionably establishes that the defendant is guilty of a serious, violent offense-but leaves some doubt with respect to an element that would justify conviction of a capital offense." 447 U.S. 625 (1980). "But [a] defendant is not entitled to have the jury

[2] As an initial matter, the Court is not persuaded by the Respondent's argument that the Petitioner's claims are procedurally defaulted pursuant to the South Carolina Supreme Court's decision in State v. Lyles, 381 S.C. 442, 443, 673 S.E.2d 811, 812 (S.C. 2009). In Lyles, the court noted that "a decision of the Court of Appeals after conducting a review pursuant to Anders is not a decision on the merits of the appeal, but simply reflects that the appellate court was unable to ascertain a non-frivolous issue which would require counsel to file a merits brief." Id. At 444-45, 673 S.E.2d at 813. Based on this language, the Respondent seems to argue that in denying Anders and/or Johnson petitions, an appellate courts does not consider the merits of a petitioner's claims, resulting in those claims being procedurally defaulted. After consideration, the Court disagrees with the Respondent's attempt to apply Lyles in this manner and finds that the denial by an appellate court of discretionary review of a PCR action does not by itself result in procedural default under Coleman. See also McCoy v. Cartledge, 2010 WL 680258 (D.S.C. Feb. 24, 2010).

instructed as to lesser degrees of the crime simply because the crime charged is murder." Bates v. Lee, 308 F.3d 411, 418 (4th Cir. 2002) (internal quotation omitted). Instead, "due process requires that a lesser included offense instruction be given only when the evidence warrants such an instruction." Hopper v. Evans, 456 U.S. 605 (1982).

The Fourth Circuit has not, in a published opinion, addressed the question of whether due process requires that a trial court instruct a jury on lesser included offenses in non-capital cases. But in an unpublished decision, Robinson v. North Carolina Attorney Gen., the Fourth Circuit explained:

> the Supreme Court has never held that due process requires lesser-included instructions in non-capital state trials . . . [and] a review of decisions from other courts of appeals establishes that there is no consensus on this question. Consequently, a decision in [the Petitioner's favor] would require the enunciation and retroactive application of a new rule, in violation of § 2254(d)(1) and Teague v. Lane, 489 U.S. 288 (1989).

238 F.3d 414 (4th Cir. 2000) (table) (unpublished).

Accordingly, this Court declines to find that due process requires an involuntary manslaughter instruction in this case. Thus, the Court finds that the state court's decision not to charge on the lesser offense of involuntary manslaughter was not contrary to nor an unreasonable application of clearly established Federal law as decided by the United States Supreme Court, and the Court rejects the Petitioner's claim. See Cobbs v. Michael McCall, 2010 WL 936782 (D.S.C. March 16, 2010); Epps v. Bodison, 2009 WL 960792 (D.S.C. April 8, 2009); Bates v. Bodison, 2009 WL 2423766 (D.S.C. Aug. 5, 2009).

B. Ground Two

In ground two, the Petitioner contends that his appellate counsel was ineffective for failing to raise the following issues on appeal (1) that the trial court erred in charging the

jury on voluntary manslaughter; (2) that the trial court erred in admitting two unauthenticated documents and an irrelevant, prejudicial photograph; and (3) that the trial court erred in allowing hearsay testimony. After a thorough review of the entire record, the Court agrees with the Magistrate Judge that the Plaintiff's claims fail.

In Strickland v. Washington, 466 U.S. 668 (1984), the Supreme Court held that a meritorious ineffective assistance claim must demonstrate two things: first, that counsel's performance was deficient and, second, that counsel's deficient performance prejudiced the defense. Id. at 687-98. The first part of the test, a court's evaluation of counsel's performance, must be "highly deferential" under this standard, so as not to "second-guess" the performance. Strickland, 466 U.S. at 689. "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id. (internal quotation marks and citation omitted); see also Fields v. Attorney Gen. of Maryland, 956 F.2d 1290, 1297-99 (4th Cir. 1992); Roach v. Martin, 757 F.2d 1463, 1476 (4th Cir. 1985). To establish prejudice and thereby fulfill the second prong of the ineffective assistance test, the challenging defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694-95.

1. Voluntary Manslaughter Charge

The Petitioner claims that appellate counsel was ineffective for failing to argue that the trial court's voluntary manslaughter instruction was unsupported by the record. During

the charge hearing, the Petitioner requested a charge on accidents and involuntary manslaughter. (Entry 15-2 at 129.) The State responded that it did not understand the request for an involuntary manslaughter charge. Specifically, Mr. Blake stated:

> I don't see that the Defendant [has] in any way claimed criminal negligence. He says it was an accident. That would be a complete defense to the case. That would be a not guilty verdict. Involuntary manslaughter would mean that the Defendant had acted in a reckless manner causing the death, and there has been no evidence come forward of that.

(Entry 15-2 at 131.) The Court then asked the Petitioner whether he preferred an instruction on accident. The Petitioner responded, "Yes, sir." (Entry 15-2 at 131.) The Court later acknowledged the Petitioner's request for a charge on involuntary manslaughter, but stated that it was "out" because "he agreed to go with accidents." (Entry 15-2 at 143.) Next, the State requested a charge on voluntary manslaughter, stating:

> There is evidence of heat of passion. One of the witnesses gave testimony and a written statement that Mr. Steward said he got mad at his girlfriend and he flipped. Furthermore, there is extensive evidence of relationship with the – the victim's relationship with another boy. And Mr. Stewart's continued aggravation of that, both before he was in jail and after he committed the crime.

(Entry 15-2 at 136.) The Petitioner objected to the Court charging both voluntary manslaughter and murder, stating, "The state is trying to prove voluntary manslaughter. That only that be submitted to the jury. And the state is trying to prove murder and only that be submitted. I'd like to object to both of them being submitted." (Entry 15-2 at 136.) Importantly, the Petitioner did not object to the inclusion of a voluntary manslaughter charge on the basis that the evidence in the record did not support the charge. Thus, this issue was not preserved for appellate review.

Nevertheless, the Petitioner raised this claim on PCR, asserting that there was no

evidence of legal provocation to support the charge. The PCR court rejected the claim, finding that the Petitioner's statements to police that the victim pulled a knife or razorblade constituted sufficient legal provocation to support the voluntary manslaughter charge.

After a thorough review of the record, the Court agrees with the Magistrate Judge that the record contained sufficient evidence to support the voluntary manslaughter charge. Although the Petitioner now disagrees and asserts that he knew the victim did not intend to harm him when she pulled the box cutter on him, the evidence presented at trial (including but not limited to the Petitioner's differing versions of how the victim died) created a number of factual issues for the jury. And ultimately, the Court has no difficulty finding that the voluntary manslaughter charge was appropriate based on all of the evidence presented. Therefore, the Court agrees with the PCR court that appellate counsel did not err in failing to argue on appeal that the voluntary manslaughter charge was not supported by the record. Moreover, the court agrees with the PCR court that the Petitioner has not shown prejudice.

Based on the foregoing, the Court does not find that the PCR court's adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). Accordingly, this claim is denied.

2. Admissibility of Evidence

The Petitioner next contends that appellate counsel was ineffective for failing to raise on appeal an issue regarding the admission of two allegedly unauthenticated documents: (1) the "motive" letter and (2) a letter to the victim's mother. The Petitioner also alleges that appellate counsel was ineffective for failing to argue on appeal that the

trial judge admitted an irrelevant and unduly prejudicial photograph.

a. The Letters

At trial, Detective Gurley testified that the Petitioner personally handed her the "motive" letter (which, *inter alia*, described various theories on who killed the victim) and that she assumed the Petitioner wrote it since the handwriting resembled the Petitioner's. The trial court admitted the "motive" letter into evidence despite the Petitioner's objections that he had not given Detective Gurley the letter and that the letter had not been analyzed by an expert for a handwriting match.

Next, with respect to the letter to the victim's mother, the Petitioner testified at trial that he had not written the letter, and the Petitioner objected to its admission, asserting that there was no envelope or evidence showing that it was mailed to the victim's mother's house.[3] The trial court overruled the Petitioner's objection and admitted the letter, finding that the Petitioner's objection went to the weight of the evidence and not its admissibility.

The PCR court rejected the Petitioner's claims, finding that the letters were admissible and that it was for the jury to decide whether the handwriting was, in fact, the Petitioner's. Moreover, the PCR court found that even if the letters were inadmissible, their admission was not prejudicial in light of the other statements and documents written by the Petitioner and presented at trial. The PCR court found that the Petitioner failed to prove that his appellate counsel was ineffective in this respect or that he was prejudiced by counsel's failure to raise this issue on appeal.

After a thorough review of the record, the Court agrees with the Magistrate Judge

[3] The victim's mother later testified that she had received the letter.

that this claim is without merit. First, as noted by the Magistrate Judge, authenticity of documents may be established by indirect or circumstantial evidence. State v. Wilson, 145 S.E.2d 20 (S.C. 1965). And alleged deficiencies in authentication testimony go to weight, not admissibility. Here, the Petitioner admitted writing other documents that were in evidence, so the jury could compare the handwriting in the documents. Moreover, Detective Gurley testified that the Petitioner personally handed her the "motive" letter, and the victim's mother testified that she received the other letter in the mail.

Moreover, even if the letters were inadmissible, the Court agrees with the Magistrate Judge that the Petitioner has failed to show any prejudice, particularly in light of all of the evidence presented at trial. Based on all of the foregoing, the Court finds that the Petitioner has failed to show that the PCR court's adjudication of this issue "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). Accordingly, this claim is denied.

b. The Photograph of the Victim

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At trial, the State offered two photographs of the victim's burned body to show the Petitioner's state of mind and his actions after the death. The Petitioner objected on the ground that the prejudicial value of the photographs outweighed their probative value. The State countered that the photographs were the least gruesome of the fifty photographs and that they were relevant to show the Petitioner's state of mind as he had acknowledged burning the body and had pleaded guilty to the desecration of human remains. The court allowed one of the photographs into evidence, noting that its probative value outweighed its prejudicial effect, that it was relevant to show the Petitioner's state of mind, and that it

appeared from the photograph that the body had been placed on a platform in a "ritualistic" manner. (Entry 15-1 at 346.)

The PCR court denied this issue, noting that the relevance and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. The PCR court found that the Petitioner failed to show (1) that appellate counsel was ineffective for failing to brief this issue or (2) that the Petitioner was prejudiced as a result.

After review, the Court agrees with the Magistrate Judge that the photograph was admissible and that appellate counsel was not deficient for failing to raise this issue on appeal. Accordingly, this claim is denied.

3. Admission of Hearsay

Finally, the Petitioner alleges that appellate counsel was ineffective for failing to raise a hearsay issue on appeal. At trial, one of the Petitioner's friends, Stanton Wright, was asked to read a passage of the statement that he had given to police. The trial court overruled the Petitioner's objection and denied the Petitioner's request to approach the bench. Wright then read his statement, which stated: "As we walked towards the path, he told me that [the victim] said that she had sex with another dude before she had sex with him and she didn't shower. And then he – and then he said that he flipped." (Entry 15-1 at 198.) When Wright became upset, the court sent the jury out and asked the Petitioner what he wished to put on the record. The Petitioner complained that Wright was being coerced or intimidated. The court later asked Wright whether he was being threatened or intimidated, to which Wright responded, no.

The PCR court addressed this issue, noting that the Petitioner did not lodge a contemporaneous hearsay objection when Wright testified, and that appellate counsel

therefore could not have been deficient for failing to raise the issue on appeal. The Magistrate Judge determined that the PCR Court's adjudication of this issue was not contrary to, nor an unreasonable application of, clearly established federal law. Moreover, the Magistrate Judge determined that the PCR court's adjudication of this issue was not based upon an unreasonable determination of facts in light of the state court record. After review, the Court agrees with the Magistrate Judge, and accordingly, this claim is denied.[4]

CONCLUSION

After a review of the entire record, including the R&R and the Petitioner's objections, the Court finds that the Magistrate Judge fairly and accurately summarized the facts and applied the correct principles of law. Accordingly, the Court adopts the Magistrate Judge's R&R (Entry 25); overrules the Petitioner's objections (Entry 27); and grants the Respondent's motion for summary judgment (Entry 14).[5]

IT IS SO ORDERED.

The Honorable Sol Blatt, Jr.
Senior United States District Judge

March 26, 2010
Charleston, South Carolina

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[4] Additionally, the Court agrees with the Respondent that the statement was admissible. First, the Petitioner's own statement would not constitute hearsay pursuant to Rule 801(d)(2) of the Federal Rules of Evidence. Moreover, what the victim told the Petitioner would not constitute (a second layer of) hearsay because it was not offered to prove the truth of the matter asserted but was instead offered to show the effect on the listener. See Fed. R. Evid. 801(c); United States v. Guerrero-Damian, 241 F. App'x 171, 173 (4th Cir. 2007) (unpublished) (citation omitted) ("A statement is not hearsay if it is offered to prove knowledge, or show the effect on the listener or listener's state of mind.").

[5] Because the Court does not find that the Petitioner has made a substantial showing of the denial of a constitutional right, the Court denies a certificate of appealability. See Rule 11(a) of the Rules Governing § 2254 Cases in the United States District Courts; 28 U.S.C. § 2253(c)(2).

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	))	INDICTMENT #02-GS-34-1919
STATE OF SOUTH CAROLINA	)	MOTION FOR NEW TRIAL
V.	)	
WELDON W. STEWART, JR.	)	

I. Facts

Weldon confided in Lori Stewart that he had a prior conflict with a man named Tyrone Alford. Weldon recalled that one of the jury members, William Alford, was giving him "funny looks" during his trial. Weldon expressed to Lori that he had the "nagging feeling" that Tyrone and William were related.

Lori initiated a people search on William Alford on September 9th, 2014. She discovered that William and Tyrone are actually the same person; Tyrone is William's middle name.[1] (Lori obtained more information on William Tyrone Alford on December 11th, 2014)[2] Lori shared this information with Weldon, and Weldon informed her that he had no idea that Tyrone's first name was William. For the sake of clarity, William will only be referred to by his middle name, the name known to Weldon, in this brief.

Weldon was involved in a romantic relationship with Larekia Alford in the year 1996 that lasted until 1997. Larekia told Weldon that her ex-boyfriend, Tyrone Alford, had a serious problem with the relationship between Larekia and Weldon. Tyrone was further aggravated by the fact that Larekia had been impregnated by Weldon.

Larekia and Weldon attended a high school basketball game together one night. Tyrone was also present at this game. Larekia pointed Tyrone out to Weldon. Weldon saw Tyrone from a distance, but he could tell that Tyrone was giving him "dirty looks". Later that same night a car tried to run Weldon over as he was standing in front of his parents' house. Weldon recognized Tyrone as the driver of the car due to the fact that Tyrone was still wearing the clothes he had worn at the basketball game. Weldon stated, "I don't know how he knew where I lived; I guess he followed me home after the game was over."

Weldon changed schools, and was therefore no longer at the same school as Larekia. The romance between the couple dwindled as a result. Larekia rekindled her relationship with Tyrone, but Tyrone was very disturbed by the fact that Larekia was pregnant by Weldon. Larekia attempted to terminate her pregnancy, at Tyrone's urging, by drinking a bottle of castor oil. She miscarried the baby and was hospitalized as a result of this act.

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[1] See attachment A-1 (3 pages)
[2] See attachment A-2 (2 pages)

Weldon testified specifically about this incident during his trial testimony.[3] It was at this point that Weldon noticed that Tyrone was "looking at me real funny". Weldon noticed the hostile looks he was receiving from Tyrone, but attributed this to the overall effect his emotionally charged testimony was having on the jury. Weldon's testimony had already been interrupted once and the jury was sent to lunch, due to one of the jurors having an anxiety attack.[4] Therefore, Weldon had no way of knowing that he was receiving hostile looks from Tyrone during that part of his testimony due to the fact that Tyrone was directly involved in the incident about which Weldon was testifying.

II. Legal Analysis

A new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information; and (2) the information would have supported a challenge for cause or would have been material factor in the use of a party's peremptory challenge. See State v. Woods, 345 S.C. 583, 550 S.E.2d 282, 284 (2001) (finding that a juror's intentional failure to disclose a relationship gives rise to an inference of bias and rejecting the State's argument that a new trial should be warranted only where an individual shows he was prejudiced by the juror's failure to disclose information).

Both prongs of juror misconduct are present in this case. (1) It is highly unlikely that Tyrone could have forgotten a conflict as serious as the one he had with Weldon. It must be noted that Weldon specifically talked about his relationship with Larekia, as well as her pregnancy, during his trial testimony; it was at this point in Weldon's testimony that he noticed Tyrone was giving him very hostile looks. These facts tend to show that Tyrone did remember his previous conflict with Weldon and that he intentionally concealed this information. (2) This information, Weldon and Tyrone's serious prior conflict, would have certainly supported a challenge for cause or would have been material factor in the use of a peremptory challenge.

Furthermore, Weldon's only means of positively identifying Tyrone was the name "Tyrone Alford". Weldon had only seen Tyrone from a distance; therefore, he would have been unable to identify Tyrone by appearance alone. It must be noted that the name "Tyrone Alford" was never mentioned during jury selection.[5] It must be further noted that Weldon initially asked Lori Stewart to find out if William was related to Tyrone. Weldon did not discover that the man sitting on the jury was the same man with whom he had prior conflict until he received the results of the people search conducted by Lori. The date of this discovery falls within the one year limitation; Weldon has brought this matter before the Court in a timely manner.

Weldon recently discovered that Tyrone Alford, a man with whom he had serious prior conflict, was allowed to serve on the jury at his trial. However, the South Carolina Supreme Court held that juror misconduct is not material to the issue of guilt or innocence of the accused and therefore does not fall within the definition of newly discovered evidence. It would nevertheless

[3] See attachment A-3 (1 page)
[4] See attachment A-4 (1 page)
[5] See attachment A-5 (1 page)

warrant a new trial on a separate basis. See McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013).

III. Conclusion

On the above grounds, I, Weldon W. Stewart, Jr., move before this Court to grant me a new trial. I further move for the Court to hear this motion within thirty (30) days.

February 9, 2015

Respectfully Submitted,

Weldon W. Stewart, Jr.

Weldon W. Stewart, Jr. #295095
Broad River Correctional Institution
[redacted]
Columbia, SC 29210

[redacted]

People Search Reverse Phone Background Check My Home

William Alford
[redacted]
Clio, SC 29525

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Personal Information

We search public records to show you the person's full name, any known aliases, birth records, and even phone information.

Names and Aliases

First Name	William
Middle Name	T
Last Name	Alford
Known Aliases	N / A

Birth Information

Date of Birth / Year	[redacted]
Age	[redacted]

Phone Numbers

Phone	N/A

[redacted]

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A-1

OFFICIAL CBR CRIMINAL REPORT

[redacted]

PERSON INVESTIGATED

Name: William T Alford
Date of Birth: [redacted]
SS#: Not Entered

Order Number: [redacted]
Order Date: [redacted]4
Member: Not A Member

Please verify that the following record(s) are indeed the person you are investigating. If the record(s) below do not match the subject you are investigating, then there is No Records Found based on the search criteria you submitted.

Record Details

South Carolina Criminal

Identity

Name: WILLIAM TYRONE ALFORD
Offender Record ID: [redacted]
Age: [redacted]
Eye color:
Hair Color:
Height:
Weight:
Race: BLACK
Gender:

Addresses

Other Address
Address: [redacted], SC, [redacted]

Parties

Judicial Official

Cases

Case Number: [redacted]
Jurisdiction: [redacted]MAGISTRATE COURT DILLON
Title: THE STATE OF SOUTH CAROLINA VS WILLIAM TYRONE ALFORD
Appealed From Lower Court: No
Filing Date: 2008-06-13
Type: CRIMINAL

Offenses

Description: [INITIAL CHARGE: ASSAULT / ASSAULT AND BATTERY WITH INTENT TO KILL (ABWIK)][FINAL CHARGE: TRANSFERRED]
Type:
Date Committed:
Date Ended:
Disposition: **Date:** 2008-08-20
Additional Information: [STATUS: [SENTENCE: TRANSFER][SENTENCE: TRANSMITTED TO GS [redacted]

Charges

Number: 0014
Description: [INITIAL CHARGE: ASSAULT / ASSAULT AND BATTERY WITH INTENT TO KILL (ABWIK)][FINAL CHARGE: TRANSFERRED]

Courts

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A-1

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End of Criminal Report

OFFICIAL CBR CRIMINAL REPORT

[redacted]

[redacted]

A-5

SLED CATCH
Citizens Access to Criminal Histories
Results

Name **William Alford**
Date of Birth [redacted]
Maiden Name
Gender **Male**
SSN
Transaction [redacted]
Date of Check **December 11, 2014 at 11:49**

ARREST RECORD

This record is based on a search using **Last name, First initial, Gender, and Date of Birth only**. Compare all identifying data given for record subject with screening subject. Fingerprint comparison is recommended as the most reliable means to identify a record subject.

[redacted] FBI-********* PUR-E
ATN-WEB, ACCOUNT

AUTHORIZED USE ONLY. ******** CONTACT CONTRIBUTING
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-12/11/2014 TIME-11:45:06
[redacted] C [redacted]AW ENF DIV

NAME-AL , WILLIA YRONE SEX-M RACE-B
HEIGHT-[redacted] WEIGHT-[redacted] EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC- HENRY-
PHOTOGRAPH AVAILABLE AUTHORIZED USE ONLY
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--N/A DATE OF LAST UPDATE--08/08/2014

ADDITIONAL IDENTIFIERS	BIRTH			
NAME	DATES	MARKS	SOC SEC	MISC NUM
	[redacted]			

CONTRIBUTOR/SUBJECT	DOA/RCVD	CHARGE/DISPOSITION/ETC
ILLIAM TYRONE	10/12/2002	
[redacted] MARLBORO CNTY SO		
CASE-[redacted]		
ATN-[redacted]		
WARR[redacted]		
CIT-[redacted]		DEMEANOR
		ARREST CHARGE
01-CRIM DOMESTI		
		C VIO OF A HIGH AND AGGRA
		NATURE
		OFFENSE DATE-10/12/2002
		PHOTOGRAPH AVAILABLE
WARR[redacted]		
CIT-[redacted]		
		ARREST CHARGE 02-POINTING
		AND PRESENTING FIREARMS
		AT A PERSON

A-2

OFFENSE DATE-10/12/2002

CIT-[redacted]
WARR-[redacted]

COURT CHARGE 01-CRIMINAL
DOMESTIC VIOLENCE HIGH &
AGGRAVATED
COURT DISP-NON-CONVICTION;NO
BILLED
ATN-[redacted]

[redacted] IL [redacted] NE
[redacted] [redacted] PO
08/08/2014

CASE [redacted]
ATN-
WARR
CIT-

ARREST CHARGE 01-CRIMINAL
DOMESTIC VIOLENCE 1ST
OFFENSE

OFFENSE OATE-08/08/2014
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

BASED ON SEARCH OF SCLED CJIS CCH FILE USING SID [redacted]
THIS CRIMINAL HISTORY RECORD IS FOR SOUTH CAROLINA ARRESTS AND
CONVICTIONS ONLY AND IS BASED ON THE INFORMATION PROVIDED. SINCE
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** S C CJIS END OF RECORD **

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A.3

MR. BLAKE: This isn't a bifurcated trial.

THE COURT: I'm going to give him some leadway. Just don't get too far with it. Go ahead.

MR. STEWART: Just, my grades started slipping lower in the fifth grade. Other than that, I did pretty good. Was doing good at home. Got older.

When I got about 15, I started dating this older lady. She was 27, and she kind of played with my -- played with me a little bit and kind of threw me away. So that was that.

But in school, I was pretty good. Shortly after that relationship, I got with another girl, and she got -- she became pregnant. She was older -- she was a little bit older than me. I was still 15. She was like a high school senior or something. She became pregnant, and she forced herself into an abortion by -- not an abortion, but forced herself into a miscarriage by drinking caster oil, something like that.

And had baby out on the floor and took pictures of it and sent it to me. So that's what happened. Shortly after that, I started -- I had problems with. That -- that really bothered me. Just seeing the pictures and stuff, so I really -- I started -- not getting in trouble, but just to be honest, what I said I was going to do in my opening statement, so I started using a little marijuana. That was how I coped with my pain and stuff like that.

A4

THE COURT: Go ahead. Is everybody all right? Okay.

(JURY EXCUSED TO JURY ROOM AT 12:38 P.M.)

THE COURT: Counsel, I propose we break for lunch. Mr. Stewart, I know you're up here.

BAILIFF: Your Honor, she was having an anxiety attack before we came out. She was having congestion in her chest. It may be an anxiety attack.

THE COURT: All right. Mr. Clerk, if you will check on her. Tell them to go ahead and go to lunch. Let's break until 2 o'clock.

(JURY EXCUSED FOR LUNCH AT 12:39 P.M.)

(COURT IN RECESS AT 12:39 P.M. AND RECONVENES AT 1:51 P.M.)

MR. BLAKE: Judge, before the jury come in, I would like to put something on the record.

THE COURT: Okay. Mr. Crow isn't here. Yes, he is. Go ahead.

MR. BLAKE: And I can't fault the defendant for this, but the closing went to lunch was, of course, very abrupt because of the medical problem with the juror.

And when we broke for lunch, Mr. Stewart was, of course, on the stand in the middle of testifying as a witness would have been sequestered. And I didn't feel it was my place to step in and do anything, but he did talk to one of his witnesses. And, of course, he was talking to his parents.

I can't change anything that's already happened. I just

CLERK OF COURT: Have a seat in the jury box, please, ma'am. 33, Michael Costner. What says the State?

MR. BLAKE: Please excuse Mr. Costner from the trial of this case.

CLERK OF COURT: Return to your seat, please. 7, Alexander Bethea. What says the State?

MR. BLAKE: Please excuse Mr. Bethea from the trial of this case.

CLERK OF COURT: Return to your seat, please. 24, Lindsay Carter. What says the State?

MR. BLAKE: Please seat Ms. Carter.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, please. 39, Michael Taylor. What says the State?

MR. BLAKE: Please seat Mr. Taylor.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please. 2, William Alford. What says the State?

MR. BLAKE: Please seat Mr. Alford.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, please. 131, Linda Sports. What says the State?

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
COUNTY OF MARLBORO	)	2002-GS-34-1919

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
WELDON STEWART	)	
DEFENDANT	)	

May 26, 2016
Darlington, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

ELIZABETH R. MUNNERLYN, ASSISTANT SOLICITOR
Attorney for the State

JAMIE SCRUGGS, PUBLIC DEFENDER
Attorney for the Defendant

PEGGY ALFORD,
LORI STEWART,

HATTIE O. GORDON
Circuit Court Reporter

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DEFENDANT'S EXHIBITS

NO	DESCRIPTION	ID	EV
1	Unlisted	7	19
2	Unlisted	7	19
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4	Unlisted	7	

COLLOQUY

THE COURT: Mr. Scruggs.

MR. SCRUGGS: Thank you, Your Honor. May it please the Court. This is also a Marlboro County matter. If Your Honor may recall these motions for a new trial came before Your Honor I believe last April and the Court appointed Mr. Rick Jones to argue those motions and assist with those motions.

Mr. Jones is no longer with our office and I have taken over the representation for Mr. Stewart on these motions. Your Honor, today in speaking with Mr. Stewart about these motions it's my understand that at the April hearing last year there were three motions for new trials before the Court.

The first one was alleging juror misconduct. The second one has to do with qualifications for the forensic pathologist that testified in the trial of this matter. And the third dealt with, just simply put, a version of events by the Defendant which he claims was repressed at the time he gave his statements and at the time he testified at trial.

In the spoke Mr. Stewart and advising him about the merits of these motions we've agreed to only go forward on two motions which is the first and the second. The first alleging juror misconduct and the second one as to the

qualifications of the forensic pathologist. What I would like to do, if the Court sees fit, is to give a brief opening remark. I have three witnesses I would like to call and then give arguments in closing. I can't see this matter lasting more than 30, 45 minutes. I don't know if Ms. Munnerlyn has anything that she would like to comment on at this point, but that's my understanding.

MS. MUNNERLYN: Your Honor, I'm ready to proceed. I thought we were only going forward on the juror misconduct motion, but I'm ready to go forward on the other motion as well. Although if they have the full transcript I would ask if you're going to consider to portion of the transcript of that particular pathologist ask that all of it come in. Not just the pages that are attached to his motion.

THE COURT: No problem.

MR. SCRUGGS: And I have a full record of the trial and my courtroom office, Your Honor, if it becomes necessary to introduce all of it. Although I have no problem with introducing the entire transcript of the forensic pathologist's testimony in.

THE COURT: All right. I appreciate that. That will help.

MR. SCRUGGS: Thank you, Your Honor. Your Honor, I'd like to start with the motion for the new trial dealing

with juror misconduct, and this motion for new trial centers on the allegation that one of the jurors in the Defendant's trial, whose name is William Alford, failed to disclose information which if it had been known to the Defendant it would have had -- would have supported a peremptory challenge during jury selection process or for a challenge for cause.

Specifically, we intend to show through testimony today that William Alford, or as he was known to most people including the Defendant, Tyrone Alford was a former boyfriend of the Defendant high school girlfriend and was aware that the Defendant and his former girlfriend were romantically involved and that there was some prior conflict and jealousy that naturally arises between couples and ex-couples.

This fact was not disclosed during the voir dire or jury selection process. And, Your Honor, what I'd like to do at this point is to take testimony on this issue, and the Defense would first like to call Ms. Peggy Alford to the witness stand.

THE COURT: Come around and be sworn, please.

CLERK OF COURT: Come over here, please, ma'am. Raise your right hand.

PEGGY ALFORD, after being duly sworn, testified as follows:

CLERK OF COURT: If you will have a seat right here and scoot up as close as you can to the mic.

(WHEREUPON, Defendant's Exhibit Nos. 1 THROUGH 4 were marked for identification only.)

DIRECT EXAMINATION

BY MR. SCRUGGS:

Q. Mrs. Alford, can you -- could you state you full name for the record?

A. My name is Peggy Ann Alford.

Q. Okay. Would you tell the Court who Laretha Alford is?

A. Laretha is my oldest daughter.

Q. Okay. How old is she currently?

A. She's 37.

Q. And can you tell the Court what her status currently is?

A. Yes. She had a mental problem.

Q. Okay. She currently reside with you?

A. Yes, sir.

Q. Have you in the past had a close relationship with your daughter?

A. Very close.

Q. Do you continue to have a close relationship with your daughter?

A. Yes. At this moment a very closeness.

Q. Do you help provide for her currently?
A. Yes.
Q. And when your daughter was younger where did she go to high school?
A. [redacted] High School.
Q. Okay.
A. [redacted] High, I'm sorry.
Q. Do you know the Defendant, Weldon Stewart, Jr.?
A. I didn't really know him, but I know that my daughter dated him.
Q. When did she date Mr. Stewart?
A. In her senior year.
Q. Do you remember what year that was?
A. Ninety something. It was the end of -- Retha graduated in, let's see. Probably around about '97, '98, I believe.
Q. That's approximately the time that she dated Mr. Stewart?
A. Correct.
Q. Okay. Do you know anyone by the name of William Alford?
A. No, not until a few years ago. I know him as Tyrone.
Q. Okay. And to your knowledge is Tyrone's first name William?
A. Yes.

Q. Okay. Did you ever call him William?
A. I didn't know his name was William. I always heard him called Tyrone.
Q. Did your daughter call him William?
A. No, sir.
Q. Did your daughter date Tyrone Alford?
A. She did.
Q. Okay. When did she date?
A. Retha started dating Tyrone when she was in the 11th grade, and it continued on until he started being abusive to her.
Q. Okay. Did she date Tyrone Alford before she dated Mr. Weldon Stewart?
A. She did.
Q. Okay. Did your daughter and Mr. Weldon Stewart eventually break up?
A. Repeat that again now.
Q. Did your daughter and Mr. Weldon Stewart eventually stop dating?
A. They did.
Q. Okay. After they broke up did your daughter ---
MS. MUNNERLYN: Your Honor, I would object to the leading questions.
THE COURT: Just rephrase your question.
BY MR. SCRUGGS:

Q. After -- did your daughter date Tyrone again?
A. She did.
Q. When was this?
A. After her and Weldon stopped talking.
Q. Okay. Can you give us a general idea of the timeframe between your daughter and Mr. Stewart breaking up, her beginning to date Mr. Alford again?
A. I would say no more than about six months.
Q. Did your daughter tell Weldon and Tyrone about each other?

MS. MUNNERLYN: Your Honor, I would object unless she personally knows if this is not what somebody else told her.

THE WITNESS: No. This is ---

THE COURT: Hold on. Wait a second. You have to form your question as to where she actually heard it otherwise you've got a problem with that.

BY MR. SCRUGGS:
Q. Okay. Ms. Alford, let me rephrase that. Did you ever overhear any conversations between your daughter and Mr. Alford?
A. Yes, hear a conversation they used to have?
Q. Yes.
A. Yes, sir.
Q. Okay. Did you ever hear her mention Mr. Weldon

Stewart to Mr. Alford?

MS. MUNNERLYN: Your Honor, I don't know. Again, I'm going to object to hearsay if she's not going to testify. I mean I don't know why need her to testify to what she's hearing other people say here in the courtroom today.

THE COURT: I think you're right. That is hearsay.

MR. SCRUGGS: I'm not specifically asking for a hearsay exception -- a hearsay answer. I'm just asking whether or not she -- if she was present. If she heard conversations between her daughter and.

THE COURT: As long as you don't get into what was said.

MR. SCRUGGS: Yes, sir. I'm not trying to go into what was said, I'm just trying to establish, One, that she heard conversations and, Two, that Mr. Stewart's name was mentioned to her.

THE COURT: I'll let you go forward on what you're doing. No problem.

BY MR. SCRUGGS:

Q. Ms. Alford, did you ever overhear any conversations between your daughter and Mr. Alford?

A. Yes, sir.

Q. During any of those conversations did your daughter ever mention Mr. Weldon Stewart's name to Mr. Alford?

A. Yes, sir.

Q. Okay. Thank you. Following up on that, did you ever hear your daughter, During one of these conversations, mention that she and Weldon had dated?
A. Yes, sir. If I can explain. Especially the time went Retha got pregnant.
Q. Okay. Well, that's my next question actually. Your daughter became pregnant. Did your daughter become pregnant?
A. She did.
Q. What ultimately happened with that pregnancy?
A. She had a miscarriage. Tyrone had brought Retha home one Saturday -- late one Saturday evening. And she was complaining about her stomach. And so she went to the bathroom and I happen to go to the bathroom where she was. And she had the door closed.

So I opened up the door and she was laying down on the floor. And I said, "Retha, what's wrong with you." She said, "Mom, my stomach hurts." I just happen to look over on the other side of the camode and there was a fetus laying there on the side.

So me and my husband got her up and carried her and the fetus to the hospital and they said that she had had a miscarriage.
Q. At the time that this occurred was your daughter dating anyone?

A. Well, it's like it was a back and forth thing cause at that time she was talking to Tyrone then.
Q. Okay. And when you say, 'back and forth' can you clarify what you mean by that?
A. Okay. Weldon would call her. Tyrone would call her. And I heard a conversation when she told Tyrone that she believed she was pregnant. And she didn't know whether it was his baby or Weldon's baby.
Q. Well, did she go to the hospital?
A. Yes, sir. We carried her, [redacted].
Q. Okay. Did Mr. Tyrone Alford visit her when she was at the hospital?
A. He did. He practically stayed day there with her.
MR. SCRUGGS: Your Honor, if I may have just a minute?
THE COURT: Sure.
MR. SCRUGGS: Your Honor, I have no further questions for Ms. Alford.
THE COURT: Ms. Munnerlyn.

CROSS-EXAMINATION

BY MS. MUNNERLYN:
Q. Ms. Alford?
A. Yes, ma'am.
Q. When did your daughter quit dating Tyrone?
A. Now, that's pretty hard to say because Tyrone

graduated a year before Retha did. And after Retha graduated they still was talking until he started beating on her.

Q. So you don't have any idea when they quit dating?

A. Not really because like I said Retha was out there because my had her own transportation, and when she would go places, you know, I don't know whether she was with him or not.

Q. Okay. Sp but I mean you don't even know what year?

A. Retha graduated had to be around '97 or '98 because I know she would have me like go pick him up like going to my other daughter's soft ball games. She would ask me if I would pick Tyrone up which I didn't want to do it, but I tried to do things, you know, to make her happy.

Q. Okay. So when was the last time you think Tyrone was seeing your daughter?

A. One night my father was carrying a revolver over in Hot Springs, South Carolina, and my baby called and said Tyrone was at the house beating on Retha. And so when we got back my brother told my daddy. He couldn't handle the problem Because he had surgery.

So my daddy went over there and hit Tyrone across the head with a two by four and he asked him what he was doing over there. So after then because, Tyrone had asked Retha to marry him. He had gave her an engagement ring. And

after she told him she didn't want him no more and he waited good until we left, you know, left the house to come over there.

Q. This was after she had that miscarriage?

A. Correct.

Q. Okay. And so she was just -- this was when she was still in high school or what?

A. No. This was -- she was finished high school.

Q. Okay. So was it like a year after she finished high school? Two years after she finish high school?

A. I would say no more than -- no more than, say, from a half of a year to a year.

Q. No more than one year after she finished high school which would be '99?

A. I would say. No more than 2000. Like I said until he came abusing her.

Q. Okay. Well, so you said she graduated in either '97 or '98. You're not sure?

A. I'm not sure, but I know Retha graduated.

Q. Okay. But even if she graduated in '98 one year after that would be '99?

A. Correct.

Q. Okay. So '99 would be the latest that could have happened?

A. What you talking about? Pregnancy?

Q. No. No. No. I'm talking about the when the incident happened and she broke it off and she wasn't dating him any more?

A. Okay. Like I said I can't really say because he was steady calling to the house.

Q. Okay. When did he stop calling the house?

A. It had to be around 1999.

Q. Okay. That's all I wanted to know.

A. Okay.

Q. Was she seeing Weldon Stewart then?

A. I don't think so, but now the last incident that I know what happened they had went to a basketball game. And Retha came and told me that Tyrone had tried to run over Weldon. And I asked her what did -- why did he do that. And then that's when she was saying, "Ma, you know, Weldon still like me. And I care some for Weldon." So I just went by what she told me.

Q. That was when she was still in high school?

A. This was after high school.

Q. So she went to a ball game after she had graduated from high school?

A. Correct.

Q. So this was the first year after high school that she was still seeing Tyrone?

A. Yes, ma'am.

Q. Okay. So that would be at the latest in '99?
A. Correct. But see cause after the incident what my dad did to him she -- Tyrone never called back to my house again.
Q. Okay. But no question what Tyrone and Weldon knew who each other were?
A. They did.
Q. Okay.
MS. MUNNERLYN: No further questions.
THE COURT: With that answer why are we going to waste any time on this particular motion, this first motion?
MR. SCRUGGS: Your Honor, what I'd like to get in through another witness is ---
THE COURT: That Weldon Stewart didn't know Tyrone?
MR. SCRUGGS: Well, Your Honor, what I'd like to get into evidence is that the juror list that was given to all parties at the trial of this case on the juror list Tyrone Alford was referred to as Mr. William T. Alford.
THE COURT: Is Mr. Weldon Stewart blind?
MR. SCRUGGS: No, sir.
THE COURT: This Court has better things to do than to sit up here and entertain a ridiculous frivilous motion like this. Now, in all fairness I'll let you develop the record, but you know what this is going to look like when

he gets down there before the Appellate Court. They probably going to chastise me for wasting valuable Court time listening to something like this. Do what you've got to do. You may step down.

MR. SCRUGGS: Defendant calls Lori Stewart.

GLORIA STEWART, after being duly sworn, testified as follows:

CLERK OF COURT: Have a seat right here.

DIRECT EXAMINATION

BY MR. SCRUGGS:

Q. Ms. Stewart, what is your role in this matter?

A. When Weldon was telling me about his case I didn't take what he told me on face value. And so I asked him to send me his trial transcripts. Once I received his trial transcripts I went over them and I started with the jury.

And I was just starting the independent review of the case. And once I did the independent review of the case I found inconsistencies with the case and helped Mr. Stewart with his appeal.

Q. And as far as your investigation did you review the names of the jurors with Mr. Stewart?

A. Yes, I did.

MS. MUNNERLYN: Your Honor, I will stipulate to all the exhibits that he wants to put in as far as the jury list, who was actually seated on the jury. I will

stipulate to exhibits which is the entire jury venire, the list of those individuals. I'll stipulate to that. I don't know what else has that he wants to put in, but I will certainly stipulate to that.

Otherwise, I really don't know what relevance the testimony of this witness would have to this particular proceeding. I don't think she was -- she's not a fact witness. I don't think she was connected at the time to this Defendant.

MR. SCRUGGS: That's correct, Your Honor. I do have what's been marked as State's -- Defendant's Exhibit Two and Defendant's Exhibit One which is the juror master list from the trial and also the full names of the jury that were ultimately seated in this case.

THE COURT: That's fine. It will be part of the record.

MR. SCRUGGS: And what I believe are One and Two.

THE COURT: That's okay. I'll put them in

(WHEREUPON, Defendant's Exhibit Nos. 1 and 2 were admitted into evidence.)

BY MR. SCRUGGS:

Q. What I have not shown Ms. Munnerlyn is what's been marked as Defendant's Exhibit Four which is a criminal background check that Miss Stewart ran when researching Mr. William T. Alford.

MS. MUNNERLYN: Your Honor, I would object to this particular document. I don't know who produced it. How it was produced. It looks like it might be a private company that produced this particular record. I would just object to this, and this is not related to what was raised in the motion, Your Honor.

So this is actually outside the scope of what was included in the motion. If he intends to show that this particular juror had a prior criminal history I would like to have known that before right now so I could have gone and checked that myself.

I have had no contact with this particular juror because wasn't sure where this was going, and I didn't want there to be any question whether or not this juror talked with me or anyone on particular of the State. And the motion did not include that I have seen any allegations that this particular juror had any sort of criminal history -- prior criminal history that was revealed to the Court.

So I would object to that coming in at this time because I had no knowledge of it. And I would specifically object to the document because I don't know where it came from, who produced it. If it was a Dillon County conviction then there are certain valid ways for him to obtain that.

THE COURT: I'm going to have to sustain that.

MR. SCRUGGS: If I can just clarify, Your Honor. This is just paperwork that was originally included, filed by the Defendant pro se prior to our office involvement with this case. I don't have personal knowledge whether it was provided to the Solicitor at that time. So this is where I got this from.

I'm not introducing it to try to show that the juror had a criminal background. I don't think -- I agree that's not relevant. All I'm trying to show is what his middle name is. An independent basis for what the 'T' stands for in his middle initial.

THE COURT: But in no way is there any accusation here that that juror hid a criminal record? That's not the motive here?

MR. SCRUGGS: I am not arguing and I'm not trying to argue that the juror was constitutionally barred. It has his middle name spelled out which is William Tyrone, and I just want to try to use this for the purpose of establishing what his middle name is.

THE COURT: Well you've certainly got an uphill battle there from what the first witness had to say. I mean, my goodness, the testimony there that attempted to run over him. Any other questions?

MR. SCRUGGS: If I may just ask Ms. Stewart if she

found out what Mr. William Alford's middle name was.

THE WITNESS: Yes, I did.

MS. MUNNERLYN: Your Honor, I would object to that. I don't know how she would have found that out if it was just something that someone told her. If we were going to try to show that this person is one and the same it looks to me like they would have simply subpoenaed this particular juror.

So I don't -- I would just object to this. My understanding is that this particular witness is now married to the Defendant. And so I think she's completely and entirely biased. I don't know what authority she has to testify unless she had some specific conversation with William Tyrone Alford. And then if she has that would be hearsay because he's not here. He's not a party, and I would object to it.

THE COURT: Well, may have some merit in the objection, but as far as that one question I'll let her answer that.

MR. SCRUGGS: And, Your Honor, if I could just reply briefly. If she, you know, something comes out during testimony that Ms. Munnerlyn can certainly object to that, but I still think I should be allowed to establish a foundation to see whether -- how she found out this information.

THE COURT: What the specific question is what his middle name is?

MR. SCRUGGS: Correct.

THE COURT: Go ahead.

BY MR. SCRUGGS:

Q. Ms. Stewart, do you know what William Alford's middle name is?

A. Yes. I did a people search on each of the jurors and upon the Google search the first one I ran showed William D. Alford. I ran the second people search and it showed William Tyrone Alford. When -- the reason I did a people search on the jurors I wanted to talk to two jurors and get some more information about the case.

When I did a people search one of the jurors there was -- it was a lady. She had -- there were three ladies that had the same name in the same county. So I did more extensive search. And that's when I did -- I searched into the different jurors, and that's when I found out that William Tyrone Alford -- William T. Alford is William Tyrone Alford.

And then I did a third search.

Q. Let me ask you specifically. How do you know that the William Alford you researched is the same William Alford that sat on Mr. Weldon't Stewart's jury?

A. From the people search that I did I also had a

conversation with Mr. Alford ---

MS. MUNNERLYN: Objection, Your Honor.

THE COURT: No hearsay.

BY MR. SCRUGGS:

Q. Do you have any basis that, not talking about what somebody told you, that you can show that you know that that William Alford that you researched is the same William Alford that sat on Mr. Stewart's jury?

A. Mr. Alford told me ---

MS. MUNNERLYN: Objection.

THE COURT: Hearsay.

THE WITNESS: I did the people search and it showed ---

MS. MUNNERLYN: Your Honor, I also object to the people search cause I really don't know what she used. What search engine. I would just object to that. We don't know the validity of that.

THE COURT: I thought it was going to be limited to that one question. Sustained.

BY MR. SCRUGGS:

Q. Ms. Stewart, did you use -- what information did you use to run those people searches?

A. I took the juror list, and I did a people search. I did a check people search, and then I took the information that I got in there to find out information about the

juror. And then I did a more background -- did more on extensive search on Mr. Alford.

Q. When did you conduct this research?

A. I conducted the research on September 19th in 2014.

Q. And when was a motion for a new trial filed based on this information?

A. February 16, 2015.

MR. SCRUGGS: Your Honor. No further questions.

THE COURT: Solicitor.

MS. MUNNERLYN: I don't have any questions, Your Honor.

THE COURT: You may step down.

MR. SCRUGGS: Your Honor, the last witness is Mr. Weldon Stewart.

WELDON STEWART, after being duly sworn, testified as follows:

CLERK OF COURT: Have a seat.

DIRECT EXAMINATION

BY MR. SCRUGGS:

Q. Mr. Stewart, did you have a relationship with Ms. Laretha Alford when you were in high school?

A. Yes.

Q. Okay. And I want to go straight to the heart of this because I think it needs to be explained is how did you not recognize Mr. Alford during your jury selection

process?
A. All right. First of all, I just want to clarify that I never went to school with Tyrone. I never had any personal contact with him. When -- the only way I knew of him was through Laretha. Through our relationship Laretha kept saying Tyrone ---
MS. MUNNERLYN: Objection, Your Honor.
THE WITNESS: Well, she, Laretha, would talk about Tyrone a lot to me. I never met him. I never was in a room with him. I never went to school with him. I had no personal interaction with him. The only time that I saw Tyrone or who Laretha identified to me as being Tyrone was at a basketball game, and that was from a distance.
I never spent any time with him. We didn't come -- we didn't talk or anything like that. I only knew of them through Laretha, what she told me about him.
Q. During the testimony portion of your trial did Mr. Alford stand out to you at all?
A. During the testimony portion of my trial one of the jurors had an anxiety attack. And this happened and then Your Honor sent the jury to lunch. After the jury -- after we had came back from lunch I was testifying again. And so what I was doing was trying to testify about less upsetting things to the jury and I was just giving my background.

You know, basically things I had been through and a little history about myself. And as I was talking and giving a general background I was watching the jury real closely because we just had a juror that had an anxiety attack. And I was trying to make sure everything that I was saying to the jury at this point wasn't upsetting them anymore.

And so when I was talking about my relationship with Laretha and her miscarriage I noticed that Tyrone, well, who William then. I didn't know it was Tyrone; that he was looking at me, you know, really angry like he wanted to jump across the thing and fight me.

And so, of course, I noticed it, but I didn't think too much of it because there was a lot going on. A lot of people were looking at me, and I didn't take time to try to figure it out. But it spelled out because it was strange because I didn't think I was talking about anything that should unset anybody. So it just kind of stuck out in my mind.

Q. If you had know that William Alford was in fact Tyrone Alford would you have exercised one of your premptory strikes or challenge for cause during the jury selection process?

A. If I had known that that was Tyrone sitting on that jury I would have definitely asked for him to be excused.

Before the trial -- before the jury was selected I wrote out my on individual questions and Your Honor read them to the jury. We tried very hard to get every juror off that jury that had any type of conflict with me.

If I had known that that was Tyrone I would have asked that he be excused because we had prior conflict, but my only way to identify him was by the name Tyrone. That's all I knew him by. I didn't know him by face. I didn't know him -- I had never been around him. The only thing I knew him by was the name of Tyrone.

Q. Lastly, Mr. Stewart, your case, did it receive a lot of publication in the local press?

A. Yes, my case received a lot of attention as far as I know. And as far as I know it was a lot of people knew exactly who I was based on that publicity.

MR. SCRUGGS: Nothing further for Mr. Stewart, Your Honor.

THE COURT: Solicitor.

CROSS-EXAMINATION

BY MS. MUNNERLYN:

Q. So, Mr. Stewart, you said that you were testifying at your trial?

A. Yes, ma'am.

Q. And a juror had an anxiety attack?

A. Yes, ma'am.

Q. And when they came back out you continued to testify?
A. Well, actually, yes. The -- Your Honor sent them to lunch because a woman had an anxiety attack. And so when they came back out it interrupted my testimony, basically. And when they came back out I was still -- I was put back on the stand to continue my testimony. Yes.
Q. And you were -- now this was in 2003, correct?
A. Yes, ma'am.
Q. When had you last had a relationship with Laretha Alford?
A. I don't know the definite date, but I think it was sometime in 1998.
Q. Okay. And so when you were testifying at your murder trial why did you talk about Laretha Alford?
A. Because when I was giving my basic things that happened in my life you were dealing with -- it was a situation involved -- we were dealing with [redacted] had an abortion. Laretha had a miscarriage. These were both by children. I lost two children.

So it was a connection in my mind between painful events involving children that I had lost. And I was giving a basic background, and then -- so I just -- it was just -- I was nervous. The woman had just had an anxiety attack, and I was just trying to talk about -- give the jury information about myself that was like wouldn't upset

anybody.

So Laretha losing our child in the way that she did something that very upset me and so it was a very significant point in my life, and I just was talking about different things. Not just that, you know, but I talked about a relationship with a woman who was 27 and I was 15. And she taught me how to love me, and I talked about that about when he tried to drown me when I was ten.

And I just talked about various painful things that happened in my life. It wasn't just that.

Q. No question that you and Mr. Tyrone Alford had both seen or dated at some point Laretha Alford?

A. Yes.

Q. And you just testified you had had some prior conflict with him because of that, correct?

A. Actually, I only -- the only -- the only time that I -- the only time in my life, other than that I saw Tyrone, was at a basketball game. I saw him one time in my life. Well, twice. One, I saw him one time at the basketball game that night.

And what happened was Laretha and I were sitting on one side of the [redacted] High School and Tyrone was sitting all the way on the -- either we were sitting in the visitor's section or he was sitting in the visitor's section. We were sitting in two different sections. And

what happened was that Laretha pointed him out and said, "That's Tyrone," and I said, "Okay." And so at halftime we went out there.

He stood -- he stood probably from Laretha and I to that -- where that guy is sitting right there. He kept his distance. Probably about to where he's at. Okay. And so he kept his distance. He didn't come. He didn't approach me. He didn't talk to me.

Q. There was clearly conflict or tension between the two of you?

A. Yeah. Yeah. He looked angry, but we didn't talk. He didn't approach me.

Q. And he actually tried to run over you?

A. Yes, and the only way I recognized him later that night ---

Q. But there was another time that you saw him later that night, too?

A. Yes, later that night in front of my parent's house. He tried to run me over. The only reason I knew it was him it was because what he did was when he came to the end of the block where me and my friends were standing at he cut the interior lights on, and he kind of reved the engine a little bit. And I saw he had the same outfit on that he had at the game.

Q. Saw him again?

A. Yes.
Q. You knew exactly what he looked like?
A. No. I knew he had the same outfit on.
Q. You and Laretha started dating after she got pregnant with your baby?
A. No, she was dating him before.
Q. And after?
A. And after, yes.
Q. And after?
A. Yes.
Q. And you didn't like that, did you?
A. Really, when, to be honest with you, when Laretha -- when I got with Laretha she was -- Tyrone was a constant thing in our relationship. He was always ---
Q. A constant thing in your relationship?
A. She was -- he was always -- she was always talking about him, and so ---
Q. How long did you date her?
A. Probably about six months to a year.
Q. Six months?
A. Yes.
Q. To a year?
A. Um hum.
Q. He was a constant problem in your relationship with her?

A. She constantly talked about him. He was a problem for her.
Q. He even tried to run you over?
A. Yes.
Q. And he was at the hospital with Laretha the night she lost your child, wasn't he?
A. I didn't know that until just recently.
Q. Until later?
A. Until just recently after lawyer spoke with Laretha's mother I had no idea of that. At the point when -- at the point when Laretha lost the baby Laretha and I were not really communicating. So I didn't know what was going on with her. I only found out about her losing the baby after she got out the hospital.
Q. Court's indulgence just one moment. No further questions, Your Honor.

THE COURT: Anything further?

MR. SCRUGGS: Nothing further, Your Honor.

THE COURT: You may step down. Thank you.

COLLOQUY

MR. SCRUGGS: Your Honor, to address the juror misconduct issue, the -- where juror misconduct is alleged Defendant has to show two things. "New trial is warranted on the basis of jury misconduct if it can be shown that, first, the jury intentionally concealed information.

And, two, the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenge." And I'm citing from State v. Woods. That is 345 SC 583.

"Where a juror without justification fails to disclose a relationship it may be inferred nothing to the contrary period that the juror is not impartial." That's from State v. Savage, 306 SC 5.

"An intentional concealment occurs when the question presented to the jury on voir dire is reasonably comprehensive to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable."

"Unintentional concealment, on the other hand, occurs when the question posed is ambiguous or incomprehensible to the average juror or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances." I'm quoting from State v. Woods. 550 SC 2d 282.

As the Court is aware every criminal defendant is entitled to an impartial jury at their trial. Where there is an intentional concealment the juror's bias or prejudice can be inferred. Your Honor, the Court went

straight to the heart of the matter when it answered the first question. What's the basis of this motion where the circumstances appear that the Defendant and Mr. William Alford knew each other.

I would like to point out, however, that when Mr. Alford was called as a juror in this case the Court documents reflect that he was called as William T. Alford. Your Honor, as the Court knows during basic voir dire questioning jurors are asked if they know the Defendant.

This is not disclosed to Mr. Alford -- excuse me. To Mr. Stewart during this case, Your Honor. As to the facts about their prior interactions Mr. Stewart had limited personal interaction with him. Of course, there is his relationship with Laretha Alford. He knew Tyrone Alford's name. He knew that she had once dated him. She knew -- he knew that she had gotten back in a relationship with him.

But there was only one instance where they were at the same event at a basketball game. That was in the late '90s. I believe '98, '99. And this, the trial of this case, was late July of 2003. At least three years later, Your Honor, where they had had no personal physical contact.

At the time that Mr. Alford was called I believe Mr. Stewart had used five peremptory strikes and in a

case -- and in the case of murder where he was tried as the Court is aware he was entitled to ten strikes. He testified that he would have used a peremptory strike or challenge for cause if he had known that William Alford was Tyrone Alford.

Your Honor, the -- I'm sure the Court is also concerned about the fact that this trial happened in 2003, and this motion for a new trial was not filed by the Defendant until 2015. The -- this information only recently came to light as Ms. Stewart was researching the case. This motion was filed shortly thereafter, I believe in February of 2015.

And, Your Honor, that is the basis for the Defendant's motion for a new trial on jury misconduct. I've had conversations with Mr. Stewart about this two other motions that he had filed pro se. Your Honor, I -- the -- have advised him that one of the motions regarding suppressed memories I can think of no merit to bring before the Court and advised him to not go forward on that.

He would, however, like me to raise his issues with the forensic pathologist in the motion for a new trial that he filed. A Dr. Russell Harley testified at the trial of this case as a expert in forensic pathology. There was testimony that there was a skull fracture that

was caused by blunt force trauma. The -- Mr. Stewart is basically alleging in his motion that there was information available to the State based on their conversations with the doctor that burning could have caused the skull to fracture rather than a blunt force trauma to the skull.

He is alleging that he was not privy to that information and has only recently discovered that as part of his research. And has also moved for a new trial on that basis. Thank you, Your Honor.

THE COURT: Solicitor.

MS. MUNNERLYN: Your Honor, to respond on juror misconduct, I think it's clear from the evidence that, well, first of all, we don't even know if the William T. Alford who was the juror in this case is one and the same as Tyrone Alford that's been testified to today. And if in fact he is then I think it is clear from the evidence that the Defendant either knew him at that time or should have known him at that time.

He clearly had a history with him. Dated the same girl. Dated her for six months to a year when he was clearly a factor in their relationship. And I don't think he can now come forward, when he had in Marlboro County the jurors are much closer to the Defendant even than they are here. Clearly, he could have observed him and known

that he was in fact Tyrone Alford. At that time it would have only been a couple of years since he had seen him and had the conflict that he had had with him.

And I don't think he can now, after he sat him on that jury, and come forward and say, "Oh, well, I didn't -- I didn't know him then" when he should have known him. Suddenly all remembering this. Certainly not a road we want to go down.

And even after that, Your Honor, we don't have any connection. We haven't heard from the juror. We don't have anything connecting the fact that that person is actually the William T. Alford that served on the jury.

As for the motion regarding the forensic pathologist I thought the motion was in regards to whether or not the doctor was actually board certified. But now they're making a motion in regards to whether or not the cause of death was from the burning or the blunt force trauma.

You know, I think all of those issues were clearly brought forth at the time of the trial. They were all fully discussed, and all of that was determined at that time. And in fact, the burning, I think the burning was even removed.

I think there was a motion hearing that was held two weeks before the trial, and in the language of the indictment I believe burning was actually removed in the

murder indictment because he had already previously pled to burning the body.

If Your Honor is pointing out he didn't really talk about the certification for the doctor. But if you are going to consider that portion of the motion I would just ask that the complete transcript of that particular witness be considered by the Court. Not just the one or two pages that are attached to the motion.

MR. SCRUGGS: And, Your Honor, that's correct. His Our motion was styled attacking the forensic pathologist's qualification to render that opinion that the skull was fractured due to blunt force trauma.

And, Your Honor, at the appropriate time Mr. Weldon Stewart would like to address the Court. Thank you.

THE COURT: Okay.

MR. STEWART: I've listened to Mr. Munnerlyn say I knew this man. I listened to Ms. Munnerlyn say that I knew this man at the trial. And that I placed him on the jury knowing that this was somebody I had conflict with. And that I sat in the prison of South Carolina and suffered for 12 years after the trial before I brought it to the attention of the Court.

I would just like to point out that I did not know this man at the time we did the jury. The jury selection at that time I did everything I could possibly do. I

wasn't a lawyer. I did my own questions. Your Honor asked the questions to the jury, and any person that we identified that had any possible conflict with me, no matter how small, I asked him to be removed from the jury.

I did not know this man as far as physically. I could not identify him by seeing him. I've never been around him. The only way that I knew him was by the name of Tyrone Alford. That was the main way that I could identify this person. We didn't go to school together, and I would -- the only reason that I made the connection as far as when we did the motion nobody did a people search on the jury looking for ---

THE COURT: No, sir. No. You're just extending your testimony. You already relinquished the stand. Any other things for the record? All right. This is two prong. We got two motions.

The first motion I can go ahead and tell you that I'm going to deny the motion for the new trial based on the first motion. Clearly, from the evidence presented here today that in my opinion it's a frivolous motion.

Mr. Scruggs, I want to thank you for taking over this case. The Public Defender or no other attorney has any responsibility in the bringing of this motion. And I want the record to be clear on that; that you were just following upon my request that Mr. Jones assist

Mr. Stewart.

I remember this trial well. Mr. Stewart wanted to represent himself. He turned down representation. He, from this very stand, admitted after a lunch break that there was a problem in his opinion with that juror, his looks and demeanor. If I remember correctly there was an alternate. Maybe two possible alternates seated. There was that option to move or make a motion at that time. Juror could have been replaced.

Now, on this particular motion Mr. Stewart is serving a lengthy sentence at the State Department of Corrections, and I don't think there is any use of me trying to pursue any kind of sanction against him for filing a frivolous motion. But I want to be briefed by the Solicitor's Office after exchanging materials on briefing this on how a third party can come in and assist a frivolous motion to see if that particular person can be sanctioned.

As to the second motion, I cannot rule on it at this time because I do need to look at the transcript. And it appears that, if I understand that correctly now, that motion has been altered somewhat to say that the State didn't turn over information concerning a possible skull fracture injury or what -- exactly what are we saying here?

MR. SCRUGGS: Your Honor, that -- it's not a Brady

violation that he's alleging. I guess the best way of putting it is the information he was researched recently caused him to question the doctor's qualifications and that there may have been an alternative explanation for why the victim's skull was fractured.

THE COURT: All right. With that said then I'm going to deny that motion at this time. However, upon review of the transcripts, counsel, you can make a motion to reconsider certainly on whatever you want to. But that will give us a safety valve on that in case my memory is not serving right about that testimony.

So, Solicitor, I need that brief about possible -- there may not be any possible sanctions. But if there is not there needs to be and the rule folks down in Columbia need to start figuring it out more motions that we have like this because it's just not a good situation where third parties come in and take part in obvious what I term frivolous motion on that first count.

On the second one, I'm ruling, but if y'all find something; Mr. Scruggs, if you find something in that transcript feel free certainly to make a proper motion to reconsider. So that way will ends at this time. There would not be any need for Mr. Scruggs to do a proposed order. So we'll do it this way. The State will have to come up with a proposed order. And, Mr. Scruggs, look at

it before we finalize it, okay?

MS. MUNNERLYN: Yes, Your Honor.

THE COURT: All right. I'll expect some briefs. The sanction business is totally separate from the other. That's going to be a tangent angle I want to take a look at because that's the situation that the Court, if I can impose sanctions, it certainly looks like to me it should be done in this case if possible. Thank you very much.

MS. MUNNERLYN: Thank you, Your Honor.

MR. SCRUGGS: Your Honor, may we approach?

(WHEREUPON, a bench conference was held off the record, but put on the record.

THE COURT: Mr. Stewart wanted to hear the testimony as to the second motion considering the forensic pathologist after I ruled. The Court therefore denies any further testimony.

MS. MUNNERLYN: I object to it, yes.

THE COURT: I sustain the objection. Mr. Scruggs was told by Mr. Stewart he wanted to enter further testimony or enter testimony about the forensic pathologist. The State objects to that, and I sustain the objection. That's going to be the clearest cut way to do it.

END OF TRANSCRIPT OF RECORD

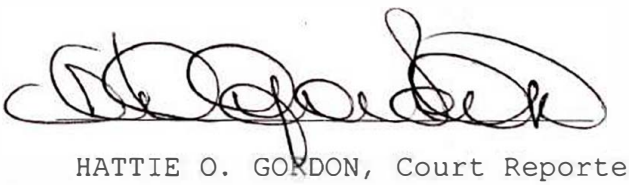
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

I, HATTIE O. GORDON, Official Court Reporter for the 4th 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 Marlboro County, South Carolina, on the 26th day of May, 2016.

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

February 28, 2017



HATTIE O. GORDON, Court Reporter

State of South Carolina

County of Marlboro

In the Court of General Sessions

Paul M. Burch, Circuit Court Judge

Case No.:02-GS-34-1919

State of South Carolina — Plaintiff

v.

Weldon W. Stewart, Jr. — Defendant

Defendant's Pro Se Brief & Motion

Weldon W. Stewart, Jr., Pro Se Defendant
Allendale Correctional Institution
[redacted]
Fairfax, SC 29827

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BACKGROUND

On March 26, 2016, the Court heard a post-trial motion filed by Defendant alleging that Defendant is entitled to a new trial on the basis of juror misconduct.[1] Defendant alleged that a juror, William Tyrone Alford (Juror), intentionally concealed information "which if it had been known to the Defendant would have supported a peremptory challenge during the jury selection process or a challenge for cause". Motion Record page 5 line 24 - page 6 line 7. Defendant presented evidence at the hearing to support this claim.

After hearing the evidence, the Court made an oral ruling denying Defendant's motion for a new trial. However, no written order has been filed in this matter. *"Until written and entered, the trial judge retains the discretion to change his mind and amend his oral ruling". Christy v. Christy, 354 S.C. 203, 580 S.E.2d 444, 446 (2003).* Defendant submits his pro se brief, hereby moving the Court to amend its oral ruling on the following grounds:

1. The standard of review requires a new trial because evidence presented at the hearing is sufficient to establish juror misconduct.

"A new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information; and (2) the information would have supported a challenge for cause or would have been material factor in the use of a party's peremptory challenge". State v. Woods, 345 S.C. 583, 550 S.E.2d 282, 284 (2001)(finding that a juror's intentional failure to disclose a relationship gives rise to an inference of bias and rejecting the State's argument that a new trial should only be warranted where an individual shows he was prejudiced by the juror's failure to disclose information).

Defendant's counsel opened the motion hearing by stating that "we intend to show through testimony today that William Alford (Juror), or as he was known to most people including the Defendant, Tyrone Alford (Juror) was a former boyfriend of the Defendant's high school girlfriend (Daughter) and was aware that Defendant and his (Juror) former girlfriend (Daughter) were romantically involved and that there was some prior conflict and jealousy that naturally arises between couples and ex-couples. This fact was not disclosed during the voir dire or jury selection process". Motion Record page 6 lines 8-17.

a. Peggy Alford testimony

Peggy Ann Alford, Daughter's mother, testified at the motion hearing. Ms. Alford testified that she has always shared a close relationship with Daughter and that she is Daughter's caregiver due to the fact that Daughter has a "mental problem". Motion Record page 7 line 7 - page 8 line 2. Ms. Alford's sworn affidavit sheds more insight into the root of Daughter's mental condition as Ms. Alford stated her belief that Daughter's "mental problem" resulted from a combination of her miscarriage and the abuse she suffered at the hands of Juror. Ms. Alford further explained in her sworn affidavit that she was testifying in Daughter's place because Ms. Alford possessed personal knowledge of the matters in dispute and to prevent Daughter from being exposed to the painful memories that would possibly

[1] Defendant is submitting Motion Record with brief.

resurface as a result of the facts that would be brought out in the hearing, as these facts describe events which are the source of Daughter's tenuous mental state. [2]

Ms. Alford testified that Daughter dated both Defendant and Juror. Motion Record page 8 line 8 - page 9 line 14. The witness further testified to her personal knowledge that Juror's first name is "William", but the witness stated that "I know him (Juror) as Tyrone". Motion Record page 8 lines 20-25. Ms. Alford then testified that she and Daughter never called Juror by his first name, "William". Motion Record page 9 lines 1-5.

The record reflects that Ms. Alford confirmed her personal knowledge that William Tyrone Alford (Juror) dated Daughter, and also confirmed her personal knowledge that Juror was known and referred to as "Tyrone Alford". [3] It must be noted that Juror was called to jury service at Defendant's trial by the name "William Alford", a name the testimony of the witness established was not commonly known as Juror's name. See Trial Transcript page 46 lines 19-23.[4]

Ms. Alford testified as follows:

Q. Ms. Alford, did you ever overhear any conversations between your daughter (Daughter) and Mr. Alford (Juror)?

A. Yes, sir.

Q. During any of those conversations did you hear your daughter (Daughter) mention Mr. Weldon Stewart's (Defendant) name to Mr. Alford (Juror)?

A. Yes, sir.

Q. Okay. Thank you. Following up on that, did you ever hear your daughter (Daughter), during one of those conversations, mention that she and Weldon (Defendant) had dated?

A. Yes, sir. If I can explain. Especially the time when Retha (Daughter) got pregnant.

Q. Okay. Well that was my next question actually. Your daughter became pregnant. Did your daughter (Daughter) become pregnant?

A. She did.

Q. What ultimately happened with that pregnancy?

A. She (Daughter) had a miscarriage...

Motion Record page 11 line 20 - page 12 line 11.

Ms. Alford described Daughter's relationships with Defendant and Juror, during the time of Daughter's pregnancy and miscarriage, as "a back and forth thing". Motion Record page 12 line 24 - page 13 line 2. The witness went on to explain that "Weldon (Defendant) would call her (Daughter). Tyrone (Juror) would call her (Daughter). And I heard a conversation where she (Daughter) told Tyrone (Juror) that

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[2] Ms. Alford's sworn affidavit is included as a Supporting Document.
[3] Ms. Alford and Daughter have the same last name as Juror but they are not related to him.
[4] Pertinent sections of all Trial Transcript references are included as Supporting Documents.

she believed she was pregnant. And she (Daughter) didn't know whether it was his (Juror) or Weldon's (Defendant) baby". Motion Record page 13 lines 5-8.

Daughter miscarried this baby. Ms. Alford testified that Daughter was hospitalized due to complications with Daughter's miscarriage. Motion Record page 12 lines 10-23; page 13 lines 9-10. When asked did Juror visit Daughter "while she (Daughter) was at the hospital", Ms. Alford testified that Juror "practically stayed there with her (Daughter)". Motion Record page 13 lines 11-13.

During cross-examination, Ms. Alford testified about Juror's violent behavior towards both Daughter and Defendant. The witness testified that Juror became physically abusive towards Daughter after Daughter miscarried the baby of questionable paternity between Juror and Defendant. Motion Record page 14 line 17 - page 15 line 5. Ms. Alford further testified that Daughter confided in her that "Tyrone (Juror) had tried to run over Weldon (Defendant)" with a car. Motion Record page 16 lines 11-17. Juror attempted to run Defendant over with a car directly following a basketball game Defendant attended with Daughter, at which Juror was also present.

In light of the evidence establishing Juror's violent reactions to Defendant's relationship with Daughter, it is highly unlikely that Juror would have easily forgotten or let go of his ill will towards Defendant. It can be reasonably deduced from Ms. Alford's testimony that Juror, whom evidence strongly suggests had been previously consumed with jealous rage to the extent that he made an attempt on Defendant's life, had clear motive to conceal his prior conflict with Defendant from the Court (i.e. to exact revenge on Defendant by serving on the jury that convicted him). Thus, the testimony of this witness, standing alone, presented the Court with evidence that sufficiently negated any reasonable conclusion that Juror's failure to respond to voir dire questions was unintentional, or that juror was impartial. *"Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial."* *State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct.App.1991).*

b. Lori Stewart testimony

[redacted] (Lori) Stewart testified that she conducted an "independent review" of Defendant's case. Motion Record page 18 lines 11-19. Ms. Stewart testified that that she discovered that Juror's middle name is "Tyrone" through conducting people searches on the jurors in Defendant's case. Motion Record page 23 lines 8-20. When asked how she knew that Juror was the same person she researched, Ms. Stewart testified that she gained her personal knowledge "from the people search that I did I also had a conversation with Mr. Alford (Juror)". Motion Record page 23 line 22 - page 24 line 1. The witness further testified that "Mr. Alford told me". Motion Record page 24 line 9.

The Court ruled that this portion of Ms. Stewart's testimony was hearsay. However, Defendant respectfully requests the Court to consider that this portion of Ms. Stewart's testimony was not being offered to prove that Juror committed misconduct, the matter asserted, but to "establish a foundation to see how she (Ms. Stewart) found out this information". Motion Record page 22 lines 20-25. *"Evidence is not hearsay unless it is an out of court statement offered to prove the truth of the matter asserted."* *State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991).*

The record reflects that Ms. Stewart, in the contested portion of her testimony, did not repeat any statements that were made to her by Juror, and she was only stating what her "independent review" of Defendant's case revealed and her conclusion that this evidence, her conversation with Juror, formed a basis for her personal knowledge connecting Juror to the information she discovered through her "research". Defendant respectfully requests that the Court consider the aforementioned portion of Ms. Stewart's testimony in comparison with a South Carolina Supreme Court ruling in which the Supreme Court held that statements offered under nearly identical circumstances should not be excluded as hearsay. See *State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (S.C. 2013).*

In light of Ms. Stewart's testimony that she independently "found inconsistencies" with Defendant's case, her testimony regarding her conversation with Juror could also be reasonably construed as an explanation for why she acted on the information she discovered, through her "independent review" of Defendant's case, by assisting Defendant with his appeal. Motion Record page 18 lines 12-19. See *Caprod v. State, 338 S.C. 103, 525 S.E.2d 514 (S.C. 2000) (finding that an out of court statement is not hearsay if offered for the limited purpose of explaining why information was acted on).*

Due to the fact that Ms. Stewart's testimony was arguably restricted improperly based on an error of law, and in light of the fact that the Court allowed similar testimony to be given by Ms. Alford, Defendant respectfully requests that the Court conduct a review of Ms. Stewart's sworn affidavit and the recording of her conversation with Juror, as a reasonable alternative to a rehearing being held to fully develop the record with Ms. Stewart's testimony. [5] Defendant is respectfully requesting that the Court consider this evidence, as a part of its deliberations, for the limited purpose of determining whether or not this evidence sufficiently establishes a "foundation" for how Ms. Stewart gained her personal knowledge which connected Juror to the information she discovered through her research.

c. Defendant testimony

The matter in question, during Defendant's testimony, was how Defendant failed to recognize Juror at trial. Defendant testified that "I never had any personal contact with him (Juror)". Motion Record page 26 lines 3-4. Defendant further testified that "the only way I knew of him (Juror) was through Laretha (Daughter)...what she (Daughter) told me about him (Juror)". Motion Record page 26 lines 4-16. Defendant went on to explain that "my only way to identify him (Juror) was by the name Tyrone. I didn't know him (Juror) by face. The only thing I knew him (Juror) by was the name of Tyrone." Motion Record page 28 lines 7-10.

The record reflects that Defendant had never seen Juror, or observed Juror's facial features, in close proximity prior to Defendant's trial. Motion Record page 26 lines 9-13; page 30 line 16 - page 31 line 8. Thus, it can be reasonably inferred from the evidence that Defendant had no prior standard of comparison by which he would have been capable of identifying Juror at trial by facial recognition. It must be noted that the State presented no evidence to contradict Defendant's claim that "I didn't know him (Juror) by face".

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[5] Ms. Stewart's sworn affidavit is included as a Supporting Document and her recorded conversation with Juror is being submitted to the Court electronically.

The record further reflects that Defendant, whose knowledge of Juror was gained solely through conversations with Daughter, had never heard Juror referred to by the name "William Alford", the name by which Juror was called at trial. Motion Record page 9 lines 1-5; page 26 lines 8-9; page 28 lines 9-10. Moreover, it can be reasonably inferred from the evidence that Defendant would not have been capable of identifying Juror by any name other than "the name of Tyrone Alford". Motion Record page 40 lines 5-8. Thus, the record supports a reasonable conclusion that Defendant would not have been capable at trial of connecting the name "William Alford" to the man he had previously heard referred to only as "Tyrone Alford".

Defendant testified as follows:

Q. If you had known that William Alford was in fact Tyrone Alford would you have exercised one of your peremptory strikes or challenge for cause during the jury selection process?

A. If I had known that that was Tyrone sitting on that jury I would have definitely asked for him to be excused.

Motion Record page 27 lines 20-24.

The record reflects that it was not known to Defendant that Juror was actually "Tyrone Alford", a man with whom Defendant had prior conflict, and that if this information had been known to Defendant at trial, "I (Defendant) definitely would have asked for him (Juror) to be excused". The record further contains sufficient evidence to support a reasonable conclusion that Juror intentionally concealed his prior conflict with Defendant from the Court, and that this information would have supported a challenge for cause or would have been a material factor in the use of Defendant's peremptory challenges. Thus, pursuant to *State v. Woods*, supra, the evidence presented at the hearing clearly supports a finding that Juror committed misconduct.

2. The oral ruling of the Court is not consistent with the evidence, or with the Court's knowledge of Defendant's case.

a. Not consistent with the evidence

The State concluded its cross-examination of Ms. Alford as follows:

Q. But no question [t]hat Tyrone (Juror) and Weldon (Defendant) knew who each other were?

A. They did.

Motion Record page 17 lines 5-7.

Directly following the affirmative answer given by Ms. Alford, the Court addressed Defendant's counsel as follows:

THE COURT: With that answer why are we going to waste any time on this particular motion, this first motion?

MR SCRUGGS: Your Honor, what I'd like to get in through another witness is---

THE COURT: That Weldon Stewart (Defendant) didn't know Tyrone (Juror)?

MR. SCRUGGS: Well, Your Honor, what I'd like to get into evidence is that the juror list that was given to all parties at the trial of this case on the juror list Tyrone Alford was referred to as William T. Alford.

THE COURT: Is Mr. Weldon Stewart (Defendant) blind?

MR. SCRUGGS: No, sir.

THE COURT: This Court has better things to do than to sit up here and entertain a ridiculous frivolous motion like this...

Motion Record page 17 lines 10-24.

At the conclusion of the hearing, the Court ruled that "I'm going to deny the motion for a new trial" on the basis that "from the evidence presented here today in my opinion it's a frivolous motion". Motion Record page 40 lines 17-20. It must be noted, in light of the Court's aforementioned comments to Defendant's counsel, that the Court formed its "opinion" that Defendant's motion was "frivolous" based solely on an isolated portion of Ms. Alford's testimony in which the witness affirmed that Defendant and Juror "knew who each other were". Motion Record page 17 lines 10-12. ("*With that answer* why are we going to waste any time on this particular motion, this first motion?") The record reflects that the Court adopted a belief that the affirmative answer of the witness was sufficient to establish that Defendant was capable of identifying Juror by facial recognition, as manifested by the Court asking Defendant's counsel if Defendant was "blind". Motion Record page 17 line 20.

Defendant believes the oral ruling of the Court is not consistent with the evidence as Ms. Alford's affirmative answer, if viewed in relation to her entire testimony, is not sufficient to establish that Defendant could identify Juror by facial recognition and the witness affirming that Defendant and Juror "knew who each other were" merely reflects her earlier testimony that Daughter had told Defendant and Juror about each other. Motion Record page 10 line 19 - page 12 line 5; page 13 lines 5-8. The record reflects that the Court's interpretation of the response of the witness is not supported by the evidence and is, therefore, speculative in nature. It must be noted that Ms. Alford gave no indication during her testimony that she had ever observed Defendant and Juror interact with each other.

The only evidence the Court received through the testimony of Ms. Alford in reference to interaction between Defendant and Juror was a secondhand account of an incident in which the Juror attempted to run Defendant over with a car. Motion Record page 16 lines 11-17. Defendant testified that the night of the incident was "the only time in my life" that he had ever seen Juror prior to trial and that on this night Defendant only saw Juror "from a distance", never in close proximity. Motion Record page 26 lines 11-13; page 30 line 16 - page 31 line 8. The record clearly reflects that on the night of the incident Defendant identified Juror as the driver of the car that attempted to run Defendant over solely based upon Juror's clothing, not by facial recognition. Motion Record page 31 line 13 - page 32 line 3. See *Willis v. Garrison, 624 F.2d 491, 494 (4th Cir. 1980) ("It is true, of course, that Brown was unable to identify Willis based upon the latter's facial characteristics, but height, weight, and clothing are acceptable elements of identification...")*

At the conclusion of the hearing, the State offered the following argument:

"Clearly he (Defendant) could have observed him (Juror) (at trial) and known that he (Juror) was in fact Tyrone Alford. At the time it would have been only a couple of years since he (Defendant) had seen him (Juror) and had the conflict that he (Defendant) had with him (Juror)."

Motion Record page 37 line 25 - page 38 line 3.

Though the record contains no definite date of the aforementioned "conflict" (Juror's attempt to run Defendant over with a car), the evidence indicates that Defendant's relationship with Daughter ended "sometime in 1998" and Defendant's jury trial was held "in 2003". Motion Record page 29 lines 1-14. It can be deduced from the evidence, as the evidence established that Defendant was dating Daughter during the time of the "conflict" with Juror, that approximately 5 years elapsed between this "conflict" and Defendant's trial. Thus, the record reflects that the time period between the "conflict" and Defendant's trial was more than the "couple of years" claim made by the State in its argument. In light of the fact that Defendant was being tried for murder, as well as representing himself at trial, it can be reasonably inferred that the 5 year old "conflict" with Juror would not have been in the forefront of Defendant's mind at trial.

Furthermore, the State presented no evidence to support its claim that Defendant "should have known" Juror at trial as the record clearly reflects that Defendant had never heard Juror referred to by the name which Juror was called at trial and Defendant had never seen Juror in close proximity prior to trial. The "conflict" relied upon by the State does not support its argument that Defendant "could have observed" Juror at trial and "known that he (Juror) was in fact Tyrone Alford" as the record reflects that Defendant's identification of Juror as the perpetrator of the incident was not made by facial recognition and was made solely based upon Juror's clothing. Defendant believes the record clearly reflects that the argument of the State lacks evidentiary support and is built upon speculation. Defendant further believes the State's theory, that Defendant recognized Juror at trial, falls well below a standard of reasonableness. Implicit in the State's theory is that Defendant "placed him (Juror) on the jury knowing this was somebody I had a conflict with" and then Defendant "sat in the prison of South Carolina and suffered for 12 years after the trial before I bought it to the attention of the Court". Motion Record page 39 lines 16-22. Defendant believes the record clearly reflects that the State's alternative theory to juror misconduct is based upon speculative circumstances which do not amount to proof, and that this theory is contrary to sound reasoning.

Conversely, there is significant evidence found in the record that Juror knew, or should have known, Defendant at trial. The record reflects that Juror was familiar with Defendant's name, as it was called at trial. Motion Record page 11 lines 20-25. The record further reflects that the scene of the incident in which Juror attempted to run Defendant over with a car ("in front of my (Defendant) parent's house") was the exact same address and same approximate location as the death scene (in the back of Defendant's parent's house) of the incident giving rise to Defendant's trial. Motion Record page 31 lines 18-19. See Trial Transcript page 127 line 19 – page 128 line 19; page 351 lines 14-22. Most significantly, the record reflects that Defendant, during his trial testimony, provided details about his relationship with Daughter as well as provided details about Daughter's pregnancy and miscarriage. Motion Record page 29 line 13 – page 30 line 9. See Trial Transcript page 500 lines 11-19.

In essence, the record reflects that Juror was capable of identifying Defendant at trial as a person with whom Juror had a serious prior conflict by (1) Defendant's name, which had been told to Juror by Daughter; (2) the location in which Juror attempted to run Defendant over with a car, which was repeatedly identified as the death scene during Defendant's trial; and (3) Defendant's trial testimony, in which Defendant provided details about his relationship with Daughter, as well as Daughter's pregnancy and miscarriage.

Below is a chart comparing the evidence found in the record, as it pertains to Defendant and Juror.

Juror	Defendant
• Dated Daughter. Motion Record page 9 lines 6-11.	• Dated Daughter. Motion Record page 8 lines 8-19.
• Was told about Defendant by Daughter. Motion Record page 11 lines 20-25.	• Was told about Juror by Daughter. Motion Record page 26 lines 8-9.
• Knew of Defendant by the name Weldon Stewart, same name Defendant was called at trial. Motion Record page 11 lines 20-25.	• Knew of Juror by the name Tyrone Alford, different name than Juror was called at trial. Motion Record page 28 lines 9-10; page 40 lines 7-8.
• Was told by Daughter that Defendant possibly impregnated her. Motion Record page 13 lines 6-8.	• Was not told by Daughter that Juror possibly impregnated her. Motion Record page 30 lines 2-4; page 32 lines 4-5.
• Present during Daughter's hospitalization for miscarriage. Motion Record page 13 lines 9-13.	• Not present during Daughter's hospitalization for miscarriage. Motion Record page 33 lines 5-14.
• Physically abusive towards Daughter after miscarriage. Motion Record page 14 lines 1-3, lines 17-19; page 15 lines 4-5.	• Record contains no evidence of violent history towards daughter.
• Observed Defendant attending basketball game with Daughter at which Juror was present. Motion Record page 30 line 21 - page 31 line 8.	• Attended basketball game with Daughter, at which Daughter pointed Juror out from a distance. Motion Record page 30 line 16 - page 31 line 2.
• Attempted to run Defendant over with car after basketball game. Motion Record page 16 lines 11-17.	• Identified Juror as driver of car based upon Juror's clothing. Motion Record page 31 line 13 - page 32 line 3.
• Was present on jury when Defendant testified about relationship with Daughter, Daughter's pregnancy and her miscarriage. Motion Record page 30 lines 2-5.	• Provided details about relationship with Daughter during trial testimony. Motion Record page 29 lines 13-16.
• Had angry look on face during Defendant's testimony about Daughter. Motion Record page 27 lines 8-12.	• Noticed Juror looking angry during testimony about Daughter. Motion Record page 27 lines 8-19.

The culmination of the evidence clearly and convincingly establishes that Juror (1) recognized Defendant at trial; and (2) intentionally concealed his prior conflict with Defendant from the Court. Conversely, the evidence raises, at most, a mere suspicion that Defendant recognized Juror at trial. See *State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402, 409 (2013) (suspicion implies a belief or opinion based on facts or circumstances which do not amount to proof).* As the oral ruling of the Court tends to dismiss the clear and convincing proof of the Juror's misconduct, based on the mere suspicion that Defendant recognized Juror at trial, Defendant believes that the oral ruling of the Court is not consistent with the evidence.

b. Not consistent with Court's knowledge

The Court was also the Trial Court in Defendant's case. The Court, while making its oral ruling, stated the following:

"I remember this trial well. Mr. Stewart (Defendant) wanted to represent himself. He turned down representation".

Motion Record page 41 lines 2-3.

Though the record reflects that the Court has some recollection of Defendant's trial, Defendant believes that the oral ruling of the Court is not consistent with the Court's knowledge of Defendant's actions at trial. This portion of Defendant's brief is intended to refresh the Court's recollection of Defendant's trial.

Defendant testified in the motion hearing as follows:

"[B]efore the jury was selected I wrote out my own individual questions and Your Honor read them to the jury. We tried very hard to get every juror off that jury that had any type of conflict with me".

Motion Record page 28 lines 1-4.

Defendant filed a pretrial motion with the Court in which Defendant submitted 16 proposed voir dire questions for the Court to pose to potential jurors during their voir dire examination.[6] *"Through the judge, parties have a right to question jurors on their voir dire examination not only for the purpose of showing grounds for a challenge for cause, but also, within reasonable limits, to elicit such facts as will enable them intelligently to exercise their right to peremptory challenge." State v. Gulledge, 277 S.C. 370, 280 S.E.2d 400 (1982).*

Though the jury qualification and voir dire examination are excluded from the trial record in this case, the trial record reflects that the Court made several inquiries during the jury selection process by which Defendant elicited facts, through the Court, from potential jurors based on the previous responses of the potential jurors during their voir dire examination to Defendant's voir dire questions. See Trial Transcript page 51 lines 2-23; page 53 lines 2-23; page 55 lines 6-25. The trial record further reflects that Defendant diligently made challenges for cause and exercised peremptory challenges based on

[6] Motion and proposed voir dire questions are included as Supporting Document.

the responses of potential jurors to the Court's inquiries. See Trial Transcript page 51 lines 2-23; page 52 lines 2-19; page 53 lines 2-23; page 55 lines 2-25.

During the motion hearing, Defendant stated the following:

"I did my own questions. Your Honor asked the questions to the jury, and any person that we identified had any possible conflict with me, no matter how small, I asked him to be removed from the jury".

Motion Record page 40 lines 1-4.

The trial record supports Defendant's claim that he made every possible effort during the jury selection process to insure that his trial was held before a fair and impartial jury. The Court was a key participant in the jury selection process at trial and the Court witnessed firsthand Defendant's painstaking efforts to exclude people with biases against him from being selected to serve on the jury. Defendant respectfully requests that the Court reflect on its knowledge of Defendant's actions at trial during the jury selection process, as Defendant believes the aforementioned knowledge of the Court is not consistent with the underlying rationale (Defendant knowingly allowed a person with an extreme bias against him to serve on the jury) for the Court's oral ruling.

Defendant further respectfully requests that the Court reflect upon Defendant's words to the jury, during closing arguments, as these words shed insight into Defendant's state of mind at trial, as it relates to the jury. Defendant addressed the jury as follows:

"[Y]ou (the jury) are very important to this case and very important to me and you're very important to the system of justice. But also, I'd like to make you individuals aware that you do have my life in your hands...

Now, in your voir dire examination questions, each of you did under oath say that no matter if evidence made you emotional or upset you, that you would put your emotions aside and weigh the facts. Each of you did make this agreement with the Court before you were selected for the jury".

See Trial Transcript page 689 lines 1-18.

Defendant respectfully requests the Court to consider his state of mind at trial, that the jury held "my life in your hands", as his state of mind makes it highly unlikely that Defendant would have knowingly and intelligently placed his "life in the hands" of someone who had previously attempted an extreme act of violence against him. Thus, it is highly unlikely that Defendant, in light of the evidence establishing his state of mind at trial, would have allowed Juror to be selected for the jury, if Defendant had known that Juror "was in fact Tyrone Alford".

It must be noted that Defendant testified in the motion hearing as follows:

Q. If you had known that William Alford was in fact Tyrone Alford would you have exercised one if your peremptory strikes or challenge for cause during the jury selection process

A. If I had known that that was Tyrone sitting on that jury I would have definitely asked for him to be excused...

Motion Record page 27 lines 20-25.

Defendant noticed that members of the jury, including Juror, had displayed strong emotional reactions to the evidence presented during his trial. One juror had an emotional response so severe that it caused the juror to have an anxiety attack which interrupted Defendant's trial testimony. Defendant's words to the jury, at the conclusion of his trial, served to remind the jury that they had made an "agreement with the Court" in which the jurors agreed to "put your emotions aside and weigh the facts", and that the jurors had made this agreement "under oath".

Defendant feels that it is relevant at this point to mention comments made by the Court, during the motion hearing, in reference to Defendant's state of mind at trial. The Court, while making its oral ruling, stated the following:

"He (Defendant), from this very stand, admitted after a lunch break that there was a problem in his opinion with that juror, his looks and demeanor. If I remember correctly there was an alternate. Maybe two possible alternates seated. There was an option to move or make a motion at that time. Juror could have been replaced".

Motion Record page 41 lines 3-9.

The above-mentioned comments of the Court were made in reference to the portion of Defendant's motion hearing testimony, in which Defendant testified as follows:

"During the testimony portion of my trial one of the jurors had an anxiety attack. And this happened and then Your Honor sent the jury to lunch. After the jury--after we came back from lunch I was testifying again. And so what I was doing was trying to testify about less upsetting things to the jury and I was just giving my background...

And as I was talking and giving a general background I was watching the jury real closely because we had just had a juror that had an anxiety attack. And I was trying to make sure everything that I was saying to the jury at this point wasn't upsetting them anymore.

And so when I was talking about my relationship with Laretha (Daughter) and her miscarriage, I noticed...that he (Juror) was looking at me, you know, real angry like he wanted to jump across the thing and fight me.

And so, of course, I noticed it, but I didn't think too much of it because there was a lot going on. A lot of people were looking at me, and I didn't take time to figure it out. But it (stuck) out because it was strange because I didn't think I was talking about anything that should upset anybody. So it just kind of stuck out in my mind".

Motion Record page 26 line 17 - page 27 line 19. See Trial Transcript page 497 line 1 - page 500 line 19.

This evidence clearly established the circumstances under which Defendant noticed the "angry looks" he was receiving from Juror. The record reflects that "one of the jurors had an anxiety attack" while Defendant was testifying at trial and that, because of this, Defendant was "trying to testify about less upsetting things to the jury" by providing the jury with "general background" information about himself. The record further reflects that Defendant was "watching the jury real closely" while he was giving them this "general background" information in order to "make sure that what I was saying to

the jury at this point wasn't upsetting them anymore". Defendant provided the jury with details about his relationship with Daughter as a part of his "general background". It was under these circumstances that Defendant noticed Juror "looking at me...really angry" while Defendant was "talking about my relationship with Laretha (Daughter) and her miscarriage", and that Defendant felt "it was strange because I didn't think I was talking about anything that should upset anybody".

It must be noted that the record reflects that Defendant noticed the "looks" he was receiving from Juror at a point in the trial when Defendant was "watching the jury real closely", and was specifically looking for the emotional responses of the jurors to his trial testimony. It must be further noted that Defendant noticing the "looks" he was receiving from Juror, under the circumstances found in the record, does not support an inference that Defendant recognized Juror as being "Tyrone Alford", as the record clearly reflects Defendant's state of mind at trial to be that if Defendant "had known that that was Tyrone sitting on that jury I would have definitely asked for him to be excused".

In essence, there is a great distinction to be made between Defendant noticing that Juror had an emotional reaction to Defendant's trial testimony and Defendant recognizing Juror as being "Tyrone Alford", as the former is clearly established by the evidence found in the record while the latter is solely based upon speculation. As the aforementioned comments made by the Court tend to imply the latter, Defendant belleves that these comments reveal that the Court failed to make this distinction in its oral ruling.

Moreover, Defendant believes that the comments of the Court, that Defendant should have made a motion for Juror to be "excused" based on Juror's "looks and demeanor", improperly shifted the burden on Defendant, as it can be reasonably inferred from Juror's emotional reaction to Defendant's trial testimony that Juror was aware of information (Juror's prior conflict with Defendant over Daughter) of which Juror had a sworn duty to disclose to the Court. Juror's emotional reaction to Defendant's trial testimony could further support a reasonable inference that Juror intentionally concealed this information from the Court for malicious purposes, a fact which Defendant believes should not be casually dismissed by the Court.

It must be noted that it is highly unlikely that Defendant would have prevailed on a motion to have Juror "excused" on the mere basis that Juror became upset during Defendant's trial testimony, as the nature of the evidence presented during Defendant's trial was such that it was anticipated that jurors would become emotional during the trial. It must be further noted that the record reflects that Defendant observed at least two members of the jury become emotional during his trial. The trial record, as mentioned earlier, reflects that Defendant attempted during his closing argument to remedy the emotional responses he observed from the jurors by reminding the jurors of their sworn duty to "put your emotions aside and weigh the facts".

Defendant believes that the culmination of the evidence comprising the Court's knowledge of Defendant's trial, in light of the fact that the Court presided over this trial, is such that the oral ruling of the Court is not consistent with the Court's knowledge of Defendant's case.

3. The conduct of the State created false impressions upon the Court from which Defendant suffered prejudice.

The State improperly presented allegations to the Court during the testimony of Lori Stewart. Defendant believes the record will reflect that these allegations created false impressions upon the Court. Defendant further believes the record will support a finding that he was prejudiced at the hearing as a direct result of the false impressions created by the State.

"A defendant is generally entitled to rebut the false impressions created by the State's evidence". State v. Northcutt, 372 S.C. 207, 641 S.E.2d 873, 800 (2007). This section of Defendant's brief is intended to rebut the false impressions created by the State during the motion hearing. Defendant believes he is entitled as a matter of Due Process to rebut the false impressions created by the State as the record reflects that the improper manner in which the State presented the aforementioned allegations to the Court gives the appearance of being calculated to deny Defendant the opportunity to offer rebuttal evidence at the hearing.

The State, while objecting to the testimony of Ms. Stewart, stated the following:

"Your Honor, I would object to that. I don't know how she (Ms. Stewart) would have found that out if it was just something that someone told her. If we were going to try to show this person (Juror) is one and the same it looks like to me they would have simply subpoenaed this particular juror.

So I don't--I would object to this. My understanding is that this particular witness (Ms. Stewart) is now married to the Defendant. And so I think she's completely and entirely biased. I don't know what authority she has to testify unless she had some specific conversation with William Tyrone Alford. And then if she has that would be hearsay because he's not here. He's not a party and I would object to it".

Motion Record page 22 lines 3-16.

It must be noted that in this one objection the State (1) implied that Defendant acted in bad faith by failing to subpoena Juror to the motion hearing, (2) improperly attacked the credibility of Ms. Stewart, and (3) commented on and entered an objection for evidence that had not yet been introduced to the Court. Though the record contains other instances demonstrating the prejudicial impact of the State's conduct, Defendant believes this objection, standing alone, is sufficient to establish the prejudicial effect of the State's conduct, once this conduct is viewed through the lens of Defendant's rebuttal evidence. Thus, for the sake of brevity, this section of Defendant's brief will address only the false impressions created by the aforementioned objection.

a. Failure to subpoena Juror

On April 13, 2015, the Court appointed Rick Jones (Original Attorney) to represent Defendant at the motion hearing. As Original Attorney prepared for the motion hearing, he requested that Ms. Stewart assist him in communicating with Defendant and Defendant's witnesses.[7] Original Attorney left the Public Defender's Office a couple of months prior to the motion hearing, and another attorney was appointed by the Court to represent Defendant at the motion hearing. However, Original Attorney handled most of the legal preparations for the hearing.

[7] Email dated November 19, 2015 is included as Supporting Document.

Original Attorney advised Defendant and Ms. Stewart that the State would most likely subpoena Juror to the motion hearing to rebut Defendant's claims that Juror committed misconduct. Ms. Stewart informed Original Attorney that Ms. Alford was very afraid of Juror and was requesting to be sequestered from Juror if he attended the hearing. Original Attorney advised Ms. Stewart that he would work on getting this request granted for Ms. Alford if Juror showed up to the motion hearing. [8]

The motion hearing was originally scheduled to be held on December 7, 2015, but was postponed at the request of Original Attorney, due to the fact that Ms. Alford suffered a heart attack on the morning of the hearing. It was believed that Ms. Alford's extreme fear of Juror may have been a contributing factor to her having a heart attack on the day of the hearing, as Ms. Alford had previously expressed that she was terrified of encountering Juror at the hearing. Ms. Alford's debilitating fear of Juror and concerns for her health were key factors in Original Attorney's decision that it would be best to attempt to establish Defendant's claims without subpoenaing Juror to the hearing, as the combined personal knowledge of Ms. Alford and Ms. Stewart would be sufficient to prove that Juror committed misconduct. This decision was consistent with Original Attorney's decision to not subpoena Daughter to the motion hearing based on concerns for her mental health.

Defendant believes the aforementioned comments of the State, in reference to the failure to subpoena Juror, created the false impression that Defendant's attorneys acted in bad faith by not subpoenaing Juror. Defendant further believes these comments were improper as it was within the discretion of Defendant's attorneys to decide the best manner in which to present Defendant's claims to the Court.

b. Credibility of Ms. Stewart

The State, under the guise of making an objection, improperly attacked the credibility of Ms. Stewart, which created the false impression that Ms. Stewart had motive to misrepresent. Motion Record page 22 lines 9-12. As the record contains no other attack on the credibility of Ms. Stewart, Defendant believes it can be reasonably inferred from the record that the Court sought to pursue sanctions against Ms. Stewart as a direct result of this false impression created by the State. Motion Record page 41 lines 14-17; page 42 lines 12-18. Defendant offers the following evidence in rebuttal of the aforementioned false impression.

"Bias, prejudice or any other motive to misrepresent may be shown to impeach the witness either by examination or by evidence otherwise adduced." Rule 608 SCRE. See State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (S.C. 2000). "On cross-examination, any fact may be elicited which tends to show interest, bias or partiality of the witness." State v. Saltz, 346 S.C. 114, 551 S.E.2d 240, 250 (2001).

The State's attack on the credibility of Ms. Stewart was improper because it was not made "by examination or by evidence otherwise adduced". Rather, the State's attempt to impeach Ms. Stewart's testimony was made under the guise of an objection and the comments of the State, in reference to Ms. Stewart's credibility, were not relevant to the matter being objected to by the State. Moreover, the State's improper attack on the credibility of the witness presented misinformation to the Court, as Ms. Stewart and Defendant are not married. It must be noted that the State's claim that Ms. Stewart

[8] Emails dated November 30, 2015; December 1, 2015; and December 2, 2015 are included as Supporting Documents.

is "married to the Defendant" served as the basis for the State's contention that Ms. Stewart was "completely and entirely biased". Motion Record page 22 lines 9 -12.

The record reflects that the State declined to cross-examine Ms. Stewart, which denied her the opportunity to respond to the State's improper attack on her credibility, and left the Court with the false impression that Ms. Stewart had a motive to misrepresent to the Court. For purposes of rebutting this false impression, Defendant believes it is relevant that the Court be provided with background information pertinent to Ms. Stewart's involvement with Defendant's case.

Ms. Stewart, a 24 year FBI veteran, was dismissed from her role with the Bureau due to her refusal to discontinue her personal relationship with Defendant as well as her refusal to discontinue working on Defendant's case, as this conduct posed a potential conflict of interests with her professional duties. Ms. Stewart maintained the position that she had independently discovered evidence which firmly convinced her of Defendant's actual innocence and that she had also independently discovered evidence of juror misconduct. Thus, the aforementioned refusals were based upon Ms. Stewart's firm conviction that, based on the evidence she discovered, for her to discontinue her pursuit of justice on behalf of Defendant would result in Defendant remaining unlawfully detained in violation of the United States Constitution.

Ms. Stewart's attorney advised that, based upon Ms. Stewart's position, Defendant's exoneration would give her the greatest chance of successfully appealing her dismissal from the Bureau. Ms. Stewart informed Original Attorney of these circumstances and deferred to his legal expertise to guide her conduct in Defendant's case in all matters related to the motion hearing. Moreover, Ms. Stewart provided the FBI with full disclosure of her actions in Defendant's case, as she was aware that the reinstatement of her lifetime career was at stake based in part upon the integrity of her conduct in Defendant's case.[9]

Defendant believes the evidence of these unique circumstances, as well as the evidence found in Ms. Stewart's sworn affidavit and the recording of her conversation with Juror, should be sufficient to rebut the false impression created by the State and to convince the Court that Ms. Stewart, her personal relationship with Defendant notwithstanding, did not misrepresent to the Court. It must be noted that Ms. Stewart did not disclose any information about her professional background during the motion hearing due to the fact that she wanted to avoid interpretation that she was attempting to use this information to improperly influence the outcome of the proceeding. However, the State's improper attack on Ms. Stewart's credibility, and the false impression resulting therefrom, has necessitated the disclosure of these facts to the Court as rebuttal evidence.

Defendant believes that the false impression created by the State's improper attack on Ms. Stewart's credibility cannot be viewed as harmless, as it can be reasonably inferred from the record that this false impression caused the Court to view Ms. Stewart's testimony in a negative light. This can be deduced from the Court seeking to bring sanctions against Ms. Stewart. Motion Record page 41 lines 14-17. Defendant further believes that the aforementioned false impression was a contributing factor

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[9] Redacted documents containing relevant correspondences between Ms. Stewart, her attorney and the FBI are included as Supporting Documents.

in the Court's rulings that portions of Ms. Stewart's testimony were inadmissible. Motion Record page 24 lines 2-19. As the excluded portions of Ms. Stewart's testimony were essential to establishing Defendant's claim of juror misconduct, and in light of the evidence Defendant has provided the Court in rebuttal, Defendant believes it is beyond dispute that he was prejudiced by the State's improper attack on the credibility of Ms. Stewart.

As an additional matter, it must be noted that the record reflects that the State failed to elicit any facts from Ms. Stewart or to present any evidence against Ms. Stewart which would serve as legal justification for the Court's comments implying that Ms. Stewart should be sanctioned for allegedly being a "third party" who assisted with a "frivolous motion". As the aforementioned comments of the Court tend to reflect adversely on the state of mind of a key witness, Defendant believes he is entitled to offer rebuttal evidence, as a matter of fundamental fairness, for purposes of establishing Ms. Stewart's state of mind, as it relates to her participation in matters pertinent to the motion hearing.

Original Attorney advised both Defendant and Ms. Stewart that the Court was very familiar with Defendant's case and that the Court appointed Original Attorney to represent Defendant at the motion hearing. Original Attorney further advised Defendant and Ms. Stewart that the Court had previously appointed Original Attorney to several cases under similar circumstances, and that the Court had reversed the convictions in all these cases. Though it was not directly stated, Original Attorney implied to both Defendant and Ms. Stewart that the Court appointing Original Attorney to Defendant's case was a strong indicator that the Court believed the allegations in Defendant's motions may warrant the reversal of Defendant's conviction.

Original Attorney emphatically expressed his professional opinion to be that Defendant's juror misconduct motion held the most merit, and that this was the motion most likely to convince the Court to reverse Defendant's conviction. This professional opinion was reiterated by the attorney who represented Defendant at the motion hearing. In light of the fact that two attorneys appointed by the Court expressed to Ms. Stewart that the juror misconduct motion held merit, it can be inferred that Ms. Stewart's state of mind was such that she did not believe that she was assisting Defendant with a "frivolous motion".

Moreover, Defendant believes the record clearly reflects that the juror misconduct motion is not frivolous. And even if the motion was frivolous, Defendant believes that there is no legal basis upon which Ms. Stewart could be sanctioned for the motion, due to the fact that Defendant was represented by counsel at the hearing and it would have been the responsibility of Defendant's counsel to avoid raising frivolous matters before the Court. *"A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous..." Rule 3.1, RPC, Rule 407, SCACR.*

c. State's comments on evidence not introduced

During the testimony of Ms. Stewart, the State, under the guise of objecting to other evidence, made comments in anticipation that Ms. Stewart would testify that "she had some specific conversation with William Tyrone Alford (Juror)". Motion Record page 22 lines 12-14. The State went on to comment that if Ms. Stewart had a conversation with Juror, "that would be hearsay because he's (Juror) not here (at the motion hearing)". Motion Record page 22 lines 14-15. The State concluded its comments by making

it clear that if Ms. Stewart testified about her conversation with Juror, "I would object to it". Motion Record page 22 lines 15-16.

(It must be noted that no mention was made of Ms. Stewart's conversation with Juror prior to the State's comments. This tends to reflect the State's prior knowledge of Ms. Stewart's sworn affidavit, filed with the Court 5 months prior to the hearing, in which Ms. Stewart gives a detailed description of her conversation with Juror. There is no other reasonable explanation for the State having knowledge of Ms. Stewart's conversation with Juror prior to her testifying about it).

Later in Ms. Stewart's testimony when she mentioned her conversation with Juror, the State objected. Motion Record page 23 line 25 - page 24 line 2; page 24 lines 9-10. The Court, having just previously heard the State's comments that Ms. Stewart's conversation with Juror "would be hearsay", automatically ruled that Ms. Stewart's testimony was hearsay. Motion Record page 24 lines 2-11. It must be noted, as discussed in section 1(b) of this brief, that Ms. Stewart's testimony regarding her conversation with Juror was not being offered as hearsay testimony; it was being offered to "establish a foundation" for how Ms. Stewart gained her personal knowledge. Motion Record page 22 lines 20-25; page 23 line 22 - page 24 line 1.

Defendant believes the record clearly supports a finding that the comments made by the State created upon the Court a false impression that testimony concerning Ms. Stewart's conversation with Juror "would be hearsay". The record reflects that the State gave no specific grounds for its objection to Ms. Stewart's testimony, and that the Court ruled upon this objection without affording Defendant's counsel an opportunity to respond. Motion Record page 24 lines 2-11. Thus, it can reasonably inferred from the record that the ruling of the Court, finding that the contested portion of Ms. Stewart's testimony was hearsay, was based solely upon the false impression created by the State's comments, and that this false impression was created prior to the introduction of the evidence.

Defendant believes the record contains clear proof that he was prejudiced by this false impression, as the Court ruled that similar testimony offered by Ms. Alford to establish her personal knowledge was admissible. Motion Record page 10 line 11 - page 12 line 5. Specifically, the Court ruled that Ms. Alford's testimony was not hearsay "as long as you don't get into what was said". Motion Record page 11 lines 7-12. In light of these facts, Defendant believes it can be reasonably inferred from the record that the Court would have ruled on the contested portion of Ms. Stewart's testimony in a manner that was consistent with how the Court ruled on the contested portion of Ms. Alford's testimony, by ruling that Ms. Stewart's testimony was not hearsay "as long as you don't get into what was said", if the ruling of the Court had not been improperly influenced by the false impression created by the State's comments. As aforementioned ruling of the Court prevented facts which were material to Defendant's claim of juror misconduct from being included on the record, Defendant believes it is beyond dispute that he was prejudiced by the false impression created by the State's comments.

CONCLUSION

Defendant realizes that he would normally be barred from filing a pro se brief due to the fact that he was represented by counsel at the motion hearing. However, at the conclusion of the hearing, the Court stated to Defendant's counsel that the "Public Defender or no other attorney has any

responsibility in the bringing of this motion". Motion Record page 40 lines 21-23. As the comments of the Court effectively relieved Defendant of counsel, Defendant believes he should be allowed to submit a pro se brief, as a matter of Due Process.

In conclusion, Defendant wishes to refresh the Court's recollection of the Court's words to the jury during Defendant's trial. The Court instructed the jury as follows:

"Now, ladies and gentlemen, you are not partisans for the State of South Carolina or the Defendant. You do not serve as jurors to reward friends or punish enemy. Obviously, such a perverted system of justice would be intolerable".

See Trial Transcript page 738 lines 9-13.

The record contains clear and convincing proof that Juror intentionally concealed information from the Court which would have been material in Defendant's exercise of peremptory challenge or challenge for cause. The record further contains sufficient evidence from which it can be reasonably inferred that Juror concealed this information from the Court for malicious purposes, so that he would be allowed to serve on the jury to "punish (an) enemy (Defendant)" for a perceived past slight, Defendant's relationship with Daughter.

As the Court previously found that "such a perverted system of justice would be intolerable", Defendant hereby moves the Court to uphold this standard by amending its oral ruling and by granting Defendant's motion for a new trial on the basis of juror misconduct.

Defendant further moves the Court to include this brief and the Supporting Documents as a part of the record for appellate review.

Respectfully Submitted,

Weldon W. Stewart, Jr. #295095
Allendale Correctional Institution
[redacted]
Fairfax, SC 29827

Fairfax, South Carolina
February 28, 2018

SUPPORTING DOCUMENTS

List of Supporting Documents

Supporting Documents are arranged according to the pages on which the documents are referenced in the motion and by the footnotes in which the documents are referenced, if applicable.

Referenced on Page= ROP Footnote= FN

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ROP 2 FN 2

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

AFFIDAVIT OF
Peggy Ann Alford

My name is Peggy Ann Alford, my address is [redacted], SC [redacted]. My phone numbers are [redacted]

I am the mother of Larekia Alford. My daughter and I have always been very close, she tells me just about everything. I have always monitored my daughter's activities as much as possible. I am very familiar with the boys she dated in high school, because just as any good mother of a teenage daughter, I was very involved in her life and had many conversations with her about these boys.

Larekia dated (William) Tyrone Alford all through high school, up until her senior year. We always called him Tyrone, we never called him William. Tyrone use to come to our house to visit Larekia all the time. Tyrone graduated a year before Larekia and they broke up during her senior year. Tyrone became very abusive towards Larekia during her senior year when she began to date other boys.

Larekia dated Weldon Stewart during her senior year. I talked to Weldon on the phone a few times when he called the house for Larekia and I remember Weldon coming to my house with his parents to pick up Larekia.

Larekia and I had many mother-daughter discussions about Weldon, Tyrone and any other boys she dated. I also overheard many telephone conversations between Larekia and her boyfriends. I know Weldon and Tyrone knew about each other based on these conversations. I don't know if Weldon and Tyrone ever had any contact with each other, but I do know that Larekia talked to both of them about each other. Larekia was always a very open person and talked a lot.

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Larekia became pregnant during her senior year. I remember one Saturday, she had been with Tyrone earlier in the day. He dropped her off at home. Later that night, Larekia said she had to use the bathroom and she had a miscarriage on the bathroom floor. I found Larekia laying on the bathroom floor and rushed her to the hospital. Larekia was hospitalized for a few days. She was in really bad condition and could have died. Tyrone came to visit her while she was in the hospital. I can't say for certain who got Larekia pregnant. All I know is that it was either Weldon or Tyrone because they were the only two boys she dealt with during that time period.

After Larekia's pregnancy, she and Tyrone got back together. One day we returned home and Tyrone was beating Larekia so bad, her grandfather had to take a two by four to get him off of her. After this situation, we never allowed him to come to our house again.

Larekia has not been right since she lost her baby. Tyrone was very abusive to her and he got real crazy, especially crazy when she dated other boys. The things he has done to my daughter have left her scarred for life. She has never had any children and this bothers her a lot. She struggles with paranoid schizophrenia and taking care of her is an everyday struggle. She is in a very fragile mental state and I do not want her reminded of this situation under any circumstances. At first I did not want to get involved with this situation at all, but I later realized that I either had to come forward with what I know or risk my daughter to being exposed to dealing with this situation. That is the reason I agreed to give my statement about everything I know. I am doing this to protect my daughter.

CERTIFIED TRUE COPY
William B. Gundlach
CLERK OF COURT
MARLBORO COUNTY

I declare that to the best of my knowledge and belief, the information herein is true, correct and complete.

Peggy Ann Alford

Peggy Ann Alford

Devon G. Hooks

June 26, 2025

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WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

CLERK OF COURT: Have a seat in the jury box, please, ma'am. 33, Michael Costner. What says the State?

MR. BLAKE: Please excuse Mr. Costner from the trial of this case.

CLERK OF COURT: Return to your seat, please. 7, Alexander Bethea. What says the State?

MR. BLAKE: Please excuse Mr. Bethea from the trial of this case.

CLERK OF COURT: Return to your seat, please. 24, Lindsay Carter. What says the State?

MR. BLAKE: Please seat Ms. Carter.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, please. 39, Michael Taylor. What says the State?

MR. BLAKE: Please seat Mr. Taylor.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please. 2, William Alford. What says the State?

MR. BLAKE: Please seat Mr. Alford.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, please. 131, Linda Sports. What says the State?

ROP 4 FN 5

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

AFFIDAVIT OF
[redacted] Stewart

My name is [redacted] Stewart, my address is [redacted]. My phone number is [redacted]

I was conducting research on Weldon Stewart's case. My logical starting point was with the jury. I wanted to find out as much as I could about the people who found Weldon guilty, as well as find out if any jurors were willing to speak with me and share with me their reasons for returning a guilty verdict.

I wrote down a list of the names of the jury members from Weldon's trial transcripts and began trying to locate the jurors by conducting a people search on them. Some of the names on the jury list had several people in Marlboro County with the same name, (i.e. Tammy Quick). This prompted me to ask Weldon to share with me any specific information he could remember about individual jury members. As I would tell Weldon a juror's name, he would tell me everything he could remember about that juror. For example, Weldon recalled that Victoria Jacobs was crying while he was being sentenced.

When I called William Alford's name, Weldon recalled that this juror was giving him very hostile looks during the part of his testimony in which he was talking about one of his ex-girlfriends. I found this part of Weldon's testimony in his trial transcript and Weldon proceeded to give me more details about his relationship with Larekia Alford, as well as his conflict with Tyrone Alford, over Larekia. Weldon then asked me to see if the juror, William Alford, was related to Tyrone or Larekia. I conducted a people search on September 9, 2014 which revealed that neither Tyrone nor Larekia were listed as relatives of William Alford. However, I noticed that William's middle initial is the letter "T". I then used a different search engine, which revealed that William's middle name is Tyrone.

I shared this information with Weldon and he stated that he never heard Larekia call Tyrone by his first name. Weldon stated that he only knew Larekia's ex-boyfriend by the name Tyrone Alford. He only remembered Tyrone's last name because he thought it was weird that they both had the same last name but were never married. I noticed that William Alford had some felony charges on his record. I hired Stillinger Investigations, Inc. to investigate whether or not William Alford had any felony convictions prior to serving on Weldon's jury. The [redacted] investigator reported back to me on December 11, 2014 that William Alford did not have any felony convictions prior to serving on the jury. Weldon and I then worked together to prepare a motion for a new trial based on this information.

Weldon went to court on April 13, 2015 and was appointed attorney, J. Richard Jones, to represent him for the motion hearing. Mr. Jones advised me that independent confirmation was needed on the details that were included in the motion, he further advised me that Weldon's word would not be accepted on face value. I informed Weldon of my conversation with the attorney and he stated he would ask his friends to help find as much information as possible.

On May 11, 2015, Weldon asked me to call Tyrone Alford and find out if he was willing to give me any information. Weldon informed me that one of his friends had called Tyrone the previous night and that she and Tyrone began arguing, due to the fact that Tyrone made some very derogatory comments about Weldon. I agreed to call Tyrone, but as a precaution I decided to record the conversation so that he couldn't come back later and claim harassment. I recorded the conversation to safeguard myself.

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A CERTIFIED TRUE COPY
William B. Gundlach
CLERK OF COURT
MARLBORO COUNTY

Tyrone confirmed, during my conversation with him, that he dated Larekia up until her senior year. He admitted that the relationship was ended by Larekia. Tyrone claimed that he loved Larekia and that he invested a lot of money taking care of her, but then she left him during her senior year and started dating other boys. He stated that this deeply hurt him and made him very angry.

Tyrone admitted Larekia told him everything and that she even told him about her other boyfriends. He then proceeded to name some of her boyfriends. However, he adamantly denied that Weldon had ever been involved in a relationship with Larekia. He also adamantly stated that Larekia had never been pregnant. I found it strange that Tyrone disclaimed any prior knowledge of Weldon, yet he repeatedly referred to Weldon by his last name, which is something that is only done by Weldon's family members or personal acquaintances to distinguish between him and his father, Weldon Sr. I also found it very significant that Tyrone recalled from memory the exact distance between Weldon's parents' home and Larekia's parents' home. Additionally, Tyrone made a comment that Weldon may be able to lie to me but that he couldn't lie to him "because I know him".

On August 25, 2015, Mrs. Peggy Alford, Larekia's mother, signed a sworn affidavit and agreed to testify for the purpose of confirming Tyrone's prior knowledge of Weldon. A hearing date was scheduled for December 7, 2015. Mrs. Alford was unable to attend the hearing, due to being hospitalized. The hearing was postponed as a result. Mrs. Alford agreed to submit a more detailed affidavit in case her health prevented her from attending any further hearings.

I declare that to the best of my knowledge and belief, the information herein is true, correct and complete.

[redacted] Stewart

[redacted] Stewart

Devin G. Hanks
June 26, 2025

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WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

Q. Did you determine that there was?

A. To the best of my knowledge, the lab did not determine any flammable liquids on it.

Q. Although you really will not be offering expert testimony in this case, for the record, let me take a step back, and you said that you've been at SLED doing arson for?

A. Seven years now.

Q. And prior to that, how many years?

A. Eighteen.

MR. BLAKE: State would move to qualify Mr. Elvington as an expert witness in arson investigation.

THE COURT: Any objections?

MR. STEWART: No, sir

THE COURT: So qualified.

MR. BLAKE: Thank you.

Q. (BY MR. BLAKE): Okay. You got there, you said around 3 o'clock?

A. Correct.

Q. And did you at any time enter the house, the Stewart house?

A. Yes, we did.

Q. When you say "we," that would be who?

A. Myself and officers with the [redacted] Police Department.

Q. All right. Now, how did -- how is it that you came

to enter that house?

A. We had gained possession of a key to the residence after we got signed consent from the owners and made access to the residence with the key.

MR. BLAKE: Your Honor, could you hold on just one moment?

THE COURT: Sure.

MR. BLAKE: I don't think we've marked this one yet. Your Honor, we have another exhibit that needs to be marked.

(STATE'S EXHIBIT NO. 22 MARKED FOR IDENTIFICATION.)

Q. (BY MR. BLAKE): Handing up State's Exhibit 22. This is a photocopy entitled "Voluntary Consent to Search."

A. Yes, sir. This is the voluntary consent that was given to us and signed by Mrs. Stewart.

Q. Okay. You said you entered the premises by a key. How did you get the key?

A. If I'm not mistaken, the key was given to me by Lieutenant Boston with the police department who got it from either Mrs. Stewart or Mr. Stewart himself.

Q. Okay. And could you read for us the time down there, Mr. Elvington, when that was signed?

A. It was signed at date, December 7, 2000, time was 1536 p.m.

Q. And in normal, human time, what's that?

A. 3:36 p.m.

MR. STEWART: No, objection, sir.

THE COURT: You're excused. You may step down.

MR. BLAKE: I got one that we can finish up pretty quick, and that would take care of it. Officer Crossland.

SAMMY CROSSLAND, first being duly sworn, testified as follows:

CLERK OF COURT: Come around here and state your full name.

A. My name is Sammy Lee Crossland.

DIRECT EXAMINATION BY MR. BLAKE

Q. You're going to have to boost the volume. You look like you can boom it if you want to.

A. Sammy Lee Crossland.

Q. Very good. Remember that call back on December 6, 2000 at about 1:15?

A. Yes, sir, I do.

Q. And you went over to the Upper East?

A. Yes, sir.

Q. You remember the address?

A. I know it was [redacted]

Q. You got your incident report with you?

A. Yes, sir. [redacted]

Q. That's correct. Anybody with you?

A. Officer Keith Worsley.

Q. Okay. What did you notice as soon as you pulled up?

MR. BLAKE: This isn't a bifurcated trial.

THE COURT: I'm going to give him some leadway. Just don't get too far with it. Go ahead.

MR. STEWART: Just, my grades started slipping lower in the fifth grade. Other than that, I did pretty good. Was doing good at home. Got older.

When I got about 15, I started dating this older lady. She was 27, and she kind of played with my -- played with me a little bit and kind of threw me away. So that was that.

But in school, I was pretty good. Shortly after that relationship, I got with another girl, and she got -- she became pregnant. She was older -- she was a little bit older than me. I was still 15. She was like a high school senior or something. She became pregnant, and she forced herself into an abortion by -- not an abortion, but forced herself into a miscarriage by drinking caster oil, something like that.

And had baby out on the floor and took pictures of it and sent it to me. So that's what happened. Shortly after that, I started -- I had problems with. That -- that really bothered me. Just seeing the pictures and stuff, so I really -- I started -- not getting in trouble, but just to be honest, what I said I was going to do in my opening statement, so I started using a little marijuana. That was how I coped with my pain and stuff like that.

ROP 9 FN 6

STATE OF SOUTH CAROLINA	)	**GENERAL SESSIONS COURT**
	)	**FOURTH JUDICAL CIRCUIT**
COUNTY OF MARLBORO	)	**2002-GS-34-1919**
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs. Plaintiff,	)	
	)	
	)	**MOTION REQUESTING VOIR**
WELDON W. STEWART, JR.	)	**DIRE QUESTIONS TO JURY**
	)	
Defendant.	)	
	)	

The Defendant submits to the Court the attached Defendant's Requested Voir Dire Questions numbered 1 through 16 inclusive, and requests that the Court ask the prospective jurors each of them.

The Defendant further requests that any question or questions that are refused or modified be made an Exhibit of the Court for purposes of any possible record on appeal.

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

Bennettsville, South Carolina
July 14, 2003

Respectfully Submitted,

Welton W. Stewart Jr.

WELDON W. STEWART, JR.
[redacted]
BENNETTSVILLE, SC 29512
PRO SE DEFENDANT

ROP 9 FN 6

Defendant's Requested Voir Dire Question Number 1

Have you ever served on a jury before? What was the out come of the case?

A CERTIFIED TRUE COPY

Anita M. Williams

CLERK OF COURT
MARLBORO COUNTY

Defendant's Requested Voir Dire Question Number 2

Have you heard or read anything about this case prior to today?

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

Defendant's Requested Voir Dire Question Number 3

Do you have any sisters, daughters, nieces, or any close female friends or relatives between the ages of 13 and 18?

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

Defendant's Requested Voir Dire Question Number 4

The state is relying primarily upon circumstantial evidence to establish its case. Some of the circumstances may be disturbing. Do you feel that you will be able to put aside your emotions, weigh all the evidence, and return a fair verdict?

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY