

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Greenville County

Honorable G.D. Morgan, Jr., Circuit Court Judge

RONNIE C. SWOFFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001436

APPENDIX

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RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 **THE WITNESS:** It is Ronnie Cleveland Swofford, Jr.

2 DIRECT EXAMINATION BY MR. JOHNSTON:

3 Q Where are you from, Mr. Swofford?

4 A Spartanburg, South Carolina.

5 Q Were you born there?

6 A Yes, sir.

7 Q And have you lived anywhere much other than
8 Spartanburg?

9 A No, sir. I did live in Tennessee for a brief
10 moment in my life, but only about a year.

11 Q What type of education do you have?

12 A A high school diploma.

13 Q Where did you graduate high school?

14 A Broome High School in Spartanburg County.

15 Q What year did you graduate from Broome?

16 A 1992.

17 Q Any schooling past that?

18 A I had two years with machine technology. Two
19 years of auto mechanics. I'm currently taking some
20 online small business courses right now.

21 Q Did you get in some big trouble about 1993?

22 A Yes, sir, I did.

23 Q Were you convicted of five violent felonies?

24 A Yes, sir, I was.

25 Q And were you also convicted of armed robbery

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 and financial transaction card infraction at that time?

2 A Yes, sir, I was.

3 Q Did you go to prison for it?

4 A Yes, sir, I did.

5 Q How long did you stay in prison?

6 A Thirteen years and one month.

7 Q Where did you do most of your time?

8 A Broad River Correctional Institution.

9 Q Where is that located?

10 A Columbia, South Carolina.

11 Q Go ahead and get your water.

12 A The medicine I take makes me drink a lot of
13 fluids. I apologize.

14 Q Well. That leads me to a question: You said
15 that the medicine you take requires that you hydrate
16 all the time; is that right?

17 A Yes.

18 Q What kind of physical conditions do you have?
19 And you can take your time. Okay. Take another sip of
20 water and let me know when you're ready. Okay?

21 A My step daughter is here is the reason -- I
22 have HIV -- I'm HIV positive.

23 Q Your step daughter, that's the young lady back
24 here, she doesn't know that. You're not proud of that,
25 are you?

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 A No, sir.

2 Q Do you know how you got it?

3 A Not exactly.

4 Q What kind of medicines do you have to take?

5 A Well, I take Tegretol (ph), Norvir (ph). I
6 take antibiotics three times a week. Last year, I came
7 down with a various -- meningitis and I had to take
8 certain antibiotics.

9 Q Now meningitis, is that -- leads to infection?

10 A Yes, sir, it does.

11 Q Takes advantage of someone who has impaired
12 immune system?

13 A Correct.

14 Q What is meningitis?

15 A Well, apparently, in this case, when I
16 developed -- was something that I inhaled at one of the
17 businesses that I was doing work for. They couldn't
18 never pinpoint, but it could have been just as easily
19 bird poop. And -- but it was just real hard to
20 pinpoint it.

21 Q And what is meningitis? Do you know?

22 A It's where yeast cultures were forming in my
23 blood on my spine, and it was attacking my brain. And
24 I was working so much at the time, up to 20 hours a
25 day. That I got to where I couldn't see. And I

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 went -- I had to stop to my mother's --

2 Q It affected your vision?

3 A Correct. I couldn't see. I went to my
4 mother's. My -- I think it was a Sunday night last
5 year, in February. She tried to do the motherly thing
6 and doctor me up, but I don't drink. She gave me some
7 Rock and Rye. She thought I was just sick. I ended up
8 driving to the Mary Black Hospital to check myself in.

9 Q And how long were you in the hospital with
10 that, with the meningitis?

11 A For 30 days.

12 Q Since you have been out of prison, what kind of
13 work are you doing?

14 A Initially -- if you don't mind me adding to the
15 present --

16 Q Go ahead, sir.

17 A I ran -- I ran a hardwood flooring business
18 when I was incarcerated --

19 Q I didn't understand you. Please repeat that.

20 A I ran a hardwood flooring --

21 Q A hardwood flooring business?

22 A Correct.

23 Q And that's while you were incarcerated?

24 A While I was incarcerated.

25 Q Is that something that is officially sanctioned

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 by the South Carolina Department of Corrections?

2 A It is a private sector that is -- that's been
3 established by the Department of Corrections to maybe
4 help generate a trade for some people, potentially
5 maybe, to be released or just something to help
6 generate money for incomes of families that may or may
7 not be getting out. I don't know.

8 Q So, while you were in jail, you ran the
9 hardwood flooring aspect under the auspices of SCDC?

10 A Correct.

11 Q After you got out of prison, what did you do?

12 A I traveled for a couple of the first months,
13 with the same type of business, hardwood floors.

14 Q Yes, sir.

15 A I traveled to Michigan, Washington, D.C.,
16 Atlanta. I did some -- I designed some stuff for some
17 of the major flooring companies in the world. I never
18 got the patent, but that's what I was -- that's what I
19 thought I wanted to do. But I developed my
20 relationship with Shannon. And I was just gone too
21 much. I tried to start my -- well, I did start my own
22 business. And that business was initially Mobile
23 Detailing --

24 Q Is that like for cars?

25 A Initially it was for cars. And I moved up into

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 trucks. Got into fleet washing. I started doing a
2 little more commercial stuff. I got involved -- I had
3 over 128 Kangaroo Gas Stations between Charlotte and
4 Georgia. Hubbell Lighting (ph), it's in Greenville
5 County. I do all the Greenville/Spartanburg County
6 stores as well.

7 I even, you know, did the football stadium --
8 I'm a vendor for Spartanburg County. All these
9 McDonalds, banks all over Greenville/Spartanburg
10 County. Regents Bank, BB&T.

11 Q Now, obviously you didn't immediately have all
12 of this clientele?

13 A Correct.

14 Q So it built up over time?

15 A Yes, sir. I got out in -- I didn't do a lot of
16 advertising, but I started with just a lot of hustle,
17 word of mouth. I felt like I had something to prove,
18 you know, where -- I was gone for so long, I wanted to
19 show everybody, look, this is not who you think I am.
20 I want to get out of here and be the man I know I am,
21 you know.

22 Q Okay. Now, you said that your career choice
23 sort of changed when either you met Shannon or when
24 your relationship started, I'm not exactly sure. Had
25 you known her before and then you kind of developed a

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 more intimate relationship with her or what?

2 A Yes, sir. I knew Shannon before I went to --
3 before I went away to be incarcerated.

4 Q How did you know her?

5 A You know, probably in the early '90's, '90,
6 '91, there was a place where people would go to in
7 Chesney and cruise in Gaffney at night, and then
8 sometimes on the weekend --

9 Q Cruising in their cars?

10 A Cruising, like ---

11 Q Like on a Sunday, hanging out?

12 A Then WestGate Mall on the weekends. We would
13 always be at the same places. You know, the little
14 teen clubs we would always go to and always just run
15 into each other. It was just one of those situations.
16 And we had a thing then and we -- I just kind of -- I
17 kind of threw everybody off when I went away. I just
18 -- I said I just want to try to do this the best I
19 could -- it was already difficult --

20 Q You mean, your time?

21 A My time, correct. And so when I got out, you
22 know, it was just -- the greatest thing in the world to
23 be released.

24 Q Thirteen years and one month is what you said?

25 A Right. And I was released with over \$20,000

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 that I had saved up.

2 Q And give us chronological -- give us a date
3 when you were released?

4 A September 29, 2006. It was on a Friday,
5 weekend falls on -- the actual 1st fell on the weekend.
6 So that allowed -- in the Department of Corrections,
7 they allowed you to be released the previous day, which
8 would -- at this point, be the 29th.

9 Q So you came back home?

10 A Right.

11 Q Did your mother need you?

12 A Yes, sir.

13 Q Where is your dad?

14 A He's deceased.

15 Q When did he die?

16 A When I was eight.

17 Q Back to Shannon, you got out of prison you
18 started things back up with her?

19 A Yes, sir. It didn't start out quite so fast.
20 We just -- and my brother and them, we just -- they
21 were all children, I guess you can say, in middle
22 school. I had just graduated and got involved in
23 something I didn't have no idea to get involved in.
24 And so I ended up going away. And they are still in
25 school. So I didn't really have an opportunity to

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 spend a lot of time with them.

2 And when I come out, they all had -- my brother
3 and sister, both, had children. And one of my other,
4 little brother don't, but at the time --

5 Q Your little brother, Jamie, that just
6 testified, right?

7 A Well, I have a littler -- a younger brother,
8 Brent.

9 Q Okay.

10 A So, I have me, Tessell (ph), Jamie, then Brent,
11 right. So it was just a lot of bonding, spent a lot of
12 time together. And so we did go out on -- maybe the
13 first month or so. Right before I started traveling,
14 we went to -- I think, Wild Wings one night or Chiefs
15 one night or so. And so I was -- it was just some
16 bonding. And I ran into Shannon. She was the head --
17 or like full manager of Chiefs. She's been in the
18 restaurant business basically her whole life. And
19 until I met her, I actually got her involved more in
20 business type work.

21 Q Now, Shannon, she already had quite a number of
22 children, didn't she?

23 A She had two beautiful twin girls and a handsome
24 little boy, yeah.

25 Q One of whom we heard from in this case?

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 A Correct, J [REDACTED].

2 Q And you're pretty close to them, aren't you?
3 Especially to JL [REDACTED]?

4 A Well, I'm particularly close to all three. I
5 coached JP [REDACTED] in baseball for three years when I --
6 recently. Whenever AL [REDACTED] or JL [REDACTED] had a problem --
7 the other day, JL [REDACTED] was broke down in Greenville.
8 And I come in there and brought her two tires and
9 changed them.

10 Q Okay. Now, so you're close to her children?

11 A Yes, sir.

12 Q You and Shannon began to build a life together?

13 A We did. We -- I tried -- after I slowed down
14 from the traveling, business picked up. I took
15 advantage of my brother, working for a trucking
16 company. I got involved there. I moved to some other
17 resources to get involved with some trucks.

18 So I wanted to branch out. I was doing a lot of
19 attorneys' vehicles. Doctors, I was going to the
20 hospitals. We -- I had machines mounted on trailers
21 with water tanks, long hoses. High pressure, low
22 pressure, hot water, cold water. And that resulted in
23 you -- doing houses, you do concrete. It just kind of
24 started taking different turns to where I could take
25 this mobile thing and just turned it into a little bit

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 something bigger, because there is more money in
2 commercial.

3 Q Now, you and Shannon moved in together?

4 A We did. We actually moved in early of 2007.
5 At this time, I was staying home with my mother.

6 Q At that time --

7 A Initially, when I was released through -- at
8 the beginning of 2007, I stayed with mother. Then
9 Shannon and I moved in together.

10 Q Now, did Shannon know you were HIV positive?

11 A I did. I sat her down -- as a matter of fact
12 at Chiefs one evening. We talked and we sat in there.
13 I remember one of the things -- the first booth, when
14 you walk in Chiefs on the right. And, apparently, she
15 had already heard about it. But I guess she wanted to
16 hear it from me. She said is there anything you need
17 to tell me or anything like that.

18 I just wanted to let her know, because honestly,
19 I felt uncomfortable having any sexual relations
20 without making that known. I don't really know what
21 the actual ramification of someone that may have that,
22 so, I didn't -- from the law standpoint. So, I didn't
23 know. I just wanted to make her aware of it. That's
24 what I did.

25 Q Now, you and she, did y'all begin to plan a

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 family or did it just happen?

2 A I did good for a long time. I found out -- I
3 was actually diagnosed in 1998, HIV. They did random
4 testing.

5 Q That was while you were in the Department of
6 Corrections?

7 A Correct, yeah. Corrections. I had a couple of
8 tattoos on each shoulder and --

9 Q Were they prison tattoos?

10 A Yes, sir, they was. And I wasn't real educated
11 on it. I never done drugs. I never -- I don't drink
12 alcohol. So I knew I didn't do anything from that
13 point. I did have a blood transfusion early 1990's,
14 but was kind of unsure if it come from that part of --
15 I believe DHEC wanted to do some -- I had to give out a
16 list of the stuff. And they had to try to trace to see
17 if there was any potential persons I could have
18 contracted it from.

19 Q All right. Let me get back to you and Shannon
20 planning a family. Was it -- how did it come about
21 that y'all had a little boy?

22 A I got sick. I just was -- I was working too
23 hard and I started getting sick, so I started going to
24 the doctor. And I started taking -- I went to the
25 Spartanburg Infectious Disease, which -- that's the

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 name of it, but they tried to change it, to cover up
2 certain issues that -- maybe people walking into a room
3 that says that, you are thinking ugh -- but I was being
4 checked out regularly to monitor my blood counts. To
5 monitor my weight, my diet.

6 I actually -- it's -- I actually fell into the
7 AIDS category. That's where my numbers fell below 200
8 and down to 50. And you have a CD4 and a count -- my
9 CD4 dropped an actual -- a human being, an average
10 person, has like 1100. Mine dropped into the 50's,
11 which would allow my body to accept -- allow me to get
12 more sick or sick easily, more easily.

13 And so I started taking medicines. I finally
14 took that step that I always thought I was just too
15 self conscious or I worked out too much to try to do
16 that, but it come to that point.

17 Q Okay. Did you and Shannon plan to have a
18 family?

19 A Well, I took medicines. I started doing a lot
20 better. We talked about it. I thought, like I said,
21 my brother and sister had children already, and none of
22 them had the Swofford name. My brother has girls, my
23 sister is married with a boy and a girl. It was -- it
24 was planned, but it was with some -- me and her, you
25 know, we was going to church. And this is a point in

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 our relationship, I think, you know, we were a lot
2 better. And we were going to church. We prayed about
3 it a lot. I talked to my pastor about it. And we --
4 after my numbers were a lot higher, we took that
5 chance.

6 Q All right. And was it sort of a miracle that
7 she got pregnant?

8 A Well, I don't know if it was a miracle that she
9 got pregnant, but it's a miracle that my little boy
10 don't have HIV.

11 Q He doesn't have it and Shannon doesn't have it?

12 A No, sir.

13 Q Along about the time -- do you remember when
14 you found out that you were going to have a little
15 boy -- what is your little boy's name?

16 A R.S. [REDACTED] [REDACTED].

17 Q And what do you call him?

18 A We call him [REDACTED] for three. But I -- he, to
19 me, he's -- I have a nickname for him, it's a baby
20 name, I'm sorry --

21 Q That's all right. About what time -- about
22 date wise, when did you find out that you guys were
23 going to have R.S.?

24 A September 17th, we went for our initial --

25 Q Of what year?

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 A I'm sorry. 7/17 of 2009.

2 Q Okay. You said 7/17 or September 17th?

3 A I'm sorry. July 17th.

4 Q July 17th?

5 A 2009.

6 Q July 17, 2009, you went to the doctor?

7 A Correct, at Mary Black.

8 Q And what did the doctor discover?

9 A They did an ultrasound. And at that point, we
10 knew -- knew Shannon was pregnant. We had -- did the
11 preliminary testing at home. This was something
12 totally different with the -- with the ultrasound and
13 it said she was pregnant.

14 Q Were you excited about it?

15 A It's probably -- with him being born, was the
16 second most exciting point in my life.

17 Q Okay. And that's just three weeks roughly
18 before the incident that we're here about today?

19 A Ten days.

20 Q Okay. Tell me about Curt Wooten?

21 A Do you want to start when I first met him?

22 **MS. HODGE:** Your Honor, may we have a specific
23 question other than tell me about Curt Wooten.

24 **MR. JOHNSTON:** I'll try to make it more specific.
25

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 BY MR. JOHNSTON:

2 Q How did you meet Curt Wooten?

3 A Well, I never met him in Spartanburg County
4 Jail.

5 Q Did you meet him in prison?

6 A I met him in prison. He -- he -- I met him. I
7 was there first. He -- we became good friends. He
8 wanted to --

9 Q What institution were you in?

10 A McCormick Correctional Institution F3. And
11 that's the dorm, was F3, room 127.

12 Q And did you and he -- y'all were roommates?

13 A Correct.

14 Q How long were y'all roommates?

15 A About a year.

16 Q In a little small cell?

17 A Correct.

18 Q Did they keep you in there most of the day?

19 A Not most of the day, but a lot.

20 Q A lot of the day?

21 A Yes, sir.

22 Q Did you have occasion to get pretty close to
23 Mr. Wooten?

24 A I did.

25 Q How would you characterize your relationship

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 after y'all lived together for a year?

2 A I guess you could say he was one of my best
3 friends. I mean, we -- I mean, I knew a lot about him
4 and his family. I knew his brother, he did some stuff
5 for the governor. I knew that -- Curt told me about
6 the woman that would come visit him at the time. He
7 said he wanted her to be his wife.

8 He worked on visitation, he had seen my mother
9 over there and spoke with her on different occasions.
10 So he wore a lot of my clothes on visits, because I had
11 a lot of nice clothes.

12 Q Did you and he ever have any problems?

13 A Not a one.

14 Q He got out before you did?

15 A Yes, sir.

16 Q Did you know he was from the Spartanburg
17 /Greenville area?

18 A No, sir. Well -- I guess I'll say Greer, that
19 would be yes. But he -- I did remember him saying he
20 was from the Greer area.

21 Q Okay.

22 A Specifically.

23 Q After you got out of prison, how did you -- did
24 you meet up with him again?

25 A I ran into him on June 6, 2009, at the Kangaroo

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 Gas Station in Greer.

2 Q June 6th of 2009?

3 A Yes, sir.

4 Q Had you seen him, communicated with him,
5 anything like that since you had gotten out of prison
6 until that date?

7 A No, sir.

8 Q All right. So, you met up with him. What
9 happened?

10 A I just got through doing the Strange Brothers,
11 grating dump trucks on Saturday night. I was coming
12 back up 29. I pulled in the Kangaroo. I'm always
13 drinking diet drinks, or Gatorade or some sort of
14 fluids. I pulled in to get a drink. I pulled in. All
15 of the gas pumps were filled up and I walked into the
16 store.

17 I walked right around to the very first aisle.
18 And the drink machine --

19 Q You don't need to get quite that specific.

20 A I ran into him at the counter. And it was just
21 like, wow, you know, I said, hey, what's going on.

22 Q Total happenstance?

23 A Yeah -- well, it was for me. He was a little,
24 kind of not into it, you know --

25 Q No. By happenstance, I mean it wasn't planned?

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 A Oh, no, no. I never knew he would be there,
2 never.

3 Q Okay. And he didn't know you were going to be
4 there?

5 A No, sir.

6 Q All right. Now, what happened with your
7 relationship from that point?

8 A Well, we talked for a little bit. We went
9 outside at the gas pump. He was parked on the inside
10 pump, his Mustang. Some girl was with him. She was in
11 his black Chevy S10 --

12 Q Is that Rikki Danielle Edwards?

13 A No, sir. This was his ex-girlfriend. They
14 just had a bad accident, and he was still seeing her
15 but she was -- just not physically for him any more.
16 That's what he said.

17 Q Okay. What happened from there with the
18 progression of your relationship and your interaction?

19 A We exchanged numbers. I seen Curt on a couple
20 of occasions. He came to Spartanburg. And Jamie was
21 working at Regions Bank in Boiling Springs --

22 Q That's your brother?

23 A That's my brother, yeah. And he came to
24 Spartanburg when I was doing that bank. He parked in
25 the Ingles parking lot and walked over. He gave me a

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 cable because at the time I had a generator on the
2 back. He said, I've got a cable in the truck if you
3 need it. Because I'm just going to mount it. He was
4 in the area, I don't know why, he just stopped in. And
5 he kind of wanted to see what it is that I did, is one
6 of the reasons.

7 He never gave me his address to probably early
8 July. I didn't really -- we didn't really hang out
9 near as much as he said. We -- it was one of those --

10 Q Not as much as he said?

11 A I'm sorry.

12 Q He testified --

13 A Yeah.

14 Q A couple of days ago --

15 A He testified five or six days a week, no, it's
16 not nearly nothing like that. I mean, I don't know
17 where he got that. I worked a lot so, therefore, I was
18 always working. I would -- I may stop by when I was in
19 the area, because I did do work in the Greer area. And
20 --

21 Q And he lived where?

22 A He lived on Memorial Drive. I think it's where
23 an old hospital was, and McDonald's off of 29.

24 Q Is that in Greer?

25 A Yes, sir, it is.

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 Q All right. Please continue.

2 A I think one day when -- as a matter of fact, he
3 came to Spinx on No. 9 in Boiling Springs, Spartanburg.
4 And me and Jamie were at the gas station. And I
5 remember him talking, that's when he told me where he
6 lived.

7 Q Now when you say "he" --

8 A I apologize. Curt told me where he lived. And
9 he gave me the directions. I was familiar with the
10 area. And he said once you turn beside the McDonald's,
11 go about a mile and a half. And he said the house is
12 up on the hill on the right. You'll see it -- he had a
13 red Mustang.

14 He also had a red truck and orange Camaro. The
15 first time I went by there, there was a girl there that
16 happened to be Rikki Edwards.

17 Q Have you known Rikki Danielle Edwards before
18 that?

19 A I've never seen her in my life.

20 Q Okay. But you were introduced to her that day
21 when you went --

22 A No, sir. I wasn't introduced to her. I never
23 spoke to her and she went to the back room.

24 Q You just saw her?

25 A I just saw her in passing.

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 Q Then you learned later on that's Rikki Danielle
2 Edwards?

3 A Yes, sir. The second time -- I said that was
4 the first time I had ever been to his house in
5 around -- somewhere around the first of July. I only
6 went back to his house on three other occasions period.

7 Q All right. When was the first occasion again?

8 A This first occasion was the first of July.

9 Q The first of July, and you went back three more
10 times?

11 A Correct. The second time I had stopped by, I
12 pulled up in the drive way. And there was a lot --
13 there was a couple of cars there. I didn't get out.
14 He told me to stop by, but I didn't know that he had
15 company.

16 So I waited a little bit and then two or three
17 girls, and I think -- there's one guy, a bald headed
18 guy with tattoos all over his head, came out. I
19 actually backed out of the driveway, so they could get
20 out. That's when I walked inside. That was the first
21 time ever I was introduced to Rikki Edwards. And I --
22 he introduced me. He said this is my girlfriend,
23 Rikki. And I introduced myself and so --

24 Q How old is Curt?

25 A I think Curt is about eight or nine years older

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1 than I am.

2 Q And you are?

3 A I'm 39 years old. I'll be 40 in a couple of
4 months.

5 Q Okay. So you would have been 36 back then?

6 A Yes, sir.

7 Q And so he would have been forty...?

8 A Forty-five or six, something like that.

9 Q Okay.

10 A Somewhere in there.

11 Q How old was she?

12 A I believe -- I thought she was like 19 or 20.
13 She appeared to be like 22 or 23. I'm not -- I don't
14 remember her age. I know --

15 Q She was a lot younger than him?

16 A A lot younger. A lot younger than me.

17 Q Okay.

18 A So any way. I was like, okay. I remember
19 sitting right down in the living room when you walk
20 into Curt's home. I sat down in the first chair. He
21 was sitting across this little table, with a chair that
22 faces his television, which sits right beside the front
23 door.

24 She came in there and sat down beside me in
25 another chair. And so she just had blatantly said, so

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1 you're Curt's friend that he was in prison with. What
2 did you go to prison for? And --

3 Q Okay. So anything else important happened that
4 trip?

5 A Well, it's just -- he stated -- he said he
6 never did any of that. That's my best friend. I trust
7 him more now and I haven't seen him in 12 years, than I
8 do any of the people --

9 Q So you all had a good relationship at that
10 time?

11 A Yes, sir, we did. After that, I left. I went
12 back -- the only difference -- around the 13th or the
13 14th --

14 Q Of July?

15 A Of July. I actually called Curt. I called his
16 cell phone.

17 Q For what purpose?

18 A Just to shoot the jive or whatever you call it.

19 Q To talk?

20 A I gave him a call. I don't get an answer. I
21 had another cell phone, I called it. I didn't get an
22 answer. He had told me, look, I'll give my cell phone
23 and my house phone. So I called the house phone. No
24 answer.

25 A few minutes later, I got a call back. It was

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1 a female and it was Rikki. Rikki stated --

2 **MS. HODGE:** Objection to anything Rikki said.

3 **MR. JOHNSTON:** Don't tell us what she said.

4 A I'm sorry.

5 BY MR. JOHNSTON:

6 Q Don't tell us what she said. You got a call
7 back from her. What did you do in response?

8 A I was just asking where Curt was and there was
9 a lot of stuff that we interchanged about, you know,
10 just tell him to give me a call. I'm not -- so the
11 next day, I actually give him a call again. And he
12 told me to stop by.

13 Q He told you to stop by?

14 A Yeah. Curt told me to stop by. Well, when I
15 got close to McDonald's, I said, hey, I just drove by
16 McDonald's. He said, do me a favor, stop up there at
17 the -- there was a doctor's office down on the right,
18 that he claimed that was across from where his mother
19 lived. She lived in some -- like a town home place.

20 Q Yes, sir.

21 A He said, wait there for me. He said, I have
22 got a problem. I said, okay. Everything all right.
23 Anything I can do? He said, I have this crazy -- I
24 don't know if I'm supposed to say the word -- bitch is
25 what he was referring to. I don't know who he was

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1 referring to. That's just what he was saying.

2 Q Who do you think he was referring to?

3 MS. HODGE: Objection. That calls for
4 speculation.

5 THE COURT: Well, he can -- he can say what his
6 state of mind is. Go ahead.

7 THE WITNESS: Well, I thought it was Rikki
8 initially.

9 BY MR. JOHNSTON:

10 Q Okay.

11 A I waited for about 20 minutes. Well, I had to
12 go. I didn't -- I was just, you know, in the area, so
13 I actually went on to his house. So I pulled up in the
14 drive way because he said he was having a problem. And
15 I just, I don't know, I thought maybe if there was an
16 issue, I could help. I pulled up in the drive way --

17 Q Now, what date was this?

18 A This was -- this had to be on the 14th or
19 15th -- it's was the next day. That's why I say either
20 13th or 14th. It was the week that we had the
21 ultrasound. I mean, I do remember that.

22 Q Okay.

23 A I pulled up in the drive way. He comes
24 storming out the door. He probably gets down the steps
25 and turns inside his car, and then Rikki had -- comes

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1 out behind him. Comes up, storms out behind him.

2 Q Rikki?

3 A Rikki, yeah. He's hollering something to her
4 and he's walking towards my truck. And she's hollering
5 something to him. She said --

6 **MS. HODGE:** Objection to anything --

7 **THE COURT:** Yeah. Sustained.

8 BY MR. JOHNSTON:

9 Q Don't tell us anything she said.

10 A I apologize. Anyway, there was some derogatory
11 remarks made.

12 Q They appeared to be arguing?

13 A Very. He come up to -- his face was all red
14 and veins was popping out everywhere -- to -- on the
15 passenger side of my red truck that I was in. And I
16 said, man, is everything all right? He said -- I don't
17 know if I'm supposed to say. It was stated that --

18 **MS. HODGE:** Objection.

19 **THE COURT:** Yes. You can't, yeah. No. You
20 can't -- that's hearsay. You can't testify to what
21 someone else said.

22 BY MR. JOHNSTON:

23 Q Based on what he said to you, what did you do?

24 A Well, it was in reference to me. Apparently
25 there was -- the phone call made on the house phone,

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1 seemed to have turned into something that I had said to
2 Rikki in essence of trying to hook up or something.

3 Q All right. Did Curt apparently think there was
4 something going on between you and Rikki?

5 A He said that he had cameras in his house and
6 his phone was tapped. He knew it was a lie. And she
7 just wanted a way to be with him because he's gone all
8 day. She is there at night time, when he's -- he comes
9 home late at 11:00 --

10 Q Did -- did Curt ever use you as a way to get
11 out of the house so-to-speak?

12 A A couple of times we were talking and --

13 Q You and who?

14 A Me and Curt. We would talk. He would say
15 sometimes, if I text you, you text me back. All right.
16 Okay. Well, why? He said, look, you know, Rikki don't
17 know you. If you text me, she will think that I'm
18 going to come where you are at, or you -- me and you
19 just going to meet up or whatever. You can just text
20 me. And that way she don't know. Because she don't
21 know you like that to call you and ask. She knows all
22 of my other friends.

23 Q All right. Would you actually meet him when he
24 would do that?

25 A Oh, no.

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1 Q Would you text him back like he asked?

2 A I have.

3 Q How many times has that happened?

4 A Probably about four or five times.

5 Q All right. So after the incident you just
6 spoke about, when was the next time that you had
7 contact with Mr. Swofford?

8 A Well, I called him that week, Friday. I called
9 Curt on Friday.

10 Q That would have been?

11 A On July 17th.

12 Q Friday the 17th?

13 A 2009. That was after I had found out about the
14 ultrasound.

15 Q Okay. What did you tell him?

16 A I called him up. I just told him, I -- I was
17 so excited. And the reason I had called him -- I
18 didn't call him first, but the reason I called him, we
19 had an another conversation in reference to that girl
20 that I saw that night -- the first night I met him.
21 And he said that she was very fertile. And that UCLA
22 wanted to do stuff on -- parts of her, because, you
23 know, she is very fertile. He said, but I don't really
24 care for kids, so I don't, you know -- he said "better
25 you than me" was his words.

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1 Q Okay.

2 A I told Curt, I said, well, look, you know, I
3 just want to let you know, you know, I told you I was
4 going to let you know what the outcome was. He said,
5 well, congratulations. He said, I'm about to leave.
6 I'm going to Columbia. So I'm going to be gone for the
7 weekend. Him and some friends is going to strip clubs
8 and all that stuff. I was never invited or anything
9 like that. I was in a relationship so. That was the
10 last time I saw him until the 21st.

11 Q Now, there has been some talk in this case
12 about you borrowing money from Mr. Wooten, did you ever
13 borrow any money from Mr. Wooten?

14 A No, sir.

15 Q Did you need to borrow money from Mr. Wooten?

16 A No, sir.

17 Q Was your business going okay?

18 A Oh, yeah. I made more money in a year -- a
19 month than he got in a year out of his disability.

20 Q Okay.

21 A So I don't see why I would need any money from
22 Curt.

23 Q All right. Now, what happened the next time
24 you had contact with him?

25 A Well, I was supposed to -- I had an

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1 appointment -- well, I had two appointments actually.
2 I had an appointment in Greer at Ryans, to discuss
3 about doing some contract work for their concrete side
4 padding and their grease pits. And I believe it was
5 around 11:30 or 12:00, somewhere right before lunch.

6 I also had an appointment with my counsellor at
7 Piedmont Community Care that helps me -- helps me fund
8 my HIV meds and they offer counselling and stuff for, I
9 guess, whenever you are feeling a certain way --

10 Q Okay.

11 A On the way to Ryans, I called to confirm my
12 appointment. And Ryans wanted to move to later on in
13 the day. They said, could you do it -- could you come
14 after lunch. He said, we have an issue here in the
15 restaurant, can you come after -- I think the main
16 office is behind one of their restaurants. So I was
17 wanting to talk to one of the district guys, to try to
18 get in more stuff -- more stores. I stopped by Curt's
19 --

20 Q Had you planned to stop by Curt's on the 21st,
21 Tuesday the 21st?

22 A Well, I didn't initially plan on it. When they
23 changed my time and I was in the area, I called him up.

24 Q You had some time to kill?

25 A I did. So I called Curt and he answered --

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1 initially, he didn't answer the phone with a hello. It
2 was a lot of verbal, like he had dropped the phone or
3 something. He picked the phone up and -- Curt picked
4 the phone up, was like, hello. And I'm like what is
5 going on. I said, I'm in -- I'm in Greer. I said, are
6 you at home. I said, I was going to swing by and
7 polish -- I was going to show my ultrasound. And I
8 just -- I just had it. I had been carrying it around.
9 I have it on me right now. I have this thing on me my
10 whole -- ever since I have gotten it. And I was going
11 to stop --

12 Q Have you got it with you now?

13 A I believe I do. (Pause).

14 Q And that's **RS**'s ultrasound?

15 A Yes, it is.

16 Q Okay. So after you had that conversation with
17 him, what happened next?

18 A Well, he tells me, come on down. I get to his
19 house. Normally Curt greets me at his front door. And
20 at this point, he didn't. I done went up the steps,
21 got to the door. Knocked. I even looked in the
22 screen. The front door was open. Curt was sitting in
23 that same chair that faces the television, that's
24 beside the entrance. And he's like, you know, rocking
25 back and forth with his eyes closed. So I didn't

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1 know -- I mean, I really didn't know anything about --
2 if he was a religious person, if he was praying, if he
3 was what. I just knocked again, kind of loud. I said,
4 Curt, like that. And he kind of jumps up, like, you
5 know, in a fog. So I just opened the door and stepped
6 in. I said, you all right? He said, yeah, yeah, yeah.
7 I've been up about four days. I said, four days. I
8 said, what's going on? He said, well, long weekend,
9 man. He said, I am trying to take these Adderalls to
10 keep it going --

11 **MS. HODGE:** Your Honor, I don't know how many
12 times --

13 **THE COURT:** Yeah. You cannot testify to what
14 someone else said.

15 **THE WITNESS:** All right. Well, anyway --

16 BY MR. JOHNSTON:

17 Q What happened?

18 A Well, I went over and sat down in the seat
19 right across from Curt. Curt -- if I'm sitting like I
20 am, Curt would be sitting right here. The front door
21 was right there.

22 Q Okay.

23 A Well, I am sitting there and I actually go to
24 pull out the ultrasound and he's not really paying me
25 any attention. He doesn't know really -- it's just

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1 like he is not even aware of what's going on.

2 Q What room are you in?

3 A We're in the living room.

4 Q That's the front room as you're coming in the
5 house?

6 A Correct.

7 Q Okay. What happened next?

8 A Curt would scoot up in his chair and then he
9 would scoot back. He would scoot up and he'd scoot
10 back. There were various small portions of time that
11 he would be in -- he would know what was going on, and
12 then there would be times where he was very -- he
13 didn't know anything was going on.

14 Q Did you have an impression as to what his
15 situation was?

16 A I felt like he was probably over medicated, I
17 mean. I have seen it about every time I saw him. But
18 that's just my impression.

19 Q Okay.

20 A He was -- that was just my impression. Well,
21 any way, I told Curt, I said, do you have anything to
22 drink -- I mean, I had a drink in the truck. I believe
23 I had just stopped at the store right before I called
24 him, but I asked him if he had anything to drink. And
25 he said, yeah, yeah. I'll get you something.

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1 So that's just how he said it. It was kind of a
2 real fast talk. But he was sitting there and Curt had
3 his head, it would flop. It was like he had no -- it's
4 like he couldn't control what was going on with him.
5 He was just kind of out of -- in and out type of
6 situation.

7 Well, he gets up and he walks in front of me and
8 goes this way. And initially I stand up behind him to
9 go into the kitchen. Well, as he gets ready -- because
10 this is only like three or four steps from that chair
11 to the break of the kitchen off the living room, he
12 goes -- I look up and Curt has like a handgun in his
13 left back pocket. And on the --

14 Q Did you see the handgun?

15 A Yes, sir.

16 Q Was it poking out of his pocket or you saw the
17 outline or what?

18 A Well, the actual gun was stuck in the top of
19 the holster. And the holster was actually stuck to the
20 -- he had on denim jeans. And the gun was actually --
21 the clip or -- it was just hung on top of the denim
22 part of the pocket. It was like it was just hung
23 there.

24 Q But it was in the holster?

25 A It was in a holster, but it was stuck -- you

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1 know, half way out of his back pocket --

2 Q The holster was or the gun was?

3 A The holster was.

4 Q Okay. Did you see the gun at that time?

5 A I just seen parts of the barrel. I mean, maybe
6 the handle. I don't know a lot about guns. But it's
7 the handle part is what I saw.

8 Q Okay. What happened next?

9 A Well, I made the statement -- I said, Curt,
10 you're about to lose your gun out of your pocket. I
11 have known Curt to carry a gun. He carried one around
12 his neck, as a matter of fact, a .22 Derringer. And he
13 carried -- I thought it was a .38 until he kind of
14 corrected me it was a 380. Okay. A little small gray
15 green looking type gun.

16 Q Now, I'm showing you what has been marked as
17 State's Exhibit No. 24; does that appear to be the sort
18 of weapon that he had with him that day?

19 A It does.

20 Q Okay. You said that you thought -- you said
21 something to him that you thought he was going to lose
22 his gun; what happens next?

23 A Well, he walks on into the kitchen and he
24 starts to move around back there. He first goes to the
25 bottom of -- I'm watching him at this point. I'm just

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1 making sure -- I don't know what kind of condition he
2 would be -- I don't know, like I said, if he's hurt or
3 if he's sick or what. He just acted like he wasn't
4 himself. So, he reached in the bottom of his pockets,
5 and when he came up, the pocket -- the holster was
6 already hanging about half way out.

7 Well, he reaches -- he reaches back there. And
8 when he grabs -- goes to grab the gun and the holster
9 together, he pulls on it and it's like the clip sticks
10 to the pocket and then the holster falls to the floor,
11 but the gun is in his hand. But it --

12 Q Which hand was it in?

13 A His left hand.

14 Q His left hand?

15 A Yes, sir.

16 Q Okay. What happened then?

17 A Well, he walks to -- he walks to the sink in
18 his kitchen. Walks around, the holster was probably
19 one and a half, two feet from the refrigerator.

20 Q The sink is at the far end of this room, is
21 that correct?

22 A Correct. It's not a big room. But it was --
23 he was in front of the sink. I thought he was grabbing
24 me a cup because I did ask for something to drink. I
25 stood directly beside the refrigerator with my arm on

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1 top of the refrigerator. I'm -- I'm -- I'm always
2 standing with my arm here and my hand on my hip, just
3 like that. But I was facing the back wall in his
4 house.

5 And he stood there for a minute. I couldn't see
6 his right hand. Well, he has the gun in his left hand,
7 but just not on the trigger that I could see or
8 anything like that. He was -- holding the gun down.

9 So, I asked -- he stood there for a second. So,
10 I said, Curt. He just like -- it's like he jumps. I'm
11 just assuming I either scared him or woke him up or
12 something from standing there.

13 Well, he turns around to the -- to the stove.
14 And the stove now is facing -- just a direct turn
15 around, and the stove is right here and the
16 refrigerator door handle is probably right here. And
17 I'm just on the other side of the refrigerator.

18 Well, I'm still standing there, but I'm just,
19 you know, I'm kind of just looking around. I'm like,
20 Dude, are you all right? I said, you know, you're
21 not -- there's just something not right here.

22 But he keeps mumbling stuff that I can't
23 understand at this point. And he's like -- he's
24 breathless and he's standing there. And I notice
25 when -- he bent over to hold on the stove. When he

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1 did, he has got both hands and he has -- this gun is
2 still in his left hand. It's facing the back wall.

3 At this time, I'm still standing there. I am
4 like, all right, just come on back here and sit down,
5 you know. We'll just -- just sit down and just get off
6 your feet or something. I don't know, I just -- I was
7 just uncomfortable.

8 But still not ever anticipating anything would
9 happen. And about that time, his left leg buckles
10 down. As soon as his left leg buckles down, he goes to
11 clutch himself with his forearm on his gun. And when
12 he does -- I just -- it was all in a quick motion, that
13 when I'm standing there, I was like -- I go to reach.
14 As soon as I reached, the gun just fired, discharges
15 and goes -- hits my arm and I jumped back. And as soon
16 as I jumped back, I was scared and I took off out the
17 front door.

18 I went over to my truck. Curt runs to the front
19 door. At this point, he's like, oh, no, what did I do;
20 what did I do? I'm like dude, you shot me in the arm.
21 I said, I told you, you were going to hurt yourself.
22 And I said, and you shoot me in the arm.

23 And I stood behind my truck for at least a good
24 minute maybe. And when I realized -- I said, do you
25 have the gun in your hand? He said no.

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1 Then he said, did I hit you? Where did I get
2 you? I just said, you shot me in the arm. I walked
3 over to -- at this time when he had nothing in his
4 hand, he went inside. I didn't know what he was going
5 to do. I was hoping it wasn't to grab anything.

6 I went over to the hose pipe. He had a hose
7 pipe right there. I had it -- I had on a camouflage
8 shorts. I had on boots and I had a red and black
9 fleece Piedmont Mobile Detailing work shirt.

10 And I had to pull the sleeve up. I seen one
11 hole in my arm. I didn't see -- I didn't know of any
12 exit wound. I started rinsing my arm. And when I
13 realized -- I felt something on the back side. I
14 looked around, and I'm like -- I started doing that.
15 There is a hole right there. So I started doing my
16 fingers just like this, thinking was there a bullet in
17 my arm or what is that. You know, I just see there is
18 two holes here.

19 He comes back to the door and he hands me a
20 towel. And he said, man, I swear -- he said, I swear
21 to God I didn't mean to do that. He said, I'm so
22 sorry. He stumbles out the door and hands me a towel.
23 I took the towel from him. I held it like a tight
24 compression. I held my arm. I told him, I said, man,
25 it's okay. I know, you didn't mean to do it. I really

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1 didn't think Curt meant to do it. He just wasn't in
2 his right frame of mind. I was a little scared.

3 He said, well, do you need to go to the
4 hospital? I said, I don't think I do. I said, it
5 looks like it come out. I actually pulled the sleeve
6 out, thinking that the bullet was in the sleeve for
7 some reason. I just felt like something had dropped on
8 the ground.

9 At that time, I didn't know exactly what to do,
10 but I just said look, I'm just going to go right now.
11 I said, I need to get -- just do something about
12 cleaning this or something. Because I was unaware of
13 what -- I know in my situation, I don't know how --
14 infections can do things to me a little differently
15 than others. But he was really concerned about me
16 going to the hospital, because Curt stated to me, said,
17 Dude, you know, I'm a convicted felon. He said, I'm
18 not supposed to have a firearm.

19 I said, look, it's okay. Don't worry about it.
20 I said, I don't think I'm going to need any kind of
21 medical attention that requires the hospital.

22 Q Had the bullet gone through your arm?

23 A Well, apparently it did. I didn't know for
24 sure until, like I said, I felt on it and actually got
25 it -- when I got home, I actually called Shannon to see

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1 if she was at home. And apparently she was gone. So
2 when I got home, no one was there.

3 So I got to go inside and kind of inspect and
4 look at my arm. And I cleaned it up. And I initially
5 put two gauzes and I wrapped it in a bandage we had in
6 the kitchen -- in a kitchen cabinet, that we kept in a
7 little basket like tray, that we kept a lot of our
8 bandages and creams or whatever else, aspirins. We had
9 a bunch of dogs at the time, so we had a bunch of dog
10 medicine in there too.

11 Q And did your arm ever require any medical
12 attention?

13 A Not to the extent of the hospital. One of my
14 employees that I eventually did tell about what
15 happened --

16 Q I mean, professional medical attention?

17 A No, sir.

18 Q Did you ever get any professional medical
19 attention for that?

20 A I -- I -- I. No. I didn't never go to the
21 hospital, no. Actually I asked a veterinarian what I
22 could do to help heal it, but that was it.

23 Q Okay. Now, you have heard reference to a
24 bullet hole in the wall of Curt's kitchen. It appears
25 to some -- in State's Exhibit 38 and State's Exhibit

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1 No. 37, State's Exhibit No. 39; do you think that -- I
2 don't know if there is one hole or two holes there, but
3 one or both of those holes is associated with you
4 having been shot?

5 A I'm assuming these are holes that the
6 ballistics showed at the scene, directly in front of
7 the refrigerator -- that would probably be -- I didn't
8 know -- Curt mentioned that -- later on in the week --
9 well I'm sorry -- I know -- I realized later on,
10 through a conversation, that -- that there was a hole
11 in the wall.

12 Q Did you know whether or not your blood was on
13 the wall?

14 A No, sir.

15 Q But it wouldn't have surprised you that there
16 was some of your blood somewhere in the house, is that
17 fair to say?

18 A It would be fair to say. I didn't see it and
19 nor did I ever go back to his house, period, from that
20 point. Now I have seen him, but I didn't go back to
21 his house. I have never seen it.

22 Q Tuesday, this was on Tuesday, July 21, 2009?

23 A Yes, sir.

24 Q Now, did you tell Shannon about what had
25 happened?

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1 A No, sir.

2 Q Why not?

3 A Well, she's already pregnant. The last thing I
4 wanted to do was cause any harm to her. This was the
5 only chance I thought I ever had to have a child. So I
6 was actually -- she came home later on that evening and
7 my arm was already bandaged. I had just bought a Zero
8 lawn mower. And I was out cutting the grass in the
9 yard.

10 At the bottom of our front yard, there's a big
11 ditch. And there's a couple of old limbs that
12 protrudes up from that ditch area. So, it look -- you
13 know, I told her that when I went to turn around down
14 there -- she knew I was coming from the lawn mower -- I
15 told her that I slid back and damaged my arm.

16 Q And was that a lie?

17 A Yes. It was a lie.

18 Q Okay. Well, did you intend to deceive anyone
19 or anything like that with that lie?

20 A Well, I did intend to deceive her because I
21 just didn't want her to think that I had done gotten --
22 there was already -- she didn't really care for the
23 fact that I would talk to -- she didn't -- it was one
24 of those stages in a relationship where she didn't --
25 there was a lot of outside drama. I did make mention

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1 to her about some stuff that was said between Curt and
2 Rikki and stuff, and that just didn't fly over well
3 with her. So I just didn't want her to know what
4 happened immediately, at least until I knew I was going
5 to probably be okay.

6 Q Okay. So when was it that Shannon found out
7 you had actually been shot?

8 A Shannon probably found out -- it was probably
9 around the time that I came clean with her right before
10 I was arrested.

11 Q All right. Did you tell her what had happened?

12 A I did.

13 Q Okay.

14 A I told her -- I tried to -- I tried to explain
15 to her, but I just -- I kind of kept it brief. I
16 didn't -- it didn't do me any good to go into any
17 detail with her. I mean, I could have. I mean, and I
18 did to a couple of people before this ever happened on
19 the 27th. But I never -- I didn't want to scare her or
20 make her feel like, you know, she couldn't trust me. I
21 felt like I was doing it because it was for the
22 betterment of the child. I didn't want her to -- maybe
23 miscarriage or thinking I was trying to deceive her or
24 anything like that.

25 Q All right. Now, when was your next contact

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 with Curt Wooten?

2 A Curt contacted me later on that day, well --
3 well, he called me. I didn't answer. He tried to
4 contact me, but I didn't answer. I got a text. And I
5 didn't hear no more from him until the next day. I did
6 talk to him the next day. And he didn't sound on the
7 phone like he did the day before.

8 Q He didn't sound messed up?

9 A No, sir, he did not.

10 Q Did you all discuss the shooting?

11 A Oh, yeah. He asked me, was I okay. He said --
12 he said, is there anything I can do?

13 **MS. HODGE:** Your Honor, it's just consistent --

14 **THE COURT:** You're going to have to stop
15 testifying to what other people said.

16 **THE WITNESS:** Okay.

17 BY MR. JOHNSTON:

18 Q As a result of what he said, what did you do?
19 Or did you do something?

20 A Not -- not immediately. I was contacted again
21 on Thursday --

22 Q By whom?

23 A Curtis. At this point, he was talking in
24 reference --

25 **THE COURT:** All right. You know, I'm not going to

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 tell you again, Mr. Swofford. You cannot testify to
2 what other people said. Okay?

3 **THE WITNESS:** Yes, sir.

4 BY MR. JOHNSTON:

5 Q What I want you to do is just -- I'm going to
6 ask you about the contact and then I'm going to ask you
7 if you did anything and what you did. You can tell us
8 what Mr. Wooten did. You cannot tell us what he said.
9 Okay?

10 A Okay.

11 Q All right. Now -- so when was the next contact
12 again?

13 A Thursday.

14 Q That would have been Thursday, the...?

15 A Twenty-third.

16 Q Twenty-third. Okay. Did he contact you?

17 A Yes.

18 Q He didn't sound messed up?

19 A Thursday he did.

20 Q He did sound messed up?

21 A Yes.

22 Q Okay. As a result of that conversation, what
23 did you do?

24 A We were to meet the next day in reference to
25 trying to sell his Camaro, because he said --

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 Q Don't tell us what he said. Did you meet him
2 and did he bring his Camaro with him?

3 A Yes, sir.

4 Q Did he show it to anybody?

5 A That was on Friday.

6 Q Did he show the Camaro to anybody?

7 A We met in Lyman. We --

8 Q Who is we?

9 A Curt and I met in Lyman at a little ice machine
10 place in front of a drug store. He followed me up 29
11 and into Spartanburg, to a Quick Time Sales, which is
12 owned by Arthur Ray Lawter Jr., Bud, Shannon's brother.

13 Q And did he show his car to Mr. Lawter?

14 A Bud is somewhat of a local expert on Camaros.
15 He looked the car over, tried to give an assessment of
16 what he felt it was worth. But Curt wasn't happy with
17 what the price was, so he decided not to sell it.

18 Q Okay. Now, did Curt give you anything that
19 day?

20 A Curt said follow him up to -- he said --

21 Q Don't say what he said.

22 A We left -- we went and went to the Kangaroo
23 right up the street, probably not even 100 yards from
24 the Quick Time Motorcycle Shop. Curt pulls into the
25 gas pump in the middle. I pull up right behind him. I

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1 get out. He said come here. I went over to the back
2 of his Camaro, to the trunk. He opens up a black lock
3 box on the left side of his trunk and he offered me
4 \$850.

5 Q Did he give you any money?

6 A He gave me \$850. I tried not to accept it, I
7 told him it's not that big a deal, but --

8 Q What was your impression of why he was offering
9 you the money?

10 A I can't answer it without saying what he said.

11 Q What was your impression of why he was giving
12 you the money?

13 A It was -- it was a deed, a pay deed or it
14 was -- I took it as a sign of I'm sorry. A sign of --

15 Q Why did you take the money?

16 A Well, after about two or three minutes of
17 telling him that I did not want it, it was unnecessary,
18 and I understood it to be an accident, it was pressed
19 --

20 Q You took it anyway?

21 A I did -- I eventually, I said okay.

22 Q Did you put any of that money in the bank?

23 A Well I left, and I will never -- it was roughly
24 4:40 in the afternoon of -- it rained earlier that day.
25 It was so late in the afternoon, that he came down, he

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 didn't want to bring the car out in the rain. So
2 around 4:40, I went down to Arthur State Bank, which is
3 about two miles away from Kangaroo on 221. And I
4 deposited 750 bucks.

5 Q And was that \$750 of the \$850 that Mr. Wooten
6 had given you?

7 A Yes, it was.

8 Q I'm showing you what has been marked for
9 identification as Defendant's Exhibit No. 20, look at
10 that document and see if you can identify it for me?

11 A Yes, sir.

12 Q What is it?

13 A That's the \$750 deposit on July 24th.

14 Q Into what account?

15 A Into my business account.

16 Q What bank is what I mean?

17 A I'm sorry. Arthur State Bank.

18 Q All right. What day is the deposit?

19 A July 24th.

20 **MR. JOHNSTON:** We offer this into evidence.

21 **MS. HODGE:** No objection.

22 **THE COURT:** All right.

23 (DEFENDANT'S EXHIBIT NO. 20 RECEIVED INTO
24 EVIDENCE.)

25

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 BY MR. JOHNSTON:

2 Q Now, did you hear from Curt any more? This is
3 Friday, July 24, right?

4 A Right.

5 Q Did you hear from him any more?

6 A I talked to him on Saturday on the phone.

7 Q Did you do anything in response to your
8 discussion with him?

9 A No, sir. We did speak, but that was it.

10 Q Was everything cordial?

11 A He was still checking on me --

12 Q Don't -- don't --

13 A Everything was fine.

14 Q All right. Now, did you ever hear from Curt
15 again?

16 A Only through text messages.

17 Q Okay. He sent you some text messages?

18 A He did. He was checking on me on Sunday. That
19 Saturday -- well, for my birthday, one of my employees,
20 I give him the day off. We share the same birthday. I
21 went and pressure washed a house. It was a cash job.
22 So I went and did it. I came back. I took a shower.
23 On Saturday --

24 Q Now, this is on Saturday --

25 A Right. July 25th.

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 Q July 25th, your special day for you?

2 A Yes, sir. My birthday.

3 Q All right.

4 A All right. Well, later on that evening, my
5 brother called me and said hey --

6 Q Don't tell us what your brother said.

7 A Okay. I was invited to go to Kanpai.

8 Q Okay. And did you go to the Kanpai?

9 A Yes, sir.

10 Q Who all went?

11 A It was Shannon and myself and Jamie and his --
12 it's his wife now, but at the time, his girlfriend.
13 Alston Addington and Lisa. And then there was another
14 guy that I wasn't real familiar with. I believe it was
15 one of Jamie and Alston's friends. And David, the head
16 chef, had always been our favorite --

17 Q All right. Now, as mementoes of the occasion,
18 were some photographs made?

19 A Yes, sir.

20 Q I show you Defendant's Exhibits Nos. 18 and 19,
21 have you seen those before?

22 A That's my birthday hat. That's my --
23 supposedly my Fire Marshal Bill cartoon, the
24 expressions that I do. But I mean, that was the hat
25 they gave me when they sang me a song --

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 Q It was a birthday thing?

2 A Yes.

3 Q All right. Now, this picture in front, that
4 would be Defendant's Exhibit No. 19.

5 A Correct.

6 Q What's on your arm?

7 A That's -- there's a butterfly bandage on the
8 back side. And then there's a smaller bandage on the
9 front.

10 Q And why were you wearing bandages on your
11 birthday, July 25th, at the Kanpai?

12 A Well, that's where I got shot earlier in the
13 week. I was just -- I didn't really look all that
14 great. I mean, it looked like burns, so I just kept it
15 covered.

16 Q All right. And had you shown your momma?

17 A Unfortunately I did. Almost every time I go
18 over there, I -- she calls me over to see if -- what's
19 happening, what's going on, you know.

20 Q And is there a reason that she calls you over,
21 other than you're her son?

22 A Well, she is just concerned about certain marks
23 on me. I don't heal as fast as probably most people
24 do, due to my condition, but she always tends to check
25 me out real well.

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 Q All right. Now, did you also deal with the two
2 gentlemen who testified here earlier today, the
3 business transactions?

4 A Hunter, yes. Hunter is -- he has a fabrication
5 shop, so.

6 Q That would be Hunter Smalley?

7 A Hunter Smalley. He has a fabrication shop. So
8 when I need something done in-house, I can leave it
9 there and he -- at various times, I have different
10 people working for -- I forgot, at this time, I have
11 got more -- I've done probably got three pressure
12 washing trailers at this time. So I'm allowed -- I can
13 leave one and do work.

14 Q You had three pressure washing trailers at that
15 time?

16 A Right. And a parking lot stripping machine.

17 Q And one parking lot striping machine?

18 A Yes, sir.

19 Q How about the other gentlemen?

20 A Charlie is a good friend of mine. He does a
21 lot of the mechanical work. It's kind of in and out of
22 the jobs, he goes to a lot of temp services. And when
23 I can get him to do something, if I can offer him some
24 work, I'll call him up and just give it to him, you
25 know, let him make him a little money.

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1 And at the time, I was transferring styles -- I
2 was going to the new ladder racks and things to hold my
3 wands, so I didn't give him a lot to do, but I just
4 gave him something to do, just to make a little money.

5 Q An in the course of dealing with those two
6 gentlemen, did both of them see the bandages that were
7 on your arm?

8 A Yes, sir. Mr. Smalley actually helped me load
9 the frames up -- because I had a little bit -- at the
10 time, it had just happened. And I had a little --
11 difficult time trying to load them because I couldn't
12 do a lot of squeezing. It wasn't -- it didn't hit no
13 nerves or no tendons or anything, it was just one of
14 those real clean deals, but it was still a little sore
15 the day before.

16 Q All right. Now, back to your birthday.
17 Anything happened after Kanpai; did you go home?

18 A Yes, sir, we went home. We was just in for the
19 night. I wasn't -- I wasn't even going to even go to
20 Kanpai. The only reason I -- I probably did it for
21 Shannon more than I did myself. I was really tired. I
22 took her. And it was like a momento -- when I was
23 actually holding her -- the belly, that's all that was
24 on my mind was the whole thing about **RS.** -- well, I
25 didn't know it was **RS.** at the time, it was just the

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1 baby. I was taking every opportunity to, you know,
2 express some kind of enjoyment.

3 Q Now, I'm going to take us to Sunday, July 26th
4 of 2009, tell us what you did that day?

5 A Slept in, which is a rarity to me, because I
6 don't really sleep a lot. I'm up all hours of the
7 night. I make sure the dogs are fed and watered. I
8 always keep a look out -- it became my nature to just
9 kind of oversee things at the house. You know, I'm on
10 the computer. I do a lot of my own invoicing. I do a
11 lot of my own -- I do all my emails and stuff like
12 that. I micro-manage my business --

13 Q So you did some work at home?

14 A Correct. Until about -- between 3:00 -- I
15 think I left the house around 3:15.

16 Q Is this 3:15 p.m. or a.m.?

17 A P.M. I left and fueled up. I filled up
18 with -- my truck, my machines with diesel and gas. And
19 I went and picked up one of my employees at around 4:00
20 over on -- Inman, Inman, South Carolina, off of
21 Interstate 26.

22 Q Okay. Did you all have a job that day?

23 A Yes, sir. I was previously scheduled to do the
24 Strange Brothers' trucks on Saturday, but I took that
25 day off so I could do it -- and then we did it the next

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1 day.

2 Q Where is Strange Brothers?

3 A It's located in -- it's in Greer, Taylors area.
4 It's like -- you may know -- use a landmark where the
5 Silver Fox used to be, it burned down. It was like
6 right across the road there. It sits off on the left.
7 It's a nice little -- they are a construction outfit.

8 Q What time -- what time did you get to Strange
9 Brothers?

10 A I got there around 5:00.

11 Q In the afternoon?

12 A Yes, sir.

13 Q How long did y'all work?

14 A We actually left at five after 12:00 because it
15 had rained real hard a couple of times --

16 Q Five after 12 midnight?

17 A Correct.

18 Q You say it had rained a couple of times?

19 A Yes.

20 Q Does that interfere with what you're trying to
21 do?

22 A Oh, yeah. I mean, it's -- I don't -- I don't
23 work in lightening. I just -- I'm not going to play
24 with God like that. I just stop, we get in the truck
25 and go under something. I don't work in lightening. I

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1 mean, there is still work, but it's just something I
2 don't tackle with. If I see it, I stop.

3 Q Okay. So you stopped. Did you finish up work
4 five after 12:00 you say?

5 A I remember getting done and we pulled out. I
6 locked the gate. I had the key to the place as I do
7 with many of the businesses. Sometimes I have to work
8 after hours. I pulled the gate, locked it. And I told
9 my employee, I stated to him, I said, well, we just got
10 done -- well, my meaning was, I wanted to get done by
11 12:00 with the rain. I understood -- I wanted to get
12 sooner, but I knew 12:00 was my mark to get done any
13 way. But we -- just past 12:00 we got done.

14 So we go up to the top of the hill at Strange
15 Brothers, you're now facing 29, which is Wade Hampton
16 Boulevard. So I turn to the left, going back towards
17 Greenville. And I was taking Terry, my employee, I was
18 taking him to his girlfriend's home. That's his
19 children's mother. And I took him -- she lives on the
20 Augusta road area.

21 I came down 29. I ended up getting on 385, I
22 think. He was giving me directions this way. I don't
23 really -- I'm not familiar, but I'm trying to do the
24 best I can to remember. Pleasantburg Drive, I think
25 it's south --

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1 Q And about what time was this?

2 A I got him home at roughly 12:35, 12:30 or
3 12:35.

4 Q Okay.

5 A He got out and I drove off.

6 Q All right. Now, did you go back to Spartanburg
7 then?

8 A I did. She actually lives right by the
9 interstate. So, I -- once I left the apartment complex
10 and I got out, I got back on the interstate and headed
11 up the highway. It started raining a little bit again
12 so -- and I -- normally, I don't carry a lot of water
13 in my tank, but if there was -- at this distance, if I
14 would have kept -- if you keep the water running
15 sometimes, it fills up. And I don't pay attention to
16 it. And if it don't drain fast enough, I have to be
17 careful. I can get pulled over and DHEC or someone --
18 EPA or somebody could stop me and say what's this
19 coming out of your tank, and potentially fine me if
20 they don't know exactly what it is.

21 So I left water in my tank -- it's a lot more
22 excessive weight -- so it took me a little longer to
23 get home than it normally probably would.

24 Q All right. Did you have an encounter with
25 Mr. Pullen?

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1 A I got off of -- I went up 85 and got on
2 Interstate 26, the road -- I believe I received a call
3 not -- just seconds after I had just turned beside
4 Fuddruckers and got on 295, which I believe you
5 referred to as Southport, Highway 295.

6 I just had turned down that way and I got a call
7 from him. And I vaguely remember him asking me any
8 question about eating. I do remember him asking me
9 something about --

10 Q Don't tell us what he said.

11 A Oh, I'm sorry. I remember the conversation.
12 And --

13 Q Did you do anything or did you keep going home?

14 A I just kept on going.

15 Q All right. Now, you had headed home to
16 Roebuck, how did you get there?

17 A 295, I turned on --

18 Q Which is Southport Road?

19 A Correct. It takes about ten minutes to get
20 home from there. No -- from that point, it is probably
21 about five minutes, three to five minutes depending on
22 how fast you go.

23 Q What time did you get home?

24 A I believe it was around 1:35 or 1:30. Yeah,
25 about 1:35 or so. I used to keep a log, but I don't --

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1 I'm sorry -- I can't provide you --

2 Q You arrived home at 1:35; what did you do then?

3 A Well, I pulled up in my drive way. I turned
4 around. I did have some issues with that -- with some
5 stuff on the back of my trailer that I was going to
6 have to probably maybe take care of the next day or so.

7 So I backed my trailer up to where it -- if I'm
8 looking at you, the front of my truck is facing you, it
9 will drift down a little bit, so the drain of water
10 would allow the water to drain out empty. So I backed
11 it up to that incline to where it would allow the water
12 to drain.

13 Q Okay. And was it at that time that you
14 encountered Mr. Parham?

15 A Yes, sir. I -- I actually didn't know where
16 the voice was coming from until I actually looked over
17 my shoulder and realized he was out there on the phone.

18 Q Okay. Did you talk to him?

19 A He spoke to me. And I just -- I told him I was
20 going to leave the water running. And I just kind of
21 walked on. There was actually a period of time where
22 we wasn't really speaking, so I didn't --

23 Q Because you were angry at one another or you
24 were doing something else?

25 A We wasn't really angry. It's just -- it's just

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1 a lot of conflict with families. I don't know them
2 like Shannon knows them, but there's just a lot of
3 conflict.

4 Q Okay.

5 A You know, about property and stuff. I just
6 kind of walked --

7 Q So you didn't spend a lot of time with him that
8 night?

9 A No, sir.

10 Q Did you go inside?

11 A I did.

12 Q What did you do?

13 A Well, actually when -- when I pulled in, I
14 noticed one of my -- I noticed there was two people on
15 the side of -- my house is long ways. And it's got a
16 deck with a Jacuzzi on the end of it. And I noticed
17 two people were out there. It appeared to me like they
18 were smoking. I wasn't sure, but that's -- that's
19 probably why I kind of bolted toward the house. I was
20 trying to be strict to the girls. I wanted them --

21 Q Now, were they supposed -- now, they were
22 just -- how old were they, 14 or 15?

23 A I believe they were actually 16.

24 Q Were they allowed to smoke at that time?

25 A Well, no. They was not allowed to smoke.

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1 Q Okay.

2 A One of them was on restriction already. AL
3 was on restriction. And when I walked in the back
4 door, she pops around the corner--

5 Q Don't tell us what she said.

6 A Right.

7 Q Did you encounter them?

8 A I did.

9 Q You thought they had been smoking?

10 A I did. I could smell the smoke. I said
11 something about that.

12 Q All right. What happened after that?

13 A Well, I went on into the -- well, she wanted
14 the computer piece, because she had her friend,
15 Michelle, over -- I gave them -- I had a Verizon
16 Wireless Computer -- home plan phone and it had Verizon
17 Wireless--

18 Q Did you give them the computer piece so they
19 could get on the internet?

20 A Correct. I walked in and I went into the
21 bedroom. I was soaked. I had oil, grease, dirt. I
22 mean, all kind of stuff on me. I mean, I'm soaked from
23 the rain, number one, when it started. And then I'm
24 soaked from work, from all the stuff that blows off
25 while you're cleaning.

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1 So I took a shower and actually -- all my
2 clothes, we had towels in our bathroom, so I just left
3 everything in the bathroom and took a shower.

4 I got out of the shower. I actually -- when we
5 had folding doors, so I could -- if I fold it up, I
6 could get into the little medicine type cabinet. And
7 I -- I would put my new bandages on. And then I walked
8 over there and laid -- sit on the couch -- on the bed,
9 over on my side of the bed with J.P.

10 Q Okay. Did you have to go to Charlotte the next
11 morning?

12 A I did. I had to -- I was tired, but I couldn't
13 really sleep. I was actually educating J.P. on why
14 the Boston Celtics and the Lakers were classic wore
15 short shorts and now they wear baggy -- I remember
16 exclusively -- we was watching that game.

17 He dozed off with his head on my stomach.
18 Shannon was planning something about -- let's go get
19 something to eat. I'm craving the Waffle House. I'm
20 like, you know, I'm beat. I said, I'm soak. I'm beat.
21 I have got a lot to do in the morning. And I knew I
22 had to be down there on the other side of Charlotte at
23 -- it was a couple of names. It's a salvage auction.
24 And you pick up -- of course, wrecked motorcycles.

25 Q Did you go to Charlotte?

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1 A Uh-huh.

2 Q What time did you leave?

3 A Five minutes to 6:00. I left -- well, at first
4 I went to Bud's to get the trailer.

5 Q Who went with you?

6 A AL -- I mean JL and her friend, Katie
7 .

8 Q Okay. And y'all went to Charlotte?

9 A Yes, sir.

10 Q You did your business there?

11 A Right.

12 Q You returned home?

13 A Yes.

14 Q When was the first time you heard the police
15 were looking for you?

16 A 7:00 that morning. Sergeant Weiner gave me a
17 call, stated --

18 Q Was this while you were on the way to
19 Charlotte?

20 A I didn't see the call come in to my phone. I
21 received a message, but I never saw the phone -- the
22 number come through. So later on that day, when I
23 checked my messages, I noticed it said -- you know, it
24 gives you the time and date of the message. And he
25 said, I'm trying to get Ronnie. This is Sergeant

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1 Weiner with Greenville County, something detention
2 center or law enforcement division or center, something
3 like that. Could you give me a call when you get this.
4 My intention was to call him that day, but I -- I
5 forgot. I was actually supposed to be -- there was a
6 numerous amount of places that I could have been going,
7 because I had a lot of jobs, Clemson University was
8 one, Atlanta. Columbus, Georgia.

9 I had -- I didn't know exactly how I was going
10 to plan it just yet, but I had that on my mind. I
11 didn't know what it was in reference to. Nothing was
12 specified. It -- it was imperative for me to call.
13 And he didn't say Swofford, or he didn't say my
14 business. So I didn't -- I didn't even know if he had
15 the right person.

16 That was -- but I never -- I didn't call him --
17 I did speak with Sergeant Weiner like two days later.

18 Q Okay.

19 A He called me.

20 Q All right. When is the next time you had
21 contact from the police?

22 A I talked to Sergeant Weiner that same day --
23 two days after that. I actually talked to Detective
24 Miller. He actually called me on the 3rd, like he said
25 he did, and he actually did. And I talked to him. And

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1 I told him -- he would like to eyeball me. He said,
2 I'm on my way to SLED and I've got some stuff I wanted
3 to discuss with you. And he said, it's kind of
4 important that we meet.

5 Q So you did -- your recollection is that you did
6 speak --

7 A Oh, yeah. I did talk to him.

8 Q All right. And did you all make an appointment
9 or what?

10 A No. I told him when I got back -- when I got
11 back from doing some cars -- picking up some cars and
12 doing some work, I said, I would be more than happy to
13 meet with him. I was kind of unclear as to why, but I
14 didn't -- I was kind of unsure as to what they were
15 insinuating, so I wasn't really opposed to speaking
16 with them -- I just didn't -- I was unsure --

17 Q But you weren't real anxious to do so either?

18 A Well, no. I -- I -- I actually called Gerald
19 and then -- at first, and I said what should I do.

20 Q Okay. You don't want to talk about that.

21 A Okay.

22 Q Now, were you arrested?

23 A I was actually at the hospital, at Mary Black,
24 on the 18th. My mother had just suffered a heart
25 attack. And I was up there visiting her, you know,

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1 she, you know, sorry I left. My mother is everything
2 to me, so I couldn't --

3 Q You were arrested at Mary Black Hospital?

4 A I was. It was very embarrassing.

5 Q You were taken to Greenville County?

6 A They took me to the -- to the border of South
7 Carolina --

8 Q Spartanburg --

9 A -- and Greenville County, yeah. At Spinx gas
10 station. I switched cars with a couple of gentlemen.
11 They brought me to the law enforcement division, issued
12 the warrants. I believe I had a -- a bond hearing
13 initially for something. And then I had to wait for a
14 bond hearing. And so they -- they did what they did
15 and took me in custody.

16 Q Okay. And the next morning, did the detective
17 come over and get you?

18 A Yes, sir. He -- I was called down to go into
19 transport. I didn't know who was going to be there. I
20 don't know the gentleman here. Mr. Miller was -- said
21 he was here to take me across. I guess he had some
22 questions. So he shackled me up and we went through
23 the Sally port, I guess, is what you call it.

24 Q Okay. Did he take you to the law enforcement
25 center?

RONNIE SWOFFORD -- DIRECT BY MR. JOHNSTON

1 A He did. We walked over.

2 Q Did he get some DNA samples from you?

3 A No.

4 Q No?

5 A No.

6 Q They already had your DNA on record, though,
7 didn't they?

8 A Yes, sir.

9 Q And in the paperwork that you were given, when
10 you were arrested, did it indicate that there was DNA
11 involved in this case?

12 A It was. It was -- it was warrants stating that
13 it was probable cause for DNA or something like -- to
14 that nature. And what the other charges were. It was
15 only -- there was one charge I wasn't charged with at
16 the time, that came at a later date, just to indicate
17 that I had a -- a DNA issue, some kind of warrant --
18 something to do with DNA.

19 Q Did you shoot Curt Wooten in the early morning
20 hours of July 27, 2009?

21 A No, sir. Absolutely not.

22 Q Did you have anything against Curt Wooten?

23 A Absolutely not.

24 Q Any reason to want Curt Wooten dead?

25 A Absolutely not, not one reason.

R. SWOFFORD -- CROSS BY MS. HODGE

1 **MR. JOHNSTON:** Please answer any other questions.

2 **MS. HODGE:** Your Honor, are we going to take a
3 break?

4 **THE COURT:** Yeah. I was going to suggest that we
5 take a short -- we've been going for a pretty good bit.
6 Don't talk about it and we will get back to you in just
7 a minute.

8 (Whereupon the jury left the courtroom at
9 3:57 p.m.)

10 **THE COURT:** All right. Just take about ten
11 minutes or so.

12 (After a recess, court reconvened.)

13 (Whereupon, the jury entered the courtroom at
14 4:19 p.m.)

15 **THE COURT:** All right. Cross examination.

16 **MS. HODGE:** Thank you, Your Honor.

17 CROSS EXAMINATION BY MS. HODGE:

18 Q Mr. Swofford, you stated that you met Mr.
19 Wooten in prison, y'all were roommates for about a
20 year, and this was back in the 90's, mid '90's?

21 A I would say around 1995, 1996.

22 Q Okay. And he didn't stay that long in prison,
23 did he?

24 A I only remember about 18 months.

25 Q Okay. And you were there for more extended --

R. SWOFFORD -- CROSS BY MS. HODGE

1 A Oh, yes.

2 Q And you guys didn't have problems, y'all were
3 good friends and made friends and stayed friends while
4 you were in prison?

5 A Yes, ma'am.

6 Q Okay. So when you see him, June 6th of 2009,
7 at the Kangaroo, you're -- all is well?

8 A Oh, yeah. Yes, ma'am.

9 Q All right. And then within the next 25 days or
10 so, you guys start hanging out a little bit more?

11 A Yes, ma'am.

12 Q That's when you learned about where he lives in
13 Greer -- or lived at the time in Greer?

14 A Right.

15 Q Okay. And you went on to state that you saw
16 him four times that you can detail to this jury? Just
17 four times at his home?

18 A That was four times at his home, right.

19 Q Four times at his home?

20 A Right.

21 Q And saw him other times other places?

22 A Correct.

23 Q Okay. So within 27 days, y'all saw each other
24 what? How many times?

25 A About ten times.

R. SWOFFORD -- CROSS BY MS. HODGE

1 Q About ten times. Okay. So Curt wouldn't have
2 been too far off that you saw each other ten times in
3 27 days, that's almost every other day, every third
4 day?

5 A No. He was saying I was at his house every
6 five days.

7 Q He said y'all were hanging out --

8 A Every week.

9 Q Four or five days a week. And, really, if you
10 break it down from the 10th to the 27th, if you saw
11 him -- or excuse me -- from yeah --

12 A The 6th.

13 Q From the 6th to the 27th, that's about every
14 other day, every third day?

15 A Yeah. About 60 days -- wasn't it 60. I mean,
16 if you --

17 Q Just from July -- I'm just speaking from July?

18 A I mean --

19 Q I'm just -- just speaking of July. You went to
20 his house at least four times?

21 A Oh, yeah.

22 Q And you you saw him a few more times, so y'all
23 were hanging -- my point is, y'all were seeing each
24 other a few times a week at least?

25 A Yes, ma'am, I would say we were.

R. SWOFFORD -- CROSS BY MS. HODGE

1 Q Okay. So he is not that far off -- a little
2 longer than you are saying, but he is not that far off.
3 And the times you saw him, you are saying he always had
4 a .22 hanging around his neck?

5 A Yes, ma'am.

6 Q Out in public?

7 A Well, it was under his shirt.

8 Q Okay. Did he show it to you?

9 A He did -- one day, he did.

10 Q And he didn't shoot you with that, did he?

11 A No, ma'am.

12 Q So the first time you go over to his house, you
13 state that you see a girl named Rikki, just in passing?

14 A Yes, ma'am.

15 Q You don't really speak to her or know her very
16 well?

17 A No.

18 Q The second time -- I don't know that I have the
19 dates. What's the first time you went to his house?
20 What date was that?

21 A I think it was the first part of July. I just
22 remember it being around the 4th of July. It was the
23 first part -- before the 4th of July, but I do remember
24 it was right around the 4th of July. That's why I kind
25 of indicated the first part of July.

R. SWOFFORD -- CROSS BY MS. HODGE

1 Q Okay. And then when is the second time you go
2 over there?

3 A I think it was around 13th or 14th of July.
4 Yeah. That was the night of -- I knew that the
5 ultrasound was coming up.

6 Q Okay. So you go there the 13th or 14th, that's
7 when you -- you weren't really -- you weren't sure he
8 had company, but when you pull up, there is other cars
9 there?

10 A Right.

11 Q Okay. So you see Rikki at that point, too?

12 A Right.

13 Q Okay. That's when you're just introduced, but
14 it's not a real --

15 A Right.

16 Q Visit?

17 A Right. That's the first time that I saw the
18 actual .22.

19 Q That was the first time?

20 A With other weapons that he kept.

21 Q Okay. So you didn't see it from June and up
22 until July 13 almost, you didn't know that he had that
23 on him?

24 A Right -- well --

25 Q So you can't say he always had it?

R. SWOFFORD -- CROSS BY MS. HODGE

1 A -- I knew it, but I just didn't never see it.

2 Q Oh, okay. And then you say on the -- either
3 the 14th or 15th, you see him again, so just another
4 day or two later, you see Curt again, when he and Rikki
5 are supposed to be arguing?

6 A Right.

7 Q And you didn't speak or hang out and talk to
8 Rikki much then, did you?

9 A No. Never.

10 Q Now, that's the time -- no, I'm sorry. On the
11 13th, maybe a day or two before, you're saying that he
12 went inside his house, and Rikki sat down beside you
13 and y'all were all just kind of talking. And Curt was
14 saying y'all were best buds, that kind of thing?

15 A Right.

16 Q Okay. So then the 14th, they were arguing and
17 you --

18 A Well, I had made a call before then -- remember
19 I said that I made a couple of calls and I couldn't get
20 him, so I called the house phone. She called back.
21 And then there was some statements -- some statements
22 between -- alleged between two people, that were never
23 said, that kind of caused a tiff between them, that
24 tried to lead up towards me, I guess. I don't know.

25 Q Okay.

R. SWOFFORD -- CROSS BY MS. HODGE

1 A Based on what he said, but I can't say --

2 Q So you aren't aware of what she and he were
3 talking about --

4 A No, no, --

5 Q Just him telling you something later?

6 A Right. Right. Well, other than what she was
7 hollering out the door.

8 Q Okay. And so then on the 21st, you're saying
9 that is the last -- absolute last time you went to
10 Curt's house?

11 A Yes, ma'am.

12 Q July 21st. And you went there because you were
13 going to a business meeting, but that got delayed?

14 A Right. Yes, ma'am.

15 Q Okay. And that is when Curt accidentally shot
16 you?

17 A Yes, ma'am.

18 Q I'm guessing you didn't get to your business
19 meeting?

20 A No, ma'am, or my appointment with Mr. --

21 Q You didn't go see him either that day?

22 A I did stop by the next day, when I went -- I
23 had to stop by his office to let him know something
24 came up. I just never elaborated to him --

25 Q Did he have some concerns about your big

1 bandage on your arm?

2 A He did not --

3 Q This is your community chair person --

4 **MR. JOHNSTON:** Your Honor, I would ask that he be
5 allowed to finish his answer.

6 **THE COURT:** Let him finish. Finish your answer.

7 **THE WITNESS:** I asked him later on did he notice.
8 He said, he never paid any attention. He never asked
9 me directly about anything on my arm.

10 BY MS. HODGE:

11 Q Okay. So you're at a place that their primary
12 care is for people that have HIV and/or AIDS?

13 A Right.

14 Q And you walk in with a bandage after missing an
15 appointment, and he just didn't really care?

16 A I didn't say he didn't care --

17 Q He didn't ask, hey, man, what's that injury on
18 your arm. That could be bad for you.

19 A Well, he didn't, --

20 Q He didn't?

21 A -- but you're right.

22 Q And --

23 A It's not a doctor's office -- I want to
24 clarify -- it's not a doctor's office. It's a
25 counsellor.

R. SWOFFORD -- CROSS BY MS. HODGE

1 Q And they also do meds, is that right?

2 A They don't distribute them, no, ma'am. They
3 actually provide us with care --

4 Q Help you --

5 A -- like the Ron White Foundation (ph), it
6 allows us -- medicine is very expensive --

7 Q So it helps you to find financing for the
8 medicines?

9 A Correct.

10 Q Okay. But, again, they are professionals that
11 deal with people that have a disease that can be
12 deadly?

13 A Correct.

14 Q And you state this day that you were
15 accidentally shot by Curt, you were wearing a long
16 sleeve fleece shirt, is that correct?

17 A It was a red and black -- it goes -- it's
18 actually designed -- it's black, and at an angle red --
19 red around -- all red with black trim and black
20 embroidering with my business name on it.

21 Q Long sleeves?

22 A And it zips up right here.

23 Q It's a fleece?

24 A Correct.

25 Q And this is July 21st, in Greenville, South

1 Carolina, in the afternoon?

2 A That's right.

3 Q And your mom said you're not supposed to get
4 real hot; did you hear that?

5 A No. It's not that I'm not supposed to get real
6 hot -- well, you know, I guess it's not, but I had
7 lesions on both arms. They look like little blisters.
8 And on my arms, they -- they are not supposed to be
9 exposed to sun.

10 So I normally wear long sleeves or a wind
11 breaker of some sort during the summer time, just to
12 kind of -- I put a lot a sun block on my face. But a
13 lot of times I put stuff over my arms because -- we're
14 going to get wet anyway. So, a lot of times I would
15 wear a light windbreaker or a fleece with cut off
16 shorts, but it's -- just on my arms, you know, on both
17 arms.

18 Q Let me show you State's No. 73 and 74, is there
19 one -- that's the gunshot wound? That's not a lesion.

20 A Right. What it is -- and I know they can't see
21 it -- but all these right here, they are on my arm and
22 they are probably -- not illuminated on this picture
23 that you can see -- but you can see very clearly on
24 both hands where they come up.

25 Q Okay. And so your mom said, though, you're not

R. SWOFFORD -- CROSS BY MS. HODGE

1 supposed to get hot, right? Is that part of it? Is
2 heat part of it?

3 A Well, it's not so much -- they're not supposed
4 to be sunburned. They are not supposed to be exposed
5 to light -- sunlight, which you know, maybe in her
6 terms, that's heat. I mean, they can itch.

7 They can get wet. And if they get wet, they
8 tend to -- you know, how your fingers get wet and
9 wrinkly when you take a shower or swim, they do that.
10 They are a lot more easier to tolerate when you are
11 sweating as opposed to exposing them and letting them
12 get sunburned.

13 Q Okay. Pressure washing is a very manual job,
14 right? I mean you do get hot doing that, even if
15 you're wearing a shot sleeve shirt?

16 A Yes, ma'am.

17 Q You are working hard doing that kind of stuff?

18 A Yes.

19 Q Okay. Now, you said that you did not tell
20 anyone about Curt accidentally shooting you
21 initially -- or for a while because you knew he was a
22 convicted felon, he wasn't supposed to have a gun?

23 A No. I didn't say I didn't tell anybody. I
24 just said, I mean -- were you referring to the police
25 or just anybody in general?

R. SWOFFORD -- CROSS BY MS. HODGE

1 Q Yes.

2 A I made a statement -- I made a statement to one
3 of my co-workers at the time, that was incarcerated
4 with me, and I made a statement to him, did he know
5 Curt -- because he asked me what happened. And I
6 explained to him and --

7 Q Okay. My -- go ahead.

8 A I'm sorry. I told him the next day on the
9 22nd, I had -- there is three people, initially, that I
10 made contact with, two of whom I probably -- that
11 doesn't know Curt. I don't know if Hunter Smalley
12 knows him. Charlie Duffie was one and one of my
13 employees was the other.

14 Q What is his name?

15 A His name is Terry.

16 Q But Curt is not convicted -- was not convicted
17 of violent crimes, he was just convicted of a felony?

18 A I really didn't know -- I never knew exactly
19 what Curt was charged with, until I heard him say in
20 court. That's the first time I ever knew what he was
21 charged with.

22 Q Which is obtaining drugs by false pretenses,
23 which is not violent?

24 A I don't know. I mean, I'm assuming --
25 according to you. I don't know exactly what that calls

R. SWOFFORD -- CROSS BY MS. HODGE

1 for.

2 Q And you didn't go to the hospital, we've
3 covered that, because --

4 A I didn't feel the need to. From my
5 understanding, one of the guys -- well, that Terry told
6 me --

7 Q Well, let's not say what Terry said. But you
8 didn't go the hospital?

9 A No.

10 Q Just on the advice of a friend, Terry?

11 A Well no --

12 Q You didn't go?

13 A The main reason I didn't go is because I didn't
14 -- I felt -- I felt a bit of loyalty to Curt. We were
15 friends. I didn't never expect what happened, that was
16 intentional.

17 Q Right. You thought it was an accident --

18 A Well, it was an accident.

19 Q Right.

20 A I know he didn't mean to do it, because it's
21 the way that it happened, it wasn't meant that way.
22 But I didn't feel that it would justify anything for me
23 going to the hospital. Now, if I had to go, if I
24 didn't know there was exit wound, and I didn't know
25 that the bullet had came out, and it was apparent that

R. SWOFFORD -- CROSS BY MS. HODGE

1 it did -- now, it could have been something in there,
2 it could have swole up and it could have caused me some
3 serious damage, I thought better of it later on,
4 especially later on.

5 Q Well, in light of your medical condition, which
6 we have heard about at length, that was probably not
7 the smartest decision, right, not to go to the hospital
8 after you have been shot?

9 A No.

10 Q But to go ahead and ask a veterinarian maybe
11 about it, that you thought was a better decision?

12 A Well, I was, you know --

13 Q Okay. Let's talk about you said this
14 accidental shooting, you're in the kitchen of Curt's
15 home, and you're leaning up on the refrigerator because
16 you always stand in the same manner every time.

17 A Well, just if I'm leaning on something.

18 Q All right. Let's see if I can find a picture
19 that we can look at. Let's see here. State's No. 12
20 and State's No. 10, I want to show you. All right. So
21 No. 12, are you familiar with Curt's kitchen and all
22 that?

23 A Yes, ma'am.

24 Q So the refrigerator is over here?

25 A Right.

R. SWOFFORD -- CROSS BY MS. HODGE

1 Q And you are leaning, kind of with your arm up
2 on the refrigerator --

3 A Right. I was standing ex -- on the side of
4 this refrigerator. And I was facing -- this would be
5 the back wall.

6 Q Okay. You're facing this direction?

7 A Right. The way the refrigerator was facing
8 towards the back wall, I was facing that way, with my
9 arm up, and it was kind of -- I had my hand on --

10 Q Let's say this is -- for the jury, this is the
11 refrigerator. There is where the kitchen sink would
12 be. That's the back wall. So you're leaning on the
13 refrigerator?

14 A I'm just saying the sink is right there.

15 Q Uh-huh.

16 A Okay. The sink is right there. And then let's
17 say the refrigerator is right here. This is the side
18 of the refrigerator. I'm standing beside the
19 refrigerator, not in front, but standing beside it.

20 Q Beside it. Okay. Looking that way, with your
21 arm on your hip?

22 A Yeah. You know, just kind of stuck it on top
23 of the refrigerator.

24 Q Okay. And he's over here by the sink?

25 A He actually walks over right here.

1 Q Okay. So he is by his sink. And he stumbles
2 is your testimony --

3 A No. Actually he turns this way, after he
4 wakes up or apparently wakes up or whatever condition
5 that was that caused him to jerk. He turned toward the
6 stove.

7 Q Okay.

8 A And he was leaning on -- he just kind of rested
9 his hands on the stove, probably eight to ten inches
10 back, maybe a foot back.

11 Q Okay. And he buckled?

12 A Well, he -- he stood there for a minute. And
13 I -- I didn't know if he might have been having a
14 seizure. I didn't understand really the nature of what
15 was happening before me. It's just I was -- initially,
16 I was looking out the window. I look over and he's
17 just standing there. He's not getting any -- not
18 getting me a cup. He is just standing there. I don't
19 see his hands -- so I didn't know if he was looking at
20 a phone. I said Curt, and you know, he just kind of
21 jerked.

22 So he turned around to the stove, and then I'm
23 just standing here. So I start looking at him, and
24 he's standing facing the back of the stove. And his
25 hand -- he has a gun in his hand, but I don't see it on

R. SWOFFORD -- CROSS BY MS. HODGE

1 the trigger or anything. I wasn't really focused on
2 that, I just know he still had it in his left hand and
3 he had his other hand like this. And he was standing
4 away from me a little bit. But his upper torso was
5 kind of leaning a little bit.

6 He was out of breath and, you know, just kind of
7 grasping and that kind of thing.

8 Q And you were kind of looking out the window?

9 A Well, I was -- you know, just kind of, you
10 know, looking. And I wasn't really zoned in on
11 anything until after I got his attention and noticed,
12 you know --

13 Q I thought you said you were looking out the
14 window?

15 A I did, I said I was looking out the window, but
16 then when I looked over he was just -- when I didn't --
17 realize he was getting me a cup, I said his name.
18 That's when I kind of -- getting a cup, I'm standing
19 here --

20 Q Okay.

21 A So he just stands there looking towards the
22 sink. So I get his attention and then he turns toward
23 the stove.

24 Q And his left leg buckles, right leg --

25 A The left leg buckles -- the left leg kind of

1 buckles in toward the stove. And when he did, it is
2 just like he dropped his left hand to catch himself.
3 And when he did, in one quick motion, it's apparent or
4 it appeared that he is right here, you know, I guess --

5 Q Yeah. Right here?

6 A Well, the stove is, the stove sits kind of low.
7 Can I demonstrate?

8 Q Sure.

9 A He is like this, doing this. And about that
10 time, his legs were together -- I didn't mean to go
11 this far back -- he is like this. And I am standing
12 directly, just to the side of where the refrigerator
13 would be.

14 Q Right.

15 A When he's doing like this, about that time,
16 he -- he kind of buckles and he goes like this, to
17 catch himself on the stove.

18 Q So, he gets a little lower?

19 A He got lower and then just -- it's just like
20 clinched his hand to try to catch himself from the
21 falling.

22 Q Then you reached too, right?

23 A Well, what I did, I didn't reach around.
24 Initially I was just standing there. And my -- it was
25 a reflex to reach my hand toward him. I just kind of

R. SWOFFORD -- CROSS BY MS. HODGE

1 kept my arm up, and I -- because I'm standing, I'm
2 looking at him like this, like you know --

3 Q Right.

4 A By the time, I just --

5 Q You reached in --

6 A I reached in, and then a shot came up from
7 the -- I guess from the stove angle --

8 Q Right.

9 A And I just reached in. And it went it my arm
10 and it came straight -- I'm assuming straight behind
11 me, according to what y'all's records show.

12 Q Right. Because you looked at our records and
13 you figured out how this kind of all fits in that --

14 A I hadn't seen any of these pictures until
15 recently.

16 Q But you have seen these pictures and you saw
17 the whole case file -- you have read your whole case
18 file?

19 A No, no, ma'am. I have not seen --

20 Q But you read the case file, where there's
21 descriptions and reports and things of that nature,
22 right?

23 A Yes, ma'am, I have.

24 Q Okay.

25 A Curt did say he reached around something, and

R. SWOFFORD -- CROSS BY MS. HODGE

1 shot around the refrigerator --

2 Q Well, you understand trajectory, slightly
3 upward --

4 A Oh, yeah.

5 Q And you know where the bullet hole is in the
6 wall, and you know where your DNA is, spattered up on
7 that wall and that's basically where you are saying in
8 this story --

9 A Well, I haven't heard -- I haven't heard any
10 testimony saying there was any upward trajectory. All
11 I've heard, you know, is the area that it come from.

12 Q Okay. But when he shot you, it went upward?

13 A Oh, yeah. It did go up when he shot me,
14 correct.

15 Q Okay. So it would be upward trajectory, right?

16 A Well, yeah. A lot of my testimony is based on
17 what my experience was a few days before. This is
18 y'all's crime scene -- alleged crime scene from this
19 day of the 27th. So, I can't -- it's not fair for me
20 to elaborate on that day --

21 Q Well, I'm asking you about the alleged scene on
22 July the 21st --

23 A Okay.

24 Q And that you reached in?

25 A Right.

R. SWOFFORD -- CROSS BY MS. HODGE

1 Q With your left hand, like this, and you get
2 shot. So did your clothes have some stuff on it, some
3 blood, or some matter on the front?

4 A No, it was -- like I said, I knew there was a
5 hole -- excuse me -- in the front. I had no idea that
6 I had anything on the back of the shirt. And I guess
7 because the material it is small material --
8 stretchy -- I'm not sure what a fleece is made out of,
9 maybe nylon, polyester, but they're not real big holes.
10 There was never a distinct size from the front or the
11 back based on the injuries to the -- what the pictures
12 may show. They --

13 Q Well, I'm not -- you don't need to worry about
14 the pictures, just worry --

15 A Right.

16 Q -- about what you supposedly know --

17 A I'm just saying, it's you know, just the
18 regular size hole.

19 Q Did you save the shirt? Do you have that
20 shirt?

21 A No, I mean I had it for probably a day and then
22 --

23 Q Then you got rid of it?

24 A Well, I mean, I don't -- I'm not going I got
25 rid of it, I don't know exactly what I did with it. I

R. SWOFFORD -- CROSS BY MS. HODGE

1 may have. It's possible.

2 Q You didn't think that once you got arrested,
3 the law enforcement would be interested in maybe seeing
4 that?

5 A No. I didn't never anticipate being arrested.

6 Q So you threw it away immediately?

7 A No. I didn't say I threw it away at all, I
8 just don't remember what I did with the shirt.

9 Q Okay. And you said it would be fair to say
10 your blood would be at the scene, is that correct? Is
11 that what your testimony was?

12 A That -- that -- that would have been a great
13 possibility, yes, ma'am.

14 Q Okay?

15 A But not where -- I mean, I'm only going to
16 assume the location. I didn't see anything.

17 Q You didn't see any blood?

18 A Not on any place in the house. I mean, I ran
19 out the door. I mean, I was kind of scared.

20 Q You knew it was an accident?

21 A Right.

22 Q Why were you scared?

23 A But still, I just got shot. I mean, I guess it
24 is just an impulse. You know, I'm already -- I just
25 got hit in the arm. I don't know really -- I felt it

R. SWOFFORD -- CROSS BY MS. HODGE

1 here, but I guess, you know, the initial reaction or --
2 or understanding of a shot, I didn't know if I got hit
3 in the stomach or something -- I felt it in my arm, but
4 I didn't -- I was kind of concerned, so I went outside
5 and really checked myself over.

6 Q All right. Not concerned enough to go to the
7 hospital, though?

8 A After I figured -- after I realized it was just
9 an incident in the arm, and I started rinsing it
10 over -- and that's when I found the back part of it. I
11 actually spent just a minute looking, to see if there
12 was a bullet fragment that may have fell out on the
13 ground, but --

14 Q Okay.

15 A It was a hose right directly in front of his
16 porch.

17 Q And you left, and then you and Curt talked
18 after that, and he was apologetic, is that your -- is
19 that the gist of your testimony?

20 A Well, he's been very apologetic.

21 Q Okay. And so that -- that didn't cause any bad
22 blood between y'all?

23 A No.

24 Q And then on Thursday --

25 A Not on my part. I mean, I don't know what he

R. SWOFFORD -- CROSS BY MS. HODGE

1 may --

2 Q After him shooting you, he probably didn't have
3 any bad blood towards you, because you helped him out
4 by not saying anything; right?

5 A Right. I mean, I'm assuming, you know, right.

6 Q Okay. And then on the next contact you had
7 with him, which was -- well, you had the contact the
8 next day. And then on the next day, the 23rd, y'all
9 had another -- some contact, either phone or meeting.
10 And then on the 24th, you guys go and try to sell his
11 Camaro to Shannon's uncle --

12 A Brother.

13 Q Brother. I'm sorry.

14 A Yeah. There was no -- no -- no meeting
15 Wednesday or Thursday.

16 Q Phone contact?

17 A Well, one actual phone contact. A couple -- a
18 bunch of text messages. And then also Friday, we
19 actually were supposed to meet earlier in the day, but
20 because of the rain, he didn't want to bring the car
21 out until after the rain had stopped. So --

22 Q Okay.

23 A We ended up going later than that.

24 Q Okay. So Friday afternoon, y'all are in Lyman
25 together and trying to sell this Camaro, but he didn't

R. SWOFFORD -- CROSS BY MS. HODGE

1 sell it, correct?

2 A Yes.

3 Q And then you go up to the Kangaroo, up the
4 street, and he gives you \$150? Was that the --

5 A \$850.

6 Q Eight, okay. I didn't hear it correctly.
7 \$850. All right. And you say you didn't need his
8 money because you made plenty of money, correct?

9 A I mean, I made decent money.

10 Q Yeah. Right. I'm not saying you're getting
11 rich. But that you made more money than he made off of
12 his disability check, which is what you testified to?

13 A I would say so.

14 Q Okay. And Defendant's Exhibit No. 20, this is
15 your bank statement for your business, Piedmont Mobile
16 Detailers?

17 A Correct.

18 Q For the month of July of 2009. And on July 24,
19 there is a \$750 deposit, correct?

20 A Right.

21 Q Then on the next page, it shows where you have
22 a balance of -- on July 15th, so a week prior, your
23 balance was \$7.70, correct?

24 A For that bank account, yes, ma'am.

25 Q Okay. And then on the 24th, after you

R. SWOFFORD -- CROSS BY MS. HODGE

1 deposited this money, you had \$774.70, is that correct?

2 A That's what it says, yes, ma'am.

3 Q Okay. And then by Monday, you only had \$15.42,
4 is that correct?

5 A Yes, ma'am, in that account.

6 Q So if you would not have deposited the \$750 on
7 July 24th, it's a good possibility you would have
8 overdrawn your account at this bank?

9 A I wouldn't have overdrawn it. That was just
10 the closest bank. I just -- at the time, when I first
11 started out, I was trying to establish something with
12 the bank -- different banks. Because I went through --
13 what do you call it --

14 Q Your credit? You were trying to establish your
15 credit rating?

16 A Yeah.

17 Q Okay. All right. And over here, the third
18 page of your exhibit, shows some checks that were going
19 to be clearing and -- or did clear in close proximity.
20 So by July 31st, you were going to have \$164 debit
21 clear, is that right?

22 A Yes. It should have been --

23 Q A loan payment that cleared so -- then there
24 was a \$255 cash?

25 A That's on the 31st.

R. SWOFFORD -- CROSS BY MS. HODGE

1 Q On the 31st, right. Then on the 27th, though,
2 on Monday the 27th, you had to pay BSI -- clear
3 \$408.29, is that correct?

4 A It appears so, yes, ma'am.

5 Q Okay. So when your balance was going to only
6 be \$15.42, had you not made a payment, that check would
7 have bounced, wouldn't it, the \$480 check?

8 A Well, I wouldn't say -- I would have wrote a
9 check if I didn't have the money in there. Like I
10 said, I had another bank account -- actually I had two
11 other bank accounts.

12 Q You understand that when you write a check to
13 someone and present it, it doesn't automatically clear
14 on the same day?

15 A Right. I know that.

16 Q Okay. We're on the 25th -- so, that was
17 Friday, the 24th, now we're on Saturday, the 25th, your
18 birthday, which we have clearly established. And you
19 did some work and went to Kanpai for dinner. And the
20 victim, Mr. Wooten, was text messaging you, y'all were
21 texting or something like that?

22 A Maybe one or two texts.

23 Q Okay.

24 A Really wasn't nothing.

25 Q All right. And did you -- did you pay for this

R. SWOFFORD -- CROSS BY MS. HODGE

1 meal? Your birthday meal? Did you pay any of it or
2 did somebody else pay?

3 A I paid.

4 Q Okay. You paid it. Did you happen to keep a
5 receipt?

6 A No, ma'am.

7 Q Okay.

8 A I normally pay cash for any kind of meal
9 that -- normally I may write a check for documentation
10 for business on the other stuff, but on that, I paid
11 cash --

12 Q But they bring you a receipt. I mean, you
13 don't -- they don't just verbally say hey, it's \$100
14 and you give them a \$100 bill. They give you --

15 A Yeah, they give me a handwritten ticket there.

16 Q They also type it up and put it in their
17 system? It's probably generated --

18 A They did debit -- the one in Spartanburg, that
19 I'm familiar with, that is all handwritten. They do
20 their own -- you know, way of itemizing their food
21 sales. So once you go pay, you take it up there, and
22 they know what they have done. And then, you know, I
23 guess if you ask for a receipt, they will give you one.

24 Q They just don't make a practice of when you pay
25 cash, they give you, here's your receipt?

R. SWOFFORD -- CROSS BY MS. HODGE

1 A No, ma'am.

2 Q Could you have gone back and asked somebody to
3 get a receipt from that meal?

4 A Not -- probably a couple of weeks later after I
5 was starting to be -- I guess what you guys assume as a
6 suspect -- I started doing a lot of things. And I was
7 trying to -- I went to the transportation --

8 Q Well, I'm asking you about getting a receipt at
9 Kanpai?

10 A I did, but they said it was too late. There
11 wasn't nothing they can do to get a receipt that far
12 off.

13 Q A week later?

14 A No, it wasn't a week later. I didn't even talk
15 to Lieutenant Miller until the 3rd, which was ten --
16 and even then he never said I was a suspect.

17 Q Well, you talked to Sgt. Weiner--

18 A No, ma'am.

19 Q -- on the 29th?

20 A Right.

21 Q And you knew he asked you, were you involved in
22 a shooting with Curtis Wooten?

23 A Right.

24 Q So you knew that?

25 A No. Sgt. Weiner asked, he said, did you have

R. SWOFFORD -- CROSS BY MS. HODGE

1 any reason to shoot Curtis Wooten. And I said no.

2 That's what he asked me and I said no.

3 Q Did you ask him if Curtis Wooten had been shot?

4 A No.

5 Q Your friend?

6 A Right. No, I didn't ask him.

7 Q You didn't ask him, why? Has Curtis been shot?

8 Oh, my gosh.

9 A He asked me how I knew him, and he asked me,
10 did I have any reason to shoot him. And then he asked
11 me, where I was -- at first, he -- he initially asked
12 me, was I in town to speak with him. And I said no.
13 And he said, well, listen, I want to ask you about an
14 incident, did you have any reason to shoot Curtis
15 Wooten. I said no. He said, how do you know Curt? I
16 said we was in prison together.

17 Q Uh-huh.

18 A And then he stated -- something about a text
19 message. I said, I have no idea why -- especially at
20 the time he was referring to, I know -- I didn't text
21 no specific time on that --

22 Q But you told him -- or he said, did you text
23 him, and you didn't have --

24 A I said no.

25 Q You said no?

R. SWOFFORD -- CROSS BY MS. HODGE

1 A I said no.

2 Q Okay. And you heard -- or your heard Sergeant
3 Wiener's testimony here, correct?

4 MR. JOHNSTON: Your Honor, object to pitting the
5 witnesses.

6 THE COURT: Go ahead.

7 BY MS. HODGE:

8 Q The way -- you didn't deny that you and Mr.
9 Wooten had been texting each other, though, did you?

10 A No, I didn't deny that.

11 Q Did you have phone records during this time
12 where y'all had called each other -- did you think that
13 was important?

14 A Not really, I mean -- I mean once -- once I
15 became, I guess to you guys as a suspect, and I was
16 arrested, then I was -- I could defer to my attorneys
17 at that point. I didn't -- I wasn't going to allow
18 anything -- I was not going to come out and come
19 forward with anything because I wanted to keep my
20 rights to shut up.

21 Q Well, I'm talking about before, before you were
22 arrested, you knew they were interested in you?

23 A Right.

24 Q You were a person of interest? You were a
25 suspect and you knew that they were wanting to talk to

R. SWOFFORD -- CROSS BY MS. HODGE

1 you about a shooting involving Curtis Wooten, you knew
2 that?

3 A No -- initially what they wanted to do was --
4 what they told me, and Detective Miller was the one
5 that said it, he wanted to eyeball me, to see if I had
6 been shot.

7 Q Uh-huh.

8 A To see if there was any kind of wounds on me.

9 Q Exactly.

10 A He didn't say if -- I want to know if you were
11 -- did you shoot Curt Wooten -- nothing like that was
12 said. I kind of felt that Curt did say something to
13 them about what he did. I was unsure. I didn't know.
14 You know, you have to know Curt. You know, he's in and
15 out. I mean, I didn't know what he might have -- what
16 he did. So I just kind of left it alone. I tried
17 contacting Curt a couple of times during that week when
18 he was allegedly shot that, you know, I didn't know
19 that he was actually in the hospital.

20 Q And you certainly didn't ask anybody, did you?

21 A Oh, yeah --

22 Q They're calling you, talking about Curt being
23 shot, you don't say, well, is he?

24 A Well, no, the 28th -- the 27th, I was calling.
25 Nothing was said about that. And then when I talked on

R. SWOFFORD -- CROSS BY MS. HODGE

1 the 29th, on those first couple of days, before I
2 talked to Sergeant Weiner, I had tried to call Curt and
3 text. So I was assuming y'all had the phone.

4 Q Yes. We had the phone. And would it surprise
5 you to know there were no texts from you after
6 2:00 something in the morning on the incident of the
7 shooting?

8 A I thought it was four -- but no, I don't know.

9 Q I don't know. You tell me. Did you text him
10 at 4:00?

11 MR. JOHNSTON: Your Honor, those are the facts not
12 in evidence.

13 THE COURT: It's cross examination. I'm going to
14 allow it. Go ahead.

15 BY MS. HODGE:

16 Q So, no -- would it surprise you to know there
17 were no messages from you?

18 A I'm sure there were. No, I left -- if they
19 don't come through for some reason for the phone being
20 off, but I know I did try to -- a matter of fact, I
21 even tried to contact a girl name Joanie.

22 Q I'm not asking about contacting Joanie. I'm
23 asking you about messages to Mr. Wooten. All right.
24 So on this night that you are saying that you were
25 pressure washing on July 27th -- or excuse me -- 26th

R. SWOFFORD -- CROSS BY MS. HODGE

1 into the 27th, early morning, you ended up taking Terry
2 to his girlfriend's, correct?

3 A Correct.

4 Q Terry has not been a witness here today,
5 correct?

6 A Correct.

7 **MR. JOHNSTON:** Your Honor, I would object. That's
8 burden shifting.

9 **MS. HODGE:** I'm just asking if any of these people
10 --

11 **THE COURT:** That's all right. I'm going to
12 overrule the objection. Go ahead.

13 BY MS. HODGE:

14 Q And then you stated you took a certain route
15 home, where you then passed by -- or where you then got
16 contacted by Mr. Pulley?

17 A Pullen.

18 Q Pullen.

19 A P-u-l-l-e-n.

20 Q And he did testify today, Mr. Pullen?

21 A Yes, ma'am.

22 Q Okay. Now, did you -- where did you meet
23 Mr. Pullen?

24 A I believe we was incarcerated.

25 Q Okay. You were in prison with Mr. Pullen?

R. SWOFFORD -- CROSS BY MS. HODGE

1 A Yes, ma'am.

2 Q And when was that? What year was that?

3 A I would say somewhere in the neighborhood of
4 1998. I -- he probably got out years before I did.

5 Q About a year before you did?

6 A Maybe a couple. I'm not real sure. He was the
7 manager of the gas station --

8 Q Okay. But he had been in there, you know,
9 several years with you?

10 A I don't know about several, like I said, I
11 don't recall him earlier. Somewhere in that
12 neighborhood is what I recall meeting him.

13 Q Would it be fair to say that Mr. Pullen would
14 have been incarcerated somewhere -- until maybe 2000,
15 2003?

16 A It's a good possibility, that's about accurate.

17 Q Okay. All right. Did he ever do any work for
18 your business?

19 A Who?

20 Q Mr. Pullen.

21 A Oh, yeah. I mean, more recently than before --
22 I mean I just -- we were -- I had established -- he was
23 already established. And I was, I guess, more along
24 those lines, starting to really get more established.
25 I was getting more into the commercial end at that

R. SWOFFORD -- CROSS BY MS. HODGE

1 time. And probably he's helped some in the past.

2 Q Okay. Did you ever give your employee, Terry,
3 a car to drive, to help with work either an Explorer or
4 Jeep Cherokee, something like that?

5 A I did.

6 Q Okay. And what other kind of cars did you and
7 your fiance or the -- and the girls have, that would
8 have been around your house during this time, on
9 July 27, 2009?

10 A I had a 2004 Jeep Grand Cherokee Laredo.

11 Q Okay.

12 A I had a 2006 Ford F150. I also had a 1998
13 convertible black Mustang. And then -- it was such a
14 fine line -- but somewhere right in there -- in this
15 time frame, I bought a 2004 Ford Explorer because the
16 girls were starting to drive, and we was getting rid of
17 the Mustang because Shannon was going to be expecting,
18 so I wanted to have the baby something safe.

19 Q Okay.

20 A To ride in.

21 Q All right. On the -- after you get home from
22 dropping Terry off, and you say you passed by where
23 Mr. Pullen calls you, you say from the spot, it takes
24 you maybe ten minutes to get home?

25 A No. I was actually kind of -- I corrected

R. SWOFFORD -- CROSS BY MS. HODGE

1 myself during that piece of testimony.

2 Q Oh that's right.

3 A It was more like three to five minutes because
4 it's really not that far up 295. I was -- I have
5 always gaged myself to a Spinx, which is before you get
6 to Chiefs. And it depends on the red lights that I get
7 there. Because -- it's just something that I have
8 always --

9 Q You just always get it down to the minute, huh?

10 A Sometimes I try to do certain things --

11 Q And that would be important, wouldn't it, to
12 know the exact minutes on this night? We're counting
13 minutes on this night, aren't we?

14 A Well, I guess we are now. Initially we wasn't.
15 But, I mean, because I hadn't -- I had nothing to hide
16 until we had to start -- I had to start thinking back
17 and going back and research as much as possible to see
18 what exactly I did, to show where I was and anything
19 else that can validate exactly what happened.

20 Q Okay. And you came home somewhere in the
21 1:35 -- excuse me, not somewhere in -- exactly 1:35.
22 You come home. And you go inside, and shower, and
23 bandage yourself, that kind of thing?

24 A I said around. I didn't say exactly 1:35.
25 Right at -- it was right at 1:35. I round off. You

1 know, it's difficult -- sometimes I say just 1:30 or
2 1:45 or 2:00. But, you know, I'm trying to be as
3 specific as possible. If I told you for sure 1:35 or
4 1:34, I would be lying, so I'm just trying to give you
5 a roundabout --

6 Q Okay. Then JP was the bed that you got in,
7 right?

8 A Yeah. We have a King size queen pillow top.
9 You know, he will lay there with her just until I get
10 home.

11 Q And he was about 11 years old at this time?

12 A JP was born in '98 -- this happened in '09,
13 yeah just turned 11.

14 Q Just turned 11. All right. And he's staying
15 up to 1:45, 2:00 a.m.?

16 A School is not in and JP -- JP is actually
17 ADHD. And he's on medicine for that. So a lot of
18 times in the summer time, we wouldn't give him his
19 medicine, and it would allow JP to stay up a lot
20 longer. You know, he is just wild -- you know, just
21 wide open. And plus he felt like he was protecting his
22 mother when I'm not there.

23 Q Okay. Don't you think his mother can protect
24 herself?

25 A Well, I mean --

R. SWOFFORD -- CROSS BY MS. HODGE

1 Q She seems like a tough lady.

2 A Well, yeah, but still, he's a child that loves
3 his mother and his father is nowhere in his life.

4 Q Now, let's go back to you talking to -- let's
5 see -- we have established that you talked to
6 Investigator Weiner, and he asked -- stated no,
7 correct?

8 A That's correct.

9 Q And at that point in time, you didn't ask any
10 questions?

11 A No.

12 Q So if a police officer is calling you about a
13 person possibly being shot, and you just don't inquire
14 anything, is that -- that's what you --

15 A Well, you have to understand, ma'am, in my --
16 where I have been and what I have experienced and what
17 I have come to know -- I may not do what is supposed to
18 be done. I try to do what I feel -- I don't want to be
19 in the middle of something. I walk on egg shells every
20 day. I'm constantly trying not to get into trouble. I
21 don't -- this is the only thing I have been in, in any
22 kind of trouble over, since I have been out. I mean --
23 I mean I have done -- I mean, two speeding tickets I
24 believe, and that's criminal. I had to go to the
25 schoolhouse both times for the --

R. SWOFFORD -- CROSS BY MS. HODGE

1 Q Okay. Let's go back to my question. You are
2 incarcerated -- well, let me -- let me back up because
3 that is a great point. You were incarcerated for some
4 violent crimes, you know, that is very serious?

5 A Yes, ma'am.

6 Q Now, you're being questioned about some very
7 violent crimes?

8 A Yes, ma'am.

9 Q You know, that's pretty serious?

10 A Yes, ma'am.

11 Q And you don't think that you need to inquire
12 any further?

13 A No, not without counsel. No, because I don't
14 want to be dragged into something that I had, you know,
15 it was best just to wait to the day they wanted me to
16 physically come in. I said -- they never said that
17 eventually I would do that -- once I talked with
18 counsel, because that's just always been the proper
19 steps to take.

20 Q Okay.

21 A But I never told them I wouldn't never see them
22 or come to them, I just told them after I got
23 through -- I was actually doing a big job that I really
24 wanted to get done. And they never said, well, you're
25 a suspect. You are going to be under arrest. They

R. SWOFFORD -- CROSS BY MS. HODGE

1 never told me that. I was never given any directives
2 by Detective Miller or Sergeant Weiner. They are the
3 only two gentlemen I spoke with.

4 Q Okay. All right. You're -- you're in
5 agreement or we can agree -- let me know -- if we can
6 agree -- what happened to Curt was a real serious, bad
7 thing?

8 A Yes, ma'am, it was.

9 Q All right. And it is something that happened
10 to him?

11 A Apparently, yes, ma'am.

12 Q Okay. So we're -- we're not saying that he
13 wasn't shot by somebody and somebody didn't break in
14 his house or bust up on him and shoot him?

15 A It's not my place to say specific, but I just
16 know he was shot. It was a bad thing that happened.

17 Q So you're not disputing that this actually
18 happened to Mr. Wooten, you're just disputing that you
19 didn't do it?

20 A Oh, I know I didn't do it.

21 Q Okay. We're just clear. Just clear.

22 A Okay.

23 Q You agree that the crime has been committed,
24 you're just saying you didn't do it?

25 A I believe that someone shot him, yes.

R. SWOFFORD -- CROSS BY MS. HODGE

1 Q Okay. All right. Now, you're saying that
2 Investigator Miller, he came to your house, did -- were
3 you aware that he came to your house when you were not
4 there?

5 A Yes, ma'am, I was.

6 Q And spoke to Shannon?

7 A I was out of town. I wasn't actually in
8 Columbia and I actually wasn't in Atlanta, I was in
9 Columbus, Georgia, which is, you know, on the way to
10 Atlanta. And I told -- I guess maybe Shannon
11 misunderstood, but actually that's where I was.

12 Q Okay.

13 A And from what I understood, she called crying,
14 saying that they come in blaring guns at the kids'
15 faces and stuff like that. So, I was like, did he say
16 why. He wanted to know if you had a gunshot wound.

17 Q So --

18 A And she said -- I said, well, what did you tell
19 him. She said no. I said okay. She said, well, you
20 don't have a gunshot, do you? I said no. So I kept --
21 that was from -- I kept on alluding from Shannon to
22 that point, that I had actually had a gunshot wound
23 even to that point, because she was under the
24 impression that I had done this lawn mower.

25 Q Okay. You're saying that they came in on the

R. SWOFFORD -- CROSS BY MS. HODGE

1 night -- Investigator Miller or the day Investigator
2 Miller came over, they came in guns blaring, on
3 July 28th or July 29th, and said something about you
4 having a gunshot wound. They come -- bust into the
5 house with guns, to say, does he have a gunshot wound?

6 A They wanted to search the house. They wanted
7 to go to every room. And they asked her first and she
8 -- from what I gathered, she had -- no, no --

9 Q They came in?

10 A Yes. They came in --

11 Q According --

12 A -- after a search warrant was shown, went into
13 each and every room. And instead of, you know -- I
14 understand now why they probably did it, but at the
15 time, it wasn't expected or I didn't feel like it was
16 called for. Like I said, it's different in knowing
17 what exactly happened up to this point.

18 Q So these -- the police come in your house,
19 while you're away on business, and harass your
20 girlfriend, who is pregnant --

21 **MR. JOHNSTON:** Your Honor, he didn't say that
22 he -- that they harassed her. That's a
23 mischaracterization --

24 **THE COURT:** Well, I'm going -- I'm going to allow
25 it. Go ahead. Overrule the objection.

R. SWOFFORD -- CROSS BY MS. HODGE

1 BY MS. HODGE:

2 Q So they come in there, pointing guns, going
3 through your house, and your fiance is in a very highly
4 volatile pregnancy, according to you, high risk, and
5 very concerned about her and the baby, correct?

6 A Yes.

7 Q And you do not then say, maybe I to call these
8 officers back and say, what's going on?

9 A Well actually --

10 Q You're with busting up in my house?

11 A Actually, I tried contacting him. I called the
12 same number back, to Sergeant Weiner. I called that
13 number because either Shannon gave me the wrong number
14 or she was given the wrong number. But the number I
15 tried to contact back, was Sergeant Weiner, and I asked
16 him to call me back. And this was that very same week
17 of when this happened. And I never got a response.
18 The next time I received a phone call was August 3rd,
19 on a Monday, from Lieutenant Miller, stating he was on
20 his way to SLED and he would like to, you know, to meet
21 up with me. He wanted to eyeball me.

22 Q So he told you where he was going?

23 A He did. But he didn't say why and he didn't
24 elaborate as to why he was going to SLED, he just
25 stated he was going to SLED. And when the opportunity

R. SWOFFORD -- CROSS BY MS. HODGE

1 presented itself, he would like to meet up with me to
2 eyeball me.

3 Q Okay. And you did not do that, correct?

4 A Not at that time, no. Because I was away at
5 business.

6 Q All right. And that was more important to you
7 than to meet up with him to let him eyeball you?

8 A Well, like I said, I went based on knowing what
9 I did or did not do. And I wasn't quite sure what they
10 were alluding to or what they were trying to insinuate,
11 so I didn't feel the need just to jump to a beck and
12 call to someone that made -- I don't know whether -- to
13 see if this was going to cause me any trouble, so I
14 just took my time. I conferred with my attorney and,
15 you know, that's when we -- this all started. I was --

16 Q When did you -- when -- at what point, did you
17 confer with your attorney? What date?

18 A I don't remember the exact date on that. I do
19 remember -- I may have called him a couple of times.
20 As a matter of fact, I believe one -- one evening I
21 called one of the attorneys at their home, that Shannon
22 gave me the number for. And I -- I told them what was
23 questioned. And he said --

24 MS. HODGE: Objection.

25 MR. JOHNSTON: Your Honor, I object.

R. SWOFFORD -- CROSS BY MS. HODGE

1 **THE COURT:** Yes.

2 **THE WITNESS:** I'm sorry.

3 BY MS. HODGE:

4 Q Don't tell me what the lawyer said, but this
5 was before you got arrested though? Is that what
6 you're saying before you got arrested?

7 A Yes. I apologize.

8 Q Okay. And when you finally are arrested, you
9 are speaking to Investigator Miller, correct?

10 A Yes.

11 Q He has gotten a search warrant to take pictures
12 of you, correct?

13 A Right.

14 Q At that point, you know exactly what he wants
15 to take a picture of, correct?

16 A Yes, ma'am.

17 Q Okay. And you don't take the opportunity at
18 that time to tell him this whole story about Curt
19 shooting you on the 21st, right?

20 A That's right.

21 Q Okay. You don't say anything about that?

22 A Right.

23 Q And you know now that you have been charged
24 with shooting Curt Wooten, that Rikki -- and coming in
25 the house, you know all that because the warrants say

R. SWOFFORD -- CROSS BY MS. HODGE

1 that, correct?

2 A Right.

3 Q And you know your whereabouts supposedly on
4 that night?

5 A That's right.

6 Q And you do not say to him in y'all's
7 conversation, hey, why don't you talk to Shannon? You
8 didn't say that, right?

9 A That's right.

10 Q You didn't say why don't you talk to AL?

11 A That's right.

12 Q You didn't say why don't you talk to JL?

13 A To JP.

14 Q To JP.

15 A That's right.

16 Q Otis Pullen?

17 A Right.

18 Q Terry?

19 A That's right.

20 Q Let's see, Mr. Stephen Parren?

21 A Parham.

22 Q Parham, no? You don't say that either?

23 A No.

24 Q All right. You just say that know your DNA
25 would be there because you visited a few times, based

R. SWOFFORD -- CROSS BY MS. HODGE

1 on what the warrant said, correct?

2 A I don't recall saying that. There's an awful
3 lot of spontaneous writing that Mr. Miller put down,
4 but I don't -- there is a lot of stuff in there that I
5 did not say.

6 Q Okay. But you know it because it was in the
7 warrant?

8 A I knew it based on what the warrant stated.

9 Q And you didn't want to give your explanation at
10 the time?

11 A I was already told by my attorney not to say
12 nothing --

13 **MR. JOHNSTON:** Your Honor, I object.

14 **MS. HODGE:** You're objecting to your own client's
15 statement.

16 **THE COURT:** Conversations between the attorney and
17 the client --

18 **THE WITNESS:** I'm sorry.

19 **THE COURT:** Well, actually he can say what he
20 wants to say, it's his privilege. So go ahead.

21 **THE WITNESS:** Maybe I'll clarify it, I just stated
22 --

23 BY MS. HODGE:

24 Q The clarification is, you didn't tell him
25 anything, correct?

R. SWOFFORD -- CROSS BY MS. HODGE

1 A I kept my rights to be quiet.

2 Q But you weren't being quiet, you were talking?

3 MR. JOHNSTON: Your Honor, I have a matter of law.

4 THE COURT: Mr. Foreman, ladies and gentlemen,
5 we'll get back to you in just a second. Don't talk
6 about the case.

7 (Whereupon, the jury left the courtroom at
8 5:07 p.m.)

9 THE COURT: Okay. What is your matter of law?

10 MR. JOHNSTON: May it please the court, Your
11 Honor. There has been testimony in the record that Mr.
12 Swofford was given his Miranda rights.

13 The Solicitor now has repeatedly brought out
14 testimony that is -- it's a comment on his right to
15 remain silent. She keeps asking him, did you tell them
16 this, did you tell them that. And it's going further
17 and further.

18 He has a right to remain silent. And by her
19 asking these questions is a comment on his rights
20 unfairly. We would ask that that immediately be
21 prohibited.

22 MS. HODGE: Your Honor?

23 THE COURT: Yes, ma'am. Go ahead.

24 MS. HODGE: He is testifying. He is testifying to
25 everything involving his rights. He is basically

R. SWOFFORD -- CROSS BY MS. HODGE

1 opening himself up on cross examination. He has made
2 spontaneous statements pre-Miranda and post Miranda, so
3 he was making free and voluntary statements. I'm just
4 asking him simply about those statements.

5 He can give the answer, no, I chose not to speak
6 to them anymore. I chose to invoke my rights. He has
7 put the answer out there and the story.

8 **MR. JOHNSTON:** Your Honor, I would cite to the
9 court the case of State v. Holliday, wherein a similar
10 matter to this was taken and --

11 **THE COURT:** What's your cite?

12 **MR. JOHNSTON:** 333 SC 585, the Court of Appeals
13 '98. Um -- sorry -- did I give it to you too fast?

14 **THE COURT:** No. I'm using the Wizard.

15 **MR. JOHNSTON:** Yes, sir. It's 333 SC 585. Court
16 of Appeals '98.

17 **THE COURT:** Tell me about it.

18 **MR. JOHNSTON:** All right, sir. Actually, Your
19 Honor, there are two State vs. Hollidays. Let me make
20 sure I'm giving you the right one. I apologize. I
21 gave you the wrong cite. Those were companion cases,
22 this is the one I actually intended to cite to the
23 court.

24 State vs. Holliday, two Ls. This one is 333 SC
25 332. Again, it is the Court of Appeals from '98. In

R. SWOFFORD -- CROSS BY MS. HODGE

1 that case, cross examination of the Solicitor was
2 deemed to be improper and reversible error because it
3 was deemed to be a comment on the Defendant's right to
4 silence.

5 Let me discuss with you just a little bit about
6 what was said. During the challenge cross examination,
7 the Solicitor repeatedly referenced Aaron, the
8 Defendant, Aaron's silence. The Solicitor --

9 **THE COURT:** Well, we're going to get moving. I'm
10 going to -- Ms. Hodge, the root case is Doyle vs. Ohio,
11 which is the United States Supreme Court.

12 **MS. HODGE:** Yes, Your Honor. And I have got that.
13 I've got that. And there's also a State vs. McIntosh,
14 which speaks about that. And I won't go any further I
15 have asked my questions, but I rather -- my position
16 was that he continues speaking. He had invoked his
17 right and then he effectively began speaking again.

18 **THE COURT:** So he waived it?

19 **MS. HODGE:** Yes. In Holliday, that was actually
20 my case with Judge Peeples, so I'm very familiar with
21 that case.

22 **THE COURT:** 1996?

23 **MS. HODGE:** Yes, sir. I know I don't look old.

24 **THE COURT:** I remember that year very well.

25 **MS. HODGE:** Yeah. It was the year Judge Peeples

R. SWOFFORD -- CROSS BY MS. HODGE

1 was here. And I clearly remember that case. And this
2 is a different scenario from that case.

3 **THE COURT:** Okay. Well, just don't, you know,
4 don't go any further with that.

5 **MS. HODGE:** Yes, sir.

6 **THE COURT:** If he wants to -- if he wants to talk
7 about what he talked and said to his attorneys, it's
8 his privilege and he can waive it.

9 But I want to tell you that, Mr. Swofford, you
10 have an absolute right not to talk about the
11 conversation you had with your attorney. It is
12 absolutely protected under the law.

13 But if you don't care and you want to talk about
14 it, that's up to you. But I'm telling you, you have
15 the right not to talk about it. Okay?

16 **MR. JOHNSTON:** Your Honor, may I -- am I permitted
17 to offer him my advice as counsel on that point?

18 **MS. HODGE:** I think that would be --

19 **THE COURT:** Not right now, in the middle of his
20 examination. I think what your counsel would say is
21 don't talk about what we talked about.

22 **THE WITNESS:** All I'm referring to --

23 **THE COURT:** Don't. Don't. All right. Let's get
24 the jury back in.

25 (Whereupon, the jury entered the courtroom at

R. SWOFFORD -- CROSS BY MS. HODGE

1 5:16 p.m.)

2 **THE COURT:** Okay. Yes, ma'am.

3 BY MS. HODGE:

4 Q Just a few more questions. Stephen Parham, the
5 neighbor that you had -- that testified, you stated in
6 your direct that he -- you and he weren't like good
7 friends at the time that you pulled in or -- and were
8 letting the water out on July 27th of '09, is that
9 right?

10 A We just wasn't real close. I mean, I don't
11 know how you look at that. We just weren't best of
12 friends, we're not enemies, we were just neighbors. It
13 was more along the families not necessarily Stephen.

14 Q Okay. Not particularly Stephen. Okay. And
15 since this incident occurred, since you have been
16 charged with this in the last, what, several months or
17 a year, you have been more of a friend with Stephen?

18 A No, ma'am.

19 Q You have not spent time with him, bought him
20 cigarettes, hung out, visited with him?

21 A I've never bought him any cigarettes. I don't
22 hang out with him. He needed a ride to an attorney's
23 office and I offered that ride. And like I said,
24 initially when all of this started happening, I was
25 trying to figure out maybe who saw me for whatever

1 reason, I was trying to figure out what I could do to
2 validate my situation.

3 Q Uh-huh.

4 A And I never asked anybody to say anything other
5 than what they could actually say for themselves, tell
6 the truth.

7 Q Okay. And you -- do you know how he gets to
8 work every day?

9 A No, I don't.

10 Q But you don't take him to work every day?

11 A No, ma'am, I have never taken him to work.

12 Q But he needed a ride to the lawyer's office?

13 A That's right.

14 Q So you gave him a ride?

15 A I gave him a ride.

16 Q You do take Shannon to work every day, is that
17 right?

18 A That is right.

19 Q And you do have her daughter living with you?
20 It's just the two of y'all?

21 A Actually, the apartment is mine. And I got it
22 for both twins. And so probably in the last few
23 months, Shannon's got a lot of anger issues, so I stay
24 at both places. But the apartment that [REDACTED] and I
25 stay at, is in -- that's my name. The apartment, it

R. SWOFFORD -- CROSS BY MS. HODGE

1 was for them. But since they have moved out, I have
2 moved in. So, yeah, we do live together.

3 Q But that's my question, the two of y'all live
4 together and Shannon doesn't live there, [REDACTED] doesn't
5 live there, your son doesn't live there, you and she
6 live there, correct?

7 A Yeah and no, like I say, I'm at both places.
8 I've got clothes at Shannon's and at my place. I don't
9 know really how to answer that. I can't say I live in
10 one place. Do I say that I was on house arrest during
11 this bond, and I had to be at one place exclusively at
12 night. You know, that's basically it. But most of the
13 time, I'm at Shannon's because I'm -- I'm with my son
14 as much as possible.

15 Q You stayed over there and you helped take care
16 of him, but you live at the other place, correct?

17 A I stay there. I have to be in four hours a
18 night, that's correct.

19 MS. HODGE: Thank you.

20 THE COURT: Redirect.

21 MR. JOHNSTON: I have none, Your Honor.

22 THE COURT: All right. Thank you. You can step
23 down.

24 MR. JOHNSTON: Your Honor, at this time, the
25 defense rests.

D. MARTINEZ -- DIRECT BY MS. HODGE

1 **THE COURT:** All right. Let me see y'all up here
2 for a second.

3 (Whereupon, a bench conference was held in the
4 presence of the jury, but outside the hearing of the
5 jury.)

6 **THE COURT:** All right, Ms. Hodge.

7 **MS. HODGE:** Thank you, Your Honor. The State
8 would call Deborah Martinez-Ruiz.

9 DEBORAH MARTINEZ-RUIZ, having
10 been first duly sworn, testified as follows:

11 **THE CLERK:** Thank you. Please be seated. Please
12 state your name for the record.

13 **THE WITNESS:** Deborah Martinez.

14 DIRECT EXAMINATION BY MS. HODGE:

15 Q Ms. Martinez, if you want to look in this
16 direction and also make sure your voice holds up so we
17 can hear at the very end of this jury box. All right?

18 A Okay.

19 Q Are you familiar with the Defendant, Mr.
20 Swofford, in this case?

21 A I am.

22 Q And how do you know him?

23 A He was my neighbor.

24 Q And do you know his former girlfriend, Shannon
25 Lawter?

D. MARTINEZ -- DIRECT BY MS. HODGE

1 A I do.

2 Q And how do you know her?

3 A She was my former neighbor as well.

4 Q How long have you known them?

5 A About six years.

6 Q And where do you live currently?

7 A At [REDACTED] Blanchard Road in Spartanburg.

8 Q And has your son -- is your son, Stephen

9 Parham?

10 A Yes, he is.

11 Q And did he also live at that residence at some
12 point?

13 A He did.

14 Q Do you have -- are you working right now?

15 A No, I'm not.

16 Q Are you on disability?

17 A I am.

18 Q And what are you on disability for?

19 A I have several problems. I have Post Traumatic
20 Stress Syndrome from my car accident my husband was in,
21 and subsequently killed in the accident. And I have
22 major back problems, so I have a couple of different
23 things going on.

24 Q So were you treated for Post Traumatic Stress
25 Disorder?

D. MARTINEZ -- DIRECT BY MS. HODGE

1 A Yes. I'm currently being treated.

2 Q And when was this accident and when did this
3 all happen?

4 A That was in 2004.

5 Q All right. And do you have any other mental
6 health issues that you are being treated for?

7 A No.

8 Q Not schizophrenia?

9 A No.

10 Q Bipolar?

11 A No.

12 Q And how about any other health issues, any
13 medications you may take for health issues?

14 A Just high blood pressure, diabetes. Just
15 normal...

16 Q Okay. Are you on any type of medicine for the
17 PTSD?

18 A I am.

19 Q What kind of medication is that?

20 A I take Effexor, Vibrid, Lamictal and Xanax.

21 Q Now, were you living at your -- the residence
22 that you're currently in on Blanchard on July 27, 2009?

23 A I was.

24 Q Did -- during that time frame, did you -- are
25 you married?

D. MARTINEZ -- DIRECT BY MS. HODGE

1 A I am.

2 Q Do you and your husband go up to Saluda during
3 the summer time?

4 A We did.

5 Q So July 27th of 2009, were you actually in your
6 home that night?

7 A No, we were not.

8 Q Where were you?

9 A We were in Saluda.

10 Q Okay. And what would you guys do up in Saluda?

11 A We camped. We had a permanent site area we had
12 our RV on, and we would camp there for the summer.

13 Q Would you ever do things for people up in that
14 campground area, did you ever do any cook outs or --

15 A We did. We did cook outs for people in the
16 campground, other permanent campers there, we would get
17 together on Saturday nights and cook out.

18 Q When you were down in -- how long did you stay
19 up in Saluda?

20 A That particular summer, we were there all
21 summer. I would come down, you know, and take my son
22 to the grocery store and that kind of thing. But,
23 basically, I was there all summer.

24 Q And your son, does he have some type of
25 learning disability or --

D. MARTINEZ -- DIRECT BY MS. HODGE

1 A He does. He has -- they diagnosed him with
2 Attention Deficit Hyperactivity Disorder, learning
3 disabilities and OCD. He has -- we -- the doctor and I
4 kind of kicked around some ideas with Asperger
5 Syndrome, but the doctor informed me at the time that
6 the treatment for the Aspergers, which is a mild --

7 **MR. JOHNSTON:** Your Honor, I would object to what
8 the doctor said.

9 **THE COURT:** I sustain that.

10 BY MS. HODGE:

11 Q Did he take -- I don't know if you call it
12 special ed or learning disabled classes in school?

13 A He did, yes.

14 Q And do you know about what his I.Q. is?

15 A It's about 74.

16 Q He obviously functions and takes care of
17 himself?

18 A He does.

19 Q He lives on his own now?

20 A Yes.

21 Q Do you know anything personally about any
22 incidents, that you witnessed anything, see anything on
23 July 27th, 2009?

24 A No, not personally.

25 Q Did Shannon Lawter come to your home, at some

D. MARTINEZ -- DIRECT BY MS. HODGE

1 point in February of 2012, this year?

2 A Yes, ma'am.

3 Q And can you say exactly what day that was?

4 A I'm not sure exactly what day it was. It was
5 late February.

6 Q And was she still living next door to you at
7 this point?

8 A No, ma'am.

9 Q Do you know where she was living?

10 A She was living in the Springfield area. I'm
11 not exactly sure.

12 Q What brought her to your house that day?

13 A She and Ronnie had had some problems. They had
14 been arguing. And she just needed somebody to talk to.
15 She came and brought her son, and they spent probably a
16 couple of hours at my house.

17 Q Do you have a small child in your house right
18 now?

19 A My grandson.

20 Q How old is he?

21 A He's five.

22 Q So do you help take care of him?

23 A I do.

24 Q Tell us about what Ms. Lawter and you talked
25 about?

D. MARTINEZ -- DIRECT BY MS. HODGE

1 A We talked about a lot of things. She vented
2 about her anger with Ronnie because they, of course,
3 had been into an argument. The conversation kind of
4 turned and she began giving me some information about
5 the night of the shooting.

6 And she told me that Ronnie had been at the
7 home. And that he was there with the man and the man
8 was drinking. And that he got heavily intoxicated --
9 the victim got heavily intoxicated. And that when
10 Ronnie got ready to leave, he tried to wake him up.
11 And that the victim was startled and came off the couch
12 and shot him with a gun, and Ronnie had returned --
13 shot the victim in self defense.

14 Q And that's what she told you during this time
15 that y'all were talking about the relationship?

16 A Yes, ma'am.

17 Q Were you aware that Mr. Swofford had been
18 charged in a shooting incident?

19 A I was, yes.

20 Q That's something that was known amongst the
21 neighbors or the neighborhood?

22 A Everybody knew.

23 Q Is this the first time that anyone had said
24 anything to you about the specifics of it?

25 A Yes.

D. MARTINEZ -- DIRECT BY MS. HODGE

1 Q Is this the first time Ms. Lawter ever said
2 anything to you about the details?

3 A Yes.

4 Q And did she tell you anything that she may say
5 when it comes to court?

6 A She didn't want to testify against him because
7 of their young son. She wanted him to grow up with his
8 father, of course. She was not -- she was very
9 reluctant to come in and testify.

10 Q Did she say that she would testify as to a lie?

11 A She --

12 MR. JOHNSTON: Your Honor, I would object to
13 leading the witness.

14 THE COURT: Don't lead.

15 BY MS. HODGE:

16 Q Can you tell me exactly what she said or what
17 you recall she said?

18 A To the best of my knowledge, she told me that
19 she would not come in and tell that story in court.
20 Because she did not want her -- did not want him to go
21 to jail because she wanted her son to be able to grow
22 up with his father.

23 Q Did she -- did she tell you that the Defendant
24 told her that, about the incident?

25 A That was...?

D. MARTINEZ -- DIRECT BY MS. HODGE

1 Q Shooting the man?

2 A Yes.

3 Q Do you know -- did she say when he told her
4 that version?

5 A No, ma'am.

6 Q And this was just about three months ago.

7 A Correct.

8 Q And how did y'all's day end or conversations
9 end, did you give her any advice or...?

10 A No. I really didn't push any more on it,
11 because I didn't want any more information on it.
12 Because prior to that, everything had been denied as
13 far as his involvement or anything else. So I didn't
14 want any more information.

15 Q Is it fair to say you don't want to be here
16 today?

17 A No, I don't.

18 Q And did the investigators from the Solicitor's
19 Office come out to speak to your son initially?

20 A Yes, ma'am.

21 Q And when they were speaking to your son, did
22 they end up talking to you?

23 A Yes, ma'am.

24 Q Is that the first time you told anyone what
25 Shannon told you?

D. MARTINEZ -- CROSS BY MR. JOHNSTON

1 A Yes, ma'am.

2 **THE CLERK:** Thank you. Please answer any of
3 defense's questions.

4 CROSS EXAMINATION BY MR. JOHNSTON:

5 Q You didn't want any more information?

6 A No, sir.

7 Q That's sounds like you -- you just really
8 didn't want to hear about this?

9 A Not really.

10 Q This was three months ago?

11 A Yes.

12 Q Did you take any notes? Did you call anybody?

13 A No, sir.

14 Q According to the story that you say she gave
15 you, that I guess she says Mr. Swofford gave her, he
16 wouldn't have anything to worry about because under
17 that story, it would be self defense, wouldn't it?

18 A According to that story, yes.

19 Q Yet she didn't want to testify against him?

20 A Correct.

21 Q But if it was self defense, she wouldn't have
22 anything to worry about, would she?

23 A I don't know. I don't know how the court
24 system works.

25 Q You really didn't want to hear about it, did

C. MILLER -- DIRECT BY MS. HODGE

1 you?

2 A Not really.

3 MR. JOHNSTON: Please answer any other questions.

4 MS. HODGE: That's all the questions I have.

5 THE COURT: Thank you very much. You can stand
6 down.

7 MS. HODGE: We ask that she be excused --

8 MR. JOHNSTON: We have no objection to her being
9 excused.

10 THE COURT: You are relieved from your subpoena.

11 MS. HODGE: Your Honor, the state would recall
12 Investigator Miller just briefly.

13 THE COURT: All right, sir.

14 CHRIS MILLER, having been
15 first duly sworn, testified as follows:

16 THE CLERK: Thank you. Please be seated. State
17 your full name for the record.

18 THE WITNESS: Christopher Miller.

19 BY MS. HODGE:

20 Q Investigator Miller, did Shannon Lawter ever
21 come and speak to you after -- or even before, but
22 specifically after the Defendant had been charged with
23 these crimes and arrested?

24 A No, ma'am.

25 Q Did she ever come in to give you a statement

C. MILLER -- DIRECT BY MS. HODGE

1 about his whereabouts, that he may have been with her
2 that night?

3 A No, she did not.

4 Q Did she ever bring her 16 year old daughter,
5 **AL**, to come speak with you?

6 A No.

7 Q Did she ever bring her other 16 year old
8 daughter, **JL**, to come speak with you?

9 A No.

10 Q Did an Otis Pullen ever come and speak to you
11 about this case?

12 A No, ma'am.

13 Q And did a Hunter Smalley ever come and talk to
14 you about this case?

15 A No, ma'am.

16 Q Did Ms. Swofford, the Defendant's mother, ever
17 come and speak to you about this case?

18 A No, ma'am.

19 Q How about Charlie Duffie, did he ever come and
20 try to speak to you about this case?

21 A No, ma'am.

22 Q All right. Would that have been important
23 information for your investigation?

24 A It would have been very important.

25 Q In your experience, have you seen a crime scene

C. MILLER -- DIRECT BY MS. HODGE

1 where people have been shot?

2 A Yes. I have been a police officer for 18
3 years. And I have seen all types of deaths, whether it
4 be suicides, murders, car accidents. And I've been a
5 homicide investigator for five years.

6 Q I'm showing you State's No. 39.

7 MR. JOHNSTON: Can I just see which one that is --
8 yes.

9 BY MS. HODGE:

10 Q Are you still recuperating?

11 A Still trying.

12 Q State's No. 39, in your experience, would you
13 see this reddish and yellowish substance five to six
14 days after a shooting --

15 MR. JOHNSTON: Your Honor, I would object. He
16 hasn't been qualified as an expert on that sort of
17 matter. He's merely a police officer.

18 MS. HODGE: He has just testified about his
19 extensive training in homicides and shootings --

20 MR. JOHNSTON: And he has not been so qualified --
21 I'm sorry.

22 THE COURT: Are you moving to qualify him as an
23 expert in --

24 MS. HODGE: I will, but I thought he could give a
25 lay opinion about that. But I will move to qualify him

1 as an expert.

2 **THE COURT:** Go ahead and move to qualify him as an
3 expert.

4 **MS. HODGE:** At this time, we move to qualify him
5 as an expert in gunshot and crime scene investigations
6 based on his training and experience.

7 **THE COURT:** Okay. Do you want to voir dire him
8 about it?

9 **MR. JOHNSTON:** Yes, sir.

10 **THE COURT:** Okay.

11 BY MR. JOHNSTON:

12 Q Have you ever been qualified as an expert in
13 the area of crime scene reconstruction before?

14 A No, sir.

15 Q Do you have a degree in chemistry?

16 A No, I do not.

17 Q Do you have a degree in biology?

18 A No, sir.

19 Q You're not a medical doctor?

20 A No, sir.

21 Q Is it fair to say that most of the work you do
22 as a police officer is you go out to the crime scene,
23 you try to find out who did it?

24 A That's part of it. But we do have a lot of
25 training.

1 Q Yes. And I noted that when it came to the
2 collecting of evidence in this case, it was done by
3 somebody else?

4 A It was done by the forensics division.

5 Q You've got a whole forensics division over
6 there, don't you?

7 A Yes, sir.

8 Q And, in fact, you have got a whole host of
9 experts?

10 **THE COURT:** Mr. Johnston?

11 **MR. JOHNSTON:** Yes, sir.

12 **THE COURT:** This is voir dire about whether or not
13 he can be qualified as an expert to testify, so limit
14 it to what his qualifications are, not what else is out
15 there in the rest of the world.

16 **MR. JOHNSTON:** Yes, sir.

17 **BY MR. JOHNSTON:**

18 Q If I cut my finger, put a little blood here on
19 the wall, and you come back a week later, you would be
20 able to tell me how long it has been there?

21 A I can tell you that, in my in my opinion, it
22 would not be fresh.

23 Q It would not be fresh. Well, you don't have to
24 be an expert to know that.

25 A Correct.

1 Q Okay. When does blood on a wall cease to be
2 fresh? When does it turn from fresh to not fresh?

3 A When it is no longer in a liquid state.

4 Q When it's no longer in a liquid state. How
5 long does it take for human blood to turn from a liquid
6 state into a solid?

7 A That would depend on different variables as far
8 as the temperature of the climate --

9 Q Have you --

10 A -- inside, outside.

11 Q Have you ever had a class in that?

12 A Yes, I have.

13 Q You've had a class in it -- well, what class
14 was it?

15 A A graduate from the University of Louisville
16 Homicide --

17 Q Yes --

18 A Squad.

19 Q Homicide Squad. And they talked to you
20 specifically how long it takes for human blood to dry?

21 A That was part of it.

22 Q Okay. Are you able to identify the substances
23 that are -- that are in this picture?

24 A That would be blood and tissue and fiber
25 tissue.

1 Q Yeah. Can you tell by looking at it what it
2 is?

3 A From this picture?

4 Q Yes, sir. I mean, I know you know about this
5 case already, but I'm just talking about a random
6 situation, when you come on it?

7 A Yes, I can look at this picture and tell you
8 that there is blood, there is hair, there is fabric.
9 There is also yellowish tissue --

10 Q Or can you tell me that that's what it looks
11 like?

12 A From the picture, I can tell you that's what it
13 looks like.

14 Q That's what it looks like. You can't tell me
15 that that's what it is, can you?

16 A No, correct.

17 Q And in fact, on the wall, you can't tell what
18 it is, can you?

19 A No.

20 Q You've never had any training in serology?

21 A No, sir.

22 Q The study of blood?

23 A No, sir.

24 **MR. JOHNSTON:** I have no further voir dire, Your
25 Honor. We would argue that he is not qualified to

1 offer for -- offer an expert opinion in this situation.

2 **THE COURT:** Well, you -- you acknowledge that you
3 didn't have to be an expert to determine whether or not
4 it was fresh, so I'll let him to testify to that.

5 **MR. JOHNSTON:** All right, sir.

6 **BY MS. HODGE:**

7 Q In State's No. 39, the matter that you see as
8 suspected or possible blood, tissue, hair, does that
9 appear to be fresh blood, tissue, hair in your
10 experience?

11 A That would be fresh blood, the red.

12 Q I need you to say that in the microphone?

13 A The blood is red.

14 Q And what does that tell you that?

15 A That it is still fresh.

16 Q Tell the jury about the -- a little more
17 specifics about the day that you went out to -- or the
18 Defendant's residence when you spoke to Ms. Lawter; how
19 many cars showed up that day?

20 A When we got to Ms. Lawter's residence, what we
21 refer to as -- in the case, basically -- all we're
22 doing is going to a house, we're knocking on the door,
23 and seeing if somebody will talk to us. So Master
24 Deputy Will Lewis was training with me. So we were in
25 my vehicle. We contacted the Spartanburg County

1 Sheriff's Office and asked them if they could meet us
2 somewhere if we give them an address.

3 They told us to meet them -- there's a search
4 station right off of I26, behind Dorman High School.
5 They said this address was near Dorman High School. So
6 we met them in the parking lot of this gas station. It
7 was two cars.

8 And we told them we didn't have a warrant. We
9 didn't have a search warrant. We didn't have --
10 nothing but -- just a knock and talk.

11 So -- and Johnnie Brown, who was a deputy with
12 us, who is also assigned to the US Marshalls, he is
13 also -- there was two marked Spartanburg County cars.
14 My unmarked Chevrolet and Deputy Brown -- I'm not sure
15 if he was still driving his Crown Vic or -- he has a
16 pickup truck now. Those were the only cars there.

17 Q And did you go inside of the residence?

18 A No, because when we arrived, someone came
19 outside. And I told them what we were there for. And
20 I noticed that there was not a pickup truck there, so I
21 already assumed that Mr. Swofford was not there.

22 So we asked for Mr. Swofford when Ms. Swofford
23 came outside. And she was asked if we could go inside
24 to look for Mr. Swofford. She assured us that he was
25 not there. She went on the fact that his truck was not

1 there. And that he was out of town.

2 So I took Ms. Lawter to the side and talked to
3 her and advised her why I was there. I mean, it was
4 truly just an investigation. Because at this point, I
5 still don't know exactly what happened. I have got a
6 victim in the hospital who can't talk. I have got
7 another person that I know was shot, who I have not
8 been able to speak to.

9 And then I've got a witness that says that she
10 was shot at. And that's all I have got, on top of all
11 the other cases that I was assigned to that week that I
12 was on call. So, I'm doing this, you know so -- this
13 basically is just an investigation.

14 Nobody pulled guns out. Nobody pointed guns at
15 anybody. I never saw any kids. I mean, I never went
16 inside the trailer. All the business was conducted
17 outside in the drive way. And I gave Ms. Lawter my
18 business card. My cell phone number that I still have
19 to this day. And asked her to have Mr. Swofford call
20 me. And he did not return my phone call.

21 I did talk to him, like he said, on the 3rd of
22 August. I did talk to him. And I did tell him that I
23 wanted to lay eyes on him. And tell him -- and so I
24 can see if he had been shot. And he said he was out of
25 town. I said, well, when you get back in town, would

1 you contact me back.

2 Q Did you tell him you were on your way to SLED?

3 A I don't recall saying that.

4 Q Do you make it a practice of telling anyone,
5 suspects particularly, where you are going?

6 A No.

7 Q Okay.

8 **MS. HODGE:** Thank you. That's all the questions I
9 have?

10 **THE COURT:** Cross?

11 CROSS EXAMINATION BY MR. JOHNSTON:

12 Q Your testimony is that this is fresh because
13 it's still in the liquid state? I'm holding No. 39 in
14 my hand. That's your testimony?

15 A Yes, sir.

16 **MR. JOHNSTON:** No other questions.

17 **THE COURT:** All right. You can step down. Thank
18 you very much.

19 **MS. HODGE:** That would be the State's reply.

20 **THE COURT:** All right. All right, Mr. Foreman and
21 ladies and gentlemen of the jury, remember in my
22 opening comments to you I said there were five parts to
23 the trial. The first part was opening statements. The
24 second part was presentation of the testimony and the
25 evidence. We have completed the first few parts. So

1 all of the testimony and all of the evidence that you
2 will receive in this case you have received. So we've
3 got the last three parts of the trial, which will be
4 the closing arguments of the attorneys, where they
5 advocate their positions.

6 The fourth part of the trial will be the -- my
7 charge to you on what the law is. And the fifth part
8 will be when you all retire to your jury room to
9 deliberate this case and resolve this dispute.

10 So, we're not going to try and do that tonight.
11 I'm going send y'all home. I am going to strongly
12 instruct you, under your oath, not to discuss this
13 case. It belongs to you very shortly. And it should
14 belong to only you. No one else should have any input
15 in this. Okay.

16 They haven't been up here and made the
17 sacrifices. They haven't listened to the testimony.
18 They haven't looked at the evidence and haven't looked
19 at the witnesses who have testified. Only you all have
20 done that.

21 So let's keep it that way. And I know you will.
22 I hope you have a pleasant evening. And I'll see you
23 back at 9:30 in the morning. Thank you very much.

24 (Whereupon the jury left the courtroom at 5:55
25 p.m.)

1 **THE COURT:** All right. We had a bench conference
2 after the defense rested, at which Mr. Johnston made
3 motions. I -- I told him I would give him an
4 opportunity to put that on the record. So if you want
5 to put those on the record at this time.

6 **MR. JOHNSTON:** Your Honor, we renew our directed
7 verdict motions.

8 **THE COURT:** All right. And that same ruling. All
9 right. Have y'all had time to consider any other
10 requests to charge?

11 **MR. JOHNSTON:** Nothing other than what -- what we
12 already mentioned today, Your Honor. I can't think of
13 anything else right now.

14 **MS. HODGE:** And I would request a malice charge
15 that does use the deadly weapon. Malice can be
16 inferred from that because there is no testimony or
17 anything else.

18 **THE COURT:** Yeah. This -- what is your position?

19 **MR. JOHNSTON:** I don't have any authority to the
20 contrary.

21 **THE COURT:** I think that's correct. I will charge
22 that. There has been no evidence that would mitigate
23 the circumstances of the shooting of the victim, so
24 it's either all or nothing basically.

25 **MR. JOHNSTON:** Yes, sir.

1 **THE COURT:** All right. We'll see y'all at 9:30.
2 Whereupon, the hearing adjourned.)
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1 * * * THURSDAY MAY 17, 2012 * * *

2
3 **THE COURT:** Thank you. Please be seated. Are
4 y'all ready to go?

5 **MR. JOHNSTON:** Yes, Your Honor. Just one point if
6 I could. First of all, the Solicitor and I have agreed
7 between ourselves, subject to the court's approval,
8 that I'll argue first, she'll argue last.

9 **THE COURT:** Okay.

10 **MR. JOHNSTON:** Your Honor, we would also make a
11 motion in limine to prohibit any discussion in the
12 Solicitor's argument of the Defendant's post arrest
13 silence that's been touched on earlier, but I'm
14 concerned that it might be raised again during final
15 argument.

16 **THE COURT:** I -- I have no problem with the -- he
17 waived -- he waived it. I mean, for the period of time
18 before he gets the -- his Miranda rights, and through
19 the time he says he doesn't want to talk, that's not a
20 problem. When he voluntarily begins speaking after
21 that, why is that not a waiver?

22 **MR. JOHNSTON:** Because at some points, he -- at
23 some point he stops speaking. They are going to say he
24 didn't tell the exculpatory story at that time. And
25 that's exactly what the holding in Doyle is geared to

1 stop.

2 **THE COURT:** Well -- so, what you're saying is that
3 she can't say, he didn't tell me -- you gave him his --
4 you know, he began speaking voluntarily. And while
5 he's talking to the officer, he could have told the
6 story, but he didn't. And you want -- you don't want
7 to allow her to say that?

8 **MR. JOHNSTON:** No, sir.

9 **THE COURT:** I'm going to allow her to say that.
10 Once he stops talking, I mean, he -- he had an
11 opportunity. You are telling -- you're telling us that
12 she can't comment on his -- her theory of the case,
13 that she can't comment on his failure or his deception
14 to the police in his statement; is that -- that's what
15 you are asking?

16 **MR. JOHNSTON:** Yes, sir.

17 **THE COURT:** I -- you know, how is that
18 appropriate?

19 **MR. JOHNSTON:** We -- we will follow your --

20 **THE COURT:** He was not being silent. He was
21 talking.

22 **MR. JOHNSTON:** Yes, sir. But they are going to
23 say that he didn't tell the complete story.

24 **THE COURT:** They can say he didn't tell the truth.

25 **MR. JOHNSTON:** Yes, sir.

1 **THE COURT:** What is wrong with that? Just because
2 he -- he refused to give a written statement, that he
3 asserted his right. You can waive your right and hang
4 tight. He did that. Now, as soon as he reasserted it,
5 it's over, right? Isn't that the way it works?

6 **MR. JOHNSTON:** We will follow whatever the court's
7 instructions are, Your Honor.

8 **THE COURT:** I'm just curious if I'm wrong about
9 that. Because every case I have ever read, you can
10 waive your right to silence.

11 **MR. JOHNSTON:** Absolutely.

12 **THE COURT:** Then you can reassert it at any time.

13 **MR. JOHNSTON:** Absolutely. And it would be our
14 position that he did reassert it when he doesn't say
15 anything else, and he doesn't give a written statement.

16 **THE COURT:** That's what -- but you want to take
17 out the middle part for her to say, he began talking to
18 the police. There was his opportunity to tell this
19 story and he didn't do it.

20 **MR. JOHNSTON:** Yes, sir. That is what we want.

21 **THE COURT:** Well, I'm going -- I'm not going --
22 I'm not going to go along with that.

23 **MR. JOHNSTON:** Well, I understand. Yes, sir.

24 **THE COURT:** All right.

25 **MR. JOHNSTON:** Your Honor, would you note our -- I

1 don't want to interrupt the flow of her argument, would
2 you just note our objection, that if that comes up we
3 object.

4 **THE COURT:** For the record, I -- I will -- well,
5 no, I don't know when -- I mean, I think that Ms. Hodge
6 is a -- is a good listener, very smart attorney.

7 **MR. JOHNSTON:** Yes, sir.

8 **THE COURT:** She has heard what I have said now,
9 not commenting on his assertion of his constitutional
10 rights. But when -- once he reasserted it, then it has
11 got to stop. But there is a period where it is wide
12 open.

13 **MR. JOHNSTON:** Yes, sir. Well, I'm not suggesting
14 that she is not going to follow your ruling. All I'm
15 suggesting is that I would like you to note our
16 objection to what I have already objected to.

17 **THE COURT:** Yeah. Yes. I am going to note that.

18 **MR. JOHNSTON:** Thank you.

19 **THE COURT:** I think she -- I think she has heard
20 me.

21 **MS. HODGE:** Yes, sir.

22 **MR. JOHNSTON:** I'm very confident she has heard
23 you.

24 **THE COURT:** Okay. Well, I just -- all right.
25 Anything else?

CLOSING ARGUMENTS BY MR. JOHNSTON

1 **MR. JOHNSTON:** No, sir.

2 **THE COURT:** Okay. All right.

3 (Whereupon, the jury entered the courtroom at
4 9:51 a.m.)

5 **THE COURT:** All right. Mr. Foreman, and ladies
6 and gentlemen of jury, welcome back. I hope you had a
7 pleasant evening last night.

8 As I told you yesterday, we have completed the
9 two first two parts of the trial. You all have been an
10 outstanding jury. You paid attention and we really
11 appreciate that.

12 I -- I would ask you to continue to pay
13 attention during the closing arguments of these fine
14 attorneys. All right.

15 **MR. JOHNSTON:** May it please the court?

16 **THE COURT:** Yes, sir.

17 **MR. JOHNSTON:** Mr. Foreman, ladies and gentlemen
18 of the jury, as I told you in opening statement, in
19 some cases it is not just important what the evidence
20 is, but it is also very important as to what that
21 evidence means. That is, what is the significance of a
22 particular point or a particular piece of evidence.

23 I submit to you in this case, that once the
24 police matched Ronnie Swofford's DNA to the genetic
25 material at the crime scene, that for them, the

CLOSING ARGUMENTS BY MR. JOHNSTON

1 investigation was over. I submit to you, ladies and
2 gentlemen, that that is where just your investigation
3 should begin.

4 I told you in opening statements that the
5 genetic material that was found at Curtis Wooten's
6 house, in fact, belonged to Ronnie Swofford. The
7 question is not whose DNA was it, the question is when
8 did that DNA get there. If the genetic material was
9 left at Mr. Wooten's house by Mr. Swofford on 21 July,
10 as opposed to 27 July, then Mr. Swofford is clearly not
11 guilty.

12 Now, in all of these different tests on that
13 genetic material, they sent it down to SLED, and they
14 had a forensics examiner look at it and a DNA analyst
15 look at it. And she opined that there was one in 24
16 quadrillion chance that that DNA belonged to somebody
17 else other than Ronnie Swofford. That seems like a
18 very fine analysis, a very exacting examination.

19 What didn't they do with that blood evidence,
20 ladies and gentlemen? What they didn't do is tell me
21 how old it was and how long it had been there. There
22 is nothing in any of the reports that says that we
23 looked at this blood and it was fresh. Nothing.
24 Nobody in the State's case in chief said anything about
25 that blood being fresh.

CLOSING ARGUMENTS BY MR. JOHNSTON

1 The first time we heard anything about freshness
2 was in the State's reply, when they put Detective
3 Miller on the stand. Detective Miller seems like a
4 fine fellow and a fine police officer, but I submit to
5 you that he's dead on wrong when he says he can look at
6 a photograph and say this is fresh. It is still in a
7 liquid state.

8 Ladies and gentlemen, this isn't in a liquid
9 state. If it were in a liquid state, it would still be
10 dripping. This is not evidence that the blood was
11 fresh.

12 I submit to you that Detective Miller's
13 testimony on that point is merely attempting to patch a
14 hole in a leaky boat, which has already set sail.

15 Ronnie got on the stand and told you that he was
16 shot in Curt's house on 7/21 and not 7/27. He says
17 Curt was messed up, appeared to be on pills or
18 something like that -- and, ladies and gentlemen, that
19 from what we know in this case certainly doesn't sound
20 hard to accept, does it?

21 He says that Curt was wearing his gun in his
22 house, an unusual practice. I doubt many people always
23 wear their guns in their house, but we know in this
24 case, that by the own admission of Mr. Curtis Wooten,
25 he apparently always totes his weapon, even in the

CLOSING ARGUMENTS BY MR. JOHNSTON

1 house. That is certainly not hard to accept.

2 Mr. Wooten even admits that Ronnie was in his
3 house in the days before 7/27. Ronnie is certainly no
4 stranger to Mr. Wooten. They were friends in prison
5 and everyone admits that they had renewed their
6 relationship and were spending time together. So the
7 fact that Ronnie was in Mr. Wooten's house, that is
8 certainly no surprise.

9 Accidents happen with loaded firearms,
10 especially when the person handling the loaded firearm
11 is on drugs. He is messed up on drugs. Now, we also
12 know that Curt Wooten is a convicted felon. We also
13 know that Curt Wooten was aware of the strict penalties
14 involved for a person, who is a convicted felon, being
15 caught by the authorities with a firearm in his
16 possession. So you can think of that as motivation for
17 Mr. Wooten not to want to be charged with that crime.
18 And there is no evidence in this case that he ever was.

19 A gunshot wound, you and I think gunshot wounds,
20 shot with a gun, we go to the hospital. I'm going to
21 the hospital. But we also probably don't think about a
22 gunshot wound to look like that, looking like that
23 (indicating).

24 Apparently, Mr. Swofford didn't need any medical
25 treatment because he never got any. And he's shot.

CLOSING ARGUMENTS BY MR. JOHNSTON

1 So, you can't necessarily substitute what you and I
2 would do in a given situation, with what Ronnie did,
3 especially when you think of this: He and Curt were in
4 prison together. They were roommates for 18 months.
5 Was it too much to ask, since it was through and
6 through, a flesh wound if you will, that Ronnie didn't
7 go to the hospital? Because when you go to the
8 hospital with a gunshot wound, inquiries are made.

9 And I submit to you that it would be perfectly
10 natural for Mr. Wooten to not want Ronnie to go to the
11 hospital. And it would be perfectly natural for him to
12 pay him some money for his trouble.

13 Other witnesses saw the wound in the days before
14 the 27th of July. Charlie Duffie, Hunter Smalley,
15 Phyllis Swofford. Jamie Swofford saw the bandage, and
16 Shannon Lawter.

17 It's important because there's an anchor date
18 and that anchor date is 25 July. 25 July is Ronnie
19 Swofford's birthday. Now, it is sometimes hard for a
20 person to remember just any old day what they did,
21 where they went. But if you have an anchor point that
22 can tell you, oh, yes, that was my birthday, I remember
23 what I did. And he brought photographs of this visit
24 to the Kanpai restaurant in Spartanburg here in
25 Defendant's No. 18 and Defendant's Exhibit No. 19.

CLOSING ARGUMENTS BY MR. JOHNSTON

1 But let me show you something interesting about
2 Defendant's Exhibit No. 19. This is a photograph of
3 Ronnie and Shannon in front of Kanpai that Jamie
4 Swofford said he took with his cell phone. Note two
5 things: There is a bandage on Ronnie's left arm, which
6 is consistent with the testimony that's been described
7 about the bandage thing put on his left arm.

8 The other thing is, look where Ronnie's hand is.
9 It's on Shannon's stomach because they've just found
10 out that they're going to have a baby. I submit to you
11 that that shows you that this was his birthday, 2009.
12 Not 2008, 2007, 2011 or 2012, but 2009. Look at his
13 hand on her stomach.

14 We brought you alibi witnesses in this case,
15 Otis Pullen, Shannon Lawter, [REDACTED] and Stephen
16 Parham. Now, I'm confident that the Solicitor is going
17 to tell you these are his friends. These are his
18 family. These are the people that love him. And
19 that's true. I can't dispute that.

20 But ladies and gentlemen, if I were accused of
21 being in a different place at a different time, what
22 would be the most likely place I would be, with my
23 friends or with my family. That doesn't mean that
24 they're lying. That's because that's the most --
25 that's the place you spend the most time is with our

CLOSING ARGUMENTS BY MR. JOHNSTON

1 friends and our family.

2 Now, I'm sure also the Solicitor is going to
3 come and tell you, well, these witnesses didn't come
4 over to Greenville or call on the phone to talk to
5 Detective Miller or to talk to people in the
6 Solicitor's Office, and tell them about his alibi and
7 tell them about what they had seen in the days before
8 7/27. I submit to you that had they done so, it would
9 have fallen upon deaf ears, just as it has in this
10 case. Everything that has been said, they have done
11 nothing but to try to discredit it. Once they arrested
12 Ronnie Swofford on August 18th of 2009, the
13 investigation was over. They didn't want to hear
14 nothing else.

15 And by the way, I want to make sure that you
16 understand the point -- I don't know how well this came
17 out in the evidence, but there are really two different
18 ways that Mr. Swofford's DNA was gotten. One is they
19 actually took buccal swabs. That was during the course
20 of the date -- that was after he was arrested. But, in
21 fact, his DNA profile had already been taken because he
22 was a convicted felon. They already had his DNA
23 profile on record. So they arrested him off of his DNA
24 profile that was on record, not so much the buccal
25 swabs that were gathered later, although that certainly

CLOSING ARGUMENTS BY MR. JOHNSTON

1 confirmed it.

2 And if you look back at how they are trying to
3 discredit witnesses, they go out and on the day -- in
4 the couple of days before trial, they go and find this
5 woman, Deborah Martinez. She has never been
6 interviewed before, but they bring her in to testify.
7 I don't exactly understand the nature of her testimony,
8 but she did hear that her own son said she had been
9 diagnosed as schizophrenic. I submit to you that
10 perhaps you could consider that and evaluate the
11 credibility of the testimony. But, in any event, let's
12 look at what she said.

13 She said that Shannon Lawter came over and told
14 her at the kitchen table that she could -- she didn't
15 want to testify against Ronnie, because Ronnie had told
16 her that he shot Curt Wooten in self defense. It
17 doesn't make any sense, ladies and gentlemen. What
18 does make sense is what she said on the stand. I
19 really didn't want to hear about it. She's confused.
20 She doesn't know what she's talking about. I submit to
21 you her testimony is not credible.

22 Ladies and gentlemen, in the 236 years of our
23 Republic, there have been twelve major conflicts and
24 numerous lessons. Thousands and thousands of American
25 service men and women have given their lives in the

CLOSING ARGUMENTS BY MR. JOHNSTON

1 service of their country.

2 One of the things that these service men gave
3 their lives for, was for our legal system, our justice
4 system. And what is the corner stone of our justice
5 system? The requirement that a criminal case be proven
6 beyond any reasonable doubt before a person can be
7 convicted. Reasonable doubt. It is the golden thread
8 that runs through the fabric of our legal system.

9 Those service men and women sacrificed for us.
10 Their sacrifice is important to you today, because I
11 ask you to honor their sacrifice by treating that
12 concept of reasonable doubt seriously.

13 It's not just a term or a phrase that you hear
14 on the news, or that we hear on TV. It is the whole
15 enchilada. It is everything.

16 It's been said that a reasonable doubt is a
17 reason -- is a doubt for which you can give a reason.
18 I'm going to give you here several examples of
19 reasonable doubt in this case.

20 The first is the physical evidence is wrong.
21 Now, we know that Mr. Wooten says that he fired his 380
22 semiautomatic pistol. And that he says that it was
23 that firearm which struck Mr. Swofford, at least he
24 says that that's the case on 7/27.

25 Remember the semiautomatic pistol, the cartridge

CLOSING ARGUMENTS BY MR. JOHNSTON

1 is ejected. The gas, which is released from the firing
2 of the bullet, expels the bullet and it also expels the
3 casing.

4 The casing, in this particular case, because the
5 ejector port is on the right, the basic principal of
6 physics is that the shell is going to fly to the right.
7 Mr. Wooten says that he was in the kitchen when he
8 fired that 380 automatic. Look at this picture,
9 States's Exhibit No. 16. If this Mr. Wooten were in
10 front of this sink, at the time he fired the weapon, he
11 would have been looking this way and his right would
12 be that way.

13 The -- if Mr. Wooten is telling the truth, that
14 380 shell would have flown to the right. It would been
15 over here. Now, ladies and gentlemen, I clearly
16 concede the point that there is a decree of mobility
17 with something like ejecting a shell casing. It can
18 roll. It can be hit. But it doesn't fly through a
19 wall.

20 The 380 shell casing, here in Exhibit 45, was
21 found not in the kitchen, not on the right side of the
22 kitchen, but in the living room. It was found in the
23 living room.

24 Now, if you look at the defense's exhibits, it
25 gives you a better perspective as to why that can't be

CLOSING ARGUMENTS BY MR. JOHNSTON

1 so. Look at the Defense's Exhibit 3, there are two
2 cartridges here. These are not the 380 cartridges.
3 These are the 40 caliber cartridges or shell casings,
4 excuse me -- C and D are not the 380, C and D are the
5 40.

6 If you recall, the forensics guy said that they
7 didn't put one of these little C, D and E things on
8 that 380. I don't know why, but they didn't. So, C
9 and D, Those are the 40s.

10 Now, this is the kitchen. This is the living
11 room. Now, there is a door way entrance here. But all
12 the rest of this is wall. And, remember, the
13 assailant, the supposed assailant is over here where
14 letter E is. Mr. Wooten is back in the other room on
15 the other side of the room.

16 Here gives you perspective on where the 380 was
17 found. Defendant's Exhibit No. 6, it's found way over
18 there on the living room floor, that is it right there.
19 You see it is marked with a scaling device, but it is
20 not marked with a letter.

21 Ladies and gentlemen, I submit to you that
22 something is wrong. You can also get a perspective by
23 looking at Defendant's Exhibit 6, as to where that 380
24 shell casing was found. Something is not right here,
25 ladies and gentlemen. Is it a staged crime scene? Was

CLOSING ARGUMENTS BY MR. JOHNSTON

1 something moved afterwards? It didn't get there on its
2 own -- or maybe that isn't the crime scene. Maybe the
3 kitchen isn't the crime scene. Maybe the living room
4 is the crime scene. Did they find any of Mr. Wooten's
5 blood in the kitchen? No. All of his blood was found
6 there (indicating).

7 Mr. Wooten's testimony, the judge will tell you,
8 that there are certain tools that you can use to try to
9 evaluate whether or not someone is telling the truth.
10 One of the things he is going to tell you is their
11 demeanor. That's just a fancy word for how they act.

12 I'd submit to you that Mr. Wooten's demeanor on
13 the stand was extremely suspect and extremely evasive.
14 When asked to read his statement Mr. Wooten gave to the
15 police, I can't read that.

16 Mr. Wooten testified in court that the assailant
17 had a mask with just the eyes open. And that he
18 couldn't see the mouth. But in his written statement
19 to the police, he said that the assailant had on a ski
20 mask with the whole face open. And that was one of the
21 ways that he knew it was Ronnie Swofford who shot him.

22 I submit to you, ladies and gentlemen, that
23 those are inconsistent statements and I believe the
24 court will instruct you that you can use the fact that
25 a person has given a prior inconsistent statement also

CLOSING ARGUMENTS BY MR. JOHNSTON

1 as a way to judge their credibility.

2 Remember, that Mr. Wooten never gave an
3 unequivocal identification of Ronnie as being the
4 shooter until September 3rd, when he gave a written
5 statement to Detective Miller. Hey, Ronnie had already
6 been arrested. He was arrested on August 18th. The
7 blood was already back, at least as far as they were
8 concerned. Don't you think that the police told him
9 that.

10 When repeatedly asked on the 911 tape who shot
11 you, there's no response. Now, I'll certainly concede
12 that Mr. Wooten had more important things on his mind
13 at that moment, but I think the fact that he doesn't
14 name Ronnie Swofford, someone he knows so well as being
15 the shooter at that time, means that he didn't know
16 whether or not it was him.

17 But at the hospital, Sgt. Hayes goes to his
18 bedside, who shot you? He still said, it was an
19 unknown assailant even after he's already at the
20 hospital. He didn't say it was Ronnie Swofford that
21 shot me. What he said was, was in response to a
22 question that Sgt. Hayes put to him, listen to the
23 question again, do you know anybody who would do this,
24 not who did this. Do you know anybody who would do
25 this. And he said, Ronnie Swofford, he owes me money.

CLOSING ARGUMENTS BY MR. JOHNSTON

1 Well, Mr. Wooten says in court he doesn't know
2 any reason why Ronnie Swofford would have wanted to
3 kill him. So I submit to you, that that little
4 exchange is quite suspect. They don't have to prove
5 motive. They are going to tell you that.

6 The judge is probably going to instruct you
7 about that. They don't have to prove motive as part of
8 their case. But, ladies and gentlemen, I submit to you
9 that you can consider the fact that there is no motive
10 established in this case. That's reasonable doubt.

11 Even Mr. Wooten says everything is hunky dory
12 between Mr. Swofford and him. He was loaning him money
13 according to Mr. Wooten.

14 Now, I think you may have a hard time swallowing
15 that story, but think of it this way: Here's a man who
16 only gets 700 and something dollars a month off of his
17 check. And then what he earns off of selling things
18 and stuff like that. Yet he makes a loan of \$750. And
19 then Ronnie's failure to pay it back after only a few
20 days is a reason that Ronnie wants to kill him?

21 Another reason, no fingerprints of Ronnie
22 Swofford on the 40 caliber shot casings. Remember,
23 that when you take a bullet, you've got to take a
24 bullet and you've got to put it in the gun, whether
25 it's a magazine or in the gun or wherever. Didn't find

CLOSING ARGUMENTS BY MR. JOHNSTON

1 any fingerprints.

2 What else did they never find? Nothing at
3 Swofford's house. No mask. No shirt with a hole in
4 it. No other evidence of -- physical evidence.

5 Why would Mr. Wooten lie? Well, we know he
6 doesn't want to go jail for a weapons violation.
7 Apparently, being the victim, means you don't. He
8 wants to protect himself. That's only perfectly
9 normal.

10 But could there be someone else he's protecting.
11 How about the possibility of his younger girlfriend,
12 Rikki Danielle Edwards. Now, Steely Dan came out with
13 a song in the '70's, called, Rikki Don't Lose That
14 Number. Well, apparently, the State of South Carolina
15 in this case has lost Rikki's. Even with all of the
16 resources of the Greenville County Sheriff's Office and
17 the 13th Circuit Solicitor's Office, they have been
18 unable after a thorough scour of the community to find
19 hide nor hair of Rikki Danielle Edwards.

20 I submit to you that is a matter of convenience
21 for the State of South Carolina. I submit to you that
22 her testimony in this case would have been most
23 inconvenient to the State of South Carolina. And I
24 believe that you should consider her very absence in
25 this case as reasonable doubt.

CLOSING ARGUMENTS BY MR. JOHNSTON

1 She is one of two eye witnesses in this case.
2 They don't call her. They don't call her to the stand.
3 One of two eye witnesses in this case and they don't
4 call her. Ladies and gentlemen, that alone is
5 reasonable doubt.

6 She's supposed to be motivated to be here.
7 She's a victim. One of the indictments in this case is
8 for assault and battery, assault with intent to kill
9 against Rikki Edwards, but she's not even here. Ask
10 yourself why.

11 Even Detective Miller said that her relating of
12 what happened sent up red flags. I didn't say that. I
13 didn't say her statements sent up red flags, that was
14 what he said. I think he was right.

15 He said she was concerned about herself and not
16 about Mr. Wooten. Hysterical, unconcerned.
17 Hysterical, unconcerned. She remained a person of
18 interest for weeks after this. I submit to you she is
19 still a person of interest.

20 Now, they are going to say, oh, well, we did the
21 gunshot residue test on that. We swabbed her hands
22 with that barium and antimonium and all that stuff.
23 But you have to look at the limitations of that. The
24 samples were not taken from her hands until 6:55 a.m.
25 This incident had occurred at about 2:40. Four hours

CLOSING ARGUMENTS BY MR. JOHNSTON

1 had gone by.

2 SLED doesn't even want to look at the GSR kit
3 where it has been six hours or more. So that tells
4 you -- and the witnesses told you this as well. That
5 that -- those particles naturally dissipate from your
6 hands.

7 The other thing the expert witnesses told you
8 is, that if you wash your hands under running water
9 that will eliminate all traces of gunshot residue. She
10 was at the hospital. We know that she took Mr. Wooten
11 to the hospital. We know Mr. Wooten was bleeding. It
12 doesn't strain the imagination to figure out that she
13 got blood on her hands. And what's she going to do
14 sometime during that four hours, she is going to wash
15 her hands, to get the blood off.

16 When they said, oh, well, we took her clothes.
17 We know she didn't put them in a washing machine, and
18 washed it off. They took her clothes and never
19 bothered to test them for the gunshot residue.

20 There are many scenarios here which could have
21 occurred. Mr. Wooten's on drugs. Mr. Wooten is messed
22 up on drugs. He -- we know he has a volatile temper.
23 Just moments before the gunshots are fired, Mr. Wooten
24 is on the phone leaving an angry voice mail to someone
25 saying that he's going to cut their f-ing heads off.

CLOSING ARGUMENTS BY MR. JOHNSTON

1 And why is going to cut their f'ing heads off? Because
2 they ate his Little Debbies. That's a man, ladies and
3 gentlemen, I submit to you that has got an anger
4 problem.

5 There's also the possibility of jealousy.
6 Remember, this young girl, a lot younger than he is,
7 they are not together now. There's some talk about how
8 he thinks she might have something going on with Mr.
9 Swofford. Jealousy can make people do a lot of
10 different things.

11 I submit to you that the state has not excluded
12 the possibility that the exchange of gunshot was
13 between Rikki Danielle Edwards and Curtis Wooten.

14 There was a second gun in the house, don't
15 forget. There was a second gun there. Mr. Wooten says
16 that Ronnie brought that gun there. Ronnie said, the
17 prints weren't on that gun. But interestingly, no
18 forensics examination of that gun. Was that the other
19 gun? I submit to you, the State has certainly not
20 excluded that evidence.

21 The failure by the police to preserve evidence,
22 to find evidence is reasonable doubt. In this
23 situation, we know that there were -- well, they say
24 that there were text messages on Mr. Wooten's cell
25 phone. Y'all know how a cell phone works. On there,

CLOSING ARGUMENTS BY MR. JOHNSTON

1 it says, time, person, the contact, and then whatever
2 the message is.

3 In this situation, Detective Weiner kind of
4 eyeballs it real quick, and passes it along. He is
5 able to give some recollection of what was on there,
6 but I submit to you that's not sufficiently reliable
7 for where we are in this situation.

8 Now, what could they have done? Well, they
9 could have at least taken a pen and a piece of paper
10 and written down that information. And remember
11 there's a text message from at least one other person
12 during the shooting. They didn't do that.

13 They didn't take a camera and take a picture of
14 it. They didn't do that. What do they do? They gave
15 it back to Mr. Wooten and he lost it. He lost it.

16 It's also possible that Mr. Wooten doesn't even
17 know what happened. Does taking heavy narcotics or
18 methadone affect your memory? Is it possible that he
19 has just come to believe that Ronnie Swofford is the
20 person who shot him, and that the police have
21 reinforced his belief by telling him, we've got his
22 DNA. We know it's him.

23 Ronnie has got a criminal record. He did his
24 time. He paid his debt to society. The court is going
25 to instruct you that you can consider that as to his

CLOSING ARGUMENTS BY MR. JOHNSTON

1 credibility. But the court is also going to instruct
2 you, that you cannot consider the fact that a person
3 has a criminal record, that that is evidence that they
4 committed the crimes that you are considering in this
5 case.

6 The evidence is, however, that Ronnie was
7 working in his business. He had all kinds of clients
8 and customers. He had a relationship that was going
9 strong at that time. And he had just learned that he
10 was going to have his first child.

11 And because of his medical condition, somewhat
12 even more precious than -- than under other
13 circumstances, there would be no reason for Ronnie
14 Swofford to want to take a gun and go over to Memorial
15 Avenue and shoot Curtis Wooten.

16 You will write your verdicts in this case with a
17 permanent marker, not with a pencil. That means if you
18 make a mistake, if you don't consider all of the
19 evidence, it cannot be simply erased.

20 Before a man can be convicted of a crime in this
21 country, the case against him must be 100 percent free
22 of reasonable doubt. I submit that to you. I submit
23 to you that that is not the case here. Take your time.
24 Make a list. Go over these points. You don't need a
25 bunch of them, all you need is one. One reasonable

CLOSING ARGUMENTS BY MR. JOHNSTON

1 doubt. And then the judge will tell you, if you find
2 there is one reasonable doubt, you have have a sworn
3 duty to find Ronnie not guilty.

4 This has been a relatively long trial long, a
5 lot of witnesses, a whole table full of exhibits. I'm
6 sure you folks will take your time and it's possible
7 you can get confused trying to remember everything that
8 has happened.

9 Before satellite and before GPS, mariners at sea
10 needed a way to find their way home when they were out
11 on the ocean. And this is how they did it. They
12 looked to the pole star. If they were in the northern
13 hemisphere, they would find the north star. If they
14 were in the southern hemisphere, they would look for
15 the south star. Why? Because in those kind of
16 hemispheres, those stars were clear and they never
17 moved. As long as the mariner could find one of those
18 two stars, he could find his way home.

19 Ladies and gentlemen, in this case, you have a
20 pole star too. Your pole star is that Ronnie Swofford
21 is presumed innocent. So wherever you are in your
22 deliberations, to find your way home, look to that pole
23 star, the presumption of innocence.

24 In this case, ladies and gentlemen, I submit to
25 you simply, there is too little evidence and too much

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1 doubt. Therefore, I ask you to find him not guilty of
2 all the charges. Thank you.

3 **MS. HODGE:** Thank you, Your Honor. May it please
4 the court.

5 **THE COURT:** Yes, ma'am.

6 **MS. HODGE:** Mr. Johnston, ladies and gentlemen of
7 the jury, our entire court system is founded on truth
8 and justice. And if the truth isn't put forth, this is
9 a sham. What are we doing here?

10 Evidence that comes in this courtroom should be
11 true. And you are a part of that because if the truth
12 isn't presented here, then when the next person comes
13 in that's been a victim of a crime and the next person
14 that's been accused of a crime, it doesn't matter, the
15 integrity of the whole system is lost. So the truth is
16 very important. And putting out falsehoods ruins the
17 system for everyone.

18 Your piece is to find a verdict that speaks the
19 truth. The word verdict comes from a latin word
20 verdictum, and that's exactly what it means, to speak
21 the truth. So when you write your verdict, you are
22 speaking the truth about this case.

23 How are you going to reach your verdict? Well,
24 just like any job, this has got a lot of stuff going on
25 here and there's a lot of testimony. You need certain

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1 tools to do your job. So you need to know what the law
2 is, because you need to know if the law has been
3 broken.

4 I submit to you -- and the Defendant even stated
5 in his testimony, the law is not an issue here. Some
6 cases you will have a conflict when -- on the entrance
7 to the home, one person says he's not supposed to be
8 there, and another person say, yes, I am. The conflict
9 is, has the law been broken.

10 I submit your deliberations are not going to
11 revolve around whether the law has been broken. The
12 law has been broken. A burglary has been committed;
13 An assault and battery with intent to kill has been
14 committed; an assault with intent to kill has been
15 committed. And if you determine the Defendant
16 committed these crimes, then there are two weapons
17 charges that have been committed.

18 So you don't need to spend -- I'm not going to
19 say you don't need to spend -- but I would assume that
20 your deliberations are going to focus more on the facts
21 of this case. Who did these crimes?

22 Judge Miller is going to give you a very
23 detailed instruction on the law. I briefly will go
24 over it so you will hear it two times. But burglary
25 first degree in South Carolina is when someone enters

CLOSING ARGUMENTS BY MS. HODGE

1 another person's home -- not a business, but a home and
2 they do so without permission, without consent and with
3 the intent to commit a crime inside.

4 There has to be some aggravating circumstances
5 to be a burglary in the first degree. Usually night
6 time is one of them, or a person who is armed with a
7 weapon, or if someone is hurt during that burglary.
8 That's the law for burglary first degree. I submit to
9 you that happened in this case.

10 Assault and battery with intent to kill is
11 called attempted murder now. The law changed in 2010
12 and they renamed it. And that's essentially what you
13 have got here. An attempted murder of Curtis Wooten,
14 shooting him a few feet away in the stomach and then
15 attempting to shoot Ms. Rikki Edwards across the back
16 of the kitchen as she runs out. I submit to you those
17 laws have been broken.

18 And then, again, as I stated, if you find --
19 excuse me -- that Mr. Swofford is the person that
20 committed the crimes, it's already been stipulated that
21 he is a convicted felon and that this is a violent
22 crime, so if you find that he did this, he was in
23 possession of a gun, he is guilty of that.

24 And if he was in possession of a gun during the
25 commission of shooting someone, which is obvious -- you

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1 would be in possession of a gun if you shot someone --
2 you would find him guilty of that. So that's your
3 first tool. Your first tool is the law.

4 Your second tool is the facts in the case. And
5 I think that's where you want to spend the majority of
6 your time, figuring out what happened here. Now -- and
7 who did it.

8 The third thing you are going to need is your
9 common sense. That is your most important tool. That
10 is the tool that every juror walked in this room with.
11 You didn't check it out downstairs in the jury room,
12 you brought it with you. And the reason we have this
13 system is because we want 12 people, common every day
14 citizens -- and I don't mean that in a bad way -- but
15 people with some common sense, people that made
16 decisions that are difficult every day of their lives.

17 You made a decision on where did you go to
18 school. How far would you go to school, or what kind
19 of job would you like to have. Who would you date, who
20 will you marry? Will you have children? Will you move
21 somewhere? Will you have -- do you have
22 responsibilities in your work? Do you have to fire
23 someone? Hire someone? You make really important
24 choices.

25 Do you get a divorce? Do you do that? You use

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1 your common sense and you have made a lot of
2 evaluations through your life, to make these decisions.
3 And you probably went through a check list as you did
4 that. And you became firmly convinced about whatever
5 those decisions are. Marriage, kids, jobs, schooling,
6 those kind of things. So, today is no different. You
7 are not elevated to a standard where you could never
8 reach a decision with firm conviction, with -- beyond
9 reasonable doubt. No, you do that every day in your
10 life. So you will be able to do that today.

11 To determine the facts in this case, you have
12 got to figure out who is telling the truth and who is
13 lying, period. That is it. The State has one version
14 of events, the defense has another. You have got to
15 pick one.

16 Now, Mr. Johnston gave you a very nice closing
17 argument, very good. He's a very good attorney. But
18 he threw the entire kitchen sink in there. I thought I
19 heard the evidence to be the Defendant didn't do this
20 crime. And the Defendant even said, -- agreed, this
21 crime was committed, it just wasn't me. But Mr.
22 Johnston says, okay, well, maybe the crime wasn't even
23 committed. You should look here, look there. Look
24 over here. Look down there. Look up here. Because
25 it's not believable that Ronnie Swofford didn't commit

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1 this crime, so look away. Look at the shinny object
2 over here. Divert your attention. Get you to think
3 about some other things except the obvious.

4 So you have got to determine which witnesses and
5 what evidence is truthful. How do we know who's
6 telling the truth and who's telling a lie. It's simple
7 stuff like we do every day. Every day of our life, we
8 do this.

9 As Mr. Johnston said, we look at people's
10 demeanor, when they are talking to us, are they like
11 this, or are they smiling or they're happy or they're
12 looking around or they're stuttering or they're
13 inappropriate in their emotional response. They bust
14 out into tears --

15 (Cell phone ringing.)

16 **MS. HODGE:** I thought I heard a cell phone.

17 **THE COURT:** Hang on one second. I'm sorry.

18 **MS. HODGE:** Sorry. Anyway.

19 **THE COURT:** Go ahead, yes, ma'am.

20 **MS. HODGE:** Okay. So anyway, you look at their
21 demeanor, if their emotion is appropriate. Is their
22 speech appropriate? Are they fast -- fast, fast, fast,
23 to get this and get over it? Are they highly volatile
24 when you ask them one thing that doesn't fit in their
25 story and they storm out, or do they -- you know, those

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1 are the things that you are to evaluate as the judges
2 of the facts.

3 Who is telling the truth, who is lying, so you
4 have got the demeanor. Then you look to people's
5 consistencies in their stories and coherence, does what
6 they are telling you make sense. I mean, it's just
7 really common sense. Does that make sense. Does it
8 make sense that this shooting happened the way Mr.
9 Wooten said, with all the physical evidence that
10 supports everything he said. Does that make sense?

11 Is it consistent? Does he say the same thing on
12 911 as he does at the hospital, as he does when he
13 wakes up from a comma two and a half months later, as
14 what all of the physical evidence shows? Does that
15 make sense and is it consistent? I submit to you it
16 is.

17 There are always going to be strange little
18 oddities in every criminal case. The State cannot
19 answer every single thing to the nth degree. Do you
20 know why? Because we're all human. This is a human
21 matter. We are not computers. The only people that
22 know exactly how things happen are the perpetrators and
23 the victims.

24 I think it's kind of like football, if I can use
25 that -- I'm not a great football expert, but when

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1 you're on offense, when you're doing the thing, you
2 know what you're doing.

3 When you're on defense, you don't know what is
4 going on. I submit to you Mr. Swofford was on offense.
5 He knew what he was doing, how he was going to do it,
6 what he was going to do, do it and get out. Mr. Wooten
7 didn't know what was coming. He didn't know that play
8 had been called. So is he going to be able to account
9 for why the shell casing came out of his gun is in the
10 other room? No, he probably isn't.

11 But as the ballistics expert told you, with a
12 gun -- when casings come out, if the person holds it
13 like -- what they like to call gangster style, what you
14 see in the movies and what-not, side ways. It's going
15 to go, boop, up in the air.

16 He's down on the ground and he's going around,
17 trying to go around the refrigerator, could it come up
18 and fall on him? And as he scrambles to get up, could
19 it be caught in his clothing, and as he goes out the
20 door and it falls out? It didn't go through a wall.
21 Nobody is saying it went through a wall. It went into
22 the living room.

23 Just one thing, when we talk about consistency
24 and coherency, the defendant's version of events is
25 that plausible, coherent? Is it consistent? Did he

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1 say it when the police called him, the day after -- two
2 days after the incident? No.

3 Did he say it two more days after that, when he
4 talked to the investigator Miller? No. Did he ever
5 come in and get eyeballed, let us see that gunshot
6 wound. Tell me about that. Tell me how this happened
7 on July 21st. Nope.

8 After he's arrested, he knows a little bit of
9 what the evidence is against him. Does he say it then?
10 No. Does he say it when they're taking pictures of him
11 -- I mean, I know when they're taking his pictures, let
12 me tell you -- let me tell you what happened here? No.
13 There are several inconsistencies, opportunities to say
14 it didn't happen.

15 But then you've got Shannon, his girlfriend, who
16 doesn't know what to say other than she has got an
17 alibi. The police come out there. They want to know,
18 hey, where's Ronnie? We want to look -- look at him.
19 And I submit to you, they had a good conversation
20 probably before that, when he comes in with a gunshot
21 wound, probably a referencing of time frame. She can't
22 pinpoint it. She can't say 2:42 and she wouldn't say
23 that because she didn't know what the police log
24 showed.

25 So, let me make a broad sweep and see if we can

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1 just get that fixed. But she is not consistent either,
2 because she did know it was a gunshot wound and she
3 didn't say anything about that. She said here she
4 never told law enforcement -- apparently law
5 enforcement, I don't know why, who's busting up in her
6 house like that, but you've got Investigator Miller
7 from outside, sometimes things get a little bit
8 exaggerated.

9 So there is some inconsistency in some of the
10 defense's -- and I'll get to the rest of their side in
11 a moment -- but the final thing that we probably do
12 mental check lists is -- is someone motivated to tell
13 me what they're telling me? What is the motivation
14 behind what this witness is saying, or whomever, a used
15 car salesman. I can go buy a car. They clearly have
16 motivation. They want to sell you a car. They are
17 going to tell you what you want to hear.

18 The same principles apply here. Curtis Wooten
19 does not have any motivation to tell you anything.
20 He's not going to get charged. He wasn't going to get
21 charged. The man almost died. They are not going to
22 come back and charge him with having a firearm on him.
23 And thankfully he did, because then we were able to
24 find evidence of an actual, very violent, serious
25 offender.

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1 So he's not worried about getting charged. He's
2 worried about living. And he tells what happens and
3 who did it, he thinks. He's not going to have any
4 different motivation today in court, because his life
5 is not going to be any different. When we leave here
6 today or tomorrow or whenever it is that y'all come to
7 a verdict, he is walking out of the door just as he
8 walked in.

9 He's still messed up physically, probably
10 emotionally. He's not getting any money. This is not
11 a civil case where he's going to get a million dollars
12 if y'all find the Defendant guilty. He might sleep a
13 little better at night if that's what the verdict is,
14 but his life is not going to change whether it is
15 guilty or not guilty. He has no motivation to tell you
16 what happened with him other than the truth.

17 The police officers, they have no motivation to
18 tell you anything but the truth in the case. They are
19 going to get -- Investigator Miller is not going to get
20 a bonus if y'all find the Defendant guilty. He is not
21 going to get fired if y'all find him not guilty. He's
22 going to go to the next case and he's probably got a
23 trial next Monday. So it's just his job. Just as all
24 the other law enforcement witnesses, they don't have a
25 stake in it, other than this is a dangerous crime. We

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1 want to make sure we get the right guy.

2 They are not interested in framing an innocent
3 man while a ruthless, malicious, attempted murderer is
4 out on the streets just wandering around, mingling
5 amongst the Greenville and Spartanburg counties. That
6 is not how it operates. That is not how it works.

7 And then we have Ms. Martinez, our final
8 witness, just going through the State's witnesses.
9 What is her motivation? She didn't want to get
10 involved, period. Probably her life is going to be a
11 little more difficult after yesterday. It probably was
12 a little more difficult or it could be. She has to
13 live in the same community as these people. And she
14 had to tell something that did not bode well for the
15 defense.

16 She didn't want to tell that. That was
17 something that came on her, and only because the
18 Solicitor's Office Investigator, first speaking to her
19 son who was going to be an alibi witness, they said,
20 Ms. Martinez, do you have happen to know anything about
21 this, and started questioning her.

22 And reluctantly, she told them, well, Shannon
23 came to my house. She and the defendant had a fight.
24 This was this year in February. And basically Shannon
25 was upset with him and she was telling Ms. Martinez all

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1 about this, and just couldn't believe it.

2 And said something to the effect of, you know,
3 he shot that man in Greer, but I'm not willing to go
4 testify against him. I don't want my child to grow up
5 without a daddy. Basically, she said, I'm going to
6 lie. I'm going to do what I need to do -- and part of
7 me understands that. She is a mom. And I understand
8 that you want to protect your child, but not at the
9 expense of an entire criminal justice system. Making a
10 farce out of this, a mockery out of this.

11 She said, I'm going to go in there and lie. I'm
12 going to tell them he was with me. He didn't do it,
13 when she knows he did. And whether the truth -- or
14 whether she was told it was some kind of self defense
15 or she made that conclusion on her own, I don't know.
16 But it's interesting the theory kind of changed,
17 depending on who's talking. So, again, it's not real
18 consistent coming from the defense's side.

19 Now, we go to the defense's witnesses'
20 motivation. And Mr. Johnston is right. Yes, I am
21 going to point out the fact that he had his family or
22 people that were his friends, or people that he was in
23 prison with, people that he did business with and
24 people that he can manipulate like Stephen. There is
25 not an independent witness in that.

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1 They want to make a big deal about this -- these
2 birthday pictures, which granted that is -- that is a
3 very important, interesting issue. Taking the cell
4 phone -- cell phones are extremely reliable with date
5 and time stamps because you, in fact, don't set the
6 time on your cell phone, right? It comes on to your
7 cell phone. So when the time change happens, it's
8 already updated. It's changed. It's got a little SIM
9 card in there. You take your computer cord, plug it
10 into your phone. It puts it on your computer. There
11 are date and time stamps. Wouldn't that have been nice
12 to have an actual date and time that this was taken.
13 They could have done that.

14 But I submit to you they didn't because it's not
15 the date and the time they pawn it off as. Have you
16 ever celebrated on a day that wasn't your birthday? My
17 daughter had a birthday last month, I think we
18 celebrated five times. It's just one of those things,
19 you might get with family one time, friends one time.
20 You may not do it on the exact day.

21 I submit to you this little birthday dinner did
22 not happen on July 25th of '09. It happened after.
23 And I do not mean this in any type of disrespectful
24 way, but if -- if Ms. Lawter, and she is pregnant,
25 maybe if you look at that, she looks just a little more

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1 pregnant than two weeks. It's just something for you
2 to consider and look at.

3 So we have got a lot of motive over here on the
4 defense side because everybody's life on that side is
5 going to be real different tomorrow. They're either
6 going to lose some kind of monetary thing, child
7 support, rent, bills, working income, or they are going
8 to lose a family member, momma, brother. They have got
9 some motivation. The Defendant, clearly, as he told
10 Investigator Miller in the few statements he chose to
11 make, by the end of that time, after they took
12 pictures, he starts crying and starts coming to
13 realization, this isn't good. And he says, let me --
14 let me make a call and see if I can get a bond before I
15 go back to jail.

16 He knows it's coming. He knows it's coming.
17 This is fighting, clawing, scratching, doing whatever
18 it takes not to accept responsibility for his actions.

19 And, of course, his friends and family are going
20 to come and support him because they all need him out
21 for various reasons. He apparently employed several
22 people as well. So there is some motivation behind
23 what they're telling you. I just ask you to take that
24 into consideration in your deliberations.

25 As Mr. Johnston pointed out, I do feel it is

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1 appropriate to make -- to give the discussion about
2 reasonable doubt. Again, Judge Miller is going to
3 instruct you on what the actual law is. If I misstate
4 it in some way, I'm not intending to. But reasonable
5 doubt is the doubt that causes a reasonable person to
6 hesitate to act.

7 Now, that seems odd because I would hope that
8 you would all hesitate, that you would not go in your
9 jury room and just like, yep, done. You're going to
10 think. But it is after your thorough thoughtful
11 examination, if you still have a reason to say, I don't
12 think he did it, I think he is not guilty, that's your
13 reasonable doubt.

14 You are going to hear the judge say it does not
15 require proof beyond all doubt, because as I tried to
16 say earlier, this is the human world. There are things
17 that we will never know beyond all reasonable doubt.
18 And the State does not to have prove its case beyond
19 all reasonable doubt or to 100 percent certainty.

20 We have to prove the case to you, in your
21 individual, reasonable person standard, that means what
22 one juror's consideration of beyond a reasonable doubt
23 is, may differ from the next. It's personal to you.
24 If you are personally satisfied that the guilt of the
25 Defendant has been proven to any evidence beyond a

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1 reasonable doubt, in your heart, in your mind, then you
2 can find him guilty. And that is individual to each of
3 you.

4 So, briefly, because I know y'all have been
5 paying very, very, very good attention, a couple of
6 points, talking about the defendant's evidence and then
7 I'll move to the State's, and I'm going to keep it
8 brief.

9 The Defendant's testimony that you're, again,
10 looking at demeanor, consistency, motivation, just --
11 if it seems that he had an answer for everything, every
12 moment of his life from July 1st to July 28th, it
13 seemed almost a little too detailed, maybe a little too
14 contrived. He just kind of happened to have that
15 ultrasound picture in his pocket. It just seemed a
16 little too much.

17 And that is for you to decide when you're
18 determining the truthfulness of his statement. Like I
19 said before, he had his personal hands on many of his
20 witnesses. He lives with his -- not his step daughter,
21 but a woman's child that he had been involved in her
22 life for six years only. Now, they live together. She
23 is 19. He's in her life.

24 He drives his ex-girlfriend to work and back
25 every day. That's hands on there. That's hands on,

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1 family, friends, those kinds of things. People he
2 works with and pays money to.

3 The Defendant's problem in this case is right
4 here, is this: State's No. 39, and not only that,
5 this. You will see State's No. 42. There's actually
6 two items of evidence that had the Defendant's DNA on
7 them. He wants you to believe this is from a shooting
8 on July 21st, but this little copper jacketed -- copper
9 jacket from a bullet would still be sitting in Mr.
10 Wooten's kitchen for six days. That's body tissue and
11 hair and suspected blood would just be on his kitchen
12 wall for six days? And he wants you to say that this
13 is six days old.

14 I don't think it takes an expert to testify to
15 you that that stuff is fresh. That is fresh body
16 tissue and blood. When blood dries, it turns brown,
17 doesn't it? It turns a brownish color.

18 A body tissue is kind of yellowy. You may not
19 know that, but I submit that if you look at the law
20 yourself, that's what old things looks like. This is
21 what fresh things look like. So because this is a
22 problem, he had to construct and craft his story around
23 that. To explain away that.

24 That's where he says there's some buddy -- hey,
25 remember, I was over at your shop that day. Remember,

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1 I had that band-aid on. I'm not sure that some of
2 these people came in here with the intent to lie, but I
3 think they possibly could have been swayed to have
4 their memory refreshed in a certain way. Because none
5 of them had independent documentation as to exactly
6 what happened on these days three years ago. They are
7 kind of, I suspect, and submit to you, being talked to
8 you by the Defendant. Shown the case file and had
9 their memory sort of jogged in that direction.

10 Don't you remember? Remember, you saw me with
11 Band-aids, I came over and got the trailer worked on?
12 That could have happened in August, very easily. He
13 did lots of work with the guy with the trailer -- the
14 metal fabricator person. There is no book from August.
15 He brought his July book because they needed to find a
16 date somewhere in there, that would fit a story.

17 So conveniently, August receipt book is not
18 here. So they work with the one day they put on a
19 receipt, July 21st. Everybody has got to tie into the
20 July 21st. And I submit those people don't have an
21 independent recollection. They are going to say, oh,
22 yeah, I saw you with band-aids. Okay. Yeah, that
23 sounds about right. It was July. I think it was in
24 the summer. It's not independently verified.

25 And the other piece of evidence that the

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1 Defendant decided to enter was his bank statement.
2 Now, they're -- Mr. Johnston talked to you all about
3 motive, Defense No. 20. And it's a three page bank
4 statement of the Defendant's.

5 And on July 24th, just as Mr. Wooten testified,
6 to loaning Mr. Swofford \$750, boom, there is a deposit
7 for \$750 in his account. Interesting. And as Mr.
8 Wooten said, he thinks it's because the Defendant was
9 going to bounce some checks or something, he wasn't
10 exactly sure. Something like that.

11 Then you can come and look to the third page and
12 you can see what checks were probably going to clear.
13 You can see what his account balance would have been
14 had it not been for the \$750. And on the front, there
15 is also an automatic debit, which is coming out, \$353
16 is going to come out on July 27th. And a check for
17 \$480.29 is going to clear. It's kind of comes close to
18 \$750.

19 He pretty much knew how much money he needed
20 before he would bounce some checks. That's what he
21 asked his good friend, Curt, for. Curt gave it to him.
22 And there it is. That is not deed money. That is not
23 pay off for thanks for not telling on you because I
24 shot you on accident. I mean, that story -- does that
25 story really hold water? This -- their own evidence

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1 supports what Mr. Wooten said.

2 So let's go to the State's No. -- the State's
3 own evidence -- sorry, I forget to take my marker out
4 before I start talking.

5 Independent verified evidence. The 911 call, so
6 you will have this back there. You can listen to it as
7 many times as you need to. On the 911 call, absolutely
8 right, the 911 operator is saying to him, who shot you?
9 Who shot you? And when you listen, you will hear that
10 he is not really paying attention to that.

11 I submit to you that, again, the offense/defense
12 analogy, I was trying to warn you, could it be that Mr.
13 Wooten was totally shocked and appalled and freaked out
14 by the fact that his friend, this man he thought was
15 his friend, that probably had some kind of code of
16 honor -- I mean, if you spend some time with somebody,
17 you probably have a tighter bond. You're thinking, you
18 know, friends. You are down together. And he probably
19 was in shock that it was the Defendant.

20 You can use your personal experience. Has there
21 ever been anything in your life that you've seen,
22 heard, walked in on, anything, where you thought, did I
23 just see what I think I saw? And you may not verbalize
24 right at that second, but it's in there. Okay. All
25 right.

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1 But a few minutes later, you can say what it is
2 that you saw. But you're so caught off guard and
3 clearly, with him, he was about to die, so there is a
4 little thing that your brain is not working exactly
5 right. You're in stage three/four shock, which means
6 your whole body is shutting down, you're not thinking
7 real clear.

8 But if you listen to the 911 call, you can hear.
9 This is a crime that occurred. And Rikki Danielle
10 Edwards is on that call as well. Listen to her,
11 frantic, crazy, describing the man like Curt -- excuse
12 like -- or yeah, Mr. Wooten, describes a mask, shooter
13 starts shooting, ran out the door. You will hear all
14 of that on the 911 call.

15 She is not a person of interest. She is not a
16 suspect in this case. She is not the shooter. Did she
17 act weird? Yes. And would it have been bad for law
18 enforcement investigating, had they not tried to figure
19 out if she was involved? Absolutely.

20 Two people in a house, one person shot. You
21 better bet that person is a suspect until they can
22 clear them.

23 Mr. Wooten unequivocally stated, she is not
24 involved. She is just like me. The Defendant shot at
25 her, too. Would we love to have her here? Yes, we

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1 would have.

2 Is there a real possibility that she did not
3 want her face seen again? Is there a real possibility
4 that she thought she might befall the same kind of
5 fake? Mr. Swofford even told you, he didn't really
6 know her and maybe he would have recognized her if he
7 saw her on the street somewhere because he didn't
8 really know her.

9 Is she going to put herself, make herself
10 available to come in here and be eyeballed, to put
11 another finger on a man that tried to kill her and
12 certainly Curtis Wooten?

13 Now, we tried. We have tried. And I can tell
14 you, we can find people. If we need to find them, we
15 can find them. You find people when they have things
16 that you can connect to.

17 So Ms. Edwards doesn't really have a home base.
18 And we would have loved to have her come in here to be
19 able to tell you all about this. And we have tried and
20 she was not here, but you will hear what she has to
21 say. And I'm not sure if can blame her, to be honest,
22 for not making herself available.

23 Now we have got the statements at the hospital.
24 You will hear the 911 call -- in fact, you hear from
25 the moment they leave the house to the moment they get

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1 to the hospital. So I think it's about seven or eight
2 minutes maybe between the two phone calls. Because the
3 one call is coming from the home phone and then Mr.
4 Wooten just got the home phone and got in the car with
5 it and it -- you know, went out of range obviously.

6 And she calls back on the cell phone. So you
7 have the entire time, so within seven or eight minutes,
8 they're at the hospital. And Mr. Wooten, his
9 statements to Sgt. Hayes at this point, he has probably
10 processed a little bit of what just happened to him.
11 And he says, who do you think did this to you? Who
12 could have done this to you? Why would somebody do
13 this -- I mean, really, why would somebody do this?
14 Could it be Ronnie Swofford? And low and behold, the
15 DNA evidence comes back, it is Ronnie Swofford. But he
16 says that within -- seven or eight minutes at the
17 hospital, he gives the name.

18 They BOLO out that there's somebody that's been
19 shot. And all the hospitals should be on the lookout
20 for a person that has been shot and it matches the
21 description of Mr. Swofford and he gives the name Mr.
22 Swofford.

23 At the hospital, Investigator Miller also speaks
24 to Rikki. And she gives him the same basic information
25 that she testified that she said, the same thing,

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1 they're in the kitchen, a guy comes in, starts
2 shooting. Curt gets shot. Curt shoots back. I run
3 out. And here's a general description. He's kind of
4 muscular. He's not real tall. Kind of muscular. Had
5 on a mask.

6 She verifies the same thing. Now, she doesn't
7 know Ronnie like Curt Wooten does. She's not giving
8 his name. She probably didn't physically recognize his
9 eyes and nose. She probably didn't. So she's not
10 going to give that name, as common sense would tell
11 you.

12 We have got physical evidence at the scene, that
13 not only supports what -- all the evidence supports
14 itself, so each piece is consistent with itself, but it
15 also supports the victim's statement. So you are going
16 to have all of these photographs. And I know y'all are
17 going to look at all of them.

18 You are going to be able to see where the
19 droplets of blood were on Mr. Wooten, where the shell
20 casings that match up. The two 40 shell casings that
21 match up with the bullet behind the sink. You are
22 going to have the gun that matches the 380, that is
23 consistent with the bullet that goes down in the wall.
24 You are going to have all of these pieces back there.
25 And they are all consistent with Mr. Wooten's

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1 statement. There isn't anything in here that doesn't
2 support what Mr. Wooten said.

3 Independent, physical evidence. So you have
4 ballistics, which is the firearms examination. You
5 have trajectory, the angles where the gunshots were
6 fired to and from. And they -- one in the hole in the
7 wall, has a shot that goes this direction, which went
8 towards where Ms. Edwards was, behind the doorway, as
9 she turned around the back door. And then you have one
10 that goes to the sink, where Mr. Wooten says he was
11 standing. You have trajectory evidence and, of course,
12 you have the DNA evidence.

13 The DNA evidence from that bullet jacket on the
14 floor and the wall. There is just no way around that.
15 That all supports that this case happened just like Mr.
16 Wooten said. And it supports the identity of the
17 perpetrator, the Defendant.

18 So, we have -- you have your ballistics, you
19 have trajectory, you have photos of the scene and you
20 have DNA. Most times when I stand up and give jury
21 closing arguments, I have to give the -- this is not my
22 CSI speech, because so many people watch television and
23 they expect there is going to be DNA -- when you walk
24 through somewhere, there is going to be DNA.

25 So this case is different for me because we have

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1 DNA. And this is like a CSI episode. It's really a
2 great law enforcement case because they took that
3 bullet jacket from the scene, and didn't know 100
4 percent who the perpetrator was, but they had a
5 suspect. And they send it SLED. And they get the DNA
6 that matches with one in 24 quadrillion chances of the
7 Defendant.

8 And that's how we would like to be able to
9 present every case. And this case has it. You can't
10 discount that.

11 They made a -- the text messages. I will tell
12 you -- I would have loved to have seen those text
13 messages. The Defendant does not deny that he was text
14 messaging, so I'm not sure what the huge deal is
15 because the defendant said, yeah, I'm text messaging --
16 we were text messaging. I would have liked to have
17 seen those as well.

18 Again, this case is made of humans. Sometimes
19 humans make mistakes. And I think that probably a
20 miscommunication happened between Investigator Weiner
21 and Investigator Miller. They probably thought the
22 other person was going to do that. But you do have
23 evidence that Investigator Weiner looked through the
24 cell phone, saw numerous texts from Ronnie in the early
25 morning hours, wanting to know where is Curt, where is

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1 Curt? Where are you? Where are you? Interesting.

2 Where he was? Is that to help him make his plan?

3 Definitely to locate him.

4 There is evidence of that. And just because you
5 don't have the actual texts in front of you, doesn't
6 mean the evidence isn't there. If you had dinner last
7 night, but you didn't write it down, that doesn't mean
8 you didn't eat dinner, does it? No. It's there. It's
9 not the form we would like to have, but it is there.

10 Then, of course, we have got another big one,
11 the Defendant's gunshot wound. It's kind of hard to
12 get away from that. Now he's figured that out, after
13 he's had a couple of years to look through the whole
14 case file and figure out what his story is going to be.
15 There it is. Gunshot wound just like Curt Wooten said.

16 I shot that perpetrator, that guy, whoever that
17 guy was in the black. He came around. He had his left
18 hand, I shot him on the left, somewhere on the left.
19 That is what he's got.

20 Why the left hand? Why is that important? The
21 way this kitchen is set up, if that's the sink over
22 there and I'm coming through the entry way of the
23 kitchen, if I had my right arm -- if I'm right handed,
24 it's going to be kind of hard to do this. So, I am
25 going to stick my left around and make my move. And he

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1 shot back left, downward, up.

2 Mr. Wooten wants -- excuse me -- Mr. Swofford
3 wants you to believe that that was in this exchange
4 where he reached down to help Curt who stumbled and he
5 did his arm like this and it shot in this direction.

6 Just for argument sake, look at the direction of
7 the spatter. You don't have to be an expert to know,
8 is it going in this direction or is it going in this
9 direction? It is something for you to consider.

10 And then finally, you have got in the State's
11 case, you have got the Defendant's statements,
12 extremely selective. And again, why is that? Because
13 he doesn't want to box himself in.

14 He is not sure what we've got, but he is not
15 going to say too much until he knows what he can say.
16 So he is very selective in what he tells Investigator
17 Miller.

18 The one point that I find extremely interesting,
19 because y'all have heard the others, is that as they're
20 walking over from the detention center to the law
21 enforcement center, some 100 -- 100 yards or something,
22 he is wanting to know what's -- what's the evidence
23 basically -- well, what do you have on me?

24 He didn't say it exactly like that, but that's
25 the gist of what he is saying. He said, well, I read

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1 the warrants and it says -- it says on here that y'all
2 have DNA. Well, my DNA will be there because I have
3 been over there, not because I was shot over there.
4 But, you know, I have been there. He's thinking touch
5 DNA at this time, because he hasn't figured out his
6 story about a gunshot wound five days ago.

7 Touch DNA. Because there is such a thing as
8 touch DNA. That's not the kind of DNA we have. We
9 have tissue, hair and blood DNA. Touch DNA is if I
10 touch this, they probably could come and swab that and
11 get some of my skin cells. We drop skin cells
12 constantly. Although there have been -- probably mixed
13 in with everybody else that touched this table, so --
14 anyway, so, he's saying, yeah, my DNA would be there.
15 I'm not saying what form.

16 Then he says, how can y'all arrest me because
17 based on what the witnesses are saying, the suspect was
18 masked. Well, I didn't read that anywhere in this
19 warrant. Investigator Miller read the warrant to you
20 and it's in evidence, as verbal testimony, there is not
21 one mention of the suspect wearing a mask.

22 And he went on to say numerous times, the
23 officer didn't tell him anything about this. He didn't
24 know what was going on. The officers are smart enough
25 to know not to give a lot of details about cases before

1 they talk to somebody. Nobody told him about that.
2 How did he know that? Maybe he was there? Maybe
3 that's how he knows.

4 The State does not have to prove motive, but I
5 think there is some motivation here, financial
6 motivation. Because as Mr. Wooten said, when he pulled
7 out that \$750, he had another \$1,200 or so dollars in
8 cash. Greed and pure meanness makes people do things
9 that are not rationale, that are not logical. That's
10 the root of all evil. You're not going to be able to
11 explain thing that away. That is what this is about,
12 pure mean evil. Greed mixed with that.

13 Ladies and gentlemen, I do believe and submit to
14 you after you view the State's evidence and you're able
15 to go through all of this on your own, and discuss the
16 case amongst yourselves, that you will be able to
17 return a verdict of guilty against Mr. Swofford on all
18 counts beyond a reasonable doubt, where you are
19 personally satisfied that he is guilty. Thank you for
20 your attention.

21 **THE COURT:** All right. Mr. Foreman, ladies and
22 gentlemen of the jury -- is everyone okay?

23 (Jury indicating affirmative.)

24 **THE COURT:** During this trial, you and I had
25 certain duties to perform. As the trial judge, it is

1 my responsibility to preside over the trial of the case
2 and to rule upon the admissibility of the evidence that
3 is offered during the trial.

4 It is also my duty to charge you the law
5 applicable to the case. And it is your duty, as
6 jurors, to accept and apply the law as I now state it
7 to you.

8 As I told you in my opening comments, if you
9 think you have any idea as to what the law is or what
10 you law should be, and it differs from what I now tell
11 you the law is, you are sworn under oath to set aside
12 your own opinion and apply the law precisely as I state
13 it to you.

14 I would also remind you that in every case tried
15 in this court before the jury, the jury is the sole and
16 exclusive judge of the facts. A trial judge is not
17 allowed by law to have an opinion about the facts of
18 the case. So please don't think by anything I may have
19 said or done throughout the course of the trial, that I
20 have such an opinion. I do not and the law does not
21 allow it. You all are the sole judges of the facts.

22 I again instruct you that the fact that the
23 Defendant was arrested, charged and indicted in this
24 case is not evidence of guilt, nor does it create any
25 presumption or inference of guilt. These documents are

1 simply the formal written instruments which contain the
2 charge made against the Defendant and they serve as the
3 formal documents by which the case is processed and
4 brought into court for disposition.

5 Now, the indictments in this case allege several
6 different offenses against the Defendant. And they are
7 assault with intent to kill; burglary in the first
8 degree; possession of a pistol by a person convicted of
9 a violent crime; and count one is of -- the last
10 indictment is assault and battery with intent to kill
11 and possession of a weapon during the commission of a
12 crime.

13 Now, each indictment and each count of each
14 indictment charges a separate and distinct offense and
15 you must decide each count of each indictment
16 separately on the evidence and the law applicable to
17 that count, uninfluenced by your decision on any other
18 count of any other indictment.

19 And a Defendant may be convicted or acquitted on
20 any or all of the offenses charged and you will be
21 asked to write a separate verdict of guilty or not
22 guilty for each indictment.

23 Now, necessarily, you must determine the
24 credibility or believability of the witnesses who have
25 testified in the case. And it becomes your duty, as

1 jurors, to evaluate the evidence and determine which
2 evidence convinces you that it is true.

3 And then determining the believability of the
4 witnesses, you may believe one witness over several, or
5 several over one. You may believe a part of the
6 testimony of a witness and reject the remaining part.
7 You may believe the testimony of a witness in its
8 entirety or reject that testimony in its entirety.

9 And you may consider whether the witness has an
10 interest in the result of the trial, whether the
11 witness is prejudice towards either, the State or the
12 Defendant; the opportunity for the witness to have seen
13 the matters and things about which the witness has
14 testified, and the way the witness acts on the witness
15 stand, or what we call a witness' demeanor.

16 There has been evidence presented that witnesses
17 have made prior statements which are not consistent
18 with the witness' testimony at trial. And you may use
19 this evidence to decide whether to believe the witness.

20 You may also use evidence of earlier
21 contradictory statements to determine the truth of
22 those statements. And it is up to you, the jury, to
23 decide whether to believe the earlier statements or the
24 testimony given at trial.

25 And I would tell you that a person who has a

1 past criminal record, is competent to testify during a
2 trial. A past record does not affect the ability of
3 that witness to testify. The past record may only be
4 considered by you, if at all, in determining the
5 witness' believability or credibility.

6 Remember, you are the sole judges of the facts
7 in the case and of the believability of any and all of
8 the witnesses' and the evidence.

9 You have also heard the evidence that the
10 Defendant was convicted of a crime other than the ones
11 for which he is now on trial. And this evidence may be
12 considered by you, if you conclude it to be true, only
13 in deciding whether the Defendant's testimony is
14 believable, and for no other purpose. You must not
15 consider the Defendant's prior record as evidence of
16 the Defendant's guilt of the crimes for which we are in
17 this trial today.

18 Now, the Defendant has pled not guilty to all
19 these indictments and that plea puts the burden on the
20 State to prove the Defendant guilty.

21 A person charged with committing a criminal
22 offense in South Carolina is never required to prove
23 themselves innocent. And I charge you that it is a
24 cardinal and a single rule of the law that the
25 Defendant in a criminal trial will always be presumed

1 to be innocent of the crimes for which indictments have
2 been issued, unless guilt has been proven by evidence
3 satisfying you of guilt, and beyond reasonable doubt.

4 Now, reasonable doubt is the kind of doubt which
5 would cause a reasonable person to hesitate to act.
6 And reasonable doubt may arise from the evidence which
7 is in this case, or from the lack or absence of
8 evidence in the case. And you, the jury, must
9 determine whether or not reasonable doubt exists as to
10 the guilt of the Defendant as to each separate count of
11 each indictment.

12 The State has the burden of proving each and
13 every element of a crime beyond a reasonable doubt.
14 And any reasonable doubt that you may find in your
15 deliberation should be resolved in favor of the
16 Defendant.

17 Now, a statement alleged to have been made by
18 the Defendant has been admitted into evidence in the
19 case. And while the court has determined that the
20 statement is admissible, I instruct you that you make
21 the ultimate decision of whether or not the Defendant
22 made the statement. If the Defendant did make the
23 statement, you must determine whether the statement was
24 made by the Defendant voluntarily and of his own free
25 will.

1 This means that the statement was not caused by
2 pressure, force, fear, threats, coercion or
3 intimidation, or by a hope or a promise of leniency or
4 a reward of any kind. In determining whether the
5 statement was voluntary, you should consider both the
6 characteristics of the Defendant and the details of the
7 questioning.

8 Some of the factors that you must consider are
9 the age of the Defendant, the Defendant's education or
10 lack of education. The Defendant's mental ability or
11 capacity. The Defendant's IQ or intelligence quotient
12 or level. The Defendant's background and environment.
13 The place and length of the detention. The nature of
14 the questioning, and the advice or lack thereof to the
15 Defendant of his constitutional rights, including but
16 not limited to the right to remain silent; that any
17 statement could be used against him in court. And the
18 right to have a lawyer present. That if he could not
19 afford a lawyer, a lawyer would appointed to represent
20 him without any cost. And that he could stop making
21 the statement at any time. And you must carefully
22 consider all of the surrounding circumstances before
23 you give any weight to the alleged statement.

24 The State has the burden of proving beyond a
25 reasonable doubt that the alleged statement was made

1 voluntary. And if you determine it was, you may give
2 the statement any further consideration that you deem
3 proper.

4 You must decide what weight, if any, should be
5 given to the alleged statement. And if you determine
6 the alleged statement was not the free and voluntary
7 statement of the Defendant, you should not consider the
8 statement at all.

9 Now, the Defendant has raised the defense of an
10 alibi. And in order to establish an alibi, it must be
11 shown that the Defendant was at another specified place
12 at the time the crime was committed. And that it was,
13 therefore, impossible for the Defendant to have been at
14 the scene of the crime. Mere denial of presence at the
15 scene of a crime does not constitute an alibi.

16 There is no burden on the Defendant to prove an
17 alibi, the burden is on the State to prove beyond a
18 reasonable doubt that the Defendant was actually
19 present at the scene of the crime, actually
20 participated in it and was not somewhere else.

21 Now, at issue in this case, is the
22 identification of the Defendant as the person who
23 committed the crime charged or crimes charged. The
24 State has the burden of proving identity beyond a
25 reasonable doubt. And you must be satisfied beyond a

1 reasonable doubt of the accuracy of the identification
2 of the Defendant before you may convict the Defendant.
3 Identification testimony is an expression of belief or
4 impression by a witness, you must determine the
5 accuracy of the identification of the Defendant and you
6 must consider the believability of each identification
7 witness in the same way as any other witness.

8 You may consider whether the witness had an
9 adequate opportunity to observe the offender at the
10 time of the offense. And this will be affected by
11 things like how long or short a time was available, how
12 far or close a witness was; the lighting conditions,
13 whether the witness had a chance to see or know the
14 person in the past.

15 Once again, I instruct you the burden of proof
16 on the State extends to every element of each crime
17 charged, and this specifically includes the burden of
18 proving beyond a reasonable doubt the identity of the
19 Defendant as the person who committed the crimes.

20 Now, in every case, there are two types of
21 evidence which are generally presented at trial. They
22 are known as direct and circumstantial evidence.
23 Direct evidence is the testimony of a person who claims
24 to have actual knowledge of a fact, such as an eye
25 witness. It is evidence which immediately establishes

1 the main fact to be proved.

2 Circumstantial evidence is proof of a chain of
3 facts and circumstances indicating the existence of a
4 main fact. It is evidence which immediately
5 establishes collateral facts from which the main fact
6 may be inferred.

7 Circumstantial evidence is based on inference
8 and not on personal knowledge or actual observation.
9 The law makes absolutely no distinction between the
10 weight or value to be given to either direct or
11 circumstantial evidence, nor is a greater degree of
12 certainty required of circumstantial evidence than of
13 direct evidence. You should weigh all of the evidence
14 in the case.

15 After weighing all of the evidence, if you are
16 not convinced of the guilt of the Defendant beyond a
17 reasonable doubt, you should find the Defendant not
18 guilty.

19 Now, the Defendant is charged with burglary in
20 the first degree. The State must prove beyond a
21 reasonable doubt that the Defendant entered a dwelling
22 without consent.

23 A dwelling is a building or a portion of a
24 building in which a person ordinarily sleeps. A
25 building constructed as a dwelling, that has never been

1 occupied, cannot considered a dwelling for purposes of
2 burglary. But a building is a dwelling, even if the
3 residents are temporarily absent from the building.

4 Now, in order to prove that the Defendant
5 entered the dwelling, the State does not have to show
6 that the Defendant's entire body entered the dwelling.
7 The smallest entry is sufficient. It may be any part
8 of the body, such as a hand or a foot or even an
9 instrument, such as a hook or other instrument. And in
10 addition, the State does not have to prove that force
11 was used to gain entry.

12 Next, the State must prove beyond a reasonable
13 doubt that the Defendant intended to commit a crime
14 either a felony or a misdemeanor at the time of the
15 entry. The mere entry into a dwelling without consent
16 is not burglary. If the intent to commit a crime is
17 formed after the entry, it is not burglary.

18 On the other hand, if the Defendant intended to
19 commit a crime at the time of the entry, it is a
20 burglary even if the intent was abandoned after the
21 entry. It does not matter that the crime intended was
22 not committed. Now, intent may be shown by acts and
23 conduct of the Defendant and other circumstances from
24 which you may naturally and reasonably infer intent.

25 Finally the State must prove beyond a reasonable

1 doubt at least one of the following: That when
2 entering, while in the dwelling or when fleeing, the
3 Defendant or an accompish was armed with a deadly
4 weapon.

5 A deadly weapon is any article, instrument or
6 substance which is likely to cause death or great
7 bodily harm. Whether an instrument has been used as a
8 deadly weapon depends on the facts and circumstances of
9 each individual case.

10 The following are examples of instruments which
11 may be deadly weapons: A pistol, a shot gun, a rifle,
12 a dirk, a dagger, a knife, a sling shot, metal
13 knuckles, a razor, gasoline, a fire bomb or even
14 lighter fluid. And a gun may be a deadly weapon even
15 if it is not operating.

16 Next, one of the things that the -- one of the
17 criteria that the State must prove when entering, or
18 while in the dwelling, or when fleeing, the Defendant
19 or an accompish caused physical injury to anyone not
20 participating in the crime.

21 Next, when entering, while in the dwelling, or
22 when fleeing, the Defendant or an accomplice, used or
23 threatened to use a dangerous object.

24 Next, when entering, while in the dwelling, or
25 when fleeing, the Defendant or an accomplice displayed

1 what was or appeared to be a knife, pistol, revolver,
2 rifle, shot gun, machine gun or other firearm.

3 And, finally, the Defendant entered or remained
4 in the dwelling in the nighttime. Nighttime is the
5 period between sunset and sunrise, during which there
6 is not enough daylight to recognize a person's face
7 except by artificial light or moonlight.

8 Now, the Defendant is also charged with assault
9 and battery with intent to kill. In order to prove
10 assault and battery with intent to kill, the State must
11 prove beyond a reasonable doubt that the Defendant
12 committed an unlawful act of a violent nature to the
13 person of another with malice aforethought.

14 An assault occurs when a person unlawfully
15 attempts or offers to commit a violent injury upon
16 another person and had the present ability to complete
17 the attempted or intended injury. An assault is the
18 intentional creation of a reasonable fear of immediate
19 bodily harm. It is not necessary that the attempted
20 injury or harm actually take place.

21 For example, if I were to walk up to you on the
22 street, and draw back -- when we're within reach, I
23 draw back to hit you, that is an assault.

24 A battery is the unlawful touching of another
25 person by a person who has committed the assault. An

1 unlawful touching can be caused by a part of the
2 accused's body or by any object the accused puts in
3 motion. A battery is the completion of the assault by
4 using or applying force to another person, however
5 slight, in a rude, angry or resentful manner, without
6 legal justification for doing so. Using my earlier
7 example, if I carry through the assault by hitting you,
8 that is the battery.

9 Now, malice is defined as hatred, ill will or
10 hostility towards another person. It is the
11 intentional doing of a wrongful act without just cause
12 or excuse, and with an intent to inflict an injury or
13 under circumstances that the law will infer an evil
14 intent.

15 Malice aforethought does not require that the
16 malice exist for any particular length of time before
17 the act is committed, but malice must exist in the mind
18 of the Defendant just before and at the time the act is
19 committed. Therefore, there must be a combination of
20 previous evil intent and the act.

21 Malice aforethought may be expressed or
22 inferred. These terms, expressed and inferred, do not
23 mean different kinds of malice, but merely the manner
24 in which malice may be shown to exist, that is either
25 by direct evidence or by inference from the facts and

1 circumstances which have been proved.

2 Express malice is shown when a person speaks
3 words which express hatred or ill will for another or
4 when the person prepared beforehand to do the act which
5 was later accomplished. For example, lying in wait for
6 a person or any other acts of preparation going to show
7 that the deed was within the Defendant's mind, would be
8 express malice.

9 Malice may be inferred from conduct showing a
10 total disregard for human life. An inferred malice may
11 also arise when the deed is done with a deadly weapon.
12 A deadly weapon is any article, instrument or substance
13 which is likely to cause death or great bodily harm.
14 And whether an instrument has been used as a deadly
15 weapon depends on the facts and circumstances of each
16 case.

17 The following are examples instruments which may
18 be deadly weapons. A pistol, a shot gun, a rifle, a
19 dirk, a dagger, a knife, a sling shot, metal knuckles,
20 a razor, gasoline, a fire bomb or Molotov cocktail or
21 lighter fluid. And a gun may be a deadly weapon even
22 if it is not operating.

23 Now, if the facts are proved beyond a reasonable
24 doubt, sufficient to raise an inference of malice to
25 your satisfaction, this inference would be simply an

1 evidentiary fact to be considered by you, along with
2 all of the other evidence in the case, and you give it
3 the weight that you think it deserves.

4 And a specific intent to kill is not an element
5 of assault and battery with intent to kill, but there
6 must be a general intent to commit serious bodily
7 injury. Intent means intending the result which
8 actually occurs, not accidentally or involuntarily. An
9 intent may be shown by acts and conduct of the
10 Defendant, and other circumstances from which you may
11 naturally and reasonably infer intent.

12 Evidence of the character of the assault, the
13 character of the instrument used, the manner in which
14 it was used, the purpose to be accomplished and the
15 resulting wounds or injuries may be considered in
16 determining the intent with which the assault was
17 committed.

18 Intent may be inferred when it is demonstrated
19 that the Defendant voluntarily and willfully commits an
20 act, the natural tendency of which is to destroy
21 another's life.

22 Now, assault with intent to kill, the Defendant
23 is charged with assault with intent to kill. In order
24 to prove assault with intent to kill, the State must
25 prove beyond a reasonable doubt that the Defendant,

1 with malice aforethought, unlawfully attempted or
2 offered to commit a violent injury upon another person
3 and had the present ability to complete the attempted
4 injury.

5 An assault is the intentional creation of a
6 reasonable fear of immediate bodily harm. It is not
7 necessary that the attempted injury or harm actually
8 take place. For example, if I walk up to you on the
9 street and when we are within arms reach, I draw back
10 to hit you, that is an assault.

11 The same definition of malice that I described
12 to you in my charge to you on the indictment for
13 assault and battery with intent to kill, applies to
14 this indictment as well. So that assault with intent
15 to kill -- excuse me -- assault with intent to kill
16 contains all of the same elements as assault and
17 battery with intent to kill, except it does not require
18 the element of battery, which is the unlawful touching
19 of another person by a person who has committed the
20 assault.

21 Now, the Defendant is also charged with
22 possession of a weapon during the commission of or
23 attempt to commit a violent crime. The State must
24 prove beyond a reasonable doubt that the Defendant was
25 in possession of a firearm or physically displayed or

1 what appeared to be a firearm during the commission of
2 a violent crime.

3 A firearm means any machine gun, automatic
4 rifle, revolver, pistol or any weapon which will, is
5 designed to, or may be readily converted to expel a
6 projectile. And in order to find the Defendant guilty
7 of possession of a weapon during the commission of a
8 violent crime, you must first -- first find the
9 Defendant guilty of any either committing a violent
10 crime, or attempting to commit a violent crime. And I
11 will tell you, that burglary in the first degree,
12 assault and battery with intent to kill, and assault
13 with intent to kill are violent crimes under the law of
14 our state.

15 South Carolina Code of Law Section 16-23-30
16 reads in part, "it is unlawful for a person who has
17 been convicted of a crime of violence in a court of the
18 United States, the several states, commonwealths,
19 territories, possessions or the District of Columbia to
20 possess a handgun". The State must prove beyond a
21 reasonable doubt that the Defendant possessed a hand
22 gun and (2) has been convicted of a violent crime.

23 A handgun is any firearm designed to expel a
24 projectile and designed to be fired from the hand. It
25 shall not include a firearm generally recognized or

1 classified as an antique, collector's item, or that
2 does not fire free fixed cartridges.

3 The parties have entered a stipulation that the
4 Defendant has been convicted of a violent previous
5 crime -- previously convicted of a violent crime under
6 the laws of the State of South Carolina.

7 Now, ladies and gentlemen, we have prepared a
8 verdict form, which we will send back into the jury
9 room with you. On each separate charge -- there are
10 four indictments. One indictment contains two counts.
11 So there are five separate offenses which you must
12 consider. And I, again, remind you, each must stand on
13 its own merits.

14 You may find one of two verdicts, and that is
15 either guilty or not guilty. And there is an
16 appropriate place -- I think it's self explanatory.
17 When the jury has reached their verdict, Mr. Foreman, I
18 would ask that you fill out the appropriate -- check
19 the appropriate place and sign your name.

20 I want to tell you, ladies and gentlemen, all
21 twelve of you must agree on your verdict. Your verdict
22 must be unanimous. And that is to each separate
23 charge.

24 I want to tell you, your verdict cannot be based
25 on sympathy, passion, prejudice, emotion or any other

1 consideration that is not in evidence in the case. You
2 have no friends to reward and you have no enemies to
3 punish.

4 So, Mr. Foreperson, we are going to excuse you
5 all back to your jury room, which I know you are
6 probably glad to see at this point. I ask you not yet
7 to begin your deliberations. I have to go over my
8 charge, which I have just given you, with the attorneys
9 to make sure that I did not misstate something or omit
10 something.

11 When the verdict form comes back to you, along
12 with all the evidence in the case, you may begin your
13 deliberations. And the only thing I will tell you, is
14 that if you desire to listen to a disk, you need to let
15 us know and we will arrange it, make that available for
16 you. Okay.

17 And the other thing is I will be -- I would
18 caution you, you saw the officers using gloves when
19 they handled some of this evidence, and I -- I suggest
20 to you that perhaps you shouldn't handle it, but you
21 can certainly look at it. If you feel that you have to
22 handle it, please let us know. Okay.

23 And with that, ladies and gentlemen, I'll excuse
24 you back to your jury room with the exception of Ms.
25 Lambrecht. I have to ask you to stay. Say goodbye to

1 your new friend.

2 (Whereupon, the jury left the courtroom at 11:44
3 a.m.).

4 **JUROR:** Do you want me to stay right here?

5 **THE COURT:** Well, I would love for you to stay
6 right there, but you don't have to. I want to tell
7 you, Ms. 7, that you have -- you have been just as good
8 a juror as all the other 12. You have paid just as
9 close attention. You are just as qualified. And this
10 is always a hard part for me, especially after a long
11 trial, is to tell you that are not allowed to go back
12 and deliberate. That maybe a relief, it may not, I
13 don't know. But you -- the law only allows 12.

14 **JUROR:** That's fine.

15 **THE COURT:** So you are released. And you are
16 finished with your service. And you're also free to
17 talk about the case with whoever you would like to.

18 I want to tell you that if someone comes up to
19 you, talks to you, and you don't want to talk about it,
20 and they persist, just let us know about that and you
21 let the clerk's office know, because I will not have a
22 juror be intimidated or harassed in any fashion.

23 **JUROR:** Okay.

24 **THE COURT:** Thank you so much for your service.
25 All right, any exception or objection to the charge?

1 **MS. HODGE:** None from the State, Your Honor.

2 **MR. JOHNSTON:** Not from the defense.

3 **THE COURT:** Okay. Y'all help Madam Court Reporter
4 go through this evidence and we'll send it.

5 (Whereupon, the evidence and verdict form were
6 sent to the jury at 11:56 a.m).)

7 (Whereupon, at 12:15 p.m., jury requests CD/DVD
8 player.)

9 (Whereupon, at 12:26 .m., a CD/DVD player was
10 sent to jury.)

11 (Whereupon, at 2:12 p.m. notice from jury,
12 verdict reached.)

13 (Whereupon, court reconvened at 2:16 p.m.)

14 **THE COURT:** All right. I have been informed that
15 we have a verdict.

16 (Whereupon, the jury entered the courtroom at
17 2:17 p.m.)

18 **THE COURT:** All right, Mr. Foreman, I understand
19 you have reached a verdict?

20 **MR. FOREMAN:** We have.

21 **THE COURT:** All right. If you would please hand
22 it to the bailiff.

23 **THE CLERK:** Your Honor, the State of South
24 Carolina vs. Ronnie Cleveland Swofford, Jr., number
25 one, as to the indictment 2009-GS-23-9403, the charge

1 of burglary first degree, we, the jury, find the
2 Defendant guilty.

3 Number two, as to the indictment
4 2011-GS-23-7263, the charge of assault with intent to
5 kill upon Rikki Danielle Edwards, we, the jury, find
6 the Defendant guilty.

7 Number three, as to the count one of indictment
8 2009-GS-23-9404, the charge of assault and battery with
9 intent to kill on Curtis Wooten, we, the jury, find the
10 Defendant guilty.

11 Number four, as to the count two of the
12 indictment, 2009-GS-23-9404, the charge of possession
13 of a weapon during the commission of a violent crime,
14 we, the jury, find the Defendant guilty.

15 Number five, as to the indictment
16 2009-GS-23-9405, the charge of possession of a pistol
17 by a person convicted of a violent crime, we, the jury,
18 find the Defendant guilty.

19 These are certified that the decision was
20 unanimous by the jury. Signed by our foreman, John
21 Potter.

22 Ladies and gentlemen, if you agree these are the
23 verdicts you reached in your deliberation room, would
24 you please raise your right hand?

25 (All jurors raised their right hand.)

1 **THE COURT:** Anything further from the jury from
2 the State?

3 **MS. HODGE:** Not from the State, Your Honor.

4 **THE COURT:** From the defense?

5 **MR. JOHNSTON:** Not from the defense.

6 All right. Mr. Foreman, and ladies and
7 gentlemen, I want to thank you very much for your
8 service this week. You all have done an incredible
9 job. It's hard work. I hope what I told you early
10 comes -- is true, that you would find the deep sense of
11 satisfaction to have served your community in this
12 fashion.

13 This case could not have been resolved any other
14 way, except to ask a jury to come and listen to the
15 facts, make the sacrifices you have made, to arrive at
16 this resolution. So I want to thank you so much for
17 your service.

18 I am happy to tell you, it's Thursday afternoon.
19 You have finished your service for the week. And
20 you're free now to talk about it with whoever you would
21 like to talk about it, the case with. You're also free
22 not to talk about it.

23 And if someone approaches you and wants to talk
24 and you want to talk, great. If they bother you or
25 persist, and you tell them no, just tell the clerk's

1 office who it was that was bothering you, because I'll
2 fix the problem. We're not going to have jurors being
3 intimidated or harassed in any fashion whatsoever.

4 So thank you all so much for your service. And
5 I believe you're free to go, stay, whatever you would
6 like to do. We will have -- downstairs, we have got --
7 if you need something for your work, we will have that
8 for you.

9 Thank you so much for your service.

10 (Whereupon the jury was released at 2:21 p.m.)

11 **THE COURT:** Okay. Anything further?

12 **MS. HODGE:** Not from the State, Your Honor.

13 **MR. JOHNSTON:** No, sir, other than sentencing.

14 **THE COURT:** All right. Any motions?

15 **MR. JOHNSTON:** No, sir.

16 **THE COURT:** Okay. All right. What did you say --

17 **MR. JOHNSTON:** Sentencing, Your Honor.

18 **THE COURT:** Yeah. I understand. Is there any
19 motions?

20 **MR. JOHNSTON:** No, I have no other motions -- I
21 apologize -- I have no other motions regarding trial at
22 this time, no, sir.

23 **THE COURT:** All right. Great. All right. Come
24 on around.

25 **MS. HODGE:** Your Honor, this is a life without

1 parole case. The notice was served on the Defendant
2 this year by Diane Reeves, on the 23rd day of May,
3 2011. Notice was also provided to Mr. Johnston on
4 May 17, 2011. And I have got certified copies of his
5 prior convictions for the record as well.

6 **THE COURT:** All right. I -- probably, for the
7 record, that will be included in the record.

8 **MS. HODGE:** The priors are for -- there's an
9 assault and battery with intent to kill, 93-GS-42-5086.
10 A second count of assault and battery with intent to
11 kill, 93-GS-42-5084. Armed robbery, 93-GS-42-5052.
12 Kidnapping, 93-GS-42-5081. There might have been one
13 stuck -- the involuntary manslaughter one.

14 **THE COURT:** Yeah.

15 **MS. HODGE:** 93-GS-42-5080.

16 **THE COURT:** All right. Is all -- with respect to
17 service of these offenses, Mr. Johnston, anything you
18 have to say about that?

19 **MR. JOHNSTON:** Your Honor, I am not aware of any
20 irregularities in the process. I believe that the
21 Solicitor has complied with the prerequisite statute
22 and, therefore, the matter is before you properly.

23 **THE COURT:** All right. And were these served on
24 the defendant, the assault and battery with intent to
25 kill and burglary in the first degree, is that right?

1 **MS. HODGE:** Yes, sir.

2 **MR. JOHNSTON:** Yes, sir.

3 **THE COURT:** All right. Anything y'all want to
4 tell me?

5 **MR. JOHNSTON:** Your Honor, at this time, normally
6 I would offer a plea in mitigation. In light of the
7 mandatory nature of the sentence, I don't know of
8 anything that I can say other than I would ask you to
9 be as merciful as you can.

10 **THE COURT:** Anything you want to say, Mr.
11 Swofford?

12 **MR. SWOFFORD:** No, sir. I just -- the same thing,
13 sir, with an opportunity at some point in my life, if
14 this is feasible, to be able to --

15 **THE COURT:** Well, do you understand my hands are
16 tied. This is statutory. It's mandatory.

17 **MR. SWOFFORD:** Yes, sir, I understand. I just --
18 that's it. Thank you.

19 **THE COURT:** Mr. Wilson, anything?

20 **MR. WILSON:** Nothing, Your Honor.

21 **THE COURT:** Okay. Assault and battery with intent
22 to kill is 20?

23 **MS. HODGE:** Zero-ten, if it's nonviolent --

24 **THE COURT:** Okay. All right, well, I just want
25 to -- for the record, compliment the attorneys on their

1 zealous advocacy on behalf of their -- each of their
2 clients. It was an excellent trial. And I hope
3 everyone appreciates the quality of the advocacy that
4 we have seen.

5 On indictment 09-9403, which is burglary first
6 degree, life without parole.

7 Indictment, 09-9494 assault and battery with
8 intent to kill, life without parole.

9 09-9404, possession of a weapon -- I'm not sure
10 I am to sentence him on that one, am I?

11 **MS. HODGE:** A weapon's charge, possession of a
12 weapon during the commission of a violent crime?

13 **THE COURT:** Yeah.

14 **MS. HODGE:** Right.

15 **THE COURT:** Okay. No sentence.

16 On the possession of a weapon by a person
17 convicted of a violent crime, five years, and ten on
18 the assault with intent to kill. All right.

19 **MR. JOHNSTON:** Thank you, Your Honor.

20 **THE COURT:** Best of luck to you.

21 **MR. JOHNSTON:** May I approach, Your Honor?

22 (Whereupon, the hearing adjourned at 2:41 p.m.)

23

24

CERTIFICATE OF REPORTER

25

1 I, SHARON D. JONES, OFFICIAL COURT REPORTER
2 FOR THE 9th JUDICIAL CIRCUIT OF THE STATE OF SOUTH
3 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
4 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
5 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
6 THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE GENERAL
7 SESSIONS COURT OF GREENVILLE COUNTY, SOUTH CAROLINA, ON
8 THE 14TH, 15TH, 16TH AND 17TH DAY OF MAY, 2012.

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

11
12 31
13 OCTOBER 20, 2012
14

15 SHARON D. JONES,
16 OFFICIAL COURT REPORTER
17
18
19
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25



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

June 25, 2013

The Honorable Jenny Abbott Kitchings
Clerk of the S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

JUN 25 2013

SC Court of Appeals

Re: The State v. Ronnie Cleveland Swofford, Jr. – Appellate Case # 2012-212122

Dear Ms. Kitchings:

The brief of appellant and designation of matter in the above case is due to be served and filed on July 5, 2013. However, as evidenced by the enclosed affidavit, Mr. Swofford has elected to drop his appeal. I have discussed the consequences of dropping the appeal with Mr. Swofford both verbally and in writing. Because Mr. Swofford's decision to drop his direct appeal is knowing, intelligent, and voluntary after thoroughly discussing the advantages and disadvantages of pursuing a direct appeal, I respectfully request that the Court issue an order dismissing Mr. Swofford's appeal.

By copy of this letter, I am informing Salley W. Elliott of the Office of the Attorney General of Mr. Swofford's decision.

Thank you for your time and assistance in this matter.

Sincerely,

LaNelle Cantey DuRant
Appellate Defender

LCD/mpm

cc: Salley W. Elliott, Esquire
Ronnie C. Swofford

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

THE STATE,)

Respondent,)

v.)

RONNIE CLEVELAND SWOFFORD, JR.,)

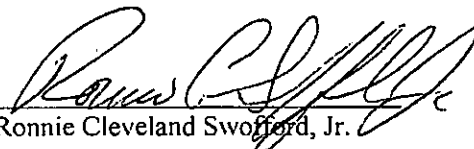
Appellant.)

IN THE SOUTH CAROLINA COURT OF APPEALS

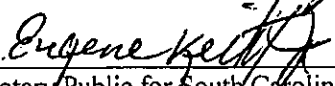
AFFIDAVIT

PERSONALLY appeared before me, Ronnie Cleveland Swofford, Jr., who being duly sworn, deposes and says:

1. I am the appellant in the above captioned case.
2. I understand that I am entitled to an appeal of my conviction, and that, because I am indigent, I am entitled to the assistance of an attorney from the South Carolina Office of Appellate Defense. I have been informed that if I drop my direct appeal that I forever waive those issues that could be raised.
3. In light of the risks which have been explained to me, it is my desire that the South Carolina Office of Appellate Defense drop the appeal formerly filed on my behalf.
4. I have made this decision on my own, with a full understanding of all the possible consequences of this action.
5. I do not wish to appeal.


Ronnie Cleveland Swofford, Jr.

SWORN TO before me this 23
day of MAY, 2013

 (L.S.)
Notary Public for South Carolina
My Commission Expires: My Commission Expires April 4, 2016

The South Carolina Court of Appeals

The State, Respondent,

v.

Ronnie Cleveland Swofford Jr., Appellant.

Appellate Case No. 2012-212122

ORDER

It appears that the appellant with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw and dismiss this matter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY

V. Claudia Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Salley W. Elliott

LaNelle Cantey DuRant

FILED
JMS 6/28/13



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 24, 2013

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Ronnie Swofford
Lower Court Case No. 2009GS2307263, 2009GS2309403,
2009GS2309404, 2009GS2309405
Appellate Case No. 2012-212122

Dear Clerk of Court:

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

Very truly yours,

Handwritten signature of Jenny A. Kitchings in cursive script.
CLERK

Enclosure

cc: Salley W. Elliott
LaNelle Cantey DuRant

RONNIE C. SWOFFORD, JR., #218281
BRCI MARION UNIT 117
4460 BROAD RIVER ROAD
COLUMBIA, SC 29210

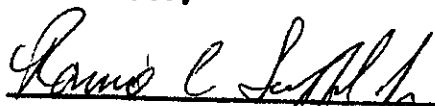
PAUL B. WICKENSIMER
CLERK OF COURT
GREENVILLE COUNTY
CIRCUIT COURT DIVISION
305 EAST NORTH STREET
GREENVILLE, SC 29601

2013 SEP 24 PM 3:05
RECEIVED
CLERK OF COURT
GREENVILLE COUNTY
CIRCUIT COURT DIVISION

DEAR CLERK,

PLEASE FIND ENCLOSED A POSTAGE PREPAID ENVELOPE
ADDRESSED TO THE DEFENDANT, TO BE USED WITH A CLOCK STAMPED
COPY OF THE DEFENDANTS MOTION TO BE RETURNED TO THE DEFENDANT.
I THANK YOU IN ADVANCE FOR YOUR ASSISTANCE WITH THIS MATTER.

SINCERELY,


RONNIE C. SWOFFORD, JR.

9-11-13
DATE

- net copy to def as req.
- a/c'd to SO

THE STATE OF SOUTH CAROLINA
County OF GREENVILLE

THE STATE

V.

Ronnie C. Swafford, Jr.

Defendant

IN the COURT OF General Sessions
13th Judicial Circuit

CASE No: 09-GS-23-9403
09-GS-23-9404
09-GS-23-9405
11-GS-23-1263

MOTION TO AMEND TO THE MOTION
FOR A NEW TRIAL BASED ON AFTER
DISCOVERED EVIDENCE, per. TO Rule
29(b) SCR CrimP.

"Priority MATTER"

2013 SEP 24 PM 3:05
CLERK OF COURT

The Defendant Request this Honorable Court to Accept the Motion to Amend to the Motion for A New TRIAL Based on AFTER DISCOVERED EVIDENCE. The Request for the Motion to Amend is by way of the SCRCP VI. TRIALS Rule 40(a)(2) and Rule 40(h) to Designate the Motion for a New Trial to the NonJury Docket; Priority of Matters. This Motion Reference for a New Trial needs an Evidentiary hearing to hear the New Evidence THATS EXCULPATORY Evidence which is Considered An "EMERGENCY MATTER" which is included under SCRCP VI. TRIALS Rule 40(h) which is governed by SOUTH CAROLINA Code of LAWS and Controlled by the Chief Judge for Administrative purposes in Cooperation with the clerk, is Responsible for Setting all matters on the NonJury Docket for Disposition. This Motion for a New TRIAL

based on After-Discovered Evidence is an "EMERGENCY matter" And should be heard immediately. The Defendant is submitting this motion PRO SE, and if the Defendant is incorrect in his request, the defendant ASKS this Honorable Court's forgiveness and to CONSTRUCT his requests liberally.

Thank you.

Sept. 11, 2013

Ronnie C. Swafford Jr.
Ronnie C. Swafford Jr.

2 of 2

the STATE OF South Carolina
 In the County of Greenville
 COURT OF General Sessions
 The Honorable Edward W. Miller

CASE No. 09-GS-23-9403
 09-GS-23-9404
 09-GS-23-9405
 11-GS-23-9263

the STATE

v.

Ronni C Swafford, Jr.

Defendant

2013 SEP 24 PM 3:05
 FILED
 CLERK OF COURT
 GREENVILLE
 SOUTH CAROLINA

Proof of Service

I, Certify that I have served the motion ~~for~~
 To Amend to the Motion For A New Trial Based on
 After Discovered Evidence, on the Clerk of Court of
 Greenville County, ATTN: PAUL B. WICKENSIMER, Circuit
 COURT Division A 305 EAST NORTH STREET, GREENVILLE
 SC 29601. By depositing the original and (1) copy
 in the United STATES MAIL postage prepaid. on
 September 11, 2013.

9-11-13

Ronni C Swafford Jr
 Ronni C Swafford, Jr.

09-9403

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS

CASE NOS. 2009GS23-9403, 9404, 9405,
AND 2011-GS-23-7263**ORDER DENYING MOTION FOR A
NEW TRIAL BASED ON AFTER-
DISCOVERED EVIDENCE AND
MOTION FOR APPOINTMENT OF
COUNSEL**

State of South Carolina,

v.

Ronnie C. Swofford, Jr.,

Defendant.

I 478818
I 478817
I 478819
I 478820
I 343291

2011 FEB 3 PM 2:34

THIS MATTER is before the Court on Defendant's motion for a new trial based on after-discovered evidence, pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure, and Defendant's motion for appointment of counsel. On May 17, 2012, a jury found Defendant guilty of first-degree burglary, assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime, and this Court sentenced him to a life sentence without the possibility of parole. In his motion for a new trial based on after-discovered evidence, Defendant alleges he is in receipt of an affidavit from a previously undisclosed eye-witness whose sworn statements support Defendant's alibi offered at trial. In his motion for appointment of counsel, Defendant argues the investigation of the new evidence and the potential for a new trial resulting from the same are beyond his knowledge and experience and require adequate representation.

This Court held a hearing on Defendant's motions on November 18, 2013, at which Defendant was present. Defendant's motions are denied.

Motion for Appointment of Counsel

Defendant argues the after-discovered evidence will "require substantial investigation, fact development, and expert assistance" from legal counsel, which he cannot retain due to his indigent status. (Def. Motion, pg. 2). "A defendant's Sixth Amendment right to assistance of counsel attaches at all critical stages of a criminal prosecution. However, this constitutional right extends only to the first right of appeal." *State v. Clinkscales*, 318 S.C. 513, 515, 458 S.E.2d 548, 549 (1995) (citing *Michigan v. Jackson*, 475 U.S. 625, 106 S.Ct. 1404, 89 L.Ed.2d 631 (1986)). As a motion for a new trial based on after-discovered evidence is not heard or determined at a critical stage, Defendant is not entitled to counsel for his rule 29(b) motion. *Id.*

Motion for New Trial Based on After-Discovered Evidence

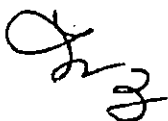
Defendant also argues he is entitled to a new trial based on the testimony of an eye-witness discovered after trial. To prevail on a motion for a new trial pursuant to Rule 29(b), SCRCrimP, the Defendant must show the evidence (1) is such as could alter the result if a new trial is granted; (2) was discovered after the trial; (3) could not have been discovered, through the exercise of due diligence, before the trial; (4) is material; and (5) is not merely cumulative or impeaching. *State v. Spann*, 334 S.C. 618, 619-20, 513 S.E.2d 98, 99 (1999).

JH2

Defendant first learned of the witness, Terry Stephens, through a handwritten affidavit Defendant received on October 29, 2012. Stephens claimed to be at the crime scene immediately before the crime occurred and said Defendant was not at the scene when Stephens left.

Defendant argues Stephens' testimony was undiscoverable prior to trial because only Stephens knew of his presence at the crime scene and Stephens did not come forward until five months after trial. Stephens' testimony was discovered after Defendant's trial, as required for a Rule 29(b) motion, and is material to the issue of Defendant's guilt; however, Stephens' affidavit and testimony do not meet the other three elements required for this Court to grant a new trial based on after-discovered evidence. At the hearing on this motion, the State said there was ample forensic evidence presented at trial, such that this after-discovered evidence would not change the result were this Court to grant a new trial. Stephens' testimony is cumulative to the other evidence presented at trial, and could have been discovered before trial through due diligence on the part of Defendant or Defendant's counsel.

In addition, a motion for a new trial based on after-discovered evidence must be supported by an affidavit of the accused which, absent a valid and sufficient reason for omission, must show the accused (1) was not aware of the existence of such evidence at the time of the trial and (2) exercised due diligence in discovering such evidence or could not have discovered the evidence even through the exercise of due diligence. *State v. DeAngelis*, 256 S.C. 364, 371, 182 S.E.2d 732, 735 (1971). Defendant's affidavit to this Court falls short of the *DeAngelis* standard. Defendant says he was not aware, before or during the trial, of the information provided by Stephens, satisfying the first requirement. Defendant does not meet the second requirement,



however, as there is no mention of whether Defendant exercised due diligence to discover the witness or the exculpatory testimony, nor any mention of whether Defendant could have discovered such information through the exercise of due diligence. Additionally, Defendant does not offer any reason, much less a "valid and sufficient reason," for the omission of this information. *Id.*

Conclusion

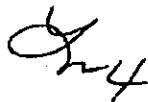
Defendant's motion for a new trial based on after-discovered evidence and motion for appointment of counsel are denied.

IT IS SO ORDERED.

December 9, 2013



LETITIA H. VERDIN
CIRCUIT COURT JUDGE



STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

The State of South Carolina,

v.

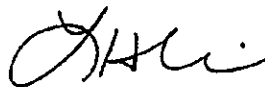
Ronnie C. Swofford,

Defendant

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUITCASE NUMBERS2009-GS-23-9403, 9404, 9405, and 2011-GS-23-
7263ORDER DENYING MOTION TO
RECONSIDERFILED CLERK OF COURT
JULIE A. COOPER
REC'D
2013 DEC 31 AM 11:31

This matter comes before the Court on Defendant's Motion to Alter or Amend a Judgment, pursuant to rule 59(e) of the South Carolina Rules of Civil Procedure. This Court interprets Defendant's motion as a Motion to Reconsider the December 9, 2013 order denying Defendant's Motion for a New Trial based on After-Discovered Evidence and for Appointment of Counsel, pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. After careful consideration, Defendant's Motion to Reconsider is DENIED.

IT IS SO ORDERED.

December 31, 2013


 LETITIA H. VERDIN
CIRCUIT COURT JUDGE

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

THE HONORABLE LETITIA H. VERDIN, Circuit Court Judge

CASE NOS 09-65-23-9403
 09-65-23-9404
 09-65-23-9405
 09-65-23-7263

THE STATE RESPONDENT

✓
RONNIE CLEVELAND SWOFFORD, JR. APPELLANT

NOTICE OF INTENT TO APPEAL

RONNIE CLEVELAND SWOFFORD, JR APPEALS THE DECISION OF THE HONORABLE LETITIA H. VERDIN IN DENYING THE APPELLANT'S MOTION FOR A NEW TRIAL BASED ON AFTER-DISCOVERED EVIDENCE PURSUANT TO RULE 29(b) SCRCMP. SIGNED ON DEC 9, 2013 THEN THE HONORABLE LETITIA H. VERDIN DENIED THE APPELLANT MOTION TO ALTER OR AMEND A JUDGEMENT PURSUANT TO RULE 59(b), SCRCMP, SIGNED DEC 31, 2013 RECEIVED BY APPELLANT ON JANUARY 18, 2014.

1-27-14

DATE

RECEIVED

JAN 31 2014

SC Court of Appeals

Ronnie C. Swofford, Jr.

RONNIE C. SWOFFORD, JR #218281

BRCI MON 243

4460 BROAD RIVER ROAD

COLUMBIA, S.C 29210

CC: SOUTH CAROLINA OFFICE OF THE ATTORNEY GENERAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS
THE HONORABLE LETITIA H. VERDIN, CIRCUIT COURT JUDGE

CASE NOS 09-65-23-9403
09-65-23-9404
09-65-23-9405
09-72-23-7263

THE STATE RESPONDENT

✓
RONNIE CLEVELAND SWOFFORD, JR. APPELLANT

I, CERTIFY THAT I, RONNIE CLEVELAND SWOFFORD JR.
HAVE SERVED THE NOTICE OF INTENT TO APPEAL ON
THE OFFICE OF THE S.C. ATTORNEY GENERAL, P.O. BOX
11549 COLUMBIA, S.C. 29211. BY DEPOSITING A COPY IN
THE UNITED STATES MAIL POSTAGE PREPAID ON JANUARY 27, 2014.

1-27-14

DATE

Ronnie C. Swofford Jr.
RONNIE C. SWOFFORD JR.

CC: SOUTH CAROLINA OFFICE OF THE ATTORNEY GENERAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS
THE HONORABLE LETITIA H. VERDIN, Circuit Court Judge

CASE NOS 09-65-23-9403
09-65-23-9404
09-65-23-9405
09-72-23-7263

THE STATE RESPONDENT

✓

RONNIE CLEVELAND SWOFFORD, JR. APPELLANT

PROOF OF SERVICE

I, CERTIFY THAT I, RONNIE CLEVELAND SWOFFORD, JR.
HAVE SERVED THE NOTICE OF INTENT TO APPEAL ON THE SC
COURT OF APPEALS, CLERK OF COURT ATTN: JENNY ABBOTT KITCHINGS
P.O. BOX 11629, COLUMBIA, S.C. 29211 BY DEPOSITING THE
ORIGINAL AND ONE (1) COPY IN THE UNITED STATES
MAIL POSTAGE PREPAID ON JANUARY 27, 2014.

1-27-14

DATE

Ronnie C. Swofford Jr.
RONNIE C. SWOFFORD JR.

CC: OFFICE OF THE ATTORNEY GENERAL

RECEIVED

JAN 31 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS
THE HONORABLE LETITIA H. VERDIN, CIRCUIT COURT JUDGE

CASE NOS 09-65-23-9403
09-65-23-9404
09-65-23-9405
09-72-23-7263

THE STATE RESPONDENT

✓
RONNIE CLEVELAND SWOFFORD, JR. APPELLANT

I, CERTIFY THAT I, RONNIE CLEVELAND SWOFFORD JR.
HAVE SERVED THE NOTICE OF INTENT TO APPEAL ON
THE OFFICE OF THE S.C. ATTORNEY GENERAL, P.O. BOX
11549 COLUMBIA, S.C. 29211. BY DEPOSITING A COPY IN
THE UNITED STATES MAIL POSTAGE PREPAID ON JANUARY 27, 2014.

1-27-14
DATE

Ronnie C. Swofford Jr.
RONNIE C. SWOFFORD JR

CC: SOUTH CAROLINA OFFICE OF THE ATTORNEY GENERAL

JANUARY 27, 2014

THE HONORABLE JENNY ABBOTT MITCHINGS
CLERK OF THE S.C. COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, S.C. 29211

RE: THE STATE V. RONNIE CLEVELAND SWOFFORD, JR

DEAR MITCHINGS:

PLEASE FIND ENCLOSED FOR FILING THE ORIGINAL
NOTICE OF INTENT TO APPEAL IN THE ABOVE
REFERENCE MATTER. ALSO ENCLOSED ARE:

1. ORIGINAL PROOF OF SERVICE UPON OPPOSING COUNSEL.
2. COPIES OF THE JUDGES ORDERS.

SINCERELY,

Ronnie C. Swofford, Jr.

RECEIVED

JAN 31 2014

SC Court of Appeals

CC: SOUTH CAROLINA OFFICE OF THE ATTORNEY GENERAL

AFFIDAVIT OF INDIGENCY

I, the undersigned, being first duly sworn upon my OATH, deposes and STATES:

1. THAT I am the Appellant in the foregoing instrument.
2. THAT I believe I am entitled to the Relief Sought.
3. THAT because of my poverty, I do not have sufficient means, monies, properties, or other securities to pay the costs for service that I Request.
4. I have \$0.00 in my prison account.

I, the Undersigned, Affirm under penalties for perjury that the foregoing Representations are true to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT

Sworn Before me this

27th DAY OF Jan., 2014

Susan H. Frye
 Notary Public for South Carolina
 My Commission Expires: _____

Rennie C. Swoboda, Jr.
 Rennie C. Swoboda, Jr.



The South Carolina Court of Appeals

The State, Respondent,

v.

Ronnie Cleveland Swofford, Jr., Appellant.

Appellate Case No. 2014-000192

The Honorable Letitia H. Verdin
Greenville County

Trial Court Case No. 2009GS2309403, 2009GS2309404,
2009GS2309405, 2009GS2307263

ORDER

It appears that the appellant wishes to withdraw and dismiss this matter. Accordingly, this matter is Dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Ronnie Cleveland Swofford, Jr., 218281

Alan McCrory Wilson, Esquire

Salley W. Elliott, Esquire

FILED

June 23, 2014



RECEIVED

JUL 10 2014

clerk

ATTORNEY GENERALS
OFFICE

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 09, 2014

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Ronnie C. Swofford, Jr.
Lower Court Case No. 2009GS2309403, 2009GS2309404,
2009GS2309405, 2009GS2307263
Appellate Case No. 2014-000192

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Ronnie Cleveland Swofford, Jr., 218281
Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire

FORM 5

STATE OF SOUTH CAROLINA

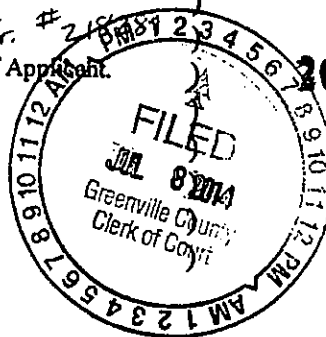
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Ronnie C. Swafford, Jr. # 218
 Full name and prison number (if any) of Applicant.

v.

State of South Carolina



2014-CP-23- 03763

APPLICATION FOR
 POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention BROAD RIVER CORRECTIONAL INST. 4460 BROAD RIVER ROAD, COLUMBIA, SC
2. Name and location of Court which imposed sentence Greenville, S.C.
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 09-GS-23-9303 - 1ST Degree Burglary.
 - (b) 09-GS-23-9304 - ABWIK
 - (c) 09-GS-23-9305 - Possession of Pistol by a Person Convicted of A Violent Crime.
 - (d) 11-GS-23-7263 - Assault with intent to Kill.
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) LWOP - May 17, 2012
 - (b) MAY 17, 2012 - 10 Sentence - Accompanying charge.

- (c) MAY 17, 2012 - 5 YEARS
 (d) MAY 17, 2012 - 10 YEARS
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. withdrew
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 6-28-13
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Rule 221(B) SCACR
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) 11/11
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel - 6th Amendment Violation
 (b) Due Process Violation - 5th + 14th Amendment Violation
 (c) Confrontation Clause Violation - 6th Amendment Violation
 (d) Newly Discovered Evidence
11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) TO BE AMENDED LATER
 (b) TO BE AMENDED LATER
 (c) TO BE AMENDED LATER
 (d) TO BE AMENDED LATER
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. New TRIAL BASED on AFTER Discovered Evidence per Rule 29(b)
SCRCrimP.
 ii. _____
 iii. _____
 iv. _____

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

- i. Greenville County General Sessions, Greenville, S.C.
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. Denied
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. 12-9-2013
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. None (^{Allegedly} Failed to do an Affidavit to Support Motion).
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
Yes
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. Newly Discovered Evidence.
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. Motion For A New Trial per Rule 29(b) SCR CrimP.
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Non-Appellable issues
- (b) Non-Appellable issues
- (c) Non-Appellable issues
- (d) Newly Discovered Evidence
17. Were you represented by an attorney at any time during the course of:

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

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

- (a) the name and address of each attorney who represented you:
 - i. Andrew Johnston, 184 N. Daniel Morgan Ave, Spthg SC 29306
 - ii. Gerald Wilson, 184 N. Daniel Morgan Ave, Spthg, SC. 29306
 - iii. Chelle Camty Durant ~~P.O. Box~~ 1330 Lady St., Suite 401 Columbia, S.C. 2921
- (b) the proceedings at which each such attorney represented you:
 - i. TRIAL
 - ii. TRIAL
 - iii. Appeal (Direct)

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

VACATE Sentence and/or Remand for a new TRIAL

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

no

STATE OF SOUTH CAROLINA

County of GreenvilleRonnie C. Swafford, Jr. #218281

VERIFICATION

I, _____, 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.

Ronnie C. Swafford Jr

SWORN to and subscribed before me this 19th
day of June, 2014.

Susan H. Frye (L.S.)
Notary Public

Commission Expires
March 5, 2018

My Commission Expires: _____

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

I, Ronnie C. Scofield, Jr. #219281, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Ronnie C. Scofield Jr.
Applicant

SWORN or affirmed to and subscribed before me this
19th day of June, 2014.

Awsan H. Frye
Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

W

MR. Wickensimer.

Please Clock STAMP the
Copy of My PCR And Return for
my Records. Prepaid Postage envelope is
enclosed. I Thank you for your
help.

Sincerely,

Ronnie C. Snoff Jr

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-3763
COUNTY OF GREENVILLE	)	
	)	
Ronnie Cleveland Swofford, Jr.,	)	
S.C.D.C. No. 218281,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed July 8, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the November 2009 term of General Sessions for first-degree burglary (2009-GS-23-9403), assault and battery with intent to kill (ABWIK) (2009-GS-23-9404, count 1), possession of a weapon during commission of a violent crime (2009-GS-23-9404, count 2), possession of a pistol by a person convicted of a violent crime (2009-GS-23-9405) and at the September 2011 term for assault with intent to kill (AWIK) (2011-GS-23-7263). Andrew Johnston, Esquire and Gerald Wilson, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On May 17, 2012, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of life imprisonment without parole for first-degree burglary, life imprisonment without parole for

ABWIK,¹ 5 years for possession of a pistol by a person convicted of a violent crime, and 10 years for AWIK.

A notice of appeal was filed at the South Carolina Court of Appeals. The Applicant's motion to relieve LaNelle C. DuRant, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense was denied by order filed February 15, 2013. The Applicant indicated he wished to withdraw his appeal. The Court of Appeals filed an order on June 28, 2013 dismissing the appeal. The Remittitur was sent on July 24, 2013.

The Applicant filed a pro se motion for a new trial based on after-discovered evidence pursuant to Rule 29(b), SCRCrimP on July 23, 2013. By order filed December 9, 2013, the Honorable Letitia H. Verdin denied the motion. On December 31, 2013, Judge Verdin filed an order denying the Applicant's motion to reconsider. The Applicant filed a notice of appeal at the South Carolina Court of Appeals. After the Applicant indicated his desire to withdraw his appeal, the Court of Appeals dismissed the matter on June 23, 2014. The Remittitur was sent on July 9, 2014.

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

II.

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

1. Ineffective assistance of trial counsel.

¹ The Applicant was not sentenced on the accompanying possession of a weapon during commission of a violent crime conviction because he received the life imprisonment without parole sentence.

2. Due process violation.
3. Confrontation clause violation.
4. Newly discovered evidence.

In an "Amended Application to Applicants P.C.R. Application" filed August 12, 2014, the Applicant made the following allegations:

1. Ineffective assistance of trial counsel:
 - a. Failed to investigate facts of the crime and the crime scene and failed to present an adequate defense based on the facts.
 - b. "[D]amaging opening arguments . . . lied to the jury and bolstered the States case."
 - c. Failed to impeach victim's testimony and credibility with victim's medical records.
 - d. Failed to employ a forensic psychologist to impeach identification testimony by the victim.
 - e. Failed to cross-examine the State's DNA expert Gibson "on the blood test on the section of the law, and the processing of a hair w/ possible root."
 - f. Failed to effectively cross-examine the State's DNA expert Hefney "in testing the hair w/ possible root."
 - g. Failed to cross-examine or impeach forensics witnesses about processing and preserving evidence.
 - h. Failed to move to suppress "section of the wall evidence" due to failure to follow chain of custody procedures.
 - i. Failed to object to "false testimony regarding evidence by the victim referencing blood on a bullet in the wall."
 - j. "Repetitive inquires of 'false evidence' in reference to blood of Applicant that does not exist."
 - k. Failed to request a curative instruction "to disregard testimony of false evidence regarding blood of the Applicant."
 - l. Failed to request a jury charge that jurors are not to accept opening and closing arguments by attorneys as evidence.
 - m. Failed to impeach victim's contradictory statements with evidence seized by police.
 - n. Failed to object to prejudicial remarks by the prosecutor in closing arguments.
 - o. Failed to consult with a medical expert regarding the reliability of the witness/victim identification, "witness memory was obviously impacted by medical trauma."
 - p. Failed to move to suppress "all testimony in reference to blood belonging to the Applicant."
 - q. Failed to object to prosecutor's comments on the Applicant's

- assertion of the right to remain silent.
- r. Failed to object to hearsay evidence from Rikki Edwards.
- s. Failed to include the Applicant in the investigation in developing the facts and preparing the case.
- t. Failed to object when the Applicant was not properly served notice of intent to seek life imprisonment without parole.
- 2. Due process violation:
 - a. Prosecutor knowingly solicited and failed to correct false statements and evidence.
 - b. Prosecutor obtained a conviction through misinformation and failing to produce all material evidence at trial.
 - c. Prosecutor made prejudicial comments during closing argument.
 - d. Forensics experts failed to properly process evidence and maintain a proper chain of custody.
 - e. Trial judge failed to give a jury charge that jurors are not to accept opening and closing arguments by attorneys as evidence.
 - f. Trial judge interjected himself into the process during a proffer hearing by telling the prosecutor what questions to ask and telling the detective how to answer those questions.
 - g. Jury was exposed to extrinsic evidence.
 - h. Prosecutor intended to seek a life sentence if the Applicant did not take a plea bargain solely to punish him for exercising his right to a jury trial.
 - i. Witness Rikki Danielle Edwards was not at the trial.
 - j. Trial court admitted testimonial hearsay statements of Rikki Danielle Edwards (who was not at trial).
 - k. State failed to properly serve notice of intent to seek life imprisonment without parole upon the Applicant.
- 3. Confrontation clause violation:
 - a. Trial court admitted "testimonial hearsay evidence made by Rikki Danielle Edwards."
- 4. Newly discovered evidence:
 - a. "Mr. Terry Stephens (eye witness) states he was at the crime scene and gave a sworn affidavit . . . and has agreed to testify at the hearing."

III.

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

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 on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises

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

IV.

The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the alleged evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (citation omitted) (emphasis added). This Court notes the Applicant has failed to articulate the exact nature of the “new evidence.” The Applicant has not shown that the alleged evidence meets any of the requirements for after-discovered evidence. The Respondent submits the Court should summarily dismiss this allegation.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for Respondent

January 13, 2015

THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Ronnie C. Swofford Jr.
Applicant

V.

STATE OF SOUTH CAROLINA
Respondent

IN THE COURT OF ⁷⁶⁹
Common Pleas

CA. No 2014-CP-23-3763

~~Plaintiff~~ ^{Applicant} Memorandum in
Support of Newly Discovered
Evidence, pursuant to Rule
59(c) and 60(b) SCRCP

The ~~Plaintiff~~ ^{Applicant} herein submits this memorandum in Support
of his Allegation on Newly Discovered evidence, pursuant
to Rule 59(c) and 60(b) SCRCP.

The Sworn And Signed Affidavit by Mr. Terry Stephens
stating "He" was at the home of Mr. Curt Wooten merely
seconds before the Alleged Incident stated by the Alleged
Victim(s) took place. Mr. Stephens states as an "EYE witness"
gives a detailed account of events seconds before the
Alleged Incident occurred stating "HE" physically saw what
transpired and rebuts the Allegations by the STATE. This
Affidavit being backed by Mr. Terry Stephens willingness to
testify, serves as After-Discovered, Relevant, and Exculpatory
Evidence, to prevail on this claim for a New Trial
the following CLARK TEST must be met:

1. That the Evidence is such as will probably change the results
if a New trial is granted.
 2. That it has been discovered since trial.
 3. That it could not have been discovered before trial by
the exercise of Due Diligence.
 4. That it is Material to the issue
 5. That it is not merely Cumulative or impeaching,
- 1 of 4

On May 17, 2012 The Defendant was sentenced to Life without Parole per statute by The Honorable Edward W. Miller, the conviction was given by a jury. The Defendant is citing case

STATE V. SPANN 334 SC 618, 513 SE2d 98 (1998)	Citing
STATE V. PRINCE 316 SC 57, 447 SE2d 177 (1993)	See
HAYDEN V. STATE 278 SC 610, 299 SE2d 854 (1983)	

The following Meritorious reasons are shown by the Defendant to prevail on this claim of After-Discovered Evidence:

1. The Defendant was on trial for 1st Degree Burg., ABWIX, AWIK, poss. of a firearm in commission of a violent crime. The Defendant advanced the Defense theory of ALIBI. The State advanced the prosecution theory of ALIBI BIAS. There is a critical dispute between the Defense and Prosecution of Particular Facts of this case. The Defendant states he was not at the crime scene at any time of the Alleged Incident. The Evidence of "EYE WITNESS" Testimony by Mr. Terry Stephens will change the result of this case if a New Trial is granted, and give a different Investigative theory as to what actually happened at the Crime Scene that night.

2. The Defendant received a Handwritten Sworn Affidavit (Copy enclosed) on October 29, 2012 by U.S. mail. The Defendant then received a typed Sworn Affidavit on March 8, 2013 by U.S. mail (Copy enclosed) by Mr. Terry Stephens. This information was after trial, Trial commenced on May 14, 2012 and ended May 17, 2012. A Sworn Affidavit by the Defendant not knowing of such information existed before or during the Defendants trial (Copy enclosed).

3. The Evidence was undiscoverable without Mr. Terry Stephens coming forward on his own free will with this "Relevant and Exculpatory Evidence" stating "HE" (Mr. Stephens) was in FACT at the home of Mr. Wooten. on the morning and seconds before the Incident occurred.

4. The Affidavit by Mr. Terry Stephens is Material because Mr. Stephens admittedly states "HE" saw what took place on the morning of Monday, July 27, 2009 at the home of Mr. Wooten. As an EYE WITNESS giving detailed information, and stating the Defendant Ronnie Swofford "WAS NOT THERE".

5. Mr. Terry Stephens Confession of the detailed account of events moments before a crime took place, Physically being there and Eye Witnessing a chain of events Sworn by Affidavit and willing to testify to such, *therefore being different than the Alleged Victim(s) testimony.*

In JOHNSON V. CATOE 345 SC, 389, 548 SE2d 587 (2001)

The Supreme Court of SC granted a stay of execution to determine if a New Trial was warranted due to an Eye Witness providing a new version of her previous statements. In his Dissent of JOHNSON V. CATOE, Justice Pleicones found that the CONFESSION would probably change the result if a New Trial were granted. In reaching this finding, he noted that "Our System of Justice Reveres the Probative value of Confessions" JOHNSON V. CATOE 345 SC 389, 403, 548 SE2d 587, 594 (2001) (Pleicones, J., Dissenting).

In his dissent on JOHNSON V. CATOE, Justice Waller held: "I believe to deny Johnson a new trial in the face of a confession by someone who was admittedly present when the murder was committed would constitute" "A Denial of Fundamental Fairness Shocking to the Judicial Sense of Justice" JOHNSON V. CATOE 345 SC 389, 401, 548 SE2d 587, 593 (2001) Waller, J., Dissenting quoting (BUTLER V. STATE 302 SC 466, 468, 397 SE2d, 87, 88 (1990)

In NEWSON V. UNITED STATES 311 F2d 74 (5th Circuit 1962) after a conviction at trial Newson submitted a Motion for a New Trial. The Court reasoned that another jury may find reasonable doubt under the facts presented in the Motion for a New Trial and held that the District Court erred in denying the Motion for a New Trial. The Court stated "Every Practicable Precaution must be taken to insure that the Verdict really Speaks the Truth, For if it does not an innocent person may be imprisoned". Id at 79

STATE V. DOCTOR (SC 1992) 306 S.C. 527, 413 SE2d 36

The EYE WITNESS testimony that initially was not able/available to testify was After-Discovered Evidence because: 1. Was in detail to the in court testimony 2. Served to Exculpate the Defendant, and 3. Contradicted the testimony of the Victim, who was the sole witness thus the exclusion of the Statements was not harmless.

STATE V. WILLIAMS (SC 1917) 108 SC 295, 93 SE 1006

The right to a New Trial on Newly Discovered Testimony, when sufficient, is a fully settled and guaranteed by the Law as any other, and This right cannot be lost because a New Trial had once been refused upon facts wholly different from and not involving THIS NEWLY DISCOVERED TESTIMONY.

The Defendant has held from day 1, that He is not guilty. The admissions of Mr. Stephens is supported by a Sworn Affidavit to being at the home of Mr. Wooten moments before the incident occurred, giving a full detail of events that took place. The SUPREME COURT of the UNITED STATES has held:

A CONFESSION is like no other Evidence. Indeed, the Defendants own confession is probably the most Probabtive and Damaging Evidence that can be admitted against him. The Admissions of a defendant come from the actor himself, the most knowledgeable and Unimpeachable Source of information about his past conduct certainly Confessions have a profound impact on a jury, so much that we may justifiably doubt its ability to put them out of mind, even if told to do so. ARIZONA V. FULMINATE 499 US 279, 296, 111 SCT 1246, 1257 (1991)

CONCLUSION

The Defendant respectfully moves this Honorable Court to hear such Motion and allow an Evidentiary Hearing to determine the facts of such Evidence to allow a New Trial for the Defendant to be granted. The Defendant request that a Hearing be as soon as possible to have this information put on record.

2-2-15

DATE

4 of 4

Rennie C. Swafford Jr.
Rennie C. Swafford Jr.

TO:

WHOM THIS MAY CONCERN:

After working Early Monday Morning 7-27-09 I text Curt to see if he was out, so that I could meet him somewhere to buy something for some pain I was having. He text back stating he'll be home in about an hour or so. I text back around 2am to see if he had made it in and he then text back saying in about 30 more minutes, so I drove over and waited at McDonald's for a few minutes until I saw his red truck go down past McDonald's towards his house. I text and said I'm down the street be there in just a minute. I pulled up & Curt was just backing into the driveway in the front of his house, so I parked at the bottom of the driveway because his driveway is very steep. I walked up to the front door and heard Curt and a short lady with black hair arguing. I then knocked on the screen door and he motioned for me to come on in the lady was cussing and crying and headed towards the back of the house down the hallway. I followed Curt into the kitchen, Curt continue yelling thru the house at the lady and she also was yelling back at him also. Curt unlock the back door and said lets step outside and talk. As I was about to step outside Curt went to grab

a pill bottle and as I was looking back, the lady stepped around the corner cussing and raising hell and pointing a gun in our direction, but missed at Curt. I wasted no time and dipped out the back door and just seconds later I heard 2 or 3 shots, I then took off. I looked up at the house and saw Curt at the front door shoot a gun towards the driveway. I went home in Greenville and never saw them again. I was on parole and didn't want to know what happen. I never saw anyone get shot. I found out 6 months later that Swafford was charged with a shooting, but I didn't want to get involved. I knew he wasn't guilty because he wasn't there. My conscience has really bothered me for years over this. I was suppose to testify on his behalf on another issue with Curt and I was going to tell about me being there that night. I again backed away because I felt my parole would be violated and I didn't want to deal with this after. I was told of his guilty verdict. I felt bad and it's bothered me everyday. I heard the girl never showed up and I know why bc she pulled the gun on Curt. I saw it.

I don't know how this may apply to Ronnie Swafford case but I swear this to be a true statement and wants to make the courts aware of this statement

and will testify to this.

Terry Stept

Sworn Before Me this
23rd Day of October, 2012

Juanita 2 Hagg
Notary Public for South Carolina
My Commission Expires: May 5, 2016

I Ronnie C. Swafford, Jr. the Applicant Being Sworn Under OATH THAT I, Ronnie C. Swafford, Jr. Received the Sworn Affidavit by Mr. Terry Stephens on OCTOBER 29, 2012, indicating that "HE" Mr. Stephens WAS AN EYE WITNESS TO THIS INCIDENT. FURTHER, I Ronnie C. Swafford Jr. 1. WAS NOT AWARE OF the evidence or existence of Such evidence AT THE TIME OF the trial or During the trial.

2. Could not have discovered the evidence even through the exercise of Due Diligence.

2-3-15

DATE

Ronnie C. Swafford Jr.

Ronnie C. Swafford Jr.
386 Redemption Way

Mc Cormick, S.C. 29899

Sworn Before me this

04 Day of February, 2015.

04 Feb 2015

J. Frankle

NOTARY PUBLIC FOR THE STATE OF S.C.

my Commission Expires: 12-16-2019

My Commission Expires December 16, 2019

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Ronnie C. Swafford Jr.
Applicant

v.

STATE OF SOUTH CAROLINA
Respondent

In the Court of
Common Pleas

C.A. NO. 2014-CP-23-3763

Certificate of Service

I certify that I have served the
S.C. Attorney's General's Office, P.O. Box 11549
Columbia SC 29211, by depositing the original
of the "Applicant's Memorandum in Support of Newly
Discovered Evidence, pursuant to Rule 59(e) and 60(b)
SC.RCP." in U.S. mail postage prepaid. on February
2, 2015.

2-2-15
DATE

Ronnie C. Swafford Jr.
Ronnie C. Swafford Jr.
386 Redemption Way
McCormick, S.C. 29899

RECEIVED

FEB 11 2015

Referred to Rangan/Km
Answered _____

CC: Greenville County Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) COURT OF COMMON PLEAS

Ronnie C. Swofford, Jr.,)
Applicant,)
v.) Case No. 14-CP-23-3763
State of South Carolina)

TRANSCRIPT OF HEARING

The within HEARING in the above-captioned matter was held October 21, 2015, before The Honorable Perry H. Gravely in Courtroom 6 of the Greenville County Courthouse, East North Street, Greenville, South Carolina; attended by counsel as follows:

APPEARANCES:

R. Mills Ariail, Esq.
....Appearing for Applicant

Karen Ratigan, Esq.
OFFICE OF ATTORNEY GENERAL
...Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org

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- None Entered -

Ronnie C. Swofford, Jr. v State of South Carolina
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Post-conviction relief Hearing of October 21, 2015
Before The Honorable Perry H. Gravely

3

1 THE COURT: Which one is this?

2 MS. RATIGAN: This is Ronnie
3 Swofford, Your Honor. May it please the
4 Court this is Raeford Ronnie Cleveland
5 Swofford, Jr., versus the State of South
6 Carolina. The docket number is 2014-CP-43-
7 3763.

8 Mr. Swofford was indicted for first
9 degree burglary, assault and battery with
10 intent to kill, possession of a weapon during
11 the commission of a violent crime, possession
12 of a pistol by a person convicted of a
13 violent crime and assault with intent to
14 kill.

15 He was represented on these charges by
16 Mr. Johnston and Mr. Wilson.

17 The case was brought to trial in May of
18 2012. Mr. Swofford was found guilty at that
19 time. On May 17th of 2012, Judge Miller
20 sentenced him in concurrent terms of life
21 without parole for first degree burglary,
22 life without parole for the ABWICK charge,
23 five years for possession of a pistol, ten
24 years for assault with intent to kill.

25 Mr. Swofford did file a direct appeal.

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Testimony of Ronnie Swofford - Direct Examination

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1 However, he indicated he wished to
2 withdraw that appeal so the Court of Appeals
3 dismissed it in June of 2013.

4 Apparently, Mr. Swofford also filed a
5 Rule 29 Motion in General Sessions. Judge
6 Verdin denied that Motion by written order
7 December 21st, 2013. That order is in your
8 packet, Your Honor.

9 Mr. Swofford filed a notice of appeal on
10 the 29 Motion. And then again indicated that
11 he desired to withdraw that appeal, and the
12 Court of Appeals dismissed that matter in
13 June of 2014.

14 This application was timely filed, Your
15 Honor, and the State is ready to proceed.

16 THE COURT: All right. I'll be
17 glad to go ahead and hear from you.

18 MR. ARIAIL: Yes, Your Honor, I'm
19 ready to proceed and I call Mr. Swofford to
20 the stand.

21 THE COURT: Mr. Swofford, if
22 you'll come forward.

23 (WITNESS TAKES STAND)

24 RONNIE SWOFFORD, having been duly sworn
25 to tell the truth, and noting but the truth,

Ronnie C. Swofford, Jr. v State of South Carolina
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Testimony of Ronnie Swofford - Direct Examination

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1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. ARIAIL:

4 Q. Mr. Swofford, how you doing today?

5 A. Doing great, Mills.

6 Q. Good. I want to go through -- and
7 you've got a rather lengthy PCR application
8 with numerous items that's been made a part
9 of the record. Also, the transcript is
10 currently a part of the record.

11 I want to go through and tell Judge
12 Gravely a little bit about your case and kind
13 of move along with this.

14 A. Okay.

15 Q. You have filed this PCR application.
16 You were represented at that time at the
17 trial by Mr. Johnson; is that correct?

18 A. And Mr. Gerald Wilson, correct.

19 Q. Both of them. They both represented
20 you during that time?

21 A. Yes, sir.

22 Q. How long had they served as your
23 attorneys after you were charged with these
24 crimes?

25 A. Maybe roughly two and a half years.

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1 Q. Okay. Now, during that two and a
2 half years did you have discussions with them
3 about the evidence in the case?

4 A. I met with them on a couple of
5 occasions. I was never given access to any
6 of the pictures or evidence that they claimed
7 they had because when I requested it, they
8 said the time is not -- you know, 'let's not
9 do that.' We would talk about stuff and
10 about what transpired before this actual
11 shooting because, there again, I'm not guilty
12 of the shooting. I could give anything --
13 part of the shooting.

14 Q. Right. Okay. And I want to go
15 through a little bit because the Judge has
16 the transcript ---

17 A. Right.

18 Q. --- but I want to get a little
19 background about what the allegations that
20 you were charged with. Can you give us a
21 little background about what they were saying
22 you did?

23 A. Initially, what they tried to say
24 was I allegedly did a home invasion. I shot
25 Mr. Wooten and shot at a female named Ricki

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1 Danielle Edwards. They said apparently -- or
2 they said a masked assailant come in with --
3 they said 5'8", 200 pounds came in and
4 started shooting. Later on they claimed that
5 Mr. Wooten shot back, hit the assailant.

6 At that time they did some DNA testing on
7 a piece of copper jacket that was found on
8 the floor, that was later identified to have
9 my DNA match to it. So, therefore, that's
10 where the charges came from.

11 I was then later charged with a shooting
12 at Ms. Edwards' about sixty days later while
13 I was on house arrest.

14 Then later on there was a section of the
15 law that where the alleged assailant was shot
16 at was tested and then somehow or other that
17 came back right before trial. And according
18 to my attorney and Ms. Hodge, it was my blood
19 that was on the wall, along with a hair.

20 Q. Okay. So there's two separate
21 incidents; correct, in this?

22 A. There was only one incident, the
23 actual -- you know, I was shot by Mr. Wooten
24 prior to this charge, accidentally.

25 Q. Okay.

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Testimony of Ronnie Swofford - Direct Examination

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1 A. And that's where, you know, that's
2 where a lot of my alibi defense came from.
3 And that's where this copper jacket
4 apparently came from, from days prior.

5 Now, this wall of this alleged blood and
6 all this other stuff, I don't really know
7 anything about it.

8 Q. Okay. So tell me what you discussed
9 with Mr. Johnston and Mr. -- about these
10 incidents and your alibi?

11 A. Well, when I specifically told them
12 that, I was not at the home. I told them
13 that I'd plead five days or six days prior to
14 this, I went by Mr. Wooten's home. He
15 appeared to be highly intoxicated with maybe
16 some sort of drug or something. There's a
17 long -- I explained to them how the incident
18 happened where I got shot. I told them that.
19 I told them that the people that knew about
20 the wound on my arm -- I gave them pictures
21 of where I was -- had bandages on my
22 birthday, which is [REDACTED], which is two
23 days before this incident happened. So I was
24 establishing to them that I already had this
25 wound, how it happened and with the alibis --

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1 with the witnesses that I provided to them.

2 Q. Okay.

3 A. Once this incident took place or
4 this alleged incident took place, that's when
5 I was arrested, and I retained or paid them
6 to be my attorneys.

7 Q. Okay. Did you explain that all then
8 what your alibi was, witnesses, all of that?

9 A. Right.

10 Q. Who were those individuals?

11 A. At the time they was my mother.

12 Shannon Lauder, which was my fiancé.

13 Terry Stephens, he did some work for me
14 here today.

15 Jeffrey Hunter.

16 Steven Parham, which was my neighbor.

17 He knew when I got home the night of this
18 alleged incident and, you know, kind of
19 verified that I was at home at this time.

20 My brother Jamie. He's the one who took
21 the picture of the wound on my arm on my
22 birthday at Kampi Tokyo.

23 Q. Right.

24 A. So we established the people that
25 had saw this prior injury to this day to

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1 establish that.

2 Q. Okay. Were any of those people
3 going to testify that you were with them at
4 the date of the incident that occurred?

5 A. They did. Shannon -- I was at home
6 that night. First of all, Steven Parham, my
7 neighbor saw when I got home that night at
8 roughly around 1:30.

9 Q. Okay.

10 A. This incident allegedly happened at
11 around 2:30 or 2:40, something like that. I
12 was with Shannon and the children. And one
13 my daughters actually -- step-daughters,
14 excuse me -- Jordan Lauder testified that I
15 was at home at this time because I actually
16 had to leave out a couple of hours later to
17 go to Charlotte to pick up some motorcycle
18 parts for my brother-in-law.

19 Q. Right.

20 A. So I had alibis all during this
21 time.

22 Q. Okay. And you provided all that
23 information to them?

24 A. Correct.

25 Q. Okay. Now, I'm going through your

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1 application just a little bit, just to
2 understand, just to divide it up a little
3 bit.

4 You had some issues in regards to how, I
5 guess, the blood evidence was handled in this
6 case; correct?

7 A. Right. Initially -- and if I may
8 refer to this -- I put in for a 29(b) after I
9 dropped my direct appeal because I felt like
10 there wasn't enough proper objections to be
11 identified to maybe make a decision on, so
12 what I did was is first of all, I got a
13 letter -- at the end of 2012, October, from
14 Terry Stephens indicating that he, in fact,
15 was at the home of the night this happened.
16 And he gave some sort of a description or
17 detailed information as to what occurred
18 while he was there.

19 And, you know, when I received this,
20 quite naturally I was happy and mad at the
21 same time. You know, I knew I didn't do this
22 to begin with, so I didn't know what to do
23 with it. So I was researching law and what I
24 should try to do. And my first step was is
25 to try to do a 29(b). It was after-

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1 discovered evidence.

2 I never could get a response from
3 Greenville County Solicitor's Office. So I
4 got in touch with Daniel Shearhouse and told
5 him that they would not respond. So he got
6 in touch with them and they responded rather
7 quickly after that. And they wouldn't give
8 me any subpoenas to subpoena the witness in
9 here for that information.

10 Q. Uh-huh.

11 A. So once I got my subpoena, I was two
12 weeks into this note, this letter that was
13 received by the solicitor's office, I'm going
14 to court on November the 15th of 2012. I got
15 the subpoena. I had to fill it out, send it
16 back to the solicitor's office for them to
17 sign and seal. And get it from -- send it
18 back to me and send it back to the sheriff's
19 office for serving, which I didn't have to do
20 because I got in here before I ever got the
21 subpoenas back. Judge Verdin denied it based
22 on the fact that the State claimed they had
23 ample forensics that put me at the crime
24 scene. And the fact that I failed to -- that
25 a procedural issue about the standard about a

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1 certain affidavit. That was her reasons for
2 denying me the motion.

3 I was going to appeal it. I dismissed it
4 after I thought about it and just went with
5 the PCR to handle this matter.

6 Q. Okay. So -- and we'll get to Terry
7 Stephens in a little bit, down the road. But
8 I want to go back to the trial and things
9 that you believe were done ineffective. And
10 I asked about the blood.

11 A. And the reason for that, okay, to
12 get about the blood. And that was -- the
13 thing about Mr. Stephens is I found about him
14 first. I didn't have my case file from Mr.
15 Johnston and Mr. Wilson at this time. I
16 didn't know what existed inside that file.
17 I'd never had access to my complete file
18 through them.

19 I was told on a couple of occasions if
20 they had the opportunity to sit down with me,
21 we could go through some stuff but that never
22 happened. The only times that we spoke about
23 my case file was when I could stop and we had
24 about thirty minutes to talk about some stuff
25 and that was relatively it.

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1 However, once I received my case file in
2 February of 2013, I started discovering a lot
3 of Motions, reports and stuff in there that
4 I'd never saw, ever.. And it really blew my
5 mind because Mr. Johnston received a report
6 from SLED from the solicitor's officer -- I'm
7 sorry, the solicitor's office from SLED --
8 about a section of the wall, which was Item
9 53 in the exhibits of the trial, the trial
10 transcript.. It was the wall where they
11 received the information off of it.. And
12 there had been some testing, some evidence,
13 blood and stuff.

14 And Mr. Johnston at that time put in for
15 a continuance for thirty days in April. They
16 granted the Motion.

17 So once we went to court, this time Mr.
18 Johnston knew that what that report said.
19 There was no blood indicated on the wall.

20 Q. Uh-huh.

21 A. And it was even testified to by Ms.
22 Gibson. Verona Gibson stated that when that
23 section of the wall was tested it was
24 negative for blood. And then Solicitor Hodge
25 repeated it. Negative for blood, okay. It

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1 was slid in there rather smooth because they
2 were talking about the victim in his blood on
3 some towel, a towel and a blanket. They went
4 right into the wall, referring to that
5 section of the wall that had the alleged
6 blood spatter on it. They went straight into
7 that. And they didn't refer to the suspect
8 because they was talking about the victim.

9 But when they said no blood indicated --
10 well, no -- negative for blood, she said,
11 okay. Mr. Johnston -- she made one more
12 comment and she asked Mr. Johnston did he
13 have any questions. He said 'I have no
14 questions for this witness.'

15 At that point I felt Mr. Johnston should
16 have -- that was an opportunity to hold item
17 39, the State's Exhibit 39 up which showed
18 the only red substance that appeared to be
19 blood and tell the jury that this was not
20 blood. Because what he did is he went in
21 opening statements and said the blood and
22 tissue at the home of Mr. Wooten belonged to
23 my client, Mr. Swofford. And what does the
24 presence of this blood mean? All right. So
25 this was a repetitive issue all the way

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1 through the trial..

2 Q. So his defense was there was some of
3 that there, but you didn't -- I mean, what
4 was the defense y'all had discussed?

5 A. Well, honestly -- and I'm going to
6 say it like this. I felt initially it was
7 the alibi defense. The way he kind of
8 curtailed at the end of trial when he said
9 'is this a staged crime scene?' And if you
10 look back at it, it looked like one now, now
11 after I've seen the evidence because the
12 blood wasn't blood. And they didn't test for
13 anything else. There was this big large area
14 of red substance that they tested and it was
15 negative. There was no blood indicated.

16 However, they even tested a bullet
17 fragment on the floor. There was no
18 appreciable stains, there was no blood on it.

19 They didn't test that material that the
20 small genetic piece that identified that.
21 And I told them, 'well, that's why I told
22 that before this.' I said, you know, this
23 incident happened prior to this.

24 The house was dirty and nasty so I don't
25 know how the person may have cleaned or where

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1 it come from. There was no blood spatter
2 around this fragment on the floor or
3 anything.

4 Q. You told them that you had been shot
5 in that house before?

6 A. Six days prior..

7 Q. Six days prior?

8 A. (Affirmative nod), of the incident
9 where his gun went off accidentally.

10 Q. And who was a witness to that that
11 you gave ---

12 A. No one was at the home but Curt and
13 myself because I had a job -- I do commercial
14 pressure washing and parking lots jobs.

15 Q. Okay.

16 A. I had stopped by there to kill some
17 time before I met with the people from Ryan's
18 Steak House to do some work.

19 Q. Did you go to the hospital?

20 A. No, sir.

21 Q. Did you get medical treatment?

22 A. No, sir. It was through and
23 through. It was probably a inch and a half
24 apart. It went in. At first I didn't know
25 that it went through and through. I ran out

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1 of the house. I stood out by my truck. And
2 I went grabbed my -- looking at my arm. I
3 started feeling to see if a bullet was in it.
4 Went back in front of the house, right by the
5 hose pipe. He had a little black curly -- I
6 mean a green curly hose pipe. I rinsed my
7 arm off. He come out scared and kind of was
8 more awake at the moment and went got me a
9 towel. I started patting my arm. I realized
10 I had an exit wound on the back side.

11 Q. Okay.

12 A. I didn't do it because Curt's a
13 convicted felon. He was my friend. I knew
14 he didn't mean to do it so I didn't see a
15 reason at that time to go to the hospital.

16 Q. Okay. Now, that's the blood issue.
17 And what I want to get into now is ---

18 A. Well ---

19 Q. --- there was -- go ahead.

20 A. If you don't mind me just kind of
21 expounding just a little about the blood
22 issue.

23 Q. Sure.

24 A. What was key about this issue is
25 when they stated the issue about the piece of

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1 fragment with the genetic material on it,
2 that was said once and it was done.

3 It was the blood all through the trial.
4 Every officer got up there, blood on the
5 wall. The detective got up there --
6 Detective Miller got up there not once but
7 twice and even was, after I've testified, Mr.
8 Miller got on the stand and Mr. Johnston went
9 with a seven-page issue with him in reference
10 to the fact that 'how do you know this' --
11 'This blood, is it in a liquid state? Is it
12 fresh blood?' And it was a long process
13 about did he have any degrees in these things
14 and he did not.

15 Q. Okay.

16 A. At first it was a good attack but
17 after I look back and realize it wasn't real
18 blood, there shouldn't have been any -- they
19 shouldn't have been kept talking to the blood
20 because the jury is listening to something
21 that doesn't exist.

22 Q. Uh-huh.

23 A. This blood was not blood. They did
24 not have one drop of blood, not one drop or
25 speck of blood in this home belonging to me.

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1 Q. Uh-huh.

2 A. But all through trial it's being --
3 I'm being put through the wringer about how
4 all of this blood of mine is in this home and
5 how did it get there and all of this other
6 stuff.

7 Even Solicitor Hodge made a long drawn
8 out process about it being red and fresh. It
9 would have brown if it'd been there for days.
10 I never said the wall came from my event.
11 And I don't know if that's what they were
12 assuming.

13 I don't even know if there's any hole in
14 the wall when I got shot. I couldn't tell
15 you that because I ran out the house and I
16 haven't been back. Because it was only a few
17 days later that this incident happened.

18 Q. Okay. Now, we go through and we
19 discussed too, there was some hair that was
20 found. Tell me what you believe that he
21 failed to do in regards to the hair evidence?

22 A. Well, initially, when this section
23 of the wall was collected -- and it was
24 labeled JDG initially by forensics expert,
25 John Derby, at 5:25 a.m. on 7/27/09. He took

1 this piece of the wall. And he said it was
2 suspected tissue, suspected fabric and a
3 suspected bullet hole. And there was never
4 mention of a hair. So I never saw the
5 evidence issue until I got my case file. But
6 as I'm going through this, this trace
7 evidence, I notice that they claim they found
8 a hair two and a half years later on the
9 wall.

10 Q. Okay.

11 A. All right. First of all, there was
12 -- I noticed that in the trial transcript
13 Detective Miller, along with Master Deputy
14 Lewis and Sergeant Shaw took this piece of
15 wall. No signing in and out of the -- they
16 didn't follow procedures for the chain of
17 custody, number one.

18 But nobody signed this out.

19 And then for eight days this piece of
20 wall was exposed to whatever the elements may
21 be, whether it was in a car. But they took
22 it back to try to find trajectory angles and
23 I understand that. But then they cut out an
24 additional four foot by one foot section of
25 the wall, with a Sawzall. And I don't know

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1 how this may have happened. I mean, I've
2 been an invited guest many of times. So it
3 wouldn't have been uncommon to find a hair in
4 the home. So I don't know when putting this
5 somewhere in the kitchen, wherever they sat
6 the wall down and doing what they were doing,
7 did they -- I felt like they didn't preserve
8 potential exculpatory evidence because there
9 was no identification of a hair.

10 The blood would have said that it wasn't
11 me. Now all of a sudden two years later
12 there's a hair.

13 Nobody's signed -- I don't know who else.
14 Just on the record there was a total of four
15 people had access to this wall and nobody
16 signed it out.

17 Q. So I guess what -- when you said
18 it's hair evidence, what did Mr. Johnston and
19 Mr. Wilson do that was ineffective in regards
20 to ---

21 A. Well, they didn't attack it, number
22 one. What kind of hair was it. There was no
23 exclusionary defense to was it a head of
24 hair. What are you saying happened here?
25 Was it an arm hair? Was it a pubic hair?

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1 None of this stuff was attacked. It wasn't.

2 I mean, was it a curly hair. Was it a

3 straight hair? I mean, at the time I had

4 relatively four or five inch length of hair.

5 So there was no defense as to this hair and

6 how it may have gotten there. And there was

7 no defense on preserving this evidence.

8 Q. Okay.

9 A. Because it was exposed by the

10 officers and it just wasn't attacked. The

11 only thing that was really questioned about

12 it is how do you determine or how do you get

13 your DNA from it and how -- no questions

14 about the hair whatsoever.

15 Q. Okay. Now, you've indicated on here

16 to and I'm taking it through. And for your

17 information, your PCR application is a part

18 of the record and the Judge can review the

19 transcript and look to see whether a lot of

20 these things. Because, I mean, you've got

21 numerous ones that ---

22 A. I do agree that there was -- some of

23 them's repetitive.

24 Q. Right.

25 A. And the reason I had done that is

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1 because those were things throughout the
2 trial that were, you know, deemed to be
3 ineffective for allowing certain things for
4 the jury to be heard or shouldn't have been
5 in evidence or should have been refuted but
6 it never was. So I just wanted to identify
7 them. And I understand that if we didn't go
8 through every single thing about the blood,
9 I'm sure Your Honor would probably see what I
10 was trying to -- I'm trying to obtain in
11 this.

12 Q. Right. And what I'm trying to
13 explain to you, this is part of the record.
14 And, you know, review and look at the
15 transcript and do that. So we're not going
16 to go over every single item on here.

17 A. Yes, sir. I understand that.

18 Q. He has that for his review. I want
19 to go through a little bit. You've mentioned
20 Ricki Edwards and there was some issue in
21 regards to ---

22 A. The hearsay?

23 Q. Correct. All of that. Tell me a
24 little bit about that so that I can
25 understand what you're saying that your

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1 attorney did that was ineffective in regards
2 to that?

3 A. Well, number one, Ms. Edwards was
4 supposed to have been a witness at this
5 trial. She never showed up. They claimed
6 they couldn't find her. But there was some
7 statements made that she made that was
8 cumulative to what Mr. Wooten was saying.

9 And initially Mr. Johnston -- I believe
10 he did try to object and the Judge allowed it
11 under the *res gestae*. And I think Solicitor
12 Hodge was trying to enforce or state an
13 excited utterance, that hearsay exception.

14 Q. Uh-huh.

15 A. But my theory on this or my belief
16 on this is after I got to looking at it, all
17 of the information that he could have at
18 least asked for a computational analysis of
19 -- initially, when she gave the statement to
20 Detective Miller, she was -- that was the
21 third person she'd spoke to.

22 And from my understanding of the
23 confrontation clause -- and, you know, I may
24 be quoting *Hammond v. Indiana* as opposed to
25 *Davis v. Washington*. At this point it's what

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1 happened and not what is happening.

2 The on-going emergency I don't believe
3 ever existed to begin with. But in this case
4 I believe it had already stopped because they
5 left the home, drove to the hospital and this
6 was at 2:44 according to 9-1-1 that Officer
7 Castle got a formal statement from Ms.
8 Edwards at around 3:10 that morning, which is
9 twenty five minutes later, after getting
10 this. And she gave her version of whatever
11 happened. She talked to Sergeant Hayes. And
12 after that, she then spoke with Detective
13 Miller.

14 Q. Okay.

15 A. And I believe, you know, based on
16 her actions and a lot of her statements were
17 very inconsistent. She was always speaking
18 in an excited utterance manner. And so
19 treating it as that, I don't know if, you
20 know, there should have been an analysis to
21 maybe he could have researched more about
22 this was obtained or how they -- you know I
23 believe he could have done an analysis during
24 trial to determine whether they should allow
25 her statements. Anything she said because

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1 Sergeant Minor said she gave my name.

2 At the end of the trial, and this was
3 during the *Jackson v Denno* maybe. So the
4 jury didn't hear that word. He said Ms.
5 Edwards gave us Mr. Swofford's name. But
6 Solicitor Hodge to the jury said she never
7 mentions his name. She didn't know him like
8 that. She never said his name, which she
9 lied to the jury.

10 Q. Right.

11 A. And so, you know, Ms. Edwards did
12 give, you know, information pertinent to my
13 name. She did talk to them about me and gave
14 the my name, saying any kind of thing that
15 would refer to her and she not being there,
16 it kind of worked in the State's favor.
17 Because it looked like that she may just not
18 want to face me or something like that.

19 Q. Right. Okay. And I want to go
20 through a little bit -- you've mentioned to
21 me the notice of life without parole. That
22 was an issue you had to -- not being served
23 with it; is that correct?

24 A. According to the State I seen in my
25 file where -- now, Mr. Johnston and I spoke

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1 on the phone. And I already knew basically
2 that I could be served life without parole.
3 But he told me that I may be being served in
4 the next few days. So in my case file that
5 I've seen of Mr. Johnston, there was a note
6 on that. I, however, was never served notice
7 by anybody. The State claimed and I told Mr.
8 Johnston and Mr. Wilson the day they
9 convicted me, they asked me was I ever
10 served. I told her, no. I told Mr. Wilson
11 -- I looked at Mr. Wilson they said, no.
12 He's never been served. I thought he would
13 have brought that up when we came to the
14 bench for sentencing. But apparently that
15 wasn't the case.

16 The Solicitor stated that Ms. Diane, Ms.
17 Diane or Diana Reeves served me at my house
18 arrest appoint, which never happened. I've
19 never met a Diana Reeves before in my life.
20 I never received any life without parole
21 paper. And according to the statute my
22 attorney and the Defendant, whatever they
23 want to call me at the time is supposed to be
24 served. I was never served life without
25 parole papers. And they never gave me any

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1 papers but they just told me that I may be
2 served. And I'm assuming the solicitor's
3 office would have been serving it.

4 Q. Now, I'm going through -- and I'm
5 trying to consolidate what you've put on
6 here. A lot of these things we've discussed
7 and I think they're included, things that can
8 be considered by the Court. I want to know
9 and I always kind of try to do this, are
10 there any other major issues that you want
11 the Court to know? I'm not saying failing
12 to, you know, object impeach evidence those
13 things.

14 A. Well, the Miss Martinez issue about
15 allowing this witness that was not part of
16 *voir dire* at our jury -- at the impounding of
17 the jury ---

18 Q. Correct.

19 A. --- which I asked to be amended to
20 this PCR.

21 Q. Tell me that individual?

22 A. Her name was Deborah Martinez.

23 Q. Okay. And she was not a part of the
24 *voir dire* in the beginning?

25 A. No, sir. She was not. In the

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1 beginning of the trial transcript the judge
2 gave a list of names of every witness.

3 Q. Uh-huh.

4 A. Her name was not on that list. Now,
5 she did -- in the trial transcript, she
6 talked and stated on the record that she
7 talked to Keith of the solicitor's office,
8 the investigator a week before trial. So
9 they knew what she was probably going to
10 testify. But they never turned her name in
11 as a witness.

12 Q. I guess there's two things I look at
13 when I deal with that. Was your attorney
14 aware of that witness?

15 A. At this point, no. I mean, unless
16 he knew that morning. I never knew she
17 existed as a witness. And when he said what
18 would she say in reference to this case, I
19 said I have no idea.

20 Q. What did she testify in regards to?

21 A. She actually got up there and said
22 something in reference to my fiancé and I had
23 gotten in an argument and she said 'I don't
24 want to go into court.' And that my fiancé
25 told her -- my fiancé told her that I shot

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1 him in self-defense. It wasn't even part of
2 the theory of the case.

3 It just -- and all due respect to Ms.
4 Martinez, she's a neighbor that's just nosey
5 and just want to be probably part of
6 something because her son was testifying on
7 my behalf. And they try to make a thing
8 about it that I was manipulating her son to
9 testify, which wasn't the case. I just told
10 him ---

11 Q. So you're saying she shouldn't be
12 allowed to testify because she was not listed
13 in *voir dire*?

14 A. And she was considered a rebuttal
15 witness. But even ten for the alibi, the
16 rules of court stated they should have been
17 turned in -- I mean, the names should have
18 been on the list for that.

19 And my thing is this is my Sixth
20 Amendment rights extend to my preemptory
21 challenges. If she was called out as part of
22 the impoundment of the jury and someday would
23 have least said 'hey, I date her' or I'm --
24 'that's my aunt or my daughter or coworker',
25 then I feel like that at that point the judge

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1 could have made a ruling on that, but it
2 never happened. And, therefore, I feel like,
3 you know, I've got somebody up there that's
4 potentially could help sway the jury in some
5 point and manner.

6 Q. Well, here's another question I've
7 got with that issue. She was called as a
8 witness. Was there anything -- you know, if
9 they weren't made aware of it, was there
10 anybody on the jury that you're aware of that
11 said, 'well, I knew that person and that
12 influenced my decision', anything of that
13 nature?

14 A. Well, see, I never got any -- I have
15 no information from the actual jury. I just
16 know that before that she testified -- after
17 I testified she came in and testified after
18 me, Ms. Martinez did. And before they
19 allowed her to come in, the judge called my
20 attorneys and the solicitor to the bench and
21 they had a meeting and then they went back.
22 And so, you know, from everything I've read
23 in the books of the law that, you know,
24 everybody's supposed -- or a prejudice is
25 presumed because of the fact that we don't

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1 know if she was canvassed and whether it
2 could have potentially made an impact on that
3 jury. At least give me the opportunity to
4 question that before the trial started.

5 Q. Okay. You've got numerous other
6 items in here and some of them are
7 repetitive. Some of them say there was a
8 failure to impeach victim's testimony.
9 Things of that nature.

10 A. Some things -- I backed off about
11 that. I mean, I don't really think -- I
12 mean, there was some stuff that -- there was
13 some things said about Mr. Wooten being in a
14 coma for thirty days and that was false. The
15 actual medical records state he was only in
16 there for five days.

17 And I felt like there were some things
18 about the -- in the medical records that Mr.
19 Johnston had access to, could have testified
20 -- or could have done that would have cast
21 some doubt about the credibility of the
22 witness because he would stretch out his
23 theory.

24 Mr. Wooten claims that he was ninety-nine
25 percent sure it was me. But when he found

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1 the bullet with my blood on it in the wall,
2 he was a hundred percent sure.

3 And with that being said, my attorney
4 didn't object to that. They found no bullet
5 in this home with my blood on it. They found
6 no bullets in the home that matched any
7 weapon they found. There was that one piece
8 -- even the fragment that they claim they
9 found in the floor that had my genetic
10 material on it, they said it was insufficient
11 to make a determination if it even matched
12 the gun that Mr. Wooten shot that night.

13 Q. Okay.

14 A. It was not consistent -- it was not
15 comparable to what was actually found.

16 Q. How was Mr. Stephens going to help
17 you win the case? What would he have done?

18 A. Well, I mean, I don't know. I mean,
19 I don't know what Mr. Stephens actually has
20 to say opposed to what I got in the letter.
21 I have not talked to Mr. Stephens in years.
22 He was an employee on occasion with me. You
23 know, he was dealing with some issues. I
24 tried to help him out with some work here and
25 there. But I know he had some health issues

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1 he was dealing with, so there was times that
2 he couldn't work.

3 When I received the letter I was, you
4 know, being that he's claiming he was at the
5 crime scene and he saw potentially happened
6 and stuff, then he can say what he needs to
7 say. I wish he would have said it prior to
8 then, but ---

9 Q. And I know -- what I'm getting to
10 is, you know, are there any other major
11 issues that you have you want the Judge to
12 consider? I know he's got the transcript.
13 He's got your application. We've gone
14 through in depth a lot of these things. I
15 want to make sure that you've got the major
16 points ---

17 A. Well, I just want to expound on one
18 thing. And it is in the reference to the
19 blood thing. It's moreso from the
20 solicitor's office. I think Ms. Hodge knew
21 that the actual results of this same blood
22 test, and they knew that my blood didn't
23 exist. And I felt like that since Mr.
24 Johnston pretty much conceded me being there
25 with this blood in the beginning, never

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1 questioning the experts to refute that 'hey,
2 this is not his blood.' And continuing to
3 get in debates with Detective Miller about
4 how fresh the blood is and how much we would
5 state the blood is, how red the blood is.
6 The solicitor expounded on the same thing.
7 She -- I felt like that there was some
8 prosecutorial misconduct being done because
9 she knew that it wasn't blood and yet she
10 didn't go and correct the misinformation or
11 the false evidence. The jury, in my opinion,
12 was probably more impacted.

13 It's common to find a hair in the home
14 that belonged to me. But to find blood
15 splattered on the wall would be uncommon.
16 And that's the case. There was no blood
17 there to say I was there.

18 And I feel like that Solicitor Hodge
19 could at least have said, 'hey this is not --
20 this blood does not belong to Mr. Swofford,
21 we'll make that clear.'

22 'However, this other stuff.' But, no,
23 all of it went uncorrected and it continued
24 in closing arguments. She expounded about
25 how fresh the blood was. How red it was and,

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1 you know, I just felt like that both
2 attorneys for the State and the Defense knew
3 what did and did not exist and the jury
4 should not have those things.

5 Q. About the blood evidence being in
6 there when it's not?

7 A. Well, correct. And then the fact
8 that there was no preservation of the wall
9 that -- you know, they don't know where the
10 hair came from before that. I mean, and the
11 way they did it with torn gloves and
12 everybody having access to this for a certain
13 amount of time without following the protocol
14 and chain of custody.

15 Q. Okay. I have no further questions.
16 Answer any questions the Court or Ms. Ratigan
17 may have for you.

18 THE COURT: Ms. Ratigan.

19 MS. RATIGAN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. RATIGAN:

22 Q. So when you met with Mr. Johnston
23 and Mr. Wilson you discussed the State's
24 evidence against you?

25 A. To extent, yes, ma'am.

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1 Q. And did they discuss with you the
2 charges you were facing and what the State
3 would have to prove at trial, the elements?

4 A. They did.

5 Q. And did they explain to you the
6 minimum and maximum sentence on each of these
7 charges that you were facing?

8 A. No, ma'am. We never discussed
9 anything about minimum and maximum.

10 Q. And I believe you testified y'all
11 kind of settled on a defense of alibi. Would
12 that be fair?

13 A. I believe that would be fair to say.

14 Q. And you were pretty forthcoming with
15 them. You told them about having been shot
16 accidentally by Mr. Wooten several days
17 before?

18 A. I was trying to be clear with them
19 about everything because they were my
20 attorneys.

21 Q. And they put up an alibi defense at
22 trial; did they not?

23 A. Did I present witnesses for alibi?
24 Yes, ma'am.

25 Q. Now, about the blood evidence. The

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1 SLED analyst, I believe her name was ---

2 A. Verona Gibson.

3 Q. No, Adrian Hefner.

4 A. Hefnee, but that wasn't the one
5 doing the blood testing.

6 Q. Okay. Well, let me ---

7 A. Okay. I'm sorry.

8 Q. Hefnee testified at trial that a
9 swab of tissue from the kitchen floor DNA
10 matched you and that a hair DNA matched you;
11 is that correct?

12 A. Yes correct.

13 Q. I'm having some trouble following
14 your blood evidence argument. Are you saying
15 now that that's not correct or that an
16 additional object was tested and that turned
17 out to not be blood?

18 A. Well, see there was no blood in the
19 home belonged to me period. I don't know how
20 to answer that in any other way. The section
21 of the wall is allegedly where this hair was
22 found.

23 Q. Uh-huh.

24 A. And that's the alleged blood spatter
25 that they were claiming to be. And that's

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1 the section that the said the assailant was
2 standing in front of when he got shot. And
3 this alleged blood was tested and it was
4 negative. Negative by testimony and no blood
5 indicated by report.

6 Q. But you just stated your blood was
7 not found in the home?

8 A. Correct.

9 Q. But how could she identify a swab of
10 tissue from the kitchen floor matching to
11 you?

12 A. I've got an exhibit that my attorney
13 has that states that when they tested that
14 for blood, they said there was no appreciable
15 stain or report, that she could not test it
16 for blood. However, she said there was a
17 small piece of genetic material that I would
18 assume to be tissue that she tested that was
19 identified to me. But she said there was no
20 appreciable stain for blood and they could
21 not do a blood test because if they did, they
22 ran a risk on damaging all of the material
23 for any testing.

24 Q. So there was no blood evidence of
25 you in the home, but there was tissue and

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1 hair. Would that be fair to say?

2 A. I wouldn't argue about the tissue.
3 I was just for about this hair was there
4 because there's some -- I just ---

5 Q. But that's what the State argued?

6 A. Yes, ma'am. That's correct.

7 Q. And your testimony today was that
8 your attorney should have attacked the hair
9 evidence. For example, what type of hair it
10 was. Why would that have mattered, the type
11 of hair?

12 A. Well, I think that the exclusionary
13 rule when you're determining something like a
14 hair, from my understanding the way most
15 authorities or forensics do this, I mean, if
16 you're saying I got shot in the arm, then you
17 could have said it was an arm hair. But if
18 you're just saying hair, the jury's going to
19 -- they say, okay, find a hair in there and
20 they tested. There was an exclusionary
21 issue.

22 I'm just curious to know what kind of --
23 if they found a head hair on the wall, I
24 mean, that couldn't been from my arm, from
25 that alleged shooting that took place. And

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1 that, the hair on my arm's not going to be
2 four inches long. Does that make sense what
3 I'm saying? That it's ---

4 Q. You believe that the type of hair,
5 if that had been examined, would have maybe
6 excluded ---

7 A. Well, I think that the jury would
8 have got a better understanding of what was
9 being said. See, they're saying that the
10 assailant, which they're claiming was me, got
11 shot in the arm. And now my blood and hair
12 is on that wall.

13 Well, we know now that the blood didn't
14 exist. All this alleged red substance was
15 not blood.

16 So what kind of hair was this? Now if
17 this was a head of hair when they come in and
18 they did all of the excessive cutting on the
19 wall, did a hair blow around in the house?
20 Did you find a couple of hairs and you only
21 tested the one that matched me. There's a
22 difference then I believe to exclude the fact
23 that I was standing in front of this wall
24 when this allegedly happened if it's a four
25 inch hair. Because it would ---

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1 Q. But you've been in the house
2 numerous times; right?

3 A. Right.

4 Q. So why would it necessarily have
5 mattered what type of hair it was when you
6 had been there numerous times. Could you
7 have shed all different types of hair all
8 over the place?

9 A. That's always possible but at the
10 same time I don't believe that -- I still
11 believe that if you're saying that I got shot
12 in front of the wall in my arm, and let's say
13 -- and with all due -- a pubic hair, if it
14 was a underarm hair, a head of hair. I mean,
15 that didn't come from my arm. Then why would
16 that piece -- why would that big piece of
17 hair be included as evidence that I did
18 something when I was an invited guest there.

19 Q. Okay. Were your attorneys served
20 with notice of life without parole?

21 A. I can't answer that. I don't know
22 if they were or not.

23 Q. When you went to trial, did you know
24 it was a life without parole trial?

25 A. I knew it when the judge said I

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1 could receive life without parole. Yes,
2 ma'am.

3 Q. But, I mean, prior to trial?

4 A. I knew that one of the sentences
5 carried life. But as far as -- did I know
6 they were going to seek life? No.

7 And I can tell you that there was -- they
8 didn't know that. From my understanding
9 there was a plea bargain or something that
10 was on the table for a year and a half that I
11 was unaware of. And I didn't even know --
12 once I got my case file, I realized that they
13 were seeking life once I didn't accept the
14 plea bargain. They said you got to June to
15 accept the plea bargain, which I never knew
16 existed through my attorneys over a year and
17 a half, that they wouldn't seek -- according
18 to my file, they wouldn't seek life without
19 parole a month earlier than when the plea
20 bargain would have expired. This is
21 information I got after I received my case
22 file.

23 Q. Okay. All but I needed to know was
24 when you went to trial that day you had no
25 idea it was a life without parole trial?

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1 A. Not until the judge said it.

2 Q. So at the end of trial, that's when
3 you ---

4 A. Oh, no. I mean, I knew -- if I'm
5 not mistaken in trial -- well, I could be
6 mistaken on that. I still knew I could
7 receive life because the charge carried life
8 without parole -- or carried life. Let me
9 rephrase that. I didn't know about the life
10 without the parole part.

11 Q. So when the Judge mentioned during
12 the trial that you could get that life
13 without parole, why didn't you tell the judge
14 at that point that you were unaware that this
15 was going to be a life without parole trial?

16 A. I went under the guidance of my
17 attorneys to direct me as needed.

18 Because once they questioned me at the
19 end of the trial about the life without
20 parole, I asked about leniency, which he said
21 his hands are tied due to statutes. And I,
22 you know, I understand that.

23 But when they asked me was I served, I
24 told them -- I looked to my right and told
25 Mr. Johnston. And he looked to his left,

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1 across to Mr. Wilson and told him I said no.
2 And I just assumed that in trial that either
3 he would have objected to it or he could have
4 stated that I was -- that I told him I was
5 not served and I could explain it then. But
6 that didn't happen until we came up for
7 sentencing.

8 Q. Okay. Now, do you have any
9 information or any evidence or any proof that
10 any of your jurors knew Ms. Martinez?

11 A. No, ma'am. I do not.

12 Q. And the issue about Mr. Stephens,
13 that was the basis of your Rule 29 Motion?

14 A. That was the initial -- yeah,
15 because I didn't have my case file to support
16 anything else.

17 Q. But that was what addressed in the
18 29 Order, correct; Mr. Stephens' testimony?

19 A. Only Mr. Stephens' testimony.

20 Q. Okay.

21 MS. RATIGAN: That's all I have,
22 Your Honor.

23 THE COURT: All right. Anything
24 further, Mr. Ariail?

25 MR. ARIAIL: No, Your Honor.

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1 THE COURT: All right. Thank you.

2 (WITNESS STEPS DOWN)

3 MR. ARIAIL: Your Honor, I call Mr.
4 Terry Stephens to the stand.

5 (WITNESS TAKES STAND)

6 TERRY STEPHENS, having been duly sworn to
7 tell the truth, and nothing but the truth,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ARIAIL:

11 Q. Thank you, Mr. Stephens, how you
12 doing today?

13 A. I'm doing good.

14 Q. How do you know my client, Mr.
15 Swofford?

16 A. I used to occasionally work for him.
17 And I was incarcerated during that time.

18 Q. Okay. Now, you've come in to
19 testify today. And I want to go through a
20 little bit about your testimony today. Is it
21 about an alibi or some type of -- I guess
22 it's not really an alibi. It would be more
23 of a situation you had with Mr. Wooten who
24 was the victim in Mr. Swofford's case; is
25 that right?

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1 A. Right.

2 Q. Okay. So you had a -- or witnessed
3 something at his house prior to the incident
4 that Mr. Swofford was convicted for; is that
5 correct?

6 A. Yes, sir. I did.

7 Q. Okay. I want you to walk through a
8 little bit of what you witnessed and what
9 happened the day you were at Mr. Wooten's
10 house?

11 A. I had talked to him earlier that day
12 about some pain pills and he was going to
13 give me some pain killers. But I worked --
14 I went home because I was driven home by Mr.
15 Swofford.

16 I got my girlfriend's car in Greenville.
17 After I left Greenville, I went back to The
18 Grill. I called him. He said he had left.
19 I said 'well, how long you going to be gone?'
20 He said 'well, not that long.' I said, okay.
21 'I'll be there waiting.'

22 When I got there, I stopped at the
23 McDonald's. And I waited there, playing on
24 the phone. I seen his truck go down the
25 road. I called him. And then I said, 'I

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1 just seen your truck go down the road. I'm
2 at the McDonald's.' He said, 'well, come on
3 now.' So I went down there to his house. I
4 went down the street. He was backing the
5 truck up the hill. He had a steep driveway.
6 I turned in the driveway and I backed back
7 out. And I pulled on the side of the curb.

8 So he came around the house and went in
9 the front door. He waited for me to come on
10 up, so I came up. Me and him went through
11 the front door. So when we went to the front
12 door, I remember at the little counter right
13 there to the right was a hallway. The other
14 side was the kitchen. I remember him and
15 some girl was arguing back and forth. She
16 was yelling from the back. He was yelling.
17 I was like, 'let me get out of here because I
18 ain't going to be involved in this.'

19 And then she came up the hallway and he
20 and her kept going, back and forth, back and
21 forth. I'm trying to get the pills and
22 leave. I'm on parole. I don't supposed to
23 be here. 'Let me get the pills and go if you
24 don't mind before y'all start that.'

25 I couldn't see her because she was a

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1 little short girl. I didn't even know she
2 was going to be there.

3 By this time, I seen her came up and she
4 had a gun. I mean, I was a gun. You know
5 what I'm saying. I said 'man, I ain't going
6 to get them pills right now. I don't want to
7 be a part of this.'

8 So I take out trying to run out the back
9 door. There was a car right there. I hit
10 the car. I heard two shots in the house. I
11 ran down that driveway trying to get to my
12 car. Mr. Wooten came out that front door.
13 He shot down the driveway, a third shot.

14 I cranked the car up, like a chicken, I
15 mean, I got out of there. I never seen,
16 heard nothing about it. I said well, 'maybe
17 it's all right.' You know what I'm saying?
18 I said I ain't going to get into that. I
19 already was running from parole.

20 I even run to Philadelphia, I have some
21 health issues, I have Stage IV liver cancer.
22 My sister and them feel like it would be best
23 for me to come up there for better treatment
24 anyway. So I went up there. I went into
25 treatment. It was said that you do have

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1 Stage IV liver cancer and your spleen and
2 all. So my sisters and them want me to just
3 stay up there with them, but I came back home
4 because my brother was missing at the same
5 time. So my sister and them told me from
6 down here that they got the two guys for the
7 murder, but they never found his body. Going
8 to be going to trial. They already had the
9 suspects but they did try them.

10 So at that time, that's when I ran into
11 Mr. Swofford. I said, 'what's been going
12 on?' How's the work going? He said, just,
13 'you know, I pick up work here and there
14 now.'

15 I ain't said no more. But then he was
16 saying he had got charged. What kind of
17 charge? I said 'what kind of charge you
18 got?' I got attempted murder, burglary. I
19 said 'How you got all that? You ain't been
20 going in no trouble. You doing fair good for
21 yourself.' And he told me about that. I
22 said, 'huh.'

23 And I was thinking. I said -- well, I
24 know he wasn't there because I was there. He
25 wasn't there. So I ain't said nothing else

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1 about it.

2 So I -- he ran back into me on some
3 pavement work. You know what I'm saying?
4 I said 'well, I need a little work.' You
5 know what I'm saying because I done violated
6 because I went to Philadelphia without
7 permission. You know, I didn't want no part
8 of that. And I know when he spoke of the
9 burglary it was on the same day, [REDACTED].

10 And him and his brother's done asked me
11 to come hang out with us for our birthday. I
12 said 'well, I ain't got no money.' He said
13 'don't worry about it.' You know, what I'm
14 saying is we're just going to have fun. And
15 then that's what we did. You know what I'm
16 saying?

17 Q. Uh-huh.

18 A. And I did that knowing it was Mr.
19 Swofford's birthday with that wrap around his
20 arm. I know it because we was all taking
21 pictures and having fun.

22 Q. And that was before the incident
23 happened when you were at the house; correct?

24 A. Yes.

25 Q. The bandage on his arm?

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1 A. Yeah. That was on our birthday. I
2 remember that, [REDACTED].

3 Q. Okay. So you're saying that you
4 knew and can say that he did -- Mr. Swofford
5 wasn't involved in that shooting that
6 happened, that you were -- that you
7 witnessed?

8 A. Right.

9 Q. Okay.

10 A. But I went there to get pills but I
11 never even get the pills. I left. I ran.

12 Q. Okay.

13 MR. ARIAIL: I have no further
14 questions, Your Honor. Thank you.

15 MS. RATIGAN: Very briefly, Your
16 Honor.

17 CROSS-EXAMINATION

18 BY MS. RATIGAN:

19 Q. So what date was it that you went
20 out to the house to get those pills from Mr.
21 Wooten. Do you remember?

22 A. I can't. I can't remember the date,
23 ma'am. That was years ago. I can't remember
24 the date. I know I had worked and I know
25 that.

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1 Q. Uh-huh.

2 A. So I went back to Greenville because
3 I was staying with his mother in Greenville.

4 Q. Uh-huh.

5 A. I didn't have no car at the time.
6 When we got there it was late and it was
7 pouring down rain. So I got her keys and got
8 that car and went back.

9 Q. But your testimony today it was some
10 time after your birthday that you went out to
11 Mr. Wooten's house for those pills or don't
12 you remember?

13 A. I don't remember. I know [REDACTED] the
14 [REDACTED] is my birthday. And I know we went out
15 to eat, me and Mr. Swofford and his family.

16 Q. Oh, I know. But what I'm saying is
17 you just don't remember if this incident with
18 Mr. Wooten was before or after that?

19 A. No, ma'am.

20 Q. Okay. And you stated you had been
21 incarcerated with Mr. Swofford. What were
22 you incarcerated for?

23 A. Me.

24 Q. Yes, sir?

25 A. Armed robbery.

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1 Q. Okay. And so you kind of became
2 friends with him while y'all were in SCDC
3 together?

4 A. No, I knowed him but we stayed in
5 two different dorms. We was on the same yard
6 but we was on two different dorms.

7 Q. And did you know him before you went
8 to SCDC?

9 A. No, ma'am.

10 Q. Okay. Now, when you went out to Mr.
11 Wooten's house to get these pills, did you
12 actually see him get shot or did you just
13 hear shots from outside?

14 A. No, I heard the shots. I didn't see
15 neither one of these shots.

16 Q. And when Mr. Wooten -- you said
17 afterwards he came outside and kind of shot
18 down the driveway?

19 A. Yeah. From the front. He came back
20 out the front door.

21 Q. Right.

22 A. I went out the back door.

23 Q. Right. So you said you saw him come
24 out and shoot?

25 A. Right. Down the driveway.

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1 Q. Yes, sir. But did you see that he
2 had any kind of injury to him or did you just
3 not notice?

4 A. No, ma'am. I didn't notice no
5 injury. I just was trying to get to that car
6 in a hurry.

7 Q. So you went up to Pennsylvania for a
8 while and then you came back and you ran into
9 Mr. Swofford. And he told you he'd gotten
10 these charges. Do you remember when that
11 was?

12 A. I don't remember -- I think it was --
13 I think I came back in 2010.

14 Q. Okay. And did you ever call the
15 police and tell them that you had some kind
16 of evidence that might help Mr. Swofford?

17 A. No. I never contact the police.

18 Q. And did you ever tell his attorneys
19 that you had some evidence that might help
20 his case?

21 A. No. I just -- I think he wanted me
22 to say that he had on the bandage prior to
23 that.

24 Q. I'm sorry. Could you repeat that?

25 A. Yeah. I think his own attorney

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1 wanted me to testify about the bandage prior
2 because I noticed the bandage on our
3 birthday. I did notice the bandage on our
4 birthday. But what happened that I didn't
5 testify was I had already violated my parole.
6 And I said I ain't going to be no part of it
7 so I left.

8 Q. But did you ever talk to his
9 attorneys or did you just talk to Mr.
10 Swofford?

11 A. I talked to the attorney.

12 Q. Okay. Do you remember if it was Mr.
13 Johnston or Mr. Wilson? Do you remember?

14 A. (No verbal response).

15 Q. Just one of those gentlemen?

16 A. Yes.

17 Q. Okay. And when you spoke to them,
18 did you tell them about this, about how you'd
19 gone out to Mr. Wooten's house or were y'all
20 just talking about the bandage on his arm?

21 A. Talking about the bandage.

22 Q. Okay.

23 MS. RATIGAN: That's all I have,
24 Your Honor.

25 THE COURT: Anything further, Mr.

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1 Ariail?

2 MR. ARIAIL: No, Your Honor.

3 THE COURT: All right. Thank you.

4 (WITNESS STEPS DOWN)

5 MR. ARIAIL: Your Honor, that is
6 our case.

7 THE COURT: All right.

8 MS. RATIGAN: Your Honor, the State
9 would call Mr. Johnston.

10 THE COURT: All right. Mr.
11 Johnston come on around.

12 (WITNESS TAKES STAND)

13 ANDREW JOHNSTON, having been duly sworn
14 to tell the truth, and nothing but the truth,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. RATIGAN:

18 Q. Mr. Johnston, do you recall
19 representing Mr. Swofford on these charges?

20 A. Yes, I do.

21 Q. And were you appointed in this case
22 or were you retained?

23 A. We were retained, Mr. Wilson and I.

24 Q. Okay. Now, was one of you retained
25 before the other or kind of jointly? Do you

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1 remember how that came about?

2 A. I believe that Mr. Wilson was
3 consulted originally. But Mr. Wilson and I
4 at the time, we worked -- we had separate law
5 practices but we were in the same building
6 and we sort of had an understanding between
7 one another that we would work together on
8 cases from time. And Mr. Wilson told me
9 about this case and asked me if I wanted to
10 be part of it. And I said I would. And then
11 we were retained.

12 Q. Okay. Now, did you file the usual
13 Brady and Rule 5 motions?

14 A. I did.

15 Q. To the best of your knowledge, did
16 you receive full discovery from the State?

17 A. To the best of my knowledge.

18 Q. And did you just independently and
19 with Mr. Wilson review that evidence?

20 A. Both as well as with Mr. Swofford.

21 Q. And obviously you probably received
22 a lot of evidence. Can you briefly summarize
23 the items you would have received in
24 discovery, just the categories of things you
25 would have received?

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1 A. Incident reports, supplemental
2 reports, witness statements and lots of
3 forensic reports. I'm sure there were
4 photographs and things like that. I'm sure
5 there were other materials as well, but just
6 describing the general categories that would
7 be in.

8 Q. And you went through all of this
9 with Mr. Swofford?

10 A. Yes, ma'am.

11 Q. Did you show him photographs? Did
12 you show him these actual documents or did
13 you just talk about the substance of these
14 items?

15 A. My practice is to -- all of the
16 documents that I get, my practice is to read
17 them out loud to the client so that I'm aware
18 of what it says and my client is aware of
19 what it says. Now, I wouldn't read verbatim
20 a forensic report. I would use my ability to
21 try to figure out what I thought was the
22 significant aspects of the forensic reports
23 and share my impressions. If there were
24 photographs or something like that, I would
25 certainly show them to my client.

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1 Q. Okay. And can you briefly summarize
2 the evidence that the State had against your
3 client that was particularly damaging?

4 A. Well, they had eyewitness testimony
5 from the purported victim, who actually had
6 known Mr. Swofford and had known him well.
7 They had been cell mates together in the
8 Department of Corrections. So you have an
9 eyewitness who knows the person rather than
10 trying to make some sort of identification or
11 something like that.

12 And then they had forensic evidence. And
13 the forensic evidence is quite complicated.
14 And I don't know that I can do justice to it,
15 but I'll try to tell you what I understood it
16 to be.

17 There was -- the State's theory was that
18 the assailant, which they claim was Mr.
19 Swofford, shot Mr. Wooten. Mr. Wooten had a
20 pistol on him as well. And that Mr. Wooten
21 returned fire. And that when Mr. Wooten
22 returned fire, a bullet struck the assailant.

23 They -- as I recollect, there were three
24 main pieces of evidence from that shooting.
25 There was a wall section, and when you're

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1 talking about the wall section, it's
2 important to note that there's the exterior
3 wall, which I guess would be the sheetrock or
4 something like that. And then there was an
5 interior part of the wall as well. And I
6 don't know if there was wood underneath it.
7 I don't recall that right now. But it was
8 also a piece of a jacket of a bullet on the
9 floor in the kitchen.

10 And there was also a piece of a
11 projectile under the sink.

12 And there was certain genetic material
13 recovered from those areas, some of which
14 matched up to what, according to the SLED
15 laboratory, was matched to Mr. Swofford. And
16 that they said that that was his genetic
17 material. His DNA.

18 Q. So I would say that that was the
19 major part of the evidence. There was also
20 some sort of off-handed statements that Mr.
21 Swofford gave that came into evidence. It
22 wasn't like a confession or anything like
23 that, but there were some statements that the
24 State used, that they attributed to him from
25 a conversation that he had with one of the

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1 police officers whose name I can't say.

2 Q. So to the best of your ability being
3 a lay person and not a scientist, were you
4 able to review all these forensic findings
5 with Mr. Swofford?

6 A. Yes.

7 Q. And did Mr. Swofford tell you that
8 he had been shot accidentally by Mr. Wooten
9 prior to this?

10 A. He didn't. He told me and Mr.
11 Wilson that he was -- he, of course,
12 concurred that he was acquainted with Mr.
13 Wooten, indicated that they had been in
14 prison together. And that they had randomly
15 run into each, I think, one day and they had
16 renewed their friendship after they had both
17 gotten out of jail. And that Mr. Swofford
18 would go to Mr. Wooten's home. He told us
19 that he would go to the home and that he
20 would visit with Mr. Wooten. And he told us
21 that on one occasion Mr. Wooten was showing
22 him a gun. I think Mr. Wooten had an
23 interest in firearms. And people who have an
24 interest in firearms, like to show their guns
25 to their friends. And I think he may have

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1 also said that Mr. Wooten was taking some
2 drugs and may have been under the influence,
3 and that that might have contributed to what
4 happened. And that basically what my
5 recollection is that Mr. Swofford said that
6 Mr. Wooten shot him by accident. And that
7 this was approximately one week before the
8 home invasion. That's my recollection of
9 what was said. And, of course, this would
10 explain why Mr. Swofford had a bullet hole in
11 his arm. And as it developed later on, we
12 used it to try and explain the presence of
13 his genetic material.

14 Q. Would it be fair to say that you
15 arrived at an alibi defense for the trial?

16 A. Yes, that would be fair to say.

17 Q. And Mr. Swofford testified there was
18 a plea offer in this case. Do you recall
19 there being a plea offer from the State?

20 A. Yes. The plea offer. to my
21 recollection, was twenty years.

22 Q. Okay. And did you convey that to
23 Mr. Swofford?

24 A. Yes, ma'am. I did.

25 Q. And I assume because ---

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1 A. In fact, I recommended that in light
2 of the strength of the evidence against him,
3 I recommended, and I think Mr. Wilson
4 concurred, that that would be his best
5 option. Because if he went to trial and he
6 was convicted, that he would face life
7 without parole because of his -- because of
8 these charges and because of his prior
9 convictions.

10 Q. Obviously, Mr. Swofford rejected it
11 because you ended up at trial, but did he
12 tell you why he rejected that twenty-year
13 offer?

14 A. I don't remember him -- he said he
15 was innocent.

16 Q. Now, he has brought the issue today
17 that there was blood spatter on a piece of
18 the wall evidence that was not blood. Does
19 that -- I've heard him testify to that but I
20 would have to tell you that I can't really
21 explain to you at this juncture all of the
22 ins and outs of that. I read the transcript
23 in preparation for today.

24 Q. Uh-huh.

25 A. And I know there was a photograph,

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1 which purportedly showed blood, which as Mr.
2 Swofford accurate stated lead to a big
3 argument between me and the police officer
4 about the quote unquote freshness of that
5 stuff.

6 Q. Right.

7 A. But as I sit here now, I can't
8 remember exactly what all was involved with
9 that. My guess is there was a photograph but
10 I don't have -- the transcript that I have,
11 of course, doesn't have all of the exhibits
12 with it. I'd have to see the exhibit again
13 to refresh my memory.

14 Q. Okay.

15 A. But this freshness issue was
16 something that the State was bringing out to
17 try and refute Mr. Swofford's claim that he
18 had been shot in the home roughly a week
19 beforehand.

20 Q. And you put up several witnesses at
21 the trial to testify about Mr. Swofford's,
22 bandage prior to this incident. Can you
23 think of anyone else you could have argued or
24 anything else you could have argued to try
25 and prove that there was this prior

1 altercation?

2 A. Well, if the photograph -- Mr.
3 Swofford provided us with some photographs.

4 Q. Uh-huh.

5 A. If the photographs had had some sort
6 of digital time stamp or something on it,
7 that would have been potentially either
8 useful or damning, depending on what that
9 would show. But basically we have the
10 photographs but it was within certainly the
11 plausible realm that the photographs were
12 taken after the incident that Mr. Wooten
13 claim, after the home invasion. There was no
14 way that the times were relatively close
15 together; there was no way to pin it down
16 precisely. Now, Mr. Swofford used his
17 birthday and he tried or he said that the
18 occasion when they went to the Kampi
19 Restaurant was on his birthday. And it
20 probably was in celebration of his birthday.
21 But whether or not it fell on that precise
22 day we have no evidence, other than Mr.
23 Swofford's statement and the mother of his
24 children's statement.

25 Q. Do your recall speaking to Mr. Terry

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1 Stephens about this case?

2 A. Yes, ma'am.

3 Q. And did he ever tell you that he had
4 been at Mr. Wooten's house and heard a couple
5 of shots being fired?

6 A. I prepared a summary of various
7 witnesses that we were going to call in the
8 case. There were a bunch of them. And I
9 summarized what I believed Mr. Stephens
10 testimony to be -- would have been in
11 preparation for the trial. And he was listed
12 under the section of what I call the alibi
13 witnesses. I had some witnesses about the
14 wound, explaining the presence of the wound.
15 And then I had what I called strictly alibi
16 witnesses. And I've written several lines of
17 his testimony or what I -- what he told us
18 his testimony would be. And he didn't
19 indicate that he was present at the Wooten
20 residence. He never told us that.
21 Basically, he told us that he had seen Mr.
22 Swofford in between the time that Mr.
23 Swofford said he was shot and the time that
24 Mr. Wooten said that he shot Mr. Swofford.
25 And that basically he saw the gun wound

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1 during that period. And there was nothing
2 about what was testified to today. The first
3 that I heard about what was testified to
4 today was Mr. Wilson's secretary -- I guess
5 he contacted Mr. Wilson's office. And Mr.
6 Wilson's secretary prepared and notarized an
7 affidavit for Mr. Stephens that goes along
8 more with what his testimony was today.

9 Q. And when would that have been?

10 A. According to the affidavit itself it
11 is October 23, 2012, which, of course, is
12 several months after the trial. Now, we
13 issued a subpoena for Mr. Stephens and he
14 didn't come to this courthouse to the best of
15 my recollection. Mr. Stephens was very
16 nervous about testifying because he believed
17 there was a warrant out for him, I didn't
18 think his testimony added anything. Again,
19 it wasn't the much more dramatic telling that
20 we got today. I didn't think that his
21 testimony about the wound was all that
22 significant. We had several other people who
23 were testifying. And, frankly, Mr. Stephens
24 a couple of other problems. He had a record.
25 I believe he had been convicted of armed

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1 robbery and he was in prison with Mr.
2 Swofford. So I sort of felt like he was a
3 witness of convenience, if you know. And we
4 had other witnesses. And we had one
5 disastrous occurrence with one of Mr.
6 Swofford's witnesses. The mother of his
7 child who had given an alibi type testimony
8 and discussed the wound and that sort of
9 thing. And they had brought in someone on
10 reply to basically say that that witness had
11 told her that Mr. Swofford had shot Mr.
12 Wooten, but that it was in self-defense. So
13 I didn't think -- long story short, I didn't
14 think Mr. Stephens' testimony was helpful.
15 Now, if he'd related the story that he did
16 today, perhaps I might have reconsidered it.
17 I don't know.

18 Q. Okay. Now, were you properly served
19 with the LWOP notice by the State?

20 A. Yes.

21 Q. And did Mr. Swofford ever tell you
22 that he had not been served?

23 A. Not to my recollection. The
24 solicitor sent a letter to me serving me with
25 the LWOP notice.

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1 Q. Uh-huh.

2 A. And in the letter it said that they
3 planned to serve him at his next -- he was on
4 home detention. That they planned to serve
5 him at his next visit to home detention.
6 Whether or not that was actually done, I
7 don't know. I don't recall ever talking
8 about that with Mr. Swofford.

9 Q. He never told you he hadn't been
10 served?

11 A. I don't recall us ever talking about
12 it in one way or the other. He indicated it
13 was going to be done. Whether or not it was
14 done, I can't say. Would Mr. Swofford, in
15 your opinion, have known when he came to
16 trial that first day that this was an LWOP
17 trial?

18 A. Well, I asked for him to be out on
19 bond. I read this in the transcript. I
20 asked for him to be -- remain out on bond
21 during the trial. And the solicitor popped
22 up and said judge, I object because he's
23 facing life without parole. Certainly, that
24 would have told him. But we discussed this
25 plea offer extensively. And as I said, I

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1 recommended it to him. And the reason I
2 recommended it to him was because of the
3 strength of the evidence against him and the
4 fact that he faced life without parole upon
5 conviction and that the Judge would have no
6 discretion on that point.

7 Q. Now, when the solicitor at trial,
8 you know, you can't release him on bond,
9 judge, it's an LWOP trial. At that point did
10 Mr. Swofford ---

11 A. I'm sorry. Would you please repeat
12 that?

13 Q. When at trial the solicitor said,
14 you know, Judge, he -- you can't remain him
15 on bond because it's an LWOP matter.

16 A. Yes.

17 Q. Did Mr. Swofford at that point say
18 anything, express any kind of surprise that
19 this was an LWOP trial?

20 A. No. Mr. Swofford well knew that he
21 faced life without parole.

22 A2:. That's all I have, Your
23 Honor.

24 THE COURT: Anything further.

25 MR. ARIAIL: May it please the

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1 Court.

2 CROSS-EXAMINATION

3 BY MR. ARIAIL:

4 Q. Mr. Johnston, how are you doing
5 today?

6 A. Fine, sir. And you?

7 Q. Good. Just to summarize a little
8 bit. Was there a 9-1-1 call in this case
9 that indicated that a female may have
10 committed the crime? Do you remember
11 anything about that?

12 A. There was a 9-1-1 call. But as I
13 sit here now I can't tell you what the
14 content of it was.

15 Q. Okay. The discussion with Mr.
16 Swofford about Mr. Stephens, did he ever
17 relay to you that Mr. Stephens was going to
18 testify on his behalf like he did today?

19 A. Well, like he did today in the sense
20 that he would testify for him, but not as to
21 the content, no.

22 Q. Okay.

23 A. My understanding of the content of
24 what Mr. Stephens would have testified to at
25 that time was again in what I prepared for

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1 myself, the memorandum of what people were
2 going to testify to because there were so
3 many witnesses.

4 Q. Okay. In this case when you said
5 there was some eyewitness testimony, the
6 assailant in the case had a mask on; is that
7 correct?

8 A. Well, there's some controversy about
9 that. I believe that there was some evidence
10 or testimony that the witnesses reported that
11 the assailant was wearing a mask. I think
12 there was also some testimony that perhaps he
13 wasn't. I think Mr. Wooten may have
14 extrapolated a bit there on what he saw as
15 far as that's concerned.

16 Q. Okay. Either way, Mr. Wooten was
17 testifying that he believed it was Mr.
18 Swofford?

19 A. Yes. And he had -- and I think this
20 is important. Apparently, when Wooten is
21 first taken to the hospital, one of the
22 police officers is there. And while they're
23 trying to tend to his medical needs, the
24 police officer comes up to him and he says
25 essentially do you know who did this to you?

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1 And the testimony was that Wooten said Ronnie
2 Swofford.

3 Q. Uh-huh. Okay. And I know he -- did
4 he ask you to object to that or there was
5 some excited utterance or some issue that
6 he's raised to me. Do you remember anything
7 about that statement?

8 A. I mean, I definitely remember the
9 statement. I cannot -- I did not then and do
10 not now know of a basis to keep it out. The
11 way that I tried to handle it was to sort of
12 discuss maybe that the police had suggested
13 that to him as opposed to him telling them.

14 Q. Okay. Now, the situation where Mr.
15 Swofford was shot by Mr. Wooten in the arm
16 the week before, did you discuss that with
17 Mr. Swofford?

18 A. Many times.

19 Q. Okay. Was that -- I guess that was
20 one of your defenses as to how you were going
21 to put him in the house or his blood or all
22 of that?

23 A. That would have explained his -- the
24 presence of his genetic material at the home.
25 And the fact that Mr. Swofford had a hole in

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1 his arm. And the police knew about the hole
2 in his arm. They'd taken a picture of it.

3 Q. Right?

4 A. So we had basically two things to
5 explain. The hole in his arm and the genetic
6 material found. And that was a handy dandy
7 way of explaining that.

8 Q. Right.

9 A. And that's what Mr. Swofford told
10 us. So I had no reason to dispute that.

11 Q. And the blood on the wall, they
12 never -- did they confirm or deny that that
13 was Mr. Swofford's blood?

14 A. Well, as I sit here right now I
15 can't tell you that for sure. I guess it's
16 possible that during the trial that the term
17 blood might have got intermingled with the
18 term genetic material ---

19 Q. Right?

20 A. --- or blood like tissue or
21 something like that. So I can't tell you as
22 I sit here exactly about that. I know there
23 was a photograph with something that was
24 purported to be blood, but what testing was
25 done on that, as I sit here now, I can't tell

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1 you.

2 Q. Okay. So the evidence in this case
3 was really the eyewitness testimony, whether
4 or not they were placing him there. The
5 forensic evidence, which was the wall
6 section, his genetic material and things
7 there. And then whether or not a jury
8 believed it was either there beforehand or it
9 got there on the day of the crime?

10 A. And the hole in his arm.

11 Q. And the hole in his arm. The LWOP,
12 so it's your testimony he was aware to your
13 knowledge that this was a life without parole
14 charge?

15 A. Yes. Now, but again, I have no
16 knowledge of whether he was actually served
17 with the document. I can't address that.

18 Q. Okay.

19 A. But I have no reason to believe --
20 he was aware of it. Let me put it that way.

21 Q. Did you consider getting any of your
22 own experts to testify about the blood or the
23 hair or any of these items?

24 A. I considered it. It struck me that
25 the better strategy was to use his

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1 explanation of having been shot there the
2 week before. That that way we didn't get
3 into a contest of scientists, their scientist
4 versus our scientist or something like that.
5 In a perfect world it would have been great
6 to have had someone to advise me about all
7 the meanings and things of this somewhat
8 complicated scientific evidence. But I went
9 with the theory that anything they found came
10 from the week before.

11 MR. ARIAIL: I have no further
12 questions, Your Honor.

13 MS. RATIGAN: I have nothing
14 further, Your Honor.

15 THE COURT: Thank you, Mr.
16 Johnston.

17 (WITNESS STEPS DOWN)

18 MS. RATIGAN: And, Judge, the State
19 would rest. We do have Mr. Wilson here today
20 but his testimony would merely be cumulative
21 to that of Mr. Johnston so the State would
22 rest at this point.

23 THE COURT: All right. Mr.
24 Ariail, anything further?

25 MR. ARIAIL: No, Your Honor. That

Ronnie C. Swofford, Jr. v State of South Carolina
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Post-conviction relief Hearing of October 21, 2015
Certificate of Court Reporter

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1 is our case.

2 THE COURT: I would note to make
3 sure -- concerning notice of the LWOP. I
4 mean, I know there have been indications
5 whether or not just before sentencing on Page
6 723. It's in the record that notice was
7 served on Defendant by Diane Reeves on May
8 the 23rd, 2011. And just there is no
9 objection or any indication like that.

10 Anything else that y'all have regarding
11 that, notice provisions? And I realize he
12 testified he didn't know Diane Reeves,
13 something like that.

14 MR. ARIAIL: No, Your Honor,
15 there's nothing further.

16 THE COURT: All right. Nothing
17 further. All right. If there are
18 sufficiently quite a list here, let me just
19 kind of go back through those. I think I
20 found most of the areas in the transcript
21 that relate to that. But let me just -- I'd
22 like to review those matters before making
23 the final decision so I'll take it under
24 advisement. Thank you, Mr. Swofford.

25 (HEARING CONCLUDED)

Ronnie C. Swofford, Jr. v State of South Carolina
Case Number 14-CP-23-3763
Post-conviction relief Hearing of October 21, 2015
Certificate of Court Reporter

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 13th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the hearing
held in the within action heard on December 2,
2015, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor
counsel to any of the parties and have no interest
in the outcome of this action.



Deborah Garrison

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Ronnie Cleveland Swofford, Jr.,)
S.C.D.C. No. 218281,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2014-CP-23-3763

ORDER OF DISMISSAL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2016 JAN 7 PM 2:45

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 8, 2014. The Respondent made its return on January 13, 2015. An evidentiary hearing was held on October 21, 2015 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Terry Stephens and one of the Applicant's trial attorneys, Andrew Johnston, Esquire.¹ The Court had before it the trial transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application and subsequent amendment, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the November 2009 term of the Greenville County Grand Jury for first-degree burglary (2009-

¹ The Applicant's second trial attorney, Gerald Wilson, Esquire, was also present but did not testify.

GS-23-9403), assault and battery with intent to kill (ABWIK) (2009-GS-23-9404, count 1), possession of a weapon during commission of a violent crime (2009-GS-23-9404, count 2), possession of a pistol by a person convicted of a violent crime (2009-GS-23-9405) and at the September 2011 term for assault with intent to kill (AWIK) (2011-GS-23-7263). He was represented by Andrew Johnston, Esquire and Gerald Wilson, Esquire.

After the State called the case to trial, the Applicant was found guilty. On May 17, 2012, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of life imprisonment without parole for first-degree burglary, life imprisonment without parole for ABWIK,² 5 years for possession of a pistol by a person convicted of a violent crime, and 10 years for AWIK.

A notice of appeal was filed at the South Carolina Court of Appeals. The Applicant's motion to relieve LaNelle C. DuRant, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense was denied by order filed February 15, 2013. The Applicant indicated he wished to withdraw and the Court of Appeals filed an order on June 28, 2013 dismissing the appeal. The remittitur was sent on July 24, 2013.

The Applicant filed a pro se motion for a new trial based on after-discovered evidence pursuant to Rule 29(b), SCRCrimP on July 23, 2013. By order filed December 9, 2013, the Honorable Letitia H. Verdin denied the motion. On December 31, 2013, Judge Verdin filed an order denying the Applicant's motion to reconsider. The Applicant filed a notice of appeal at the South Carolina Court of Appeals. After the Applicant indicated his desire to withdraw, the Court of Appeals dismissed the matter on June 23, 2014. The remittitur was sent on July 9, 2014.

² The Applicant was not sentenced on the possession of a weapon during commission of a violent crime conviction because he received the life imprisonment without parole sentence.

ALLEGATIONS

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

1. Ineffective assistance of trial counsel.
2. Due process violation.
3. Confrontation clause violation.
4. Newly discovered evidence.

In a pro se "Amended Application to Applicants P.C.R. Application" filed August 12, 2014, the Applicant made the following allegations:

1. Ineffective assistance of trial counsel:
 - a. Failed to investigate facts of the crime and the crime scene and failed to preset an adequate defense based on the facts.
 - b. "[D]amaging opening arguments . . . lied to the jury and bolstered the States case."
 - c. Failed to impeach victim's testimony and credibility with victim's medical records.
 - d. Failed to employ a forensic psychologist to impeach identification testimony by the victim.
 - e. Failed to cross-examine the State's DNA expert Gibson "on the blood test on the section of the law, and the processing of a hair w/ possible root."
 - f. Failed to effectively cross-examine the State's DNA expert Hefney "in testing the hair w/ possible root."
 - g. Failed to cross-examine or impeach forensics witnesses about processing and preserving evidence.
 - h. Failed to move to suppress "section of the wall evidence" due to failure to follow chain of custody procedures.
 - i. Failed to object to "false testimony regarding evidence by the victim referencing blood on a bullet in the wall."
 - j. "Repetitive inquires of 'false evidence' in reference to blood of Applicant that does not exist."
 - k. Failed to request a curative instruction "to disregard testimony of false evidence regarding blood of the Applicant."
 - l. Failed to request a jury charge that jurors are not to accept opening and closing arguments by attorneys as evidence.
 - m. Failed to impeach victim's contradictory statements with evidence seized by police.
 - n. Failed to object to prejudicial remarks by the prosecutor in closing arguments.

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- o. Failed to consult with a medical expert regarding the reliability of the witness/victim identification, "witness memory was obviously impacted by medical trauma."
 - p. Failed to move to suppress "all testimony in reference to blood belonging to the Applicant."
 - q. Failed to object to prosecutor's comments on the Applicant's assertion of the right to remain silent.
 - r. Failed to object to hearsay evidence from Rikki Edwards.
 - s. Failed to include the Applicant in the investigation in developing the facts and preparing the case.
 - t. Failed to object when the Applicant was not properly served notice of intent to seek life imprisonment without parole.
2. Due process violation:
- a. Prosecutor knowingly solicited and failed to correct false statements and evidence.
 - b. Prosecutor obtained a conviction through misinformation and failing to produce all material evidence at trial.
 - c. Prosecutor made prejudicial comments during closing argument.
 - d. Forensics experts failed to properly process evidence and maintain a proper chain of custody.
 - e. Trial judge failed to give a jury charge that jurors are not to accept opening and closing arguments by attorneys as evidence.
 - f. Trial judge interjected himself into the process during a proffer hearing by telling the prosecutor what questions to ask and telling the detective how to answer those questions.
 - g. Jury was exposed to extrinsic evidence.
 - h. Prosecutor intended to seek a life sentence if the Applicant did not take a plea bargain solely to punish him for exercising his right to a jury trial.
 - i. Witness Rikki Danielle Edwards was not at the trial.
 - j. Trial court admitted testimonial hearsay statements of Rikki Danielle Edwards (who was not at trial).
 - k. State failed to properly serve notice of intent to seek life imprisonment without parole upon the Applicant.
3. Confrontation clause violation:
- a. Trial court admitted "testimonial hearsay evidence made by Rikki Danielle Edwards."
4. Newly discovered evidence:
- a. "Mr. Terry Stephens (eye witness) states he was at the crime scene and gave a sworn affidavit . . . and has agreed to testify at the hearing."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

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

Ineffective Assistance of Counsel

A.

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

B.

The Applicant stated trial counsel had his case for 2.5 years but that he never reviewed the pictures and evidence. The Applicant stated he told trial counsel he was not at the victim’s house on the day in question but that he had been shot accidentally when he was there 5-6 days

before. The Applicant stated he had witnesses and photographs to demonstrate he was injured before the day in question. The Applicant acknowledged trial counsel argued an alibi defense at trial. The Applicant also acknowledged tissue and hair from the scene was matched to him but argued there was no blood evidence linking him to the scene and that trial counsel should have brought this to the jury's attention. The Applicant argued trial counsel should have attacked the hair evidence under the exclusionary rule. The Applicant stated trial counsel failed to argue Rikki Edwards' testimony should not have been allowed at trial because it was hearsay and a violation of the confrontation clause. The Applicant argued he was never served with notice of the State's intention to seek a sentence of life imprisonment without parole (LWOP). The Applicant argued the State's reply witness – Deborah Martinez – was not part of the jury voir dire. The Applicant argued trial counsel should have attacked the victim's credibility.

Andrew Johnston (hereinafter "trial counsel") was the Applicant's lead counsel. Trial counsel testified he and Gerald Wilson handled the Applicant's case. Trial counsel testified he filed discovery motions, received full discovery, and reviewed it with both Wilson and the Applicant. Trial counsel testified he read all of the documents aloud to the Applicant and showed him all of the photographs. Trial counsel testified they also reviewed the charges, the elements of the charges, and the sentence ranges for the charges. Trial counsel testified they also reviewed the forensic reports. Trial counsel explained the State's evidence was: the victim's identification of the Applicant, the forensic evidence on the wall of the victim's home, the jacket of the bullet on the victim's floor, and the projectile under the victim's sink. Trial counsel testified some of the genetic material at the scene matched the Applicant. Trial counsel testified the defense theory was that the genetic material was from the Applicant's accidental shooting at the victim's house the week prior and that the Applicant had an alibi. Trial counsel testified he

was served with the notice of the State's intent to seek a sentence of LWOP and that the Applicant knew this was an LWOP trial. Trial counsel said the State called a witness in reply (Martinez) in order to discredit testimony from the Applicant's girlfriend.

C.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have challenged the blood and hair evidence. While the Applicant argued the blood evidence was not actually blood and the type and location of the hair evidence should have been challenged, this Court does not find these arguments persuasive. The SLED expert witness testified a swab of tissue from the victim's kitchen floor and a hair taken from the victim's wall both matched the Applicant. (Trial transcript, p.264; pp.267-68). Trial counsel's defense theory was that this genetic material was from a prior accidental shooting (of the Applicant) at the victim's house and that he had an alibi for the time the victim was shot. In presenting this defense at trial, this Court finds trial counsel properly questioned the State's expert witnesses and then argued to the jury in closing argument that the State's forensic evidence was not dispositive. The Applicant has failed to prove trial counsel were deficient. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (finding in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to testimonial statements from a non-testifying witness – Rikki Edwards. This Court notes several witnesses mentioned Edwards at trial (and statements she had made). These statements, however, were clearly allowable as exceptions to the hearsay rule. See Rule 803(1), SCRE (defining present sense impression as “a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately

thereafter"); Rule 803(2), SCRE (defining excited utterance as "a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition"). As such, trial counsel were not deficient in not making an objection.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have argued that he was never served with the LWOP notice. Initially, this Court does not find credible the Applicant's assertion that he was not served with the LWOP notice. When the assistant solicitor noted at sentencing that he had been served on May 23, 2011, the Applicant did not object. (Trial transcript, p.722). Trial counsel also confirmed he had been served with the LWOP notice and stated he had no recollection of the Applicant saying that he had not been served. Regardless, this Court finds credible trial counsel's testimony that the Applicant knew the trial in his case would be an LWOP trial.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have challenged Deborah Martinez being called as a State's reply witness. Martinez was called in order to rebut testimony from defense witness (and the Applicant's girlfriend) Shannon Lawter. While Martinez was not listed as a potential witness during the jury voir dire, the Applicant has failed to demonstrate he suffered any resulting prejudice. Trial counsel did not testify he was ill prepared for this witness. Further, the Applicant failed to present any evidence from either Martinez or a juror that Martinez was known to any members of the jury. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have better challenged the victim's credibility. This Court has reviewed the trial transcript and finds the victim was thoroughly cross-examined about his account of the shooting. This Court also notes the victim was impeached with details from his first statement. (Trial transcript,

pp.106-07). This Court finds the Applicant has failed to identify an alternate line of questioning that would have been more successful in attacking the victim's credibility. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.

D.

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

Newly-Discovered Evidence

The Applicant argued trial counsel should have called Terry Stephens as a defense witness at trial.

Terry Stephens stated he used to work with the Applicant and had also been incarcerated with him at one time. Stephens stated he was at the victim's house and saw the victim come outside and shoot three times. Stephens admitted he did not know the date of this occurrence. Stephens also admitted he did not see who shot the victim. Stephens stated the Applicant had a bandage on his arm on his birthday (which was the same day as the Applicant's birthday). Stephens stated he did not tell either police or trial counsel about the shooting incident. Stephens stated the Applicant had wanted him to testify that he had a bandaged arm on his birthday but that he did not want to testify at the trial and risk a parole violation.

Trial counsel testified he spoke to Stephens before trial and that he could have been used as an alibi witness except he had a prior record, so he did not call him at trial. Trial counsel testified Stephens had not indicated prior to trial that he was present at a shooting incident at the victim's house. Trial counsel testified he had not heard this story until after the Applicant's trial.

This Court notes that, for an applicant to be granted post-conviction relief based on newly-discovered evidence, he must show the alleged evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (citation omitted) (emphasis added). This Court finds the Applicant has failed to prove any of the five elements necessary to substantiate a claim of newly-discovered evidence. This Court also finds this claim is barred by res judicata, as the issue of Stephens' alleged witnessing of a shooting at the victim's house was the subject of the Applicant's unsuccessful Rule 29(b), SCRCP motion. See Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992) (finding res judicata prohibits subsequent actions by the same parties on the same issues); see also Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 190-91, 427 S.E.2d 918, 919 (Ct. App. 1993) (holding a final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action). As such, the Applicant has failed to meet his burden of proving the existence of newly-discovered evidence. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to

present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

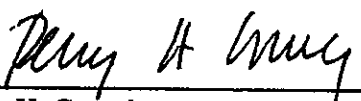
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel were not deficient and the Applicant was not prejudiced by counsels' representation. Further, the Applicant has failed to meet his burden of proving the existence of newly-discovered evidence. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 30th day of December, 2015.



 Perry H. Gravely
 Presiding Judge
 Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
RONNIE C. SWOFFORD,

APPLICANT,
VS.
STATE OF SOUTH CAROLINA,

RESPONDENT

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

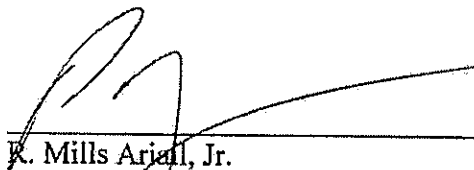
CASE NUMBER: 2014-CP-23-3763

**APPLICANT'S MOTION FOR
RECONSIDERATION**

FILED - CLERK OF COURT
GREENVILLE CO. SC.
PAUL D. WICKENS, CLERK
2016 FEB 2 AM 11:15

PLEASE TAKE NOTICE that the Applicant, Ronnie Swofford, by and through her undersigned counsel and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure move this Honorable Court for an Order to Reconsider, alter and amend and/or withdraw the Court's Order signed on December 30, 2015 and filed in Greenville County on January 7, 2016.

This Motion is supported by the brief attached, laws, statutes, and Rules of Civil Procedure of this State, and by such further legal memoranda or supporting materials as may be accepted by the Court. Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, no consultation with opposing counsel is required prior to the filing of the instant Motion and/or would serve no useful purpose.


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South Carolina Bar #15584
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Greenville, SC 29601
864-232-9390
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Greenville, SC
Date: 1/28/2016

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Ronnie C Swafford JR #218281
Applicant

V.

STATE OF SOUTH CAROLINA
Respondent

IN THE COURT OF COMMON
PLEAS

C.A. No. 2014-CP-23-3763

Rule 59 (e)

~~SCRP~~ SCRP, Motion

to Alter or Amend

A Judgment

The Applicant Respectfully submits TO THIS
HONORABLE COURT the Following exhibits to the Applicants
PCR CLAIMS in Support of the Allegations Against THE
STATE pursuant TO Rule 59(e) SCRP.

1. Exhibits A.1 through A.13 -

Supports the claims of "Ineffective Assistance of
Counsel" and "Due Process" by way of Prosecutorial Misconduct
THE Exhibits A.1 - A.13 will show by transcript Record
And Forensic Expert Reports that TRIAL Counsel Johnson
(ATTY FOR Applicant) and Solicitor Hodge both knew
before trial that "NO BLOOD" existed in the home
of the victim. ① TRIAL Counsel Johnson conceded the
Applicants guilt and bolstered the STATES CASE by stating
Repeatedly that the Applicants blood was AT the home

Of the Victim while also Arguing an Alibi Defense. Trial Counsel Johnston Received the Results from the "Wall" then ASKed for a Continuance to then Discover that there were "NO Blood Indicated" by Forensics Experts, yet trial Counsel still submitted to the Jury that the Applicants blood was in the Home of the Victim - which was false.

② "DUE Process" Solicitor Hodge also Knew that no blood evidence existed by the Applicant in the home of the Victim yet Solicitor Hodge lied to THE JURY by Submitting False Evidence. Solicitor Hodge had a Constitutional Duty to correct any and all misinformation or false testimony. THE Blood Evidence was the STATE'S most TALKed About evidence that contributed to the guilty Verdict.

Miller v. PATE, 386 U.S. 1 (1967)

Mooney v. Holohan 294 U.S. 103, 386 US 2-7 (1935)

Giglio v. U.S. 405 U.S. 150 (1972)

Violating S.C. Code of Law 16-9-10, perjury And Subornation of perjury.

In Addition, the STATE'S HEAVY Reliance on Defense Counsel's Failure to challenge the blood Evidence highlighted both the Deficiency of Counsel and the Resulting prejudice.

2. Exhibits B.1 through B.6

Supports THE CLAIM OF the Applicants Confrontation Clause violation. Rikki Danielle Edwards partial STATEMENT WAS read TO THE JURY by Det. Miller, and the Applicant HAS never had the opportunity to Confront or Cross-Examine this witness. Ms. Edwards gave the Applicants name to Police AS STATED by Sgt. Weiner TT. pg. 34 Line 23-25 and TT. pg. 35 Line 1-5 yet Solicitor Hodge Again lied to the Jury STATING MS. Edwards never gave MR. Swiftards name to Police TT. pg. 692 Line 6-11, MS. Edwards gave several different stories to Police, yet Det. Miller only says she gave a cumulative story that Mr. Wooten gave. This misinformation given by Solicitor Hodge is another example OF Prosecutorial Misconduct by the constant lies to the Jury. MS. Edwards did give MR. Swiftard's name, AS she gave A STATEMENT TO ofc. CASSEL AT THE Hospital.

3. Exhibit C.1

Supports the claim of Ineffective Assistance of Counsel. TRIAL Counsel Johnston failed to object TO THE STATES witness MS Debroah Martinez testifying. MS. Martinez WAS NOT on the STATES witness list. Also MS. Martinez WAS NOT announced to the potential Jurors during Voir DIRE. THE defendant had no knowledge that MS Martinez WAS even testifying.

THE U.S. Supreme Court has STATED many times that the 6th Amendment Right to an impartial Jury is inextricably intertwined with the right to challenge a potential Juror. THE Applicant did not have the opportunity to potentially challenge any Juror for cause or to use peremptory challenges to exclude a Juror by having knowledge or relationship of some sort with Mrs. Martinez, due to THE FACT Mrs. Martinez WAS NOT ANNOUNCED to the Jury Panel when all the witnesses were being announced. The STATE had a duty under the Discovery Rule 5 to list all witnesses for the STATE. The Applicant does not know what type of relationship Mrs. Martinez may have with a Juror or Jurors, if any at all. Yet this omission is clearly a violation of the Applicant's 6th Amendment rights.

4. Exhibit D.1

Supports Newly Discovered Evidence claim of Actual Innocence. Mr. Terry STEPHENS sent this initial letter in on October 29, 2012. The Applicant received this letter a year and a half before ever knowing that all the Forensics evidence was False. The False Evidence actually supports the Newly Discovered Evidence by Mr. Stephens and supports the Police theory that Mrs. Edwards was a person of Interest to this crime and potentially as to why she never showed up for trial.

Ex-A-1

1 - Greenville SO
2 - Greenville PD
DPS - Detection
☐ Other

Greenville County Department of Public Safety
Criminal Justice Support-Property Report

1. Status - Check one only: ☐ Found ☐ Safekeeping
☐ GS Evidence ☐ MCM Evidence: ☐ Recovered ☐ Seizure/FF ☐ Other

2. Case No. 01-07-119378

3. Date and Time Impounded: 7/27/09 0525 It is mandatory to submit a laboratory analysis request form for all articles requiring laboratory or forensic processing. P & E Use only: S3-1

4. Case Type: SHOOTING INCIDENT

5. Found or Recovered From: ☐ Location ☐ Suspect ☐ Complainant ☐ Victim
☐ Person reporting ☐ AKA ☐ Other

6. Where property was impounded (Give exact location - address):
608 Memorial Dr EXT
GREEN, SC

7. Owner's Name: Kitchen

8. Owner's Address:

9. Owner's Phone #:

10. Item #	11. Quantity	12. Description (include make, model, serial numbers and drug weights)	13. NCIC Hit	
			Yes	No
<u>JD-G</u>	<u>1</u>	<u>Section of wall from kitchen containing suspected projectile hole, suspected fabric, & suspected body tissue</u>		

UNLOADED FIREARM VERIFICATION: ☐ UFCV (clerk verified) ☐ UFOV (officer verified)

Initials _____ Date _____ Initials _____ Date _____

Drug weight/grams: _____ Officer's initials: _____ P & E Use only: _____ Evidence clerk's initials: _____

14. I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.

15. Impounding Officer (print full name): JOHN DEERBY

16. Star No: 3448 17. Unit No: 922

18. Signature: [Signature] 19. Investigating Officer: M. Miller

20. Received by (print name): Isabel Rodriguez 21. Signature: [Signature] 22. Reason: ONE SUMME (SAND) 23. Date and Time Received: 8-04-09 1555

X BETWEEN 7-27-09 through 8-4-09

THIS SECTION OF THE WALL THAT HAD ALLEGED "BLOOD" AND "NO HAIR" WAS NOT SIGNED OUT OR IN DURING THE TRAJECTORY TESTING AT THE HOME WHERE A SHOOTING HAPPENED TO THE VICTIM.

AUTHORIZATION FOR DISPOSITION: It is the authorizing officer's responsibility to notify owners to claim property.

TYPE OF DISPOSITION: ☐ Cleared for destruction/auction Items _____ ☐ Release item #s _____ to: _____

AUTHORIZED BY: _____

Name: _____ Signature: _____ Date: _____

Address: _____

ID# _____

Firearm Release verification: _____

NCIC/CCH check: _____ Name: _____ Date: _____

Ex. A.2

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8847
Telefax: 864-467-8810



Greenville County Courthouse
321 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. Walter Wilkins

April 9, 2012

Andrew Johnston
184 North Daniel Morgan Ave.
Spartanburg, SC 29306

IN RE: State of South Carolina v. Ronnie Swofford
2009-GS-23-9403, 04, 05
2011-GS-23-7263

Mr. Johnston:

Under State's continuing duty to disclose pursuant to Rule 5, SCRCP, and Brady, attached please find recent SLED reports for a GSR kit analysis and Trace Evidence. These were provided to me as of today, and I am forwarding them to you. I am faxing you a copy of these as well. These reports were recently generated due to the fact I asked SLED to examine the GSR kit, and a section of wall, labeled JD-G. I requested the section of wall be analyzed to determine if there was any potential evidence, either trace or DNA on this item. I submitted the request two months ago, advising them of our trial date of April 16th. I am awaiting final report from DNA, and was told it should be out in next day or two. I will forward that report to you as soon as I receive it.

In addition, I contacted our Latent Analysis Division, in the Department of Public Safety, to determine if any of the latent prints lifted from the glass door on front porch were matched to anyone. Their policy is not to make any type report unless a match is confirmed. Capt. Keller advised me today that no latents lifted in this case were matched to the defendant. The latents from the glass front door were not of AFIS quality, and as of today have not been matched to anyone. However, the latents lifted off of assorted paperwork, and not matched to Rikki Edwards, were of AFIS quality, and were searched on AFIS. No one other than Rikki Edwards was matched to any of the latents lifted from the paperwork.

Ex. A.3

**SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT**NIKKI R. HALEY
GovernorMARK A. KEEL
ChiefInv. Chris T Miller
Greenville County Sheriff's Office
Law Enforcement Center, 4 McGee Street
Greenville, SC 29601**EVIDENCE PROCESSING**

April 04, 2012

SLED LAB: L09-09220

Your Case No: 109119378

Incident Date: 7/27/2009

[V] Curtis Wooten

[S] Ronnie Swofford, Jr.

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

Mark A. Keel, Chief
South Carolina Law Enforcement Division**SUPPLEMENTAL REPORT****ITEMS OF EVIDENCE:**

Item: 7 Section of wall

JD-G-

RESULTS:

No blood indicated.

Item: 7.1 Debris

RESULTS:

Potential evidence collected and sent to the Trace Department.

Item: 7.2 Possible hair

RESULTS:

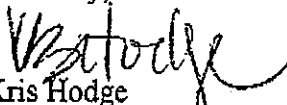
Potential evidence collected and sent to the DNA Department.



As to your request to view all evidence in P&E, the policy of our P&E Division is that an appointment must be made in advance to view evidence. We are to request the appointment by email. My investigator, Mrs. Reeves, emailed P&E last Thursday a.m., seeking an appointment to view the evidence this Friday morning. As of right now, we have had no response to the request. Mrs. Reeves will contact your office as soon as she hears back from P&E.

If you have any questions, please call me. I'm in the office all week.

Sincerely,


Kris Hodge
Assistant Solicitor



DEPARTMENT OF
FORENSIC DNA ANALYSIS

Evidence Worksheet

Lab #: L09-09220
Analyst: Adrienne N. Riley

Date: 8/3/2009
Victim: Curtis R. Wooten

Subject: Ronnie C. Swofford, Jr.

1	Swab of suspected blood/tissue from kitchen floor					DNA	?	Per Inv. Miller: from bullet that passed through subject Piece of material present on swab. No appreciable stain. Went straight to PCR.
2.1	Cutting from yellow gingham print table cloth victims Blood		+			DNA	Yes	
3.1	Cutting from beige chenille material blanket victims Blood		+			DNA	Yes	
4	Buccal swabs from Curtis Randolph Wooten (2) Victim					DNA	Yes	Cut 1/4 of each swab; Received on 8/4/09

Phenolphthalein SR 1170
3% H₂O₂ SR 1118
Quality Control 8.3.09

AP Spot SC
Quality Control

AR
9

L09-09220

Page 2 of 2

These examinations were conducted by DNA Evidence Processing Technician Verona Gibson and were reviewed by Forensic Scientist Stephanie M. Stanley in the DNA Casework Department.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Stephanie M. Stanley

Stephanie M. Stanley
Forensic Scientist



STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS
 FOR THE THIRTEENTH JUDICIAL

THE STATE,)
 ,)
)
 VS.)
)
 RONNIE C. SWOFFORD,)
)
)
)
DEFENDANT.)

MOTION FOR CONTINUANCE

2009-GS-23-9403

2009-GS-23-9404

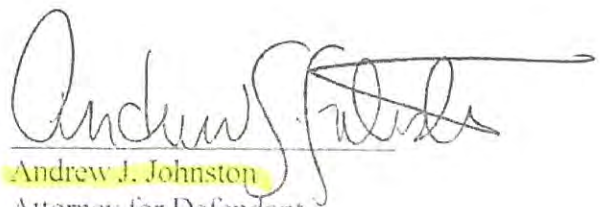
2009-GS-23-9405

2011-GS-23-7263

TO: KRIS HODGE, ESQ., ASSISTANT SOLICITOR, GREENVILLE COUNTY

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through his attorney undersigned, will move before the Presiding Judge of the Thirteenth Judicial Circuit, located in the Greenville County Courthouse, Greenville, South Carolina, as soon as this matter can be heard, for an Order granting a Continuance on the trial on the above charges, scheduled for the April 16, 2012, term of court.

This request is based on the Defense needing additional time to review DNA evidence just received by the State.



Andrew J. Johnston
 Attorney for Defendant

PO Box 3252
 Spartanburg, SC 29304

April 12, 2012

Spartanburg, South Carolina

Solicitor Hodge Opening Statement

1 You will hear from various experts. You will hear
2 from a ballistics or firearms expert. You will hear
3 from the trace evidence expert. Then you will hear
4 from a DNA analysis expert.

5 And the evidence in this case shows the person
6 that was the shooter, the person that was shot by Mr.
7 Wooten left behind his DNA. A splatter on the kitchen
8 wall and body tissue and hair, is the DNA of the
9 Defendant, Ronnie Swofford.

10 At the close of the evidence, the State will be
11 back for closing arguments and go through every piece
12 with you. Then I feel confident that once you have
13 heard all of the evidence of the State's and if the
14 defense chooses to put any up, you will feel the
15 Defendant is guilty of all charges beyond a reasonable
16 doubt.

17 As the judge told you, it is very important that
18 you pay attention, because there will be a lot of
19 various pieces moving through this trial. Physical
20 evidence, witnesses, recordings and photographs and
21 things of that nature, so it's obviously important to
22 pay attention, which I know you will.

23 It's important to take your job seriously. This
24 is a very important case. Not only is it important for
25 Mr. Swofford, he is entitled to a fair trial, to find

Identifies →

eged DNA only from
Walls. This sentence
imicates the term
"splatter" is blood
thout using that
rm.

MR. Johnston OPENING ARGUMENT

1 an impartial jury. It is an important day for the
2 State of South Carolina, for all the citizens that live
3 in Greenville County. And especially for Mr. Wooten to
4 ensure that justice is done in this case. Thank you.

5 THE COURT: Mr. Johnston.

6 MR. JOHNSTON: May it please the court, Counsel,
7 Mr. Foreman, Ladies and Gentlemen of the jury, things
8 are not always what they seem. The apparent theme
9 behind the evidence as you go through the trial of the
10 case, what it appears to be at the start of the case or
11 at the start of an investigation, is not always what it
12 is at the end of the case when you have then heard all
13 of the evidence and -- and the arguments of the
14 counsel.

15 The question that I'm going to put to you in this
16 case is not whose blood was found in the residence of
17 Curtis Wooten by the police. I'll answer that question
18 for you right now. The blood and tissue that was found
19 in the home of Curtis Wooten belongs to my client,
20 Ronnie Swofford.

21 The question that I'm going to put to you through
22 the course of this case, is what does the presence of
23 that blood and tissue evidence mean? What does it
24 mean?

25 I want to be honest with you up right -- up -- up

Ex A. 8

247

SLED EXPERT

V. GIBSON -- DIRECT BY MS. HODGE

1 And then physically pluck it off the background.

2 Q Do you know what the other material on this
3 board might be? Did you do any testing for that?

4 A The other material?

5 Q The yellowish?

6 A No, ma'am.

7 Q Okay. And your presumptive test on this one?

8 A Was negative.

9 Q Was negative for blood. Okay. I'm showing you

10 State's No. 68. What is that? And you may need a pair
11 of scissors.

12 A I can -- unless you want to --

13 Q No. You can do that.

14 A This is the coin envelope that I sealed the
15 possible fibers into.

16 Q All right.

17 A It's item number 7.1 because it came off our
18 item 7.

19 Q All right. What about State's No. 69.

20 A This is item 7.2. This is the possible hair I
21 collected off a section of wall.

22 Q Where would State's No. 68 have gone after you
23 collected it and made it 7.1?

24 A To our Trace Department.

25 Q And let's open this one up too. Do you have

EST For
Blood

V. GIBSON - DIRECT BY MS. HODGE

1 have your markings on that as well?

2 A I do, yes, ma'am. My initials and the date
3 that I sealed it are on the back, as well as where I
4 filled out the front of it.

5 Q And how about this one?

6 A Yes, ma'am. My initials and the date again.

7 Q Okay. Great. Thank you. Were you asked to
8 examine any other items of evidence in this case?

9 A No, ma'am.

10 MS. HODGE: Please answer any of the defense's
11 questions.

12 MR. JOHNSTON: I have no questions for the lady.

13 THE COURT: All right. Thank you, ma'am. You may
14 stand down. Any reason not to release her from
15 subpoena?

16 MR. JOHNSTON: Not from the defense.

17 THE COURT: Okay. You are free to go, ma'am.

18 MS. HODGE: The State calls Ila Simmons.

19 THE COURT: Okay.

20 THE CLERK: Ma'am, please place your left hand on
21 the Bible and raise your right hand.

22 ILA SIMMONS, having been
23 first duly sworn, testified as follows:

24 THE CLERK: Thank you. Please be seated. State
25 your name for the record.

Ex A.10

238

CLOSING ARGUMENTS BY MS. HODGE

1 doubt. Therefore, I ask you to find him not guilty of
2 all the charges. Thank you.

3 MS. HODGE: Thank you, Your Honor. May it please
4 the court.

5 THE COURT: Yes, ma'am.

6 MS. HODGE: Mr. Johnston, ladies and gentlemen of
7 the jury, our entire court system is founded on truth
8 and justice. And if the truth isn't put forth, this is
9 a sham. What are we doing here?

10 Evidence that comes in this courtroom should be
11 true. And you are a part of that because if the truth
12 isn't presented here, then when the next person comes
13 in that's been a victim of a crime and the next person
14 that's been accused of a crime, it doesn't matter, the
15 integrity of the whole system is lost. So the truth is
16 very important. And putting out falsehoods ruins the
17 system for everyone.

18 Your piece is to find a verdict that speaks the
19 truth. The word verdict comes from a Latin word
20 verdictum, and that's exactly what it means, to speak
21 the truth. So when you write your verdict, you are
22 speaking the truth about this case.

23 How are you going to reach your verdict? Well,
24 just like any job, this has got a lot of stuff going on
25 here and there's a lot of testimony. You need certain

CLOSING ARGUMENTS BY MR. ADAMS

1 your common sense and you have made a lot of
2 evaluations through your life, to make these decisions.
3 And you probably went through a check list as you did
4 that. And you became firmly convinced about whatever
5 those decisions are. Marriage, kids, jobs, schooling,
6 those kind of things. So, today is no different. You
7 are not elevated to a standard where you could never
8 reach a decision with firm conviction, with -- beyond
9 reasonable doubt. No, you do that every day in your
10 life. So you will be able to do that today.

11 To determine the facts in this case, you have
12 got to figure out who is telling the truth and who is
13 lying, period. That is it. The State has one version
14 of events, the defense has another. You have got to
15 pick one.

16 Now, Mr. Johnston gave you a very nice closing
17 argument, very good. He's a very good attorney. But
18 he threw the entire kitchen sink in there. I thought I
19 heard the evidence to be the Defendant didn't do this
20 crime. And the Defendant even said, -- agreed, this
21 crime was committed, it just wasn't me. But Mr.
22 Johnston says, okay, well, maybe the crime wasn't even
23 committed. You should look here, look there. Look
24 over here. Look down there. Look up here. Because
25 it's not believable that Ronnie Swofford didn't commit

Ex. A.12

685

CLOSING ARGUMENTS BY MS. HODGE

1 family, friends, those kinds of things. People he
2 works with and pays money to.

COURT
5

3 The Defendant's problem in this case is right
4 here, is this: State's No. 39, and not only that,
5 this. You will see State's No. 42. There's actually
6 two items of evidence that had the Defendant's DNA on
7 them. He wants you to believe this is from a shooting
8 on July 21st, but this little copper jacketed -- copper
9 jacket from a bullet would still be sitting in Mr.
10 Wooten's kitchen for six days. That's body tissue and
11 hair and suspected blood would just be on his kitchen
12 wall for six days? And he wants you to say that this
13 is six days old.

RD

14 I don't think it takes an expert to testify to
15 you that that stuff is fresh. That is fresh body
16 tissue and blood. When blood dries, it turns brown,
17 doesn't it? It turns a brownish color.

18 A body tissue is kind of yellowy. You may not
19 know that, but I submit that if you look at the law
20 yourself, that's what old things looks like. This is
21 what fresh things look like. So because this is a
22 problem, he had to construct and craft his story around
23 that. To explain away that.

ORTEP

24 That's where he says there's some buddy -- say,
25 remember, I was over at your camp that day.

CLOSING ARGUMENTS BY MS. HODGE

1 the warrants and it says -- it says on here that y'all
2 have DNA. Well, my DNA will be there because I have
3 been over there, not because I was shot over there.
4 But, you know, I have been there. He's thinking touch
5 DNA at this time, because he hasn't figured out his
6 story about a gunshot wound five days ago.

7 Touch DNA. Because there is such a thing as
8 touch DNA. That's not the kind of DNA we have. We
9 have tissue, hair and blood DNA. Touch DNA is if I
10 touch this, they probably could come and swab that and
11 get some of my skin cells. We drop skin cells
12 constantly. Although there have been -- probably mixed
13 in with everybody else that touched this table, so --
14 anyway, so, he's saying, yeah, my DNA would be there.
15 I'm not saying what form.

16 Then he says, how can y'all arrest me because
17 based on what the witnesses are saying, the suspect was
18 masked. Well, I didn't read that anywhere in this
19 warrant. Investigator Miller read the warrant to you
20 and it's in evidence, as verbal testimony, there is not
21 one mention of the suspect wearing a mask.

22 And he went on to say numerous times, the
23 officer didn't tell him anything about this. He didn't
24 know what was going on. The officers are smart enough
25 to know not to give a lot of details about cases before

Ex. B.1

SGT. WEINER -- CROSS BY MR. JOHNSTON

1 correct?

2 A Correct.

3 Q And he was free to stop talking to you at any
4 time?

5 A Yes, ma'am.

6 Q And did you conclude the conversation in a nice
7 manner?

8 A Just like we're talking right now.

9 Q Is that the only time you've ever spoken to Mr.
10 Swofford in this case?

11 A Yes, ma'am.

12 MS. HODGE: That would be all that we would have
13 of this witness.

14 THE COURT: Okay. Cross.

15 CROSS EXAMINATION BY MR. JOHNSTON:

16 Q Did you preserve those text messages?

17 A I turned the phone over. I don't know what
18 happened after that, sir.

19 Q To whom did you turn it over?

20 A To property and evidence.

21 Q Okay. And that was Mr. Wooten's phone?

22 A Yes, sir.

23 Q How did you find out that Mr. Swofford was a
24 suspect before you made the call?

25 A That night at the house, the Uniform Patrol

TERMS or PHRASES USED REFERENCING "BLOOD" (FALSE EVIDENCE)

#	PCR - LINE	PERSON	TERM or PHRASE
1	48 - 7	Solicitor Hodge	Splatter
2	49 - 16	Atty Johnston	Blood
3	49 - 18	" "	Blood
4	49 - 23	" "	Blood
5	133 - 4	Victim Wooten	Blood
6	133 - 14	Atty Johnston	Blood
7	133 - 24	" "	Blood
8	165 - 14	Solicitor Hodge	Stains
9	165 - 16	" "	Stains
10	165 - 21	" "	Reddish Look
11	172 - 23	Officer Derby	Blood
12	177 - 25	" "	Blood
13	184 - 23	" "	Blood
14	197 - 1	" "	Blood
15	243 - 11	Sgt. Weiner	Blood
16	243 - 14	Sgt. Weiner	Blood
17	260 - 10	SLED V. Gibson	Blood
18	260 - 13	" "	Blood
19	260 - 20	" "	Blood
20	261 - 9	" "	Blood *Negative Test results
21	277 - 6	SLED A. Hefney	Blood
22	277 - 10	" "	NO Appreciable Stain
23	278 - 17	" "	Blood
24	310 - 18	Detective Miller	Blood
25	310 - 19	" "	Blood Splattered on Wall
26	319 - 7	" "	Blood
27	319 - 18	" "	Blood
28	319 - 22	" "	Blood
29	559 - 12	Atty Johnston	Blood
30	559 - 16	" "	Blood
31	613 - 6	Solicitor Hodge	Splattered DNA
32	615 - 10	" "	Blood
33	615 - 17	" "	Blood
34	661 - 13	Detective Miller	Reddish

(CONTINUED)

#	PCR - LINE	PERSON	TERM or PHRASE
35	664 - 1	Atty Johnston	Blood
36	664 - 5	" "	Blood
37	664 - 20	" "	Blood
38	664 - 22	" "	Substances
39	664 - 24	Detective Miller	Blood
40	665 - 8	" "	Blood
41	666 - 8	Solicitor Hodge	Blood
42	666 - 9	" "	Blood
43	666 - 11	Detective Miller	Fresh Blood, the Red
44	666 - 13	" "	Blood is Red
45	666 - 15	" "	Fresh
46	669 - 12	Atty Johnston	Fresh
47	669 - 13	" "	Liquid State
48	678 - 19	" "	Blood
49	678 - 23	" "	Blood and it was Fresh
50	678 - 25	" "	Blood being Fresh
51	679 - 1	" "	Freshness
52	679 - 6	" "	Fresh
53	679 - 7	" "	Liquid State
54	679 - 8	" "	Liquid State
55	679 - 9	" "	Liquid State
56	679 - 10	" "	Dripping , Blood
57	679 - 11	" "	Fresh
58	689 - 7	" "	Blood
59	715 - 6	Solicitor Hodge	2 Items of Defendants DNA
60	715 - 10-11	" "	Tissue and Blood (both False)
61	715 - 15	" "	That Stuff is Fresh
62	715 - 16	" "	Tissue and Blood (both False)
63	715 - 21	" "	Fresh
64	723 - 12	" "	DNA evidence (Wall - False)
65	723 - 13-14	" "	DNA evidence (Wall - False)
66	726 - 7	" "	Direction of Spatter (Wall)
67	727 - 9	" "	Blood DNA

(END)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	2014-CP-23-3763
COUNTY OF GREENVILLE	)	
	)	
Ronnie Cleveland Swofford, Jr.,	)	
S.C.D.C. No. 218281,	)	
	)	
Applicant,	)	
	)	RETURN TO MOTION TO ALTER OR
v.	)	AMEND THE ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, by and through undersigned counsel, making its Return to Applicant's Motion for Reconsideration, would respectfully show unto this Court:

1. The matter is before the Court by way of a post-conviction relief (PCR) action filed July 8, 2014.
2. An evidentiary hearing was held on October 21, 2015 at the Greenville County Courthouse.
3. Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Applicant testified in his own behalf. Also testifying were Terry Stephens and one of Applicant's trial attorneys, Andrew Johnston, Esquire.
4. After a full review of the evidence presented at the evidentiary hearing, the post-conviction relief court issued an order filed January 7, 2016 denying the application for post-conviction relief.
5. Applicant – through counsel – filed a Motion for Reconsideration on February 2, 2016 (which was received by Respondent on February 5, 2016).
6. Respondent submits the Motion for Reconsideration should be dismissed.

Applicant's counsel merely submitted Applicant's pro se motion and documents with a scant two-paragraph cover page. This is clearly hybrid representation and is prohibited. See Rule 11(a), SCRPC; Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (holding there is no constitutional right to hybrid representation either at trial or on appeal). The fact that counsel submitted the pro se documents at Applicant's request does not remove it from the category of hybrid representation. See id. (counsel cannot serve as a mere conduit for pro se documents in an effort to avoid the prohibition against hybrid representation and the displeasure of his client).

7. Respondent submits this Motion for Reconsideration should be dismissed because it is improper. Respondent further submits the post-conviction relief court fully reviewed and properly ruled upon all issues.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

February 8, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Ronnie Cleveland Swofford, Jr.,)
 S.C.D.C. No. 218281,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

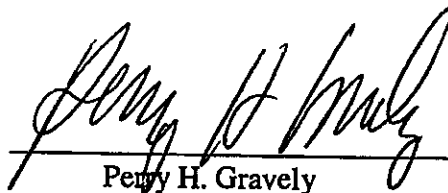
IN THE COURT OF COMMON PLEAS
 C.A. No. 2014-CP-23-3763

ORDER

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL E. WICKENS
 2016 FEB 19 PM 3 46

This matter comes before me upon Motion for Reconsideration, filed 2/2/2016, by and through counsel. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion for Reconsideration is **DENIED**;

AND IT IS SO ORDERED!


 Perry H. Gravely
 Presiding Judge

Greenville, South Carolina
 February 17, 2016

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NO: 2014CP2303763

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 16 FEB 19 PM 3:15

Ronnie C Swofford Jr vs. South Carolina State Of

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:
 Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Perry H Gravely

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail Jr. 11 North Irvine Street, Suite 11
 Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO Box 11549 Columbia,
 SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
 - Clerk of Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2014-CP-23-3763

RECEIVED

MAR 10 2016

S.C. SUPREME COURT

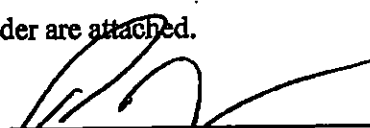
Ronnie Cleveland Swofford, Jr., ... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable Perry H. Gravely's Order of Dismissal and Order Denying Appellant's Motion to Reconsider which dismissed Appellant's application for post-conviction relief. On December 30, 2015, the Honorable Perry H. Gravely signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on January 12, 2016. On February 2, 2016, Appellant's counsel filed a Motion for Reconsideration. On February 17, 2016, the Honorable Perry H. Gravely denied the Motion for Reconsideration. Appellant's counsel received a copy of the Motion for Reconsideration on February 24, 2016. The Honorable Perry H. Gravely's Order of Dismissal and Order Denying Motion to Reconsider are attached.


R. Mills Ariail, Jr.

Attorney at Law

11 North Irvine St., Suite 11

Greenville, SC 29601

Telephone (864) 232-9390

Facsimile (864) 232-9392

Attorney for Ronnie Cleveland Swofford, Jr.

Greenville, South Carolina
March 03, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

MAR 10 2016

S.C. SUPREME COURT

Perry H. Gravely, Circuit Court Judge

Case No.2014-CP-23-3763

Ronnie Cleveland Swofford, Jr.,..... Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this March 03, 2016, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
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Denise Tanner LaBeck
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March 03, 2016

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

RONNIE C. SWOFFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000508

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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PO Box 11589
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ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

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ISSUE PRESENTED

Trial counsel erred in conceding petitioner's guilt during opening arguments by stating to the jury that blood found at the crime scene belonged to petitioner because there was no finding of blood evidence within its traditional meaning at the scene.

STATEMENT

Petitioner Ronnie Cleveland Swofford, Jr., was convicted of first degree burglary, assault and battery with intent to kill, assault with intent to kill, possession of a weapon during the commission of a violent crime, and possession of a pistol by a person convicted of a violent crime during the May 2012 term of the Greenville County General Sessions Court before Judge Edward W. Miller. Petitioner was sentenced to two concurrent life without parole sentences, ten years on the AWIK conviction, and five years on the conviction of possession of a pistol by a person convicted of a violent crime. Petitioner was not sentenced on the weapon conviction after receipt of his life without parole sentences. App. 1-755. Andrew J. Johnston represented petitioner at trial and Assistant Solicitor Kris Hodge appeared on behalf of the state. Petitioner appealed, but subsequently withdrew his appeal. An order dated June 23, 2014 was issued by the Court of Appeals therein dismissing the direct appeal. Lanelle C. Durant, Esquire, of the South Carolina Office of Appellate Defense, represented petitioner on appeal before the appeal was dismissed.

On July 8, 2014, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 757-763. The respondent filed a return dated January 13, 2015, requesting that a hearing be held in the case. App. 764-770. A PCR hearing was held on October 21, 2015, before Judge Perry H. Gravely at the Greenville County Courthouse. App. 772 – 850. Petitioner was present at the hearing and represented by R. Mills Arial, and Assistant Attorney General Karen Ratigan appeared on behalf of the state. On December 30, 2015, Judge Gravely issued an Order of Dismissal therein denying petitioner's PCR allegations in the case. App. 852-862. Judge Gravely denied petitioner's Motion for Reconsideration by Order dated February 17, 2016. App. 863-893. Petitioner appealed the Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in conceding petitioner's guilt during opening arguments by stating that the blood found at the crime scene belonged to petitioner because there was no finding of blood evidence within its traditional meaning at the scene.

The state's case included testimony from Curtis Wooten, who stated that a masked man wearing all black entered his house around 3:00 am on July 27, 2009, and fired gunshots at him and his girlfriend Rikki Danielle Edwards, but that he fired shots back at the gunman. App. 59, l. 5 – p. 75, l. 17. The return gunfire left human tissue evidence at the crime scene (genetic material from a hair fiber found on the kitchen wall, and a bullet jacket/casing, and cloth cutting from the same area) that matched petitioner's DNA. The exchange of gunfire occurred in the kitchen area of Wooten's home and as a result, the kitchen wall was photographed and canvassed for evidence. The evidence submitted at trial basically revealed that no blood was found on the crime scene wall and therefore, no blood matching petitioner's DNA was found at the crime scene. Wooten was struck by a bullet during the melee, but Edwards did not receive any gunshot injuries. Petitioner claimed an alibi defense and denied that he was the shooter, and added further that any genetic material found on any human tissue from a bullet casing and a cloth cutting and a hair fiber from the crime scene wall had been left there six days earlier when Wooten shot him during a prior visit to Wooten's house.

At trial, Wooten testified that he recognized the voice of the gunman as petitioner's voice and that he recognized the shooter's gun as a gun that belonged to petitioner. App. 72, l.24 – p. 73, l. 13. App. 70 l. 17 – p. 71, l. 7. Wooten explained that he loaned petitioner \$750.00 before the shooting and had been trying to reach petitioner for repayment. App. 67, l. 1 – p. 69, l. 14.

Since the shooting in this case obviously occurred in the kitchen area of the house, the kitchen wall was inspected for the existence of forensic evidence. Thereafter, a hair fiber was found on the wall. The only other forensic evidence found at the scene included a bullet jacket/casing and a cloth cutting (table cloth blanket material) found in the kitchen area. SLED processing technician Verona Gibbs testified that she processed the kitchen wall looking for blood and found only a hair fiber there. Ultimately, the fiber was found to have matched petitioner's DNA; however, there was no testimony by Gibbs indicating that blood was found on the wall. App. 254, l. 8 – p. 262, l. 9. Also, SLED forensics DNA expert Adrian Heffney testified that a swab taken from the bullet casing found in that area and a cutting from a cloth there also matched petitioner's DNA. App. 273, l. 2 – p. 282, l. 12.

Clearly, at no point was there any blood evidence submitted at trial as having been found on the kitchen wall at the crime scene. Note that during opening arguments, the solicitor never stated that petitioner's blood was found on the wall. Instead, the solicitor stated that a splatter (not identified conclusively as being blood) was found on the kitchen wall and that body tissue and hair found at the scene contained the DNA of petitioner. App. 48, lines 7 – 9. Note moreover at closing, that the solicitor again never argued that petitioner's blood was found on the kitchen wall. Rather, the solicitor argued that petitioner's DNA was found on the bullet jacket found in the kitchen area and on a hair fiber found on the kitchen wall. App. 723, lines 13-14.

Nevertheless, despite the fact that no blood evidence within the traditional definition containing petitioner's DNA was found on the kitchen wall, defense counsel conceded petitioner's guilt during opening argument by stating that there was blood found on the kitchen wall at the crime scene and that said blood belonged to petitioner. Counsel's opening remarks in question follow:

The question that I'm going to put to you in this case is not whose blood was found in the residence of Curtis Wooten the police. I'll answer that question for you right now. The blood and tissue that was found in the home of Curtis Wooten belonged to my client, i.e., petitioner. App. 49 lines 15 – 20.

During the PCR hearing held in the case, petitioner testified in effect that since there was no evidence of blood found on the crime scene wall, then there was no evidence that his (petitioner's) blood was on the wall and that as a result, counsel erred in conceding his guilt by stating to the jury that blood was found on the wall at the crime scene, and further, that the blood at the scene belonged to him (petitioner). App. 785, l. 17 – p. 786, l. 25; App. 790, l. 23 – p. 791, l. 6. Petitioner stated that only genetic material from the hair fiber and bullet casing matched his DNA. App. 810, l. 8 – p. 812, l. 6.

Regarding the issue of conceding petitioner's guilt, trial counsel admitted error and responded as follows:

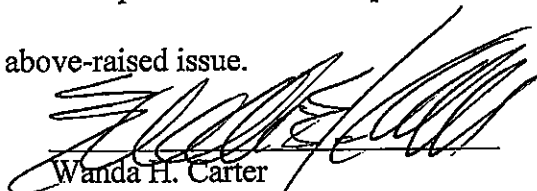
I guess it's possible that during the trial that the term blood might have got intermingled with the term genetic material. App. 847, lines 14-18.

The state's evidence against petitioner was not overwhelming as the state's case consisted primarily of Wooten's voice and gun identifications and the razor thin forensic (genetic) evidence only. Thus, counsel's failure to draw a clear distinction between genetic material allegedly containing petitioner's DNA found at the scene, and traditional blood evidence, which for all practical purposes can be seen as more definitive and damaging with respect to evidence, that was not found at the scene constituted deficient legal representation at trial, particularly since there was no blood evidence within the traditional definition found on the kitchen wall at the crime scene. Therefore, counsel's words that ended up conceding petitioner's guilt via the negligent and careless summary of the forensic evidence in the case constituted error that

resulted in irreparable prejudice to petitioner's defense. The prosecution has the burden of proving every element of the offense charged beyond a reasonable doubt at trial. Jackson v. Virginia, 443 U.S. 307 (1979). Thus, to assign guilt to petitioner and concede the case against him by informing the jury of blood evidence linking him to the crime when said blood evidence was non-existent clearly constituted ineffective assistance of counsel. This violated petitioner's right to competent counsel at trial under the Sixth Amendment. See Strickland v. Washington, 466 U.S. 668 (1984). But for counsel's error, a reasonable likelihood exists that the outcome of the trial would have been different.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full briefing on the above-raised issue.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of February, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

 Certiorari to Greenville County

 Honorable Perry H. Gravely, Circuit Court Judge

RONNIE C. SWOFFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

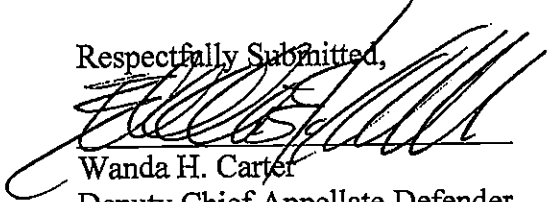
RESPONDENT

 PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ronnie C. Swofford states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
 2. She has reviewed the record of petitioner's trial before Judge Perry H. Gravely, which was held on October 21, 2015, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
 3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.
- Therefore, counsel requests that the Court relieve her as counsel for Ronnie C. Swofford.

Respectfully Submitted,

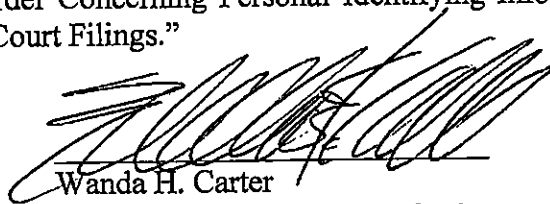

 Wanda H. Carter

 Deputy Chief Appellate Defender
 ATTORNEY FOR PETITIONER

This 8th day of February, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

This 8th day of February, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

RONNIE C. SWOFFORD,

PETITIONER

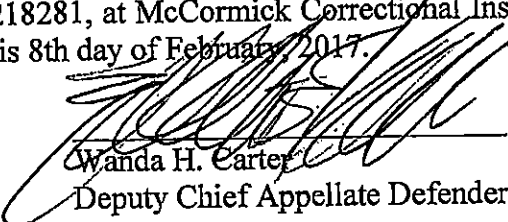
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

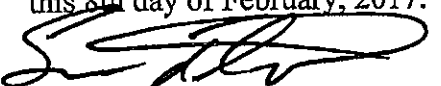
The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Justin Hunter, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Ronnie C. Swofford, #218281, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 8th day of February, 2017.


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 8th day of February, 2017.

 (L.S)

Notary Public for South Carolina

My Commission Expires: 10/30/2022.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Ceritorari to Greenville County
Honorable Perry H. Gravely, Circuit Court Judge

RONNIE C. SWOFFORD JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000508

PRO SE RESPONSE

JOHNSON PETITION FOR WRIT OF CERTIORARI

Ronnie C. Swofford Jr.
Petitioner, Pro Se
McCormick C.I. F1-233-B
386 Redemption Way
McCormick S.C., 29899

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
Honorable Perry H. Gravely, Circuit Court Judge

RONNIE C. SWOFFORD,

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V .

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APPELLATE CASE NO 2016-000508

PRO SE RESPONSE

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Indigent Defense
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ATTORNEY FOR PETITIONER

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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
HONORABLE PERRY H. GRAVELY, CIRCUIT COURT JUDGE

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V.

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APPELLATE CASE NO. 2016-000508

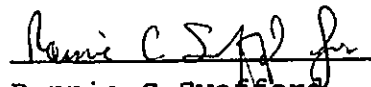
DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:
Petitioner include the following at the PCR Hearing. Left out of the
Appendix by PCR Counsel.

1. Petitioners Exhibits 3.A pg 24, 3.B pg25, 3.C pg 26; (failure to preserve);
2. Petitioners Exhibits 1.A pg 30, 2.A pg - 2.F pg 36 (Medical Reports and Victim Statement);
3. Petitioners Exhibits B.7 pg 41 - B.11 pg 45 (Ineffective Assistance and Confrontation Clause).

I certify that this designation contains no matter which is irrelevant to this appeal.

May 24, 2017


Ronnie C Swofford,
Pro Se (Response)
386 Redemption Way
McCormick SC 29899

LETTER TO DISREGARD

Honorable Court,

Petitioner respectfully requests this Honorable Court to Disregard the Appellate Counsels contents of the argument portion of the Johnson Petition for Writ of Certiorari for Appellate Counsels failure to present factual evidence to this Honorable Court, This very reason Petitioner is here is due to Trial Counsel and PCR Counsel failure to understand the DNA evidence and the terminology to properly present factual evidence on behalf of the Petitioner. the following is the misinformation Appellate Counsel is providing this Honorable Court to basically state their is no merit.

Definition:

Splatter - Probable blend of Splash and Spatter; To scatter or fall in or as if in drops.

Blood - The Red Liquid that circulates in the arteries and veins of humans and other vertebrate animals carrying oxygen to and carbon dioxide from the tissues of the body;

Tissue - An aggregate of similiar cells and cell products forming a definite kind of structural function, in a multiple cellular organism. there are 4 types of Tissue: Muscle, Nerve, Epithelial, and Connective.

Body Fluids - Blood, Saliva, Semen, Vaginal Semen, Mucus, Urine.

Appellate Counsel states in her argument that Petitioner admits his Tissue, and Hair were found at the Crime Scene, which is FALSE, Petitioner answered PCR counsels question as to what thw States DNA expert found App 810 line 8 - 12, The Cloth Cutting (Table cloth blanket material) that Appellate Counsel claims matches the Petitioner

DNA is FALSE, The Cloth cutting material was Identified as matching the Victim Mr. Wooten App 279, Line 18 - 25, Cutting of Yellow Gingham print table cloth item 2.1, and the Cutting of beige material blanket item 3.1, then DNA Expert A. Hefney states "2.1 and 3.1 matches the victims DNA profile from the Victims swab of DNA" App 280, Lines 16 - 23. Then Appellate Counsel states that Solicitor did not say Petitioners blood was stated in the States opening argument but a splatter on the kitchen wall and body tissue and hair belonging to the Petitioner. The states theory was the assailant was hit in the arm in a return fire, that being said the only body fluid that can be splattered on the wall is Blood. In addition Appellate Counsel says the Solicitor did not say Blood in the States Closing arguments, this is FALSE Solicitor Hodge states 4 times Blood App 715, Lines 10 - 23 and 1 time App 727, Lines 7 - 15, I point out on Line 7 - 10 "Touch DNA". Because there is such a thing as touch DNA Thats not the kind of DNA we have. We have tissue, hair, and Blood DNA."

The Petitioner understands the heavy case loads the Appellate Counsels have, and understands the misinformation given by Appellate Counsel was not intentional. PCR Counsel App 810, 2 - 25 and App 811, 1 - 25, is reacting in manner that Blood Tissue is what The state has as evidence, "Blood Tissue" is merely a term people tend to use. The State showed a picture of the "Section of Wall" with a red substance appearing to be blood, and as the Petitioner has stated many that blood and tissue were not found that wall. There was "NO BLOOD" found in the home of the Victim Period, in no way shape or form, belong to the Petitioner. This Scientific evidence has confused the Counsels at various levels. Due to the aforementioned reasons I asked that the contents of the Appellate Counsels argument, to please be disregarded as they are false.

STATEMENT OF ISSUES ON WRIT OF CERTIORARI

- I. Did PCR Judge err in holding that the Petitioners Due Process Rights were not violated when the Prosecutor Knowingly elicited and failed to correct false statements and evidence, and obtained a conviction through misinformation, failing to produce all material evidence at trial, failed to preserve potentially exculpatory evidence, and made prejudicial remarks during opening and closing arguments?
- II. Did PCR Judge err in holding Petitioner's Due Process was not violated when the Honorable Trial Court Interjected himself into the proceedings during a Proffer by telling the Prosecutor what questions to ask and informing the the Detective how to answer those questions?
- III. Did the PCR Judge err in holding that Petitioner's Trial Counsel were not ineffective in failing to investigate the facts of the crime and the crime scene and failed to to present an adequate defense based on the facts?
- IV. Did the PCR Judge err in holding that Trial Counsel was not ineffective for his damaging opening arguments...lied to the jury and bolstered the states case?
- V. Did PCR Judge err in holding that Petitioners Trial Counsel was not ineffective in failing to cross-examine or impeach forensics witnesses about processing and preserving evidence and follow chain of custody procedures?
- VI. Did the PCR Judge err in holding that Petitioners Trial Counsel were not ineffective in failing to consult with a Medical Expert regarding the reliability of the Witness - Victim Identification "Witnesses memory was obviously impacted by Medical Trauma"?

VII. Did the PCR Judge err in holding that Petitioners Trial were not ineffective in allowing the Trial Court to admit "Testimonial" Hearsay statements from non-testifying witness Ms. Rikki D. Edwards?

VIII. Did the PCR Judge err in holding that Petitioners Newly Discovered evidence had no merits, and no constitutional violation occurred?

STATEMENT OF THE CASE

— Petitioner Ronnie Cleveland Swofford, Jr., was convicted of first degree burglary, assault and battery with intent to kill, assault with intent to kill, possession of a weapon during the commission of a violent crime, and possession of a pistol by a person convicted of a violent crime during the May 2012 term of the Greenville County General Sessions Court before Judge Edward W. Miller. Petitioner was sentenced to two concurrent life without parole sentences, ten years on the AWIK conviction, and five years on the conviction of possession of a pistol by a person convicted of a violent crime. Petitioner was not sentenced on the weapon conviction after receipt of his life without parole sentences. App. 1-755. Andrew J. Johnston represented petitioner at trial and Assistant Solicitor Kris Hodge appeared on behalf of the state. Petitioner appealed, but subsequently withdrew his appeal. An order dated June 23, 2014 was issued by the Court of Appeals therein dismissing the direct appeal. Lanelle C. Durant, Esquire, of the South Carolina Office of Appellate Defense, represented petitioner on appeal before the appeal was dismissed.

On July 8, 2014, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. APP.757-763. The respondent filed a return dated January 13, 2015, requesting that a hearing be held in the case. APP. 764-770. A PCR hearing was held on October 21, 2015, before Judge Perry H. Gravely at the Greenville County Courthouse. APP.772-850. Petitioner was present at the hearing and represented by R. Mills Arial, and Assistant Attorney General Karen Ratigan appeared

on behalf of the state. On December 30, 2015, Judge Gravely issued an Order of Dismissal therein denying petitioners PCR allegations in the case. App.852-862. Judge Gravely denied petitioner's Motion for Reconsideration by Order dated February 17, 2016. App.863-893. Petitioner appealed the Order of Dismissal. The petition follows.

ARGUMENT

Did PCR Judge err in holding that the Petitioners Due Process rights were not violated when the Prosecutor knowingly elicited and failed to correct false statements and evidence, and obtained a conviction through misinformation, failing to produce all material evidence at trial, failed to preserve potentially exculpatory evidence, and made prejudicial remarks during opening and closing arguments.

FACTS

Prosecuter violated Petitioners Due Process rights when she knowingly elicited and failed to correct false statements and false evidence, failing to produce all material evidence at trial, by failing to preserve potentially exculpatory evidence and by making prejudicial comments during her opening and closing arguments, and therefore obtained a conviction through misinformation.

Petitioner's Due Process rights were violated by the Prosecutor by allowing the introduction of false DNA evidence into the trial, manipulating the Trial Court, the Defense, and the jury. Solicitor Hodge knew or should have known that the "splatter of DNA" on the section of wall did not exist, and therefore had a duty to correct any false statements made by witnesses, experts, or law enforcement that testified for the state and any made by Trial Counsel or Trial Court. Everyone who took the stand for the state testified as to the DNA splatter that existed on the section of wall that forensics removed from the crime scene except for SLED expert V. Gibson who testified all test for blood and tissue were negative. Regardless of Trial Counsels inability to understand and challenge the alleged DNA evidence, or to understand Mrs. Gibson when she testified that no blood or tissue existed, or to read forensic reports that no such DNA existed on the section of wall period, Solicitor Hodge was ethically bound to correct any false statements made concerning DNA. DANIELS v. LEE, 316 F3d 477 (4th 2003)"Defendents

conviction's must be reversed on Due Process grounds where the Government knowingly elicits, or fails to correct, materially false statements from its witnesses." Defendant has the Due Process right to be sentenced on the basis of accurate info, Solicitor Hodge's deliberate deception of a Trial Court, and jurors by knowingly "presenting false evidence is incompatible with rudimentary demands of justice." *GIGLIO v. U.S.*, 405 U.S. 150 (1972). Solicitor Hodge allowed the victim Mr. Wooten to state on cross examination (App 133 lines 2-5) "basically after they found the bullet I shot him with, with his blood on it in my wall, I'm 100% sure." No bullet was recovered with Petitioners blood on it, nor was there any blood on the wall period. This is a false statement Solicitor Hodge knowingly allowed.

Solicitor Hodge on direct, questioned SLED DNA expert Verona Gibson (App 260 lines 4-25 and App 261 lines 1-10) about the test results of states exhibit's numbers 39 & 53 and SLED's item 7 the section of wall that was removed from the crime scene (App 261 lines 2-9).

APPENDIX page 260 lines 4-15

V. GIBSON - - DIRECT BY SOLICITOR K. Hodge

- 4) A: It is our item number seven, a section of wall.
- 5) Q: All right. I think what has now been marked State's No. 53; see if you can identify this.
- 7) A: Yes ma'am. This is a section of the wall that
- 8) I processed
- 9) Q: Okay. What did you do with that?
- 10) A: The request was for blood and DNA, other, which
- 11) usually means hair. So I swabbed the area that is
- 12) circled and tested it for the presumptive presence
- 13) for blood. There was one possible hair that I collected
- 14) And there was, what appeared to be fibers, that I
- 15) collected.

APPENDIX page 261 lines 2-9

V. GIBSON - - DIRECT BY SOLICITOR HODGE

- 2) Q: Do you know what the other material on this board
- 3) might be? Did you do any testing for that?
- 4) A: The other material?
- 5) Q: The yellowish?
- 6) A: No ma'am.
- 7) Q: Okay. And your presumptive test on this one?
- 8) A: Was negative.
- 9) Q: Was negative for blood. Okay.

In lines 4 & 5 above Mrs. Gibson seemed confused by Solicitor Hodge's question of "the yellowish material", this is because what the Solicitor is referring to, what she wants the jury to believe is tissue, is in fact simply the wood paneling under the paint.

The Petitioner would like to show that in *STATE v. KING*, 623 SE2d 865 (S.C. CT. App 2005), Solicitor Kristie B. Hodge withheld potential exculpatory evidence favorable to the defense. Ms. King had been found guilty and sentenced to life in prison, until the Court of Appeals reversed and remanded (Cert. denied).

In the instant case Solicitor Kristie B. Hodge, released the Trace evidence results against Petitioner (results from test on the section of wall alleged to have Petitioners blood, tissue, and hair) on April 9, 2012, as part of Rule 5, discovery, for Trial Counsel to review. Petitioners trial date had been set for April 16, 2012, allowing the defense only 7 days to prepare. Trial Counsel did however request and was granted a thirty day continuance, as explained in other allegations.

Trial Counsel and Solicitor Kristie B. Hodge both knew if not before SLED expert witness V. Gibson testified, then most certainly after Mrs. Gibson's testimony that the test results for both blood and tissue on the section of wall removed from the crime scene were negative. That what was being portrayed as blood and tissue evidence belonging to Petitioner, was in fact exculpatory evidence favorable to Petitioner. Solicitor Hodge carefully led the questioning of Mrs. Gibson in a way

that would not differentiate between blood that belonged to the victim Mr. Wooten, and alleged blood belonged to the assailant. The only positive for blood test results found came exclusively from blood left by Mr. Wooten. So by not correcting false statements and by knowingly eliciting statements from Greenville county Law Enforcement and forensics the Trial Court Petitioner, and jury were led to believe that Petitioners "fresh, red, liquid blood" was found at the scene. By doing so the Solicitor Kristie B. Hodge withheld exculpatory evidence, even though it may have been through negligence, that gained the conviction against Petitioner.

Petitioner was denied Due Process by the State failing to preserve exculpatory evidence *PEOPLE v. NATION*, 26 Cal 3d 169, 161, Cal Rpter 299 604 P2d 1051 (1980). On July 27, 2009 when Forensics J. Derby observed and document what he saw on the section of wall that had been sawed from the kitchen wall at the crime scene, no hair was listed as being observed or removed.

Four days after Mr. Derby's observation, Four officers attest that they took the section of wall, with alleged DNA untested, back to the crime scene. Yet there were no signatures of who removed it from forensics, when it was removed, who had possession while it was out of forensics, how long it was kept in an unclean environment thus making it virtually unaccounted for the entire eight days it was out. While at the crime scene it was handled carelessly and unprofessionally by officers without gloves, it was exposed to and possibly contaminated by an unclean environment caused by officers tearing away more of the main wall with removed section exposed, by inserting trajectory rods back into the holes and holding it up to the main wall (see failure to preserve allegations).

In addition Prosecution failed to stipulate that Master Deputy Lewis was one of the officers who was in possession of the section of the wall when it was returned to the crime scene. Master Deputy Lewis was not present during the trial, he was not announced as a potential witness, Prosecution failed to announce him in the stipulation of establishing a complete Chain

of Custody, and there was no signed affidavit from Master Deputy Lewis put into the record of handling. Therefore the state failed to establish a proper and complete Chain of Custody, and failed to publish the true , or uncompromised Chain of Custody results. These results could have raised reasonable doubt for the jury, had the jury been allowed the opportunity to hear the true facts and given proper respect by allowing them to evaluate how the state failed to preserve the DNA evidence, so they could make a truly impartial decision based on fact.

When viewed as a whole, Solicitor Hodge's closing argument (App 699- 728) begin with her telling the jury "the truth is at stake, or this is a farce or a mockery. Evidence that comes into this courtroom shall be true." Yet throughout her entire closing argument Solicitor Hodge misstated the facts while acting as a "witness and prosecutor for the state". Petitioner suffered severe prejudice when the state was able to give closing argument last, because the last information the jury heard or were given was misinformation. Solicitor Hodge constantly made statements that were inconsistent to witness testimony and constantly misquoted witnesses and even vouched for the credibility of police officers who testified to being nothing but truthful. (App 708 lines 9-25) then stated that all of the Petitioners witnesses " were lying in some fashion" U.S. v. LOAYZA 107 F3d 257 (1997) "It is improper for a prosecutor to directly express an opinion as to the veracity of a witness".

EXAMPLES

- 1) FALSE: Solicitor Hodge stated that Ms. Lawter looked to have been more than two weeks pregnant" implying that Ms. Lawter had been untruthful. (App 711 lines 23-25 and App 712 lines 1-2)

FACT: Ms. Lawter had testified that she was in fact two months pregnant. (App 422 lines 8-9)

- 2) FALSE: Solicitor Hodge stated that " Ms. Edwards never said

Mr. Swofford's name and related the same information as Mr. Wooten about what happened.

FACT: Ms. Edwards had given Petitioners name more than once (see confrontation clause) Sgt. Weiner also stated (App 41 lines 8-9) "Rikki Edwards gave the name" (Ex. B.4, B.5, B.8) *App 884 - 885, pg 41 - (petition)*

- 3) **FALSE:** Solicitor Hodge stated that "ballistic test were consistent in matching the bullet to the (Mr. Wooten's) gun. (App 722 lines 21-23)

FACT: State ballistics expert J. Armstrong testified " the fired bullet jacket, was similar but insufficient microscopic marks prevent identification to the pistol. (App 231 line 21-24)

- 4) **FALSE:** Solicitor Hodge refers to the "tissue, hair, and blood found on the kitchen wall" (App 715 lines 10-23) and "we have tissue, hair, and blood DNA." (App 727 lines 8-9)

FACT: No blood or tissue was found on the kitchen wall, the hair was not challenged to afford an opportunity to raise doubt due to contamination. (App 261 lines 2-9)

- 5) **FALSE:** Solicitor Hodge stated the 911 call placed by Mr. Wooten revealed information of a masked shooter. (APP 719 lines 8-14)

FACTS: When asked twice by the 911 operator "do you know who shot you" Mr. Wooten said "no" both times but stated two other times that "she shot me" (App 108 lines 11-20)

The State's (and Trial Counsel) constant use of false evidence and false statements corrupted the jury's ability to make an impartial and just decision based on the facts and the truth beyond a reasonable doubt. The Prosecutors legal and ethical duty to present all material evidence to the jury was not

fulfilled, which is a direct violation of Petitioners Due Process rights. *NAPUE v. ILL*, 360 U.S. 264 (1959)

Trial Counsel became an ally to the state, bolstering the states position by stating that the blood evidence found on the wall did in fact belong to the Petitioner, making it impossible to raise a reasonable doubt. The actual truth surrounding this trial has never been identified. The state and defense counsel's manipulation of the facts, the lies told to the trial Court, jury, and Petitioner from the beginning kept the Petitioner right to a fair trial from being met.

Solicitor Hodge also stated that "Petitioner failed to tell his version of the incident and what happened" (App 706 lines 8-14) This is a direct violation of *OHIO v. DOYLE*, 426 U.S. 610 (1976) " It would be fundamentally unfair to allow an Arrestee's silence to be used to impeach an explanation subsequently given at trial, after he has been implicidley assured by Miranda warnings, that silence would carry no penalty"

BELL v. EVATT, 72 F3d 421 (4th 1955)

DANIELS v. LEE, 316 F3d 477 (4th 2003)

GIGLIO v. U.S., 405 U.S. 150 (1972)

MILLER v. PATE, 386 U.S. 1 (1967)

NAPUE v. ILL, 360 U.S. 264 (1959)

PEOPLE v. NATION, 26 Cal 3d 169, 161 Cal RPTER 299 604
P2d 1051 (1980)

RIDDLE v. OZMINT, 631 SE2d 70 (S.C. 2006)

S.C. CODE OF LAWS 16-9-10 perjury

S.C. RULES OF COURT, RULE 407, RULE 3.3 Candor towards
Tribunal

STATE v. KING, 623 SE2d 865 (S.C. Ct. App 2005)

U.S. v. LOAYZA, 107 F3d 257 (4th 1997)

U.S. v. MADDOX, 156 F3d 1280 (PC 1998)

U.S. v. OLLIVIERRE, 378 F3d 412 (4th 2004)

OHIO v. DOYLE, 426 U.S. 610 (1976)

ARGUMENT

Did PCR Judge err in holding Petitioner's Due Process was not violated when the Honorable Trial Court interjected himself into the proceedings during a Proffer by telling the Prosecutor what questions to ask and informing the Detective how to answer those questions?

FACTS

The Honorable Trial Court interjected himself into the Adversarial Process during a Proffer by telling the Prosecution what questions to ask and informing the detective how to answer those questions.

Trial Counsel (without objecting), outside the presence of the jury, states his concern that Petitioner's rights were about to be violated by Testimony elicited by Solicitor Hodge. (App 334 lines 2-24) Trial Court then asks Solicitor to Proffer questions, to see if the elicited testimony would be objectionable. (App 334 line 25 and App 335 lines 2 - 24) Solicitor proceeded to ask Det. Miller three questions (App 335 lines 6-14) Trial Court then interjected by saying "just what happened next." Solicitor begins again and after six questions and answers, Trial Court starts to offer questions that would be acceptable in his opinion and proceeds to give Det. Miller the best answers to get around informing the jury that Petitioner invoked his Miranda rights that would not allow Trial Counsel to object. Trial Court was adamant that there be no "comment on his assertion of his constitutional rights." (App 336, Ln 12-20) Trial Court then began coaching the Prosecution and Det. Miller on how to ask and answer questions to get around mentioning that Petitioner had invoked his right to remain silent (App 334 lines 16-20) Trial Court then ask Trial Counsel if he could find anything to object to, (App 336 lines 22-23) Trial Counsel stated " two things that I think are objectionable" (App 337 lines 2-6) Trial Court continued to coach Det. Miller on what to say and how to say it until Trial Counsel stated "if its done pecisely the

way your Honor just did it, I'll have no objection." (App 337 lines 21-22) To which Trial Court replied " You dont have to flatter me" (App 337 lines 23-24) Trial Counsel replied that "I was saying that the way you did it was precisely the only way I could not object to" (App 337 line 25 - 338 lines 1 and 2). Petitioner feels that Trial Court showed extreme bias against defense throughout the proceedings, and that everything said starting on App page 334 and going thru App page 339 lines 1-9 not only support this, but that it also shows how ineffective Trial Counsel was by not only allowing but assisting Trial Court to violate Petitioners 5th amendment right to remain silent. Trial Court and Solicitor continue working on questions and answers, specifically App 338 lines 23-25 Solicitor states "Without mentioning that he invoked his right to his attorney" Trial Court states "Yeah. Just leave that out". Petitioners family was very upset, disturbed, and confused by Trial Courts actions wanting to know if " the judge is allowed to assist and coach the state with questions and answers" and several stated that it didn't seem fair. Petitioner doesn't have any signed affidavits from his family concerning this but wanted to include their feelings on this issue. Petitioner feels it showed blatant bias towards himself and a complete disregard of Petitioner's rights and the fulfillment of the Adversarial system. Solicitor Hodge and Trial Counsel are suppose to be professional's in their chosen profession's with ethics and a high moral standard, if Det. Miller could not give honest, proper answers to the Solicitor's question's concerning his "interview" with Petitioner, then Trial Counsel should not be impeded in preserving any potential error on record for the Court of Appeals, by objecting. Trial Court intervened seven different times during Proffer to coach the Solicitor and Det. Miller on how to ask and answer questions in a way that avoids infringing on Petitioners Constitutional right to remain silent so the jury can be led to believe something other than the actual facts.

In essences the jury heard a doctored version of what was said that was coached and supported by Trial Court while

simultaneously preventing Trial Counsel from being able to do anything. Trial Counsel was ineffective for allowing this to take place without even objecting for the record to preserve any potential error for appeal. **PORCARO v. UNITED STATES**, 784 F2d 38, 41-42 (1st Cir 1986) Courts have repeatedly held that positive proof of the partiality of a Judge is not required, only the appearance of partiality, **LILJEBERG v. HEALTH SERVICES ACQUISITION CORP**, 486 U.S. 847, 108 SCT 2194 (1984) What matters is not the reality of bias or prejudice but its appearance. Because of Trial Counsels ineffectiveness by not only not objecting to these bias and impartial actions but by agreeing with Trial Court and allowing the jury to hear what the prosecution wants them to with a total disregard to Petitioner's Constitutional rights and shifting the burden of proof entirely onto Petitioner. **PORTER v. SINGLETARY**, 49 F3d 1483 (11th 1990)

Petitioner means no disrespect to the Honorable Judge Miller but the afore mentioned impartiality and bias prejudiced the Petitioner, when Solicitor Hodge was shown a way to impede on Petitioners Constitutional right to silence by Trial Court thru testimony and closing arguments.

LILJEBERG v. HEALTH SERVICES ACQUISITION CORP., 486 U.S. 847, 108 SCT 2194 (1984)

OHIO v. DOYLE, 426 U.S. 610 (1976)

PORCARO v. UNITED STATES, 784 F2d 38, 41-42 (1st Cir 1986)

PORTER v. SINGLETARY, 49 F3d 1483 (11th 1990)

S.C. RULES OF COURT, Cannon 3B (5)

LITEKY v. U.S. 114 S.Ct 1147,1162 (1994)

"Liteky V. U.S. states that in 1994 the U.S. Supreme court held that "Disqualification is required when an objective observer would entertain reasonable questions about the Judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the Judge must be disqualified."

ARGUMENTS

Did the PCR Judge err in holding that Petitioner's Trial Counsel were not ineffective in failing to investigate the facts of the crime and the crime scene and failed to present an adequate defense based on the facts?

FACTS

Trial Counsel failed to investigate the facts of the crime and the crime scene and failed to present an adequate defense based on the facts.

Trial Counsel A. Johnston and G. Wilson were deficient for not investigating the facts of this case, the crime scene, and failed to present an adequate defense based on the facts. Petitioner retained Trial Counsel for their experience and resources in DNA cases. Trial Counsel conducted their defense entirely from their office. Trial Counsel never visited the crime scene, never interviewed residence living around crime scene for potential witnesses, never inquired with local businesses for any possible surveillance footage that may have shown any vehicles leaving the area at the time the crime was committed. Trial Counsel never attempted to interview the victim Mr. Wooten, or the only known witness Ms. Edwards, or any law enforcement and medical professionals involved with the case. Trial Counsel never consulted with any DNA, medical, or ballistics experts to dispute any irregularities in the states findings or to even help them understand the complexities or terminology of the states scientific evidence as stated by Trial Counsel A. Johnston (App 832 lines 12-16, App 848 lines 21-25, and App 849 lines 1-10). Trial Counsel states that the strategy was to merely give an explanation that the reason the Petitioner's blood was "on the section of wall" was that Petitioner was shot at the crime scene a week prior to the crime. Trial Counsel admittedly second guessed himself for not getting an expert to advise him to the proper meanings of the "somewhat complicated scientific evidence" This was defective because had Trial Counsel investigated and

understood the Discovery given by the state, Trial Counsel would have known that no blood or tissue was indicated on the section of wall that was removed from the crime scene. (App 867- Ex. A.2, App 869 Ex. A.3, " items of evidence' item 7) "no appreciable stain of blood belonging to petitioner on the bullet jacket (App 871 Ex. A.4) Trial Counsel requested a 30 day continuance on April 12, 2012 to review what trace evidence the state had, and had Trial counsel understood the findings he would not have still preceded to claim during opening arguments to the jury that Petitioners blood and tissue was found at the scene of the crime (App 874 lines 15-24 Ex.A.7). No blood belonging to the Petitioner was found anywhere at the crime scene period. Solicitor Kristie Hodge opened her arguments by stating that Petitioner had left behind his DNA (App873 lines 5-9, Petitioners Ex. A.6). "A splatter on the kitchen wall and body tissue, and hair, is the DNA of the Defendant Ronnie Swofford" this is a false statement made to the jury. No blood or tissue was found on the "section of wall" and the hair was potentially compromised (please see failure to preserve evidence and follow chain of custody procedures). The states case built around DNA in which the only DNA evidence available was the genetic material found on an alleged bullet jacket found lying on the floor is misleading, there was no blood on this alleged jacket or on the floor where it was found. Trial Counsel did not attempt to retest or have an independent expert read the results of the states test on the section of wall, nor did Trial Counsel show that ballistics couldn't even show if the copper jacket came from Mr. Wootens gun (App 231 lines 22-24). Trial Counsel heard testimony from the states DNA expert Verona Gibson testify that the test for blood on the section of wall were all negative (App 875 lines 2-11, Petitioners Ex A.8). Solicitor Hodge even repeated the statement "was negative for blood? ok" in response to this expert witness. Trial Counsel states (App 876 line 12, Petitioners Ex A.9) "I have NO questions for the lady". Trial Counsel failed to utilize the States DNA and Medical Experts on cross-examination to raise any doubt that referenced scientific results. Through out trial law enforcement repeatedly stated they saw blood on the wall with no objection from Trial

Counsel. The victim Mr. Wooten stated the he became 100% sure it was the Petitioner (App 133 line 2-11) who had shot him when officers told him "They had found the bullet he shot Mr. Swofford with in this wall with Mr. Swoffords blood on it". This was a false statement because no bullet was recovered with any blood on it or that could be matched to any weapon in this trial and still Trial Counsel did not object. Trial Counsel challenged the experience of Det. Miller by debating the freshness of the blood on the wall (App 666 line 7-15 and App 669 lines 11-14) continually allowing the jury to infer that the Petitioners blood in fact was splattered on the wall. These deficient errors by Trial Counsel allowed false evidence and false testimony into this case.

The red substance that was found on the section of wall was tested and found as negative for blood. The Petitioner does not mean blood tissue, or any other meaning. The petitioner states that any "red fresh blood in a liquid state" or that " the blood was stil fresh as in actual red liquid blood" that the state and Trial Counsel constantly refer to during trial, in front of the jury, who believe what they are hearing is scientific fact, was in fact not blood, which the scientific test had proven, thus allowing false evidence to become a deciding factor in this case. This is fraud upon the court allowing a lie to be a determining fact. To a trier of fact asked to use comon sense when looking at a red substance, constantly being refered to as the Petitioners blood from opening arguments thru closing arguments by the solicitor (App 715 line 10-23 and App 723 lines 12-24) there could be only one conclusion. drawn from the refrence of blood. The petitioner could go on and on on how prejudice was set in thru the entire trial, of having to explain why his blood and tissue were on a kitchen wall. Trial Counsels strategy was to rebut the states reason why Petitioners blood was on the kitchen wall, that it was old dry blood. Four days of trial was wasted due to Trial Counsels inability to read and/or understand the DNA trace results that led the jury to believe that blood existed and that the Petitioner was present at the scene when the crime was committed and that he was an exceedingly dangerous person that an acquittal would put back into society. Therefore prongs 1 and 2 of Strickland were met in this regard, as there was no probative value to this false evidence and/or testimony except severe prejudice to Petitioner, which believes by rulings of the

Supreme Court of the United States and South Carolina that this deprivation of Petitioners right to an adequate legal assistance was not met and thus undermines the outcome of the proceedings.

ARD v. CATOE, 372 S.C. at 331-332, 642 SE2d at 597(2007)
 DEMAREST v. PRICE, 130, F3d 922 (10th Cir 1997)
 GIGLIO v. U.S., 405 U.S. 150 (1972)
 HOUSE v. BALKCOM, 725 F2d 608 (4th Cir 1984)
 LORD v. WOOD, 184 F3d 1083 (9th Cir 1999)
 MILLER v. PATE, 386 U.S. 1 (1967)
 MOONEY v. HOLO. AN, 294 U.S. 103, 386, U.S. 2-7 (1935)
 RIDDLE v. OZMINT, 631, SE2d 70 (SC 2006)
 S.C. CODE OF LAWS, 16-9-10
 S.C. RULES OF COURT, Rule 407, Rule 3.3.
 STEPHENS v. KEMP, 846 F2d 642 (11th Cir 1988)
 TROEDEL v. WAINWRIGHT, 667 FSupp 1456, 1461, (SD Fla 1986)
 aff'd F2d 620 (11th Cir 1987)
 (emphasis in original)

CHERRY V STATE 300, SC 115, 117-118, 386 SE2D 624, 625, (1989)
 PORTER V STATE 386 SC 378, 383, 629 SE2d 353, 356 (2006)
 STRICKLAND V WASHINGTON 466 U.S. 668 104 S.Ct 2052(1984)

ARGUMENT

Did the PCR judge err in holding that Trial Counsel was not ineffective for his damaging opening arguments...lied to the jury and bolstered the states case.

FACT

Trial Counsel erred in conceding Petitioners guilt during opening arguments by stating the blood found at the crime scene belonged to Petitioner.

Trial Counsel A. Johnston was deficient by stating the Petitioners blood and tissue was at the home of the victim Mr. Wooten in opening arguments which were damaging to an alibi defense, and by lying to the judge, jury, and Petitioner by stating that such DNA would be found in the home placing an undue burden of proof on Petitioner as to why such DNA would be there. However no blood was matched to the Petitioner. If tissue is in reference to the hair, then Petitioner argues that under a different allegation. (see failure to preserve) Trial Counsel was deficient by stating that Petitioners blood would be found at the home, which is a false statement. This was highly prejudicial to the Petitioner because all through the trial the Judge, jury, and Petitioner were led to believe that blood had been found in the house, by stating this in opening arguments Trial Counsel introduced the word 'blood' and the phrase 'blood evidence' allowing Solicitor Hodge to use these terms which she knew to be false, and causing the jury to believe throughout that blood existed, bolstering the states case, when in fact it did not exist. This also opened the door to admissions of testimony referencing "blood evidence matching Petitioners DNA". Solicitor Hodge carefully used the term "a splatter on the wall and tissue and hair" during her opening arguments but later after Trial Counsels opening argument starts using the term blood evidence. Petitioner states that the reference of blood is meaning: the actual red liquid substance that every person has in their body. Trial Counsel states the term blood may have gotten intermingled with tissue (App 847 lines 11-18) as in genetic material. Yet Trial Counsel's debate with Det. Miller is in reference to a "red, in liquid state, fresh red blood" because Trial Court qualified Det. Miller as an expert in the freshness of blood allowing him to attest

to the 'fact' that when he arrived on scene "the blood on the wall was still fresh and in a red liquid state" which was a false statement because forensic test showed there was no blood on the section of wall.

CHERRY V STATE 300 S.C. 115, 117-118, 386 SE2d 624, 625 (1989)

PORTER V STATE 368 S.C. 378, 383, 629 SE2d 353, 356 (2006)

STRICKLAND V WASHINGTON 466 U.S. 668 104 S.Ct. 2052 (1984)

ARGUMENTS

Did PCR Judge err in holding that Petitioners Trial Counsel was not ineffective in failing to cross examine or impeach forensics witnesses about processing and preserving evidence and follow chain of custody procedures?

FACTS

Trial Counsel was ineffective in failing to cross examine or impeach forensics witnesses about processing, and preserving evidence and following chain of custody procedures.

Trial Counsels failure to cross examine or impeach forensics witnesses about the states processing and preservation of evidence methods and chain of custody procedures by not investigating the facts. Trial Counsel failed to cross examine or impeach forensics J. Derby on direct testimony after J. Derby stated his job duties (App 152 lines 9-11) "my job is to document, collect, and observe physical evidence from a crime scene. Trial Counsel never questioned forensics J. Derby in reference to a possible hair that was not initially documented but that was later "found" on the section of wall that had been removed from the crime scene. The Petitioner believes that J. Derby^{documented} everything exactly as he observed it when the section of wall was removed but never mentioned a hair in any reports. Trial Counsel had received the trace evidence results and should have known a possible hair now existed on the wall two and a half years later. In addition J. Derby testified that he sealed the section of the wall, labeled JD-G and states exhibit 39 & 53 and sled item 7 then he packaged up the evidence (App 182 lines 15-16). However while still on direct testimony J. Derby was asked what he did with the items once he returned to the crime scene office (App 182 lines 17-25 and App 183 lines 1-4), he states it wasn't until days later that he put the evidence into P&E control, but then stated (App 196 lines 17-25 and App 197 lines 1-3) "the item was packaged then sent to our P&E section. J. Derby also stated that he used trajectory rods to determine the angle and flight paths

he did this by basically inserting the rods into the holes (App 176 lines 18-24). Forensics J. Derby then documented his findings of the section of the wall at 0525 a.m. on July 27, 2009 (App 891 Petitioners Ex. E.1). Petitioner would like for you to please note that the P&E report shows that the section of the wall was not turned in to the crime scene office until 8 days later on August 4, 2009 (App 891 Petitioners Ex. E.1). Trial Counsel also failed to cross examine Sgt. Shaw in reference to the section of the wall. Sgt. Shaw was asked to go back to the crime scene on July 31, 2009 (App 211 lines 12-25) Sgt. Shaw testified that he took previously collected evidence with him including the section of the wall (App 212 lines 5-23). Later when Solicitor Hodge asked Sgt Shaw "and at that time did you remove it from the box in the packaging?" (App 212 lines 24-25) Sgt. Shaw replied "I did" (App 213 line 1). Sgt. Shaw stated in his crime scene investigation report dated July 31, 2009 (Petitioners' Ex. 3.B) that he reinserted the section of the wall collected previously by forensics J. Derby and then inserted a trajectory rod into the hole in the section of the wall to determine directionality. Sgt. Shaw then took pictures of the section of the wall (Petitioners' Ex. 3.A) being put back into place while an officer was holding the trajectory rod with the tip inserted into the section of the wall and the officer holding the section of the wall has on no gloves. Sgt. Shaw also stated that he began breaking pieces of that black fiber board away. Trial Counsel Failed to ask Sgt. Shaw or any other witness if it is common practice to take sealed evidence containing alleged DNA back to a crime scene with the high risk of contamination. Det. Miller testified (App 321 lines 14-22) that himself, Master deputy Lewis, and Sgt. Shaw went back to the crime scene on July 31, 2009 to determine directionality using trajectory rods. Trial Counsels deficient errors in failing to investigate any of the facts in this case was shown by his not using the forensic pictures, reports, and by his failure to cross examine or impeach the four known law enforcement agents, including two forensic examiners, that had access to the section of the wall after forensics J. Derby sealed and documented it, during the officers direct testimony. After J. Derby documented what he

found on the section of the wall and sealed it in its box no one ever signed the P&E report showing they had possession of or even handled the section of the wall which is a direct violation of S.C. code of laws 17-28-320(B) (1) (2) (3), S.C. Rules of Court SCRCrimp rule 6, State v. Hatcher 384 sc372, 681 SE2d 925(ct App 2009) California v. Trombetta 467 U.S.479 (1984)

In addition Trial Counsels failure to cross examine or impeach forensic witnesses in reference to preservation of evidence or chain of custody would have shown the state failed to establish a complete chain of custody. Master Deputy Lewis was present at the crime scene on July 31,2009 with Sgt. Shaw and Det. Miller when they brought the section of the wall back to the crime scene, but Master Deputy Lewis was not announced during the stipulation of chain of custody witnesses before trial, nor was Master Deputy Lewis available for trial. There was no testimony from or any sworn affidavit signed by Master Deputy Lewis which is mandated by the SCRCrimp Rule 6(b) when a witness is not available. Therefore the chain of custody is incomplete by failing to establish the identity of each custodian and the manner in which this evidence was handled. Trial Counsel had access to all the reports and pictures from the crime scene for two and a half years to go through and find these violations.

Petitioner was severely prejudiced because Trial Counsel failed to bring to light through cross examination or impeaching forensic witnesses, the states incomplete chain of custody, law enforcement (to include two forensic witnesses) failing to preserve potential exculpatory evidence by not wearing gloves, reinserting trajectory rods into the section of wall, cutting and breaking apart additional sections of the wall in an already unclean environment exposing the alleged DNA evidence on the section of the wall to the elements was very highly likely causing the section of the wall to become contaminated because two and a half years later SLED DNA experts testified that no blood or tissue ever existed on the wall, but somehow a hair belonging to the Petitioner, that wasn't documented when the crime was investigated could possibly exist. Trial Counsel could have cross examined the forensic experts as to what type of possible hair was found. The states theory was that the assailant was shot in the arm by the victim. Trial Counsel failed to ask any

witness or inquire of any expert as to what size or type the hair was. At least as a exclusionary defense goes if the hair was say 5 inches long then it would raise doubt to the states theory that the assailant was shot in the arm, keeping that Petitioners arm hair was not 5 inches long and that Petitioner had been an invited guest many times to Mr. Wootens home. By asking no questions at all in reference to the hairs characteristics Trial Counsel allowed the jury to infer that the hair indeed came from the Petitioners arm. Trial Counsels failure to cross examine or impeach forensic witnesses as to preservation methods and following chain of custody procedures severely prejudiced the Petitioner by not having a defense as to why the hair may have been there or if it was indeed an arm hair. Trial Counsel also failed to cross examine forensic witnesses about failing to preserve evidence that had been collected, failing to follow chain of custody procedures, and as to why the state had not established a complete chain of custody. (A party offering into evidence fungible items such as drugs or blood samples, must establish a complete chain of custody as far as practicable. State v. Sweet 374 S.C. 1, 6, 647 SE2d 202, 205 (2007)

When the substance Analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis. Benton v. Pllum, 232 S.C. 26, 33-34, 100 SE2d 534, 537 (1957)) The afore mentioned was a violation of Petitioners 6th amendment Constitutional right to effective counsel and 14th amendment Constitutional right to due process.

BENTON v. PELLUM, 232 S.C. 26, 33-34, 100 SE2d 534, 537 (1957)
 CALIFORNIA v. TROMBETTA, 467 U.S. 479 (1984)
 MCKNIGHT v. STATE, 378 S.C., 33, 46 661 SE2d 334 359 (2008)
 citing WIGGINS v. SMITH, 539 U.S. 510 524 S.C., 2527, 2537 (2003)
 NANCE v. OZMINT, 367 S.C. 547, 557 n.8, 626 SE2d 878, 883 n.8
 (2008) (quoting Wiggins, 539 U.S. at 524-25)
 S.C. CODE OF LAWS 17-28-320 (B) (1) (2) (3)
 S.C. RULES OF COURT SCRCrimp rule 6 (b)
 STATE v. HATCHER, 384 S.C. 372, 681 SE2d 925 (CT App 2009)
 CHERRY V STATE 300 S.C. 300 S.C. 115, 117-118, 386 SE2d 624, 625
 PORTER V STATE 368 SC 378, 383, 629, SE2d 353, 356 (2006)
 STRICKLAND V WASHINGTON 466 U.S. 668 104 S.Ct 2052 (1984)

Greenville Forensics

Case Id: 1-09-119378

Call Id: 26784

Description: Shooting Incident / Home Invasion

Description: Photographs of kitchen area

3.A

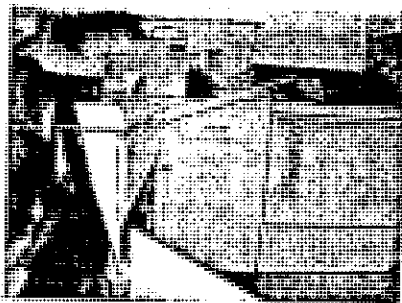


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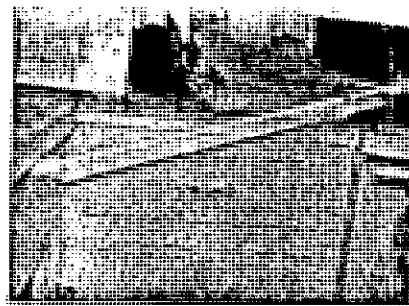


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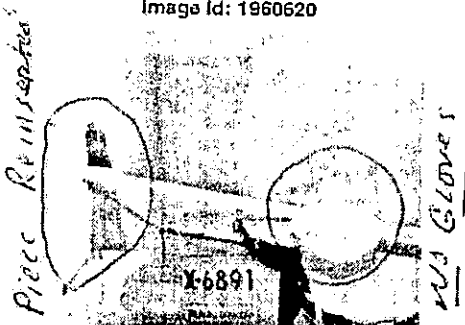


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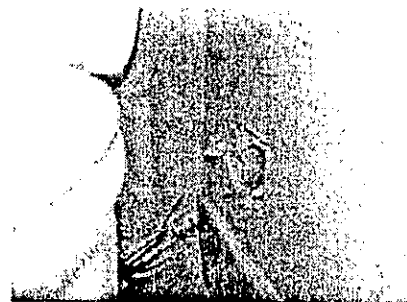


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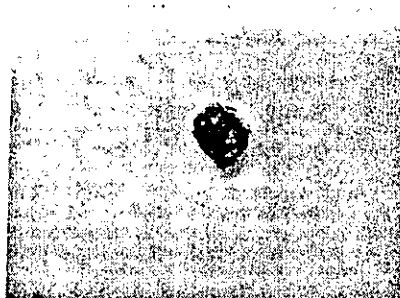


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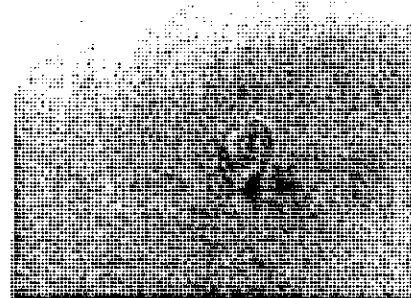


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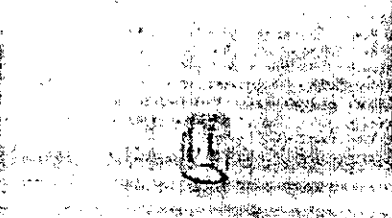


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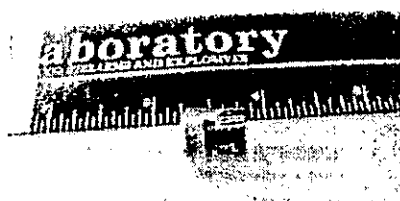


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Image Id: 1960677

3. B

**Greenville County Forensic Division
CRIME SCENE INVESTIGATION REPORT**

AGENCY: Greenville County Sheriff's Office
AREA: 03

CASE NUMBER: 1-09-119378

INCIDENT TYPE:	Gunshot Victim (Follow Up)	INCIDENT LOCATION:	Memorial Dr. Ext. Greer SC
VICTIM:	Wooten, Curtis	ADDRESS:	Same as above
COMPLAINANT:		ADDRESS:	
INV. OFFICER	Miller	UNIT NUMBER	

INCIDENT SUMMARY/ACTION(S) TAKEN:

PAGE 1 Of 1

On 7/31/09, the R/O responded to the incident location and met with Inv. Miller regarding the examination of the scene and the possibility of locating additional evidence related to a shooting that took place at that location on 7/27/09.

Upon arrival, the R/O met with John Wooten, who is the father of the victim. Mr. Wooten had a key to the residence and had given permission to Inv. Miller to conduct further investigation relating the shooting of his son.

The R/O entered the residence and went into the kitchen, where a hole was observed in the wall between the living room and kitchen.

The missing piece of paneling/wall had been collected by Technician Derby during the original investigation.

The R/O observed insulation behind the wall as well as black fiber board.

In an effort to locate a possible projectile that had not been recovered, the R/O cut out a section of the exterior wall and then cut out an area of the fiber board. The R/O observed an area on the exterior wall that had what appeared to be tissue on it and since it was not collected originally, the R/O later collected it as DLS-1.

The R/O observed behind the fiber board, brick that had mortar protruding out of the seams. The R/O temporarily put the cut out piece of wall that had been cut by Technician Derby in place and used a trajectory rod in an effort to find where the projectile may have struck on the brick or mortar. The R/O located a spot above an area of mortar that appeared to be a lead swipe. After cutting out the section of the fiber board, the R/O examined between the fiber board and cement wall and located a lead projectile. This lead projectile was collected as DLS-2.

The piece of wall that had been collected by Technician Derby was put in place where it had been taken out of and a trajectory rod was put in place in an effort to determine the directionality and trajectory of the projectile that had entered the wall. An angle finder was placed on the trajectory rod and it was determined the projectile entered the wall at an app. 11 degree angle of ascent.

Using the laser, the projectile entered the wall at an angle consistent with the weapon being fired approximately straight on. The laser indicated a travel path that was in the direction of where an unknown caliber projectile had struck the cupboard in front of the sink and was recovered under the cupboard. This had been photographed and collected by Technician Derby.

The R/O located a suspected projectile hole in the wall near the back door and a trajectory rod was put in place with the laser attached. The laser dot struck the wall just above the hole in the wall where the piece of wall had been removed by Technician Derby. The projectile entered the kitchen wall near the back door, continued through the interior wall and was found to have penetrated the wall in the master bathroom, exited the back wall behind the toilet and entered into the side wall of the bathroom.

The R/O cut a hole in the side wall in the master bathroom and after removing some insulation, located an unknown caliber projectile in the space between the walls. The area where the projectile was located was photographed. The projectile was collected as DLS-3. No further actions were taken.

Upon returning to the Crime Scene Office the digital images were scanned into the photo database under call id # 26784.

The collected items were packaged for placement into P&E.

The above actions took place between 0900 and 1045 hours.

REPORTING OFFICER	Shaw- D.L. Sgt. <u>D</u>	STAR#	8561	UNIT #	918	DATE	7/31/09
REPORTING OFFICER		STAR#		UNIT #		DATE	
APPROVING SUPERVISOR	<u>Sgt D.L. Shaw</u>	STAR#	<u>8561</u>	UNIT #	<u>918</u>	DATE	<u>7/31/09</u>

Case Id: 1-09-119378
Call Id: 26784

Greenville Forensics

Description: Shooting Incident / Home Invasion
Description: Photographs of kitchen area

943
DISC Copy

3.C

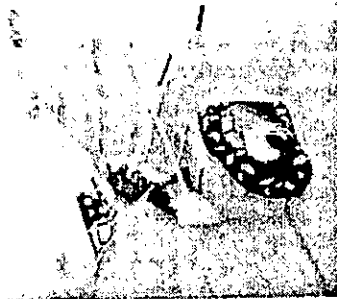


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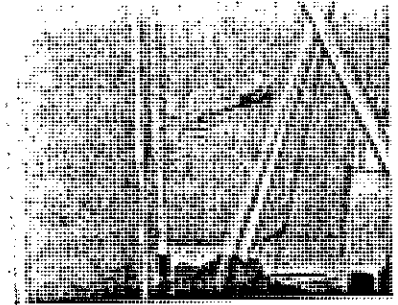


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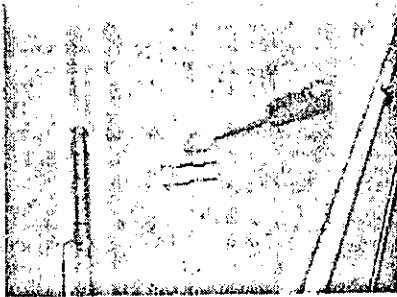


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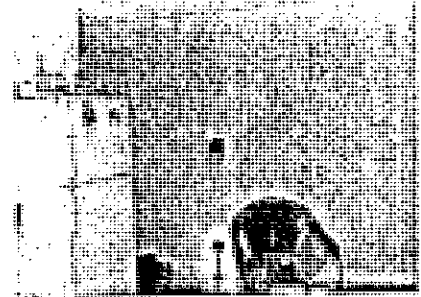


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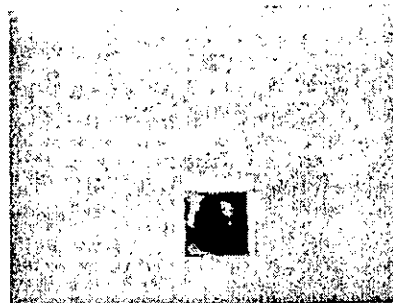


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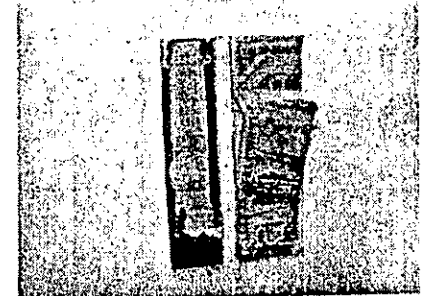


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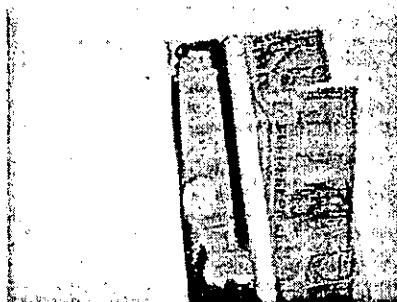


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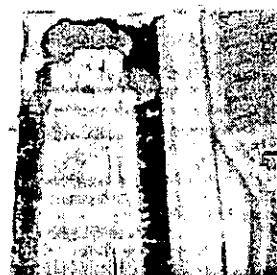


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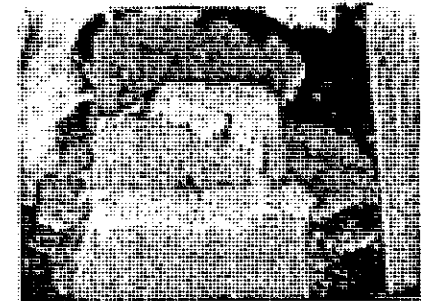


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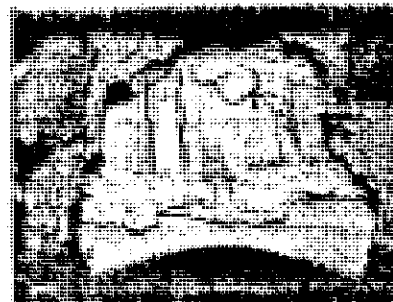


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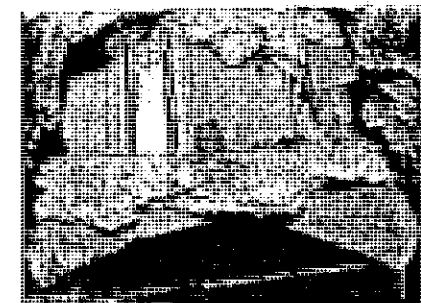


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ARGUMENTS

Did the PCR Judge err in holding that Petitioners Trial Counsel were not ineffective in failing to consult with a Medical Expert regarding the reliability of the Witness/Victim Identification "Witness memory was obviously impacted by Medical Trauma".

FACTS

Trial Counsel was ineffective by failing to consult with a Medical Expert regarding the reliability of the Witness/Victim Identification "Witness memory was obviously impacted by Medical Trauma".

Trial Counsel Failed to consult with an Independent Medical Expert to understand terminology and the potential impact of trauma suffered by the Victim and to prepare a case that shows the Victim may have possibly misidentified the Petitioner as the shooter, In addition Trial Counsel did not question the States Medical Expert Dr. Dach, a Trauma Surgeon (App 125, Line 11-12). Trial Counsel deficient error of not cross-examining Dr. Dach would have shown that (App 136, Line 13-16) Victim Mr. Wooten was showing signs of shock, In fact Victim Mr. Wooten was exhibiting class three/four shock which also means 30% to 40% of his blood volume (App 136, Line 20-25 and App 137, Line 1) loss. This amount of loss required a large amount of resuscitation (App 138, Line 5-6) in addition Victim Mr. Wooten would have expired if not treated immediately (App 138, Line 21-23) See Bell v. Miller, 500 F3d 149, 155-157 (2nd Cir 2007) "Trial Counsel failure to consult a Medical Expert concerning the reliability of Victim Identification". 1. Victim Mr. Wooten calls 911, when asked does he know who shot him, Victim states "No" 2 times, but did state "She Shot me" 2 times. 2. Sgt. Hayes states in his Supplemental report (Petitioners*Ex. 1.A) while at the emergency room "I asked Wooten if he know why someone would come in and shoot him and he stated "Ronnie Swofford", Sgt. Hayes then stated "I asked Wooten if he could say for sure it was the Swofford subject and he (Wooten) said No". At that point Sgt

Hayes was removed from the ER. Victim Mr. Wooten states in his testimony (App 71, Line 8-9) "that the assailant was 4 or 5 feet away" and "The incident happened less than a minute" (App 86, Line 18-19), Victim Mr. Wooten states (App 85, Line 14-16) that he saw Petitioner with a mask on with an open face. Later, Mr. Wooten on cross-examination states he could see the eyes but the mouth is covered (App 114, Line 12-25 and App 115, Line 1-8), Which is completely opposite to what the Witness Ms. Edwards states the Alleged Assailant was Wearing (See Confrontation Clause). 3. Victim Mr. Wooten states on Cross-examination (App 133, Line 2-5) "I was 99.9% sure and after they found the bullet I shot him with, with his blood on it in my wall, I'm a 100% sure. Mr. Wooten called 911 while coherent and did not say who shot him, and then drove himself and the Witness Ms. Edwards to the hospital, was not sure who in fact shot him then when asked by Sgt Hayes. Once Mr. Wooten is aware that the Petitioner has been charged with this shooting and upon Mr. Wootens release he becomes 99.9% sure then some how 100%, however there was "NO" bullet recovered in the wall with any blood or tissue belonging to the Petitioner, Trial Counsel did not object to this false statement. Trial Counsel failing to consult with a Medical Expert or atleast cross-examine the States Medical Expert, Dr. Dach severely prejudiced the Petitioners Defense by not putting up any defense to raise doubt as to the accuracy of the Victims Identification. Trial Counsel had the Medical records from the Hospital available to raise inquiries of various Medications that may have impacted his memory. The records would not be considered Hearsay because the records were generated to monitor the victim Mr. Wootens progress from the surgery and to gather information to help Doctors properly diagnose and/or prescribe the necessary medications to help Victim Mr. Wooten recover. These records were not generated for prosecution and Trial Counsel had them as part of his discovery. These records would have revealed that Mr. Wooten was on disability due to Psychiatric illness, suffers from having Bipolar disorder, Depression, Anxiety disorder, Opiate dependent, currently on Methadone, with a history of Drug Over dose (Petitioners EX. 2.A - 2.F) The Jury listened to the difficult time Victim Mr. Wooten had from the gunshot wound and almost losing

EX. 2.A-2.F. pgs 31-36

his life. The Petitioner had a right of Cross-examination which demands the right of effective cross-examination, *Davis v. Alaska*, 415 US 308 (1974) however Trial Counsel did "NO" cross-examination. Failing to do any Medical Research, Consult with an Independent Medical Expert, and failing to question Dr. Dach, the States Medical Expert in Trauma as to the injuries and trauma experienced by the Victim while Mr. Wootens body is shutting down from shock and the massive blood loss, and the heavy medications taken before, during, and after his hospital stay was unreasonable for Trial Counsel to do nothing at this stage severely prejudiced the Petitioner because the jury obviously felt empathy for the Victim Mr. Wooten which is understandable, but it also inflamed and infuriated the Jury as to the meanness the Petitioner possessed, which is not true. Trial Counsel abandoned their role again as an adversary for the Petitioner, which believed a reasonable cross-examination would have shown the Identification was inaccurate.

Bell v Miller, 500 F3d 149, 155-157 (2nd Cir 2007)

Davis v Alaska, 415 US 308 (1974)

Groseclose v Bell, 130 F3d 1161 (6th 1997)

House v Balkcom, 725 F2d 608 (11th 1984)

McKnight v State, 378 SC, 33, 46, 661 SE2d 334 359 (2008)
citing *Wiggins v Smith*, 539 US 510 524 SCT 2527, 2537 (2003)

Nance v Ozmint, 367 SC 547, 537 n.8. 626 SE2d 878, 883 n.8 (2006)
(quoting *Wiggins*, 539 US at 524-25)

S.C. Code of Laws 17-23-60

CHERRY V STATE 300 S.C. 115, 117-118, 386 SE2d 624, 625 (1989)

PORTER V STATE 368 SC 378, 383, 629 SE2d 353, 356 (2006)

STRICKLAND V WASHINGTON 466 U.S. 668 104 S.Ct 2052 (1984)

OF

AGENCY I.D.
SC0230000Greenville County Sheriff's Office
SUPPLEMENTAL REPORT

CASE NUMBER

0190001193781

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	ABWK/BURGLARY (GUN SHOT VICTIM)
☒ SUPPLEMENTAL REPORT	☐ OTHER	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	01B
				PAGE	1 OF 1

Victim: Wooten- Curtis W/M (██████████)
 Memorial Drive Ext. Greer, SC 29651

Ex. 1.A

Witness: Edwards- Rikki (██████████)
 Memorial Drive Ext. Greer, SC 29651

I responded to Greer Memorial Hospital ER and found the victim (Wooten) being treated by ER staff. I was able to get Wooten to give me a brief description of the events that transpired at his residence which led to his being shot. Wooten who appeared to be in serious pain stated he was returning from grocery shopping and while he was entering his residence a unknown subject dressed in dark clothing (possibly a green jacket) and wearing a ski-mask had entered the residence behind him and just started "shooting" at him. I asked Wooten if he knew why someone would come in and shoot him and he stated "Ronnie Swafford". When asked why this subject he stated that the Swafford subject owed him money and that the two had been in prison together. I asked Wooten if he could say for sure it was the Swafford subject and he said no but that he lived in Spartanburg and had a 40cal. handgun. At this time the ER staff began administering med's and Wooten just continued to say he was in pain. I observed a wound that appeared to be a gunshot in Wooten's lower back area. I then instructed Deputy Cassel (D34) to obtain a consent to search of the residence from the Witness (See Cassel's Supplemental) and for him to take possession of Wooten's clothes. I then had the county duty wrecker respond and transport the victim's vehicle to the forensics office. Wooten had apparently driven himself to the ER after the incident. I then responded to the incident location and stood by with MD Grice (D29). Investigator's Miller and Weiner with CID responded and the consent to search and the crime scene were turned over to them.

-4 AUG 2009 08 13

Wooten ①

SUBJECT IDENTIFIED		SUBJECT LOCATED		☒ ACTIVE ☐ ADMIN. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEARED UNDER 18	
☐ YES ☒ NO		☐ YES ☒ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEARED 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM/DECLINES COOPERATION ☐ EXTRADITION DENIED ☐ JUVENILE-NO ARREST									
REPORTING OFFICER(S)		DATE		UNIT NO./STAR #		APPROVING OFFICER		DATE	
Sgt. David Hays *163		7/27/09		D03		Sgt. David Hays *163		7/27/09	
						FOLLOW-UP INVESTIGATION		☒ YES ☐ NO (OFFICER)	
						CID			

Ex.
2.A

2405

GREENVILLE HOSPITAL SYSTEM UNIVERSITY MEDICAL CENTER
GREENVILLE MEMORIAL HOSPITAL
MEDICAL RECORD

NAME: WOOTEN, CURTIS RANDOLPH

DATE OF ADMISSION: 07/27/2009
DATE OF CONSULTATION: 08/13/2009

ATTENDING PHYSICIAN: Dr. Brian Dach.

REASON FOR CONSULTATION: Profound debilitation. Assess his gunshot wound to the abdomen with multiple medical comorbidities.

HISTORY OF PRESENT ILLNESS: The patient is a 46-year-old right hand dominant disabled gentleman secondary to psychiatric illness who has been on a methadone wean program secondary to drug addiction with a prior history of bipolar, depression, anxiety disorder, and prior hospitalization in 2007 secondary to drug overdose. The patient has a prior history of a gunshot wound to the leg for which he has had chronic pain. He was admitted through the emergency department on 07/27/2009 status post gunshot wound to the mid abdomen that was exiting through the left flank. The patient was brought to the operating room for exploratory laparotomy, right and left chest tube placements, and small bowel repair as well as transverse colon segmental resection, left nephrectomy, and left splenectomy. He also required endotracheal intubation performed by Dr. Dach. On 07/30/2009, he underwent end-to-end hand sewn jejunoduodenostomy as well as side-to-side functional end-to-end transverse colon anastomosis and repair of mesenteric hernia and jejunostomy tube placement as well as placement of abdominal wound vac which remains in place at this time. He subsequently underwent abdominal wound closure and superficial vac placement on 08/01/2009. He was maintained on mechanical ventilation and is status post tracheostomy secondary to respiratory failure on 08/07/2009. The patient has since been transferred out of the intensive care unit on 08/12/2009 and today, 08/13/2009, Roger C. Peace is being consulted. Speech did see him for bedside evaluation and he is approved for a mechanical soft diet. He is moderate assistance for supine-to-sit and sit-to-supine. He is able to go from sit-to-stand to the bedside chair with moderate assistance, hand-held assist. He is nonambulatory. The patient has some questionable premorbid cognitive status issues or more related to his psychiatric illness. He is currently incontinent of bowel. He is currently tolerating the Passe-Muir valve. He has had some acute renal failure status post nephrectomy. Current BUN and creatinine are 38 and 1.4, down from 50 and 1.7. He has significant drop in hemoglobin from 9.3 yesterday to 7.8 today. He has had ongoing leukocytosis with a white blood cell count now of 24,700, which is stable from yesterday but up from August 11, 2009 at which time it was 20,400. The patient has noted thrombocytopenia with platelet count of 59,000. His ionized calcium is also low at 4.1. His calcium has dropped from 8 to 7.2.

CONSULTATION
Page 1 of 4

CHART COPY

Ex.
2.B

**GREENVILLE HOSPITAL SYSTEM UNIVERSITY MEDICAL CENTER
MEDICAL RECORD**

NAME: WOOTEN, CURTIS RANDOLPH
[REDACTED]

His phosphorus is also low at 2.3. Roger C. Peace is being asked as part of the patient's treatment program to assess whether he would be appropriate for an inpatient rehab stay. The patient has not been followed by occupational therapy. He has only been seen by physical therapy on 2 occasions and a cognitive evaluation has not been performed by speech therapy. Nevertheless, Roger C. Peace is being asked to assess.

PAST MEDICAL HISTORY:

1. History of drug addiction for which he has been on a methadone program.
2. Bipolar, depression, and anxiety disorder.
3. Prior gunshot wound to the leg with chronic pain.
4. Prior tonsillectomy.
5. Prior herniography.

SOCIAL HISTORY: The patient is divorced. He lives with his parents and is disabled secondary to psychiatric illness. He smokes 1 pack per day of cigarettes for the past 30+ years. He has had prior history of cocaine use as well as alcohol abuse. Mother reports none recently.

ALLERGIES: Penicillin.

CURRENT MEDICATIONS:

1. Mycamine 100 mg IV daily and this is secondary to blood cultures being positive for yeast.
2. Reglan 10 mg IV q.8h.
3. Free water 100 mL via tube q.6h.
4. Avelox 400 mg IV daily.
5. Prevacid 30 mg via tube daily.
6. Haldol 5 mg IV q.12h.
7. Catapres patch 0.3 mg patch change weekly.
8. Heparin 5000 units subcutaneously q.8h.
9. Peridex 15 mL p.o. twice daily.
10. Duragesic patch 75 mcg patch change q.3days.
11. He is on p.r.n. Ativan and morphine.
12. He is on Fiber Source HN tube feedings.
13. P.r.n. Haldol.
14. Apresoline.
15. Zofran.
16. Geodon.
17. Tylenol.
18. Lopressor.

CONSULTATION
Page 2 of 4

CHART COPY

GREENVILLE HOSPITAL SYSTEM UNIVERSITY MEDICAL CENTER
MEDICAL RECORD

Ex.
2.C

NAME: WOOTEN, CURTIS RANDOLPH

[REDACTED]
[REDACTED]

FAMILY HISTORY: There is no family history of psychiatric illness, stroke, or cancer.

REVIEW OF SYSTEMS: Somewhat difficult to obtain as the patient is not the best historian. He complains of pain right now in his abdomen as well as low back and lower extremities. He denies any chest pain or shortness of breath. He is incontinent of bowel. His mother is currently present. The patient does have a right PICC line in the right upper extremity. The patient was advanced to a mechanical soft diet today. Otherwise, review of systems is negative.

PHYSICAL EXAMINATION: VITAL SIGNS: Temperature 98.9. Respirations 18. Heart rate 94. Blood pressure 133/76. The patient is 5 feet 11 inches tall and 240 pounds stated.

GENERAL: This is a well developed, well nourished slightly obese Caucasian gentleman in no acute distress. He has got bilateral upper extremity tremor. His mother notes that he normally has a tremor due to his severe anxiety.

HEENT: Normocephalic. Atraumatic. Pupils equally round and react to light and accommodation. Extraocular movements are intact. Oropharynx is clear. However, the patient would not cooperate with this part of the exam.

NECK: Supple. Trachea is midline. Pässe-Muir valve is on.

CARDIOVASCULAR: Regular rate and rhythm.

LUNGS: Clear to auscultation with scattered crackles throughout.

ABDOMEN: Soft. Nontender. Wound vac is in place. Abdominal wound with some sutures noted visible at the inferior and superior aspect of the wound. Peri wound area is clean.

EXTREMITIES: Without clubbing, cyanosis, or edema. Distal pulses are 2+.

NEUROLOGIC: Cognitively, it is difficult. The patient will not speak at first. He gives me hand signals, which made no sense. However, then he started to mouth words. He thought it was either July or September. He told me it was 2008. His mother often intervened during the exam stating that he was cognitively intact. The patient had difficulties following commands. He would not lift his arms off the bed. Manual muscle testing was impossible. He is moving all extremities but he is diffusely weak and has a tremor throughout.

IMPRESSION AND PLAN: This is a 46-year-old gentleman with a significant past medical history of psychiatric illness status post gunshot wound to the abdomen with profound debilitation as well as ongoing medical needs including bacteremia and wound vac placement to the abdomen, bowel incontinence, dysphagia, questionable cognitive dysfunction, and most profound debilitation.

PLAN: I will order occupational therapy evaluation and treatment for ADLs. I will also order speech therapy for cognitive evaluation. I would continue his physical therapy and occupational therapy. It is too early to tell how his recovery and progress will go. However, I think overall in the long term his rehab potential is good given his premorbid independent status. He is limited by cognition as well as his anxiety. Roger C. Peace will be pending medical and social as well

CONSULTATION
Page 3 of 4

CHART COPY

Ex
2.D.GREENVILLE HOSPITAL SYSTEM UNIVERSITY MEDICAL CENTER
MEDICAL RECORDNAME: WOOTEEN, CURTIS RANDOLPH
[REDACTED] [REDACTED]

as financial clearance as well as mother's choice. We spoke at length and the patient will need 24-hour supervision and probably physical assistance at discharge. Mother continues to work at [REDACTED]. Therefore, she is wanting to try to get him into The Cottages. However, this may be a financial issue that needs to be addressed. Therefore, I have notified case management. I will continue to follow with you. Thank you very much for allowing Roger C. Peace to participate in Curtis Wooten's care.

ELECTRONICALLY SIGNED BY

Robbins, Amy - 28596
10/06/2009 12:23:23

Amy Robbins Cantillion, MD

cc: Amy Robbins Cantillion, MD
Brian Wayne Dach, MD

ID: 08/13/2009 12:33 P

T: 08/13/2009 01:26 P jrk

DVI: 529540 C/S#: 2845443

GREENVILLE HOSPITAL SYSTEM UNIVERSITY MEDICAL CENTER
GREENVILLE MEMORIAL HOSPITAL
MEDICAL RECORD

NAME: NEVADA, CURTIS RANDOLPH

DATE OF ADMISSION: 07/27/2009

DATE OF CONSULTATION: 08/20/2009

INFECTIOUS DISEASE CONSULTATION

REQUESTING PHYSICIAN: General Surgery

REASON FOR CONSULTATION: Persisting candidemia, please assist in care.

HISTORY OF PRESENTING ILLNESS: Mr. Nevada is an unfortunate 46-year-old Caucasian male with multiple medical problems including bipolar disorder, anxiety disorder, opiate dependence, history of gunshot wound to the left thigh with chronic pain, prior tonsillectomy, prior herniography, who was admitted on 07/27/09 after suffering a gunshot wound to the abdomen by an acquaintance. The patient was admitted by the trauma service. The bullet had entered mid abdomen and exited through left flank. He was taken to the OR emergently, had right and left chest tubes placed, had exploratory laparotomy, small bowel repair, transverse colon segmental resection, left nephrectomy, splenectomy, necessitated intubation and now currently has a trach in place which is capped. On 07/30/09, he underwent end-to-end hand sewn jejunoduodenostomy as well as side-to-side functional end-to-end transverse colon anastomosis and repair of mesenteric hernia and jejunostomy tube placement, also placement of wound vac at that time. He subsequently underwent abdominal wound closure and superficial vac placement on 08/01/09. He is now transferred to the floor. He is afebrile with chronic leukocytosis but this is slowly and steadily improving. On 08/16/09, his white count was 25, then 22.9, then 23.3, now on 08/19/09 he was 15.6. His hemoglobin is stable at 9. Platelets are mildly elevated. He is status post left nephrectomy. He has a creatinine which is stable between 1.3 to 1.4. He had central lines placed on admission. On 08/05/09 he had blood cultures done. Urine cultures were done at the same time and those were negative. Blood culture noted coag negative staph but candida glabrata also. Sputum culture grew streptococcal pneumonia which was intermediate to penicillin, resistant to Bactrim, sensitive otherwise. He had a catheter removed on 08/07/09 and the cath tip had greater than 15 colonies yeast. Blood culture repeated on 08/08/09, 2/2 noted candida glabrata. Urine culture the same day was negative. Blood cultures were repeated on 08/12/09, 2/2 noted candidate glabrata. Blood cultures again repeated on 08/13/09, 3/3 candidate glabrata. His catheter was removed on 08/14/09. Cath tip noted one colony coagulase negative staph. He has not had an echocardiogram. He has no acute visual complaints at this point in time. He has been on both Mycamine and Diflucan. Diflucan I think is renal dosed due to the nephrectomy and mildly elevated creatinine.

CONSULTATION

Page 1 of 4

CHART COPY

GREENVILLE HOSPITAL SYSTEM UNIVERSITY MEDICAL CENTER
MEDICAL RECORDNAME: NEVADA, CURTIS RANDOLPH
[REDACTED] [REDACTED]Ex.
2, F

Chest x-ray last done 08/11/09, essentially benign. CT scan of the abdomen last done 08/09/09 noted right lateral chest tube removal, dense consolidation in posterior lung base, left greater than right. Cardiomegaly with a small left pleural effusion. No pneumothorax. He had postoperative changes in the left abdomen, stranding throughout the mesenteric and retroperitoneal spaces but no gross loculated fluid was appreciated at that time. The small amount of fluid in the left retroperitoneal space had minimally increased compared with 08/04/09. He had multiple nonobstructive renal calculi throughout the right kidney. No evidence for right sided hydronephrosis. Multiple small sub centimeter short axis lymph nodes were noted.

Today the patient is quite anxious and just wants to discuss about when he will go home. Discussion with case management. His mother works at [REDACTED] and has offered to take him home, care for him herself. The patient denies any recent history of IV drug use. He reports that he had been [REDACTED] with the methadone clinic prior to this admission. States he does not desire to restart with them.

PRIMARY CARE PHYSICIAN: Dr. Daniel Jebens on Wade Hampton.

He reports no acute shortness of breath, no acute pain at this point in time. Denies diarrhea. States he is ambulating to some degree and can rehab at home. He does not appear to have a Foley catheter in. He has peripheral IVs in.

PAST MEDICAL HISTORY: As above.

SOCIAL HISTORY: He is divorced. He lives with his parents and is disabled secondary to psychiatric illness. One pack per day cigarettes for 30 years. Prior history of cocaine as well as alcohol use. His mother confirmed none recently.

ALLERGIES: PENICILLIN, UNSURE OF REACTION.

CURRENT MEDICATIONS: As per HPI, otherwise please see MAR.

FAMILY HISTORY: Reviewed and noncontributory.

PHYSICAL EXAMINATION:

VITAL SIGNS: T-max 96.9, pulse 77, respirations 18, blood pressure 141/67, oxygen saturation 100% on room air.

GENERAL: A 46-year-old Caucasian male appearing stated age, well developed, well nourished, anxious but in no acute distress. Oriented to person, place and time. Somewhat pleasant.

CONSULTATION

Page 2 of 4

CHART COPY

ARGUMENTS-

Did PCR Judge err in holding that Petitioners Trial Counsel were not ineffective in allowing the Trial Court to admit testimonial hearsay statements from non testifying witness Ms. Rikki D. Edwards?

FACTS

Trial Counsel was constitutionally ineffective by allowing Trial Court to admit Testimonial hearsay statements made by non-testifying witness Rikki Danielle Edwards, violating the Petitioners Constitutional right of confrontation.

Trial Counsel failed to challenge the ruling of the hearsay rule exception by not requesting an analysis to see if the Petitioner Confrontation clause was violated. Trial Counsels failure to investigate the facts of the crime reports, which clearly showed a pattern, given by witness Rikki Edwards, who was not present at trial. Trial Counsel objected to hearsay statements by Ms. Edwards from Det. Miller (App 309 lines 4-5), however Trial Court allowed the statement as part of the Res Gestae. Trial Counsel was deficient by not investigating the facts of this case and preparing a defense to the testimonial statements. First Ofc. Cassel stated (App 883 Petitioners Ex. B.3) at 0310 per Sgt. Hayes he made contact with Ms. Edwards in the ER waiting room, where an informal statement was given by Ms. Edwards as to what had happened. Later that morning Det. Miller arrives at the hospital, and initially ask Ms. Edwards "what happened" (App 308 lines 21-22) albeit while stating she is still pretty hysterical, and emotional (App 308 lines 17-25). Trial Counsel objected but Trial Court allowed the statement while under the Res Gestae. Trial Counsel at this time was deficient by not requesting a hearsay exception analysis. Ms. Edwards was in "no present danger", and there was "no on going emergency," at this point over an hour had passed. Trial Counsel failed to challenge the Res Gestae ruling by showing the Trial Court that this was a cumulative statement by Ms. Edwards and did not fit into the hearsay exception, and therefore violated Petitioners 6th amendment confrontation clause. See *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004).

Trial Counsel was never able to cross-examine Ms. Edwards at any stage of this case, not preliminary hearing, not grand jury, no independent interview, or deposition, and Ms. Edwards did not show up at trial.

The Supreme Court narrowed the reach as to how the lower courts are to interpret the statement as "testimonial" as *DAVIS v. WASHINGTON* and *HAMMON v. INDIANA* 547 U.S.813 (2006) was decided. The courts holding that statements made to the police after an 'emergency' situation has been resolved are not admissible (Hammon case) if they are intended to gather evidence for future prosecution. This instant case is identical to the Hammon case, there was 'no present danger' or 'an on-going emergency'. At this point Ms. Edwards was and had been in the presence of police officers for over an hour at the hospital, away from the scene of the crime. The line of questioning, while informal, was asked in the manner of "what happened" (Hammon case) by Det. Miller (App 308 lines 21-22) not "what is happening" (Davis case). The primary purpose at this point was to gather information for future prosecution. The state failed to procure the witness, Ms. Edwards, and did not show good faith efforts. Det. Miller states he went by Ms. Edwards only known address 2 different times. Trial Counsel did not challenge the procurement of the witness, Ms. Edwards, nor did Trial Counsel subpoena Ms. Edwards. Petitioner requested Trial Counsel move for a continuance to get her but Trial Counsel refused. *TOSH v. LOCKHART*, 829 F2d 412 (8th circuit 1989). This prejudiced Petitioner because it allowed the state to capitalize on the assumption that Ms. Edwards was scared and did not want to face Petitioner allowing the jury to infer that Ms. Edwards was indeed scared of Petitioner. (See Prosecutorial Misconduct, Closing Arguments)

Trial Counsel was deficient for failing to request a hearsay exception analysis allowing Det. Miller and Solicitor Hodge to paint a picture to the jury that Ms. Edwards depiction of what happened was exactly the same as the victim Mr. Wooten. Prejudicial statements as such led the jury to infer that basically two people were giving identical accounts. In truth Ms. Edwards gave several conflicting accounts of what took place according to Sgt. Weiner, Det. Miller, and the other officers. (See App 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000)

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she was hiding something and maybe a suspect. Ms. Edwards stated that assailant was 5'8"- 5'9" tall around 200 pounds, with brown eyes. The Petitioner is 6'2" tall and weighed around 280 pounds. She stated she is Schizophrenic and she was having delusions and seeing things. She also stated that she saw her daughter and dead husband hanging from the tree in the front yard. The available Exhibits submitted at the PCR hearing (B.1-B.11) will explain why Ms. Edwards was not at trial and why her "testimonial" statements should have been inadmissible since Ms. Edwards clearly did not see what the victim Mr. Wooten saw. ie; Mr. Wooten stated that the mask Assailant wore was open around the eyes and nose but the "mouth was covered" (App. 115 lines 8-24). However Ms. Edwards stated (Petitioners Ex.B.8, 2nd paragraph) "the guy was either white or Hispanic because of the skin I could see around his mouth, I know he was not black". Ms. Edwards gave numerous accounts of what she saw (App. 884 Petitioners B.4, 1st and 4th statement, and App.885 Ex.B.5) which contradicted Mr. Wootens account of events. In addition Det. Miller stated "Ms. Edwards was covered in blood" (App. 311 lines 22-25) even though a search warrant was issued for Ms. Edwards clothing no testing was ever done. Det. Miller stated that Ms Edwards was a person of interest until October 1,2009, almost 2 months after Petitioner was arrested, until Mr. Wooten excluded her with his statement. Ms. Edwards was arrested (Petitioners Ex B.9, attached to argument) after going to the Law Enforcement Center on July 27,2009 on outstanding warrants (Petitioners Ex.B.9) for bad checks (a crime of dishonesty), which was impeachable information Trial Counsel could have used had there been an investigation by Trial Counsel of the facts. Trial Counsel could have used this information to rebut testimony that Mr. Wooten gave claiming the large sums of money he had in his possession that night was Ms. Edwards and not his. (App. 67 lines 15-24) This deficient error by Trial Counsel is supported by Trial Counsels statement (App 846 Lines 3-13) "I can not... I did not then and do not now know of a basis to keep it out". By not reading, investigating, or understanding the facts Trial Counsel allowed such testimony by Ms. Edwards, which by the states assertion was exactly the same as Mr. Wootens when in fact it wasn't. This Analysis would have allowed Trial Counsel to keep the "Testimonial" statements out by requesting such analysis. Trial Counsel failed to know this tactic.

This severely prejudiced the Petitioner, and by such error and prejudice, Trial Counsel was ineffective as well as the Petitioners Confrontation Clause being violated by no cross examination at any time and the fact that the testimonial statements read into evidence did not meet the hearsay exception as mandated by CRAWFORD v. WASHINGTON and HAMMON v. INDIANA.

COY v. IOWA, 487 U.S. 1012, 1019 (1988)

CRAWFORD v. WASHINGTON, 541 U.S. 36 53-54 (2004)

DAVIS v. WASHINGTON, 547 U.S. 813 (2006)

HAMMON v. INDIANA, 547 U.S. 813 (2006)

MARYLAND v. CRAIG, 497 U.S. 836, 846 (1990)

S.C. CODE OF LAWS 17-23-60

TOSH v. LOCKHART 879 F2d 412 (8th circuit, 1989)

CHERRY v. STATE 300 S.C. 115, 117-118, 386 SE2d 624, 625 (1989)

PORTER v. STATE 368 S.C. 378, 383, 629 SE2d 353, 356 (2006)

STRICKLAND v. WASHINGTON 466 U.S. 668 104 S.Ct 2052 (1984)

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	Assault and Battery with Intent to Kill
☒ SUPPLEMENTAL REPORT	☐ OTHER	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	01
				PAGE	1 OF 2 PAGES

Case Assigned to Investigator C. Miller

Ex. B.7

Incident location: [REDACTED] Memorial Drive Extension, Greer, S.C. 29651

Witness: Edwards, Rikki Danielle

Address: [REDACTED] Memorial Drive Extension, Greer, S.C. 29605
 Pack#: 234189 FBI#: 81831WC3 SCDL#: [REDACTED]

Victim: Curtis Randolph Wooten

In reference to the above case number I was called to assist Inv. Miller and Weiner. I responded to the LEC where I obtained a search warrant for the victims 2000 Chevrolet Silverado. The truck was used by the victim to drive himself to the hospital. Once the warrant was completed, I took it to Judge Hudson who did sign the warrant.

Inv. Miller called and said the witness and her mother, Carolyn Edwards, were on their way to the LEC to give statements to the incident. I first spoke to Danielle. Her demeanor was initially one of that she did not seem to care about the victim, but about herself instead. She was very nervous and continued to nervously talk and ramble on about her ex-husband who had died in a wreck, and about her being an undiagnosed schizophrenic. Once we crest the doors of the office, she became even more nervous and was visibly shaking. She asked what we were doing here and I told her I was going to get a statement from her. She immediately asked "I'm not in trouble am I?" and then she said "I didn't shoot him. I didn't do anything wrong." These statements were unprovoked as I asked her nothing. I told her to calm down and relax, and the only reason she was here was to give me the story about what happened to Curt. It didn't calm her, but she agreed to help.

She started off by telling me she was at home on her front porch reading a magazine and smoking. She said that at about 1am, she got a phone call from Curt saying he was on the way home from Wal-Mart with groceries and he needed help getting them in. She said she told him to hurry because she had been hearing things that sounded like someone beating on the car and the motion lights kept going on and off outside. Curt agreed to stay with her on the phone until he arrived and she said he did. She said he pulled into the driveway a few minutes later. She said he parked out front and she helped him get the groceries into the house. She said they went into the kitchen and the two were joking with each other and playing around. She said while in the kitchen she heard the front door screen open. She said she asked Curt if he heard anything and he said no. She said he dismissed it as her hearing things again and grabbed some pudding and started eating it. She said he took about one bite, and she heard footsteps softly coming through the living room. She said she looked up and saw a man standing in the doorway of the kitchen next to the refrigerator. She said the man was dressed in all black. She said he had on black steel toe boots and black pants which were tucked into the boots. She said he was wearing a black sweater which looked like a turtle neck and he appeared to have a bullet proof vest or padding under the sweater. She said he was wearing black gloves and a black hunting or ski type mask. She said he was holding a gun by his side in his right hand. She also said she knew the subject was either a white or Hispanic male because she could see some of the skin color out of the side of his mouth. She said she asked Curt if she was seeing things and he didn't respond. Danielle said about this time, the subject pulled the gun up and leveled it between her and Curt. She said at this point, she could see the subject smile, and he pointed the gun at her head and started to fire. She said she could see the bullet coming at her and was able to duck in time so she did not get hit. She said she turned and was able to get to the back door as the subject shot at her about 4 more times. She said she unlocked the 3 locks on the back door and ran out.

This is the part of the statement where Danielle's story became somewhat distorted. She initially said she ran out the door, but could see Curt get shot. She said Curt went to the ground and she could see him pull a gun from his front pocket and shot back at the subject. She said she did not know if he hit the subject or not. Later she said she saw Curt pulled the gun from his back pocket after being hit, and shot back at the subject. Another story she told was that he was standing up and pulled his gun, and that's when the subject shot him and he went to the ground. An even bigger inconsistency in the story is when she changed the location she ran out from the back door to the front door. When confronted with the evidence on scene and the location where she said Curt was shot I asked her how it was possible for her to be exiting the house and see him do anything and she said she did not know and could not answer the question. When pressed on the inconsistencies of her story, she began to cry and steered off course talking about the death of her husband and her self diagnosed schizophrenia. She continued to cry and said she did not know why she could not answer the simple questions correctly and was not sure what happened at this point. I told her all she had to do was simply tell the truth and she would be fine. She insisted that she was telling the truth and she went back to telling her version of the story. She said once she exited the back door, she ran around the house towards the front. She said as she was coming around the house she saw the subject crawling out the front door and thought he was coming for her. Again her story began lacking merit as she later said she did not know if she subject crawled from the front porch or not. She said he might have crawled from the back door, or she didn't even know where he might have crawled from. (Next Page)

SUBJECT IDENTIFIED		SUBJECT LOCATED		☒ ACTIVE ☐ ADMIN. CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEARED UNDER 18
☐ YES ☒ NO	☐ YES ☒ NO	☐ YES ☒ NO	☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX-CLEARED 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM/DECLINES COOPERATION ☐ EXTRADITION DENIED ☐ JUVENILE NO ARREST						
REPORTING OFFICER(S)	DATE	UNIT NO. / STEP #	APPROVING OFFICER		DATE	UNIT NO. / STEP #
Miller, C. #545	7/30/09	615	Sgt. P. Silvaggio (*307)		7/30/09	605
Lewis, W. #733	7/30/09	1843	FOLLOW-UP (OFFICER) ☒ YES ☐ NO Miller/Lewis			

SC0230000

CONFIDENTIAL REPORT

CONFIDENTIAL REPORT

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	Assault and Battery with Intent to Kill
☒ SUPPLEMENTAL REPORT	☐ OTHER	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	01
				PAGE	2 OF 2 PAGES

Ex. B-8

Don't)

She continued to say after she saw him she ran across the street to [REDACTED] Memorial Drive Extension, and started knocking on the door and screaming for help. She said no one came to the door, so she ran around the house and hid under the porch where she stood for a moment. She said she didn't see the subject anymore, nor did she see a car or a car leave. Danielle said within moments of standing under the porch, Curt walked out of the front door and started screaming for her, telling her to come out because he had been shot and he was going to the hospital. Danielle said she ran out and got into the truck, where Curt drove himself to the hospital.

Danielle said Curt was holding, what she called, a "Dellinger" which she meant "Dillinger" type pistol. She said it was small and loud. As she was talking about the guns used in the shooting, she said the subject was carrying a "big gun". She said it was big, but not loud like Curt's gun. She said it almost sounded like a whisper when it was shot. She said when Curt shot back she knew the sound of his gun and it was much louder.

During the rest of the morning, Danielle changed her statement about 4 or 5 more times. When asked about why she didn't drive to the hospital she said she could not drive a stick (the truck was an automatic), then she said because Curt was hard headed and would not let her drive, and then later on in the morning she said she didn't know why he would not let her drive because she can drive anything.

We asked Danielle who she thought might have shot Curt. She said she could think of three names, Ronnie, Brent Cash, and Damien. Danielle said Ronnie and Curt were best friends and since, they had a falling out. She said she had not seen Ronnie in a while and she didn't know where he was. She did not elaborate on the reason they had a falling out, only said she knew they no longer got along. She said Brent because she uses to date him. She said he called her about 3 or 4 days ago and asked her for money for dippers and food. She said she refused to meet him, but told him she would leave the money on her front porch and he could come and pick it up. Danielle said Curt and Brent didn't like each other. She said the only reason they didn't like each other is because she dated Brent before she dated Curt. She said that Damien and Curt were friends until today. Danielle said she and Damien's girlfriend, Crystal, are good friends and grew up together. She said that Sunday, Crystal and Damien came to her house with their new baby. She said while they were at the house, she left them alone for a few minutes while she went to the bathroom. She said she was gone for about 6 minutes and when she came back she found the two of them loading up all of the food in the house into garbage bags and taking them outside. She said she asked what they were doing and they told her they had no money and no food, and they ran out of the house, got into a yellow cab and left. Danielle said when Curt found out about this, he became enraged. She said he called them and cursed them out and told them they were not ever welcome back to the house again.

Based on the amount of pills in the house, and the statements of the persons we had talked to in the case, it was clear to us that Curt is an unlawful distributor of prescription medications. Several hundred pills were taken from the house and almost all we talked to said Curt was the "go too guy" for pills. We confronted Danielle with this and she denied all knowledge of Curt's distribution of any pills or any drugs at all. She said she knew he had back problems and knew that he often times had been prescribed medication for his pain, but she again said she had no knowledge of him selling pills.

SUBJECT IDENTIFIED		SUBJECT LOCATED		☒ ACTIVE ☐ ADMIN. CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEARED UNDER 18
☐ YES ☒ NO	☐ YES ☒ NO	☐ YES ☒ NO	☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX-CLEARED 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM/DECLINES COOPERATION ☐ EXTRADITION DENIED ☐ JUVENILE-NO ARREST						
REPORTING OFFICER(S)	DATE	UNIT NO. / STAR #	APPROVING OFFICER	DATE	UNIT NO. / STAR #	
Miller, C. *545	7/30/09	614	Sgt. P. Silvaggio (*307)	7/30/09	605	
Lewis, W. *783	7/30/09	B-43	FOLLOW-UP INVESTIGATION ☒ YES ☐ NO (OFFICER) Miller/ Lewis			

Greenville County Sheriff's Office
4 McGee St.
Greenville, South Carolina 29601

Ex. B.9

VICTIM/WITNESS STATEMENT

Case Number 09-119378Date 7/27/09

I, Rikki Danielle Edwards, do hereby give freely and voluntarily this statement to
M/D W. Lewis *783 and M/D C. Miller *545 who have identified themselves to
me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina.

I am 22 years old and I reside at Memorial Drive Extension Greer 29651

Education: completed 11th grade at Greer High School

Employed: N/A

I can read and write and M/D Lewis is typing this statement for me. At about 1am, I was at home by myself. I am schizophrenic and I was having 'delusions' and seeing things. I was seeing my daughter and my dead husband hanging from the trees in the front yard and it freaked me out. I called Curt and asked him where he was and to tell him I needed him and he said he was on his way home from the grocery store at Wal-Mart and needed help getting the groceries in. I was already on the front porch smoking and reading a tattoo magazine, and told him I would help him and he stayed on the phone with me until he got home. I kept thinking I was hearing things and the motion sensors around the house and lights kept going on and off. I kept thinking I was hearing noises that sounded like someone was banging a shovel against the car. Curt pulled into the drive way in front of the house and parked at the front porch. He pulled some of the groceries out and handed them to me and I took some inside and he took some inside. Curt followed me in the house and left the front door open but closed the screen door. Once we were in the kitchen we put up the groceries and we started talking and joking in the kitchen. I heard the front door screen open and it was loud. I asked Curt if he was expecting some one and he said no, and I was just hearing things again. Curt opened up a pudding and grabbed a spoon and started to eat it. I heard foot steps coming through the house and at about that time I saw a man in the kitchen door next to the refrigerator holding a gun by his side. He was holding the gun in his right hand. I asked Curt if he saw the same thing or if I was seeing things. The guy was about 5'08 or 5'09 and weighed about 200 pounds. He was muscular and dressed in all black from head to toe. He was wearing a ski mask and had brown eyes. He was wearing thick steel toed type work boots and had his black pants tucked into his boots:

I have read the above statement of 1 of 1 pages and it is true and correct as best as I recall.

WITNESS

Rikki Danielle Edwards 783

Rikki Danielle Edwards

I have received a copy of this statement.

Rikki Danielle Edwards

Sworn before me this 27 day of July, 2009

Notary Public 13 April 2009
NOTARY PUBLIC FOR SOUTH CAROLINA



Greenville County Sheriff's Office Ex. B.10
4 McGee St.
Greenville, South Carolina 29601

VICTIM/WITNESS STATEMENT

Case Number 09-119378Date 7/27/09

I, Con't
Con't and Con't, do hereby give freely and voluntarily this statement to
me to be Deputies of the Greenville County Sheriffs Office, Greenville, South Carolina.

I am Con't years old and I reside at Con't

He was wearing a black sweater with long sleeves and it looked like a turtle neck. He looked like he had a bullet proof vest on under his shirt. I could tell the guy was either white or Hispanic because of the skin I could see around his mouth. I know he was not a black guy. The guy pulled the gun up holding it with both hand and pointed it between the two of us. He looked at me and smiled and then he pointed the gun at my head and started to shoot. The light from the flash of the gun was very bright but the gun was kind of quiet compared to the one that Curt was shooting. I ducked and he shot at me about four times and I was running out the back door. I unlocked all three locks on the door and I could hear Curt get shot and he started yelling for me to help him because he was bleeding to death. Curt pulled his gun from his pants pocket and shot back at the guy two times. I ran out the back door and around the house. While I was running down the driveway, I could see the guy crawling down the front steps. I ran to the neighbors and tried to get them to help me but no one came to the door. I ran to the side of the neighbor's house and looked back to the front of my house and I saw Curt come out. He screamed for me telling me the guy was gone and he was going to the hospital because he was going to bleed to death if he didn't. I ran back across the street and got in the truck and Curt drove to the hospital. End of Statement.

I have read the above statement of 1 of 2 pages and it is true and correct as best as I recall.

WITNESS:

[Signature] 783

Rikki Danielle Edwards
I have received a copy of this statement.

Rikki Danielle Edwards

Sworn before me this 27 day of July, 2009

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

1302441 2010

OCR

COURT DATE-06/18/2008
ATN-990000391449

Ex
B. 11

EDWARDS, RIKKI DANIELLE
SC0420300 DUNCAN PD
CASE-20090628
ATN-422100153173
WARR-24090EX
CIT-16-13-110(B) (1)-MISDEMEANOR

06/28/2009

ARREST CHARGE 01-SHOPLIFTING
OFFENSE DATE-06/28/2009
PALM PRINTS AVAILABLE

EDWARDS, RIKKI D
SC0230000 GREENVILLE CNTY SO
CASE-234189
ATN-990000486992
WARR-I507114 1
CIT-34-11-60-MISDEMEANOR

07/27/2009

* Arrested that DAY
of questioning

ARREST CHARGE 01-FRAUDULENT
CHECK UNDER \$500 - 1ST
OFFENSE DATE-07/27/2009
PHOTOGRAPH AVAILABLE

WARR-I507115 2
CIT-34-11-60-MISDEMEANOR

ARREST CHARGE 02-FRAUDULENT
CHECK UNDER \$500 - 1ST
OFFENSE DATE-07/27/2009

CIT--MISDEMEANOR
DOC-23 WARR-I507114 1

COURT CHARGE 01-FRAUDULENT
CHECK UNDER \$500 - 1ST
COURT DISP-CONVICTED
COURT DATE-10/16/2009
ATN-990000486992

CIT--MISDEMEANOR 2
DCC-23 WARR-I507115

COURT CHARGE 02-FRAUDULENT
CHECK UNDER \$500 - 1ST
COURT DISP-CONVICTED
COURT DATE-10/16/2009

EDWARDS, RIKKI DANIELLE
SC0230300 GREER PD
CASE-03200920950
ATN-990000497982
WARR-I581194
CIT-44-53-370(D) (1)-MISDEMEANOR

10/10/2009

ARREST CHARGE 01-POSS SCHED
I(B)(C) LSD/SCHED II 1ST
OFFENSE DATE-10/10/2009
PHOTOGRAPH AVAILABLE

EDWARDS, RIKKI
SC0230300 GREER PD
CASE-03200920950
ATN-990000497982
WARR-I581194
CIT-44-53-370(D) (1)-MISDEMEANOR

04/13/2010

ARREST CHARGE 01-SHOPLIFTING
EXHIBIT B. 11

ARGUMENTS

Did PCR Judge err in holding that Petitioners newly discovered evidence had no merits, and no constitutional violation occurred.

FACTS

Petitioners newly discovered evidence was such that a jury could reasonably find the Petitioner innocent of all charges

On October 26, 2012 Petitioner did receive a letter by U.S. mail containing a signed affidavit from one Terry Stephens. The affidavit claimed that Mr. Stephens was coming forward of his own free will, to testify that on the night of July 27, 2009 while visiting the home of Mr. Curtis Wooten with the intention of obtaining pills from Mr. Wooten for pain. While still at Mr. Wooten, Mr. Stephens was witness to the events that ended with Mr. Wooten being shot and ending up in a coma. Mr. Stephens had initially been scheduled to testify at Petitioners trial, as a part time employee of the Petitioner's Mr. Stephens was scheduled to testify that on the night of July 26, 2009 he and Petitioner had worked late and Petitioner had dropped Mr. Stephens off at home at 1230 a.m. and then Petitioner left pulling a trailer with a 550 gallon tank half full of water and two industrial pressure washers along with various other tools and equipment, heading for his home an hour away. Petitioner states that the Rule 29 (b) motion for a new trial was denied and dismissed on or about December 9, 2013 when the Honorable Judge Verdin ruled that the state had "ample forensic evidence" and Petitioner had failed to do a DeAngelis standard affidavit in support of the 29 (b) motion. The state now contends that Petitioner is barred by Res Judicata. Petitioner requested his full motion of discovery from Trial counsel by way of S.C. RULES OF COURT, rule 407 professional conduct, Rule 1.16 (d), and as a "Matter of Haddock". In 2014 Petitioner received approximately 3000 pages of material pertaining to his motion of discovery from Trial counsel. Petitioner had no idea there

was this much, Petitioner Avers that before he received his motion of discovery in 2014, he had seen less than 10% of the material sent by Trial Counsel. Petitioner met with Trial Counsel eight times in the two and a half years leading up to his trial and was never shown the pictures on Trial Counsels laptop/tablet and only discussed a few statements made by Law Enforcement, and any alleged statements by Petitioner. Regardless of Trial Counsels contention that he went over material with Petitioner, this was the first time Petitioner had honestly ever seen 90% of the motion of discovery. Petitioner began going over every word on every page, reviewing every picture, reading every report test result, and all findings. Petitioner studied every testimony and every experts statements looking up all medical and legal phrases to gain a complete and proper knowledge of what had been done throughout this investigation trying to understand how he had been convicted of a crime he knew nothing about. Petitioner learned that the "blood and tissue evidence" the state and Trial Counsel repeatedly talk about belonging to Petitioner in front of the jury and Trial Court never even existed, and the "hair found on the section of wall" should have been challenged as being contaminated after it was returned to an unclean crime scene and proper procedure was ignored. Petitioner has found new evidence since filing the 29 (B) motion. Therefore Petitioner has the right to reassert the newly discovered evidence based on details that were withheld during trial by Solicitor, Trial Court, and Trial Counsel.

Petitioner also believes that the PCR Judge misunderstood a question asked of Mr. Stephens on cross examination (App 825 lines 16-19) as to the date Mr. Wooten was attacked, leading the PCR Judge to feel Mr. Stephens was not a strong witness. The question was ambiguous because Mr. Stephens knew of two separate incidents involving Mr. Wooten. The first on July 21, 2009, this is the one that Mr. Stephens was suppose to testify about during the original trial had he been available, the other on July, 27 2009 that he witnessed first hand. Had he been able to consult his affidavit he could have answered exactly with

no problems, but by going off his recollection and memory, Mr. Stephens simply gave an account of actual events. In doing so Mr. Stephens stated how Mr Wooten came out the front door and shot once . This statement is important because it clears up an unanswered question in Petitioners trial, a 380 bullet casing that was the same caliber as Mr. Wootens pistol was found by the front door but Mr. Wooten testified that he shot at assailant in the kitchen. Mr. Stephens account is much more believable than the states theory because it an eye witness account that the evidence supports without leaving any unanswered questions the way the states theory that Petitioner committed the crime does and Mr. Stephens account has more details than states theory that complete the picture without manipulating the facts. Mr. Stephens would have came forth sooner but due to personal reasons that that he has since been able to resolve, he was not able. Knowing that Petitioner wasn't involved in this crime and was in fact over an hour away when the crime took place, Mr. Stephens felt sure that Petitioner had nothing to worry about and his absence from Petitioners trial wouldn't matter. After learning that Petitioner had not only been convicted but sentenced to life in prison he felt compelled to come forth and give an accurate and honest account of what took place at Mr. Wootens home on July 27,2009. Mr. Stephens detailed testimony meets the 5 prongs Required for a new trial based on newly discovered evidence.

1) Mr. Stephens was admittedly at the home of the victim on the night the incident took place and gives such a detailed account of events, that a jury can reasonably, along with the new information regarding the false DNA entered at Petitioners trial, most likely come to a different decision.

2) While in Philadelphia, Mr. Stephens heard about Petitioners conviction, and sent a signed affidavit 6 months after trial ended.

3) Petitioner believes that even though Trial Counsel was

ineffective for repeatedly failing to investigate the facts of this case, Trial Counsel could not have known, even with Due Diligence, that there was an eye witness unless told by the victim or by Mr. Stephens coming forth with his account.

4) This affidavit is material because Mr. Stephens was at the crime scene in the minutes leading up to the attack and is able to describe certain attributes of the property and gave previously unknown details of events that answer several questions about evidence that was collected, that would rebut the states theory, especially if Ms. Edwards had been present to cross examine.

5) This new information is not cumulative or impeaching because these details potentially show Ms. Edwards as the shooter with malice, Det. Miller viewed Ms. Edwards as a person of interest until Mr. Wooten named Petitioner as shooter "after he was told Petitioners blood was found on the bullet" (App 133 lines 2-5) except that there was no bloody bullet and the "blood evidence of Petitioner never existed so it's obvious Mr. Wooten had either been given false information to elicit an ID of his attacker or he was lying. Either way it means that Ms. Edwards was dismissed as a person of interest by misinformation and not facts. A warrant was issued for Ms. Edwards clothes that were covered in blood, but they were never tested for gun shot residue, or anything else. After giving numerous conflicting statements to officers, Ms. Edwards was placed under arrest on an outstanding warrant for bad checks. Once she was released she never went to hospital to check on Mr. Wooten and didn't have any contact with him after he was released from hospital. Ms Edwards failed to show up for court or respond to attempts to notify her of Trial date. Mr. Stephens detailed and more accurate account finally explained the bullet casing (App 705 lines 8-10) that was found in the living room roughly 40 feet away and around a wall in a different room from where Mr. Wooten alleged he shot at attacker.

Mr. Stephens owes nothing to Petitioner and is not duty bound to do anything more, Mr. Stephens wants to testify to what he alone witnessed and is a valid witness to testify in this regard. A new jury hearing a true, accurate, and detailed account of events and is shown factual honest test results and evidence could only find that Petitioner is innocent of all wrong doing in this case, especially if Petitioner is afforded the opportunity to question Ms. Edwards on the stand. It has been obvious that something other than the states theory happened that night and now with an eye witness willing and able to give an accurate and detailed account that supports the evidence in this case evidence like the bullet casing found 40 feet away around a wall from where it was alleged to have been fired. It will also put an end to all the conflicting testimony and conflicting statements along with false evidence like the blood evidence belonging to Petitioner that doesn't exist in any form or capacity. JOHNSON v. CATOE, 345 S.C., 389, 548, SE2d 587(2001)

" I believe to deny Johnson a new trial in the face of a confession by someone who was admittedly present when the murder was committed would constitute a denial of fundamental fairness shocking to the judicial sense of justice"(quoting J. Waller dissenting)PLEASE SEE MR. STEPHENS AFFIDAVIT (App 888- 890, Ex. D.1)

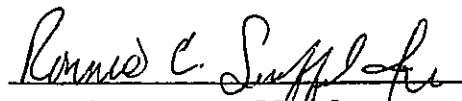
BUTLER v. STATE, 302 S.C. 466, 468, 397, SE2d, 87,88 (1990)
 HAYDEN v. STATE, 278 S.C. 610, 299 SE2d 854 (1983)
 JOHNSON v. CATOE, 345 S.C. 389, 401, 548, SE2d,587,593(2001)
 NEWSON v. UNITED STATES, 311 F2d 74 (5th Cir 1962)
 STATE v. PRINCE, 316 S.C. 57, 447 Se2d 177 (1993)
 STATE v. SPANN, 334 S.C. 618, 513 SE2d 98 (1998)

CONCLUSION

For the reasons stated, Petitioner asks this Honorable Court to grant the Petition for a Writ of Certiorari.

5-24-17

Date



Ronnie C. Swofford, Jr.

Petitioner, Pro Se (Response)

386 Redemption Way

McCormick, S.C. 29899

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County
Honorable Perry H. Gravely, Circuit Court Judge

Ronnie C. Swofford, Jr.

PETITIONER

V.

State of South Carolina,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the *Pro Se Response to Johnson Petition for Writ of Certiorari has been put into the U.S. mail postage prepaid to the following Authority
*The Motion For Leave to Amend the Petitioners Johnson Pro Se Response, ATTN: DANIEL SHARHOUSE, clerk The Supreme Court of S.C.
P.O. Box 11330 Columbia, S.C. 29211

Ronnie C. Swofford, Jr.
Ronnie C. Swofford, Jr.
Petitioner, Pro Se

SUBSCRIBED AND SWORN TO before me
on this 31 day of August, 2017.

J. Franklin
Notary Public for South Carolina
My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
Honorable Perry H. Gravely, Circuit Court Judge

RONNIE C. SWOFFORD, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016 - 000508

MOTION FOR LEAVE TO AMEND THE PETITIONERS
JOHNSON PRO SE RESPONSE FOR WRIT OF CERTIORARI

Comes now the Petitioner, respectfully moves this Honorable Court for Leave to Amend the Petitioners Johnson Pro Se Response for Writ of Certiorari pursuant to Rule 15, SCRPC.

The Petitioner submits this Motion to Amend in support of the allegations to illustrate the severe impact of the use of the "False Blood Evidence" allegedly on the Kitchen wall belonging to the Petitioner in theory of the Prosecution. SLED Forensics sent Test results to the Prosecution and Trial Counsel stating "NO BLOOD INDICATED" on the kitchen wall. SLED agent V. Gibson testified the Blood results were NEGATIVE for Blood (without mentioning the Petitioners name). Pages 2 and 3 of this motion will show the Jury heard the Term or Phrases referencing the Petitioners Blood (FALSE EVIDENCE). 1. (#) the amount of times the Term was used. 2. (PCR page - Line #) PCR Transcript. 3. (Person using term) while testifying or questioning. 4. (Term or Phrase) used to Identify the "False Evidence" in trial. Page 4 will show DNA/Tissue/Genetic Material was mentioned 26 times and 11 of those times those terms were ambiguous because those 11 times actually meant to be referenced to the Kitchen wall in which "No DNA/Tissue" were found but were phrased as DNA/Tissue/Genetic Material because Trial Counsel failed to oppose the State due to failing to investigate.

**** TERMS or PHRASES USED REFERENCING "BLOOD" (FALSE EVIDENCE)**

#	PCR - LINE	PERSON	TERM or PHRASE
1	48 - 7	Solicitor Hodge	Splatter
2	49 - 16	Atty Johnston	Blood
3	49 - 18	" "	Blood
4	49 - 23	" "	Blood
5	133 - 4	Victim Wooten	Blood
6	133 - 14	Atty Johnston	Blood
7	133 - 24	" "	Blood
8	165 - 14	Solicitor Hodge	Stains
9	165 - 16	" "	Stains
10	165 - 21	" "	Reddish Look
11	172 - 23	Officer Derby	Blood
12	177 - 25	" "	Blood
13	184 - 23	" "	Blood
14	197 - 1	" "	Blood
15	243 - 11	Sgt. Weiner	Blood
16	243 - 14	Sgt. Weiner	Blood
17	260 - 10	SLED V. Gibson	Blood
18	260 - 13	" "	Blood
19	260 - 20	" "	Blood
20	261 - 9	" "	Blood *Negative Test results
21	277 - 6	SLED A. Hefney	Blood
22	277 - 10	" "	NO Appreciable Stain
23	278 - 17	" "	Blood
24	310 - 18	Detective Miller	Blood
25	310 - 19	" "	Blood Splattered on Wall
26	319 - 7	" "	Blood
27	319 - 18	" "	Blood
28	319 - 22	" "	Blood
29	559 - 12	Atty Johnston	Blood.
30	559 - 16	" "	Blood
31	613 - 6	Solicitor Hodge	Splattered DNA
32	615 - 10	" "	Blood
33	615 - 17	" "	Blood
34	661 - 13	Detective Miller	Reddish

(CONTINUED)

#	PCR - LINE	PERSON	TERM or PHRASE
35	664 - 1	Atty Johnston	Blood
36	664 - 5	" "	Blood
37	664 - 20	" "	Blood
38	664 - 22	" "	Substances
39	664 - 24	Detective Miller	Blood
40	665 - 8	" "	Blood
41	666 - 8	Solicitor Hodge	Blood
42	666 - 9	" "	Blood
43	666 - 11	Detective Miller	Fresh Blood, the Red
44	666 - 13	" "	Blood is Red
45	666 - 15	" "	Fresh
46	669 - 12	Atty Johnston	Fresh
47	669 - 13	" "	Liquid State
48	678 - 19	" "	Blood
49	678 - 23	" "	Blood and it was Fresh
50	678 - 25	" "	Blood being Fresh
51	679 - 1	" "	Freshness
52	679 - 6	" "	Fresh
53	679 - 7	" "	Liquid State
54	679 - 8	" "	Liquid State
55	679 - 9	" "	Liquid State
56	679 - 10	" "	Dripping , Blood
57	679 - 11	" "	Fresh
58	689 - 7	" "	Blood
59	715 - 6	Solicitor Hodge	2 Items of Defendants DNA
60	715 - 10-11	" "	Tissue and Blood (both False)
61	715 - 15	" "	That Stuff is Fresh
62	715 - 16	" "	Tissue and Blood (both False)
63	715 - 21	" "	Fresh
64	723 - 12	" "	DNA evidence (Wall - False)
65	723 - 13-14	" "	DNA evidence (Wall - False)
66	726 - 7	" "	Direction of Spatter (Wall)
67	727 - 9	" "	Blood DNA

(END)

** TERMS or PHRASES USED REFERENCING DNA, TISSUE, GENETIC MATERIAL			
#	PCR - LINE	PERSON	TERM or PHRASE
1	48 - 8	Solicitor Hodge	Tissue Kitchen Wall (* FALSE)
2	49 - 18	Atty Johnston	Tissue
3	49 - 23	" "	Tissue
4	172 - 24	Officer Derby	Possible Tissue
5	178 - 10	" "	Suspected Tissue (* FALSE)
6	184 - 12	" "	Suspected Tissue
7	184 - 23	" "	Suspected Tissue
8	212 - 14-15	Sgt. Shaw	Tissue/Skin (* FALSE)
9	261 - 5	Solicitor Hodge	Yellowish Material (* FALSE)
10	277 - 6	SLED Hefney	Tissue (NO BLOOD)
11	277 - 10	" "	DNA Analysis
12	278 - 17	" "	Tissue (NO BLOOD)
13	282 - 13	" "	DNA/Hair (* FALSE)
14	287 - 11	Detective Miller	DNA
15	310 - 19	" "	Tissue on Wall (* FALSE)
16	319 - 7	" "	Tissue
17	664 - 24	" "	Tissue on Wall (* FALSE)
18	665 - 9	" "	Yellowish Tissue (* FALSE)
19	666 - 8-9	Solicitor Hodge	Tissue on Wall (* FALSE)
20	677 - 24-25	Atty Johnston	Genetic Material
21	678 - 4-18	" "	Genetic Material/DNA
22	683 - 18-23	" "	DNA
23	695 - 22	" "	DNA
24	715 - 6	Solicitor Hodge	Tissue (* FALSE)
25	723 - 12-24	" "	DNA (* FALSE)
26	724 - 5	" "	DNA

(END)

CONCLUSION OF FACTS

The Petitioner believes this Honorable Court upon review of the Johnson Pro Se Response supported with Truthful, Scientific, and Real Material facts. The Petitioner will have a guaranteed by the U.S. Constitution, a fair trial. The purpose of this Motion is to give this Honorable Court a numerical account of the times the jury heard the Terms or Phrase identifying the "False Blood/Tissue Evidence" 67 times pages 2 & 3 and 11 times on page 4, totaling 78 times the jury heard the aforementioned Terms or Phrase of the "False Blood/Tissue Evidence".

The other 15 Terms or Phrase identifying the possible "DNA/Tissue/Genetic Material Evidence" on page 4, could possibly belong to the Petitioner (Hair, Hair root, Dead skin, etc.) due to being an invited guest many times at the victims home. However, The Petitioner asserts that the Petitioner was not at the home at the time of the incident, nor had Petitioner been to the victims home a couple days leading up that date of incident. In essence the Jury heard lies and deceit 6 to 1 over the possibility of a fact.

The Petitioner gracefully thanks this Honorable Court for even considering it. In the event the Motion for Leave to Amend is granted, The Petitioner believes it will allow this Honorable Court a clearer understanding of the Evidence supporting the said Allegations in the Petitioners PCR.

Sept. 1, 2017

DATE

Ronnie C. Swofford Jr.

Ronnie C. Swofford, Jr.

Pro Se

RONNIE C. SWOFFORD, JR. #218281
McCI F-3-161-A
386 REDEMPTION WAY
McCORMICK, S.C. 29899

12 DECEMBER 2017

HONORABLE DANIEL SHEARHOUSE
CLERK OF COURT
S.C. SUPREME COURT
PO 11330
COLUMBIA, SC 29211

RECEIVED

DEC 15 2017

S.C. SUPREME COURT

RE: APPELLATE CASE NO. 2016 - 000508

Dear Clerk,

Recently my case was transferred to the Court of Appeals. Though your Office sent me the Order, I was just sending a friendly reminder. Also, can you please send me a response upon accepting my enclosed Motion. I am Indigent and can not afford return Postage.

Sincerely I Thank you,

Ronnie C. Swofford Jr.
Ronnie C. Swofford, Jr.

RECEIVED

DEC 18 2017

SC Court of Appeals

WINT 2017
DEC 18 2017

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
HONORABLE PERRY H. GRAVELY, CIRCUIT COURT JUDGE

RECEIVED

RONNIE C. SWOFFORD, JR.,

PETITIONER

DEC 15 2017

V

STATE OF SOUTH CAROLINA,

S.C. SUPREME COURT
RESPONDENT

APPELLATE CASE NO. 2016 - 000508

CERTIFICATE OF SERVICE

The Petitioner certifies that the original and one copy of the of the Petitioners "MOTION FOR LEAVE TO SUPPLEMENT THE PETITIONERS JOHNSON PRO SE RESPONSE FOR WRIT OF CERTIORARI" was placed in the U.S. mail postage prepaid addressed to: The Honorable Daniel Shearhouse, Clerk of Court, S.C. Supreme Court, Post Office Box 11330, Columbia, S.C. 29211. Also, one copy of the aforementioned Motion was sent to the following parties, Ms. Wanda Carter, Appellate Counsel for Petitioner Post Office Box ¹¹⁵⁸⁹~~11433~~, Columbia, SC 29211 and Mr. Justin Hunter, Attorney Generals Office, Post Office Box 11549, Columbia, SC 29211 also received their copy of the Motion by U.S. mail postage prepaid.

12-11-17

DATE

Ronnie C. Swofford Jr.

RONNIE C. SWOFFORD, JR #218281

McCI F-3-161-A

386 Redemption Way

McCormick, SC 29899

WVIT 12/15/17
RECEIVED

AFFIDAVIT

I RONNIE C. SWOFFORD, JR., THE PETITIONER SWEARS UNDER OATH THAT I HAVE RECENTLY RECEIVED ONE OF MY LEGAL BOXES THAT WAS MISPLACED BY SECURITY AT MCCORMICK CORR. INST. DURING A TRANSFER WHEN I SURGERY IN FEBRUARY. I HAVE WRITTEN NUMEROUS REQUESTS USING DUE DILIGENCE AND MADE GOOD FAITH EFFORTS IN LOCATING MY MISSING LEGAL OVER THE LAST 11 MONTHS THAT CONTAINED EXTREMELY CRUCIAL MATERIAL EVIDENCE IN SUPPORTING MY ALLEGATIONS. THE SIX PIECES OF EVIDENCE ARE:

1. P&E Sheet (Exhibit Z.1)
2. 4 - SLED Forensic Lab Reports (Exhibit Z.2.A , Z.2.B , Z.2.C , Z.3)
3. Motion for Continuance (Exhibit Z.4)

THE AFOREMENTIONED PIECES OF EVIDENCE ARE TO BE ADDED TO "THE DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL", and MADE TO SUPPLEMENT ARGUMENT I PG 4 - 10, ARGUMENT III PG 14 - 17, ARGUMENT IV PG 18 - 19, ARGUMENT V PG 20 - 26.

THIS IS A TRUE AND ACCURATE STATEMENT, PETITIONER HAD A MAY 26, 2017 DEADLINE TO RESPOND AND HAD TO SUBMIT THE PRO SE RESPONSE WITHOUT THE AFORMENTIONED PIECES OF EVIDENCE, DUE TO THE MISPLACEMENT OF STORAGE BY SECURITY AT THE INSTITUTION.

SWORN BEFORE ME THIS 11, DAY
OF DECEMBER 2017.

J. Franklin
NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: 12/16/2019

Ronnie C. Swofford Jr.
RONNIE C. SWOFFORD, JR.

MCCI F-3-161-A

386 REDEMPTION WAY

MCCORMICK, SC 29899

NOTARY PUBLIC
SOUTH CAROLINA

RONNIE C. SWOFFORD, JR. #218281
McCI F-3-161-A
386 REDEMPTION WAY
McCORMICK, S.C. 29899

12 DECEMBER 2017

WANDA CARTER
INDIGENT DEFENSE APPELLATE COUNSEL
POST OFFICE BOX 11433
COLUMBIA, SC 29211

RE: APPELLATE CASE NO. 2016 - 000508

MRS. CARTER,

PLEASE FIND ENCLOSED THE FOLLOWING:

1. JOHNSON PRO SE RESPONSE FOR WRIT OF CERTIORARI, May 24, 2017.
2. MOTION FOR LEAVE TO AMEND JOHNSON PRO SE RESPONSE, September 1, 2017.
3. MOTION FOR LEAVE TO SUPPLEMENT JOHNSON PRO SE RESPONSE, Dec. 12, 2017.

ALSO, PER OUR CONVERSATION ON DECEMBER 6, 2017, PLEASE CORRECT YOUR OR REDACT YOUR JOHNSON PETITION THAT CONTAINS FALSE AND MISLEADING INFORMATION THAT YOU PROVIDED IN THE JOHNSON PETITION OR ATLEAST NOTE TO THE COURT OF THESE SEVERE MISTAKES. THIS IS A SERIOUS MATTER, AND I PRAYFULLY ASK AND HOPE THAT YOU USE ETHICAL REASONING IN CORRECTING THESE MISTAKES. I HAVE PROVIDED ALL THE PROOF TO SUPPORT ALL MY ALLEGATIONS. ALL YOU HAVE TO DO IS PROPERLY ARGUE THEM.

I AM INNOCENT !!!

SINCERELY,



RONNIE C. SWOFFORD, Jr.

RECEIVED
FEB 1 2018

RONNIE C. SWOFFORD, JR. #218281
McCI F-3-161-A
386 REDEMPTION WAY
McCORMICK, SC 29899

12 DECEMBER 2017

MR. JUSTIN HUNTER, ESQ.
ATTORNEY GENERALS OFFICE
POST OFFICE BOX 11549
COLUMBIA, SC 29211

RE: APPELLATE CASE NO. 2016 - 000508
RONNIE C SWOFFORD, JR. V THE STATE

MR. HUNTER,

I HAVE SERVED YOU THE JOHNSON PRO SE RESPONSE ON MAY 24, 2017, and the MOTION TO AMEND THE JOHNSON PRO SE RESONSE ON SEPT 1, 2017. ENCLOSED IS THE MOTION FOR LEAVE TO SUPPLEMENT THE JOHNSON PRO SE RESPONSE WITH EXHIBITS. I ENCLOSED AN EXTRA COPY OF THE MOTION TO AMEND FROM SEPT 1, 2017 BECAUSE I NEVER HEARD FROM YOUR OFFICE. I BELIEVE UPON REVIEWING THE EXHIBITS AND CASE LAW THAT PRAYFULLY IN THE INTEREST OF JUSTICE THAT YOU WILL RECOMMEND THE SAME ACTION TAKEN IN THE KENNETH SIMMONS V THE STATE CASE. RECOMMENDING A REMAND TO THE PCR COURT. I THANK YOU FOR YOUR CONSIDERATION IN THIS MATTER.

SINCERELY,



RONNIE C. SWOFFORD JR

NOTED
RECEIVED

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
HONORABLE PERRY H. GRAVELY, CIRCUIT COURT JUDGE

RONNIE C. SWOFFORD, JR.,

PETITIONER

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016 - 000508

MOTION FOR LEAVE TO SUPPLEMENT PETITIONERS JOHNSON
PRO SE RESPONSE FOR WRIT OF CERTIORARI

Comes now the Petitioner, Respectfully moves this Honorable Court to accept the "Motion for Leave to Supplement Petitioners Johnson PRO SE Response for Writ of Certiorari". Petitioner Supplements his Argument to add the following six (6) Exhibits and one (1) supporting case law that are "Extremely crucial" in proving the Petitioners allegations raised at the PCR Court and now to this Honorable Court for review.

The Following six (6) Exhibits and one (1) Case law are meant to support and prove Petitioner was denied DUE PROCESS and EFFECTIVE COUNSEL at trial. Also, the Exhibits are to support the Arguments:

ARGUMENT I pages 4 - 10,

ARGUMENT III pages 14 - 17

ARGUMENT IV pages 18 - 19

ARGUMENT V pages 20 - 26

The Exhibits are as followed:

1. Exhibit Z.1 The Greenville County P&E sheet of "Section of Wall" prepared by Jon Derby, Forensics of Greenville County initially identified to have had Blood and Tissue that belonged to Petitioner, impounded July 27, 2009.

2. Exhibit Z.2.A 7 days before trial Solicitor Hodge sent a letter to Defense Counsel Johnston with SLED lab results of the Alleged Blood and Tissue DNA of the "Section of Wall", Results were **NEGATIVE** for **BLOOD** and **NO TISSUE** detected.
3. Exhibit Z.2.B SLED Forensic Lab results indicating that item 7 "Section of Wall" that **"NO BLOOD INDICATED"**
4. Exhibit Z.2.C an attachment to Exhibit Z.2.B indicating Verona Gibson was the DNA Technician that tested the "Section of Wall" also, Ms. Gibson testified there was Negative results for Blood" see **ARGUMENT I** page 6 of Petitioner Johnson PRO SE Response.
5. Exhibit Z.3 SLED Forensic Lab report stating a Copper Jacket found in the kitchen and tested on August 3, 2009, had No Appreciable stain for blood, but appeared a piece of material was found but not identified.
6. Exhibit Z.4 Defense Counsel Johnston Motioned the Court for a 30 day continuance to go over the DNA results that showed **"NO BLOOD INDICATED"** on item 7 "Section of Wall" ***However Defense Counsel opened arguments and argued throughout trial that Petitioners blood and Tissue was in fact on the "Section of Wall".

The Following case law is in support of Petitioners allegations that **DUE PROCESS** and **EFFECTIVE ASSISTANCE OF COUNSEL** were in fact denied to Petitioner at trial.

KENNETH SIMMONS v THE STATE OF SOUTH CAROLINA (Appellate Case No. 2014 - 000387, and decided on June 8, 2016) **REMANDED** to PCR Court (PCR Court overturned Simmons case and granted a New Trial in July 2017). The Mis-leading and misrepresenting the evidence to the Jury with false evidence introduced at trial with no objections. The Petitioners case is merely the same as the Simmons case in regards to Petitioners Due Process was violated and suffered severe prejudice by deficient errors by Defense

Counsel among other Constitutional Violations.

CONCLUSION

The Petitioner has diligently sought Appellate Counsel Wanda Carter's assistance in this Appellate matter, specifically on December 6, 2017. Petitioner asked Ms. Carter to correct the False and Misleading information that she provided in her Johnson Petition sub judice.

Petitioner has further diligently submitted the Exhibits and the Simmons decision, to be Supplemented to Petitioners initial Johnson Pro Se Response for this Honorable Court to have all necessary and truthful material facts as evidence to make a decision in favor of the Petitioner, and in the interest of Justice.

12-11-17

DATE

Respectfully Submitted,

Ronnie C. Swofford Jr.

RONNIE C. SWOFFORD, JR.

McCI F-3-161-A

386 Redemption Way

McCormick, S.C. 29899

EX 983 7-1

Greenville County Department of Public Safety
Criminal Justice Support-Property Report

1 - Greenville SO
2 - Greenville PD
DPS - Detention
Other

1. Status - Check one only: ☒ Found ☐ Safekeeping ☐ Other		2. Case No. 01-09-119378
3. Date and Time Impounded 7/27/09 0529		4. Case Type SHOOTING INCIDENT
5. Found or Recovered From ☒ Location ☐ Suspect ☐ Complainant ☐ Victim ☐ Person reporting ☐ AKA ☐ Other		6. Where property was impounded (Give exact location - address) MEMORIAL Dr EXT GREEN, SC

7. Owner's Name Kitchen		8. Owner's Address	9. Owner's Phone #
12. Description (include make, model, serial numbers and drug weights)			
10. Item #	11. Quantity	13. NCIC Hit	
JD-G 1	1	Yes No	
Section of wall from kitchen containing suspected projectile hole, suspected fabric, & suspected body tissue			

UNLOADED FIREARM VERIFICATION:		UFCV (clerk verified)		UFOV (officer verified)	
Drug weight/grams		Officer's initials		Evidence clerk's initials	
14. I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.		15. Impounding Officer (print full name) JON DERBY		16. Star No. 8948	
Signature		18. Signature [Signature]		17. Unit No. 927	
20. Received by (print name) JAMES I. [Signature]		21. Signature [Signature]		22. Reason ONE SUMME (SENT)	
				23. Date and Time Received 8-04-09 1555	

AUTHORIZATION FOR DISPOSITION: It is the authorizing officer's responsibility to notify owners to claim property.

TYPE OF DISPOSITION:		AUTHORIZED BY:	
☐ Cleared for destruction/auction		Name (print)	
☐ Release item #s to:		Signature	
Name		Date	
Address		Firearm Release verification:	
ID#		NCIC/CCH check:	
		Name	
		Date	

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Ex. Z. 2. A

Telephone: 864-467-8647
Telefax: 864-467-8610



Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. Walter Wilkins

April 9, 2012

Andrew Johnston
184 North Daniel Morgan Ave.
Spartanburg, SC 29306

IN RE: State of South Carolina v. Ronnie Swofford
2009-GS-23-9403, 04, 05
2011-GS-23-7263

Mr. Johnston:

Under State's continuing duty to disclose pursuant to Rule 5, SCRPC, and Brady, attached please find recent SLED reports for a GSR kit analysis and Trace Evidence. These were provided to me as of today, and I am forwarding them to you. I am faxing you a copy of these as well. These reports were recently generated due to the fact I asked SLED to examine the GSR kit, and a section of wall, labeled JD-G. I requested the section of wall be analyzed to determine if there was any potential evidence, either trace or DNA on this item. I submitted the request two months ago, advising them of our trial date of April 16th. I am awaiting final report from DNA, and was told it should be out in next day or two. I will forward that report to you as soon as I receive it.

In addition, I contacted our Latent Analysis Division, in the Department of Public Safety, to determine if any of the latent prints lifted from the glass door on front porch were matched to anyone. Their policy is not to make any type report unless a match is confirmed. Capt. Kellet advised me today that no latents lifted in this case were matched to the defendant. The latents from the glass front door were not of AFIS quality, and as of today have not been matched to anyone. However, the latents lifted off of assorted paperwork, and not matched to Rikki Edwards, were of AFIS quality, and were searched on AFIS. No one other than Rikki Edwards was matched to any of the latents lifted from the paperwork.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Inv. Chris T Miller
Greenville County Sheriff's Office
Law Enforcement Center, 4 McGee Street
Greenville, SC 29601

EVIDENCE PROCESSING

~~April 2012~~ April 2012

SLED LAB: L09-09220

Your Case No: 109119378

Incident Date: 7/27/2009

[V] Curtis Wooten

[S] Ronnie Swofford, Jr.

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

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

ITEMS OF EVIDENCE:

Item: 7 Section of wall

RESULTS:

No blood indicated.

Item: 7.1 Debris

RESULTS:

Potential evidence collected and sent to the Trace Department.

~~Item: 7.2~~ Possible hair

RESULTS:

Potential evidence collected and sent to the DNA Department.



These examinations were conducted by DNA Evidence Processing Technician Verona Gibson and were reviewed by Forensic Scientist Stephanie M. Stanley in the DNA Casework Department.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Stephanie M. Stanley

Stephanie M. Stanley
Forensic Scientist



Ex. Z. 3



DEPARTMENT OF FORENSIC DNA ANALYSIS

Evidence Worksheet

Lab #: L09-09220
Analyst: Adrienne N. Riley
Date: 8/3/2009
Victim: Curtis R. Wooten
Subject: Ronnie C. Swofford, Jr.

1	Swab of suspected blood/tissue from kitchen floor					DNA	?	Per Inv. Miller: from bullet that passed through subject Piece of material present on swab. <u>No appreciable stain</u> Went straight to PCR.
2.1	Cutting from yellow gingham print table cloth		+			DNA	Yes	
3.1	Cutting from beige chenille material blanket		+			DNA	Yes	
4	Buccal swabs from Curtis Randolph Wooten (2)					DNA	Yes	Cut ~1/4 of each swab; Received on 8/4/09

Phenolphthalin SR 1170
3% H₂O₂ SR 1118
Quality Control ✓ 8.3.09

AP Spot SC
Quality Control

Handwritten signature/initials

9 AL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS
 FOR THE THIRTEENTH JUDICIAL

THE STATE,)
)
)

MOTION FOR CONTINUANCE

VS.)
)
)

2009-GS-23-9403

2009-GS-23-9404

RONNIE C. SWOFFORD,)
)
)

2009-GS-23-9405

2011-GS-23-7263

DEFENDANT.

TO: KRIS HODGE, ESQ., ASSISTANT SOLICITOR, GREENVILLE COUNTY

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through his attorney undersigned, will move before the Presiding Judge of the Thirteenth Judicial Circuit, located in the Greenville County Courthouse, Greenville, South Carolina, as soon as this matter can be heard, for an Order granting a Continuance on the trial on the above charges, scheduled for the April 16, 2012, term of court.

This request is based on the Defense needing additional time to review DNA evidence just received by the State.

April 12, 2012

Spartanburg, South Carolina

Andrew Johnston

Andrew J. Johnston
 Attorney for Defendant
 PO Box 3252
 Spartanburg, SC 29304

*Grant
 4/12/12*

The South Carolina Court of Appeals

Ronnie Cleveland Swofford, Jr., Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2016-000508

ORDER

This matter is before the court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief (PCR). However, Petitioner did not timely serve the notice of appeal from the PCR court's order on the State as provided by Rules 243(b) and 203(b)(a), SCACR. Petitioner received written notice of the PCR court's order on January 12, 2016, but his motion for reconsideration was dated January 28, 2016, six days beyond the ten-day filing period allowed by Rule 59(e), SCRCP. As a result, the time to serve the notice of appeal was not tolled and ended on February 11, 2016, well before Petitioner's March 3, 2016 service on the State. Accordingly, this appeal is dismissed. See *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) ("The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."). The remittitur will be sent as provided by Rule 221, SCACR.


FOR THE COURT

Columbia, South Carolina

FILED

Sept. 27, 2018

cc: Wanda H. Carter, Esquire
DeShawn Herman Mitchell, Esquire
Ronnie Cleveland Swofford, Jr., 218281
The Honorable Perry H. Gravely



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 17, 2018

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: Ronnie C. Swofford, Jr. v. State
Lower Court Case No. 2014CP2303763
Appellate Case No. 2016-000508

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Wanda H. Carter, Esquire
DeShawn Herman Mitchell, Esquire
Ronnie Cleveland Swofford, Jr., 218281

FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)Ronnie C. Swofford, Jr.)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

ENTERED COMPUTER)

APPLICATION FOR)

POST-CONVICTION RELIEF)

2018-CP-23-0566219 NOV 6 PM 4:06
Paul Wickensimer DCC BUL SC**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention McCormick Correctional Inst. - SCDC
386 Redemption Way, McCormick SC 29899
2. Name and location of Court which imposed sentence Greenville County
Courthouse, Greenville S.C.
3. Name(s) of co-defendant(s) (if any) n/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 09-GS-23-9403-05
 - (b) 11-GS-23-7263

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MAY 17, 2012 - LWOP
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Applicant dropped Appeal
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JUNE 28, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) * DROPPED Appeal due to Counsel not objecting or backing off an objection to protect for Appellate Review.
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance Counsel (PCR Counsel)
both Amendment US CONSTITUTION VIOLATION
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED - pg. 8 + 9
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? YES
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Motion 29(b) After Discovered Evidence
- ii. PCR Application
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. GREENVILLE County Courthouse, GREENVILLE S.C.
- ii. GREENVILLE County Courthouse, GREENVILLE S.C.
- iii. _____
- iv. _____

(c) the disposition thereof:

i. Dismissed

ii. Dismissed

iii. _____

iv. _____

(d) the date of each such disposition:

i. Dec 9, 2013

ii. Sept 27, 2018

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) PCR Counsel failed to Timely Serve a 59(e)
And Appeal to Supreme Court on behalf of
Applicant

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

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

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

(a) the name and address of each attorney who represented you:
 i. Andrew Johnston (trial Counsel)
184 N. Daniel Morgan Ave, Spartanburg SC 29306
 ii. Gerald Wilson (trial Counsel)
184 N. Daniel Morgan Ave Spartanburg SC 29306
 iii. R. Mills Arrial, Jr. (PCR Counsel)
11 North Irvine Street, Suite 11, Greenville SC
 (b) the proceedings at which each such attorney represented you: 29601
 i. TRIAL
 ii. TRIAL
 iii. PCR

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

Applicant to be granted the chance to file a belated
59(e) And/or belated Appeal - Austin Review
to the S.C. Supreme Court (PCR Case No. 2014-CP-23-3763)

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

NO

STATE OF SOUTH CAROLINA)

County of McCORMICK)

VERIFICATION

I, Bonnie C. Swafford, Jr. #218281, 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.

Bonnie C. Swafford, Jr.

SWORN to and subscribed before me this 15
 day of October, 2018.

B. D. Wideman (L.S.)
 Notary Public

My Commission Expires: 9-30-20

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

I, Ronnie C. Swafford Jr. #218281, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Ronnie C. Swafford Jr.
Applicant

SWORN or affirmed to and subscribed before me this
15 day of October, 2018.
B. Q. L. W. Dema
Notary Public

My Commission Expires: 9-30-20

ATTACHMENT FROM PAGE 3 , 11. STATE
 Concisely And in the SAME ORDER the
~~the~~ FACTS WHICH SUPPORT EACH OF THE grounds
 Set out in (10):

11. (A) PCR Counsel R. Mills Ariail, Jr Represented
 the Applicant in the Applicants first And
 Only PCR (CASE NO: 2014CP2303763) before
 the Honorable Perry H. GRAVELY. PCR Counsel
 Ariail, Jr Rendered Ineffective Assistance
 to Applicant by failing to ~~the~~ timely file
 the Applicants 59(e) motion And failed
 to timely serve the Applicants Notice
 OF Appeal to the S.C. SUPREME COURT
 within the STATUTE OF Limitations governed
 by the S.C. Rules of Court. Applicant
 asked PCR Counsel to please timely serve
 the 59(e) motion And Appeal on the
 S.C. Supreme Court, Additionally, IN
 Post-Conviction Relief Actions Rule 71.1(g)
 supports the duties that PCR Counsel
 Mills, Jr. had in fulfilling those
 obligations. Applicant has shown error
 And prejudice by PCR Counsel Ariail, Jr.

THE APPLICANT PRAYFULLY REQUESTS the Opportunity to timely file a 59 (e) motion and timely Notice of Appeal to the Applicant's first PCR Application. This request is in fact for a belated Appeal (belated Austin Review). Based on Austin v. STATE 305 SC 453 409 SE2d 395 (1991).

The Applicant prays this process can be expedited by way of Mahoney v. STATE 518 FSUPP 2d 700 US DISTRICT COURT (CA NO 4:06-3016-RMD-TER) THE HONORABLE COURT signed a Consent ORDER granting a belated Appeal within 30 or so days after the PCR Application was submitted by Mahoney. The Applicant has waited over 2 and half years just to have the entire Appeal process dismissed due to PCR Counsel's error.