

RECEIVED

NOV - 6 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Sumter County

Ralph F. Cothran, Circuit Court Judge

---

SHERALD ANDERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-000572

---

APPENDIX

---

WANDA H. CARTER  
Deputy Chief Appellate Defender

ALAN WILSON  
Attorney General

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

MEGAN HARRIGAN  
Assistant Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX ..... i

TRIAL TRANSCRIPT DATED APRIL 15, 2010 ..... 1

APPLICATION FOR POST-CONVICTION RELIEF ..... 85

RETURN ..... 90

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 12, 2012 ..... 95

ORDER OF DISMISSAL ..... 143

INDICTMENT ..... 154

1 STATE OF SOUTH CAROLINA  
2 COUNTY OF SUMTER

CIRCUIT COURT  
2009-GS-43-00194

3  
4 STATE OF SOUTH CAROLINA,

5 -vs-

TRANSCRIPT OF RECORD

6 SHERALD ANDERSON and  
7 SAMUEL MONTGOMERY,  
8 Defendant.

9 Heard on Thursday, April 15, 2010 ;  
10 Sumter, South Carolina

11  
12 BEFORE:

THE HONORABLE W. JEFFREY YOUNG

13  
14  
15 APPEARANCES:

16 Counsel on Behalf of the State:  
17 Jason Corbett, Esq.

18 Counsel on Behalf of Defendant Anderson:  
19 David Sullivan, Esq.

20 Counsel on Behalf of Defendant Montgomery:  
21 Arthur Wilder, Esq.

22  
23 Cheri L. Young, RPR  
24 Circuit Court Reporter  
25 P O Box 1154  
Aiken, SC 29802-1154

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXAMINATION INDEX

DOMINICK WEST	
DIRECT BY MR. CORBETT . . . . .	7
CROSS BY MR. SULLIVAN . . . . .	24
CROSS BY MR. WILDER . . . . .	30

EXHIBIT INDEX

	MAR	/	ADM
State's			
16 Photographs			6
17 Photographs			6
Defendant's			
8 Chandler's statement			35
9 Warrant			37

1 ON THURSDAY, APRIL 15, 2010 AT 9:35 A.M.:

2 THE COURT: Anything before we bring the jury  
3 in?

4 MR. WILDER: May it please the Court.

5 THE COURT: Yes, sir.

6 MR. WILDER: To put on the record some things  
7 that have happened since last night.

8 Early this morning I issued a subpoena for Edward  
9 Brown based on what was testified to ballistically  
10 yesterday and -- by Ray Mackessy.

11 And the Court did sign an order which we  
12 appreciate and we have made arrangements to fax that down  
13 to SCDC where Edward Brown is, to have him transported  
14 back to Sumter County. And that has been done this  
15 morning.

16 And, Your Honor, in addition to that, in chambers  
17 this morning with Mr. Corbett present and Mr. Sullivan  
18 present, we discussed the matter of the 9-1-1 tape. And I  
19 was going to move this morning under a continuing Brady  
20 motion that the State be required to furnish me with any  
21 material as to who may or may not have made the  
22 statement.

23 That created a difficulty.

24 As the Court will recall, when Towanda was  
25 testifying, she seemed like she didn't want to own up to

1 that being her voice. So then I went exploring to find  
2 out whose voice it might have been and encountered the  
3 witness yesterday who said it wasn't her.

4           However, the State now advises us that they have  
5 made the inquiry and we believe it's Brady, Your Honor, as  
6 to what that witness said. And Mr. Corbett disclosed to  
7 us in chambers this morning that they had a meeting  
8 yesterday and that Towanda identified herself as being the  
9 witness who actually did make the 9-1-1 call. And  
10 Mr. Corbett disclosed that to us in chambers, but I  
11 believe it was Brady and should have been given to us at  
12 whatever point the State discovered the identity of that  
13 voice.

14           And now we have been notified of that, so I don't  
15 have a Brady motion to renew at this moment but I did want  
16 to put that on the record because it's important as to my  
17 client's options as to who we would call during his case  
18 when it comes to his turn to put up witnesses.

19           Thank you, Your Honor.

20           THE COURT: All right. Mr. Sullivan, do you  
21 have anything further?

22           MR. SULLIVAN: I don't have anything to add, Your  
23 Honor. I would join in his motion, however.

24           THE COURT: All right. Let's bring the jury in.

25           MR. CORBETT: Your Honor, if I may, before we do

1 that. I just wanted to clarify something.

2 Yesterday, I had offered into evidence a number  
3 of photographs. In an attempt to move the process along,  
4 I did a couple of them as groupings.

5 THE COURT: Right.

6 MR. CORBETT: One of which is a photograph of a  
7 pickup truck. And I'm just going to re-staple this,  
8 Judge, because it looks like one came loose. The  
9 photograph's a pickup truck, Exhibit 17. There's a  
10 separate group of photographs of close ups of bullets  
11 taken from the ground and I do not see a sticker on it,  
12 Your Honor. If we could have just a moment to clear that  
13 up in case I need to refer to it in the trial process.

14 THE COURT: All right.

15 (Pause.)

16 MR. WILDER: Your Honor, there are close ups of  
17 the cartridges and bullets and that sort of thing, and  
18 markers. They were collectively identified as State's  
19 Exhibit Number 16.

20 Mr. Corbett and I have examined those and  
21 determined that the staple came loose after it was  
22 affixed. We have no objection to them being re-stapled  
23 collectively.

24 THE COURT: All right.

25 MR. WILDER: And they were the groupings. We had

1 no objection to them coming in.

2 MR. SULLIVAN: Right. That's correct.

3 THE COURT: Good.

4 MR. WILDER: Good.

5 (Thereupon, the photograph was affixed to the  
6 proper exhibit. State's Exhibit No. 16, photographs, and  
7 State's Exhibit No. 17, photographs, were received into  
8 evidence.)

9 MR. CORBETT: Thank you, Your Honor.

10 THE COURT: All right. Bring the jury in.

11 (Jury enters courtroom at 9:44 a.m.)

12 THE COURT: Good morning, ladies and gentlemen of  
13 the jury. I hope you had a nice evening.

14 At the end of the day yesterday, I asked you not  
15 to read any news media or anything overnight in this  
16 case. I'd like to ask you now: Did anyone read The Item  
17 this morning, the article concerning this or any other  
18 media or anything about this case?

19 If you did, please raise your hand.

20 (No responses.)

21 THE COURT: All right. Thank you. All right.  
22 Are we ready to proceed?

23 MR. CORBETT: State is ready to proceed, Your  
24 Honor.

25 THE COURT: Call your next witness.

DOMINICK WEST - DIRECT

1 MR. CORBETT: Your Honor, the State would call  
2 Investigator Dominick West.

3 DOMINICK WEST, having been duly sworn, was  
4 examined and testified as follows:

5 THE CLERK: State your name and spell your last  
6 for the record.

7 THE WITNESS: Dominick West, W. E. S. T.

8 DIRECT EXAMINATION

9 BY MR. CORBETT:

10 Q. Investigator West, good morning.

11 A. Good morning.

12 Q. Investigator West, tell us if you would, please, by  
13 whom are you employed?

14 A. Sumter County Sheriff's Office.

15 Q. And how long have you been with the Sumter County  
16 Sheriff's Office?

17 A. This July will be 10 years.

18 Q. And what have your duties with the sheriff's office  
19 included?

20 A. I currently work in the investigations division as an  
21 investigator.

22 Q. Have you worked in any other divisions?

23 A. I was patrol deputy for five years.

24 Q. And back in 2008, were you in the investigative  
25 division at that time?

DOMINICK WEST - DIRECT

1 A. Yes, sir. I was.

2 Q. Did you have occasion to be called out to Duffie Road  
3 on May 10th of 2008?

4 A. Yes, sir. I was.

5 Q. Okay. Just kind of in general tell us a little bit  
6 about the process of how you get to a particular call.  
7 How is it that it's you as opposed to someone else?

8 A. We had, we as investigators we have a on-call  
9 schedule. I was on call for that week going into that  
10 weekend.

11 On that day lieutenant -- I received a phone call from  
12 Lieutenant Terrence Colclough that there was a shooting  
13 incident off of Duffie Road. I responded where I met with  
14 Lieutenant Colclough. He advised me that the victim had  
15 --

16 MR. WILDER: Objection, Your Honor. I'd object  
17 to what Colclough told him.

18 THE COURT: Sustained. You can rephrase your  
19 question.

20 BY MR. CORBETT:

21 Q. Now, when you arrived on the scene, were any shooting  
22 victims present?

23 A. No, sir. As I arrived, the victim was actually  
24 transported by EMS, then air lifted.

25 Q. If you would, sort of walk us through what you did

DOMINICK WEST - DIRECT

1 when you arrived on the scene.

2 A. When I got on the scene, like I said, I was met by  
3 Lieutenant Terrence Colclough. Briefed. He showed me  
4 where different shell casings --

5 MR. WILDER: Your Honor, again, out of an  
6 abundance of caution, it didn't sound like when he started  
7 to answer he was going to say hearsay but he did say, he  
8 told me and that --

9 THE COURT: I think he said he showed.

10 MR. WILDER: Showed. Okay. No objection to  
11 showed. Okay.

12 I'm sorry. Must be my feeble hearing, Your  
13 Honor.

14 THE COURT: No problem.

15 THE WITNESS: He showed me where different shell  
16 casings were. Different ballistics was on the ground. It  
17 was, the scene was secured. I started walking off. I  
18 made contact with CSI personnel, Investigator Ray  
19 Mackessy.

20 BY MR. CORBETT:

21 Q. All right. Let me stop you there for just a moment.  
22 You said the scene was secure. What does that mean?

23 A. It was taped off. We have yellow tape to mark it as a  
24 crime scene or it says, do not cross.

25 Q. Now just in general, I'm going to show you here what's

DOMINICK WEST - DIRECT

1 been marked as State's Exhibit Number Five. And that  
2 picture there, does it -- would you just show that to the  
3 jury? Is that what you mean when you say it's marked off  
4 with tape?

5 A. Yes. It's marked off with yellow tape, say crime  
6 scene, do not cross.

7 Q. Now you indicated the scene had been taped off and  
8 then you began marking?

9 A. Yes, sir.

10 Q. Tell us what that means and what you did.

11 A. Marking -- each shell casing that I found I marked  
12 with a numeric, a number.

13 Q. Investigator West, I'm going to show you State's  
14 Exhibits Five, Six, and Seven. And if you would, I'm  
15 going to get you to tell us, and then I'm going to get you  
16 to show the jury what you did in those pictures. Tell us  
17 what we see in those pictures and what you did.

18 A. In Exhibit Five, it's just at the corner of the house,  
19 at the edge of the roadway where you see markers down,  
20 numerous. And the yellow tape. When you see myself, I  
21 was I'm on the phone with the other personnel.

22 In Exhibit Number Six, same photograph. I believe it  
23 was a closer shot to number seven, number two, number 12,  
24 numbers on the ground where shell casings or bullets was  
25 found.

DOMINICK WEST - DIRECT

1           Also Number Seven is the same identical -- identified  
2 -- identical one to Number Five.

3 Q.   Now I'm going to show you what's been previously  
4 marked as State's Exhibit Number Eight. Can you tell us  
5 what that is?

6 A.   A bullet hole in the side of the passenger door of a  
7 red Ford Explorer marked as number eight.

8 Q.   Did you also mark that one?

9 A.   Yes, sir.

10 Q.   I'm going to show you what's been marked as State's  
11 Exhibit Number One. And tell us what we're looking at  
12 there on that, please.

13 A.   It's at the beginning of the trailer, close to the  
14 edge of the roadway by the tree in the backyard. You see  
15 different markers, the number markers, four, five, six and  
16 number 13, also with the yellow crime scene tape.

17 Q.   And State's Exhibit Number Eight, what are we looking  
18 at there?

19 A.   We're at the back of the trailer where you see four,  
20 the number markers and also it's a fifth one, but it's  
21 turned to the side along with the yellow crime scene tape  
22 with a blue truck on the back of the trailer where shell  
23 casings were located.

24 Q.   Are you the person who put out those markers?

25 A.   Yes, sir.

DOMINICK WEST - DIRECT

1 Q. Now, did you have occasion to come in possession of  
2 some evidence that had not been marked on that particular  
3 day?

4 A. Yes, sir.

5 Q. Tell me how that came about.

6 A. After doing the investigation, I go back. As an  
7 investigator, I go to revisit the area, the incident  
8 location. And when I was there one day, I can't remember  
9 the day, I think it was the 12th. I think this happened  
10 on the 10th, the 11th. The 12th when I was there, I was  
11 walking around the incident location and I saw a shell  
12 casing in the front yard.

13 Q. And was that shell casing also given to Investigator  
14 Mackessy?

15 A. Yes, sir. I did an evidence card and turned it into  
16 evidence.

17 Q. Investigator West, if you would sort of pick us up.  
18 You arrived on the scene. It had been tapped off. You  
19 began marking. Kind of walk us through what else was kind  
20 going on with you that day at the scene.

21 A. Like I say, I began marking. Also I made notification  
22 to my superior CSI personnel, Sergeant Burnish, Captain  
23 Turner, in reference to the incident.

24 I think -- I don't know how I came to the point of  
25 understanding that Ms. Angela died but it was, it was told

DOMINICK WEST - DIRECT

1 to me that she had died on the way, en route to the  
2 hospital.

3 I again also notified Captain Turner, you know, the  
4 outcome of the situation, that Ms. Anderson did die. So,  
5 also Captain Frank Thompson, he was the commander on  
6 call. He was notified and also he responded.

7 Q. But in terms of putting up the markers, was that you  
8 doing that?

9 A. Yes, sir.

10 Q. Now in addition to putting up the markers, what other  
11 efforts did you undertake there at the scene that evening?

12 A. After other personnel had arrived, Sergeant Burnish,  
13 Sergeant Mackessy, I went on to interview different  
14 individuals that was located at the residence at the time.

15 Q. And you did that that same evening?

16 A. Yes, sir. That day and days afterwards.

17 Q. Now in terms of the interviews, do you recall about  
18 how many people were there when you got there?

19 A. It was -- it was a bunch of little small kids and the  
20 four individuals I interviewed. Also ended up  
21 being Willie Mae Duffie and Isaac Duffie was there, but I  
22 didn't take any statements at that time.

23 Q. At the conclusion of the interviews there on the scene  
24 that evening, was there anything else that you did on the  
25 scene that particular day?

DOMINICK WEST - DIRECT

1 A. On the scene that particular day, that was it. I  
2 gathered -- I did the interviews. I gathered the  
3 paperwork. I made contact with my captain, advised of the  
4 possible suspects. And he, I think he went, he went  
5 gathering warrants on the individuals.

6 Q. So you developed suspects that same day?

7 A. Yes, sir.

8 Q. As a result of your investigation, the issuance of  
9 warrants, who was ultimately arrested as a result of the  
10 investigation?

11 A. Mr. Samuel Montgomery and Mr. Sherald Anderson.

12 Q. Now I'm going to show you what's previously been  
13 marked as State's Exhibit Number 17. Can you identify  
14 those?

15 A. That's the possible vehicle that Mr. Montgomery was  
16 driving that day of the incident.

17 MR. WILDER: Your Honor, I'm going to object and  
18 ask that be stricken. He didn't see that that he just  
19 testified to. And so I object as hearsay, and it wasn't  
20 responsive to the question even.

21 THE COURT: Sustained. Rephrase your question.

22 MR. CORBETT: Yes, sir.

23 MR. WILDER: I move that it be stricken from the  
24 record.

25 THE COURT: That answer is stricken at this time.

DOMINICK WEST - DIRECT

1 The jury will disregard the last interchange between  
2 Mr. Corbett and the detective.

3 BY MR. CORBETT:

4 Q. Do you know when Mr. Anderson was taken into custody?

5 A. He was taken into custody at the bus station right  
6 after, several -- should be about 30 minutes after

7 Mr. Montgomery was taken into custody, may not even be 30  
8 minutes.

9 Q. So, they were taken into custody on the same day?

10 A. Same day.

11 Q. Okay. Was it the same day of the incident?

12 A. No, sir. It was the day after.

13 Q. Were you present when Mr. Montgomery was taken into  
14 custody?

15 A. Yes, sir. I was.

16 Q. Where did that happen?

17 A. At Sunset -- it was, I believe it's name, the old name  
18 was Sunset Inn over on North Main Street. Sunset Motel.

19 Q. What happened when you got to the motel on North Main  
20 Street that day?

21 A. I got there. I notified the on-call commander. I  
22 notified my captain. I notified the shift lieutenant.

23 Colclough, Sergeant Ray and Deputy Clark, Deputy Conyers  
24 all responded. We set up right there at the center right

25 there on North Main, the Adult Education Center, whatever,

DOMINICK WEST - DIRECT

1 something rehab, something rehab center, we set up right  
2 there, planned out how we was going to go into the  
3 location and knock on the door.

4 We got with the hotel management advising that we had  
5 a possible suspect in the room. They gave us keys to the  
6 door and then we planned. We executed. We knocked on the  
7 door. We tried to make entry and which we did.

8 And then Shawnda Miller, we knew that Mr. Montgomery  
9 and Shawnda Miller --

10 MR. WILDER: Your Honor, I'm going to object to  
11 anything that's hearsay. I don't object to what he  
12 actually did. What he knew and where he got that  
13 information may well be hearsay.

14 THE COURT: Objection sustained. You cannot  
15 testify. You may say what you did.

16 BY MR. CORBETT:

17 Q. Did Shawnda Miller arrive on the scene?

18 A. Yes, sir. She did.

19 Q. Did she know Samuel Montgomery?

20 A. Yes, sir. She rented the room for him.

21 Q. Did she provide assistance in having Mr. Montgomery  
22 come out of the room?

23 A. Yes, sir. I advised her that we was looking for him  
24 and she stated that he was scared to come out. So I  
25 advised her to call him on the phone and I talked him

DOMINICK WEST - DIRECT

1 out. He opened the door. Sergeant Trevor Brown was also  
2 at the scene, and he was arrested.

3 Q. So you spoke with him on the phone?

4 A. Yes, sir.

5 Q. Investigator West, was the sheriff's department able  
6 to recover any weapons?

7 A. No weapon was recovered in this investigation.

8 Q. At this point in time, were both Mr. Anderson and  
9 Mr. Montgomery now under arrest?

10 A. Mr. Montgomery was arrested first. He was transported  
11 from the motel by Deputy -- Detective Clark to Sumter Law  
12 Enforcement Center.

13 Q. And you indicated that Mr. Anderson was arrested on  
14 the same day?

15 A. He was arrested the same day, probably within minutes,  
16 15 minutes, 20 minutes afterwards, at the bus station.

17 Q. So some short time after Mr. Montgomery was arrested  
18 then Mr. Anderson was also arrested?

19 A. Yes, sir.

20 Q. And that was the next day?

21 A. That was the same day. They was arrested on the same  
22 day.

23 Q. No, I mean. I'm sorry.

24 A. The day after the incident.

25 Q. I'm sorry. The next day after the incident?

DOMINICK WEST - DIRECT

1 A. Yes, sir.

2 Q. Now, Investigator West, you didn't actually get to the  
3 Duffie Road scene on May the 10th, until it was, the  
4 shooting part was over; is that correct?

5 A. Yes, sir.

6 Q. So your information about what happened on Duffie Road  
7 was a result of statements of witnesses that you spoke to?

8 A. Yes, sir.

9 Q. Now with regard to some of the photographs that I've  
10 been showing you with the markers that you put out, did  
11 you make any effort to identify those particular items or  
12 was that Mr. Mackessy?

13 A. No, sir. I was -- I saw shell casings and bullets,  
14 and whole, an unfired bullet and just put the markers  
15 down.

16 Q. You indicated a little bit ago that y'all weren't able  
17 to recover any weapons?

18 A. Yes, sir.

19 Q. Did you actually look for weapons?

20 A. We didn't look for -- we didn't have any -- well, when  
21 the suspect was arrested, he didn't have any weapons on  
22 him. When he was questioned and interviewed, asked for  
23 the weapon but he declined to give the weapon.

24 MR. WILDER: Objection, Your Honor. First of  
25 all, it's not clear which Defendant he's talking about but

DOMINICK WEST - DIRECT

1 even if it was, it's unlawful for them to ask that  
2 question.

3 THE COURT: All right. You need to --

4 MR. CORBETT: I'll withdraw that question, Your  
5 Honor.

6 THE COURT: -- withdraw the question or rephrase  
7 it. Sustained.

8 BY MR. CORBETT:

9 Q. Did you or other officers go to any particular  
10 locations and look and make an effort to find any of the  
11 weapons?

12 A. We did.

13 Q. And do you remember which locations that you went to  
14 or whose location it was?

15 A. I, I typed up the search warrant to Sammie  
16 Montgomery's residence off of Pear Tree or Peach Tree,  
17 it's one of those -- the name of the road. It's on the  
18 search warrant. We searched his residence.

19 Q. So y'all did make efforts to look for the weapon?

20 A. Yes, sir.

21 MR. WILDER: Your Honor, I have a motion I'd like  
22 to make at this time.

23 THE COURT: All right. Ladies and gentlemen of  
24 the jury, I'll dismiss you to the jury room to take up a  
25 matter of law.

DOMINICK WEST - DIRECT

1 (Jury exits courtroom at 10:10 a.m.)

2 THE COURT: Yes, sir. Mr. Wilder?

3 MR. WILDER: If it please the Court. At this  
4 time on behalf of Sammie Montgomery, I'd make a motion for  
5 mistrial.

6 THE COURT: What's your basis?

7 MR. WILDER: The basis, Your Honor, is that  
8 Mr. Corbett asked the witness, did they make any attempt  
9 to find or recover a weapon.

10 The answer was then, well, we asked the  
11 Defendants or Defendant, and I couldn't tell which one he  
12 was talking about, and he said, but he refused to give us  
13 any information about it.

14 That in and of itself -- I objected. The  
15 objection is grounded on it being unlawful because they're  
16 commenting on the Defendant's right to remain silent. And  
17 the Defendant doesn't have to give up any statement. But  
18 by posturing that as the Defendant, either one of them,  
19 being uncooperative and refusing to give a statement about  
20 where the weapon is, that's simply the Defendant  
21 exercising his right to remain silent.

22 There's no way for us to posture in the mind of  
23 the jury that thereby -- and then to further compound it  
24 with respect to Sammie Montgomery, the effort was going to  
25 Samuel Montgomery's residence to execute a search

DOMINICK WEST - DIRECT

1 warrant. So it's now as though that was the Defendant  
2 that they were trying to get the gun from.

3 And so, I, I believe that that's prejudicial,  
4 that it invades my client's right to a fair trial, that  
5 it's mistrial material, that that is the State commenting  
6 on either one of these gentlemen's right to remain silent,  
7 that they should not be permitted to do that.

8 And that a mistrial should be granted at this  
9 time.

10 THE COURT: Thank you, Mr. Wilder. Do you join  
11 in that motion?

12 MR. SULLIVAN: I do, because it was, as  
13 Mr. Wilder said, because it was unclear if it was Mr.  
14 Montgomery or both Mr. Montgomery and Mr. Anderson. I  
15 would join in.

16 THE COURT: Thank you. Mr. Corbett?

17 MR. CORBETT: Judge, the question was asked. It  
18 was objected to. Your Honor sustained the objection.

19 I rephrased and went a different direction away  
20 from that.

21 We -- ultimately my question was aimed at, you  
22 went to the residence and made an effort to find it, was  
23 what the gist of the question was intended to be it but it  
24 was objected to and it was sustained.

25 And, Judge, at this point we think that was the

DOMINICK WEST - DIRECT

1 proper remedy and we moved away from that issue.

2 THE COURT: All right. Anything further?

3 MR. WILDER: No, sir.

4 MR. SULLIVAN: No, Your Honor.

5 THE COURT: I'm going to deny the mistrial simply  
6 because I can give a curative instruction and I will give  
7 a brief instruction at the end that tells the jury  
8 defendants have a right to remain silent and they can't  
9 even consider that.

10 And I'll expand that to not just being, remaining  
11 silent here at trial if they do that, but at any point in  
12 time. So, I would give a curative instruction on that in  
13 my charge. All right.

14 Thank you. Bring the jury back in.

15 (Jury returns to courtroom at 10:14 a.m.)

16 THE COURT: Mr. Corbett, you may proceed.

17 BY MR. CORBETT:

18 Q. Investigator West, once the arrests are made then sort  
19 as the investigator, what's the next step for you?

20 A. What, like I say, Sammie Montgomery was arrested  
21 first. He was brought back to the Law Enforcement Center  
22 where he was --

23 Q. Well, I tell you what. But, you know, in terms of,  
24 they're already arrested?

25 A. Arrested.

## DOMINICK WEST - CROSS

1 Q. Then after they're, whichever direction they go, what  
2 as you, the investigator, are then doing?

3 A. Arrest and try to interview them.

4 Q. So you indicated you had gone back to the scene?

5 A. Going back --

6 Q. Did you indicate previously you went back to the  
7 incident scene?

8 A. When?

9 Q. After the arrest.

10 A. After arrest went to the Law Enforcement Center for  
11 the interview.

12 Q. No. I'm talking about unconnected to these two  
13 individuals. Did you go back to the scene?

14 A. Afterwards?

15 Q. Yes, sir.

16 A. Days afterwards. Yes, sir.

17 Q. Now at some point in time, do you compile all of your  
18 information into some type of report or packet?

19 A. Yes, sir. Package.

20 MR. CORBETT: Investigator West, thank you.

21 Please answer any questions these gentlemen have.

22 THE WITNESS: Yes, sir.

23 THE COURT: Mr. Sullivan?

24 MR. SULLIVAN: Thank you, Judge.

25 CROSS-EXAMINATION

## DOMINICK WEST - CROSS

1 BY MR. SULLIVAN:

2 Q. Investigator West, you said that your role when you  
3 first got to the scene was to talk to the first  
4 responders, see what they had to say. You went ahead and  
5 they showed you where different ballistics were and you  
6 set the markers out. Correct?

7 A. Yes, sir.

8 Q. And you stated that when you got there that the scene  
9 was secure. Correct?

10 A. Yes, sir.

11 Q. However, from the time that Angela was shot until the  
12 first responders got there, the scene wouldn't have been  
13 secure. Correct?

14 A. They was waiting for law enforcement. It wasn't  
15 secure.

16 Q. Right. So there was a time when -- after she got  
17 shot, there was a time that, obviously, it took until law  
18 enforcement to show up or EMS?

19 A. Yes, sir.

20 Q. Okay. Which would have given Toby Chandler a chance  
21 to hide the gun. Right?

22 A. I can't answer that.

23 Q. You have never talked to any witness who said that  
24 they saw Mr. Anderson shoot Angela Anderson. Have you?

25 A. I spoke to the witnesses who saw everything in the

## DOMINICK WEST - CROSS

1 front yard.

2 Q. But none of them have said that they saw Sherald  
3 Anderson shoot Angela Anderson?

4 A. They didn't put it in their statement.

5 Q. And nobody has ever told you that, that  
6 Mr. Anderson --

7 A. It was not in any statement nobody ever told me.

8 Q. Toby lied about having a, not having a gun and firing  
9 a gun. Didn't he?

10 A. What you mean?

11 Q. Well, in the beginning he didn't say that he had a  
12 gun --

13 A. In the -- I'm sorry.

14 Q. -- but he later came clean and revealed that not only  
15 did he have a gun but he shot a gun?

16 A. After interviewing all the witnesses, no witnesses  
17 stated to me that Toby Chandler ever had a gun. So when  
18 Toby Chandler was interviewed at the Law Enforcement  
19 Center after he arrived from Columbia, I didn't ask Toby  
20 whether he had a gun or not because no witnesses stated he  
21 had a gun.

22 So at the first, the initial interview with Toby  
23 Chandler, no gun was ever mentioned to me. So he just  
24 told me what took place at the incident location.

25 Q. You put the markers down. Right?

## DOMINICK WEST - CROSS

1 A. Yes, sir.

2 Q. Okay. So you saw where the casings were. Right?

3 A. Yes, sir.

4 Q. And the fact that there are casings in the locations  
5 that they were, that didn't give you any clue to, that it  
6 might be a good idea to ask Toby Chandler about a gun?

7 A. No. I never saw Toby Chandler with a gun so it was no  
8 need for me to ask him whether he had a gun or not.

9 Q. Now if Toby would have been honest in the beginning  
10 and told you that he had a gun and that he fired the gun,  
11 isn't it possible, maybe even probable, that he would have  
12 been charged with murder also if he would have been  
13 honest?

14 A. I can't answer that.

15 Q. In conducting your investigation and now, does it seem  
16 strange to you that now knowing that he did have a gun and  
17 was firing it, that no other witnesses seemed to have  
18 noticed this, that he was, not only that he had a gun and  
19 was firing it, but he was firing it in the roadway. Does  
20 that seem bizarre?

21 A. I can only tell you what the witnesses put down in  
22 their report. I can't say. There was so much going on  
23 that day, I guess they overlooked that. I can only give  
24 you what ballistics, when ballistics came back with three  
25 different shell casings.

## DOMINICK WEST - CROSS

1 Q. When did you first talk to Edward Brown and Marquise  
2 Lucas?

3 A. They was never -- their names was never brought up in  
4 the investigation until this trial started.

5 Q. Okay. But you would agree that they're key witnesses  
6 or important witnesses in this case in that they saw the  
7 events that occurred?

8 A. From what I heard, they testified to just about the  
9 same thing all the other witnesses stated to me.

10 Q. Well, didn't Edward Brown seem to have a good, from  
11 his testimony, seem to have a good vantage point of what  
12 happened and was a very --

13 MR. WILDER: Your Honor.

14 THE COURT: What's your objection?

15 MR. WILDER: I would like to object to that.  
16 He's asking Investigator West -- he wasn't there. He  
17 doesn't know where Edward Brown was standing so --

18 THE COURT: Sustained.

19 MR. WILDER: -- calls for speculation, Judge.

20 BY MR. SULLIVAN:

21 Q. Okay. The point I'm getting at, Investigator West, is  
22 you found out or law enforcement found out about Edward  
23 Brown and Marquise Lucas as a result of my investigation?

24 A. I found out Monday.

25 Q. Okay. But those are two witnesses that law

## DOMINICK WEST - CROSS

1 enforcement didn't originally talk to; correct?

2 A. When I interviewed the individuals on the scene, those  
3 two wasn't there.

4 Q. They weren't there. But you did question witnesses  
5 there and asked them about what happened; correct?

6 A. Yes, sir.

7 Q. And you asked those witnesses about who all was  
8 there. Right?

9 A. The two men, the two guys' name that you was calling,  
10 the names never came up in my investigation until Monday.

11 Q. There have been no witnesses throughout your  
12 investigation that have ever said that there was any  
13 problems between Sherald and Angela. Correct?

14 A. I can't answer that.

15 Q. You can't tell me whether or not there are any  
16 witnesses who have told you that there's been any --

17 MR. WILDER: I'm going to object on the grounds  
18 of hearsay, Your Honor.

19 THE COURT: Sustained.

20 BY MR. SULLIVAN:

21 Q. Okay. Let me ask it this way: As a result of your  
22 investigation, has there been anything to indicate that  
23 there's any issues between Angela and Sherald?

24 A. Not that I know of.

25 Q. Okay. And the only witness for the -- the only State

DOMINICK WEST - CROSS

1 witness from your investigation that would have seen  
2 Angela shot would be Toby Chandler. Right?

3 A. Toby Chandler and Angela -- and Mr. Montgomery.

4 Q. Okay. But as far as the State's witnesses -- and the  
5 only person who was back there who could really say what  
6 happened, back behind the trailer, would be Toby?

7 A. That's it.

8 Q. So as far as the State's witnesses, who's the only one  
9 who can really say what exactly happened back there behind  
10 the trailer?

11 A. Yes, sir.

12 Q. It's possible that Toby shot her, isn't it?

13 A. Can't answer that.

14 MR. CORBETT: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. SULLIVAN:

17 Q. Wasn't Angela Anderson shot in the back?

18 A. That was told to me. Yes, sir. I never saw her, so.

19 Q. Okay. And no bullets, no gun have ever been found on  
20 Sherald's person or -- and his residence wasn't searched  
21 as a result of this incident. Was it?

22 A. In an attempt to locate Mr. Anderson, we went to his  
23 mother's residence. She gave us consent to search the  
24 residence for him as well as his firearms. Nothing was  
25 found.

## DOMINICK WEST - CROSS

1 MR. SULLIVAN: Thank you, Investigator West.

2 THE WITNESS: Yes, sir.

3 THE COURT: Mr. Wilder?

4 MR. WILDER: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. WILDER:

7 Q. Investigator West, you're aware of the crime scene log  
8 in connection with this case, aren't you?

9 A. Yes, sir.

10 Q. I'm going to show it to you because I doubt you  
11 remember every time that's on there. I wouldn't expect  
12 you to. But, tell the jury what time Officer Colclough  
13 was put down on the crime scene log.

14 A. He put himself down at 16:20.

15 Q. And that's on the same date the incident happened?

16 A. Yes, sir.

17 Q. And so Colclough would have been the first responder.  
18 That's the way you respond to it or put it down on the  
19 form?

20 A. Yes, sir.

21 Q. The first responder so he's the officer first on the  
22 scene. Right?

23 A. Yes, sir.

24 Q. Now do you see Officer Colclough in the courtroom?

25 A. No, sir.

## DOMINICK WEST - CROSS

1 Q. Where is he? Where is Officer Colclough?

2 A. He may be working. I can't tell you that. I don't  
3 know.

4 Q. Well, where was he yesterday?

5 A. I don't have an answer for that.

6 Q. How about Monday, where was he?

7 A. He was not here.

8 Q. All of this week he's been working at law enforcement,  
9 right, on duty, off and on?

10 A. I don't know if he was working but he's still employed  
11 with us

12 Q. So he's employed. Well, so he's earning a paycheck.  
13 He's somewhere over there. Right?

14 A. Yes, sir?

15 Q. Well he's not shot, missing in action, gone to Iraq,  
16 dead, anything like that. Is he?

17 A. Not that I heard of.

18 Q. Okay. So he's available to you. If you pick up your  
19 radio or your phone and you call him, you can get him over  
20 here. Can't you?

21 A. Yes. Possible.

22 Q. In fact, if you call him, boom, he'd be right here.  
23 Wouldn't he?

24 A. Yes, sir.

25 Q. That's your expectation. Now -- and he's the guy that

## DOMINICK WEST - CROSS

1 was first on the scene. Right?

2 A. Yes, sir.

3 Q. Did you spread the yellow tape that's all in these  
4 pictures?

5 A. The crime scene tape?

6 Q. Yes, sir.

7 A. No, sir. He did.

8 Q. He did. Well you think he did, but you weren't there  
9 to see him. Were you?

10 A. Sir?

11 Q. You think he did, but you weren't there to see Officer  
12 Colclough spread that yellow tape.

13 A. He was the only law enforcement officer there.

14 Q. Okay.

15 A. At the scene.

16 Q. So tell the jury again what time he got there.

17 A. 16:20.

18 Q. And what time did you get there, Officer West?

19 A. 17:45.

20 Q. An hour and how many minutes later?

21 A. It was 25, hour 25 minutes.

22 Q. An hour and 25 minutes later you get there. He's  
23 there for an hour and 25 minutes, is that right, before  
24 you get there?

25 A. I don't think it would have been an hour. His time is

## DOMINICK WEST - CROSS

1 probably wrong there but.

2 Q. Well, that's what the form says. Isn't it?

3 A. That's what the form states.

4 Q. That's what it says. And whose signature is down  
5 there at the bottom of it? Do you recognize that one?

6 A. His signature is there.

7 Q. It's Mr. Colclough's signature there. Isn't it?

8 A. It's his writing.

9 Q. Well, that's his job. He's the first responder. He  
10 puts down the time people come to the crime scene. He  
11 put there that you got there an hour and 25 minutes  
12 later. Right?

13 A. Yes, sir. Right before Sergeant Burnish.

14 Q. Well, tell me how long it was before Mr. Colclough  
15 spread that yellow tape around there. It was before you  
16 got there. We know that.

17 A. Like I stated, his time is possibly wrong because it  
18 didn't take me an hour and 25 minutes to get there.

19 Q. But that's what the form says. And you don't  
20 remember. Do you?

21 A. That's what the form states.

22 Q. Okay. All right. Now, when you get there and you put  
23 the little yellow markers all around where there're  
24 casings. And Colclough is helping you find where they  
25 are. Right?

## DOMINICK WEST - CROSS

1 A. Yes, sir.

2 Q. Now sometime that same day you begin interviewing  
3 different people who were shown to you as having something  
4 to do with the case. Right?

5 A. Who was present at the incident location.

6 Q. And part of that is you talking to Toby Chandler.  
7 Right?

8 A. I talked to him later on that evening after he arrived  
9 from the hospital.

10 Q. And before you talked to -- you talked to Toby before  
11 any warrants were issued. Didn't you?

12 A. Sir?

13 Q. You talked to Toby before any warrants were issued.  
14 Didn't you?

15 A. I talked to him that evening. Yes, sir.

16 Q. And you talked to him before any warrants were issued?

17 A. Yes, sir. That's right.

18 Q. Okay. Ask the Court's indulgence. The form I'm  
19 looking for is over here.

20 THE COURT: Yes, sir.

21 (Pause.)

22 BY MR. WILDER:

23 Q. Did you take a written statement from Toby Chandler?

24 A. Yes, sir.

25 Q. And of course your file, you kept a copy of it; did

DOMINICK WEST - CROSS

1 you not?

2 A. Yes, sir.

3 Q. I'll recall upon the State to produce a copy that they  
4 took of that statement.

5 MR. CORBETT: Judge, I would look for any  
6 additional copies, but copies of the statements were  
7 provided to the defense.

8 THE COURT: All right.

9 BY MR. WILDER:

10 Q. I'm going to show you something and ask you: Can you  
11 identify your signature? Is that your signature?

12 A. Yes, sir.

13 Q. I'd ask that it be marked for identification, Your  
14 Honor.

15 THE COURT: Yes, sir.

16 (Thereupon, Defendant's Exhibit No. 8, Chandler's  
17 statement, was marked for identification.)

18 BY MR. WILDER:

19 Q. All right. Investigator West, it's been marked as  
20 Defense for ID Number Eight. And you've identified that  
21 as a statement you took from Toby Chandler.

22 Would you tell the jury what time of day you took that  
23 statement from Toby Chandler?

24 A. The time was, the initial time of the interview,  
25 started interview at 20:15.

## DOMINICK WEST - CROSS

1 Q. Okay. And did he write the statement or did you write  
2 it?

3 A. He wrote it.

4 Q. And did he sign it in your presence?

5 A. Yes, sir.

6 Q. Okay. And during that whole interview, he never said  
7 anything about shooting a gun. Did he?

8 A. The question was never asked to him whether he shot a  
9 gun.

10 Q. I didn't ask you that, Investigator West. I asked  
11 you: During that whole interview, did he ever say  
12 anything about shooting a gun?

13 A. No, sir.

14 Q. Did he ever say that he had one?

15 A. No, sir.

16 Q. And you did ask him how it happened. Didn't you?

17 A. I did ask him what took place that day.

18 Q. And so he didn't say anything about having a gun or  
19 shooting one, he must have been lying to you because his  
20 lips were moving. Right?

21 A. Yes, sir.

22 Q. Yes, sir. Thank you very much. All right.

23 So Toby Chandler starts out lying to you. And then  
24 after that y'all get a warrant for my client, Sammie  
25 Montgomery. That's the order of the time. Right?

DOMINICK WEST - CROSS

1 A. Warrants were obtained that day. I don't know what  
2 time it took place.

3 Q. Can you identify that?

4 A. Warrant.

5 Q. It's a warrant for my client. Isn't it?

6 A. Yes, sir.

7 Q. All right.

8 MR. WILDER: Ask that be marked for  
9 identification.

10 THE COURT: Nine for identification only.

11 (Thereupon, Defendant's Exhibit No. 9, warrant,  
12 was marked for identification.)

13 BY MR. WILDER:

14 Q. All right. Now, finally, who signed that warrant?

15 A. Captain Turner, James Turner.

16 Q. And Captain Turner is on the State's witness list. So  
17 I presume he's also working?

18 A. He's around.

19 Q. And we've seen him come and go from the courtroom this  
20 week so we know he's still alive and breathing. Right?

21 A. Yes, sir.

22 Q. You call him, he comes. Right?

23 A. Yes, sir.

24 Q. So he's within your control. Correct?

25 A. Yes, sir.

DOMINICK WEST - CROSS

1 Q. Now, any question about when the warrant's issued, we  
2 can get Mr. Turner over here and have him answer that  
3 question. Couldn't we?

4 A. Yes, sir.

5 Q. Fair enough. All right. Now, David Florence on the  
6 State's witness list, he's alive and breathing. Right?

7 A. Yes, sir.

8 Q. And where was he in connection with the investigation  
9 of the case?

10 A. I can't answer that. I'm not sure.

11 Q. You don't know why Mr. Corbett has him on his witness  
12 list?

13 A. No, sir.

14 Q. Well, he's alive and breathing. And you could call  
15 him to get him over here if you need to have him here.  
16 Correct?

17 A. Yes, sir.

18 Q. David Florence, Jamie Turner, Officer Colclough. And  
19 I believe I saw Mr. Burnish walk in and disappear. Right?

20 A. Yes, sir.

21 Q. So officer Burnish who's also helped you with this  
22 investigation in places, he's available to you?

23 A. Yes, sir.

24 Q. Haven't heard him testify though, yet. Have we?

25 A. No, sir.

DOMINICK WEST - CROSS

1 Q. All right. Now, I believe you said you did not take a  
2 statement from Xavier Rhodes and you did not take a  
3 statement from Edward Brown. Right?

4 A. Yes, sir. That's right.

5 Q. Now let me show you State's -- I mean, Defense Exhibit  
6 for ID Number One. Can you identify your signature on  
7 that?

8 A. Yes, sir.

9 Q. Is that a statement you took from Willie Mae Duffie?

10 A. It is.

11 Q. And you verified that that is your signature?

12 A. It is.

13 Q. And you were the one who accomplished taking that  
14 statement from Willie Mae Duffie?

15 A. Yes, sir.

16 Q. And does it stop with the point in time when Angela  
17 was shot and that's it?

18 A. It's -- Angela was shot when she went outside.

19 Q. Now presume that if she wanted to tell you anything  
20 else, you would have written down what she had to say?

21 A. Whatever she stated.

22 Q. And then she didn't tell you anything else but that,  
23 so that's what was in the statement. Right?

24 A. Yes, sir. That was it.

25 Q. Let me show you Defense for Exhibit Number Two and ask

DOMINICK WEST - CROSS

1 you: Can you identify your signature on that statement?

2 A. It is.

3 Q. Whose statement is that?

4 A. Ms. Demetria Duffie.

5 Q. And Demetria Duffie, she -- did she give you a  
6 statement the same day or the next day?

7 A. It was the day of the incident.

8 Q. The day after. Okay.

9 A. The day of the incident.

10 Q. The day of the incident? The 10th.

11 A. Yes, sir.

12 Q. What time of day were you talking to Demetria?

13 A. It was 17:25 the interview started.

14 Q. And her statement stopped with Angela getting shot?

15 A. Yes, sir.

16 Q. Nothing else?

17 A. No.

18 Q. I presume if she had told you anything else about  
19 seeing a gun being hid or knowing anything about a gun  
20 Toby had, you would have wrote that down. Wouldn't you?

21 A. Yes, sir.

22 Q. Okay. Let me show you -- oh, by the way. None of  
23 these people are saying that they ever saw Toby with a gun  
24 in the first place. Are they?

25 A. No statement.

## DOMINICK WEST - CROSS

1 Q. So if they were shooting in the road out there in  
2 front of the porch between Mr. Anderson and Toby Chandler,  
3 not a one of them said Toby had a gun. Did they?

4 A. No statement stated that.

5 Q. Not a single one. Okay. Let's look at Defense  
6 Exhibit Number Three for ID. Is that your signature on  
7 that document?

8 A. It is.

9 Q. Whose statement is that?

10 A. Mr. Isaac Duffie.

11 Q. Mr. Isaac Duffie. Does his statement stop with Angela  
12 getting shot?

13 A. That he went out the back door, saw her lying on the  
14 ground.

15 Q. That's it. Doesn't say anything about what happened  
16 after that. Correct?

17 A. That's it.

18 Q. Doesn't say anything about Toby having a gun. Does  
19 it?

20 A. No.

21 Q. Towanda Duffie. Defense for ID Number Five, is that  
22 your signature on that statement?

23 A. Yes, sir.

24 Q. Statement of Towanda Duffie. Correct?

25 A. Yes, sir.

## DOMINICK WEST - CROSS

1 Q. Towanda Duffie doesn't say anything about Toby  
2 Chandler having a gun. Does she?

3 A. No, sir.

4 Q. Okay. And, you know, curiously the only person who  
5 says anything about Sammie having a gun is Toby Chandler.

6 MR. CORBETT: Objection, Your Honor.

7 MR. WILDER: Isn't that right?

8 THE COURT: Sustained. Mr. Wilder.

9 MR. WILDER: I'll rephrase it, Your Honor.

10 BY MR. WILDER:

11 Q. In any of those statements that you have in front of  
12 you, did any one of the witnesses say that Sammie had a  
13 gun other than Toby Chandler?

14 A. No, sir. None of the witnesses stated that.

15 Q. Let's look at Defense for ID Number Seven. Can you  
16 identify your signature on that statement, sir?

17 A. Yes, sir.

18 Q. Whose statement is that?

19 A. Mine.

20 Q. Well, who signed it? Whose statement were you taking?

21 A. Oh. Whose statement? I'm sorry. Isis Davis.

22 Q. Isis Davis. And Isis Davis, did she -- he say  
23 anything to you about Toby Chandler having a gun?

24 A. Did she? No, sir.

25 Q. So it would be fair to say to the jury that the first

DOMINICK WEST - CROSS

1 time you heard anything about Toby Chandler having a gun  
2 in the way of a witness saying so is Toby in here on  
3 Monday morning?

4 A. This week.

5 Q. This week. Right?

6 A. Yes, sir.

7 Q. And that shocked you. Didn't it?

8 A. It did.

9 Q. Okay. However, you had been told at one time before  
10 by Samuel Montgomery. Hadn't you?

11 A. Yes. When he was in --

12 MR. CORBETT: Objection, Your Honor. Calls for  
13 hearsay.

14 THE COURT: Sustained.

15 MR. WILDER: All right.

16 BY MR. WILDER:

17 Q. Let me show you a statement and ask that it be marked  
18 for identification. Is that your signature?

19 A. It is.

20 Q. Whose statement is that?

21 A. It's Samuel Montgomery.

22 Q. And Samuel Montgomery --

23 MR. CORBETT: Your Honor, at this time we would  
24 interpose an objection.

25 THE COURT: All right. Let me -- I'm going to

DOMINICK WEST - CROSS

1 send the jury into the jury room for a few minutes. It's  
2 time for a break anyway.

3 Please do not discuss the case with anyone  
4 including yourself.

5 (Jury exits courtroom at 10:46 a.m.)

6 THE COURT: All right. Mr. Corbett?

7 MR. CORBETT: Your Honor, my objection is that by  
8 handing this statement to this witness, it is the  
9 deliberate effort to put in hearsay to the jury, knowing  
10 all along that that statement of his client is hearsay as  
11 related to this witness. And that this is nothing but a  
12 veiled attempt to have portions of that statement  
13 published to the jury without the Defendant having to take  
14 the stand.

15 THE COURT: Mr. Wilder?

16 MR. WILDER: Your Honor, if it please the Court.  
17 I believe I am entitled to have the witness identify his  
18 signature, identify the time and date that he did have a  
19 conversation with my client.

20 I agree that the substance of the conversation  
21 may be beyond what the Court would permit me to go into.  
22 But the fact that the conversation took place, the fact  
23 that -- and sometimes the Court -- I think I'm actually  
24 legally obligated and entitled to have the information of  
25 the fact, did you have a conversation with so and so. As

DOMINICK WEST - CROSS

1 a result of that conversation what did you do. Those  
2 things are not hearsay.

3 So, the fact that he had the interview, when the  
4 interview was, the circumstances of the interview, to wit,  
5 that he had been advised, that this man advised him of his  
6 right to remain silent, da-da-da-da-da, that he signed a  
7 waiver of rights form, that he was interviewing my  
8 client.

9 But the substance of it --

10 THE COURT: Yeah, but the problem you run into  
11 with that is that you leave the jury with an inference  
12 that your guy was cooperative and gets in, and what he  
13 said is in his favor without him taking the stand.

14 MR. WILDER: Well, Your Honor, the inference --  
15 the State is entitled to then put in the whole statement  
16 once I open the door to it, I believe.

17 So I don't, I don't believe that the inference is  
18 one that cannot be corrected by the truth should the  
19 State --

20 THE COURT: No, but you're trying to get in, you  
21 want the second part of that statement in there. You want  
22 the first part and then you want the second part without  
23 your guy taking the stand.

24 MR. WILDER: Well, Your Honor, I don't deny that  
25 I want it all in there. I'm not denying that at all. And

## DOMINICK WEST - CROSS

1 I would never mislead the Court.

2 THE COURT: What you're trying to do is crack  
3 open the door and let them look in there but not let them  
4 actually see the document.

5 MR. WILDER: Well, Your Honor, I'm going to be  
6 satisfied for the moment with the fact that he took the  
7 interview and that a statement was given. And then the  
8 substance of it, I agree that that's hearsay at the  
9 moment.

10 THE COURT: Mr. Corbett?

11 MR. CORBETT: Judge, the problem with this is --

12 THE COURT: I mean, he just moved for a mistrial  
13 a little while ago because they made an inference that a  
14 statement was made by your client. I don't know how you  
15 can take both positions on it.

16 MR. CORBETT: And, Judge, if --

17 MR. WILDER: I'm a defense lawyer, Your Honor.

18 MR. CORBETT: Judge, even though this isn't my  
19 issue to raise but it puts me in a predicament because  
20 Mr. Wilder says, oh, if there's that inference then the  
21 State can go ahead and put the whole thing in.

22 But as you're aware, there's already been an  
23 objection as to Brewton matters on this statement. So  
24 it's an effort to put something there in front of the  
25 jury.

## DOMINICK WEST - CROSS

1 THE COURT: Well, and then not putting it in  
2 front of the jury,

3 MR. CORBETT: Sir?

4 THE COURT: And then not put it in front of the  
5 jury.

6 MR. CORBETT: Exactly.

7 THE COURT: I'm going to sustain your objection.

8 MR. WILDER: All right. Your Honor, I would like  
9 to proffer the statement out of the presence of the jury  
10 at this time.

11 THE COURT: You may do so.

12 MR. WILDER: Okay.

13 BY MR. WILDER:

14 Q. So, now. Dominick West. Is that Samuel Montgomery's  
15 signature signed in your presence?

16 A. Yes, sir.

17 Q. Would you tell the Court for the record the date and  
18 time the statement was given?

19 MR. CORBETT: Your Honor, I'm sorry, Your Honor.  
20 I'm sorry to interrupt but may I ask that the record  
21 reflect that this same statement was the subject of a  
22 Jackson versus Denno hearing prior to the --

23 THE COURT: That is correct. And it was ruled  
24 that it was freely and voluntarily given and would be  
25 admissible under the right circumstances.

## DOMINICK WEST - CROSS

1 BY MR. WILDER:

2 Q. All right. So now, Officer West, when, where was that  
3 statement given by Samuel Montgomery?

4 A. The date was May 11, 2008. The time was 15:58. The  
5 location was Sumter LEC.

6 Q. And you agree that that statement was given in your  
7 presence and at your request?

8 A. Yes, sir. It was.

9 Q. And after you advised Mr. Montgomery of all of his  
10 rights, privileges to remain silent, et cetera?

11 A. Yes, sir.

12 Q. Let me show you another copy of it which has already  
13 been marked as Court's Exhibit Number One.

14 A. Okay.

15 Q. Is that the same copy of it that's already been marked  
16 for Court's purpose?

17 A. Yes, sir.

18 Q. Same. Okay. Now, and so, in connection with that,  
19 Mr. Montgomery wrote that in his own handwriting in your  
20 presence. Did he not?

21 A. Yes, sir. He did.

22 Q. Okay. It wasn't anything you told him to make him say  
23 one thing or another. He just put down what he  
24 remembered?

25 A. What took place.

## DOMINICK WEST - CROSS

1 Q. What he wanted to write. Okay.

2 A. Yes, sir.

3 Q. All right. And that is Court's Exhibit Number One?

4 A. Yes, sir.

5 Q. Your Honor, I don't need to publish it for the record  
6 because it's already part of the Court record. So in the  
7 interest of time, I won't ask him to read it or anything  
8 of that nature.

9 THE COURT: All right. Thank you.

10 MR. WILDER: Your Honor, we would -- we do  
11 believe that we are entitled even at this point, so I  
12 respectfully except, I understand the Court's ruling. I'm  
13 not going to argue with you at all insofar as being  
14 further heard, but I do respectfully except to the Court's  
15 decision on that.

16 THE COURT: All right.

17 MR. WILDER: We're ready to continue in the  
18 presence of the jury.

19 THE COURT: Why don't we all take a break at this  
20 point in time? Let's take a 15-minute break. We'll  
21 return at 10:10 -- or 11:10. Court's in recess until  
22 11:10.

23 You may step down. You're still on the witness  
24 stand, subject to Cross-Examination. You're not to talk  
25 to anybody.

1 THE WITNESS: Yes, sir.

2 (Thereupon at 10:54 a.m., a break was taken. At  
3 11:54 a.m., the trial resumed as follows:)

4 THE COURT: Now, let's bring the jury in.

5 (Jury enters courtroom at 11:54 a.m.)

6 THE BAILIFF: All jurors and alternate back in  
7 the courtroom.

8 THE COURT: Thank you, Mr. Prince.

9 Ladies and gentlemen of the jury, you've been out  
10 for about an hour. I didn't want to just keep you out.  
11 We have some other issues that we're still going to have  
12 to deal with before I bring you back into the courtroom,  
13 however I didn't want to just keep you back there.

14 So what I'm going to do is I'm going to go ahead  
15 and release you for lunch with the instructions that you  
16 be back here at two o'clock. As always, you are not to  
17 discuss anything about this case with anyone, even amongst  
18 yourselves.

19 So I'll see you back here at two o'clock. And I  
20 know you'll be prompt just like you've been every time  
21 we've had court. Thank you very much. Have a nice  
22 lunch.

23 (Jury exits courtroom at 11:56 a.m.)

24 THE COURT: Court will be at ease for the next 30  
25 minutes.

1           (Thereupon, the Court stood at ease until  
2 12:37 p.m., and the trial resumed as follows:)

3           THE COURT: All right. Mr. Corbett, I understand  
4 there's been a change in the posture of this case?

5           MR. CORBETT: That is correct, Your Honor.

6           With regard to this case of State of South  
7 Carolina versus Samuel Montgomery and Sherald Anderson,  
8 Your Honor, there has been extensive discussions between  
9 the State and the defense regarding this case.

10           And I believe we are now at the following point;  
11 that Samuel Montgomery will plead to the lesser-included  
12 offense of involuntary manslaughter. The co-Defendant  
13 Sherald Anderson will plead to two counts of assault with  
14 intent to kill, and one count of possession of a pistol by  
15 a person with a conviction for a crime of violence as  
16 defined in the statute.

17           Your Honor, the only recommendation in the case  
18 will pertain to the Defendant Anderson. And at the  
19 appropriate time, I will advise the Court as to the  
20 negotiations surrounding that.

21           (Defendants placed under oath.)

22           THE COURT: Let me just have one at a time and  
23 complete it. So I think I'll go ahead and do Mr. Wilder's  
24 first. So if you want to go ahead and be seated we can do  
25 that.

1 MR. SULLIVAN: Okay.

2 THE COURT: All right. Mr. Wilder, you represent  
3 Mr. Samuel Montgomery?

4 MR. WILDER: I do, Your Honor.

5 THE COURT: Have you had an opportunity to talk  
6 with Mr. Montgomery about the charges contained that he's  
7 facing and that he intends to plead guilty to at this  
8 point in time?

9 MR. WILDER: Yes, Your Honor. I have.

10 THE COURT: Do you believe he's understood  
11 everything that you've told him?

12 MR. WILDER: I believe he does, Your Honor.

13 THE COURT: Do you agree with his decision to  
14 plead guilty to the charge of involuntary manslaughter?

15 MR. WILDER: Yes, sir. I agree with that.

16 THE COURT: Do you think if this case would  
17 continue on through the trial that there would be a  
18 substantial likelihood that he could be convicted of at  
19 least involuntary manslaughter?

20 MR. WILDER: Yes, sir. I do believe that.

21 THE COURT: Now, Mr. Montgomery, I need to ask  
22 you a series of questions to make sure that you're  
23 entering your plea freely and voluntarily, knowingly and  
24 intelligently, the charges that you're pleading to and the  
25 consequences of your plea.

1           Now, you understand that we have begun the trial,  
2 but the trial has not yet been completed. All the  
3 testimony has not been put into evidence that will be put  
4 into evidence and the jury has not had an opportunity to  
5 deliberate on this.

6           And you understand that if you were to go forward  
7 and decided not to testify, I would instruct the jury that  
8 they could not consider the fact that you did not testify  
9 in any way whatsoever and it couldn't even be discussed in  
10 the jury room.

11           Of course, you would also have the right to  
12 testify if you chose to do so. Do you understand that?

13           THE DEFENDANT MONTGOMERY: Yes, sir.

14           THE COURT: Now, and you understand that when you  
15 plead guilty at this point in time all of that -- it's now  
16 in your hands and my hands from this point forward?

17           THE DEFENDANT MONTGOMERY: Yes, sir.

18           THE COURT: Now, are you under the influence of  
19 alcohol or drugs?

20           THE DEFENDANT MONTGOMERY: No, sir.

21           THE COURT: Are you taking any medications that  
22 would cloud your judgment in any way?

23           THE DEFENDANT MONTGOMERY: No, sir.

24           THE COURT: Are you aware of any physical or  
25 emotional or nervous condition that would make it

1 difficult for you to understand what's happening in this  
2 courtroom at this time?

3 THE DEFENDANT MONTGOMERY: No, sir.

4 THE COURT: Now, you understand that the charge  
5 that you're pleading guilty to, involuntary manslaughter,  
6 carries a maximum sentence of up to five years. Do you  
7 understand that?

8 THE DEFENDANT MONTGOMERY: Yes, sir.

9 THE COURT: And this is a non violent offense  
10 that -- all right.

11 Solicitor, what are the facts that you think  
12 would show at this point in time?

13 MR. CORBETT: Yes, sir, Your Honor. Your Honor,  
14 as has been stated in the case through the testimony of  
15 the witnesses before the Court, Your Honor, three  
16 witnesses have identified Mr. Montgomery as one of the  
17 individuals who shot on the day in question.

18 Judge, we are cognizant of the fact that when you  
19 go to trial it is the credibility of the witnesses that  
20 are being judged. Mr. Montgomery is charged with murder  
21 which as the Court knows would require a showing of malice  
22 aforethought.

23 We understand those issues and the difficulty of  
24 proving to 12 people beyond a reasonable doubt that that  
25 existed under these circumstances, especially in light of

1 the fact that so far all the witnesses seem to have  
2 another individual initiating the events in the front  
3 yard.

4           But nonetheless, we believe that Mr. Montgomery  
5 fired his weapon. And we believe that in the firing of  
6 that weapon from what we can tell he likely intended --  
7 was shooting at someone else, but that it's, one of his  
8 rounds struck Angela Anderson resulting in her death.

9           So based on all of the facts and circumstances --  
10 Judge, when I say, all of the facts and circumstances,  
11 it's not just the fact that you hear it but the fact that  
12 the jury has to weigh the credibility of that.

13           We have to make decisions based on the strength  
14 of our case when we enter into plea negotiations. And we  
15 understand that, for example, there's a group of shell  
16 casings in the backyard that are unexplained. We  
17 understand that Mr. Montgomery gave a statement to law  
18 enforcement posturing his case as a situation of self  
19 defense.

20           So under all of those circumstances and  
21 understanding the risk of continuing on with trial and  
22 after some emotional time with the family and time of  
23 pondering and some crying and everything else, we believe  
24 that as of today this is the best that, the best situation  
25 that we could come to.

1 THE COURT: All right. Mr. Montgomery, do you  
2 agree with the facts as stated by the State?

3 THE DEFENDANT MONTGOMERY: Yes, sir.

4 THE COURT: And are you in fact guilty of the  
5 charge of involuntary manslaughter?

6 THE DEFENDANT MONTGOMERY: Yes, sir.

7 THE COURT: Now, again, you understand that when  
8 you plead guilty you waive certain constitutional rights,  
9 that you would not have to if you had gone on to trial.

10 The first right is you waive your right of self-  
11 incrimination. Again as I said you would never be  
12 required to testify in this court, but when you plead  
13 guilty you're in essence doing that.

14 Do you wish to waive your right against self-  
15 incrimination at this time?

16 THE DEFENDANT MONTGOMERY: Yes, sir.

17 THE COURT: Now, and again, you understand that  
18 you're looking at up to five years' incarceration for this  
19 charge?

20 THE DEFENDANT MONTGOMERY: Yes, sir.

21 THE COURT: Now, has anybody threatened you in  
22 any way to get you to plead guilty?

23 THE DEFENDANT MONTGOMERY: No, sir.

24 THE COURT: Has anybody promised you anything to  
25 get you to plead guilty?

1 THE DEFENDANT MONTGOMERY: No, sir.

2 THE COURT: Is the only reason that you're  
3 pleading guilty is because you are in fact guilty of the  
4 charge of involuntary manslaughter?

5 THE DEFENDANT MONTGOMERY: Yes, sir.

6 THE COURT: Are you satisfied with the services  
7 rendered to you by Mr. Wilder?

8 THE DEFENDANT MONTGOMERY: Yes, sir.

9 THE COURT: Has he done everything that you think  
10 he should have done?

11 THE DEFENDANT MONTGOMERY: Yes, sir.

12 THE COURT: Do you think he's had sufficient time  
13 to investigate the facts and circumstances of this case so  
14 at this juncture you think he has advised you properly as  
15 to whether to plead guilty or take it on to the jury?

16 THE DEFENDANT MONTGOMERY: Yes, sir.

17 THE COURT: And you understand that -- do you  
18 need any more time to speak to Mr. Wilder?

19 THE DEFENDANT MONTGOMERY: No, sir.

20 THE COURT:- Do you understand that if you change  
21 your mind about whether or not to make the right decision  
22 about whether you pled guilty likely or not, that you only  
23 have 10 days in which to appeal this plea or the sentence  
24 that I give?

25 THE DEFENDANT MONTGOMERY: Yes, sir.

1 THE COURT: Do you understand as well that if you  
2 cannot afford an attorney for that appeal one will be  
3 appointed for you?

4 THE DEFENDANT MONTGOMERY: Yes, sir.

5 THE COURT: All right. On the lesser-included  
6 charge of involuntary manslaughter under indictment 2009-  
7 GS-43-0194, how do you plead; guilty or not guilty?

8 THE DEFENDANT MONTGOMERY: Guilty.

9 THE COURT: All right. I find there's a  
10 substantial factual basis for the plea. I find that the  
11 Defendant has entered into the plea freely and  
12 voluntarily.

13 Obviously he knew he had a right to a trial  
14 because we're in the middle of a trial and the jury is  
15 still out. If you were to change your mind at this point  
16 in time we could continue on with the trial. Do you  
17 understand?

18 THE DEFENDANT MONTGOMERY: Yes, sir.

19 THE COURT: Thank you. Mr. Corbett, what's his  
20 record?

21 MR. CORBETT: Mr. Montgomery has a prior  
22 conviction for failure to stop for a blue light, for  
23 simple possession of marijuana, and driving under  
24 suspension, another driving under suspension, and it looks  
25 like another driving under suspension --

1 THE COURT: Mr. Montgomery --

2 MR. CORBETT: I'm sorry.

3 THE COURT: Oh.

4 MR. CORBETT: -- and also, assault and battery of  
5 a high and aggravated nature.

6 THE COURT: All right. Mr. Montgomery, do you  
7 agree with the Solicitor's rendition of your criminal  
8 history?

9 THE DEFENDANT MONTGOMERY: Yes, sir.

10 THE COURT: All right. Mr. Corbett, would you  
11 like to say anything or the victim's family like to say  
12 anything?

13 (Pause.)

14 THE COURT: Please state your name.

15 UNIDENTIFIED SPEAKER: Sally Brunson, the mother  
16 of Angela Anderson.

17 THE COURT: Yes, ma'am.

18 MS. BRUNSON: I can't do this.

19 MR. CORBETT: Okay. That's all right.

20 THE COURT: Yes, ma'am. Please state your name.

21 UNIDENTIFIED SPEAKER: Marvalette Davis. I'm  
22 Angela Anderson's sister. I just ask that the Court give  
23 the maximum on this sentence.

24 MR. CORBETT: Judge, there's some other family  
25 members present but as you can tell, it's a very emotional

1 time for them.

2 THE COURT: I understand that. Mr. Wilder?

3 MR. WILDER: Your Honor, if it please the Court.

4 I want to hand up pictures that we took of the  
5 front of -- well, actually I didn't take them. My client  
6 took them. We took them yesterday evening.

7 State's Exhibit Number 17 is the picture that Ray  
8 Mackessy took of the front end of my client's truck the  
9 very next day. And I would like to get State's Exhibit  
10 Number 17 to hand up to you, Your Honor, so that you can  
11 see that what that is a blowup of, is the front end of the  
12 truck that Mr. Mackessy took the pictures of. The  
13 driver's side -- this is State's Exhibit 17, Your Honor.

14 THE COURT: Thank you.

15 MR. WILDER: Right behind that reflector on the  
16 front end of the truck, Your Honor, on the driver's side  
17 on 17 is the only, that one picture is the only picture  
18 that Mr. Mackessy took.

19 And, you remember, I cross-examined him on the  
20 stand and asked him, did you do a blowup on that, did you  
21 get in close on it. He said no. So State's Exhibit 17,  
22 that picture of the front end of the driver's side is the  
23 only State's Exhibit there was but if you look at that  
24 section of the truck closely, you can see a little silver  
25 spot down there behind the reflector. What that is is the

1 bullet that struck Sammie's truck that was fired by Toby  
2 Chandler on that day.

3           And the very next day it shows up on that  
4 picture. Now on the picture we took, obviously there's  
5 rust on it because it's been two years since the shooting  
6 happened. But, my client, Your Honor, clearly told the  
7 truth when he said he was being fired at by Toby  
8 Chandler.

9           And I do want the Court to look at his  
10 statement. I don't know if you got a chance --

11           THE COURT: I've got a copy of it up here.

12           MR. WILDER: Okay. It's Court's Exhibit Number  
13 One, Your Honor. From the git-go, I submit that all the  
14 people that testified, his statement is the truth, the  
15 whole truth and nothing but the truth. He said that he  
16 was fired at by Toby Chandler and he picked up his gun and  
17 he returned fire which unfortunately is a nine  
18 millimeter.

19           Now here's the bizarre thing, Your Honor. We  
20 don't believe that his bullet struck Angela. We do  
21 believe that Toby Chandler's bullet struck Angela from the  
22 back, that she was facing my client when it was fired,  
23 when the fired -- exchange of fire took place between Toby  
24 who fired first at Sammie and he returned fire.

25           Now here's where the reckless disregard for the

1 safety of others may be there and why I think he needs to  
2 plead guilty other than just the fact that he's not facing  
3 life in prison any more by pleading.

4           And the reckless disregard is, well, it was TEC-9  
5 and you heard the descriptions of the gunfire, blurp, you  
6 know, really fast. My client tells me it was not an  
7 automatic weapon. He fired the gun several times, but  
8 when you start squeezing off that many shots maybe he went  
9 too far.

10           Maybe -- I mean obviously he had self defense in  
11 mind in his heart and what the circumstances that came  
12 up. As Your Honor knows, the Castle doctrine applies to  
13 people in their car. This was his car. He was in his  
14 car.

15           There's an immunity from prosecution language in  
16 that statute. It's very strong. It creates the  
17 presumption of the fear that he was responding to, the  
18 reasonable apprehension of harm. In his mind it gives him  
19 an extra way to say to the jury, listen, I was in great  
20 fear of bodily harm. I was in my own truck. I was shot  
21 at. There's the bullet hole in my truck.

22           And, but again, although it is true and there is  
23 some basis in the law to say, well, you know, once a man  
24 is acting in self defense he has a right to empty his  
25 weapon. There's even case law to that effect. But,

1 still, Your Honor, there were other people present and  
2 unfortunately although no one intended that Angela get hit  
3 or be shot or be killed, she did get hit and she did die.

4           So, Your Honor, we are pleading guilty. We're  
5 begging for the mercy of the Court because this was  
6 clearly an unintentional thing that my client did not  
7 intend to have happen.

8           He certainly did not go there looking for any  
9 trouble. He didn't even know that Toby Chandler was going  
10 to show up. And Your Honor, so -- as sorry as he is for  
11 all of that, he can't bring back Angela.

12           Your Honor, I want to say that we also feel sorry  
13 for Edward, Mr. Brown, Angela's son. But I believe he  
14 came closest to telling the truth of any witness that  
15 testified so far.

16           And the police never had an opportunity to talk  
17 to him because Toby Chandler obviously lied to the police  
18 from the git-go and put the law enforcement on the wrong  
19 trail as to how to go about trying to figure out what  
20 actually happened out there.

21           And, Your Honor, Edward testified that, you will  
22 remember that Angela ran around the corner of the trailer  
23 before Toby did, and that Toby ran around after Angela did  
24 with the gun in his hand after already shooting a few  
25 times out in the road.

1           And then Your Honor is aware of those shell  
2 casings that were behind the house. Obviously Toby  
3 continued to fire his weapon behind the house ejecting  
4 those cartridges. Those shell casings were from the same  
5 gun. The only person that any of the witnesses who  
6 testified was firing behind the trailer was Toby Chandler.

7           So we -- we believe that the facts make out the  
8 situation that we find ourselves in. We beg for the mercy  
9 of the Court.

10           Your Honor, my client has been out for some  
11 time. He did spend about 15 months in jail. Whatever  
12 fashion you want to give to the sentence, I ask you to  
13 give him credit for the time that he served towards  
14 whatever he might have to serve from this point forward.

15           But I do ask that you consider, Your Honor, that  
16 he has been on good behavior. This man has come up here.  
17 Not only did he waive his rights to counsel and talk to  
18 the police at the beginning of their investigation and  
19 tell the truth, Your Honor, he came up here each and every  
20 time I ever asked him to appear in the courthouse. He was  
21 cooperative with me. He did the best he could.

22           He, all throughout this trial he remained out,  
23 free to come and go and has always come and been here  
24 promptly each and every time that the Court's been in  
25 session. I'm begging for mercy for this man, Your Honor.

1 THE COURT: Would he like to say anything;

2 THE DEFENDANT MONTGOMERY: I just like to say  
3 that I know it was tragic, Your Honor, but I never would  
4 hold it, to do anything to nobody. And if my bullet did  
5 hit her which I don't think so, I'm just begging the Court  
6 to have mercy, ask for mercy of the Court.

7 THE COURT: All right.

8 MR. WILDER: Your Honor, some of his family's  
9 here. If any of them would like to speak we'd like them  
10 to have that opportunity to be heard.

11 THE COURT: Would you all like to say anything?

12 UNIDENTIFIED PERSON: (Shakes head.)

13 MR. WILDER: Thank you, Your Honor.

14 THE COURT: Anything further from the State?

15 MR. CORBETT: Judge, just on behalf of the State  
16 and I understand it's Mr. Wilder's job to speak on behalf  
17 of his client, but from my perspective Mr. Montgomery was  
18 at that scene that day with a high-capacity weapon,  
19 apparently nearby, based on the time frames involved.

20 And the fact that he was able to get it out on  
21 short notice and fire a large number of shots, then  
22 leaving the scene, the police finding him at a hotel some  
23 days later, the weapon not being recovered, we believe  
24 that Mr. Montgomery had some other options here and that  
25 if he had taken some of those other options, Angela

1 Anderson may very well be alive today.

2           And for that reason we think that five years is  
3 appropriate.

4           THE COURT: SAMUEL L. MONTGOMERY, JR., UNDER  
5 INDICTMENT 2009-GS-43-194, THE CHARGE OF INVOLUNTARY  
6 MANSLAUGHTER, THE SENTENCE OF THIS COURT IS THAT YOU BE  
7 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A  
8 PERIOD OF FIVE YEARS. YOU WILL BE GIVEN CREDIT FOR TIME  
9 SERVED. Good luck.

10           MR. WILDER: Thank you, Your Honor.

11           THE COURT: And I'm sorry for your loss. Mr.  
12 Corbett?

13           MR. CORBETT: Thank you, Your Honor. May it  
14 please the Court.

15           State of South Carolina versus Sherald Anderson.  
16 Your Honor, again after -- as previously stated, after  
17 some lengthy discussions, I believe we're to the point  
18 where Mr. Anderson wishes to tender a plea of guilty to  
19 two counts of assault with intent to kill, and one count  
20 of possession of a pistol by a person convicted of a crime  
21 of violence as defined by that statute.

22           And he has been this week represented by David  
23 Sullivan.

24           THE COURT: Mr. Sullivan, you've represented  
25 Mr. Anderson throughout this trial. Is that correct?

1 MR. SULLIVAN: Yes, sir.

2 THE COURT: Have you had an opportunity to talk  
3 to Mr. Anderson about what he's now pleading guilty to,  
4 his constitutional rights, and the consequences of his  
5 plea?

6 MR. SULLIVAN: Yes, sir.

7 THE COURT: Do you think he's understood  
8 everything that you've told him?

9 MR. SULLIVAN: I do.

10 THE COURT: Does he wish to plead guilty to two  
11 counts of assault with intent to kill and to possession of  
12 a weapon by a person who has been convicted of a violent  
13 crime?

14 MR. SULLIVAN: Yes, sir.

15 THE COURT: Now, Mr. Anderson, I need to ask you  
16 a series -- well, do you think if this case continued on  
17 in trial that there would have been a substantial  
18 likelihood that he would have been found guilty beyond a  
19 reasonable doubt?

20 MR. SULLIVAN: Yes, sir.

21 THE COURT: Do you think you had enough  
22 opportunity to review all of the facts and circumstances  
23 of this case in order to do so?

24 MR. SULLIVAN: I definitely do.

25 THE COURT: Now, Mr. Anderson, you're already

1 under oath. I need to ask you a series of questions to  
2 make sure that you're entering the plea freely and  
3 voluntarily, knowingly and intelligently, the charges  
4 contained against you and the consequences of your plea.  
5 The first question I need to ask you is: Are you under  
6 the influence of alcohol or drugs today?

7 THE DEFENDANT ANDERSON: No, sir.

8 THE COURT: Are you taking any medication that  
9 would cloud your judgment in any way?

10 THE DEFENDANT ANDERSON: No, sir.

11 THE COURT: Are you aware of any emotional,  
12 nervous or physical condition that would make it difficult  
13 for you to understand what's going on?

14 THE DEFENDANT ANDERSON: No, sir.

15 THE COURT: Do you understand we are in the  
16 middle of a trial right now, that the jury has not heard  
17 all the evidence, they've heard some of the evidence but  
18 they've not heard all of the evidence, and you've not had  
19 an opportunity to present your side of the case if you  
20 wanted to. Do you understand that?

21 THE DEFENDANT ANDERSON: Yes, sir.

22 THE COURT: Do you understand that if the case  
23 were to go forward you would not have to testify and I  
24 would instruct the jury that the fact that you didn't  
25 testify could not be used against you and could not even

1 be discussed in the jury room. Do you understand that?

2 THE DEFENDANT ANDERSON: Yes, sir.

3 THE COURT: Do you understand that if you wanted  
4 to, you would have a right to take the stand and tell the  
5 jury your side of the case. Do you understand that?

6 THE DEFENDANT ANDERSON: Yes, sir.

7 THE COURT: And that you could call witnesses on  
8 your behalf if you wanted to.

9 THE DEFENDANT ANDERSON: Yes, sir.

10 THE COURT: But when you plead guilty you  
11 understand it no longer would go to the jury, it becomes a  
12 matter for me to handle and for you to handle. Do you  
13 understand?

14 THE DEFENDANT ANDERSON: Yes, sir.

15 THE COURT: Now, when you plead guilty you waive  
16 another constitutional right that you would not have to  
17 waive in the trial and that's your right against self-  
18 incrimination. Not in this court or any other court in  
19 this land would you ever be required to testify against  
20 yourself. When you plead guilty you're in essence doing  
21 that. Do you understand?

22 THE DEFENDANT ANDERSON: Yes, sir.

23 THE COURT: Now, Mr. Solicitor -- it's my  
24 understanding that you want to plead guilty to two counts  
25 of assault with intent to kill and possession of a weapon

1 by a person convicted of a violent crime?

2 THE DEFENDANT ANDERSON: Yes, sir.

3 THE COURT: Mr. Corbett, what are the facts?

4 MR. CORBETT: Yes, sir, Your Honor.

5 THE COURT: The rest of the facts.

6 MR. CORBETT: Your Honor, you have heard the  
7 testimony in the case. And, Judge, I believe that every  
8 witness who was on the scene that day have all testified  
9 that the Defendant before you, Mr. Anderson, initiated the  
10 gunfire.

11 And, Judge, we were even prepared if necessary if  
12 Samuel Montgomery pled here today to call him as a  
13 witness. He gave a statement and, Judge, even in his  
14 statement he includes a sentence, so when my cousin Angela  
15 Anderson and Toby pulled up I saw Sherald ran to the  
16 Explorer shooting.

17 So all of the witnesses and all of the  
18 information that we have been able to gather so far is  
19 that Mr. Anderson began the shooting in this particular  
20 case.

21 Mr. Montgomery even references in his statement  
22 that Mr. Anderson and Toby Chandler had an argument the  
23 day before. So I thought we, when we got there they were  
24 going to talk or forgot about it or maybe even fight. So  
25 apparently there's some evidence within Samuel

1 Montgomery's statement of some preexisting hostility.

2           But nonetheless, Judge, from our perspective  
3 Mr. Anderson set in motion these events by coming around  
4 to the front yard. There's testimony in the record that  
5 he fired at Toby Chandler. And also testimony in the  
6 record that Angela Anderson was at the Explorer when he  
7 fired in that direction at them as evidenced by the bullet  
8 hole in the Ford Explorer in the passenger window frame.

9           Judge, if I may, just about the recommendation or  
10 negotiations in the case. Mr. Anderson had some  
11 difficulty with the notion of pleading guilty to assault  
12 with intent to kill as it goes to Angela Anderson.

13           And we understand the issues that are around the  
14 intent and what must be shown in intent. For that reason  
15 the State has no objection to Mr. Montgomery (sic)  
16 pleading under Alford to the assault with intent to kill  
17 to Ms. Anderson.

18           In other words, he would not have to stand before  
19 Your Honor and admit that he intended to kill Angela  
20 Anderson but that if he proceeded to trial that the State  
21 very likely could produce evidence to that effect.

22           His counsel and I had conversations about kind of  
23 the example of if you fire into a crowd that that's  
24 assault with intent to commit -- excuse me, assault with  
25 intent to kill still applies to all the people in that

1 crowd that you fired into regardless of which particular  
2 person that you were shooting at.

3 So from our perspective, we believe that the  
4 factual basis is there for the assault with intent to kill  
5 but we are however agreeable to it being offered under  
6 Alford with regard to the victim Anderson and that  
7 sentence being a part of the sentence with the other  
8 assault with intent to kill.

9 Now we make no recommendations as to the  
10 possession of pistol charge and ask that the Court  
11 sentence those as it sees fit.

12 But that's the factual basis and the basis of the  
13 negotiations and the plea agreement.

14 THE COURT: Mr. Anderson, do you agree with the  
15 facts as stated by the State?

16 THE DEFENDANT ANDERSON: Yes, sir.

17 THE COURT: Are you in fact guilty of the charge  
18 of assault with intent to kill against Toby Chandler?

19 THE DEFENDANT ANDERSON: Yes, sir.

20 THE COURT: And you're pleading guilty or you're  
21 pleading under Alford as to Angela Anderson. Is that  
22 correct?

23 THE DEFENDANT ANDERSON: Yes, sir.

24 THE COURT: And do you understand that makes  
25 absolutely no difference to me as far as when it comes to

1 sentencing?

2 THE DEFENDANT ANDERSON: Yes, sir.

3 THE COURT: And do you understand that -- and do  
4 you believe that if the case were to continue through  
5 trial that there's enough evidence that would convict you  
6 of assault with intent to kill against Angela Anderson?

7 THE DEFENDANT ANDERSON: Yes, sir.

8 THE COURT: Now, do you understand that the  
9 maximum sentence that I can give you on each one of these  
10 charges is 10 years?

11 THE DEFENDANT ANDERSON: Yes, sir.

12 THE COURT: And on the assault with intent to  
13 kill, I can give you 10 years on each one of those and I  
14 can charge -- give you five years on the possession of a  
15 weapon by a person convicted of a violent offense. Do you  
16 understand?

17 THE DEFENDANT ANDERSON: Yes, sir.

18 THE COURT: Do you understand if I chose to do so  
19 I could run them consecutively and you would be looking at  
20 a possible 25 years?

21 THE DEFENDANT ANDERSON: Yes, sir.

22 THE COURT: Now, do you fully understand the  
23 charges that you are pleading guilty to?

24 THE DEFENDANT ANDERSON: Yes, sir.

25 THE COURT: And, again, you understand that when

1 you plead guilty you already know that you're waiving your  
2 right to have a trial. In fact, we're in the middle of a  
3 trial but you also understand that when you plead guilty  
4 you waive your right against self-incrimination. Not in  
5 this Court or any other court in the land, would you ever  
6 be required to testify against yourself, but when you  
7 plead guilty you're in essence doing that. Do you  
8 understand?

9 THE DEFENDANT ANDERSON: Yes, sir.

10 THE COURT: Now has anybody threatened you in any  
11 way to get you to plead guilty?

12 THE DEFENDANT ANDERSON: No, sir.

13 THE COURT: Has anybody promised you anything  
14 other than the fact that they're dropping the murder  
15 charge in this case to get you to plead guilty?

16 THE DEFENDANT ANDERSON: No, sir.

17 THE COURT: And the only reason that you're  
18 pleading guilty is because you are in fact guilty of the  
19 charge of assault with intent to kill Toby Chandler and  
20 you're pleading guilty under Alford of the charge of  
21 assault with intent to kill Angela Anderson because you  
22 are in fact guilty?

23 THE DEFENDANT ANDERSON: Yes, sir.

24 THE COURT: And you're pleading guilty to the  
25 charge of possession of a weapon by a violent offender

1 because you are in fact guilty of that?

2 THE DEFENDANT ANDERSON: Yes, sir.

3 THE COURT: Now are you satisfied with the  
4 services rendered to you by Mr. David Sullivan?

5 THE DEFENDANT ANDERSON: Yes, sir.

6 THE COURT: Has he done everything that you've  
7 asked him to do in this case?

8 THE DEFENDANT ANDERSON: Yes, sir.

9 THE COURT: And do you believe -- are you aware  
10 of anything that he shouldn't have done in this case?

11 THE DEFENDANT ANDERSON: No, sir.

12 THE COURT: Do you need any more time to speak to  
13 Mr. Sullivan?

14 THE DEFENDANT ANDERSON: No, sir.

15 THE COURT: Now have you understood all of my  
16 questions?

17 THE DEFENDANT ANDERSON: Yes, sir.

18 THE COURT: And again, do you understand there's  
19 a jury out there who's ready to hear the rest of this  
20 testimony, that you would have a right to let them finish  
21 it up for you. Do you understand that?

22 THE DEFENDANT ANDERSON: Yes, sir.

23 THE COURT: And you waive that right?

24 THE DEFENDANT ANDERSON: Yes, sir.

25 THE COURT: Now, has anybody suggested to you how

1 to answer my questions today?

2 THE DEFENDANT ANDERSON: No, sir.

3 THE COURT: These are your answers to my  
4 questions. Is that correct?

5 THE DEFENDANT ANDERSON: Yes, sir.

6 THE COURT: Is there anything you want to ask me  
7 about at this time --

8 THE DEFENDANT ANDERSON: No, sir.

9 THE COURT: -- about anything that they've talked  
10 about? And do you understand that you have a right to  
11 appeal this plea and any sentence that I might give you  
12 but you must do so within 10 days?

13 THE DEFENDANT ANDERSON: Yes, sir.

14 THE COURT: And you understand that if you can't  
15 afford an attorney for that appeal that one will be  
16 appointed for you at no cost to you?

17 THE DEFENDANT ANDERSON: Yes, sir.

18 THE COURT: Let me make sure I have this on the  
19 record. Mr. Corbett, what is the consideration for the  
20 Alford plea?

21 MR. CORBETT: The consideration for the Alford  
22 plea, Your Honor, is that the two AWIK charges would run  
23 concurrent.

24 THE COURT: Is that your understanding as well?

25 MR. SULLIVAN: That's right, Your Honor. That's

1 correct.

2 THE COURT: One more time for the record. On the  
3 charge of assault with intent to kill as to Toby Chandler,  
4 under indictment 2009-GS-43-194, how do you plead; guilty  
5 or not guilty?

6 THE DEFENDANT ANDERSON: Guilty.

7 THE COURT: On the charge of assault with intent  
8 to kill Angela Anderson, you enter a plea of guilty under  
9 State versus Alford?

10 THE DEFENDANT ANDERSON: Guilty.

11 THE COURT: And to the charge of possession of a  
12 weapon by a person convicted of a violent crime under  
13 count three of indictment 2009-GS-43-194, how do you  
14 plead?

15 THE DEFENDANT ANDERSON: Guilty.

16 THE COURT: All right. I find a substantial  
17 factual basis for the plea. I find that the Defendant has  
18 entered into the plea freely and voluntarily, knowingly  
19 and intelligently. He has had the advice of counsel who  
20 he says he is well pleased. I will accept his plea.

21 MR. CORBETT: Judge, if I may just for purposes  
22 of clarifying the record. The murder charge is being  
23 dismissed as part of this plea. Also, Judge, obviously  
24 the Defendant knows his prior history and has admitted to  
25 possession of a weapon.

1           We did provide Mr. Sullivan with certified copies  
2 of the Court records indicating a conviction for burglary  
3 which qualifies under the statute as possession of a  
4 pistol by a person convicted of a crime of violence. Just  
5 wanted the record to reflect that, Your Honor.

6           THE COURT: Thank you. Do you agree with the  
7 record he stated concerning your criminal history?

8           THE DEFENDANT ANDERSON: Yes, sir.

9           MR. CORBETT: And, Judge, the remainder of the  
10 criminal history for Mr. Anderson is he has, a minor in  
11 possession of a handgun, pointing and presenting a  
12 firearm, simple assault and battery, a grand larceny, a  
13 driving under suspension, and it looks like at the same  
14 time another burglary and grand larceny.

15          THE COURT: Do you agree with those charges?

16          THE DEFENDANT ANDERSON: Yes, sir.

17          THE COURT: Thank you. Mr. Sullivan?

18          MR. SULLIVAN: Thank you, Judge.

19          I think that everybody involved in this trial can  
20 hold their heads high and they've done a good job,  
21 Mr. Corbett and Dominick West. I think Dominick  
22 understands that sometimes we have to beat up on them a  
23 little bit as part of our job, but myself and Arthur  
24 Wilder investigated this case at great lengths and were  
25 able to find a couple witnesses that just because the

1 information that law enforcement got didn't know were out  
2 there.

3           It -- as you've heard, Your Honor, the testimony  
4 has indicated that Mr. Anderson kind of set in motion  
5 these chain of events. He had told me that, you know, he,  
6 that Toby had -- he thought that Toby had a gun and that's  
7 why he started shooting. As you heard, there wasn't  
8 really -- there may have just been slight testimony as to  
9 that.

10           I explained to him, you know, exactly what intent  
11 means. You know, he's always told me that he never wanted  
12 his wife dead, never intended for this to happen. But, I  
13 explained to him that a jury would be able to infer  
14 certain things from facts and how Your Honor would give  
15 the instruction of, you know, you can't crack open  
16 somebody's head and see what they're thinking as far as  
17 the intent goes.

18           But, like I said, it never was in his mind, his  
19 intent for Angela Anderson to die.

20           He told me that as far as his background he  
21 received his GED in prison when he was in Allendale, I  
22 think he told me, in 2006. He told me that he worked at  
23 Goldkist around the time that he got arrested for this.

24           I explained to him that, why he wouldn't be -- of  
25 course, he's not pleading to the murder but why he

1 wouldn't have been -- had the self-defense charge  
2 available to him.

3           And Mr. Wilder kind of talked about how his  
4 client, Mr. Montgomery, was cooperative with police and  
5 gave a statement. And I'm sure that's true.

6           As far as -- of course, Mr. Anderson didn't give  
7 a statement but I would submit that, you know, this is a  
8 complicated case. He probably didn't know exactly what he  
9 should do and he wanted to talk to a lawyer. And I think  
10 that was understandable. He didn't want to say anything.

11           His mother, I believe her name's Eloise.

12           THE DEFENDANT ANDERSON: Yes, sir.

13           THE COURT: She's here. And also this is, the  
14 other lady standing behind him is his fiancée, Denise  
15 Mosely. And I don't know if they would like to address  
16 the Court.

17           THE MOTHER: (Shakes head.)

18           THE COURT: Would your client like to say  
19 anything?

20           MR. SULLIVAN: Would you like to say anything?

21           THE DEFENDANT ANDERSON: I would just like to say  
22 to the family that I apologize for what happened.  
23 Everyday I think of my wife and I hate that the situation  
24 came up like it did because my son's without his mother  
25 and now he be without his father for a while.

1 I think about the situation every day. And I do  
2 miss my wife a lot but if I could take her place I would,  
3 but I apologize to the family all I can but I can't do any  
4 more than that. I apologize. If I could have took her  
5 place I would but I can't do no more. I sympathize with  
6 them in that situation. I apologize to them. Ain't  
7 nothing I can do for that. I still feel the pain of what  
8 they're going to because I miss her, too.

9 THE COURT: Anything from the victim's side?  
10 Yes, ma'am. State your name again.

11 UNIDENTIFIED SPEAKER: Marvalette Davis. Angela  
12 Anderson's sister. I just ask that the maximum be given  
13 on this. Thank you.

14 THE COURT: Thank you. Mr. Corbett, anything  
15 further?

16 MR. CORBETT: Judge, just from a sentencing  
17 perspective, from our perspective that there was a good  
18 chance that Angela Anderson would be alive today if it  
19 were not for the chain of events that this Defendant set  
20 in motion.

21 Judge, there's been a lot of testimony over the  
22 previous four days and you can question the credibility of  
23 Toby Chandler but all of the witnesses including Samuel  
24 Montgomery indicate that Mr. Anderson went to that front  
25 yard shooting. And he set in a chain of events whereby

1 Toby Chandler now admits that he goes and gets a gun  
2 because he's being fired upon.

3           At some point in time Toby Chandler ends up in  
4 the back yard. The testimony is conflicting as to what  
5 happened in that back yard. But there was even evidence  
6 that Mr. Anderson was in that vicinity as well. So Toby  
7 Chandler could have believed that his life was continuing  
8 to be in danger and he did not testify that he engaged in  
9 any gunfire but had he done so, there's some chance that  
10 that's understandable if he sees Mr. Anderson back there.

11           So from our perspective, Mr. Anderson's initial  
12 firing of that gun set into motion those events that led  
13 to Ms. Angela Anderson's death.

14           THE COURT: You know, as tragic as this was and  
15 is, it could have been far worse. I mean, they had  
16 children there.

17           Anything further from the defense?

18           MR. SULLIVAN: No, sir.

19           THE COURT: Mr. Anderson, had you not been there  
20 that day, I don't think any of this would have happened.  
21 You were the spark that set this tragedy into effect. The  
22 weight of this certainly is on you.

23           AS TO INDICTMENT 2009-GS-43-194, COUNT TWO,  
24 ASSAULT WITH INTENT TO KILL, AS TO TOBY CHANDLER, THE  
25 SENTENCE OF THE COURT IS THAT YOU BE SENTENCED TO THE

1 STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 10 YEARS.

2 INDICTMENT 2009-GS-43-194, ASSAULT WITH INTENT TO  
3 KILL AS TO ANGELA ANDERSON. THE SENTENCE OF THIS COURT IS  
4 THAT YOU BE COMMITTED TO THE STATE DEPARTMENT OF  
5 CORRECTIONS FOR 10 YEARS. THESE TWO WILL RUN CONCURRENT.

6 This was one event, basically.

7 AS TO THE CHARGE OF POSSESSION OF A WEAPON BY A  
8 PERSON CONVICTED OF A CRIME OF VIOLENCE, UNDER COUNT THREE  
9 OF INDICTMENT 2009-GS-43-194, IT IS THE SENTENCE OF THIS  
10 COURT THAT YOU BE SENTENCED TO THE STATE DEPARTMENT OF  
11 CORRECTIONS FOR A PERIOD OF FIVE YEARS.

12 Now, Mr. Anderson, you weren't even supposed to  
13 have a gun in your possession. AND the fact that you had  
14 one, again, started this whole mayhem. I heard the tape.  
15 It's unbelievable what was going on out there that day.

16 You will not begin serving this sentence until  
17 your other sentences are completed. SO THEREFORE THIS  
18 RUNS CONSECUTIVE TO THE OTHER CHARGES. Good luck to you.

19 MR. CORBETT: Thank you, Judge.

20 MR. SULLIVAN: Thank you, Judge.

21 THE COURT: All right. Court is adjourned until  
22 two o'clock.

23 END OF PROCEEDINGS: 1:22 P.M.

24 \* \* \* \*

25

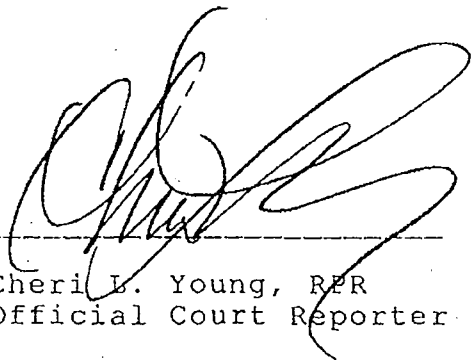
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

I, Cheri L. Young, Registered Professional Reporter,  
and Official Court Reporter for the State of South  
Carolina, do hereby certify that the foregoing transcript  
of proceedings heard on Thursday, April 14, 2010, in  
Sumter, South Carolina, was reported by me using machine  
shorthand and realtime computer-aided translation and is a  
true, accurate and complete transcript of the proceedings  
had and evidence introduced in the hearing of the matter.

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

I have hereunto set my hand this Tuesday, the 1st day  
of February, 2011.



---

Cheri L. Young, RPR  
Official Court Reporter

SC Attorney General  
**RECEIVED**

RECORDED

2010 JUL 20 PM 2:16

JUL 26 2010

Referred to M. W. NIS.

Answered \_\_\_\_\_

STATE OF SOUTH CAROLINA

JAMES L. BELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

In the Court of Common Pleas

County of Sumter

2010-CP-43-1510

Sherald K. Anderson  
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina  
Name of Respondent.

**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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. 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 applicant was convicted.

1. Place of detention Water River C-I.
2. Name and location of Court which imposed sentence Sumter County Courthouse,  
Sumter, SC.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) 2009 GS-43-0194, Assault w/intent to kill; Assault w/intent
  - (b) to kill; possession of weapon by a person convicted of a crime of
  - (c) violence
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) April 15, 2010 10 years concurrent w 5 years & 5 years
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

5. Check whether a finding of guilty was made

- (a) after a plea of guilty Reconciliation of State
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

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

NO

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

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

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

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

- (a) I wasn't aware that I could appeal it
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Ineffective Assistance of Counsel
- (b) Violation of the 6<sup>th</sup> Amendment of the U.S. Constitution
- (c) Violation of the 14<sup>th</sup> Amendment of the U.S. Constitution

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

- (a) Counsel failed to interview and interview a key witness
- (b) Some of the evidence was suppressed and not used
- (c) It is in the best interest of justice

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (d) the date of each such disposition:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

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

N/A

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) Did not know.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

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

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

- i. David F Sullivan  
Sumter county Public Defender office - 141 North main Street
- ii. Rm 102 Sumter, s.c. 29150
- iii. \_\_\_\_\_

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

- i. Sentencing
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

Sentencing Reduction

19. Are you now under sentence from any other court that you have not challenged? No

STATE OF SOUTH CAROLINA

County of Sumter

RECORDED  
2010 JUL 20 PM 2:16  
VERIFICATION

I, Sherald K Anderson, 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.

Sherald Anderson

SWORN to and subscribed before me this 8th day of July, 192010  
Pamela D Hatfield (L.S.)  
Notary Public

2010-CP-43-1510

My Commission Expires: 3/15/2011

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

I, Sherald K Anderson, 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 therefor.

Sherald Anderson  
Applicant

SWORN or affirmed to and subscribed before me this 8th day of July, 192010  
Pamela D Hatfield  
Notary Public

My Commission Expires: 3/15/2011

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2010-CP-43-1510
	)	
Sherald Anderson, #250152,	)	
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 20, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted for Murder, for two counts of Assault with Intent to Kill ("AWIK") and for Possession of a Pistol by a Person Convicted of a Crime of Violence (2009-GS-43-0194). Applicant was represented by David Sullivan, Esquire. On April 15, 2010, the Applicant pled guilty before the Honorable W. Jeffrey Young to two counts of AWIK and Possession of a Pistol by a Person Convicted of a Crime of Violence. Applicant was sentenced to ten (10) years for each count of AWIK, the sentences to be served concurrently. Applicant was sentenced to a consecutive term of five (5) years for Possession of a Pistol by a Person Convicted of a Crime of Violence. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. Ineffective assistance of counsel.
  - a. "Counsel failed to investigate and coerced me into a guilty plea."
2. "Violation of the 6<sup>th</sup> Amendment of the U.S. Constitution."
  - a. "Denial of adequate representation and a fair trial."
3. "Violation of the 14<sup>th</sup> Amendment of the U.S. Constitution."
  - a. "Denial of due process of law."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

## III.

For purposes of this Return, Respondent interprets Applicant's allegations to be allegations of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning

of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

## IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

## V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MARY S. WILLIAMS  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

April 11, 2011.


STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2010-CP-43-1510
	)	
SHERALD ANDERSON, 250152,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

---

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

**David C. Holler, Esquire**  
**Lee Erter Wilson James Holler & Smith, LLC**  
**Post Office Box 580**  
**Sumter, SC 29151**

DATED this 11th day of April, 2011.

  
 Lauren Meara, Legal Assistant  
 For Respondent

State of South Carolina)
County of Sumter )

In the Court of Common Pleas
Third Judicial Circuit
2012-CP-43-01510

Sherald Anderson, )
Plaintiff )

vs. )

Transcript of Record

State of South Carolina, )
Defendant. )

December 12, 2012
Sumter, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Judge

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

Megan Harrigan, Esq.
David C. Holler, Esq.

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

1	<u>WITNESS/DESCRIPTION</u>				<u>PAGE NO.</u>
2	Case called/Ms. Harrigan				4
3	Direct	Cross	Redirect	Recross	
4	Sherald Anderson				
5	Mr. Holler	5			
6	Ms. Harrigan	16			
7	David Sullivan				
8	Ms. Harrigan	22	46		
9	Mr. Holler	33			
10	Decision by the Court				47
11	Certificate Page				48
12					

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID</u>
------------	--------------------	-------------	-------------

- NO EXHIBITS -

1 MS. HARRIGAN: May it please the Court.

2 THE COURT: Yes, ma'am.

3 MS. HARRIGAN: Your Honor, the next case is *Sherald*  
4 *Anderson vs. The State of South Carolina*, Docket No. 2012-  
5 CP-43-1510. The applicant was indicted for murder, two  
6 counts of assault with intent to kill, and for possession  
7 of a pistol by a person convicted of a crime of violence.  
8 The applicant was represented by David Sullivan.

9 On April 15, 2010, the applicant pled guilty before  
10 the Honorable W. Jeffery Young to two counts of assault  
11 with intent to kill, one of which is pursuant to *North*  
12 *Carolina vs. Alford*, and possession of a pistol by a person  
13 convicted of a crime of violence.

14 Applicant was sentenced to 10 years for each counts --  
15 count of AWIK, with sentences to be served concurrently;  
16 and he was also sentenced to a consecutive term of five  
17 years for possession of a pistol by a person convicted of a  
18 crime of violence.

19 He did not appeal his convictions or sentence. He  
20 did, however, file a timely application for post-conviction  
21 relief on January 26, 2012, alleging ineffective assistance  
22 of counsel for counsel's failure to investigate and forcing  
23 him into a guilty plea, violations of his Sixth Amendment  
24 rights, and his Fourteenth Amendment rights.

25 The State made its return on April 11, 2011. He is

DIRECT EXAMINATION BY MR. HOLLER - SHERALD ANDERSON

5

1 represented in this action by David Holler.

2 On January 3, 2012, applicant filed a *pro se* request  
3 to appoint new counsel, and on June 1, 2012, he filed a *pro*  
4 *se* motion to relive his counsel. And I'll turn it over to  
5 Mr. Holler at this point.

6 THE COURT: Okay.

7 MR. HOLLER: Your Honor, we would call Mr. Sherald  
8 Anderson.

9 THE COURT: Okay.

10 SHERALD ANDERSON, having been  
11 first duly sworn, testifies as follows:

12 THE BAILIFF: State your name, please, and spell your  
13 first and last name for the record:

14 THE DEFENDANT: Sherald Anderson, S-h-e-r-a-l-d, A-n-  
15 d-e-r-s-o-n.

16 DIRECT EXAMINATION BY MR. HOLLER:

17 Q Mr. Anderson, let me --I want to ask you some -- some  
18 brief background questions.

19 MR. HOLLER: And Your Honor, I may lead a little bit  
20 just to kind of speed things up.

21 THE COURT: Okay.

22 MR. HOLLER: This has to do ---

23 THE COURT: As long as she doesn't object.

24 MS. HARRIGAN: No objection from the State.

25 THE COURT: All right.

1 MR. HOLLER: These were not issues in dispute, I do  
2 not believe.

3 THE COURT: Okay.

4 DIRECT EXAMINATION BY MR. HOLLER (continues):

5 Q Mr. Anderson, your post-conviction relief application  
6 has to do with charges arising out of an event on May the  
7 10th, 2008 --

8 A Yes.

9 Q -- is that correct?

10 A Yes, sir.

11 Q And that was at a private residence at [REDACTED],  
12 here in Sumter, South Carolina?

13 A Yes, sir.

14 Q And your wife, who you were separated from, was  
15 killed.

16 A Yes, sir.

17 Q And the gentleman that was with her, Mr. Toby  
18 Chandler, was also involved with gunfire.

19 A Yes, sir.

20 Q Okay. You had a prior conviction of a violent crime;  
21 is that right?

22 A Yes, sir.

23 Q And that led -- you -- you had -- alleged to have a  
24 gun on this occasion.

25 A Yes, sir.

DIRECT EXAMINATION BY MR. HOLLER - SHERALD ANDERSON

7

1 Q And that led to the charges of you having possession  
2 of a firearm after being convicted.

3 A Yes, sir.

4 Q Okay. So the two counts of assault with intent to  
5 kill were for your wife and for Mr. Chandler.

6 A Yes, sir.

7 Q You and your wife had a child together?

8 A Yes, sir.

9 Q Was that a boy?

10 A Yes, sir.

11 Q Okay. When you went to that residence, that was for  
12 the purpose of speaking with your wife about your son?

13 A Yes, sir.

14 Q And to give her some money?

15 A Yes, sir.

16 Q Okay. And when you arrived at that residence, that's  
17 when Mr. Chandler started shooting.

18 A Yes, sir.

19 Q Tell me what brought -- what happened after that?

20 A What? After the shooting?

21 Q Well, after he pulled a weapon and shot ---

22 MS. HARRIGAN: Your Honor, this ---

23 A I pulled ---

24 MS. HARRIGAN: --- the State would object. We're not  
25 here to retry any of the facts of the case. We're just

1 here for ineffectiveness of counsel; claims raised in his  
2 application, not to rehash all the facts of the case.

3 MR. HOLLER: And -- and I'm not going to try the case  
4 again, Judge. If you want to understand what needed to be  
5 done or what -- what statements should have been disclosed,  
6 I just wanted you to have some sense of ---

7 THE COURT: Okay.

8 MR. HOLLER: --- the facts.

9 THE COURT: Okay. Go ahead then.

10 MR. HOLLER: Certainly not going to retry the case.

11 DIRECT EXAMINATION BY MR. HOLLER (continues):

12 Q Prior to trial, what information, if any, did you have  
13 -- did you and your attorney have about who actually shot  
14 or whose bullet struck your wife?

15 A Toby Chandler.

16 Q Okay. When did you receive that information?

17 A I received that on the day of court, day of my trial.  
18 They had determined that -- they -- I think, Arther Wilder  
19 -- I think they proved that that day, on the day of trial.

20 Q You did not know that before you started trial?

21 A No, sir.

22 Q Now, let -- let me ask you: You had a co-defendant at  
23 trial.

24 A Yes, sir.

25 Q I'm sorry. I should ask you to start with -- David

DIRECT EXAMINATION BY MR. HOLLER - SHERALD ANDERSON

9

1 Sullivan was your attorney.

2 A Yes, sir.

3 Q Okay. Mr. Sullivan's here in the courtroom.

4 A Yes, sir.

5 Q Okay. Arthur Wilder was also a public defender.

6 A Yes, sir.

7 Q And he represented the co-defendant.

8 A Yes, sir.

9 Q Okay. So during the course of the trial, Arthur  
10 Wilder brought out evidence that the bullet that killed  
11 your wife was from Mr. Chandler.

12 A Yes, sir.

13 Q Prior to your trial, had Mr. Chandler cut a deal with  
14 the prosecution?

15 A Yes, sir.

16 Q And was he prosecuted?

17 A No, sir.

18 Q Okay. Tell me what you understand -- what was your  
19 understanding going into your plea? You -- the case tried  
20 for some period of time. You -- in other words: You went  
21 to trial and the case was tried.

22 A Yes.

23 Q Okay. Prior to trial, it wasn't -- no -- no  
24 information was disclosed to you or your attorney about  
25 whose bullet killed Ms. Anderson.

1 A No.

2 Q Okay. Prior to trial, were you given any statements  
3 of Mr. Chandler?

4 A No, sir.

5 Q Okay. And he was the star prosecution witness.

6 A Yes, sir.

7 Q Okay. Did -- did you ever receive these statements  
8 from Mr. Chandler?

9 A Never did.

10 Q Did you ask Mr. Sullivan to get those statements for  
11 you?

12 A Yes, I asked about that.

13 Q Did you ask Mr. Sullivan to get information to you  
14 about who actually shot your wife?

15 A Yes, I asked about that.

16 Q Okay. During the course of the trial, did it come  
17 into evidence that you had a prior record?

18 A Yes, sir.

19 Q Were you -- did you testify at the trial?

20 A No, sir.

21 Q Okay. Did Mr. Sullivan object to evidence of your  
22 prior convictions coming into trial?

23 A No, sir.

24 Q Did he move for a mistrial?

25 A Only person move for a mistrial was my co-defendant

1 lawyer.

2 Q Was there other evidence about a 911 tape that was not  
3 disclosed to you before you started trial?

4 A Yes, it was.

5 Q And what was that?

6 A That was Twanda Douglas. Twanda Douglas said she made  
7 that 911 call. When it come -- Arthur Wilder played the  
8 tape in trial, it wasn't her voice; it was her mom's voice.

9 Q Okay. Was that tape disclosed to you prior to -- to  
10 being in trial?

11 A No, sir.

12 Q Do you believe that was exculpatory evidence or  
13 evidence that helped you?

14 A Yes, sir.

15 Q Okay. Was the gun that you allegedly had possession  
16 ever found?

17 A No, sir.

18 Q Mr. Anderson, when you attempted -- when you decided  
19 to plead guilty, what was your understanding of what your  
20 sentence would be -- the possible sentences, as well as --  
21 not only with assault with intent to kill, but also the gun  
22 possession charge?

23 A Well, my -- my -- well, my intention -- what I thought  
24 was, I was going to have the whole, you know, ten years and  
25 a five; and the five years was going be current with --

1 concurrent with my ten. I thought I was supposed to be  
2 doing just a ten-year sentence. But come to find out I'm  
3 running -- I got a five year running consecutive instead of  
4 concurrent.

5 Q In other words: You -- you thought that the two  
6 sentences -- the three sentences would run at the same  
7 time.

8 A Yes, sir.

9 Q Not one -- the two sentences would run and then you  
10 have to wait and then have the five years start once the  
11 ten years is over.

12 A Yes, sir.

13 Q Okay. Had you known that the -- the sentences could  
14 have run consecutively -- in other words, finish the ten  
15 years and then the five years, would you have plead guilty?

16 A No, sir.

17 Q Did you discuss that with Mr. Sullivan?

18 A Not -- not that I know of.

19 Q But you -- you did discuss with him your understanding  
20 that it would be the ten years --

21 A Yes, sir.

22 Q -- or that the sentences would run together?

23 A Yes, sir.

24 Q Okay. Mr. Anderson, on two separate occasions a *pro*  
25 *se* motion has been filed, meaning you filed it yourself ---

1 A Yes, sir.

2 Q --- as opposed to a lawyer -- for me to be relieved as  
3 your attorney.

4 A Yes, sir.

5 Q Okay. You had someone in the -- in the -- in the  
6 facility help you file those motions?

7 A Yes, sir.

8 Q Was it your intent to have me relieved?

9 A No. It was a mixup.

10 Q Okay. Do you want me to be relieved?

11 A No, sir.

12 Q You understand this judge has the right to relieve me  
13 and appoint another attorney for you ---

14 A Yes, sir.

15 Q --- if you wish?

16 A Yes, sir.

17 Q You -- you do not want to pursue those two motions to  
18 have me relieved as counsel?

19 A No, sir.

20 Q Okay. Before the -- before the plea -- during the  
21 trial, is that when -- is that when your co-defendant's  
22 attorney moved for a mistrial based upon the contradicting  
23 evidence that the 911 tape was not Twanda?

24 A I think so. I think so. I mean, I -- I can't really  
25 remember all the whole trial, but I think so.

1 Q Is there anything else you would like to tell the  
2 judge about why you believe your post-conviction relief  
3 should be granted, about why you believe that Mr. Sullivan  
4 did not adequately represent you?

5 A I got to look at my legal work. I got to go get my  
6 legal work.

7 MR. HOLLER: The Court -- Judge, do you mind if I hand  
8 him his paperwork?

9 THE COURT: No.

10 (Mr. Holler hands document to plaintiff.)

11 MR. HOLLER: (To the defendant) Do you want me to  
12 help you with that?.

13 THE PLAINTIFF: Yes, sir.

14 (Mr. Holler confers with the applicant.)

15 A Okay. (As read) "My counsel was ineffective regards  
16 of (1) failure to pursue -- to pursue suppression hearing;  
17 (2) failure to object to the State use of impeached  
18 evidence, and (3) engaged in -- in dishonest fraud and  
19 deceit in -- regarding plea negotiations, (4) failing in  
20 the obligation to provide a client with informed  
21 understanding, and (5) attorney failure -- my bad --  
22 attorney failure to full -- fully disclose exculpatory  
23 material and impeachment evidence regarding statement given  
24 by key State witness.

25 "In order to prove ineffective assistance of counsel,

DIRECT EXAMINATION BY MR. HOLLER - SHERALD ANDERSON

15

1 the defendant must -- must show that his counsel  
2 performance was defective -- performance prejudiced the  
3 defense, so as to deprive defendant a fair trial. See U.S.  
4 CA Constitution Amend. 6."

5 Q Okay. Let me -- let me -- let me ask a question, Mr.  
6 Anderson.

7 A Yes, sir.

8 Q Do you understand that matters of evidence and  
9 sufficiency of evidence ---

10 A Yes, sir.

11 Q --- are for trial and direct appeal --

12 A Yes, sir.

13 Q -- and cannot be addressed with post-conviction relief  
14 application?

15 A Yes, sir.

16 Q Okay. So suppression hearing -- those issues would --  
17 would be handled in a trial, the verdict and an appeal from  
18 the verdict.

19 A Yes, sir.

20 Q Okay. And -- and are waived with a plea. Okay.

21 Is there anything else that Mr. Sullivan did or failed  
22 to do that would have changed your decision to plead  
23 guilty?

24 A Failure to object when Toby gave a false statement.

25 Q Okay. As -- as to the evidence at ---

1 A Yeah.

2 Q --- trial?

3 A Yes, sir.

4 Q Okay. Anything else?

5 A And failure to properly investigate my case.

6 Q Okay. Anything else?

7 A That's it, sir.

8 Q Thank you. Please answer any questions ---

9 MS. HARRIGAN: May it please the Court.

10 THE COURT: Yes, ma'am.

11 CROSS-EXAMINATION BY MS. HARRIGAN:

12 Q Mr. Anderson, how many times did you meet with your  
13 attorney, David Sullivan, before your trial?

14 A I think -- well, I'm not quite sure. I think at least  
15 probably -- at least once or -- I think one time before the  
16 trial, and the second time before my trial started.

17 Q Okay. So only once before trial you met ---

18 A Once.

19 Q --- with your attorney?

20 A Yes.

21 Q And were you out on bond before your trial started?

22 A No, ma'am.

23 Q So you were in Sumter County Detention Center ---

24 A Yes, ma'am.

25 Q --- and he only visited with you once?

1 A Yes, ma'am.

2 Q Do you recall how long you were in the Sumter County  
3 Detention Center prior to your trial?

4 A Almost -- seemed like about a -- probably almost two  
5 years. April was the -- April -- May would've made two  
6 years, but I went up for trial, I think, in April.

7 Q And he only met with you once in two years?

8 A Because they gave me -- I had one lawyer, then they  
9 gave me -- I -- I got rid of -- I fired the other lawyer,  
10 then they gave me Mr. Sullivan.

11 Q And Mr. Sullivan met with you once during his entire  
12 representation?

13 A I think it was one time that I know of.

14 Q Okay. Do you recall receiving your discovery  
15 materials, the evidence from the State?

16 A Yes, ma'am.

17 Q And did you review that with Mr. Sullivan?

18 A Yes, ma'am.

19 Q Okay. Did you discuss possible defenses to this --  
20 these charges with Mr. Sullivan?

21 A Not that I know of.

22 Q You never discussed defenses?

23 A Not that I know of. It's hard to recall.

24 Q Did you give him any leads or potential witnesses  
25 you'd like for him to track down and investigate?

1 A Yes. I gave him my -- my stepson, Edward Brown.

2 THE COURT REPORTER: Edward?

3 THE APPLICANT: Yes, ma'am.

4 THE COURT REPORTER: Edward?

5 THE APPLICANT: Edward Brown.

6 THE COURT REPORTER: Edward.

7 Q Do you know if your attorney hired a private  
8 investigator in this case?

9 A I think -- I think he said he did. I think he said he  
10 did, because the investigator came to see me.

11 Q So you did meet with a private investigator?

12 A Yes, ma'am.

13 Q How many times did you meet with this investigator?

14 A I seen him one time.

15 Q Are you aware as to whether or not the private  
16 investigator or Mr. Sullivan got a hold of your stepson,  
17 Edward Brown?

18 A Not that I know of.

19 Q Did you discuss any plea offers the State had made  
20 with your attorney before your trial started?

21 A Only on the day when he tell me I was about to go to  
22 trial.

23 Q Do you recall what these offers were from the State?

24 A Twenty years.

25 Q And you were originally charged with murder, correct?

1 A Yes, ma'am.

2 Q And the State dismissed your murder charge, right?

3 A Yes, ma'am.

4 Q And are you aware that murder carries a mandatory  
5 minimum of 30 years imprisonment?

6 A Yes, ma'am.

7 Q And it carries up to life without parole?

8 A Yes, ma'am.

9 Q You told Judge Young during your guilty plea that you  
10 were satisfied with Mr. Sullivan's representation, correct?

11 A Yes, ma'am.

12 Q But now you're saying that Mr. Sullivan was  
13 ineffective because he didn't investigate your case.

14 A Yes, ma'am.

15 Q What additional investigation did you want him to do?

16 A Well, for one, the things that -- like the 911 tape  
17 that's supposed to have been recalled, that was never done  
18 by my attorney.

19 Q Anything else besides that 911 tape?

20 A Yes ma'am. Yes, ma'am. Let's see ...

21 Q Do you have a copy of that 911 tape here today?

22 A No. That was on -- that was on -- that -- they had  
23 all that during the trial. All that was on the trial  
24 transcript.

25 Q Was it your decision to plead guilty?

1 A Well, I -- well, I feel like I had no choice but to  
2 plead guilty because of the way the case had went. I had  
3 no choice but to plead. That's they way I had looked at  
4 it.

5 Q So during the case, you got to hear all the evidence  
6 and you decided that it was in your best interest to plead  
7 guilty?

8 A I had -- the way I look at it, I had no choice but to  
9 plead guilty.

10 Q But it was your choice.

11 A Yes, ma'am.

12 Q And you admitted under oath that you were guilty at  
13 least to one of the counts of the assault with intent to  
14 kill ---

15 A Yes, ma'am.

16 Q --- correct? So you are, in fact, guilty?

17 A Of one of them.

18 Q Of one of them. Okay. Do you recall waiving your  
19 constitutional rights during your guilty plea?

20 A It's been --

21 Q You don't recall ---

22 A It's been -- it's been a while now. I can't --  
23 there's so much -- I just can't -- it's been a while on  
24 this case now.

25 Q If the record showed that you were advised of your

CROSS-EXAMINATION BY MS. HARRIGAN - SHERALD ANDERSON 21

1 constitutional rights by the judge and you waived those,  
2 would you agree with that?

3 A Yes, ma'am.

4 Q Okay. And one of your other allegations is that you  
5 thought your ten-year sentences for assault with intent to  
6 kill would run at the same time as your five-year sentence  
7 for the weapons charge ---

8 A Yes, ma'am.

9 Q --- correct? Okay.

10 But during your guilty plea, the solicitor stated that  
11 there was no recommendation in regards to your weapons  
12 charge, correct?

13 A They gave -- when -- when -- before -- before I took  
14 the stand, before I got up in front of the judge, they told  
15 me that my five years supposed to be going along with my  
16 ten years.

17 Q But you heard the solicitor, Mr. Corbett, during your  
18 guilty plea, tell the judge there was no recommendation in  
19 regards to the possession of a weapon by a person convicted  
20 of violence, correct?

21 A When I was at the table talking to my attorney and Mr.  
22 -- Mr. -- Mr. Corbett, they told me that my five years was  
23 going to be run concurrent, when I was at the table.

24 Q So to your recollection, the recommendation wasn't for  
25 your two assault with intent to kill charges to run

1 together, because those are run together, correct?

2 A Yes, ma'am.

3 Q Okay. No further questions, Your Honor.

4 THE COURT: Okay. Anything further?

5 MR. HOLLER: No.

6 THE COURT: You can step down.

7 (The applicant complies.)

8 MR. HOLLER: No more witnesses for the -- our case,  
9 Your Honor.

10 THE COURT: Okay.

11 MS. HARRIGAN: The State would call David Sullivan to  
12 the stand.

13 THE COURT: All right. Mr. Sullivan.

14 **DAVID SULLIVAN**, having been first  
15 duly sworn, testifies as follows:

16 THE BAILIFF: State your name, please, and spell your  
17 first and last name for the record.

18 THE WITNESS: David Sullivan, D-a-v-i-d, S-u-l-l-i-v-  
19 a-n.

20 DIRECT EXAMINATION BY MS. HARRIGAN:

21 Q Good morning, Mr. Sullivan.

22 A Good morning.

23 Q How long have you been practicing law?

24 A About seven years.

25 Q At the time of your representation of Mr. Anderson,

1 what percentage of your practice was criminal defense?

2 A All of it.

3 Q Where were you employed at that time?

4 A Sumter County Public Defender's Office.

5 Q So you were appointed to this case.

6 A Correct.

7 Q Do you recall what date you were appointed to

8 represent Mr. Anderson?

9 A I could look at my notes.

10 Q We're just ---

11 A I don't ---

12 Q --- a rough time range before the trial started.

13 A Not really.

14 Q You weren't appointed on the eve of trial were you?

15 A No.

16 Q Have you had an opportunity to review your file prior  
17 to coming to court today?

18 A Yes.

19 Q Do you recall the number of times you met with Mr.  
20 Anderson?

21 A If you're -- you'll bear with me, I can look through  
22 my notes and tell you.

23 Q Mr. Anderson was incarcerated prior to his trial,  
24 correct?

25 A Correct. We -- we had what I call a "discovery

1 review" on February 3, 2010, and I've got a list of all the  
2 contacts that I've had with him. On June 3, 2009, I spoke  
3 with Mr. Anderson over the phone. On July 16, 2009, I  
4 spoke with him again, and again on July 28, 2009. On  
5 August 10, 2009, we spoke again, mostly about the issue of  
6 his bond. I spoke with him on August 21, 2009. I spoke  
7 with him on August 29, 2009. We spoke on September 3,  
8 2009. I spoke with him over the phone on September 17,  
9 2009; over the phone on October 2, 2009; over the phone on  
10 October 7, 2009; October 29, 2009. January 11, 2010, we  
11 talked about a bond reduction. We talked about a bond  
12 reduction on January 25, 2010. On March 9, 2010, we spoke  
13 over the phone, and I did my sort of in-depth interview of  
14 him. I've got typed up notes where I took kind of a -- we  
15 talked for a while and I took a -- a statement from him.  
16 That looks like it was on March 25, 2010.

17 Q From this list, it looks like a number of  
18 conversations were regarding his bond. Would you say that  
19 was one of his primary concerns, being released pre-trial  
20 on bond?

21 A Yes.

22 Q Did you work to assist him with this concern?

23 A Yes.

24 Q Did he -- and did he have a bond hearing?

25 A He had one hearing, and I believe -- let's see; bond

DIRECT EXAMINATION BY MS. HARRIGAN - DAVID SULLIVAN 25

1 hearing on September 10, 2009, denied by Judge James. I  
2 filed a motion for a fast and speedy trial June 3, 2009.

3 And I'm trying to find it in my notes, but I think I  
4 may have moved for a reduction in bond.

5 Q How often do you visit the Sumter County Detention  
6 Center to meet with clients? Do you have a standard  
7 practice? I know some attorneys go every two weeks or so.

8 A It kind of depends on the severity of the case. With  
9 a case like this, I usually meet with my clients or talk to  
10 them on the phone even if there's really no information I  
11 need to get from them, just because I think it makes them  
12 feel better.

13 But I like to have one big, kind of lengthy, in-depth  
14 interview where we'll go over the discovery, and I'll take  
15 a statement from them.

16 And you know, so I do -- I do an initial interview as  
17 soon as I can after I get appointed. I do what I call a  
18 "discovery review," where I go over the discovery. Those  
19 are my two main appointments, and I -- I think that clients  
20 just like to hear from their lawyer, so I'll at least talk  
21 to them on the phone fairly regularly.

22 Q During this March 25, 2010 in-depth interview, I  
23 believe you stated you went over his discovery at this time

24 ---

25 A Yes.

1 Q --- with him? Okay.

2 Did you also go over the indictments and elements of  
3 the charges he was facing at that time?

4 A Yes.

5 Q Did you advise him of potential sentences?

6 A Yes.

7 Q Did you advise him that murder carries a mandatory  
8 minimum of 30 years and a maximum of life without parole?

9 A Yes.

10 Q Did you ever advise him of a likely sentence he would  
11 receive if he went to trial and was found guilty?

12 A I advised him of what he was facing.

13 Q During this in-depth interview, did you discuss his  
14 version of the facts?

15 A Yes.

16 Q Did he ever deny his involvement in this incident?

17 A The -- I talked to witnesses who -- some of them said  
18 that Angela, his common-law wife, and -- and Toby showed up  
19 after he was already there. And some of the witnesses said  
20 that he was the initial aggressor --

21 Q That your client, Mr. Anderson, was the initial  
22 aggressor?

23 A Right. The way that he presented it was that he was  
24 defending himself. I -- I don't have the transcript from  
25 the trial. I can't remember everything that happened with

DIRECT EXAMINATION BY MS. HARRIGAN - DAVID SULLIVAN 27

1 trial. I don't think that self defense was an available --  
2 or -- or instruction that I was going to get, because I  
3 think that the evidence indicated that he was the initial  
4 aggressor and had a gun. But you know, he -- he had -- he  
5 may have said that he had intended to kill Toby, but never  
6 intended to kill his wife, his common-law wife.

7 I talked to him about the idea of transferred intent,  
8 and that -- you know, how a jury would be instructed about  
9 intent. And that if you shoot a gun into a crowd of  
10 people, even if you don't intend to kill one particular  
11 person in the crowd, that a jury can still infer intent to  
12 kill.

13 But he could -- he didn't want to say that he intended  
14 to kill Angela, his common-law wife, because you know, he -  
15 - he couldn't bring himself to say that, so he pled under  
16 *Alford*.

17 Q That was one of the primary driving forces besides  
18 that AWIK charge being ---

19 A Right.

20 Q --- pled under *Alford*?

21 A Right.

22 Q Okay. In regards to what sort of investigation you  
23 did in this case, you filed an ex parte order for costs to  
24 hire a private investigator.

25 A Chris Hilditch, that's correct.

1 THE COURT REPORTER: Chris -- I'm sorry.

2 THE WITNESS: Chris Hilditch.

3 THE COURT REPORTER: Can you spell that?

4 THE WITNESS: H-i-l-d-i-t-c-h.

5 Q And Judge King approved those costs?

6 A Yes.

7 Q So you did, in fact, hire this private investigator.

8 A Yes. And we actually -- if I remember right, there  
9 were one or two witnesses that we actually found that --  
10 that I asked Investigator Dominick West about, that law  
11 enforcement didn't know about, who were there.

12 Q Would one of those witnesses be Edward Brown, who Mr.  
13 Anderson described ---

14 A It's been a -- it's been a while since -- since I  
15 tried this case, but I think Edward Brown was one of his  
16 witnesses.

17 Q And he was incarcerated with the Department ---

18 A He was ---

19 Q --- of Corrections?

20 A --- incarcerated, and either I spoke to him or Chris  
21 Hilditch spoke to him. But I -- I got a subpoena -- I got  
22 a transport order for him to come up here.

23 Q And your private investigator, Mr. Hilditch, prepared  
24 -- did he prepare any written reports for you in regards to  
25 his investigation of this case?

1 A I know he prepared one report. Chris may have  
2 prepared a supplemental report, too. He did -- yeah. I  
3 see two reports that he prepared.

4 And we actually -- I remember going out with Chris to  
5 the -- to the incident location where this shooting  
6 happened, and Chris and I talked to witnesses out there. I  
7 remember working with Chris a pretty good bit.

8 Q Did Chris formulate any sort of opinion at the end of  
9 his report as to your client's guilt or possible success at  
10 trial and any defenses?

11 A I'm -- I'm sorry. I'm just looking at Chris  
12 Hilditch's notes. He says that his conclusion was that he  
13 -- based on the investigation that he did, that (as read):  
14 "Sherald went out to the incident location with a loaded  
15 weapon, knowing he couldn't be legally in possession of the  
16 weapon, with the intention of confronting the victims -- or  
17 Toby Chandler. He denied firing more than two rounds. He  
18 admitted to fleeing the scene and hiding from law  
19 enforcement."

20 I -- I don't -- I don't really ---

21 Q Was the ---

22 A --- agree with Chris doing this, but he said that (as  
23 read): "In my opinion, based on the case review and  
24 interview with defendant, he should plead guilty or testify  
25 against his co-defendant." Which I always appreciate, you

1 know, Chris pointing out the -- the negative parts of the  
2 case, because that really helps me a lot so I can try to  
3 address those issues.

4 Q Would you categorize this initial report as favorable  
5 to your client?

6 A I think that based on -- if I remember right, we went  
7 through most of his trial. I don't think that we -- that  
8 there's a transcript that I got from his PCR. But ---

9 MS. HARRIGAN: For the record, that is correct, Your  
10 Honor. He did plead during the second day of trial, and we  
11 only have the guilty plea portion of the transcript.

12 A There was some -- if I remember right, there was some  
13 dispute about -- or some speculation about whether Toby  
14 could've fired the -- the fatal shot. I think, based on --  
15 you were asking me about Chris Hilditch's investigation, if  
16 it -- if it was favorable?

17 Q Yes.

18 A I think he came to the -- he drew the conclusion that  
19 -- that Sherald was -- there was a good chance that he was  
20 the initial aggressor. I did speak to -- and Chris may  
21 have also spoke to a witness who said that he was trying to  
22 kill Toby and may very well have done that, but his gun  
23 jammed. I remember one witness that said that.

24 So all -- all this -- these -- some of these  
25 statements really weren't very favorable in Chris's eyes to

1 -- to Sherald.

2 Q Did you ---

3 A I don't -- I don't think there was a bullet that was  
4 ever found, and there was some speculation that maybe Toby  
5 shot -- and I -- and I think I asked Dominick West about  
6 this, and kind of made this into a big deal at the trial,  
7 that they never found the bullet that went through Angela.

8 And I think that I was trying to -- you know, I --  
9 tell -- let the jury know that maybe -- or cast some doubt  
10 about what -- maybe Toby got the bullet. But I don't think  
11 there was anything conclusive about that, but there was  
12 kind of some evidence at the trial that suggested that.

13 Q In regards to co-defendant's counsel, Mr. Wilder's  
14 motion for a mistrial, did you join in this motion?

15 A Without trying to look through the transcript and --  
16 I'll say I'm pretty sure that I -- fairly certain that I  
17 did join his motion.

18 Q Did you feel that you were prepared for trial -- the  
19 trial of this case?

20 A Yes.

21 Q Had you prepared any outlines of potential testimony  
22 or cross-examination of witnesses?

23 A I always do outlines for my opening statement, closing  
24 argument, all my cross-examinations, and my direct  
25 examinations. I always do outlines, and I did those in

1 this case.

2 Q And Mr. Anderson's plea was entered after  
3 approximately two and a half days of trial, right?

4 A That sounds about right. It's been a while, but that  
5 sounds about right.

6 Q And the State allowed him to plead to the two counts  
7 of AWIK and dismissed the murder charge, correct?

8 A The two counts of AWIK and I think there was another -  
9 --

10 Q The possession of the ---

11 A The ---

12 Q --- weapon.

13 A --- possession of -- yeah. And dismissed the murder.  
14 That's correct.

15 Q Did you feel it was in your client's best interest to  
16 accept this plea negotiation?

17 A Yeah. I thought it was -- if -- if you're asking my  
18 opinion if it was a good plea offer, I definitely think it  
19 was. But I -- even if I think something's a good plea  
20 offer, I -- you know, a defendant has a right to a trial,  
21 and I tired the case. So ...

22 Q In regards to his allegation that you coerced him to  
23 enter this plea, you were already in the midst of trial at  
24 this point, correct?

25 A I don't understand how -- that's right. I mean, I

1 don't understand how --- the allegation that I forced him  
2 to enter a guilty plea, when -- if I remember right -- I  
3 tried -- we tried most of the case, me and Arthur Wilde.

4 Q Were you prepared to continue on with the trial ---

5 A Yes.

6 Q --- to it's completion?

7 Did you inform your client that you were prepared to  
8 go forward if he'd like to continue with the trial?

9 A Yes.

10 Q Ultimately, whose decision was it for Mr. Anderson to  
11 plead guilty?

12 A It was his.

13 MS. HARRIGAN: No further questions, Your Honor.

14 THE COURT: Okay. Any questions?

15 CROSS-EXAMINATION BY MR. HOLLER:

16 Q Mr. Sullivan, the -- you talked about your phone  
17 conversations with Mr. Anderson, roughly from January,  
18 2009, up through March of 2010, when you -- most of those  
19 phone conversations were between you and him while he was  
20 in the prison.

21 A Right.

22 Q Fair to say that the vast majority of those  
23 conversations had to do with him getting bond or getting  
24 out?

25 A I'm going to -- yes. And that's most likely because

1 that's what he wanted to talk about.

2 Q Certainly. But there was no real substantive  
3 discussion of the events that happened at the residence of  
4 defenses?

5 A In a lot of my entries, under the -- my client  
6 contacts with Mr. Anderson, on a lot of these I did  
7 indicate that we talked about a bond reduction/bond  
8 hearing. We could've talked about the facts of the -- the  
9 case in some of these conversations, but I do see a lot of  
10 them where I notated that they were to talk about the -- to  
11 -- that he wanted to talk about ---

12 Q When did you -- when did you receive the documents  
13 from the prosecution in your Rule 5 disclosure -- in their  
14 Rule 5 disclosures?

15 A It looks like -- I've got a note that's in my file  
16 that I -- I received discovery on October 1, 2009.

17 Q Okay. So would it be fair to say -- when did you go  
18 to the scene with Chris Hilditch?

19 A Well, whatever I've -- I've got statements that I took  
20 from -- from some witnesses, and based on the -- the dates  
21 of those interviews -- I remember going out there -- I may  
22 have gone out there more than one time, but I definitely  
23 remember going out there with Chris.

24 And the dates on these interviews is March 22, 2010.  
25 So I believe he was with me at that time, and we

1 interviewed some witnesses out there.

2 Q Okay. And you -- you -- you -- you entered -- there  
3 was an ex parte order to hire Chris. That apparently  
4 happened before you sat down with Mr. Anderson face-to-  
5 face. When did you get the ex parte order?

6 A (No audible response.)

7 Q And if it ---

8 A I -- I'm sorry.

9 Q --- if it helps you, if you have a bill from -- from  
10 Chris that would tell us the date he did work, that'd be  
11 fine, too.

12 A I can tell you -- I can tell you the dates on Chris's  
13 investigator summary.

14 Q Okay.

15 A He's got -- on one of these reports, it's December 4,  
16 2009; and on the supplemental report -- is January 9, 2010.

17 And here's the ex parte order. Judge King signed it  
18 on June 29, 2009.

19 Q Okay. Now, you -- you indicated your -- your  
20 customary -- your custom is, depending on the seriousness  
21 of the charge -- I'm assuming you would go see somebody  
22 more often for the more serious charges and less often for  
23 the less serious charges.

24 A I would say that the time that I'd speak to them -- I  
25 mean, I generally have a -- an initial interview where I

1 get background information before I get the discovery. And  
2 then when we go over discovery, I tell my clients to tell  
3 me everything that they can think of about what happened.

4 I would say that my discovery review -- that's what I  
5 call it -- in a serious case like this would be much longer  
6 than a -- a less severe case. And I probably would go see  
7 them a little bit more as -- as far as the number of  
8 visits.

9 But definitely -- I mean, I tell them to tell -- tell  
10 me everything when we go over the discovery, but -- but I  
11 definitely -- the more serious the crime, I would say,  
12 generally, the longer I would spend with the client.

13 Q Okay. And your testimony is that you went to see him  
14 initially on March the 25, 2010, when you saw him face-to-  
15 face?

16 A I've got -- I'm sorry. I've got some of my notes and  
17 -- we kept on a computer, and then I had my own form that I  
18 used, so some of my notes about the interviews are in two  
19 different places. But I see the initial interview with Mr.  
20 Anderson on June 19, 2009.

21 Q Is that by ---

22 A I saw where I spoke to him ---

23 Q --- is that by phone or in person?

24 A That would've been in person. I -- I do -- I would do  
25 my initial interviews in person.

1 Q Okay. You have two different places. You told me  
2 before your first conference with him was June 3, 2009.  
3 Then you said you spoke to him on July 16, 2009 and July  
4 28, 2009.

5 A 2009.

6 Q You're telling me that you had overlooked the June 9 -  
7 --

8 A No. The -- the June 19, 2009 -- that looks like my  
9 initial interview, which would've been in person. I've --  
10 I've got this form that I came up with, sort of a  
11 questionnaire. Then I sit down with them in person and --  
12 so that was my initial interview. I've got a notation here  
13 that I spoke to him on the phone on June 3, 2009.

14 Q Okay. And when you say -- okay. That's by telephone.  
15 So you met with him face-to-face on June 19, 2009, correct?

16 A Yes.

17 Q You saw him again on -- face-to-face March 25, 2010?

18 A We went over discovery on February 3, 2010, and I  
19 think I -- let me find his statement that I took.

20 Apparently, I did in-depth, thorough interview of Mr.  
21 Anderson. My statement and interview is dated March 25,  
22 2010.

23 Q So are you -- okay. You had gone through earlier --  
24 you were asked and you went through your contact with him.

25 You went ---

1 A Right.

2 Q --- chronologically through your contact with ---

3 A Right.

4 Q --- him. You've come back now and told me about  
5 several that you had omitted. So when you told the Court -  
6 - when -- your first testimony, you just skipped the --  
7 your person to -- face-to-face meetings?

8 A I -- I can't remember what I -- I mean, I -- I don't  
9 know what I skipped or -- I've got all of my client  
10 contacts.

11 Q You believe you sat down with him February 3, 2010?

12 A I've got that notated as when we went over -- or one  
13 of the times, at least, that we went over the discovery.  
14 Like I said, I call that my "discovery review" with him.

15 Q Okay. On February the 3, 2010?

16 A Right.

17 Q And you testified earlier your discovery review with  
18 him was March the 25, 2010.

19 A I may have had -- had -- since it's murder, I may have  
20 had more than one, but you know, I'm looking at the date of  
21 my interview. So we very -- very well -- it looks like we  
22 could have talked about the discovery on more than one  
23 occasion.

24 Q The -- the information that was turned over from the  
25 prosecution, there was no bullet that killed Ms. Anderson

1 was ever found. No -- there was no forensics for the --  
2 for the bullet that killed her --

3 A That's right.

4 Q -- is that correct? There was no evidence of Mr.  
5 Anderson having ever fired a weapon, in terms of what was  
6 on his hand or his person.

7 A Gunshot residue?

8 Q Yes.

9 A I don't -- I think he -- I mean, I hate to say it, but  
10 I -- I think the -- that the testimony or evidence was that  
11 he went into hiding.

12 So I don't think that they could've -- I mean, if -- I  
13 don't know exactly how long it was, but it's not going to  
14 do any good to try to get any gunshot residue a long time  
15 after -- you know, he's only going to have it on his hands  
16 for so long after the firing of a gun.

17 Q But there was no evidence that he had fired the gun,  
18 no physical evidence?

19 A I don't -- I don't remember. I mean, there was  
20 testimony from witnesses.

21 Q I understand. But there's no physical evidence.

22 A I don't remember there being any gunshot residue, but  
23 like I said, I think that it took them a while to -- to  
24 find Mr. Anderson, if I remember right. And he's not going  
25 to have any gunshot residue, you know, if a long time goes

1 by. I mean, you wash your hands and you sweat.

2 Q No weapon that was in his possession was ever found.

3 A I don't think so, because like I said, I think it was  
4 a while after it happened when they found him.

5 Q What -- what led up to the change of position from the  
6 prosecution in terms of dropping the murder charge and  
7 allowing him to plead to the assault with intent to kill?

8 A Well, I mean, I -- it could've been that it was maybe  
9 a little bit embarrassing to the State that I asked  
10 Dominick West about the -- a couple witnesses that I talked  
11 to that I think were there, that law enforcement didn't  
12 know about. And I think that's in the transcript.

13 So -- and I mean, I hate to say it, but Jason Corbett  
14 had always offered me -- he's offered me a lot of -- or my  
15 client's favorable recommendations/plea offers over the  
16 years. So I -- I don't know. Maybe Arthur Wilder did a  
17 good job at -- you know, at the trial.

18 Q Arthur Wilder was your co-defendants' attorney?

19 A Yes.

20 Q Arthur Wilder's a very good attorney.

21 A Yes, he is.

22 Q He's very good compared to paid/un-paid?

23 A Yes, he is. I think very ---

24 Q Regardless of ---

25 A --- highly of Arthur.

1 Q --- regardless of years in services, he's one of the  
2 best ---

3 A He's one ---

4 Q --- defense attorneys.

5 A --- of the best.

6 Q Okay. Did he make some points about this witness on  
7 the 911 tape not being who she said she was?

8 A If I -- it's been a long time, and like I said, we  
9 don't -- I didn't get the transcript. But I think that  
10 Arthur made some points about -- it seemed like whoever it  
11 was -- and I think I listened to the 911 tape, because I  
12 remember the caller saying something about where's the  
13 ambulance. It took a long time for -- for the ambulance to  
14 come out there and -- and you could -- you know, Angela was  
15 laying on the ground and they kept complaining about  
16 where's the ambulance.

17 But I think Arthur asked questions about whoever it  
18 was -- I can't remember the girl's name who made the call,  
19 but for whatever reason, she didn't want to say that she  
20 made the call.

21 Q You have a college and post-graduate degree?

22 A Yes.

23 Q Okay: Not all your clients are that educated, okay,  
24 or understand language as well as you do, agreed?

25 A Yeah.

1 Q Okay. The words "concurrent" and "consecutive" can be  
2 confusing.

3 A Well, I explain it to them. I -- I think they can  
4 understand it.

5 Q Okay. Do you specifically remember talking to Mr.  
6 Anderson about the gun charge?

7 A Not -- I mean, I've represented a lot of clients over  
8 the years, I don't specifically remember that conversation.  
9 But if -- if -- I -- I normally go over the recommendations  
10 of the State, they check the box. If there's a  
11 recommendation, I talk to my clients about that -- or did  
12 talk to my clients about any recommendations in general,  
13 and I wouldn't have done anything different with Sherald.

14 Q And you specifically remember talking about the -- the  
15 -- excuse me -- the *Alford* plea, because he could not, in  
16 his mind and in his heart, accept pleading guilty to a  
17 charge of trying to kill his wife.

18 A When all he -- the only person that he intended to  
19 kill was Toby. He didn't intend to kill his wife. I  
20 remember talking to him about that.

21 Q That's a specific, definite, we talked about that. I  
22 don't have to rely on ---

23 A Right.

24 Q --- notes or anything else.

25 A Right.

1 Q But on the five years possibly running at the end of  
2 the ten-year charge, you don't have that specific  
3 recollection?

4 A My memory's not that good that I could remember that -  
5 - that kind of thing.

6 Q What was the plea -- what was the offer, if any, going  
7 into the trial?

8 A I don't think that -- Jason Corbett generally,  
9 particularly on a murder charge, wouldn't make an offer  
10 before the trial just in general. He generally, more so  
11 than other assistant solicitors, would wait until later on,  
12 usually at trial, particularly with a murder case.

13 And that -- that would probably be the case with a lot  
14 of assistant solicitors. You're just not going to get an  
15 offer, like with a more minor charge, on a murder early on.

16 Q So Mr. Sullivan, your recollection would be on one of  
17 your more serious cases, you started this trial there was  
18 no plea offers. And that something broke during the trial,  
19 and all of the sudden there was an offer to drop the  
20 murder, go with assault with intent to kill on two charges  
21 under a *Alford* plea, and no recommendation on the gun  
22 charge.

23 A I have a place on the form -- that I was telling you  
24 about that I came up with -- for a plea offer from the  
25 solicitor. I don't see one from Jason Corbett for Mr.

1 Anderson.

2 Q So -- and I know you were trying to read while I was  
3 asking the question. You essentially started the murder  
4 trial ---

5 THE COURT: Okay. I need to take a quick recess.

6 I'll be right back.

7 (Off the record from 10:39 a.m. and 10:42 a.m.)

8 THE COURT: Okay.

9 MR. HOLLER: Really just two questions: one long and  
10 one short.

11 Cross-examination by Mr. Holler (continues):

12 Q Mr. Sullivan, I've asked you this question, but I --  
13 you were looking through your notes. I just want to make  
14 sure I got this straight. You started a murder trial, and  
15 during the course of the trial, events occurred where the  
16 State was willing to drop the murder charge -- dismiss the  
17 murder charge, allow Mr. Anderson to plead to two assault  
18 with intent to kill charges under an *Alford* deal. And you  
19 specifically remember him saying I cannot say I tried to  
20 kill my wife, who was the victim, and the gun charge,  
21 correct?

22 A Right. I -- I don't know -- I know it wasn't before  
23 the trial that Jason Corbett made a plea offer. I -- I  
24 can't remember exactly at what point in the trial it was,  
25 but I think it was done in trial that -- that he made an

1 offer, probably based on what had happened in trial, I'm  
2 guessing.

3 Q Like the facts that the case is about, a trial is a  
4 human event; is it not?

5 A Right.

6 Q Things always happen in trial --

7 A Right.

8 Q -- correct?

9 A Right.

10 Q No case cannot be always -- can't -- cannot always be  
11 won, and no case will always be lost.

12 A Right.

13 Q It's a human event to go through a trial.

14 A Right.

15 Q Things happen and a plea was offered --

16 A Right.

17 Q -- during the course of the trial.

18 A Correct.

19 Q Do you specifically remember talking about, for  
20 example, I can't plead for trying to kill my wife, who was  
21 a victim, so I will do it under an *Alford*?

22 A Right.

23 Q But you have no specific recollection of talking about  
24 the five years being run consecutive to the assault with  
25 intent to kill, although that would be your own practice.

1 A That would be my own practice. I can't remember  
2 probably most of the -- specifically the conversation about  
3 -- I mean, the plea offer, I -- I can't remember that, but  
4 that would be my normal practice.

5 Q Thank you.

6 MS. HARRIGAN: Just briefly, Your Honor.

7 REDIRECT EXAMINATION BY MS. HARRIGAN:

8 Q In regards to Mr. Holler's line of questioning  
9 regarding gunshot residue, your client hid from the police  
10 after this incident occurred, correct?

11 A I don't want to say anything that's wrong, but it's my  
12 recollection that the law enforcement -- that he was in  
13 hiding from law enforcement, and it took a while for them  
14 to catch up with him.

15 Q Based on your criminal defense experience, how long  
16 does gun residue -- gunshot residue normally remain on a  
17 shooters hands, that it's -- it would be tested by SLED?

18 A I mean, just based on when I worked for the PDs office  
19 and just listening to officers testify, I mean, I would  
20 think that -- and this is kind of me just speculating, I'm  
21 not really -- I'm not an expert on this, but I would say it  
22 would probably depend on the time of year, if they were  
23 sweating a lot, if they took a shower. I mean, I would  
24 think that soon after, if -- if the gunshot residue kit  
25 wasn't done, then they're not going to get any. I would

REDIRECT-EXAMINATION BY MS. HARRIGAN - DAVID SULLIVAN 47

1 think within hours.

2 Q Would you ---

3 A I'm guessing.

4 Q --- categorize gunshot residue as a pretty fragile  
5 material that can be easily removed or washed off?

6 A Again, I -- I don't have any -- I mean, I'm not an  
7 expert on gunshot residue, but yes, from --

8 Q In regards to no weapon being found, did Mr. Anderson  
9 ever deny that he had a weapon during this incident to you?

10 A No.

11 Q And he pled guilty to having a weapon, correct?

12 A Right.

13 MS. HARRIGAN: No further questions, Your Honor.

14 THE COURT: Okay. Anything -- you can step down.

15 (The witness complies.)

16 THE COURT: Anything further from the defense side?

17 MS. HARRIGAN: No additional witnesses from the State.

18 THE COURT: Okay.

19 MR. HOLLER: No one -- none in reply.

20 THE COURT: All right. I will let y'all know about my  
21 decision.

22 MS. HARRIGAN: Thank you, Your Honor.

23 MS. HARRIGAN: Thank you.

24 THE COURT: Thank you.

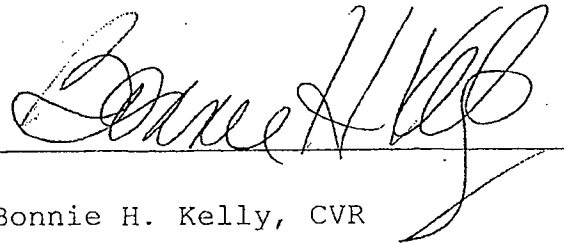
25 -- END OF TRANSCRIPT OF RECORD --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Third Circuit Court for Sumter County, South Carolina, on the 12th day of December, 2012.

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



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

May 29, 2013

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )

RECORDED

2013 FEB 21 PM 1:16

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

Sherald Anderson, #250152,

Case No. 2010-CP-43-1510

JANE S. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

*Barbara C. Dickson*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed July 20, 2010. The Respondent made its Return on April 11, 2011. An evidentiary hearing into the matter was convened on December 12, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by David C. Holler, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted during the February 2009 term of the Sumter County Grand Jury for Murder, two counts of Assault with Intent to Kill, and Possession of a Pistol by a Person Convicted of a Crime of Violence (2009-GS-43-0194). Applicant was represented by David Sullivan, Esquire. On April 15, 2010, the Applicant pled guilty before the Honorable W. Jeffrey Young to two counts of AWIK<sup>1</sup> and Possession of a Pistol by a Person Convicted of a Crime of Violence; the murder charge was dismissed pursuant to the plea. Judge Young sentenced Applicant to ten years imprisonment for each count of Assault with Intent to

<sup>1</sup> Count three of Assault with Intent to Kill was entered pursuant to North Carolina v. Alford, 400 U.S. 25 (1970).

Kill, with the sentences to be served concurrently, and to a consecutive term of five years imprisonment for Possession of a Pistol by a Person Convicted of a Crime of Violence.

Applicant did not appeal his conviction and sentence.

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

1. Ineffective assistance of counsel.
  - a. "Counsel failed to investigate and coerced me into a guilty plea."
2. "Violation of the 6<sup>th</sup> Amendment of the U.S. Constitution."
  - a. "Denial of adequate representation and a fair trial."
3. "Violation of the 14<sup>th</sup> Amendment of the U.S. Constitution."
  - a. "Denial of due process of law."

In its Return, Respondent interpreted Applicant's allegations to be ineffective assistance of counsel. At the evidentiary hearing, Applicant presented his claims as ineffective assistance of counsel and specifically alleged that Counsel was ineffective for failing to investigate and for coercing him to enter a guilty plea.

#### SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from plea counsel David Sullivan, Esquire ("Counsel"). This Court also had before it a copy of the Applicant's guilty plea transcript, the records of the Sumter County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

At the evidentiary hearing, Applicant testified first on his behalf. Applicant testified that Counsel was appointed to represent him and only met with him once during the nearly two years before his guilty plea. Applicant testified that Counsel reviewed discovery materials with him,

sent him a copy of his discovery, and he recalled discussing possible defenses with Counsel. Applicant testified that he gave Counsel various witnesses to investigate, including his stepson Edward Brown. Applicant testified that Counsel used a private investigator to assist with this case, and this investigator met with him once.

Applicant testified that he pled guilty during the middle of his trial. Applicant testified that he was originally charged with Murder and that the State dismissed his murder charge in exchange for his guilty plea. Applicant testified that Counsel advised him that murder carries a mandatory minimum sentence of thirty years imprisonment and a maximum sentence of life imprisonment without parole. Applicant testified that it was his decision to plead guilty. Applicant testified that he understood the recommendation from the State was for concurrent sentences for his two Assault with Intent to Kill counts; however, Applicant testified that he thought the State's recommendation would include concurrent time for the Possession of a Weapon by a Person convicted of a Crime of Violence count. Applicant testified that he thinks Counsel coerced him into pleading guilty because he thought the State was recommending he would receive concurrent sentences for all three counts for which he entered a guilty plea.

Applicant testified that he told the plea court he was satisfied with Counsel's representation while he was under oath. Applicant testified that he now is unsatisfied with Counsel's performance, as he thinks failing to properly investigate his case. Specifically, Applicant stated that he wanted Counsel to obtain a 911 tape from the incident and interview additional witnesses. Applicant acknowledged that he did not have a copy of the 911 tape at the hearing, nor did he have any witnesses here to testify today. Applicant also testified that during his trial, it was revealed that his bullet did not kill one of the victims, but another shooter, and that Counsel should have moved for a mistrial based on this information.

Following Applicant's testimony, Counsel testified that he has been an attorney for seven years and was formerly employed as a Sumter County Public Defender, including during his representation of Applicant. Counsel testified that he met with Applicant numerous times throughout his representation and listed more than fifteen separate times he communicated with Applicant regarding his case either in-person or by telephone. Counsel testified he met with Applicant soon after he was appointed to conduct an initial interview on June 19, 2009. During this meeting, he was able to discuss the facts of the case, possible defenses and sentences for the charges, and explain the elements of the charges Applicant was facing. Counsel testified that he met with Applicant on February 3, 2010 for a "discovery review," where he thoroughly reviewed and discussed Applicant's discovery with him. Counsel testified he also met with Applicant on March 25, 2010 for another "in-depth interview." Counsel testified that in addition to these in-person and telephone communications, he frequently corresponded with Applicant by written correspondence and kept Applicant abreast of all pertinent developments in his case.

Counsel testified that throughout the course of his representation, Applicant's primary concern was obtaining pre-trial release on bond. Counsel testified that Applicant had a bond hearing with other counsel before he was appointed, as well as a bond hearing upon Counsel's motion on September 10, 2009. Counsel testified that he also moved for a bond reduction per Applicant's request. Counsel testified that he filed a motion for a fast and speedy trial at Applicant's request.

Counsel testified that he filed an *ex parte* motion for costs to allow him to hire a private investigator to assist with the preparation of this case. Counsel testified that an *ex parte* Order for Funds was signed by the Honorable Howard P. King, allowing him to retain private investigator Chris Hilditch. Counsel testified that Investigator Hilditch interviewed several

witnesses in this case, including: Marquis Lucas at the incident location, Demitria Duffie, Willie Mae and Isaac Duffie, and Edward Brown – the victim's stepson of whom law enforcement was unaware and was only interviewed by Hilditch. Counsel testified that Hilditch also visited the incident location on at least one occasion. Counsel testified that Hilditch prepared a written report summarizing his findings and that this report was not favorable to Applicant's case. Specifically, Counsel testified that the report showed that Applicant was the initial aggressor who arrived at the scene with the intent to harm at least one of the victims, Toby Chandler, who was the boyfriend of Applicant's common law wife Angela Anderson. Counsel testified that he shared this report with Applicant, who admitted that he intended to harm Toby Chandler but not Angela Anderson. Counsel testified that Applicant also admitted to fleeing the scene and hiding from law enforcement following the incident. Counsel testified that after speaking with Applicant, he asked Hilditch to prepare a supplemental report after additional investigation. Counsel testified that this report was submitted to him in January of 2010 and was also not favorable to Applicant. Counsel testified that no weapon was recovered, as well as any bullets or shell casings from the fatal shot. Counsel testified that no gunshot residue was found on Applicant, but that this was not particularly helpful to his defense because gunshot residue is a very fragile material that can easily be removed. Counsel testified that as Applicant was hiding from law enforcement following the incident, Applicant could have easily washed his hands to remove any gunshot residue prior to his arrest. Counsel testified that he investigated into a 911 call at Applicant's request and recalled that it took a "long time for an ambulance to arrive" at the incident location; however, Counsel testified he did not think this had any bearing on Applicant's case.

Counsel testified that he was prepared for the trial of this case. Specifically, Counsel testified that he made outlines of potential testimony and cross-examination for each witness, as he always does before a trial. Additionally, Counsel testified that he prepared a witness list of trial, including nineteen witnesses who were subpoenaed. Counsel testified that this included Edward Brown, Angela Anderson's son who was present at the scene of the crime. Counsel testified that the case proceeded to trial alongside Applicant's co-defendant, Samuel Montgomery. Counsel testified that Arthur Wilder, Esquire, represented Mr. Montgomery. Counsel testified that he "thinks that Arthur Wilder is one of the best attorneys in the state" and that he was glad to be trying this case alongside him.

Counsel testified that Applicant decided to enter a guilty plea after two and a half days of trial. Counsel testified that the State made a plea offer that would allow Applicant to plead to the two Assault with Intent to Kill charges for recommended concurrent sentences and would dismiss the Murder charge, but that the State made no recommendation as to the Possession of a Weapon by a Person Convicted of A Crime of Violence. Counsel testified that the State made no offers to Applicant prior to trial, particularly in regards to the Murder charge. Counsel testified that he believes the State made this favorable offer during the trial because "it could have been embarrassing for the State that [he] found witnesses that the State did not know about." Counsel testified that he thought the plea offer was beneficial for his client and was "definitely" in the best interest of Applicant. Counsel testified that he thoroughly reviewed the State's offer with Applicant, including that there was no recommendation as the weapon charge. Counsel testified that he explained the difference between consecutive and concurrent sentences to Applicant in "layman's terms" and that Applicant appeared to understand the State's offer. Counsel testified that it was ultimately Applicant's decision to accept the State's offer.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

### *Ineffective Assistance of Counsel*

In a post-conviction relief action, the Applicant has the burden of proving the allegations in his application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

*Counsel was ineffective for failing to investigate*

Applicant alleges that Counsel was ineffective for failing to prepare and conduct a proper investigation. At the evidentiary hearing, Applicant testified that Counsel should have investigated and obtained a 911 call, as well as investigated several witnesses, including his stepson Edward Brown. Applicant presented no reports, offered no expert testimony, and otherwise provided no evidence to support this allegation. Applicant was unable to even speculate as to what benefit could have been derived from any such investigation. Counsel testified that he hired a private investigator, who interviewed numerous witnesses, visited the incident location, and prepared two written reports summarizing his findings. Additionally, Counsel testified that Investigator Hilditch was able to locate and interview Edward Brown, which the State was unable to do. Counsel testified that he subpoenaed nineteen witnesses for trial and had prepared detailed outlines for each witnesses' testimony. Additionally, Counsel

stated that he investigated the 911 call at his client's request, but he did not think it had any bearing on Applicant's case:

Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). This Court finds that Counsel performed a thorough investigation with the assistance of a skilled private investigator and was not deficient in regards to his investigation or preparation for trial. Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of counsel. Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after Counsel's competent performance at trial. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

*Counsel was ineffective for coercing him to enter a guilty plea*

Applicant alleges that Counsel was ineffective for coercing him to enter a guilty plea. Applicant testified that Counsel told him he would receive concurrent sentences for all three of the charges to which he entered a guilty plea. Counsel testified that the State offered Applicant a favorable plea deal following two and a half days of trial. Counsel testified that this offer allowed Applicant to plead guilty to Assault with Intent to Kill for a recommendation of concurrent sentences and the dismissal of the Murder charge. Counsel testified that the State refused to make any offers to Applicant prior to trial and that he believed the State only made this advantageous offer to Applicant following testimony from multiple witnesses. Counsel testified that he fully apprised Applicant of the terms of the State's offer, including that there was no recommendation as to the Possession of a Weapon by a Person Convicted of a Crime of Violence charge. Counsel testified that he explained to Applicant that this could result in consecutive sentences and explained what this meant in terms that Applicant could understand.

Counsel testified that he informed Applicant that this plea offer was in his best interest, but that it was ultimately up to Applicant to decide whether to continue with his trial or enter a guilty plea. This Court finds that Counsel's credible testimony reveals that Applicant was fully apprised of the State's plea offer and after receiving competent advice from his attorney, Applicant voluntarily and knowingly pled guilty. Based on the foregoing, this Court finds that Counsel's performance was not deficient in regards to this allegation. Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of counsel. This Court holds that the Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

#### CONCLUSION

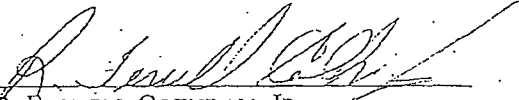
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

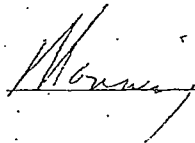
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14 day of Feb., 2013.

  
R. FERRELL COTHRAN, JR.  
Presiding Judge  
Third Judicial Circuit

, South Carolina.

WITNESSES

SCSO

Inv. D. West

DOCKET NO. 2009-GS-43-194

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

THE STATE  
vs.

SHERALD K. ANDERSON

SAMUEL L. MONTGOMERY, JR.

ARREST WARRANT NUMBER

J294261, J294262, J294264, J294265;  
J294266

D/A: 05/11/08

ACTION OF GRAND JURY

*Heidi Bice*

Foreperson of Grand Jury

Date: 9/13/08

VERDICT

Indictment for

MURDER, ASSAULT WITH INTENT TO  
KILL (2 Counts), POSSESSION OF  
PISTOL BY PERSON CONVICTED OF A  
CRIME OF VIOLENCE

C. KELLY JACKSON, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SUMTER ) MURDER, ASSAULT WITH INTENT TO KILL (2  
 Counts), POSSESSION OF PISTOL BY PERSON  
 CONVICTED OF A CRIME OF VIOLENCE

At a Court of General Sessions, convened on February 19, 2009, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – MURDER

That SHERALD K. ANDERSON AND SAMUEL L. MONTGOMERY, JR. did in Sumter County on or about May 10, 2008, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one Angela Anderson by means of shooting her, and that the said Angela Anderson did die as a proximate result thereof.

COUNT TWO – ASSAULT WITH INTENT TO KILL

That SHERALD K. ANDERSON AND SAMUEL L. MONTGOMERY, JR. did in Sumter County on or about May 10, 2008, with malice aforethought, commit an assault upon one Toby Chandler by shooting at him, with intent to kill the said Toby Chandler.

COUNT THREE – ASSAULT WITH INTENT TO KILL

That SHERALD K. ANDERSON did in Sumter County on or about May 10, 2008, with malice aforethought, commit an assault upon one Angela Anderson by shooting at him, with intent to kill the said Angela Anderson.

COUNT FOUR – POSSESSION OF A PISTOL BY A PERSON CONVICTED OF A  
 CRIME OF VIOLENCE

That SHERALD K. ANDERSON did in Sumter County on or about May 10, 2008, violate Section 16-23-30 (A)(1)&(B) of the Code of Laws of South Carolina (1976), as amended in that he did unlawfully possess a pistol, to-wit: .380 caliber pistol, after having been convicted of a crime of violence as defined in Section 16-23-10, to-wit: burglary.

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

  
 \_\_\_\_\_  
 SOLICITOR