

VOL. III OF III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Abbeville County

R. Lawton McIntosh, Circuit Court Judge

SHONDRAY LAMONT MARTIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213701

A P P E N D I X

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SHONDRA MARTIN - DIRECT

1 just --

2 Q Okay. Now, this State's exhibit, I think
3 it's State's Exhibit 19, this drawing, did you make
4 that drawing?

5 A I don't recall making that drawing. I don't
6 recall even the signature, like I said earlier,
7 whatever, whatever, I don't remember that.

8 Q How do you spell your name?

9 A S-h-o-n-d-r-a-y.

10 Q Okay. How is that spelled?

11 A S-h-o-n-d-r-a.

12 Q Okay. You also heard, I think, Agent
13 Gambrell testify on State's Exhibit 20, concerning
14 State's Exhibit 20, is that correct?

15 A (No response)

16 Q Is that correct?

17 A Excuse me. Uh-huh.

18 Q And you said that Mr. Landrum was with you
19 supposedly at this, at this crime?

20 A Correct.

21 Q And that Mr. Landrum shot the deceased?

22 A Correct.

23 Q Okay. And were you indeed there?

24 A No, sir.

25 Q Okay. Who brought up the facts, how did you

SHONDRA MARTIN - DIRECT

1 become aware of these, the facts in these, I'm

2 sorry, the facts involving these two exhibits?

3 A Could you kind of like be a little bit more
4 specific?

5 Q Yes. How did you know about this alleged
6 shooting?

7 A Oh, okay.

8 Q How did you know about this shooting when
9 they began to question you about it?

10 A Okay. Well, this is what happened. You see,
11 when the authorities come to my home --

12 Q Uh-huh.

13 A -- they came to the home,

14 When they come to the home, at the residence

15 me and my wife was there cleaning

16 up, the officer knocked on the door and, you know,

17 my wife kind of, she was kind of shaken because,

18 you know, she know that I don't work anywhere --

19 MR. JONES: Objection, Your Honor, he can't
20 testify to what his wife knows.

21 THE COURT: Sustained.

22 Q Listen to what I'm asking, Shondra.

23 A Uh-huh.

24 Q What I'm asking you is, how did you become
25 aware of what they were asking you about?

SHONDRA MARTIN - DIRECT

1 A How did I become aware?

2 Q Yes, how did you become aware of the
3 information in here?

4 A Oh, because, as I told you, hearsay, stuff
5 that I was hearing on the streets, that went on.
6 This is, when I was trying to go back, when the
7 officer came to the home and then I'm, "Look,
8 what's going on," and they're saying about, they
9 didn't say nothing about an Excursion, they said
10 Ford SUV's, "We doing a record check of all the
11 Ford SUV's," and they said, "Well, this residence
12 was one and we come here," from what my wife told
13 me, they come here and asked us about something
14 about --

15 Q A homicide?

16 A Something about Iva.

17 Q A killing?

18 A Abbeville or something like that, and he
19 asked, asked my wife, my wife didn't know anything
20 about Iva, Abbeville, Abbeville or Iva, my wife, me
21 nor my wife don't know nothing about Abbeville or
22 Iva, we just moved in Anderson.

23 Q Okay. As far as the facts and circumstances
24 of that, when you gave them this --

25 A Uh-huh.

SHONDRA MARTIN - DIRECT

1 Q Before you gave them this did you know
2 anything about the contents of it?

3 A No. I learned more about that when I started
4 asking questions, you know, to Mr. Landrum, I said,
5 "Don't you know the officers come by my home asking
6 me about some, asking my wife about some stuff that
7 happened in Iva, Abbeville, they said something
8 about a Ford SUV," and I'm saying, I'm asking him,
9 because for one, I know that him and Rosalind had
10 some conversations and I don't know what was going
11 on with him and her, you know, and it's a lot of
12 stuff was going on with that, and so, and I know
13 him from, I know him, I know what kind of person he
14 really is and stuff like that, things, things that
15 he do. And he told me a whole lot of stuff about
16 this situation. He told me about, about this
17 place, about, "We went here," he said, he told me
18 about a place, he said, "You remember one time we
19 was just riding," he was talking about where
20 Rosalind showed us some place by the lake, he said,
21 "You remember all that stuff right there," and he
22 was telling me about that. And as he was telling
23 me about that and what the officers was saying and
24 all the stuff that he say, he say man, you know,
25 because I let him use my vehicle.

SHONDRA MARTIN - DIRECT

1 Q You let him use your vehicle?

2 A Right, I let him use my vehicle.

3 Q On one occasion or more than one?

4 A On more than one occasion.

5 Q You let him use the Excursion?

6 A Right, right. He will take my car and I will
7 take his car. He stayed in my home at this time
8 that this supposed to have happened, when I heard
9 from all them what time this supposed to have
10 happened. He was staying in my home because he had
11 got shot seven times and he had to get out of
12 Spartanburg because somebody was trying to kill
13 him, so I said, "Look, you can stay in my home and
14 I will move to Spartanburg, you know, because ain't
15 nobody looking for me because they ain't looking
16 for me for none of the stuff like that."

17 So, he stayed in my home, he had got shot up,
18 he went and stayed in my home, he ain't got well
19 and everything, didn't check out of the hospital,
20 just left out of the hospital, went and stayed in
21 my home, him and Rosalind. I don't know how she
22 met him, I don't know what's up with him and
23 Rosalind but, man, they, he was telling me some
24 stuff that, according to this family here, they
25 relatives, whatever happened, whoever this guy was

SHONDRA MARTIN - DIRECT

1 supposed to happen, they lost, they lost their
2 loved one, he was telling me.

3 Q He was telling you about the facts in here?

4 A He was telling me some of them facts in
5 there. I feel like the officers put that stuff in
6 there, because some of this stuff in there I don't
7 remember, I don't recall saying none of this stuff,
8 some of this stuff they saying.

9 Q So, your knowledge of this came from Mr.
10 Landrum?

11 A Exactly.

12 Q Okay. And this is not your statement, is it?

13 A No, sir.

14 Q I mean, when I say this, you didn't write it
15 out?

16 A No, sir.

17 Q This says memorandum of an interview?

18 A Interview, correct.

19 Q Okay.

20 Q And that was by Agent Gambrell?

21 A Both -- who is Gambrell?

22 Q Would you stand up, please?

23 A He was present but I don't know if it was by
24 him.

25 Q You don't know whether or not he took that

SHONDRA MARTIN - DIRECT

1 down?

2 A No.

3 Q Who else was present?

4 A Gilliam and what is his name, Lijoi.

5 Q Lijoi?

6 A Lijoi.

7 Q Okay. And was your attorney present?

8 A No, sir.

9 Q So, you were appointed a federal public
10 defender?

11 A Correct.

12 Q Correct? He came in and talked with you
13 briefly?

14 A Correct.

15 Q And left?

16 A Left. I told him to please, sir, stay.

17 Q And then they began to question you, is that
18 correct?

19 A Well, they didn't have to question me.

20 Everything that they, that he said, what I need
21 questioning, when you done, we done had a brief
22 conversation in the same thing that they claim was
23 there, that they, that's conversation, wasn't need
24 for a conversation.

25 Q Okay. What I'm asking you is this. Did you

SHONDRA MARTIN - DIRECT

1 tell them what they wanted to hear?

2 A Yes, sir. I told them what I was, some of
3 the stuff that I had heard, and some of the stuff
4 that they put in the paper. I don't know where that
5 come from, I don't know whether they done an
6 investigation and they want to add stuff to try to
7 program somebody to put in there, they said we, and
8 they add a little bit, they say, "We know you
9 didn't do this, we know Chris Landrum was the one
10 did this, we want you to do this and that, testify
11 all this and that," you know, so I just was telling
12 them stuff I heard from him, whether it's true or
13 not, I don't know.

14 Q Does Mr. Landrum wear glasses?

15 A Yes, Mr. Landrum wear glasses.

16 Q Does he, I'm referring to State's Exhibit 14,
17 does he wear glasses like that?

18 A I can't recall, I can't recall.

19 Q Does he wear wire rimmed glasses?

20 A That may be, that may be. I can't recall
21 what kind of glasses or something that he wear.
22 Mr. Landrum, most of the time when I see him I
23 don't see him with glasses on but if he had
24 glasses, if them his glasses, I guess they are his.
25 If he say they're his, they're his.

SHONDRA MARTIN - DIRECT

1 Q Okay.

2 MR. McLAIN: The Court's indulgence, Your
3 Honor.

4 Q Okay. During that, during that interview, or
5 an interview -- how many times, by the way, how many
6 times were you interviewed, interrogated,
7 interviewed, debriefed, and now we're back to
8 interrogated, I believe, federally? During that
9 interrogation there was a report of an
10 investigation prepared by the U. S. Department of
11 Justice Drug Enforcement Administration. Is that
12 correct?

13 A Meaning for the federal charges?

14 Q That's right.

15 A Right, the federal agents, it was.

16 Q Okay. And I believe at that time Special
17 Agent Mario Lijoi?

18 A Correct.

19 Q Secret Service Agent Earl Gilliam?

20 A Correct.

21 Q Jonathan Bryant?

22 A I don't, I don't know him, I can't even
23 recall, I can't recall no name. You say Bryant?

24 Q That's what this says, right.

25 A Jonathan Bryant, yes.

SHONDRA MARTIN - DIRECT

1 Q And Agent Steve Lamb met with you, the
2 Spartanburg Public Safety narcotics office, right?

3 A Yes.

4 Q "To discuss the activities of Martin's
5 Narcotics distribution enterprise"?

6 A That's not all, they put that there but
7 that's not all they talked to me about.

8 Q Well, this is not your statement or anything,
9 is it? You didn't write this, did you?

10 A No, sir, I didn't write anything.

11 Q This says signature, Agent, S/A Mario Lijoi,
12 correct?

13 A That's what it says, sir.

14 Q Okay. And in here, among other things --

15 MR. JONES: Your Honor, if he wants to
16 introduce it he can call the witness that prepared
17 it and introduce it this way. This is an improper
18 introduction of a federal narcotics investigation
19 document.

20 THE COURT: Sustained.

21 MR. McLAIN: I'm not trying to enter this
22 right now.

23 MR. JONES: Publishing it and entering is the
24 same thing, Your Honor.

25 THE COURT: And that's why the objection is

SHONDRA MARTIN - DIRECT

1 sustained.

2 MR. McLAIN: Okay. I will just ask --

3 THE COURT: Just ask your questions.

4 MR. McLAIN: I will ask some questions, okay.

5 BY MR. McLAIN:

6 Q During this interview, correct --

7 A Uh-huh.

8 Q -- were you asked about the subject matter of
9 these cases?

10 A You're talking about the state stuff?

11 Q Yes.

12 A Yes.

13 Q Okay. And in that interview did you tell
14 them that you had nothing --

15 MR. JONES: Leading, Your Honor, it's a
16 leading question, did you tell them.

17 THE COURT: Sustained.

18 MR. JONES: What did you tell them, would be
19 a proper question.

20 MR. McLAIN: That would be correct.

21 Q What did you tell them about the shooting of
22 Mr. McCoppin?

23 A I told him, I said, I told him, first off I
24 was telling them what I heard about Mr. -- I didn't
25 know no Mr. McCoppin, I didn't know none of this, I

SHONDRA MARTIN - DIRECT

1 was telling them what I heard, and he said, he
2 said, "Well, were you there?" And I thought for a
3 minute and I said, I was thinking and I said I got
4 to tell them I was there because if I don't tell
5 them I'm there, then it ain't going to be no good,
6 so I say yes, I was there.

7 Q Okay. But you also told them that you didn't
8 have anything to do with shooting him, didn't you?

9 A Oh, correct. If I wasn't there, now, why
10 would I be shooting?

11 Q Okay. So, you told them everything you knew
12 and then some, is that correct or not correct?

13 A Man, I probably told them I know where Osama
14 Bin Laden is, I was so scared, anything. I don't
15 know, I can't remember all that. Some of the
16 stuff, a lot of that stuff in there, I don't know
17 where they get that from. They got a lot of stuff
18 in that paperwork I didn't know where, they must
19 have got it from the investigation, they said,
20 "We're going to add this here, we're going to try
21 to get something out of this." That's what I think
22 they doing.

23 Q Now, let me ask you about this. After you
24 were incarcerated in the federal penitentiary in
25 Atlanta --

SHONDRA MARTIN - DIRECT

1 A Correct.

2 Q -- where you are serving a sentence of 151
3 months?

4 A Correct.

5 Q To which you voluntarily pled?

6 A Correct.

7 Q Is that correct?

8 A Well, voluntary pled? When you say voluntary
9 pled, it's like, well, I entered a plea of guilty,
10 of being guilty because of I'm facing a life
11 sentence, is that what you're trying to say?

12 Q Right.

13 A Well, maybe. I pled guilty because he said,
14 "Well, all I got to do is get two up there to say
15 this about you, you're going down for the rest of
16 your life." I said, "Look, this is lies, they're
17 telling lies." So, yes, okay, I'm going to plead
18 guilty out of fear and, you know, when I was there
19 I was telling the judge, I said, "I'm going to
20 plead guilty today but my attorney promised me that
21 everything that I done and said to these
22 authorities, that I ain't got nothing to worry
23 about, I got immunity for everything, he promised
24 me a Rule 35 and 5(k)(1), downward --"

25 Q Well --

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1 MR. JONES: Let him finish answering the
2 question, Your Honor, he interrupted his own
3 witness.

4 MR. McLAIN: I thought he just did answer the
5 question.

6 MR. JONES: You're interrupting.

7 MR. McLAIN: I thought he said --

8 THE COURT: He was commencing to say he was
9 promised.

10 MR. McLAIN: A Rule 35.

11 THE COURT: Anything else?

12 MR. JONES: 5(k)(1), he mentioned 35 downward
13 departure and 5(k)(1), I thought.

14 THE WITNESS: Right.

15 MR. JONES: He was continuing to talk.

16 THE WITNESS: The judge told the prosecutor,
17 he said, "Miss Jean Howard, can you explain this?"

18 BY MR. McLAIN:

19 Q Who is Jean Howard, for the jurors'
20 edification?

21 A A federal prosecutor, she's a federal
22 prosecutor, Jean Howard. And she said, she said,
23 "Well, he got more to do," and more to do, to me,
24 meaning this situation, everything that I tell them
25 about this, because I didn't have no one to tell on

SHONDRA MARTIN - DIRECT

1 my drug conspiracy, my drug conspiracy didn't have
2 nothing to do with Spartanburg, nobody that I know
3 in Spartanburg, my drug conspiracy was out in
4 California, and that stuff been done with for about
5 a year and a half or better. So --

6 Q Is that before?

7 A Yes, before they even came and picked me up,
8 so I ain't got nothing to say about no drugs,
9 period, you know, but I had, stuff that I heard, a
10 little bit of stuff that I heard and the stuff that
11 they put in this paper --

12 Q So, you admitted to the federal drug
13 conspiracy?

14 A Well, I --

15 Q You pled guilty to it?

16 A No, I filed objection to the whole PSI
17 because --

18 Q Hang on. The jury may not know what a PSI
19 is.

20 A Okay. A PSI is, well --

21 Q Presentence report?

22 A Presentence report, where they collect
23 everything it is about you, how many kids you got,
24 where you live, everything, everything, what you
25 are charged with, all that, just about everything,

SHONDRA MARTIN - DIRECT

1 that is what a PSI report is.

2 Q In federal court you have the right to agree
3 to the PSI or make limited or total objections to
4 it?

5 A Correct.

6 Q Okay. And you had some objections to it?

7 A Yes, sir, I had objections to it because the
8 things that was in there, there was a lot of
9 negative stuff in there that just wasn't correct
10 and I said, "Well, how I can plead guilty if my
11 conspiracy is contained, going to California to
12 pick up powdered cocaine and then, and then why
13 come and you putting crack in there? Where crack
14 come up, what crack got to do anything with my
15 case, you know. It's no crack in the case. I
16 don't --"

17 Q Anyway, you entered a guilty plea in federal
18 court?

19 A Yes.

20 Q Okay. And you were sentenced?

21 A Correct.

22 Q Okay. And that's without parole?

23 A Yes.

24 Q In federal court there is no parole?

25 A Yes, sir, there is no more.

SHONDRA MARTIN - DIRECT

1 Q Now, after you were in Atlanta did they try
2 to come down and question you again?

3 A Yes, when I was in Atlanta they came down,
4 wanted to talk to me about something. I wasn't
5 going to tell them, I wasn't going to tell them no
6 lies anyway.

7 Q Okay. So, on October 22nd, 2002, did Sheriff
8 Charles Goodwin, Detective David Alford, Special
9 Agent Steve Gambrell, Special Agent Tony Dewarti,
10 did they come down to the United States Prison in
11 Atlanta, Georgia to interview you again?

12 A Yes, sir.

13 Q Okay. And that was concerning that letter
14 that you wrote?

15 A Not only that, they mentioned that.

16 Q They mentioned that? What else did they
17 mention?

18 A They mentioned telling me about, he said,
19 "Well, what about this stuff in this case, involved
20 in this case," and I ain't had nothing to say.

21 MR. JONES: Your Honor, this is a lawyer just
22 letting him read off this document?

23 A This ain't, it ain't even --

24 Q I'll do it this way.

25 A It ain't even --

SHONDRA MARTIN - DIRECT

1 Q Okay, I'll do it this way, then, okay? They
2 came down there to question you about what?

3 A This letter you're saying, this letter, and
4 about some stuff involved in this case right here,
5 and I say, "Well, look, I ain't," I wasn't going
6 to, I wasn't going to say nothing anyway, I already
7 wrote the letter and said, "Look, this is stuff,
8 whether Mr. Landrum did this or not, I don't know."
9 This is all before, but I didn't say this to them,
10 this is what I'm thinking, I wasn't going to say
11 anything, so I said we need a lawyer anyway,
12 because I felt like --

13 THE COURT: Don't let him see the paper.

14 A It was, I think it was just inappropriate for
15 them to come and even speak to me, I have told my
16 counselor, my counselor warned me, said, "You got
17 people here coming here to see you." I said, "Can
18 I refuse to talk to them?"

19 Q You mean your counselor?

20 A My counselor in the federal system.

21 Q You don't mean an attorney?

22 A No, no, I mean like a counselor, like we have
23 counselors, we have unit managers, stuff like that,
24 and she warned me, she said, "Martin, you know some
25 people call up here and want to talk to you about

SHONDRA MARTIN - DIRECT

1 some more charges you've got?" I said, "For real?"
2 She said yes. I said, "Well, I don't want to talk
3 about nothing," I said, "Can I refuse to speak to
4 them right now?" She said yes.

5 And so they, when I was, I was at work, they
6 came and called me from work and told me I needed
7 to go to what they call records, not records -- oh,
8 man, I can't remember what they call it, I forgot
9 what they call it. It's a place you go, SIS, I
10 think that is what it is, SIS, where you can talk
11 to authorities or something like that.

12 And so --

13 Q Like a holding room?

14 A Right. I said, "Why I have to go," I said, I
15 passed my counselor, I said, "Why I have to go, I
16 don't want to talk to nobody." She said, "Just go,
17 Martin, because," she said, "they got a letter,
18 they say you wrote them a letter or something," she
19 said, "Just go, baby, just go."

20 And I just went on and when I got down there
21 I seen about one, two, three, maybe four, four,
22 about four officers or authorities or whatever.

23 Q And at that time did you agree to talk with
24 them again?

25 A No, sir.

SHONDRA MARTIN - DIRECT

1 Q Why?

2 A Because.

3 Q Because why?

4 A There wasn't nothing to say to them, just
5 wasn't nothing to say.

6 Q Okay. How did you feel about your prior
7 statement --

8 MR. JONES: Objection, Your Honor.
9 Objection, Your Honor.

10 THE COURT: What grounds?

11 MR. JONES: Leading him.

12 MR. McLAIN: How did you feel?

13 THE COURT: ~~Overruled.~~

14 MR. McLAIN: Thank you.

15 BY MR. McLAIN:

16 Q How did you feel about talking, after all of
17 this and the promise of immunity and this, that and
18 the other, how did you feel about talking to them
19 again?

20 A Negative. I didn't want to talk to them.

21 Q Why?

22 A Because before all this occurred I was living
23 deep in sin and when I got to Atlanta God found me
24 and changed me and just came into my life and I
25 knew what I done was wrong. I didn't want to go on

SHONDRA MARTIN - DIRECT

1 with that, I didn't want to have no part of that,
2 and it didn't matter. It didn't matter.

3 Q Was that why you wrote that letter, to try to
4 rectify the situation?

5 A No. I wrote that letter because it was wrong
6 for what happened, that's why I wrote the letter.

7 Q That's what I mean.

8 A Yes.

9 Q You wrote that letter to try to correct what
10 you had told them before?

11 A Yes. I wrote that letter because what I told
12 them was something that I don't know nothing about.
13 That's why I wrote that letter.

14 Q You told them what you had heard, not what
15 you observed?

16 A That's right. And they had a man locked up
17 and I wanted, I said, "Well, you know, this is
18 unfair."

19 Q Did you feel like you had been tricked before
20 when they had asked you that?

21 MR. JONES: Leading, Your Honor, leading
22 question.

23 THE COURT: Sustained.

24 Q I'm sorry, how did you feel about when they
25 came down there to talk to you in Atlanta and you

SHONDRA MARTIN - DIRECT

1 didn't want to talk to them?

2 A Correct, I didn't want to, it didn't have
3 nothing, it wasn't whether I was being tricked or
4 not, like I said earlier, my life was totally
5 different from that man back then, I didn't want to
6 have no part of that at all, period.

7 Q By the way, when they came to arrest you and
8 you had the Ford Excursion, white Ford Excursion --

9 A Correct.

10 Q -- where was that Excursion parked?

11 A I can't remember.

12 Q Was it out front?

13 MR. JONES: Your Honor, he said he can't
14 remember.

15 A I can't remember, I don't know where. It
16 could have been in the back, out front, could have
17 been across the street, down the street, I don't
18 remember.

19 Q Were you or were you not trying to hide it?

20 A No. Where can you hide it? Ain't this about
21 the biggest U. S. vehicle in the United States?
22 Where can you hide it? It's white, too, how can
23 you hide it? You can't hide that.

24 Q Okay. I'm going to ask you on the stand, did
25 you shoot --

SHONDRA MARTIN - DIRECT

1 A No, sir.

2 Q -- Adarryl McCoppin?

3 A No, sir, no, sir.

4 MR. McLAIN: That's all I have. Your
5 witness.

6 THE COURT: We're going to take a lunch
7 break.

8 Now, ladies and gentlemen, the first warning,
9 to you, Mr. Witness, it is as if we are not taking
10 a break. You are instructed that you can't even
11 talk with your lawyer about your testimony that you
12 have given.

13 THE WITNESS: Correct.

14 THE COURT: Or any testimony you expect to
15 give to any questions that you may be asked or may
16 not be asked. You can't talk about this case at
17 all.

18 THE WITNESS: Yes, sir.

19 THE COURT: But you are expected to relax as
20 well and have your lunch as well but you cannot
21 talk with your lawyer about this testimony or this
22 case.

23 THE WITNESS: Yes, sir.

24 THE COURT: Do you understand?

25 THE WITNESS: Yes, sir.

SHONDRA MARTIN - DIRECT

1 THE COURT: All right, sir. Watch your step
2 and come down.

3 THE WITNESS: Thanks.

4 THE COURT: Madam Forelady, ladies and
5 gentlemen of the jury, we will take a luncheon
6 recess at this time until 2:30. Do not talk about
7 the case by, between and among yourselves nor with
8 any other person. Do not allow anyone to speak
9 with you about this case. If anyone does attempt
10 to do so, tell them that you are a juror and you
11 are not permitted to discuss the case with them.
12 If anyone attempts to discuss the case with you
13 after they know that you are a juror, that would be
14 improper, wrong and illegal and you should identify
15 that person by any means you are able to do that
16 and report that incident to the bailiff at the door
17 or to the Court Clerk who sits immediately in front
18 of the Court when you return, without sharing it
19 with anyone and the Court will look into the matter
20 and deal with it immediately and with
21 effectiveness.

22 If there is any media coverage of this trial
23 such as newspaper, television or radio you are
24 under your oath to disregard completely anything
25 you may see, hear or read concerning this trial,

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1 disabuse your mind of it completely and absolutely,
2 as you must decide the case only and exclusively
3 upon the evidence that's presented during the
4 trial.

5 Because of the time of day, we are
6 interrupting the testimony of the witness on the
7 stand. You heard the admonition to him, so it is
8 as if we are not taking a break but because of the
9 hour, 1:15 in the afternoon, we will take a break
10 until 2:30 so that everyone will have a rested mind
11 when we come back, but it is as if we are not
12 taking a break, the witness will be cross-examined
13 when we return.

14 Everyone remain seated, the jurors are
15 excused. Do not discuss the case at all.

16 (The jury was excused from the courtroom
17 at 1:15 p.m.).

18 MR. McLAIN: Judge, may I approach the bench
19 with Mr. Jones for one second?

20 THE COURT: Yes, sir.

21 (Unrecorded bench conference).

22 THE COURT: Anything for the record from the
23 State?

24 MR. JONES: No, Your Honor.

25 THE COURT: From the defense?

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1 MR. McLAIN: No, sir.

2 THE COURT: We're in recess until 2:30.

3 (Recessed at 1:18 p.m.).

4 (Reconvened at 2:46 p.m.).

5 THE COURT: The record will open. This is
6 Shondra Lamont Martin, the State versus Shondra
7 Lamont Martin, indictment 2002-192. Mr. Martin,
8 come on up, please, sir, and be seated.

9 Anything from the State before the jurors
10 come in, please?

11 MR. JONES: I'm sorry, Your Honor?

12 THE COURT: Anything for the record before
13 the jurors come in?

14 MR. JONES: No, Your Honor.

15 THE COURT: From the defense?

16 MR. McLAIN: No, sir, Your Honor.

17 THE COURT: Thank you. Show the jury in
18 please, Mr. Busby.

19 (The jury returned to the courtroom
20 at 2:48 p.m.).

21 THE COURT: All the jurors are present, with
22 the foreman and alternate properly seated.

23 Mr. Witness, you have been sworn and you
24 remain under oath to tell the truth. Do you
25 understand?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Thank you. Solicitor, this
3 witness is with you on cross-examination.

4 MR. JONES: If it please the Court, Your
5 Honor.

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1 CROSS EXAMINATION

2 QUESTIONS BY MR. JONES:

3 Q On direct examination you said that on
4 October 10th of 2001 you met with some law
5 enforcement officers in Spartanburg, is that
6 correct?

7 A Yes, sir.

8 Q Do you remember the names of any of the
9 officers you met with on October 10th, 2001?

10 A I remember two, Mr. Gilliam and Lijoi.

11 Q All right.

12 A Mario Lijoi.

13 Q Mr. Gilliam, are you talking about, please
14 stand up, Earl Gilliam?

15 A Earl Gilliam, yes, sir.

16 Q Secret Service Agent with the United States
17 Department of the Treasury?

18 A Yes, sir.

19 Q He was with you there?

20 A Yes, sir.

21 Q And Mr. Lijoi, this man here?

22 A Yes, sir.

23 Q A DEA Agent with the Department of Drug
24 Enforcement, United States Department of Drug
25 Enforcement?

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- 1 A Yes, sir.
- 2 Q You met with them on October 10th, 2001?
- 3 A Yes, sir, with some other officers, yes.
- 4 Q With some other officers?
- 5 A Yes.
- 6 Q Did either one of those gentlemen at that
- 7 time mistreat you in any way?
- 8 A What you mean, physically?
- 9 Q I said mistreat you in any way?
- 10 A Mentally, yes.
- 11 Q Sir?
- 12 A Yes, mentally they was beating me down, "You
- 13 did this, you did that, you know this, you know
- 14 that, tell us the truth," and all this kind of
- 15 stuff. They didn't mistreat me like physically
- 16 mistreat me, but in words and scare me, I would
- 17 call that mistreating.
- 18 Q Were they talking to you at this time about
- 19 your narcotics operation?
- 20 A They talked to me about narcotics and checks
- 21 and they asked me about some state stuff.
- 22 Q So, on October 10th they were talking to you
- 23 about the narcotics operation, the narcotics
- 24 division of your operation, correct?
- 25 A Correct.

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1 Q They talked to you about the counterfeiting
2 division of your operation, correct?

3 A Correct.

4 Q Sir?

5 A Correct.

6 Q As relates to the narcotics division of your
7 operation, you stated earlier that you don't know
8 why they mentioned crack cocaine because all you
9 dealt with was powder that you bought in Los
10 Angeles, right?

11 A Yes, I thought it was just cocaine, I didn't
12 know anything about, not no crack.

13 Q In the narcotics division of your operation
14 how many people did you have working for you, on
15 your payroll?

16 A I didn't have nobody on my payroll.

17 Q How many did you have traveling with you to
18 Los Angeles to carry the money that you took out
19 there to buy the cocaine and to bring the cocaine
20 back for you?

21 A I didn't have nobody doing nothing, I didn't
22 force nobody to do anything.

23 Q So, are you saying you personally went out
24 there, bought the cocaine and personally brought it
25 back yourself?

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1 A Yes.

2 Q That's what you're saying?

3 A Yes.

4 Q You did not have women bringing the cocaine
5 back for you in separate planes than you flew back
6 on?

7 A No.

8 Q Okay. When you came back to Spartanburg
9 that's when you melted the powder cocaine down to
10 crack cocaine, is that correct?

11 A No.

12 Q So, you're denying that part of your
13 narcotics operation was purchasing crack cocaine
14 and melting it down, purchasing powder cocaine and
15 melting it down to crack cocaine in Spartanburg, is
16 that correct?

17 A I deny that.

18 Q You deny it, okay. As it relates to your
19 counterfeiting operation, division of your
20 operation, you were actually printing out
21 counterfeit checks and having crack addicts cash
22 those checks at various businesses, unknowing
23 businesses around Spartanburg, were you not?

24 A Negative, no.

25 Q Well, who was cashing the counterfeit checks

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1 that you were producing?

2 A Well, the people that told the authorities
3 that they was cashing them, those are the ones who
4 was cashing them.

5 Q And --

6 A I can't remember their names, all of them.

7 Q You don't remember the people working for you
8 that would go out and cash the counterfeit checks
9 that you were producing?

10 A Do I remember?

11 Q Yes, sir.

12 A I ain't making no counterfeit checks, other
13 people was making counterfeit checks.

14 Q You weren't making any counterfeit checks?

15 A No, I wasn't making no counterfeit checks.
16 Other people were making counterfeit checks and I
17 just knew about them.

18 Q You just knew about them?

19 A Yes, I knew about them, I knew who was making
20 the counterfeit checks, I told the officers that.

21 Q So, you weren't in charge of the production
22 of counterfeit checks and the cashing of
23 counterfeit checks and the receipt of proceeds from
24 the cashing of counterfeit checks?

25 A Yes, people would give me money, because I

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1 know who would go get the counterfeit checks but I
2 ~~ain't making no counterfeit checks~~ and I ain't
3 paying nobody to make, to go do nothing, to cash no
4 checks to give me no money. It is just like if
5 somebody give you some counterfeit checks and they
6 say, "Well, okay, bring me back this amount of
7 money," I say okay. Well, then, if I got, if
8 somebody give me some counterfeit checks, tell me
9 to bring them some money back and if I know you and
10 you say you go cash the checks, I give the checks
11 to you and they say, "Well, okay, I'm going to keep
12 this amount of money," and bring me back the rest
13 of the counter, the rest of the money, but the
14 money don't belong to me, I wasn't leading in that,
15 because if I was I would told them I was leading in
16 that. I wasn't leading no counterfeit checks, no
17 ring, nothing like that.

18 Q Well, you told them that you would have
19 ~~certain women bring back powder cocaine from L.A.,~~
20 ~~didn't you?~~

21 A ~~I told them a whole lot of lies.~~

22 Q That comes easy to you, doesn't it?

23 A I'm not lying today.

24 Q Uh-huh. Well, then, you're telling us that
25 you personally and alone would go to Los Angeles

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1 and buy the cocaine?

2 A I didn't never say I went alone, I never said
3 that.

4 Q Who did you go with?

5 A I went with a lot of people. I had a friend
6 girl I used to date.

7 Q Name one person.

8 A She traveled with me.

9 Q Name one you went with?

10 A A friend girl named Kristen.

11 Q Kristen who?

12 A Kristen Dawkins, and her sister one time went
13 with me, another female went with me that was
14 dating a friend of mine and went, it was vacation
15 stuff, the females had no knowledge of what I was
16 doing, they might have said that when the feds come
17 and asked them all kind of questions and they get
18 scared and they say, "Well, I know he sell drugs,
19 he went out there with drugs, went out there
20 probably to get drugs," but they never seen that.

21 Q You would get how much cocaine out there?

22 A About, no more than about, what, a thousand
23 grams or something like that.

24 Q Two pounds?

25 A Two pounds? I don't know too much about the,

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1 that math stuff but I know a thousand grams of
2 powder cocaine would be like what you call a kilo
3 of cocaine, something like that.

4 Q 2.2 pounds?

5 A Is that what that is?

6 Q A kilo?

7 A That's what that is? Okay.

8 Q That's how much you would buy in Los Angeles?

9 A Uh-huh.

10 Q And bring back to Spartanburg?

11 A Right, but they said this and that, all kind
12 of other stuff.

13 Q Why did you move to Anderson?

14 A Why did I move to Anderson, because of the
15 changes.

16 Q Excuse me?

17 A A change.

18 Q Why did you move to -- you moved to Anderson
19 for a change?

20 A Yes, change in environment.

21 Q Change in environment?

22 A Yes.

23 Q Well, who did you take with you from
24 Spartanburg?

25 A My wife and kids.

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1 Q So, you're telling me that you didn't move to
2 Anderson because the heat was on with regard to
3 your enterprises?

4 A No, because if that was the case I would have
5 went way farther than Anderson. Anderson ain't no
6 farther than 30 something, 40 something minutes
7 from Spartanburg. That is nowhere to run, running
8 to Anderson?

9 Q So, you didn't like it in Spartanburg?

10 A Tired of it. I was just -- a change, new
11 environment.

12 Q So, the heat wasn't on you in Spartanburg?

13 A No. If some heat was on me I would have ran
14 farther than Spartanburg than Anderson.

15 Q Let me ask you about the home invasion
16 division of your enterprise. Who was in charge of
17 that division?

18 A Who was -- what you mean?

19 Q Well, you mentioned you had a liquor house,
20 didn't you?

21 A ~~I never had a liquor house.~~

22 Q You didn't?

23 A No.

24 Q You didn't have a club?

25 A ~~I used to run a bar.~~

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- 1 Q A little bar?
- 2 A Yes.
- 3 Q Who was your bouncer at the bar?
- 4 A ~~Bouncer? I don't recall having a bouncer.~~
- 5 Q You don't recall Chris Landrum working for
- 6 you at the bar?
- 7 A No.
- 8 Q Chris Landrum didn't help you out?
- 9 A No.
- 10 Q While you were in Spartanburg?
- 11 A No.
- 12 Q Did you meet Chris Landrum while you were in
- 13 Spartanburg?
- 14 A Chris Landrum been knowing my family, my
- 15 uncles and them long before I ever knew Chris.
- 16 Q When did you meet Chris?
- 17 A When did I meet Chris? Man, I don't know.
- 18 What, I probably, I was probably 16, 17. I don't
- 19 know.
- 20 Q How old are you now?
- 21 A I'm 30, fixing to be 31.
- 22 Q Sixteen years?
- 23 A I knowed of him, I didn't know him personally
- 24 like know him.
- 25 Q When did you first become familiar enough

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1 with him to swap cars with him on a regular basis?

2 A Okay, well, in '99, '98, '99, me and him got
3 to know of each other, he knew that I was, you
4 know, a drug dealer, whatever, and just got to know
5 me, he been knowing my family, he been knowing of
6 me but not personally like hanging around or
7 anything like that.

8 Q So, you all were swapping cars in '99?

9 A No, no, no.

10 Q Swapping cars in 2000?

11 A 2000? Let's see. Was he locked up? I don't
12 know, there have been some times when he been
13 incarcerated, in and out. I can't remember no
14 dates and stuff like that. I just know me and him
15 have traded vehicles before, a number of times.

16 Q Where did he get shot, what town was he in
17 when Chris Landrum got shot?

18 A Spartanburg.

19 Q Spartanburg?

20 A Yes.

21 Q Okay. You say after he got shot he moved in
22 with you?

23 A No, he didn't move in with me.

24 Q What did he do, come stay with you?

25 A No. I gave him and his wife the home and I

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- 1 come back to Spartanburg.
- 2 Q Wait a minute. You were in Anderson, right?
- 3 A Right.
- 4 Q He gets shot and he moves to Anderson?
- 5 A Right.
- 6 Q He decided the scenery would be better in
- 7 Anderson than Spartanburg when he got shot?
- 8 A What he say, he said he didn't know where
- 9 this was coming from, who was doing this to him, so
- 10 he asked me, he say, he didn't ask me, I said,
- 11 "Look, you can stay in this home right here, you
- 12 know, because maybe you can come here, if somebody
- 13 after you, you can just stay right here," and he
- 14 left the hospital without anybody signing him out
- 15 or anything and just left and came to Anderson.
- 16 Q He didn't get shot during the commission of a
- 17 home invasion, did he, Chris Landrum?
- 18 A I don't know, I wasn't present.
- 19 Q You don't know? You didn't ask him whether
- 20 or not he was involved in a home invasion when he
- 21 got shot?
- 22 A No, I didn't ask him that.
- 23 Q You didn't?
- 24 A I didn't. I didn't ask him that, no. I know
- 25 he have been shot.

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1 Q You know during the commission of a home
2 envision, don't you?

3 A Do what?

4 Q You know it was during the commission of a
5 home invasion, that he got shot?

6 A No.

7 MR. McLAIN: Objection.

8 A No.

9 MR. McLAIN: Asked and answered.

10 A I don't know --

11 MR. McLAIN: He has already answered that
12 question.

13 THE COURT: Overruled, cross-examination.

14 A Are you trying to say --

15 THE COURT: He has wide latitude.

16 A Are you trying to say I'm involved in crimes
17 with home invasion with Chris Landrum? Negative.

18 Q So, once he got shot you told him to come
19 live in your house in Anderson, right?

20 A Yes, because he said he didn't know who this
21 was that did this, and he going to find out, no
22 matter what it takes. I say, "Listen, I think it
23 be best if you just get away from Spartanburg,
24 look, me and my wife stay in Anderson, you can come
25 to Anderson, stay in this home and I'll leave," and

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1 that is what I done.

2 Q Where did you go?

3 A Where did I go, went to Spartanburg.

4 Q With who?

5 A With who?

6 Q Yes.

7 A With my family. My wife went and stayed with
8 her mama and I was like in hotels.

9 Q And where were the children?

10 A With their mother at the grandmama's house.

11 Q How long had you been in Anderson when you
12 moved back up there?

13 A Well, I didn't move back up there. My
14 family, my wife and my kids went to the mama's
15 house and I went back to Spartanburg, staying in
16 motels, Greenville, different places.

17 Q You liked that more than the environment, the
18 new environment you had found in Anderson, the
19 changes of scenery in Anderson, you liked bouncing
20 around in hotels in Spartanburg better than the
21 place you found to raise your family, your children
22 and your wife in Anderson?

23 A Well, I was just concerned about the fellow,
24 he had been shot several times and seemed like to
25 me, I know people say, to me he didn't seem like

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1 that person around me, so I say, "Well, you know,
2 come on, you can sit, stay in this home here and
3 maybe everything will be all right for you right
4 here."

5 Q The truth of the matter is your buddy Chris
6 Landrum needed a place to hide out, he needed a
7 place to go under, didn't he, and you gave him one,
8 didn't you?

9 A Like I said, I gave him a place, I let him
10 come move into the home that I was staying in in
11 Anderson.

12 Q So, you're saying that these two officers on
13 October 10th, 2001, were badgering you, they were
14 fussing at you and accusing you and yelling at you,
15 forcing you to come clean about some drug
16 operation?

17 A No.

18 Q Well, what were they so upset about, what was
19 it that they needed to get out of you so bad on
20 October 10th, 2001, that they want to fussing and
21 yelling at you about?

22 A I don't know. You got to ask them that.

23 Q You were there.

24 A You asked me what --

25 Q What issues were they so upset and concerned

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1 about on October the 10th, 2001, that they had to
2 yell and scream and intimidate you about?

3 A You need to ask them that, I don't know,

4 MR. McLAIN: Your Honor, my objection is I
5 don't think there has been anything about yelling
6 and screaming. There has been testimony about
7 intimidation. I think he asked him that before,
8 about yelling and screaming, did they yell and
9 scream at him, when he asked him about physical
10 versus mental intimidation, so I'm going to object
11 to the use of those words.

12 THE COURT: Overruled.

13 BY MR. JONES:

14 Q What do you recall them wanting so badly for
15 you to either confess to or tell them about that it
16 caused you to feel, you to feel intimidated?

17 A ~~The whole, from the whole time, the whole~~
18 ~~interview was intimidating.~~

19 Q More intimidating than, say, this
20 cross-examination is?

21 A No, far worse than this.

22 Q Uh-huh. Okay. So, those men were really,
23 really in your face and threatening you and
24 intimidating you?

25 A Well, I ain't going to say in my face but if

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1 you want to say from here to where the guy is
2 sitting in front of me, then close like that, some
3 of them on the side, on each side of me and some
4 just sitting back and some just sitting there like
5 you are, calm and just looking and watching.

6 Q All right. And as a result of the way they
7 were treating you on October 10th, 2001, what did
8 you do on that day as a result of the way they were
9 treating you? What did you do?

10 A I don't -- well, really, on the streets I
11 used to kind of like use heroin, and heroin, you
12 going through withdrawals, so while I'm there,
13 while I'm there I'm still going through withdrawal
14 with this stuff in my system, and I'm just sitting
15 there kind of like rocking, you know, shaking, and
16 they asking me all kind of questions and I'm, they
17 just scared, I'm just scared, because I ain't never
18 been in nothing like this before in my life, I'm
19 just scared.

20 Q Okay. So, you weren't there to take
21 advantage of an opportunity to tell them more
22 information about your drug enterprise and your
23 counterfeiting enterprise, you weren't there for
24 the purpose of telling them more information about
25 your drug enterprise and your counterfeiting

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1 enterprise?

2 A Well, I was there for what I thought they
3 told me at the home when they came and arrested me,
4 okay, but when I get there, when I had the
5 interview with them that is when, when they stopped
6 talking about the drugs and the counterfeiting,
7 that's when they started talking about state
8 charges, that's when they started bringing this up.

9 Q They brought up state charges?

10 A Yes, sir.

11 Q This federal agent brought up state charges?

12 A Gilliam.

13 Q Uh-huh.

14 A What's his name?

15 Q Lijoi?

16 A Lijoi and Gilliam, they brought this up.

17 Q They brought up state charges?

18 A They brought up state charges.

19 Q You didn't bring them up?

20 A I brought up, they asked if I had committed
21 other kind of stuff and I said, "Well, I heard this
22 about, I heard some things that went on in a place
23 in Anderson," because I don't know about Abbeville,
24 I don't know nothing about Abbeville, I asked them,
25 because all I know is Anderson. From Anderson to

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1 wherever I go, I'm thinking all this is Anderson,
2 everywhere I done been.

3 Q So, you told them -- excuse me, go ahead.

4 A I'm finished, go ahead.

5 Q You told them you knew some things about
6 Anderson?

7 A About something that's supposed to happened
8 in Anderson.

9 Q Something, like what?

10 A Like what we're here today for.

11 Q Well, what did you tell them, that's what I
12 want to know?

13 A I can't recall everything I said to them.

14 Q I don't want to know everything. I want to
15 know what you told them went on in Anderson that
16 you thought they would be interested in.

17 A Just this situation right here.

18 Q What situation?

19 A This situation with the McCoppin family, loss
20 of their relative, what did you say his name was
21 again? Darryl? What did you say his name, sir?

22 Q Adarryl McCoppin.

23 A Okay, right. I didn't know nothing about who
24 this person was or anything like that, I just gave
25 them something that I heard a co-defendant say and

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1 other people around the place, people was talking
2 about the situation.

3 Q And when you brought it up to them they
4 didn't know anything about it, did they?

5 A I'm not sure.

6 Q Well, all right. Did they tell you they
7 would talk to you later about it?

8 A I can't recall that, you see, because these
9 officers, officers had already come to my home once
10 about SUV's, so I really don't know what, what all
11 they could have known was, was expecting, you know,
12 I didn't know.

13 Q You met with them again, Officer Gilliam and
14 Officer Lijoi, on October 18th, 2001, didn't you?

15 A Correct.

16 Q All right. And you met with them to talk to
17 them about what?

18 A Well, they wanted, they told me we was going
19 to talk about what happened in the previous
20 conversation, that's what they said to me.

21 Q Okay. And you sat down and talked with them?

22 A I sat down and talked with them?

23 Q You sat down to --

24 A There was no need to talk to them because
25 what the previous conversation was about was

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1 everything that they claimed, this other stuff, but
2 when I started getting paperwork, going through
3 this and I'm saying these people, I can't even
4 remember saying nothing like this, I don't remember
5 none of this stuff that they putting in here, I
6 don't understand it.

7 Q No, sir. What I'm asking you is, when you
8 sat down with these agents on October 18th, 2001,
9 initially you agreed and they read you your Miranda
10 rights, didn't they?

11 A I don't recall.

12 Q Sir?

13 A I don't recall that.

14 Q Do you recall telling them, "I want to talk
15 to my lawyer"?

16 A Yes, I recall it because that was from the
17 first interview I was stressing that issue.

18 Q Okay.

19 A "I need to talk to my lawyer, I need to see
20 this agreement." And the second issue, "I need to
21 see my attorney," I remember this because I know, I
22 remember, because I kept crying about, "I need to
23 see an attorney."

24 Q Okay.

25 A "And I need to get the letter that you all

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1 say I have, you all have for me getting immunity
2 and don't have to worry about anything, no charges
3 being brought up against me," I kept begging them
4 for this.

5 Q And, by the way, on this date when you are
6 asking for a lawyer did they fuss at you when you
7 asked for a lawyer?

8 A Every time I see those guys they drilling me,
9 fussing at me.

10 Q Drilling and fussing?

11 A Every time I see those guys.

12 Q They didn't say, "All right, we'll go call
13 him, keep your seat, we'll go call him and get him
14 down here"?

15 A No. They walks around, got the mean look,
16 and then, you know, I guess, evidently they called
17 the attorney, because he showed up.

18 Q And I want you to take a look at State's
19 Exhibit Number, Defendant's Exhibit Number 9, Court
20 Exhibit Number 3-A, it's the last page. The fax
21 transmission on the front of it, you agree that it
22 says to Mario, dated 10/18/01, five pages, sender,
23 Sonya, and subject, Shondray, spelled with a Y,
24 Martin. Do you agree with that?

25 A I agree that's what that paper says.

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1 Q That's on the front page, right?

2 A That's what that paper right there says.

3 Q All right. On the back page do you agree
4 that that's your signature, Shondra Martin?

5 A Well, I notice every time I spell my name I
6 spell my name with a Y, that name there has
7 S-h-o-n-d-r-a, I don't spell my name S-h-o-n-d-r-a,
8 that don't even look like the paper the attorney
9 had.

10 Q All right. You are telling this jury that
11 every time you sign your name you sign it
12 S-h-o-n-d-r-a-y?

13 A Every time that I been knowing spelling my
14 name I been spelling my name S-h-o-n-d-r-a-y.

15 Q So, any correspondence you would have mailed
16 to your lawyer during October of 2001 and signed
17 your name on it you would have spelled it
18 S-h-o-n-d-r-a-y?

19 A Every time I go to spell my name that's how I
20 spell it.

21 Q That's the truth?

22 A That's the truth.

23 Q All right. I ask you again, are you saying
24 that you didn't spell your name on the proffer
25 agreement that you signed on 10/18/2001,

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1 S-h-o-n-d-r-a?

2 A Sir, how many times I have to say I haven't
3 spelled my name S-h-o-n-d-r-a.

4 Q So, that's not your signature?

5 A That is, not even the paper I signed.

6 Q It's not the paper you signed?

7 A No.

8 Q Did the last page of the paper you signed say
9 any information about any homicide or other extreme
10 acts of violence may be used against client in
11 criminal proceedings which may be undertaken by any
12 authorities?

13 A Like I said, I never read no paper. Mr.
14 Miller came to me and telling me, "Look, you have
15 ~~immunity for everything, you don't have to worry~~
16 ~~about speaking to these authorities.~~" How many
17 times I have to say that?

18 Q And the signature that you say you signed,
19 that you did not sign, Shondra Martin, below it is
20 Attorney Edward Miller, signed by Attorney Edward
21 Miller, is it not?

22 A I signed a paper but this don't look like no
23 paper and I didn't sign no paper with the A on the
24 end of my name. I sign with a Y on the end of my
25 name.

SHONDRA MARTIN - CROSS

1 Q I understand you're saying you didn't sign
2 this paper but I just want you to agree that the
3 signature of Edward Miller is beneath yours on
4 Defendant's Exhibit Number 9?

5 A Well, this is what this paper saying. You
6 are showing me that, yes, that's what it is, you
7 can show everybody in the room that, they'll tell
8 you the same thing, that's what that says, it's got
9 the attorney name at the bottom of that.

10 Q I understand, but what you're saying is it's
11 a fraudulently created document, right?

12 A Right.

13 Q Fraudulently created document, right, and we
14 should believe you when you say that because you
15 know a little bit about creating fraudulent
16 documents, don't you?

17 A So, we should believe everything the
18 authorities are saying because they are in
19 important and high positions, in these positions
20 they are in? ~~Oh, man, God knows they, knows, they~~
21 ~~know it's straight corrupt, this stuff is.~~

22 Q Let me ask you, since you're prepared to tell
23 the truth here today, the letter that you wrote,
24 Defendant's Exhibit Number 10, while you were in a
25 federal United States penitentiary in Atlanta, a

SHONDRA MARTIN - CROSS

1 letter you wrote --

2 A Uh-huh.

3 Q Defendant's Exhibit Number 10, wherein you
4 want to alert, and you mailed it, by the way, to
5 one of the investigators in Abbeville, David
6 Alford, this man sitting right here, you wanted him
7 to know, you wanted him to know about approximately
8 a year after you had given them information about
9 your involvement in the crime, you wanted them to
10 know that, you know, "What I told you all wasn't
11 true," you wanted them to know that then?

12 A It may not, may have or may not have been the
13 truth, I don't know.

14 Q And the reason you wanted them to know that
15 is because more importantly you wanted something
16 documented in writing, in your handwriting to make
17 sure that Chris Landrum knew you weren't going to
18 turn him in and you weren't going to testify
19 against him, right?

20 A No.

21 Q Oh, come on.

22 A No. If I was in that same state of mind I
23 was back then, then I probably would be here
24 telling lies on Mr. Landrum.

25 Q Well, Chris Landrum was arrested for the

SHONDRA MARTIN - CROSS

1 murder of Adarryl McCoppin on the date you wrote
2 this letter, wasn't he?

3 A I don't think so.

4 Q He was incarcerated?

5 A You may say he was incarcerated but you ask
6 me was he arrested on that date. You see, you
7 know, I know for a fact he wasn't arrested on that
8 date because, see, what you doing, you are asking
9 me a question and you know that when I was locked
10 up in the federal system that Mr. Landrum had
11 already been locked up, but what you trying to ask
12 me, you trying to get me to say that when I wrote
13 that, that he had got locked up then, and no:

14 Q Mr. Martin --

15 A To my knowledge, Mr. Landrum had already been
16 locked up.

17 Q Mr. Martin --

18 A Before that letter.

19 Q What I'm asking you is, on direct examination
20 you testified that the reason you wrote this letter
21 was because you had found God while you were
22 incarcerated in Atlanta, you had found religion and
23 you had been living in sin prior to that time and
24 you wanted to undo the wrong that you had committed
25 while living in sin, and part of the wrong that you

SHONDRA MARTIN - CROSS

1 needed to undo was to take the noose from around
2 Mr. Landrum's neck that you had placed on there
3 yourself, right?

4 A Correct, because --

5 Q That's why you wrote this letter?

6 A Because I didn't know whether he done that or
7 not. If he did, it is none of my business.

8 Q Well, you're not afraid of Mr. Landrum, are
9 you?

10 A Not afraid of Mr. Landrum?

11 Q Yes.

12 A I fear God, why should I be afraid of Mr.
13 Landrum?

14 Q So, you're not afraid of Mr. Landrum?

15 A No. I don't fear no man, I fear God.

16 Q There is something else this letter does,
17 too, ain't it? It says that everything you said
18 was not true. It gets you, it gets the noose from
19 around your neck, too, doesn't it, this letter?

20 A You know, Mr. Townes Jones, it really doesn't
21 matter what goes on, all I'm doing is I'm coming
22 clean, I don't know what Mr. Landrum done, and I
23 mean, you know --

24 Q All right, let's come clean. I want to give
25 you a copy of a typed statement. Here you go.

SHONDRA MARTIN - CROSS

1 That was prepared by SLED Agent Steve Gambrell.
2 It's a copy of State's Exhibit Number 20, and in
3 that document he prepares and lists statements that
4 he says you told him on October 18th, 2001. You
5 stated in this courtroom earlier on direct
6 examination, oh, let's see, you said, "Police
7 officers put that stuff in there, they put that
8 stuff in there, that's not what I told them, I told
9 them some of the stuff that I heard but they put
10 what they wanted." I would like for you now, I
11 would like to go down each line of this, allow me
12 to instruct you and ask you whether you told them
13 this or not. Are you ready?

14 A Judge, can I say something?

15 THE COURT: Hold it.

16 MR. JONES: I'm instructing him as to the
17 process, I was going to ask him certain questions.

18 THE COURT: Your attorney can ask you
19 questions afterwards but answer the questions that
20 the cross-examiner is asking you now.

21 THE WITNESS: No, I didn't say that like
22 that, the way you said it. I said that this stiff
23 right here, I say what they have in here, I say
24 this stuff right here, I say, man, I don't recall
25 saying most of this stuff, some of this stuff I

SHONDRA MARTIN - CROSS

1 can't remember.

2 BY MR. JONES:

3 Q I'm going to ask you right now how much you
4 remember.

5 A This stuff right here they're saying, I
6 couldn't have said this stuff, the way they are
7 saying it, the way they putting this, "Oh, well, we
8 going to make it where he have to have been there,
9 we're adding stuff."

10 MR. JONES: Your Honor, that's not
11 responsive. Interesting but --

12 Q I'm going to ask you now --

13 THE COURT: Ask the question.

14 A No, if that's what you saying, you're trying
15 to cross me up and make me look like I'm lying with
16 that, no, no.

17 THE COURT: Mr. Witness, listen to the
18 question and answer the question.

19 Q It says on line one, two, three, four, if you
20 would go to line four, beginning with the
21 statement, "Upon beginning of the interview," do
22 you see that, Mr. Martin?

23 A Yes, sir.

24 Q "Upon beginning of the interview agents were
25 advised that Martin had been advised of his Miranda

SHONDRA MARTIN - CROSS

1 rights." That's not true? Is that what you're
2 saying, that's not true?

3 A I don't recall them asking me nothing about
4 no rights. We get in there, they ask me, what it
5 was, I said I need my attorney present, I said I
6 need this proffer agreement letter.

7 Q All right.

8 A You know, and then they say, "Look, you got
9 that, you got that."

10 Q Okay. Then the next line says, "Martin was
11 then asked about the shooting of Adarryl McCoppin
12 that occurred in Abbeville County." Did they ask
13 you if you knew anything at that time about the
14 shooting of Adarryl McCoppin in Abbeville County,
15 yes or no?

16 A You say it say Martin was then asked about
17 the shooting of Adarryl McCoppin that occurred in
18 Abbeville?

19 Q That's right.

20 A This say Martin was asked?

21 Q Yes.

22 A I was asked?

23 Q Yes.

24 A About the shooting of Adarryl McCoppin that
25 occurred in Abbeville?

SHONDRA MARTIN - CROSS

1 Q Is that true or not, did they ask you that
2 question?

3 A I don't recall this.

4 Q All right, you don't recall.

5 A I recall they asked me stuff about state
6 stuff and then this incident here arise and from
7 which, bro, I don't know.

8 Q The next line says, "Martin stated that on
9 the day that this happened he was with Chris
10 Landrum and that they had gotten with Rosalind
11 Brown and that she had pointed out where Heavy D
12 stayed." Is that true or false, did you tell them
13 that or not?

14 A You see, you know something --

15 Q Did you tell them that or not?

16 A I don't remember saying this.

17 Q You don't remember?

18 A I don't know how I said it but I know me,
19 Rosalind, me and Rosalind, Rosalind done took me a
20 lot of places in Anderson and whereabouts, who live
21 and what, you got to talk to her and whoever, Mr.
22 Landrum, about all that stuff.

23 Q All right. The next statement. "Martin
24 stated that he was driving and that they rode by
25 the house and Brown pointed it out and that they

SHONDRA MARTIN - CROSS

1 went back to Anderson and dropped Rosalind Brown
2 out." Did you tell them that or not?

3 A I don't recall. I don't, like I said, I
4 can't remember this stuff. I know things that was
5 said, stuff that was said, I just can't remember
6 the stuff word for word, and every time you go
7 through all these I'm going to tell the same thing
8 because I just cannot remember, sir, I just can't
9 remember.

10 Q Well, I'm going to ask you, because you told
11 me about ten minutes ago that you were going to
12 tell the truth in this courtroom to this jury. Do
13 you know what I'm saying?

14 A I'm telling the truth.

15 Q I'm going to ask you, because I'm going to
16 give you the chance to tell them the truth.

17 A Okay.

18 Q "Martin stated that they had been in his
19 white Ford Excursion in color." Did you tell the
20 officers that?

21 A Listen, like I said before, I cannot
22 remember. I know that I talked about, yes, I got
23 an Excursion, you know, I can't remember none of
24 this, and I'm going to tell you the same thing out
25 of all these questions, Mr. Jones, because really,

SHONDRA MARTIN - CROSS

1 like I said, I'm going through withdrawal, all kind
2 of stuff running through my mind, I really don't
3 understand, I don't know nothing at this time.

4 Q Well, relax Mr. Martin.

5 A No, no, I ain't talking about -- I'm taking
6 about at that time.

7 Q Relax now.

8 A I'm relaxed.

9 Q All right. I'm going to ask you this
10 question. "Martin stated that he and Landrum went
11 back later, which was the second time, and rode to
12 the deadend and turned around and came back past
13 the driveway to Heavy D's house and stopped."

14 A I don't remember.

15 Q All right. "Martin stated this was the same
16 house pointed out to them by Brown." Do you
17 remember telling them that?

18 A I don't remember that.

19 Q All right. Let me ask this. Did you know
20 that on the date they say you told them this
21 information, on October 18th, 2001, that they
22 didn't know that Rosalind Brown and Chris Landrum
23 had been involved in the murder of Adarryl
24 McCoppin?

25 A Say again.

SHONDRA MARTIN - CROSS

1 Q Did you know that on October 18, 2001, they
2 didn't know that Rosalind Brown and Adarryl
3 McCoppin were involved in the murder of -- that
4 Rosalind Brown and Chris Landrum were involved in
5 the murder of Adarryl McCoppin?

6 A I don't know what they were aware of.

7 MR. McLAIN: I have to object to that. Is
8 that a question?

9 MR. JONES: I asked a question.

10 MR. McLAIN: Or a statement?

11 THE COURT: ~~The objection is sustained.~~
12 Restate the question.

13 BY MR. JONES:

14 Q Did you know that on October 18th, 2001, not
15 one law enforcement authority, state, local,
16 federal, international, knew of the involvement of
17 Rosalind Brown and Chris Landrum in the death of
18 Adarryl McCoppin?

19 MR. McLAIN: How could he know? Same
20 objection, same statement, same objection, it calls
21 for speculation. How could he possibly know what
22 was in somebody else's mind?

23 THE COURT: Overruled. If he knew, he knew.
24 He can say he knew. If he didn't, he didn't.

25 A I don't know, just like the attorney is

SHONDRA MARTIN - CROSS

1 saying, I don't know what's in nobody's mind, I
2 don't know what they thinking. They could have
3 been there for anything, I don't know.

4 Q The last statement on that page, "Martin
5 stated that there were a lot of people at the
6 house." Did you tell them that?

7 A Just like I said, I don't remember what I
8 told them. It's a lot of stuff could have been
9 said with them. I told you these things I have
10 heard.

11 Q Second page. "Martin stated that Chris
12 Landrum had a nine millimeter handgun with him and
13 that the gun belonged to him, Martin." Did you
14 tell them that?

15 A I don't remember. I don't know what, if I
16 told them that or not, I don't remember this stuff,
17 I don't remember, I could have told them anything.
18 I told you I told them what I heard, I can't
19 remember what I was told. You see, if you know
20 something you remember it, right? I don't care how
21 many years it take, you will just keep it in your
22 memory. I don't remember this, I don't know what
23 was said in there, I just know that I heard things
24 on the street and we got to talking about that.

25 Q Did you tell them the things you heard on the

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1 street, did you tell them those things involved
2 Rosalind Brown and Chris Landrum?

3 A I don't remember that, I don't remember that.

4 Q You don't remember talking to them about
5 Rosalind Brown and Chris robbing someone?

6 A Okay, now I remember, I understand what you
7 are saying.

8 Q What do you mean, you understand what I'm
9 saying?

10 A I'm talking about this matter, what I told
11 them about what I heard, Mr. Landrum, now, from him
12 and other people around the place. You see, what
13 you doing is, you trying to cross me up, you get
14 me, you trying to cross me up and make it seem like
15 I'm sitting up here telling a lie, Mr. Jones, and
16 I'm not, I'm telling you the truth, I can't
17 remember these things that was said at that
18 meeting.

19 Q Really?

20 A At that meeting because I told you I'm going
21 through withdrawal. I know this stuff got
22 something to do with Mr. Landrum and Mrs. Brown, I
23 know that.

24 Q Mr. Martin, you told me that you were going
25 through withdrawals on October 10th. This is the

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1 18th.

2 A I see. No, you see what I mean, you see, you
3 just confusing me with this, you just confusing me.
4 I know we're talking about two different
5 interviews, we're talking about the interview on
6 the 10th and the interview on the 18th, right,
7 which one is you talking about, when I --

8 Q The 18th, October 18th.

9 A Okay, now you talking about October 18th. I
10 didn't have to talk to them about anything because
11 everything was said about the previous
12 conversation, I didn't have to speak to them about
13 nothing.

14 Q October 18th you were talking to them about
15 Rosalind Brown and Chris Landrum, you remember that
16 much, don't you?

17 A Like I said just a few minutes ago --

18 Q What?

19 A -- what was there to talk about on October
20 18th, when October the 10th I already had this
21 stuff about Chris Landrum and Rosalind Brown.

22 Q Defense Exhibit --

23 A October 10th.

24 Q I want to ask you about Defense Exhibit
25 Number 10 that your lawyer introduced in evidence.

SHONDRA MARTIN - CROSS

1 A The letter?

2 Q The letter, the letter mailed, postmarked
3 September 27th, 2002, a year after the October
4 18th, 2001 interview, "To whom it may concern. I
5 said some things about Chris Landrum on October
6 10th, 2001, and the only reason I said it was
7 because I was scared. The detectives had me
8 thinking I was going to get a life sentence but now
9 after consulting with various people and doing some
10 serious soul searching myself I've decide it's time
11 to come clean and tell the truth, and the truth is
12 the things I said wasn't true. So, you have an
13 innocent man in your custody."

14 A Okay.

15 Q "And I can't no longer live with this lie
16 that I told and I now realize it was not right on
17 my behalf nor was it fair to him, but like I said,
18 I was scared and looking for a way out of the
19 trouble that I was in but now I know firsthand how
20 it feels to be taken away from your family and
21 friends unjustly."

22 Serving the time for the drug trafficking and
23 the counterfeiting is being unjustly taken away
24 from your family and friends in your mind, isn't
25 it, Mr. Martin?

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1 A Yes, because you know something, when
2 somebody say you did something and you didn't do
3 it, yes, that's unjust.

4 Q Well, you did the drug trafficking, Mr.
5 Martin?

6 A I'm talking about, I ain't talking about I'm
7 not guilty of the drug trafficking, I'm talking
8 about the things that was said about these
9 co-defendants, all this.

10 Q You said --

11 A All this, no, this stuff is not true.

12 Q You said, "But now I know."

13 A You see, the question, you see, you're not
14 letting me make my point, you see. I'm not saying
15 I'm not guilty of going to getting drugs and
16 involved with some counterfeit stuff, I'm saying
17 I'm no ringleader or nothing of this stuff, I'm not
18 no ringleader of any of this. And then about Chris
19 Landrum and Miss Rosalind Brown, I'm not saying I
20 don't know them and this stuff, and this stuff
21 aroused by him saying this and saying that and
22 hearing things on the street. I'm not saying all
23 this, I'm not saying that.

24 What you doing, you're sitting there, you're
25 standing there and you bringing these questions, I

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1 don't know if you making them compound, you put
2 three, four questions in one, I don't know how you
3 doing it, but you doing whatever you're doing,
4 you're making me accept like I'm sitting up here
5 telling a lie. I'm just telling you the plain, the
6 truth.

7 Q I'm going to ask you, Mr. Martin, I'm going
8 to return to the statement Agent Gambrell says you
9 gave. I'm on page two. You have a copy. If you
10 would, look at the statement. I want to ask you if
11 you made this statement. "Martin stated he also
12 had a handgun and that it was a nine millimeter,
13 did not state brand or model, only said it was an
14 automatic pistol." Did you make that statement?

15 A Like I said, I could have said anything in
16 this meeting. I could have said anything in this
17 meeting, I don't remember this stuff. I know that
18 I talked about Rosalind.

19 Q I'm going to ask you did you make the
20 statement?

21 MR. McLAIN: Your Honor, no offense, would
22 you please let this gentleman answer the question
23 before another one is asked?

24 THE COURT: Pose the question, the witness
25 will answer the question and then he may explain

SHONDRA MARTIN - CROSS

1 it.

2 Q Did you state that you had a handgun and that
3 it was a nine millimeter also and did not state the
4 brand or model, only said it was a nine millimeter
5 pistol on that day?

6 A I don't remember. If I don't remember a
7 question, is that appropriate, Your Honor?

8 Q You don't remember?

9 A Is that an appropriate question, may I ask?

10 THE COURT: The Court cannot answer a
11 question.

12 Q Let me ask you this, then, if you don't
13 remember that. Do you remember whether or not on
14 July 29th, 2001, you owned a nine millimeter
15 handgun?

16 A I can -- do I remember me owning a nine
17 millimeter?

18 Q Yes.

19 A No, I remember I used to own a .38, a .38
20 revolver kind of like pistol but I don't remember
21 owning no nine millimeter.

22 Q You never have?

23 A I don't remember owning no nine millimeter.

24 Q Ever been in possession of a nine millimeter?

25 A Yes, I have been in possession of a nine

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1 millimeter. I was at my home and a friend about
2 two days before that had left a pistol there and
3 they came to the home and they had, they had found
4 a nine millimeter there, it wasn't mine but it was
5 left at the home.

6 Q In your home?

7 A Correct.

8 Q Next question. "Martin stated when they
9 first passed the driveway, that when you get to the
10 dead-end you could see water, talking about Heavy
11 D's house." Did you make that statement?

12 A I -- this is what I'm saying. I could have
13 said anything in this paper but I don't recall
14 this, and like I said, I done been plenty of places
15 with Mrs. Brown.

16 Q "Martin stated that he drove past the
17 driveway and headed out, pulled just past the
18 driveway and parked the white Excursion and that he
19 and Landrum got out and walked up into the woods to
20 see what was going on at the residence."

21 A I don't remember that, I don't remember that.

22 Q You don't remember saying that?

23 A I don't remember that.

24 Q You don't --

25 A I don't remember that. I could have said

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1 anything in that paper but I just can't recall any
2 of that.

3 Q Well, you testified earlier today that you
4 told the officers some things that you had heard,
5 that you had heard on the street --

6 A Correct, and from --

7 Q -- about the killing of Adarryl McCoppin?

8 A And from --

9 Q Tell me what you had heard on the street
10 about it.

11 A I can't recall what them things that I heard,
12 sir, I can't recall that, I can't recall that. How
13 am I going to recall something that I done heard,
14 when this supposed to been how long, two, three
15 years ago? How can I, how can I recall this, how
16 can I sit here and tell you what have I heard. I
17 can't sit here and tell you that today, because if
18 I could I would sit here and tell you everything.

19 Q Well, do you remember who you heard it from?

20 A I told you, no, as far as I told you, I heard
21 some things from Mr. Landrum and I say some other
22 people that was like around, I could hear whisper
23 here and hear it through the grapevine.

24 Q So, you heard some things from Mr. Landrum?

25 A Oh, you hadn't heard that? You didn't hear

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1 that the first time, when my attorney was up here
2 talking to me, how I say when the police had come
3 to my home and I asked them what's going on, they
4 come about SUV, talking about something that
5 supposed done happened, you know, and he telling
6 me, he telling me blah, blah, blah, this and that,
7 I can't remember it but I know he was saying
8 something about, something about, what's it called,
9 the stuff that is going on right now, but I don't
10 know nothing about no Abbeville or nothing, so I
11 can't really say, that is why the guy said, the
12 officer said that he said something about Anderson,
13 you know, if I had known Abbeville I would have
14 said Abbeville, if I had known Iva I would have
15 said Iva. I don't know.

16 Q What did you hear about Adarryl McCoppin's
17 death from Mr. Landrum?

18 A I can't remember.

19 Q From Mr. Landrum?

20 A I can't remember.

21 Q Was it about Adarryl McCoppin's death?

22 A Like I said, I can't remember. I don't know
23 him, I don't know, I don't know him. Your Honor --

24 Q How about a death, did you hear something
25 from Mr. Landrum about a death?

SHONDRA MARTIN - CROSS

1 A No. Mr. Landrum -- how Mr. Landrum going to
2 tell me something about a death?

3 Q You just said Mr. Landrum told you something.

4 A He told me something about stuff that's
5 supposed to have happened.

6 Q That's what I'm asking you.

7 A He didn't tell me nothing about nobody was
8 dead.

9 Q What did he tell you was supposed to have
10 happened?

11 A He told me, I guess he told me whatever the
12 officers got on the paper saying that I said, that
13 I can't remember. How many times I got to answer
14 that question? Sir, Your Honor, I'm saying --

15 THE COURT: Answer the Solicitor's questions.

16 A No, I mean, no.

17 Q So, Mr. Landrum didn't tell you anything
18 about a death?

19 A No, he ain't told me nothing about no death,
20 ain't nobody know nothing about no death. Rosalind
21 stated herself that, what did she say, she called
22 me or wherever, said, "Mr. Martin said he didn't
23 know what I was talking about." Oh, man.

24 Q The next thing that the officers say you told
25 them is on page two, one, two, three, four, five,

SHONDRA MARTIN - CROSS

1 sixth paragraph, "Martin stated they continued to
2 watch from the woods for awhile." You didn't tell
3 them that, did you?

4 A Like I said, I could have told the officers
5 anything. I can't recall none of that. I can't
6 recall none of that.

7 Q You said earlier, I thought, that some of
8 what you told them was true and some of what you
9 told them wasn't true. That's what I'm trying to
10 find out.

11 A You see, that is where you're going.

12 Q Did you tell them anything true?

13 A How would I know? Oh, man.

14 Q Do you remember whether or not you told them
15 that you were there?

16 A I don't remember -- I had to tell them I was
17 there because I told, I said, I had to implicate
18 myself in the crime because I felt like, you know,
19 they was like, "Were you there?"

20 Q So, you told them you were there?

21 A What I just said? What I just said?

22 Q That wasn't true, what you are saying now?

23 A What I just said?

24 Q That wasn't true, right?

25 A What --

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1 MR. McLAIN: Your Honor, I think it's been
2 asked and answered.

3 A He keep --

4 MR. McLAIN: Hang on. He said that he told
5 them he was there.

6 Q Okay. Why did you tell them you were there?

7 A Like at that time I knew, at that time I knew
8 that, well, I had to tell them people I was
9 somewhere in it because they asked me, "Did you
10 just hear this from somebody or was you, was you,
11 how do you really know, was you there," and this
12 and that, so that's when I say I thought, "I have
13 to tell them. If I don't, they going to, whatever,
14 they threaten me, give me all this time, then if I
15 didn't, you know," so I had to say okay, yes.

16 But as far as what I said and all that other
17 stuff, you see, it's key things I remember, because
18 they was scaring me. I know they was scaring me
19 with the time, I knowed I needed to see my
20 attorney, I knowed I needed to get this proffer
21 letter signed for immunity and for everything.

22 MR. JONES: Your Honor, I will try to move
23 through this but I feel an overwhelming obligation
24 to do it.

25 Q "Martin stated they walked toward the

SHONDRA MARTIN - CROSS

1 Excursion and Chris Landrum asked the big guy, you
2 messing with my Jeep?" Did you tell them that or
3 not?

4 A I can't remember any of that. I keep telling
5 you everything you asked me in this I can't
6 remember.

7 Q "Martin stated that Chris walked over toward
8 the big guy and said don't be f'ing with my Jeep."
9 Did you tell them that or not?

10 A Like I say, I can't remember. Key things, I
11 told you the three key things that I remember,
12 because I know what, the stress I was up under, as
13 far as all these statements they said I done said,
14 I don't remember that.

15 Q "Martin stated that by the time this had
16 happened he had walked to the driver's side of the
17 vehicle, opened the door and was putting the gun up
18 that he had."

19 A Like I said, sir --

20 Q You don't remember telling them that?

21 A I told you again --

22 Q "Martin stated he was getting in the
23 Excursion, he heard scuffling on the ground at the
24 back of the Excursion." Do you remember telling
25 them that?

SHONDRA MARTIN - CROSS

1 A I told you again, like I told you --

2 Q "Martin stated he heard a gunshot and pause
3 and then two more shots." Do you recall telling
4 them that?

5 A I told you again --

6 Q "Martin stated that Landrum jumped in the
7 vehicle on the passenger side and they left and
8 drove back toward Anderson."

9 A Like I told you, again I don't remember that.

10 Q "Martin stated on the ride back to Anderson
11 that they met a marked police car on the road."
12 You never said that, did you?

13 A I don't remember that.

14 Q "Martin stated that the backpack that was
15 found at the scene with the initials in it belonged
16 to his son."

17 A I don't remember that.

18 Q You don't remember them talking to you about
19 a backpack that was found at the scene, that they
20 couldn't identify to anybody, they didn't know
21 whose it was, they didn't have a clue whose it was,
22 you don't remember them asking about a packback?

23 A No, sir.

24 MR. McLAIN: Your Honor, objection. Wait a
25 minute. Wait a minute. Objection. Is that one

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1 question or a hundred? I mean, let him answer one
2 question at a time.

3 THE COURT: Very well.

4 A Like I told them, I told you, I don't
5 remember that.

6 Q "Martin stated the backpack that was found at
7 the scene --" you don't remember telling them that?
8 "Martin again confirmed --"

9 MR. McLAIN: Let him answer.

10 Q "Landrum was armed with a nine millimeter
11 automatic and that he had given Landrum the gun."

12 MR. McLAIN: May I raise an objection?

13 THE COURT: Yes, sir.

14 MR. McLAIN: Again I ask that Mr. Jones ask
15 one question at a time and let him answer it, then
16 he has a right to follow up on it. One question at
17 a time.

18 THE COURT: ~~Sustained.~~

19 MR. JONES: I will try very hard to do that.
20 I realized I had already asked that question and he
21 answered it, that I didn't remember, but I will
22 apologize. I will re-ask the last question. I
23 didn't get an answer.

24 BY MR. JONES:

25 Q "Martin stated the backpack they found at the

SHONDRA MARTIN - CROSS

1 scene with the initials in it belonged to his son."

2 Did you tell them that?

3 A I told you earlier, like I told you about
4 everything, I do not remember that.

5 Q "Martin again confirmed Landrum was armed
6 with a nine millimeter automatic and he had given
7 Landrum the gun." Did you tell them that?

8 A Like I told you before, when you asked the
9 questions, I don't remember that.

10 Q "Martin stated there were too many people at
11 the house when they got there, to do anything,
12 meaning to rob anybody, and that's why they were in
13 the woods looking around when they decided to go."

14 A I don't remember that.

15 Q "They decided to leave."

16 A I don't remember that.

17 Q All right. Let me ask you this. Chris
18 Landrum didn't tell you anything about the death
19 and the murder of Adarryl McCoppin, did he?

20 A How many times he going to ask me that? How
21 many times you going to ask me that?

22 Q Will you answer the question, please?

23 A How many times you going to ask me that?

24 Q Chris Landrum did not tell you anything about
25 the death of Adarryl McCoppin, did he?

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1 A Listen, I told you earlier Chris, as far as a
2 death, I don't think he even knew about a death.

3 Q That's not answering the question.

4 A Well, no, no.

5 Q The question is, Chris Landrum did not tell
6 you anything at all about the death of Adarryl
7 McCoppin, did he?

8 A Chris ain't told me about no deaths of
9 nobody. Didn't nobody know nothing about no death,
10 period.

11 Q How do you know, how do you know that Chris
12 Landrum doesn't know anything about the death of
13 Adarryl McCoppin?

14 A Beats me.

15 MR. McLAIN: I don't think, Your Honor, I
16 don't think he said, I think he said did he tell
17 him, not did he know.

18 A That's what he asked me.

19 MR. JONES: His response was he doesn't know
20 anything about no murder, how could he know
21 anything about no murder.

22 A You're asking me, you see what I mean, see,
23 he keep bringing these questions and he trying to
24 use trick questions to trick me.

25 MR. JONES: Your Honor, I'm not trying --

SHONDRA MARTIN - CROSS

1 THE WITNESS: Yes, you are. That's what he's
2 doing, he's just doing this.

3 THE COURT: Ask the question.

4 THE WITNESS: Can I get off the stand?

5 THE COURT: No, sir.

6 THE WITNESS: God all mighty, he keep doing
7 tough like this, he going to do this all day, we
8 went through one, two, three, pages and he got a
9 million questions, two or three pages and I can't
10 answer the same questions over and over.

11 BY MR. JONES:

12 Q Mr. Martin, let me ask you this question.

13 THE COURT: Just answer.

14 Q Mr. Martin, let me ask you this question. Is
15 it getting as bad as it was with the agents now?

16 A No, sir.

17 Q Not nearly, is it?

18 A No, sir.

19 Q And yet you want to get off the stand?

20 A Yes.

21 Q Okay. So, why didn't you tell the agents
22 when they were questioning you that you wanted your
23 lawyer and you wanted to leave?

24 A Because they scaring me, they telling me this
25 and all that, I done gave you that story, I don't

SHONDRA MARTIN - CROSS

1 got to go over that again.

2 Q State's Exhibit Number 15, do you recognize
3 this item?

4 A Could I see it? I might not need to touch
5 this because you never know what can happen. No.

6 Q You don't recognize it?

7 A No.

8 Q Look, look here, Old Navy, can you read any
9 of these letters here, does that look like an M to
10 you? I realize it is kind of doubled up but does
11 it look like an M to you?

12 A Yes, that look like a double M.

13 Q E?

14 A Looks like a double E.

15 Q A?

16 A That look like an A, an L, a W, an N.

17 Q D?

18 A Let me see.

19 Q d-r-a?

20 A It look like an M, looks like, I don't know
21 what that is.

22 Q Okay.

23 A I don't know what that is. Oh, man, this is
24 a frame, this is a frame, oh, Lordy.

25 Q This doesn't look like a bookbag that belongs

SHONDRA MARTIN - CROSS

- 1 to your son?
- 2 A You know I got a kid, you want to make
- 3 something like that --
- 4 Q I'm just asking you, I'm asking you.
- 5 A No, sir, no, sir.
- 6 Q It's not your son's?
- 7 A No. I don't remember even buying my son no
- 8 bookbag like that.
- 9 Q All right.
- 10 A My son got the little push bookbag.
- 11 Q What's your son's name?
- 12 A I got four sons.
- 13 Q What are their names?
- 14 A Shondray, Kawan and Meandray.
- 15 Q Meandray?
- 16 A Uh-huh.
- 17 Q You have a son named Meandray?
- 18 A Yes, sir. And anybody see that, that paper,
- 19 that don't even, that ain't nowhere near Meandray's
- 20 name or how he or me, his mama spell it, that's
- 21 something that you authorities done cooked up.
- 22 Q During the course of the time that you knew
- 23 Chris Landrum did you ever see him wearing a pair
- 24 of glasses that looked like these?
- 25 A No, I can't remember that. Like I said,

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1 people got different types of glasses. I seen
2 Chris wear glasses every blue moon, I guess. I
3 didn't even really know he was wearing glasses, or
4 needed glasses. They may have been his, I don't
5 know. If he said they his, if you want to take his
6 word for it, take it.

7 Q So, what you're saying is that on October, on
8 July 29th, 2001, when Adarryl McCoppin was killed
9 you weren't with Chris Landrum, is that what you're
10 saying?

11 A You know something --

12 Q Uh-huh.

13 A 2000 what, you said 2000, 2001, 29th, I can't
14 remember where I was in 2000, and January, what did
15 you say.

16 Q July, July 29th.

17 A July 29th, I don't know where I was and I
18 don't know who I was with --

19 Q Well --

20 A -- that day.

21 Q You knew, you knew in September of 2002?

22 A September?

23 Q Of 2002, when you wrote that letter, that you
24 were charged with that murder, didn't you?

25 A Well, I know I had a detainer.

SHONDRA MARTIN - CROSS

1 Q And --

2 A I know they had a detainer on me.

3 Q And you requested a speedy trial, didn't you?

4 A Sure.

5 Q And you became aware, when you were
6 transported back to Abbeville, what date was that
7 on?

8 A When they came and picked me up on, I been in
9 Abbeville, Greenwood, I been in Greenwood about
10 almost nine months, so I say June, somewhere in
11 June, somewhere in June.

12 Q All right. In June of 2003, at least, you
13 knew that you were going to be tried for a murder
14 that occurred on July 29th, 2001, didn't you, you
15 knew about these charges, didn't you, you knew you
16 were charged with this a year ago, didn't you?

17 A Come on, I know I had a detainer for this, I
18 didn't know I was going to be charged for none of
19 this.

20 Q Didn't you request a speedy trial?

21 A That's right, I requested a speedy trial but
22 I didn't know, after I found out that I had a
23 detainer, they, the records office in the federal
24 system showed me the proper things I needed to do
25 to have this squashed, and they filed it for me

SHONDRA MARTIN - CROSS

1 because they was calling the Abbeville people and
2 they said they kept giving them the runaround, they
3 said Abbeville tell them to go here, they call this
4 person, this person tell them to go over here, this
5 person tell them to go over there, so I kept
6 bugging the guy at the records office about it. He
7 said, "Listen, here is what I'm going to do for
8 you, sir, I see you worried about this, come on, it
9 seems what they doing, they just run around, they
10 gives us the runaround, so I'm going to file this
11 for you," He said, "I'm going to send it to
12 everybody, I want you to sign here where they get
13 you an attorney, some attorney, that I didn't
14 didn't get for about four to five months until my
15 first, I was supposed to go to the hearing, and why
16 is that? Why I didn't talk to an attorney before
17 the first hearing, see my point, 180 days, why I
18 haven't spoke to an attorney about these issues,
19 what is it, it's all a mixup to try to get somebody
20 for this. I hear that the family is suing --
21 Q Listen to me, you don't testify to what you
22 hear. That's been testified to. I want to ask you
23 this question. You have known for a year, for a
24 year before today that you were going to be tried
25 for a murder that happened on July 29th, 2001,

SHONDRA MARTIN - CROSS

1 haven't you?

2 A Like I say, I didn't know that I was going to
3 be tried, I knew the pending charges.

4 Q You knew that you were charged, right? You
5 knew it was important to remember, to find out, to
6 take whatever steps you could, be they business
7 records of yours or whatever, to find out where you
8 were around midnight on July 29th, 2001, especially
9 if you weren't with Chris Landrum and Rosalind
10 Brown?

11 A You know something?

12 Q What?

13 A This whole situation was in the hands of the
14 Lord for me, I ain't studied none of it, and even
15 the paperwork that he got me, you can ask anybody
16 in the unit, they will tell you, "Well, Martin
17 don't even look at it." I pray over everything,
18 God know all about whatever supposed to happen, you
19 know what I mean, "It's in your hand, I give
20 everything up to you."

21 Q So, the truth of the matter is the only two
22 people that know where you were around midnight on
23 July the 29th, 2001, is Chris Landrum, right, and
24 Adarryl McCoppin, those two people, one of them is
25 dead and one of them is charged with murder, right?

SHONDRA MARTIN - CROSS

1 A You see, you saying that and you want to say
2 that to make it seem like, okay, you saying that to
3 make me look like I'm the villan in this situation,
4 when I'm telling the jury look, and everybody in
5 here, that I wasn't present. I understand you
6 doing your job, Mr. Jones.

7 Q My question is were you with Chris Landrum?

8 A No, I don't know, if you go back to July
9 29th, I don't know where I was and who I was with,
10 I can't remember that.

11 Q It's been important, it's been important for
12 you for a year to find out where you were on July
13 29th, hadn't it?

14 A You know something, even if you did take a
15 year and try to think about where you was on a
16 certain date, I tell you, I tell you for an
17 example, take last week, and take today and think
18 back maybe last week, can you remember every step
19 you took, where you was? You are asking me
20 questions. No, no, I'm just going to say no, no,
21 no, no. Good God.

22 Q I want to hand you State's Exhibit Number 19,
23 I'm going to ask you to look at this diagram and
24 drawing,

25 A Lord, Lord, Lord, Lord, yes.

SHONDRA MARTIN - CROSS

1 Q State's Exhibit Number 19 and Court's Exhibit
2 Number 6.

3 A How many times I have to tell you, Mr. Jones,
4 I don't recall writing that or even signing that.
5 How many times I have to say it? We don't, I know
6 the Court has done heard this about 30 times since
7 we been here, from this attorney and this state's
8 attorney, how many times we going to do that?

9 Q I haven't asked you one time about this?

10 A I know what you, come on with it, I know you
11 going to say it, "Didn't you write this, didn't you
12 write that?" I told you I don't recall any of
13 that, I will save you time, I'm helping you.

14 Q I'm trying to help you remember because I'm
15 showing you a document that either you did write or
16 you didn't write it. It might help, you know,
17 sometimes if somebody shows you something that's
18 actually something, I'm not just asking you to draw
19 something out of the sky now, Mr. Martin, I'm
20 asking you to take a look at this thing right here,
21 I thing you can touch and feel and see and know and
22 recognize and examine and look over it to see if it
23 won't jog your memory a little bit, Mr. Martin?

24 A Like I said, I don't remember, I don't recall
25 writing or signing this paper that you got here.

SHONDRA MARTIN - CROSS

1 Q Look at it closely, Mr. Martin, take your
2 time.

3 A Who writes like this? Who write like this?
4 I don't --

5 Q So, you're not going to say whether you did
6 or didn't, you're going to say you don't recall?

7 A Any, whatever you got there, that scrabble
8 stuff, whoever wrote or whatever, I don't remember,
9 recall any of this. I don't even write like this,
10 I don't know about this signature stuff. When I
11 sign, when I write my name I write my name with a
12 Y, with a Y, excuse me, with an A, with a Y, excuse
13 me, if you got anybody to come up saying I done
14 wrote some of that is my name with an A, it's all a
15 game, it's all trick stuff, all this stuff you
16 running together trying to get an innocent man
17 convicted on something he didn't do. Man.

18 Q July 29th, 2001, Adarryl McCoppin was shot
19 down and he died, he died out there that night.
20 You were there, weren't you?

21 A Like I -- no.

22 Q Sir?

23 A Like I said, no. I'm sorry to hear that.

24 Q You were there that night, weren't you?

25 A Your Honor, how many times I got to tell him

SHONDRA MARTIN - CROSS

1 this? I said no.

2 THE COURT: Just answer.

3 Q No? Had you loaned your car to anybody that
4 night?

5 A Look, I don't remember that night, I don't
6 remember none of that. Like I said, I loaned my
7 car out to Mr. Landrum and a lot of buddies of
8 mine.

9 Q Had you loaned it that night?

10 A I don't remember that night.

11 Q ~~Were you with Rosalind Brown that night?~~

12 A ~~Look here, I don't remember that night.~~

13 MR. JONES: I don't have any further
14 questions.

15 THE COURT: Any redirect?

16 MR. McLAIN: No, sir.

17 THE COURT: Thank you. Come down, please
18 sir.

19 THE WITNESS: Thank you. Can I carry this?

20 THE COURT: Yes, sir.

21 (Witness excused).

22 THE COURT: Ladies and gentlemen, we have
23 been in session just about an hour, a little bit
24 over an hour. We will take a brief recess. Do not
25 discuss the case by, between and among yourselves,

1 we'll try to get back to you real soon this time.

2 Retire to the jury room.

3 (The jury was excused from the courtroom
4 at 3:55 p.m.).

5 THE COURT: We'll be in recess just briefly,
6 two or three minutes, if anybody wants to take a
7 break, do so. Anything for the record?

8 MR. JONES: No, sir, not from the State.

9 THE COURT: From the defense?

10 MR. McLAIN: No, sir.

11 THE COURT: Thank you.

12 (Recessed at 3:56 p.m.).

13 (Reconvened at 4:09 p.m).

14 THE COURT: The record is open, State of
15 South Carolina versus Shondra Lamont Martin,
16 indictment 2002-192. Anything from the State
17 before the jury comes in?

18 MR. JONES: Your Honor, I don't know if the
19 defense plans to call additional witnesses in their
20 case. If they do, then I don't have anything. If
21 they don't, then I would like to address an issue
22 as it relates to any potential reply witnesses that
23 I might call, before the jury comes back in.

24 THE COURT: Yes, sir. Any additional
25 witnesses intended to be called by the State, or by

1 the defense, excuse me?

2 MR. McLAIN: No, sir.

3 THE COURT: Very well. We'll hear from you,
4 Solicitor.

5 MR. JONES: Your Honor, one of the reply
6 witnesses that I intend to call is Judge Miller,
7 Ned Miller, Attorney Ned Miller. We were
8 instructed to refer to him as Attorney Ned Miller
9 earlier.

10 THE COURT: For these proceedings.

11 MR. JONES: I shall continue to refer to him
12 as Attorney Miller, then, during his testimony, if
13 that's what your wishes are, that's what we'll do.
14 In other words, when I call him I don't suppose
15 there will be any mention of his currently being a
16 a Circuit Court judge.

17 THE COURT: That may be prejudicial.

18 MR. JONES: All right, then I won't do it.

19 THE COURT: Yes, sir.

20 MR. McLAIN: May I approach the bench about
21 that with Solicitor Jones?

22 THE COURT: Yes.

23 (Unrecorded bench conference).

24 THE COURT: The record will show that there
25 was a conference concerning the reply testimony

1 that the State anticipates presenting. Is there
2 anything else from the defense?

3 MR. McLAIN: Nothing.

4 THE COURT: Show the jury in, Mr. Busby.

5 (The jury returned to the courtroom
6 at 4:13 p.m.).

7 THE COURT: All jurors are present, with the
8 forelady and alternate properly seated.

9 Call your next witness.

10 MR. McLAIN: Sir?

11 THE COURT: Call your next witness in
12 defense.

13 MR. McLAIN: The defense rests.

14 THE COURT: The defense rests. Will there be
15 reply?

16 MR. JONES: Your Honor, I do have reply.

17 THE COURT: Call your first witness.

18 MR. JONES: Call Attorney Ned Miller to the
19 stand.

20

21

22

23

24

25

EDWARD MILLER - DIRECT

1 EDWARD W. MILLER,
2 after being first duly sworn, testified as follows:

3 THE CLERK: Be seated, please, and if you
4 will state your name for the record, please.

5 THE WITNESS: Yes, ma'am. My name is Edward
6 W. Miller and I go by Ned.

7 MR. JONES: Thank you.

8 DIRECT EXAMINATION

9 QUESTIONS BY MR. JONES:

10 Q Mr. Miller, I want to ask you on or about
11 October 18th, 2001, did you represent Shondra
12 Martin on some federal drug charges and counterfeit
13 charges that he was facing in Greenville and
14 Spartanburg County at the time?

15 A Yes, sir, I did.

16 Q And at the time how much experience had you
17 had in the representation of individuals charged
18 with crimes of that nature, that is, federal
19 offenses?

20 A I was licensed to practice in 1978. I began a
21 continuous active practice in criminal defense in
22 federal court in 1981.

23 Q All right, sir. So, you had had
24 approximately 20 years of experience in
25 representing individuals charged with federal

EDWARD MILLER - DIRECT

1 criminal offenses?

2 A Yes, sir, that's correct.

3 Q During the course of your representation of
4 Shondra Martin, during that time, on October, or on
5 or about October 18th, 2001, did you receive
6 correspondence from him?

7 A Well, throughout the course, I was appointed
8 to represent him on ~~October 3rd of 2001 by Federal~~
9 Magistrate Catoe, and throughout, and I guess my
10 representation ended on or about April 29th of
11 2002, and I did receive correspondence from him
12 throughout the course of that representation.

13 Q Do you have correspondence from him that he
14 filed with the Clerk of Court?

15 A I do, with the Federal District Clerk of
16 Court. Give me a second. Yes, sir. It would be a
17 pro se, he had styled it Application to Proceed In
18 Forma Pauperis, and also a Writ of Mandamus,
19 Inquisition Hearing Demanded, and it was dated
20 November 5th, 2001.

21 Q November 5th of 2001?

22 A Yes, sir. There may be others in here, I'm
23 not sure.

24 Q Did he sign his name on the letter?

25 A Yes, sir, he did.

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1 Q How did he spell his first name?

2 A S-h-o-n-d-r-a.

3 Q It's not spelled with a Y?

4 A No, sir.

5 Q And this is the individual that you were
6 representing at the time?

7 A Yes, sir. He's had a haircut but, yes, sir.

8 MR. JONES: Your Honor, I would like to
9 introduce the front page of that document, copy of
10 it for the jury at this point in time.

11 THE WITNESS: He signed the last page of
12 that, Mr. Jones.

13 MR. McLAIN: Could we just put the whole
14 thing in?

15 THE COURT: Well, in all due respect, unless
16 you want it all in, there is no need to clutter the
17 record.

18 MR. McLAIN: I understand. First and last is
19 fine with me, first and last page.

20 MR. JONES: I would move to put in the first
21 and the last page, the two pages containing the
22 signature of Shondra Martin.

23 THE COURT: How says the defense?

24 MR. McLAIN: ~~Without objection.~~

25 THE COURT: Without objection, it will become

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1 an exhibit for the State, become part of the
2 evidence in the case, first and last pages.

3 (State's Exhibit Number 21 was
4 marked and received in evidence).

5 MR. JONES: Beg the Court's indulgence, Your
6 Honor.

7 THE WITNESS: I will just tell you those are,
8 he didn't mail those documents to me. He mailed
9 the originals to the Clerk, to the Clerk of
10 District Court in Greenville and they sent me a
11 copy, so that's a copy of what the District Court
12 had, this is the envelope that contained the
13 document.

14 MR. JONES: Thank you.

15 BY MR. JONES:

16 Q Do you recall whether or not at a meeting on
17 October 18th, 2001, with your then client Shondra
18 Martin in Spartanburg you had an occasion to
19 observe whether or not he signed a proffer
20 agreement that was offered to him through the
21 federal branch of the U. S. Government?

22 A Yes, sir, I did.

23 Q Did you observe him sign one?

24 A Yes, he signed it with my pen and I signed it
25 with him at the same time.

EDWARD MILLER - DIRECT

1 Q I want to ask you to review the last page of
2 Defendant's Exhibit Number 9, Court's Exhibit
3 Number 3-A, and ask you if you recognize your
4 signature on that page?

5 A Yes, sir, that is my signature and Mr.
6 Martin's signature as well.

7 Q And he used your pen to sign it?

8 A Yes, sir.

9 Q Do you recall whether or not you told him
10 that this agreement entitled him to immunity from
11 any and all crimes that he might confess to?

12 A No, sir, I didn't tell him that.

13 Q Okay.

14 A And it does not.

15 Q Have you ever told any criminal defendant
16 charged, with a proffer agreement, that they were
17 entitled to immunity from any and all crimes that
18 they --

19 MR. McLAIN: Objection.

20 MR. JONES: Withdraw that question, Your
21 Honor. I withdraw it.

22 THE COURT: Okay.

23 BY MR. JONES:

24 Q You did not tell him that and it does not
25 entitle him to that, is that correct?

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1 A ~~No, sir.~~ I went over the agreement with him
2 before he signed it and it does not offer immunity
3 from any and all offenses. I can tell you, if you
4 would like me to, I can tell you the meaning of
5 what a proffer agreement does, if you would like.
6 I mean, it's a document in federal court where a
7 defendant may come forward and tell the government
8 their side of the story and receive protection, and
9 this is really the operative paragraph, I think
10 it's paragraph number four of that document,
11 receive protection with respect to material that
12 the government doesn't know about and generally
13 relating to the offense that they are charged with.

14 It is, in this case, by way of example, he
15 was involved in a drug conspiracy. The government,
16 federal government sentencing guidelines provide
17 for higher sentences, longer sentences for,
18 depending on the amount of drugs, the more drugs,
19 the higher the sentence. The government does an
20 investigation and finds, has evidence of a certain
21 amount of drugs. If a person charged with a crime
22 in that situation goes in and signs a proffer
23 agreement and then explains to the government about
24 more drugs, that agreement basically protects them
25 from the government being allowed to increase the

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1 sentence based on more drugs.

2 That particular agreement and all the
3 standard proffer agreements that I have been
4 involved in, and I have handled a number of cases
5 in federal court, ~~all exempt homicides and~~
6 ~~extremely violent crimes from protection based on~~
7 anything a person would say pursuant to that
8 proffer.

9 Q And did you make sure he understood that
10 before he talked to the authorities on that day?

11 A Yes, sir. I will be happy to, if it's
12 appropriate, to tell you about what his intent, or
13 what I understood the intent to be when he entered
14 into that proffer.

15 Q Well --

16 A If that's appropriate, I don't know.

17 Q Well, I will just, I basically was just
18 asking you if you let him know that any evidence
19 ~~about violent crimes or homicides could be used~~
20 ~~against him?~~

21 A Yes, sir.

22 Q Okay.

23 A He was not, he did not receive immunity for
24 those offenses. It's in black and white in the
25 agreement.

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1 Q And you explained it to him as well?

2 A Yes, sir, I believe I did.

3 Q All right.

4 MR. JONES: Answer any questions this lawyer
5 has for you.

6 MR. McLAIN: May it please the Court, Your
7 Honor.

8 THE COURT: Yes, sir.

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EDWARD MILLER - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. McLAIN:

Q Attorney Miller --

A Yes, sir, Mr. McLain.

Q -- you and I have known each other for some while, haven't we?

A ~~Probably longer than 20 years.~~

Q Okay. Were you present at the October, was it October 3rd interview?

A Yes. I was appointed on October 3rd to represent Mr. Martin by Magistrate Gatoe. I visited him on that day, I filed my discovery motions on that day, received a copy of the indictment on that day.

Q Did you go see him that day?

A I did, in the Spartanburg County detention facility.

Q Along with some other people you were representing?

A That day I don't specifically recall if I was seeing other persons. I had other clients over there, it usually makes sense, since I am from Greenville, I would go to Spartanburg and try to see as many clients as I could at the same time but I don't remember specifically.

EDWARD MILLER - CROSS

1 Q Do you know whether or not he was interviewed
2 on that day?

3 A By who, by me? I interviewed him.

4 Q No, sir, I'm sorry, by any agents?

5 A I really had no idea. Now, he may, I don't
6 know if they were with him before my appointment
7 and I don't recall when he was picked up, I don't
8 know those things.

9 Q So, you don't know whether or not he was
10 Mirandized that day before you talked to him?

11 A No, sir, I don't.

12 Q And then on the October 10th interview --

13 A Yes, sir.

14 Q -- were you present that day?

15 A No, sir.

16 Q Okay. When they interviewed him?

17 A No, sir. I was aware that they -- I didn't
18 know they were going to interview him at that time
19 on that day.

20 Q Nobody told you?

21 A I don't recall if they did or not. They may
22 have informed me they were doing it and I didn't
23 have advance notice. We had previously arranged, I
24 had arranged for the government to interview him.
25 I will be happy to go into the details of that if

EDWARD MILLER - CROSS

1 you would like to hear about it.

2 Q No, sir, I just want to know if you were
3 present.

4 A No, I was not present.

5 Q Do you know whether or not he was Mirandized?

6 A Since I wasn't there, I don't, I don't have
7 any personal knowledge of that. He never
8 complained to me that he was not Mirandized.

9 Q Okay. Did you know he was going through
10 heroin withdrawals at the time?

11 A I have, it wouldn't be an exaggeration for me
12 to say I have represented thousands of people in
13 criminal cases, and I have seen people who are in
14 bad drug withdrawal, and in my opinion he was not
15 in bad drug withdrawal.

16 Q Do you know whether or not he was going
17 through it, though?

18 A He complained to me, or I shouldn't say
19 complained, but informed me that he had a problem
20 with heroin and cocaine.

21 Q Okay.

22 A But that's quite typical.

23 Q Okay. And then on October 18th, 2004 -- I'm
24 sorry, I keep saying 2004 -- 2001?

25 A Yes, sir.

EDWARD MILLER - CROSS

1 Q Were you present that day?

2 A Yes, sir.

3 Q Okay. And were you there before he talked
4 with anybody?

5 A Well, it is -- can I explain that?

6 Q Yes, sir. I just want really to know were
7 you there?

8 A Well, I was in Spartanburg meeting with Mr.
9 Martin at the Detention Center again. I was not --
10 and I was meeting with other clients. I was not
11 aware that the agents were going to speak to him
12 again at that time. We met --

13 Q Let me stop you there, I don't mean to
14 interrupt.

15 A All right, that's fine.

16 Q Did they inform you?

17 A No, sir. I didn't know that they were going
18 to meet --

19 Q Go ahead.

20 A -- at that time. Then I finished meeting, I
21 think I was meeting with other clients and then,
22 I'm not exactly sure, I don't have a real specific
23 recollection, but I got a phone call from the
24 Assistant United States Attorney who said
25 that --

EDWARD MILLER - CROSS

1 Q Jean Howard?

2 A Jean Howard, who said that the authorities
3 were meeting with Mr. Martin and that Mr. Martin
4 had requested my presence. I happened to be in
5 Spartanburg, so I, whatever I was doing, I left and
6 went to meet with Mr. Martin and the authorities.

7 Q Okay. And you met, I think, in a debriefing
8 room?

9 A Well, it was the --

10 Q Next to Kinko's?

11 A -- Spartanburg County Narcotics Division
12 room, task force room, it's in the downstairs of a
13 building located at the corner of St. John and Main
14 Street, and met in the basement, it was not a dull,
15 dark place, it was an office building.

16 Q Typical of federal agents?

17 A Right. I don't think it was a federal
18 office, I think it was the Spartanburg County
19 Narcotics Division.

20 Q They have a task force, state and federal
21 agents working together?

22 A Working together.

23 Q A task force, correct?

24 A Correct.

25 Q So, you met there in their debriefing room?

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1 A Yes, sir.

2 Q And how long were you there?

3 A I arrived and I was there I think 15 to 30
4 minutes, would be my guess.

5 Q Okay. And do you know whether or not he was
6 Mirandized before he was asked any questions?

7 A Do I?

8 Q Yes.

9 A I don't recall specifically if he was
10 Mirandized in my presence.

11 Q Okay. Now, after you were there some 15 or
12 20 minutes did you leave?

13 A 15 to 30 minutes.

14 Q I'm sorry, 30 minutes.

15 A Yes, sir, I did. I had some other
16 obligation, I had not intended to be there and
17 could not, I had other, previous obligations and
18 had not planned to be there, so I did leave, yes.

19 Q Okay. And then after you left they began to
20 ask Mr. Martin questions?

21 A I couldn't tell you that.

22 Q Okay. Because you weren't present there?

23 A That's right. I think they intended to and
24 he intended to answer them.

25 Q And give truthful statements?

EDWARD MILLER - CROSS

1 A That's what he promised to do when he signed
2 the proffer agreement.

3 Q Okay. And do you know what the agents
4 themselves told him about immunity?

5 A Well, if you're asking me my specific
6 recollection --

7 Q Specific recollection?

8 A I don't have a specific recollection of that.
9 I know generally what they --

10 Q Yes, sir, I do, too, but specifically that
11 day?

12 A I couldn't tell you word for word, no, sir.

13 Q All right. And to the best of your knowledge
14 were there three total interviews with Mr. Martin?

15 A By who?

16 Q By any agents?

17 A As far as I knew there were two.

18 Q Two?

19 A I believe.

20 Q Two? October 10th, 2001?

21 A 10th and the 18th.

22 Q And you weren't present at the 10th?

23 A I was not present. Normally, if I could
24 explain why?

25 Q Sure.

EDWARD MILLER - CROSS

1 A Mr. Martin denied his involvement in this
2 federal drug conspiracy. I explained to him that
3 in the federal system they generally, they
4 generally have very strong cases, they work their
5 cases, they have a lot of resources and a lot more
6 financial wherewithal than --

7 Q Than we do?

8 A -- than the state courts do, so they work
9 their cases up and they generally don't, it doesn't
10 always happen that they arrest someone at the time
11 the crime is committed, they follow it, they build
12 the case, they develop the case from all kind of
13 angles, so they have pretty strong cases.

14 They accused Mr. Martin of being the
15 ringleader of a fairly large drug conspiracy. I
16 was informed of that. He was the lead name on the
17 indictment, which is generally a give-away in
18 federal court that that is the most culpable person
19 or the government believes that he is.

20 So, I, when I interviewed Mr. Martin I was
21 somewhat surprised, not terribly, but that he
22 completely denied involvement in this case. He was
23 also, there were two indictments, he was also
24 involved in a counterfeiting indictment. He denied
25 involvement in that and gave me a Sad Sack kind of

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1 story and couldn't understand why he was charged in
2 this offense.

3 I explained to him, as I explain to every
4 person I represent in federal court, about how the
5 federal sentencing guidelines worked, it's a point
6 system, you get, depending on the nature of the
7 crime, the conduct during the crime --

8 Q Federal sentencing guidelines?

9 A Sentencing guidelines, the level goes up, the
10 penalty goes up based on your conduct, your prior
11 criminal history.

12 Q Your cooperation?

13 A And then it can come down based on your
14 cooperation.

15 Q Which is called a Rule 35 departure?

16 A No, sir, that would be postsentencing.

17 Q Postsentencing, that's right, but they
18 normally --

19 MR. JONES: Let him answer the question,
20 Judge.

21 A Presentencing would be a downward departure
22 recommended, can only be recommended by the
23 government. The defense can not make that motion,
24 so I would say it encourages cooperation by people
25 charged with crimes in the federal system to go

EDWARD MILLER - CROSS

1 ahead and tell their side of the story, claim
2 responsibility for their actions, show remorse and
3 the government rewards the point system in the
4 guideline system, rewards people who do that.

5 Q Kind of whoever gets their hat in the ring
6 first?

7 A Well, you get a downward departure for
8 providing substantial assistance which results in a
9 conviction of another individual, or the
10 investigation and charge of an offense of another
11 individual. So, generally the first one in, gets
12 their hat in the ring first can --

13 Q Cut the best deal?

14 A -- can get the most benefit.

15 Q Cut the best deal?

16 A Because once the government knows the facts,
17 someone else coming in saying the same thing, it's
18 ~~not helping the government or helping to a lesser~~
19 ~~extent.~~

20 So, I explained that to Mr. Martin. Mr.
21 Martin, because he was there as the alleged
22 ~~ring leader~~, which later turned out to be true, had
23 a very high bond and he wanted, he wanted to get a
24 bond reduction. So I explained to him that, you
25 know, if he's not going to show the government that

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1 he's remorseful and he's not going to accept
2 responsibility, the government is not going to look
3 favorable on working with me as his defense
4 attorney to get his bond reduced. So, he was very
5 concerned about that.

6 Q Okay. Now, on October 18th, October 18th?

7 A Yes, sir.

8 Q When you arrived, I think you said you got a
9 call?

10 A I got a call on my cell phone from the
11 Assistant United States Attorney Jean Howard.

12 Q Howard, okay. That they wanted you over
13 there?

14 A That Mr. Martin wanted me over there, he
15 wanted to talk to me.

16 Q He wanted his attorney present, over there?

17 A He wanted to talk to me, yes.

18 Q Okay.

19 A And I would tell you that the proffer letter
20 had not been signed.

21 Q That was my next question. That was my next
22 question.

23 A All right.

24 Q The proffer letter for immunity was signed on
25 the 18th?

EDWARD MILLER - CROSS

1 A That's correct.

2 Q Okay.

3 A If I can explain?

4 Q Sure. But he had had two prior interviews
5 prior to --

6 A Did he have two prior interviews? I knew of
7 one prior interview.

8 Q You knew of one?

9 A Yes, sir.

10 Q Before the proffer letter had been signed?

11 A That's correct. I had an understanding with
12 the government concerning the proffer letter. On
13 October 5th we had a detention hearing in federal
14 court to determine Mr. Martin's bond, if he would
15 be entitled to a bond reduction, and at that time,
16 up to that point he had said he didn't want to
17 help, he didn't know anything. At that time I
18 think after the bond hearing he told me he wanted
19 to help, he wanted to talk to the government. I
20 said, "Fine, what is it you can tell them?" He did
21 not change his story, he said he didn't know
22 anything, and he couldn't, but he wanted to talk to
23 them because he wanted to get out on bond, wanted
24 to see if he could help himself but he still
25 wouldn't tell me that he knew anything about the

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1 two federal indictments.

2 I talked to United States Attorney, Assistant
3 United States Attorney Miss Howard. I arranged, I
4 said, "Look, he wants to talk and he has not
5 changed his, he hasn't told me that he's going to
6 offer anything that helps but I am here to tell
7 you," it was my job, "that he wants, he's
8 interested in making a proffer." She said, "Fine,
9 I'll get you a proffer letter."

10 Q Which means he wanted to cooperate with the
11 government?

12 A He wanted to cooperate. I didn't think,
13 based on what he was telling me, he was going to do
14 himself any good. If you get in there and lie to
15 the government in a proffer letter it usually
16 backfires on you and it doesn't help you in the
17 least.

18 Q Because you're subject to a polygraph test?

19 A And to a prosecution for perjury if you lie.

20 Q And they tell you to tell everything you
21 know?

22 A Right, uh-huh, sure.

23 Q And in return for telling them everything you
24 know you get immunity?

25 A No, sir, that's not how that works. The

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1 agreement speaks for itself but you get, you are
2 protected from an increased level, in this case I
3 can't remember, I think they said he had five kilos
4 of cocaine he was involved in and if he had been
5 involved in a hundred kilos and the government
6 didn't know anything about it and he told them he
7 was involved in a hundred kilos, then he would not
8 have been charged with those kilos. He was limited
9 in that respect, with respect to that. That's what
10 you're referring immunity.

11 Q Let me just ask you something, I'm sorry.

12 A No, that's fine.

13 Q When they talk about how much drugs, they
14 often talk about over an extended time period, not
15 just like one shipment or something like that,
16 don't they?

17 A Correct. It's a historical investigation
18 that involves their conduct, and in a conspiracy
19 it's not, you're looking at the entire conspiracy,
20 which is, can extend over a long period of time.

21 Q And it's often based on what we call in the
22 kind of law we do, practice, a dry conspiracy,
23 meaning statements?

24 A I have heard, yes, I have always referred to
25 it as a historical case, but they don't necessarily

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1 have the drugs, the drugs have been distributed and
2 they are gone. Quite often how it starts is that
3 they will, quite often it starts in state court
4 where they catch someone involved in a sale, then
5 that person makes a statement, it turns out that
6 they know someone who is a, quote/unquote, big time
7 drug dealer, then the government starts
8 investigating them, they make, they generally try
9 and go up the chain.

10 Q Okay, sure. And the federal agents often may
11 watch someone for years before they make any
12 arrests?

13 A Well, I guess maybe they, I'm sure that they
14 have, depending on how important that person is,
15 they may watch them for over a year.

16 Q Months, years, whatever?

17 A Months, years.

18 MR. JONES: Your Honor, cross-examination on
19 reply testimony is supposed to be, in my opinion,
20 limited to the areas where he was examined on
21 direct, and I asked him about a letter that was
22 signed by Shondra Martin, the signature of his
23 name.

24 MR. McLAIN: I'm getting to that.

25 MR. JONES: Excuse me?

EDWARD MILLER - CROSS

1 MR. McLAIN: I'm getting to that.

2 MR. JONES: Well, I didn't ask him anything
3 about what he's asking about now, so I object to
4 this line of questioning.

5 THE COURT: ~~The objection is sustained,~~ well
6 taken. Your line of questioning is confined to
7 those questions surrounding the subjects that he
8 was asked on reply testimony.

9 BY MR. McLAIN:

10 Q I think this is in reply, more or less. How
11 many, when you arrived there on October 18th,
12 Attorney Miller --

13 A Uh-huh.

14 Q -- how many agents or different agents were
15 there?

16 A I have thought about that. I remember two
17 from Greenville, I remember two from Abbeville, I
18 remember two from Spartanburg, I remember one or
19 two from SLED, and I remember two or three federal
20 agents.

21 Q All right. And you weren't present when they
22 interviewed him?

23 A Well, I was there when Agent Lijoi talked to
24 him briefly. I could not stay and I told Mr.
25 Martin that and I told him if he didn't want to

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1 talk, that he could terminate the interview. It
2 was pretty clear to me that they would have come
3 back to him because if that many agents came they
4 were interested in what he had to say. He
5 understood that he didn't have to do it, and he was
6 doing it because he thought that --

7 Q He was cooperating?

8 A He was trying to help himself.

9 Q Isn't that generally what they do when they
10 cooperate?

11 A Yes. He -- yes, he was trying to help
12 himself by making a statement against someone else,
13 and if I had known the result of the statement that
14 came out, and I didn't, I haven't seen this
15 statement until recently, then I would have
16 recommended that we wait and talk to them again
17 later, but based on what he had told me before
18 that, I didn't see any danger in him doing it. He
19 was not forthright with me nor honest with me
20 throughout my representation.

21 Q Okay. May I see, there are some other
22 letters, pro se motions and things?

23 A I have a number of letters from Mr. Martin.

24 Q Okay. Do you have any letters in there in
25 which he spells his name Shondray, with a Y?

EDWARD MILLER - CROSS

1 A Here is one, yes, dated, I received it April
2 12th of '02, where he signed it with a Y. This is
3 a letter that he wrote to me.

4 Q May I see it?

5 A Yes. He had, he alternately liked me and
6 didn't like me, and he would --

7 Q That's okay. I just want to know about this
8 signature.

9 A Okay.

10 Q What's the date on this letter?

11 A I wrote the date 4/12/02, because that is the
12 date that I received it. He didn't date his
13 letter, I don't know.

14 Q How many letters do, approximately, do you
15 have in there signed by, I mean by Mr. Martin?

16 A Well, here is a letter that I dated February
17 of '02, in which he signed his name with a Y. It
18 was when he was, wanted to file objections to his
19 presentence report, which he later wanted to
20 withdraw.

21 I've got one he did date February 19th, '02,
22 where he signed without a Y.

23 I have a letter that he wrote to the United
24 States District Court Judge G. Ross Anderson, Jr.,
25 that he dated December 22nd of 2001, where he did

EDWARD MILLER - CROSS

1 not sign a Y.

2 Q I notice -- turn back to that one.

3 A Sure.

4 Q That one has his middle name signed.

5 Correct?

6 A Well, he's written his middle name down
7 there, yes.

8 Q Do you have any others where his middle name
9 is written in?

10 A I can look. I've got -- in the letter, the
11 letter which you have removed the front and last
12 page, he listed his name in the caption, his full
13 name, without a Y, where he puts his full middle
14 name. He didn't sign that one.

15 MR. JONES: If it please the Court, we'll
16 stipulate he signed it both ways, with an A and a
17 Y, there is evidence he signs it both ways.

18 MR. McLAIN: Three ways.

19 MR. JONES: Three ways.

20 THE WITNESS: Well, this one, the return
21 envelope, he put his middle name in. There is one
22 without his middle name, with no Y.

23 THE COURT: Do you so stipulate, counsel?

24 MR. McLAIN: Yes, sir.

25 THE WITNESS: Okay.

EDWARD MILLER - CROSS

1 THE COURT: All right, continue
2 cross-examination. The stipulation is, ladies and
3 gentlemen, is the defendant signs his name
4 sometimes with a Y, sometimes without a Y, and
5 sometimes all three names, Shondra Lamont Martin.

6 BY MR. MCLAIN:

7 Q Are you aware of any other interviews other
8 than those two you testified to?

9 A Well, I don't know if --

10 Q I mean, I'm sorry, I mean with agents?

11 A Well, as I say, I don't know if at some of
12 these hearings at the courthouse we may have spoken
13 with an agent. I really don't remember but, I
14 mean, I'm talking about at a federal hearing and
15 the agents were there, we were there, we may have
16 spoken briefly, I don't remember. I don't think
17 there was, I don't think there was a sitdown
18 long-term interview.

19 Q Those were the extent of your meetings with
20 Mr. Martin?

21 A Oh, no, I met with him quite often. He and I
22 had an up and down relationship. He was --

23 Q Sorry.

24 A He was constantly trying to manipulate the
25 system.

EDWARD MILLER - CROSS

1 Q That was the extent of the interviews, with
2 which you were aware, that you attended with Mr.
3 Martin?

4 A Those were the two I was aware of, yes.

5 MR. McLAIN: Thank you.

6 THE WITNESS: Okay.

7 MR. McLAIN: That's all I have.

8 THE COURT: Anything on redirect?

9 MR. JONES: None, Your Honor.

10 THE COURT: Thank you, sir. Come down.

11 THE WITNESS: Yes, sir.

12 THE COURT: Any objection to this witness
13 being excused?

14 MR. McLAIN: None, Your Honor.

15 MR. JONES: None, Your Honor.

16 THE COURT: Thank you, sir. You may stay
17 with us or leave the building.

18 (Witness excused).

19 THE COURT: Call your next witness.

20 MR. JONES: Call special Agent Earl Gilliam
21 to the stand, please.

22

23

24

25

EARL GILLIAM - DIRECT

1 EARL GILLIAM,
2 after being first duly sworn testified as follows:

3 THE COURT: You may examine, Solicitor.

4 DIRECT EXAMINATION

5 QUESTIONS BY MR. JONES:

6 Q State your name for the record.

7 A Earl Gilliam.

8 Q I believe I asked you when you took the stand
9 a couple days ago if you were a law enforcement
10 officer?

11 A Yes, sir, I am.

12 Q And I asked you if on October 18th you were
13 working in the state of South Carolina?

14 A Yes, sir.

15 Q If you would, please tell this jury the
16 extent of your education and your law enforcement
17 background.

18 A I'm a Special Agent with the United States
19 Secret Service, I have two associate degrees, a
20 Bachelor's Degree in criminal justice and business,
21 and a Master's Degree in education. I have
22 attended the South Carolina Criminal Justice
23 Academy, South Carolina Fire Academy, the Federal
24 Law Enforcement Training Center, and the Secret
25 Service Training Center in Baltimore, Maryland.

EARL GILLIAM - DIRECT

1 Q How long have you been employed as a law
2 enforcement officer?

3 A Approximately 13 years.

4 Q And where did you get your Bachelor's Degree?

5 A University of South Carolina.

6 Q Now, would you please tell the jury of any
7 recognitions you have had for your service as a law
8 enforcement officer over your career?

9 A In 2002 I was the Rotary Club law enforcement
10 officer of the year, and yesterday --

11 Q What Rotary Club?

12 A The South Carolina Rotary Club.

13 Q For the state of South Carolina Rotary Club?

14 A Yes, sir.

15 Q All right.

16 A And just yesterday I was awarded the Strom
17 Thurmond Award for Excellence.

18 Q That is an award that is awarded to the top
19 federal law enforcement officer in the state of
20 South Carolina once a year?

21 A Yes, sir.

22 Q And you received that award yesterday?

23 A Yes, sir.

24 Q Now, did you have occasion to interview
25 Shondra Martin on October 18th, 2001?

EARL GILLIAM - DIRECT

1 A Yes, sir.

2 Q Did you attempt to intimidate him during that
3 interview?

4 A No, sir.

5 Q Have you ever during the course of your law
6 enforcement career attempted to intimidate
7 individuals that you are charged with the
8 responsibilities of interviewing?

9 A No, sir, I haven't.

10 Q Did you have occasion to read Shondra Martin
11 his Miranda warnings?

12 A Yes, sir, I did.

13 Q And did you read those warnings from a card?

14 A Yes, sir, verbatim.

15 Q And is it your practice when you sit down
16 with somebody to talk to them about crimes, that
17 you read them their Miranda warnings and their
18 rights?

19 A Yes, sir, I do, in custodial and noncustodial
20 settings.

21 Q And did you go over his warnings?

22 A Yes, sir, I did.

23 Q Did he appear to understand those warnings as
24 you read them to him?

25 A Yes, sir, he did.

EARL GILLIAM - DIRECT

1 MR. McLAIN: I will stipulate to the card if
2 that's what you're looking for, Townes.

3 Q Did you tell him he had the right to remain
4 silent?

5 A Yes, sir.

6 Q On October 18th, 2001 --

7 MR. McLAIN: Your Honor, I'm sorry, I
8 thought, we have been through this Miranda card
9 several times, I thought I had stipulated that it
10 says what it says.

11 THE COURT: Defense counsel offers to
12 stipulate.

13 MR. JONES: Your Honor, his client testified
14 early today he was not read his Miranda warnings
15 and on reply I believe I have the opportunity, I
16 don't want to stipulate, I want to ask this man,
17 this man on the witness stand under oath if he read
18 him his Miranda warnings on October 18th, 2001.

19 MR. McLAIN: Why doesn't he just hand him the
20 card and let him look at it and see if he gave him
21 all the information on it.

22 THE COURT: First the record shows the offer
23 to stipulate is declined. The method and manner of
24 examination is up to the examiner.

25 BY MR. JONES:

EARL GILLIAM - DIRECT

1 Q I hand you Court's Exhibit Number 2 and ask
2 you if you recognize what that is a copy of?

3 A This is a copy of the Miranda card.

4 Q Is it a copy of the same card from which you
5 read his Miranda rights to him on October 18th,
6 2001?

7 A Yes, sir.

8 Q What's the first right you read to him?

9 A It states, "You have the right to remain
10 silent."

11 Q Did you say that to him that day?

12 A Yes, sir, I did.

13 Q What's the second right you read to him?

14 A "Anything you say can be used against you in
15 court."

16 Q Anything you say can be used against you in
17 court?

18 A Yes, sir.

19 Q Did you read that right to him that day?

20 A Yes, sir, I did.

21 Q Did he understand it?

22 A Yes, sir, he did.

23 Q What's the other thing you read to him?

24 A "You have the right to consult an attorney
25 and to have him present during questioning."

EARL GILLIAM - DIRECT

1 Q You read that to him on that day?

2 A Yes, sir, I did.

3 Q What else did you read to him?

4 A "If you cannot afford an attorney one will be
5 appointed to represent you prior to any
6 questioning."

7 Q You read that to him on that day?

8 A Yes, sir.

9 Q What else did you read to him?

10 A "Do you understand your rights and are you
11 willing to waive these rights and talk to me?" And
12 he acknowledged that he was willing to talk with us
13 but he wanted his attorney present.

14 Q And he asked for his attorney?

15 A Yes.

16 Q And he met with his attorney?

17 A Yes, sir.

18 Q Then he sat down and talked with you?

19 A After the attorney left, yes, sir.

20 Q And were you present during the course of an
21 interview he had with a SLED agent who came into
22 the room with you, SLED Agent Steve Gambrell?

23 A Yes, sir.

24 Q And did you, do you know whether or not he
25 talked to Gambrell about matters involving Chris

EARL GILLIAM - DIRECT

1 Landrum?

2 A He talked about state and federal charges and
3 he also talked about his involvement with Chris
4 Landrum in the case that we're here for today.

5 Q Were you aware of his relationship with Chris
6 Landrum prior to that interview?

7 A No, sir, I did not know what their exact
8 involvement was, no, sir.

9 MR. JONES: Answer any questions that this
10 lawyer has.

11 MR. McLAIN: May it please the Court, Your
12 Honor.

13 THE COURT: Mr. McLain.
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EARL GILLIAM - CROSS

1 CROSS EXAMINATION

2 QUESTIONS BY MR. McLAIN:

3 Q Is it your normal practice as -- I'm sorry,
4 you're the winner of the Strom Thurmond award as of
5 yesterday?

6 A Yes, sir..

7 Q Congratulations.

8 A Thank you.

9 Q Okay. Is it your normal practice to ask
10 people questions after their attorneys leave?

11 A Yes, sir.

12 Q And is it also -- you said you, I'm sorry,
13 you said you weren't aware of any involvement
14 between Mr. Landrum and Mr. Martin until prior to
15 this interview?

16 A The last part again for me, please?

17 Q Okay. You said that you weren't aware of any
18 involvement, I believe, between Mr. Landrum and Mr.
19 Martin prior to this interview?

20 A No, sir, I didn't know the names of the
21 people or the extent of involvement in things and
22 that's why we had the second interview in the first
23 place.

24 Q Okay. And do you know if any other agents
25 were aware of any involvement or connection or

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1 relationship or anything else between the two?

2 A No, sir, I wouldn't know exactly what was
3 known by other agents.

4 Q And when you began to talk to him -- I'm
5 sorry, let me back up a minute. You said you were
6 working for the state at the time?

7 A No, sir.

8 Q You just said when Mr. Jones asked you, you
9 said you were working for the State of South
10 Carolina?

11 A Working in the state of South Carolina.

12 Q Oh, okay. But you were working for the
13 Secret Service?

14 A Yes, sir.

15 Q As a federal officer?

16 A Yes, sir.

17 Q And did you Re-Mirandize my client before you
18 discussed any state charges with him?

19 A No, sir, we didn't. We read his rights to
20 him initially and that was --

21 Q Did you say anything like it says in your
22 proffer agreement right there, "You don't have any
23 immunity for anything for any state things you tell
24 us"?

25 A Sir, I don't discuss anything exactly as

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1 pertaining to a proffer agreement. That's for the
2 attorney to discuss with his client.

3 Q He didn't tell you he shot this gentleman,
4 the deceased, did he?

5 A Sir?

6 Q He didn't tell you he shot the deceased, did
7 he?

8 A Sir, I don't remember what all he said as to
9 who shot who. That is why we had other law
10 enforcement there.

11 Q He didn't tell you that, did he?

12 A Sir, I just answered I didn't know what all
13 he said in relation to this, that is why the other
14 law enforcement was there, to assess what he was
15 stating.

16 Q Okay. So, you don't know what his
17 involvement was with Mr. Landrum?

18 A I was not there that night, no, sir.

19 Q You just Mirandized him and left?

20 A I gave him Miranda, I stayed there with the
21 agents to ensure continuity of Miranda rights.

22 Q What do you mean by ensure continuity?

23 A Once Miranda rights are read by one law
24 enforcement officer it is general practice for us
25 to stay there with the other agents as they do

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1 interviews to ensure continuity. He's been advised
2 of his Miranda rights and I have been here the
3 entire time to ensure that everything goes
4 accordingly.

5 Q Were you there the entire time?

6 A Yes, sir.

7 Q Who else was there?

8 A During the October 18th interview?

9 Q Yes.

10 A It was myself, Mario Lijoi with DEA, a
11 Spartanburg Public Safety Officer and Jonathan
12 Bryant with the U. S. Secret Service.

13 Q He had no attorney there?

14 A He had an attorney there at one time during
15 the day, yes, sir.

16 Q Prior to the interview?

17 A He had an attorney --

18 Q I'm sorry, I don't mean to cut you off, maybe
19 I can just cut to the quick. When he was
20 interviewed did he have an attorney present?

21 A His attorney came at his request, his
22 attorney --

23 Q That wasn't my question, I'm sorry.

24 A Okay.

25 Q It's a simple yes or no.

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1 A Okay.

2 Q When he was interviewed --

3 A Yes, sir.

4 Q -- did he have an attorney present?

5 A Not during the interview, no, sir.

6 Q And to this day nobody has told you that Mr.
7 Martin shot Adarryl McCoppin?

8 A Not that I recall, sir.

9 MR. McLAIN: Thank you.

10 THE COURT: Any redirect?

11 MR. JONES: No, Your Honor.

12 THE COURT: Thank you, sir. Come down.

13 (Witness excused).

14 THE COURT: Call your next witness.

15 MR. JONES: That concludes my reply, Your
16 Honor.

17 THE COURT: That is the entire case, ladies
18 and gentlemen. You have heard all the evidence in
19 the case. There will be no more evidence in the
20 case. We will take just a few minutes and we will
21 prepare for final summation, the Court will charge
22 the law to you and we will give the case to the
23 jury for reaching a verdict.

24 Do not discuss the case by, between and among
25 yourselves, and retire to the jury room.

1 (The jury was excused from the courtroom
2 at 5:00 p.m.).

3 THE COURT: Mr. McLain, any motions?

4 MR. McLAIN: Your Honor, I just for the
5 record renew the same motions on the same grounds
6 that I made at the end of the State's case, for the
7 record.

8 THE COURT: Yes, sir. The record will
9 reflect the Court has considered the motions made
10 and renewed at this stage. The Court finds that
11 there is some evidence to support the Count One,
12 ~~Count Three and Count Four of the indictment.~~

13 MR. McLAIN: Thank you, Your Honor.

14 THE COURT: Anything from the State?

15 MR. JONES: Your Honor, I would like to ask,
16 if the Court intends to charge felony murder under
17 the conspiracy to commit armed robbery in
18 conjunction with the homicide, if I can argue that
19 to the jury.

20 THE COURT: Yes, sir.

21 MR. JONES: Having presented evidence, I
22 would also understand that unless defense counsel
23 wants me to open on the law, that I will, if he
24 wants me to waive it, then he will proceed with his
25 remarks prior to my --

1 THE COURT: Whatever your pleasure is on
2 that, counsel.

3 MR. McLAIN: I'll have him open.

4 THE COURT: All right. Be prepared to open
5 on the law --

6 MR. JONES: All right.

7 THE COURT: -- on the three charges with
8 which we're involved here and, counsel, you will
9 close in full and the State will then close in
10 full. We'll take a few minutes, please.

11 MR. McLAIN: One matter, Your Honor, I'm
12 sorry.

13 THE COURT: You want the record open?

14 MR. McLAIN: Yes, sir.

15 THE COURT: The record remains open.

16 MR. McLAIN: One matter I forgot.

17 THE COURT: All right.

18 MR. McLAIN: Okay. Of course, I would like
19 to have my jury charges marked as exhibits.

20 THE COURT: The Court is going to charge your
21 request number one.

22 MR. McLAIN: Yes, sir.

23 THE COURT: Requests two, three and four are
24 not being charged, they involve self-defense, and
25 if you wish to hand them and have them marked they

1 will be marked as court exhibits.

2 MR. McLAIN: Okay. I think I have two, three
3 and four.

4 THE COURT: Two, three and four, excuse me,
5 two, three and four will be marked as Court's
6 exhibits.

7 MR. McLAIN: Right.

8 THE COURT: The Court will not charge those.

9 MR. McLAIN: Thank you, Your Honor.

10 (Court's Exhibits 8, 9 and 10 were marked).

11 (Recessed at 5:05 p.m.).

12 (Reconvened at 5:33 p.m.).

13 THE COURT: Back on the record, please. The
14 State of South Carolina versus Shondra Lamont
15 Martin, indictment 2002-192.

16 Is there anything from either side before the
17 jurors come in, please?

18 MR. JONES: Your Honor, the State's ready to
19 proceed.

20 THE COURT: Very well.

21 MR. McLAIN: The defense is ready to proceed.

22 THE COURT: Very well, sir, thank you. Show
23 the jury in.

24 THE BAILIFF: A note.

25 THE COURT: A note has been passed out by

1 the, it's not signed, so it is assumed that the
2 foreperson wrote this note but it's come from, who
3 handed this to you.

4 BAILIFF: The forelady.

5 THE COURT: The forelady handed it to Mr.
6 Busby, it states Reverend Raymond Pressley, juror
7 number 149, asks to be released of his duty for he
8 has just learned of a death in the family of one of
9 his church members. He feels that he is needed to
10 be there with that family.

11 Now, the Court will be guided by the advice
12 and wishes of the parties.

13 MR. JONES: Beg the Court's indulgence, Your
14 Honor.

15 THE COURT: Take your time. How says the
16 State?

17 MR. JONES: Your Honor, we have been, you
18 know, this jury has been paying close attention to
19 everything this week, they need to be paying even
20 closer attention at this point in time. With his
21 position and the nature of his concern, I'm afraid,
22 you know, that as much as he might try, his mind is
23 on other matters that he feels take priority over
24 what we're doing here. He's almost expressed that
25 in his, in the note that was written by someone,

1 that he feels the death of a parishioner is
2 something he must, you know, be allowed to attend
3 to and, you know, I don't know if it will make a
4 difference to him, of course we can't tell him he
5 would be allowed to attend to it anytime tonight,
6 we could be here at 12:00 tonight, we can be here
7 until 1:00 o'clock tomorrow morning, depending on
8 when Your Honor decides and depending on when this
9 jury decides their job is done. And, so, I think
10 we need to release him and replace him with the
11 first alternate.

12 THE COURT: How says the defense?

13 MR. McLAIN: Your Honor, I think I will agree
14 with Mr. Jones, I think that he probably would have
15 his mind on other things, may be in a hurry to get
16 out, and so I agree to go ahead and release him.

17 THE COURT: Is there any objection to the
18 Court's having an in-camera private conference with
19 this juror?

20 MR. McLAIN: None.

21 MR. JONES: None from the State.

22 THE COURT: Very well, ask him out, please,
23 Mr. Busby.

24 (Bench conference with the Court, Law Clerk
25 and Juror Pressley).

1 THE COURT: This is my law clerk.

2 JUROR: Yes, sir.

3 THE COURT: Mr. Pressley, we just received
4 this note. Did you write this note?

5 JUROR: No, sir, the foreperson wrote the
6 note.

7 THE COURT: How did you learn of the death?

8 JUROR: About seven minutes ago.

9 THE COURT: How was it communicated to you?

10 JUROR: Juror 113 just told me about seven or
11 eight minutes ago, her mother lives nextdoor to
12 Isabelle Agnew on Adams Drive and I'm assuming the
13 juror 113 went to her mother's house on the break,
14 did not tell me when she first got back, just
15 relayed the message, sir.

16 THE COURT: Very well. Thank you for that
17 explanation.

18 JUROR: Yes, sir.

19 (Bench conference concluded).

20 (Juror note marked as Court Exhibit 11).

21 THE COURT: Juror number 149 will be excused
22 and replaced with the first alternate. Thank you,
23 sir, you may leave.

24 MR. McLAIN: What is the number of the first
25 alternate, Your Honor?

1 THE COURT: The first alternate --

2 MR. WOOLSTON: Judge, a question.

3 MR. JONES: Your Honor, could we ask a
4 question of Reverend Pressley before he leaves?

5 THE COURT: The record is open. Reverend
6 Pressley, would you step forward just a moment.

7 MR. JONES: Your Honor, we just, excuse me,
8 Reverend Pressley, we just want to make sure the
9 notes he has been taking during the trial are
10 leaving with him, that he didn't leave them in the
11 jury room or anywhere like that.

12 JUROR: Would you like me to rip them up
13 here, sir?

14 THE COURT: It might be wise.

15 JUROR: Yes, sir, I'm sorry about that.

16 THE COURT: If you wish, you can just give
17 them to Madam Clerk and she can be sure that they
18 are shredded and you don't need to worry. Just
19 fold them over where nobody can read them and they
20 won't be unfolded or read by anyone.

21 JUROR: Yes, sir.

22 THE COURT: That's your private information,
23 we'll see to it that it's completely destroyed.

24 JUROR: Thank you, sir.

25 THE COURT: Madam Clerk, that will be your

1 responsibility.

2 Thank you, Reverend Pressley.

3 (Juror Pressley excused from the courtroom).

4 THE COURT: Reverend Pressley, 149, will be
5 replaced by number 153, Terri Ray.

6 Anything further?

7 MR. JONES: Well, Your Honor, in that light,
8 we are trying to ask you to, if you would, please,
9 remind us, your rule is that they will leave
10 whatever notes they have taken during the course of
11 the trial outside the jury room once deliberations
12 begin?

13 THE COURT: The instruction will be that they
14 will utterly and completely destroy them without
15 showing them or sharing them with anyone once they
16 go into the jury room.

17 MR. JONES: All right.

18 THE COURT: That they won't tell anybody they
19 have taken them and they will completely destroy
20 them such as tear them up and flush them down the
21 commode, whatever they want to do, but they won't
22 tell anybody they have taken notes.

23 MR. JONES: Prior to deliberations?

24 THE COURT: Prior to deliberations.

25 MR. JONES: Thank you, Your Honor.

1 THE COURT: Anything further?

2 MR. JONES: No, sir, nothing.

3 THE COURT: Show the jury in, Mr. Busby.

4 (The jury returned to the courtroom

5 at 5:43 p.m.).

6 THE COURT: Miss Ray, Juror Number 149, Mr.

7 Pressley, has been excused and you will take his

8 place, as the first alternate. If you will, take

9 the empty seat on the front row, please.

10 Mr. Second Alternate, you can move to the
11 front seat.

12 Ladies and gentlemen, this is the plan.

13 We're going to try, unless there is serious
14 objection from any one of you, to complete this
15 case and give it to you today. We will commence
16 closing arguments, excuse me, closing arguments now
17 and we expect those to complete about 7:30. The
18 Court will then, if not before, take a break and
19 then we will take take your dinner order during
20 that break at 7:30. After that the Court will
21 charge you, and it's expected that the charge will
22 take about an hour, that you will eat at about
23 8:30.

24 Now, there may be one amongst you who has a
25 diabetic problem or some other physical problem

1 that would cause you to endure a need for
2 nourishment before 8:30. If there is, if you will
3 raise your hand we'll make arrangements for you.

4 So, we'll take your dinner order at about
5 7:30, then you will be charged the law in the case,
6 and this judge permits you to have your meal and
7 commence discussions, Madam Forelady and ladies and
8 gentlemen, you may, some judges don't allow you to
9 discuss anything while you're eating but it's the
10 experience of this judge people talk very well
11 while they're eating, so you will be allowed to
12 discuss and deliberate while you're having your
13 meal. That's expected to be about 8:30.

14 Let it be known now if there is any problem
15 among you with that time frame.

16 Hearing none, then, and thank you, ladies and
17 gentlemen, the jury is with you, Solicitor Jones.

18 MR. JONES: May it please the Court, Your
19 Honor.

20 THE COURT: Solicitor Jones.

21 MR. JONES: Madam Forelady, ladies and
22 gentlemen of the jury, what I'm going to talk to
23 you now about in my opening statement is the law.
24 It is a requirement of our procedure during court
25 cases I'm required to do. I won't address all the

1 legal issues the Judge gives you because I don't
2 know them all. As far as the law is concerned,
3 you're to follow what he tells you. Listen to what
4 he tells you, he is the authority on the law in the
5 State of South Carolina, because the jurors, what
6 your job is, as he told you earlier, is to decide
7 what the truth is, decide what the facts are, take
8 that truth and take the law that he gives you and
9 return a verdict that speaks the truth itself.
10 That's what your job is, you take the facts and
11 apply that to the law he gives you.

12 I will try to be brief on this and all
13 remarks I share with you today. I realize and
14 understand that I believe that I'm probably one of
15 the last people you need to hear from at this point
16 in time. You have heard from the witnesses, you
17 have heard from the judge, you need to hear from
18 the judge, and you really need to get back there
19 and get to work, but just as if I was hesitant to
20 not attempt to ask questions that I thought you
21 might be interested in when witnesses were on the
22 stand, I'm also going to be compelled to try to
23 cover areas that I hope that you find is relevant
24 and is pertinent and is common sense and is
25 believable and is as much as close to the truth as

1 you need to believe and understand. And quite
2 frankly, if you are going to accuse me of doing
3 something, I would rather you accuse me of over
4 doing my job rather than under doing my job.

5 Now, the law of murder, the law of murder in
6 the State of South Carolina is the killing,
7 unlawful, intentional killing of one human being by
8 another human being, okay, with malice
9 aforethought, either expressed or implied. Now, in
10 South Carolina, you know, the killing of one human
11 being, the unlawful killing of one human being by
12 another human being with malice aforethought,
13 either expressed or implied, the law says you must
14 find malice aforethought. What is malice
15 aforethought? What is malice? The judge will tell
16 you.

17 I'm going to suggest to you malice
18 aforethought, malice, malice means maliciousness,
19 it means a heart bent on mischief, it means a human
20 being who has no real feeling for the rights of
21 others, a human being who is determined to do what
22 they want to do regardless of another person's
23 right to live. People have a right to live. But
24 some people, malice is malice, is where you are
25 determined to do what you felt like you need to do,

1 that's malice, maliciousness, a hard heart, a heart
2 bent on mischief, with forethought.

3 What is forethought? In South Carolina
4 murder does not have to be thought about, planned
5 and designed and determined to be done for any
6 longer than the instant before the final, before
7 the initial fatal shot was fired, the fatal blow,
8 the fatal shot, the fatal stabbing, whatever it is.
9 As long as you find that there is sufficient
10 evidence beyond a reasonable doubt that malice was
11 in the heart of the perpetrator of the crime for an
12 instant prior to the delivery of the blow or the
13 firing of the shot, then you can find malice was
14 present.

15 Now, expressed or implied. How is malice
16 expressed? Malice is expressed when somebody says,
17 "I'm going to kill you." Malice is expressed if
18 somebody exhibits conduct or words that express
19 what they intend to do. It's implied through use
20 of a deadly weapon in South Carolina. Did you know
21 that? If you take a deadly weapon and you use it,
22 whether it's a gun or an axe or bayonet or bomb,
23 you as jurors can say, you know, use of that weapon
24 implies a degree of malice.

25 Shooting somebody with a gun lets it be known

1 if they had enough maliciousness or enough
2 selfishness or enough heart bent on mischief devoid
3 of the rights of other people to live, to find that
4 malice existed at the time the trigger was pulled,
5 for you to find there was malice in the heart of
6 the perpetrator. That is how malice can be
7 expressed or implied. You can infer it.

8 You can infer malice in South Carolina from
9 the use of a deadly weapon, taking in all other
10 circumstances during the course of the crime, all
11 other circumstances. In other words, you should
12 look at the totality of the circumstances
13 surrounding the crime.

14 You know, I'm sitting here telling you this
15 law, and I must tell you this. I have been your
16 Solicitor, I'm in my twentieth year as your elected
17 Solicitor of the Eighth Judicial Circuit. It
18 includes Abbeville County, Greenwood County,
19 Laurens County and Newberry County. This service
20 has been probably the best thing that ever happened
21 to me besides my wife and my family. But I am
22 concluding my service as your Solicitor this year
23 and you will have the opportunity to elect somebody
24 other than me to do this work and to do this job.
25 And I have been doing a lot of administration, and

1 sitting here talking to you about malice, I could
2 stand here for two hours and discuss this law with
3 you but I can't do that because we need to move
4 along and so I'm going to move through the law.

5 There is a principle of felony murder. If
6 you find somebody has committed a felony and during
7 the commission of that felony they commit a
8 killing, you can find that the felony, the
9 commission of the felony and the killing during the
10 felony results in a felony murder rule that allows
11 malice to be found because of the commission of the
12 felony when the crime was committed.

13 For instance, by analysis, somebody decides
14 to rob a bank and they go into the bank with a gun
15 and they look over there and see a guard standing
16 there coming over to ask them what they're trying
17 to do and they turn and try to get out of the bank
18 and somebody tries to stop them and they shoot the
19 person going out of the bank, you can find that the
20 robber, the felony robbery, the felony can cause
21 the shooting to be murder even though they just
22 shot them trying to get out of the bank, trying to
23 get away, somebody is trying to stop them. They
24 didn't go in there intending to kill that person,
25 they didn't go in there intending, that person

1 wasn't a teller, that person wasn't a bank guard,
2 just a person, they didn't even know that person.
3 They were trying to get out, they had a gun, they
4 shot him. That's an example of analysis of felony
5 murder.

6 Another principle of law in this case is
7 conspiracy to commit an armed robbery. A
8 conspiracy is an agreement between two or more
9 persons to do an unlawful act. An agreement
10 between two or more persons to do an unlawful act,
11 that's a conspiracy. And once two people agree to
12 do an unlawful act, if they are conspiring to do
13 it, the conspiracy is in place until when? Until
14 the last act to accomplish the conspiracy has been
15 done or until an act that would prevent them from
16 being able to accomplish this conspiracy is
17 accomplished.

18 For instance, if you decide to conspire to
19 commit an armed robbery and you go to somebody's
20 house to do it and you're out in the woods casing
21 out the house to see if they might be home so you
22 can go in there and rob them and you have parked
23 your car in a getaway fashion to get away from the
24 house and you are walking around trying to decide
25 whether or not to commit it, whether or not the

1 conspiracy is still ongoing, whether or not the
2 conspiracy is still ongoing, then you are engaged
3 in that conspiracy with your co-conspirators until
4 you get in your car and leave the scene. If you
5 haven't gotten in your car and left the scene, you
6 are still engaged in the conspiracy to commit the
7 crime.

8 And if you are still engaged in the
9 conspiracy to commit armed robbery and you commit a
10 murder during the commission of that conspiracy,
11 you can be found guilty of murder under the felony
12 murder rule.

13 There is also a principle of law that the
14 judge will charge you, and that principle of law is
15 the hands of one is the hands of the other. If you
16 engage in a criminal enterprise with another
17 individual and you are present during the
18 commission of that enterprise and somebody takes on
19 the responsibility to commit a crime and you are
20 there aiding and abetting and assisting that person
21 in the commission of the crime, then you as jurors
22 can find that person guilty of the crime even if
23 you don't find that they committed the actual crime
24 themselves. It's aiding and abetting.

25 In other words, analogy speaking, if two

1 people are together committing a crime, committing
2 a crime and the crime is murder, and only one of
3 them pulls the trigger to kill the person and a
4 second person is there giving aid and comfort, aids
5 and abetts in these forms, helping with the getaway
6 car, driving the car away, being there during the
7 course just after and just before the commission of
8 the murder, that's called aiding and abetting, and
9 in South Carolina, under the law of aiding and
10 abetting, the hand of one is the hand of all. In
11 other words, someone can be guilty of committing a
12 murder without pulling the trigger, without pulling
13 the trigger. They've got to be on the scene,
14 they've got to be present aiding and abetting.

15 There is circumstantial evidence and direct
16 evidence. This is law. Circumstantial evidence is
17 evidence that you take -- direct evidence, as the
18 judge told you earlier, is something somebody said,
19 something somebody, that you saw somebody that you
20 could see, it's a fingerprint, a photograph or
21 physical evidence that was left at the scene.
22 Circumstantial evidence, you can find somebody
23 guilty based on circumstantial evidence if the
24 circumstances that you rely on are consistent with
25 one another and point, when taken together, wholly

1 and conclusively to the guilt of the accused to a
2 moral certainty. In other words, all the
3 circumstances that you use, circumstantial
4 evidence, to find somebody guilty must be wholly
5 consistent with one another. They must, when taken
6 together as a whole point unerrantly to a moral
7 certainty to the guilt of the accused.
8 Circumstantial evidence can be used to find
9 somebody guilty.

10 Credibility of witnesses. Credibility of
11 witnesses is law that is in your perview.
12 Credibility of a witness. You can believe none of
13 what a witness says, all of what a witness says,
14 part of what a witness says. You can believe one
15 witness against five, you can believe five against
16 one. Credibility of a witness is up to you and you
17 can use whatever, whatever means you so choose to
18 use to decide whether you believe somebody. You
19 certainly will use your experiences as human
20 beings, your life experiences. You have done
21 things, you have experienced things. You have felt
22 like you, you know, you have seen, well, this makes
23 sense, that makes sense, this makes sense, and in
24 trying to decide whether somebody is being honest
25 with you, whether somebody is credible, believable.

1 That's what credibility means, believability, do I
2 believe what that person said, do I believe that
3 they got on the witness stand and told me the
4 truth, or do I believe that they lied? I mean, you
5 know, there have been, things have been said to you
6 that, you know, you are going to have to believe
7 one or the other. It's your decision. The judge
8 will tell you credibility is something that you
9 have complete determination over.

10 Your verdict must be unanimous, all twelve of
11 you must agree either way, guilty or not guilty,
12 all twelve of you must agree.

13 Reasonable doubt. A doubt that is supposed
14 to be a doubt you could live with.

15 He is also charged with possession of a
16 weapon, firearm or knife during commission of a
17 violent crime, and the judge will charge you,
18 that's basically what he said, if you find this
19 crime was committed and this defendant was in
20 possession of a firearm, knife or weapon, then he
21 could be guilty of that crime.

22 We asked the judge to withdraw the charge of
23 attempted armed robbery, and that charge has been
24 withdrawn, attempted armed robbery. Conspiracy to
25 commit the armed robbery is still going to be

1 charged to you, the murder charge is still going to
2 be charged to you, and the commission of possession
3 of, being in possession of a firearm during
4 commission of a violent crime will still be charged
5 to you. That's one of the things I wanted to tell
6 you a minute ago as far as the law is concerned, I
7 was just remiss in talking to you.

8 I hadn't tried a case in probably a year, you
9 probably could tell, I have been tied up with
10 administrative work in my office, it's gotten to
11 the point now where the paperwork end of it and the
12 administrative end of it is so overwhelming that I
13 don't get to try cases, and it was just something
14 that sort of came over me. I have tried cases in
15 this courtroom for 20 years and I don't mean to
16 bore you or belabor your presence here, but I'm
17 going to get back up and make my closing argument
18 when he's through.

19 THE COURT: Mr. McLain, the jurors are with
20 you.

21 MR. McLAIN: May it please the Court, Your
22 Honor.

23 THE COURT: Mr. McLain.

24 MR. McLAIN: I haven't had the pleasure of
25 trying cases here for 20 years but I hope to have

1 the pleasure of trying cases here at least 20 more.

2 Ladies and gentlemen of the jury, first of
3 all let me tell you this. There are a couple other
4 things that need to be told to you and that is in
5 order for a homicide to be covered by or to
6 constitute a felony murder it has to take place
7 while a felony is in progress. That is also the
8 law of South Carolina.

9 First of all let's back up and remember this.
10 When we started this case I believe I used the term
11 that the prosecution had the right string but the
12 wrong yoyo, and it's still that they have the right
13 string but the wrong yoyo, and that this thing
14 would be convoluted, it would have to be put
15 together like a jigsaw puzzle on what really
16 happened.

17 First of all you have to remember this. The
18 prosecution has the burden of proving that my
19 client Mr. Martin is guilty beyond all reasonable
20 doubt. If you have any doubt, not a fanciful
21 doubt, but if you have any doubt in your mind as to
22 whether or not Mr. Martin was the man who killed
23 Mr. McCoppin, then you have to find him innocent,
24 and that is the duty of the jury system.

25 Now, if we look back over all of these

1 got there to do anything," meaning to rob anybody,
2 in parenthesis, by Mr. Gambrell, "that that's why
3 they were there in the woods looking and decided to
4 leave," and that is what is called a defense of
5 withdrawal. Remember that they have to prove first
6 he was there beyond all reasonable doubt.

7 Secondly, that he committed murder beyond all
8 reasonable doubt.

9 Thirdly, that there was a felony in progress
10 at the time the murder occurred.

11 Now, assuming that I'm going down in the
12 woods to rob somebody and I find somebody's having
13 a party or picnic or something like that and I go,
14 well, there are too many people and I start back to
15 my automobile, then there is no felony in progress,
16 I would submit to the jury.

17 The other thing is, and the question in my
18 mind is, where is Mr. Landrum? The State produced
19 two pocket knives, or knives, whatever kind,
20 admittedly Mr. Landrum's glasses, which were found
21 right where the deceased was shot, three nine
22 millimeter casings, no gun. There was some guns
23 asked about.

24 And then you have to ask yourself about
25 causation, what really caused Mr. McCoppin's death.

1 Well, it's uncontroverted even by the State's own
2 witness Mr. Johnny McCoppin that when he took the
3 deceased to the hospital they were detained by the
4 Highway Patrol and law enforcement to such an
5 extent that the gentleman did not, the length of
6 time he had been detained, the length of time he
7 was detained, he did not fall within what the
8 doctors referred to as the golden hour, the golden
9 hour in which somebody's life can be saved. Mr.
10 McCoppin said that the Highway Patrolman opened the
11 door and the deceased fell out on the ground and
12 they would not even help him because they were
13 afraid they would get blood on their pants or
14 uniforms.

15 ~~I'm a Scout leader, the oldest one in~~
16 Greenville in the Reedy Falls Division, and even
17 Boy Scouts are taught that if you have a puncture
18 wound, that if you apply pressure with a towel or
19 anything, that that will decrease the bleeding to
20 the point that it gives you some chance of
21 survival. Nothing was really done to help this man
22 to get to the hospital. In fact, he was detained
23 by the Highway Patrol, kept from getting to the
24 hospital.

25 They produced all this, all this evidence

1 right here but they produced no evidence of guilt.
2 The only thing that they really have is where my
3 client is, surprise, surprise, duped by federal
4 agents. That is, he's told in an entirely separate
5 matter that if he comes clean and tells everything
6 to everybody, that he's going to get immunity for
7 everything he tells them. He has his attorney come
8 for about 15 minutes and leaves, and then the
9 agents converge on him and, like anybody else, he
10 would be scared to death and he not only tells them
11 about any activities in which he is involved, but
12 anything, and this is typically done, anything and
13 everything that he's heard on the street, whether
14 it involves him or anybody else, they want to know
15 everything that you know about everybody, that
16 includes your family, your friends, your enemies,
17 anybody.

18 And anybody who is scared is going to tell,
19 usually, to get their hat in the ring first,
20 anything that they have heard about anybody else
21 and sometimes they'll say, "Oh, sure, I was there,"
22 in order to try to get credit, to get cooperation
23 with the federal government, because there is no
24 more parole in the federal system, and we now have
25 the federal sentencing guidelines and they try to

1 put points on our clients and we try to take them
2 off, and one of the ways that you get points off
3 your clients is cooperation, is what they call it,
4 cooperation, "Tell us everything you know, tell us
5 everything you know about everybody and we'll make
6 sure that you get immunity, we'll make sure you get
7 as little time as possible, we'll make sure that
8 you get a Rule 35 departure, and we'll do this," as
9 Shondra said, "and we'll do that," and then look
10 what happened. Thrown to the wolves. A deal is
11 made and then broken after a promise is made.
12 That's the frame-up in this case by the federal
13 government, which is no surprise, that's the way
14 they operate. They testified that that's the way
15 they operate.

16 Now, still, that being the case, they still
17 have no evidence that Mr. Martin had anything to do
18 with the murder of Mr. McCoppin. They had Rosalind
19 Brown get up here and tell them, tell you all what
20 she knew, which was really very little, and said
21 that she, like Heavy D, was a big time crack
22 cocaine dealer.

23 We have here Defendant's Exhibit Number 3,
24 where Mr. Landrum, who is conspicuously absent from
25 the courtroom, wrote her, Rosalind, a letter after

1 he had been arrested, after she had been arrested,
2 after Shondra Martin had been arrested, writing
3 this self serving letter with the name Rosalind on
4 the envelope, you notice how the i is dotted right
5 there with a heart.

6 You have these drawings that were allegedly
7 made, and assuming they were made, they were made
8 when seven or eight agents are standing over
9 somebody saying, "Well, here, draw this embankment
10 right here and draw this motorcycle right here and
11 tell us what you know not only about yourself, but
12 what you know about Mr. Landrum, tell us what you
13 know about Miss Brown, tell us what you know about
14 you, tell us what you know about everything," but
15 you know, the Solicitor said that there was no
16 bayonet, no bomb, and you know what, there is no
17 gun.

18 There is testimony that Mr. Martin, however,
19 knew Mr. Landrum, there is testimony that Mr.
20 Landrum sometimes borrowed his Excursion, there is
21 evidence once again of a connection, some kind of
22 obviously romantic connection between Miss Brown
23 and Mr. Landrum. There is simply not enough
24 evidence, people, to convict this gentleman of
25 murder.

1 You have shell casings, which you're going to
2 have in any shooting, you have knives with no blood
3 on the blades, you have somebody to get up there
4 and testify, "Oh, these knives, these knives right
5 here could have been used to cut the palms of
6 somebody's hand and it could be they have no blood
7 on them whatsoever and they were still used,
8 however, to cut somebody's hand but it just so
9 happens that these fall into the exception to the
10 rule that when you cut somebody it leaves no
11 blood."

12 You have a doctor's testimony, however, that
13 the deceased had cuts on his right hand, he had
14 abrasions on his right knuckle which were
15 consistent with some kind of altercation, and that
16 you had an angle of bullets, the actual angles
17 themselves from the right side, up through the
18 left, in to the left.

19 Now, you don't shoot somebody in the ankle to
20 murder somebody. You don't shoot somebody in the
21 thigh to murder somebody. If you are involved in
22 an altercation with someone, and I submit to you
23 that that altercation was between the deceased and
24 Mr. Christopher Landrum, whose eyeglasses were
25 found right at the spot where even the State says,

1 says that Mr. McCoppin was shot, that that's who
2 was involved in this right here, that that's who is
3 involved.

4 You have Mr. McCoppin, it's obvious what
5 happened, you have Miss Rosalind Brown who is well
6 acquainted with Heavy D because she's been pushing
7 drugs for him all the way back to 1993 and 1994,
8 all the way through, what, 2000 and 2001 and 2002?

9 and, by the way, there is no evidence
10 whatsoever, none whatsoever that my client had any
11 drug connection whatsoever to Rosalind Brown, that
12 he had any drug connection whatsoever to Heavy D,
13 but you have, she's willing to get up there,
14 though, to get herself a two year sentence and
15 instead of throwing this murder on her lover or
16 whomever, she's going to throw it on Mr. Martin
17 because it's his Ford Excursion that he let Mr.
18 Landrum borrow, he said on many occasions.

19 Who can remember? Can you remember where you
20 were July 29th of 2001? I can't. If I had to come
21 up with an alibi, and he didn't offer an alibi, he
22 just said, "I can't remember where I was on July
23 whatever it was, 2001."

24 Rosalind Brown wasn't selling drugs for
25 Shondra Martin, Shondra Martin wasn't selling drugs

1 for her. There was no connection between Heavy D
2 and Mr. Martin. However, there is a connection
3 between Rosalind Brown and Mr. Landrum and a
4 connection between Rosalind Brown and Heavy D.
5 Heavy D's girlfriend or common law wife or whatever
6 was her relative, I believe she said her sister.
7 There is your connection, there is your conspiracy.

8 This gentleman was sitting with his wife and
9 children when he gets a knock at the door because
10 he's got an Excursion sitting out in the front of
11 the yard. If somebody is going to murder somebody,
12 do you think that they are going to park their car
13 out in the front yard or the driveway? I mean,
14 that's ludicrous. But the state wants you to
15 believe that.

16 And then on top of that, they have state
17 agents -- first of all they have the federal agents
18 come in and they appoint this man a federal public
19 defender and they rush a public defender in who
20 himself testified he was there, what, 15 minutes,
21 30 minutes, something like that, and he doesn't
22 know whether he was Mirandized, not Mirandized or
23 anything else, and he's like, "Attaboy, you tell
24 them everything you know and you'll be just fine,
25 you'll have absolute immunity. Sign right there,

1 sign right there and you've got immunity for
2 anything you tell them. It doesn't have to be
3 about you, it can be about Mr. Landrum, it can be
4 about Heavy D, it can be about Rosalind Brown, it
5 can be about how about a murder in Anderson, it can
6 be about how about a murder in Abbeville, how about
7 a murder in Greenville, how about this, that, and
8 the other?"

9 Everybody is scared to death and so, sure,
10 you're going to come up with some stuff, you're
11 going to say, "Well, I heard on the street that so
12 and so did such and such." And they are going to
13 say, "Were you there, how do you know?" "Well, I
14 was in the car, I was sitting in the car when it
15 happened. I heard three shots and then this
16 gentleman jumped in the car and I drove off," and
17 as a result of that they want you to convict him of
18 murder, not just conspiracy, but murder, of
19 murdering another human being.

20 And then on top of that you have a problem of
21 causation. What really caused the gentleman's
22 life, who really caused this gentleman to die?
23 Well, no offense to the victim's family over here
24 but this gentleman is being prosecuted in Abbeville
25 County for murder and they're suing the Highway

1 Patrol and the State in Common Pleas state court
2 for wrongful death and survival, in federal court
3 for violation of his civil rights, and as part of
4 those pleadings it has to be alleged and is alleged
5 that the proximate cause of this man's death was
6 the negligence of the Highway Patrol and the State
7 of South Carolina. That's in their own pleadings,
8 and when you sign those pleadings you are verifying
9 those pleadings, and that is a rule under the South
10 Carolina Rules of Civil Procedure.

11 Now, you can't have your cake and eat it,
12 too, regardless of who killed Mr. McCoppin. If
13 they accused me of killing him they can't say well,
14 the cause of death was Ben McLain shot the
15 gentleman in the ankle and the thigh, and then on
16 the way the Highway Patrol pulls Mr. McCoppin over,
17 and you heard him testify himself that they opened
18 the door and let the man roll out on the ground and
19 as he cuddled his head in his lap they wouldn't
20 offer any assistance whatsoever because they were
21 afraid they would get blood on them.

22 And instead of helping them get him in the
23 car and take him to the hospital, not the Abbeville
24 Hospital, but the Anderson Hospital, they called
25 dispatch and dispatch sent out an ambulance and

1 they have to wait for the ambulance to get there
2 and then they have to wait for the ambulance to get
3 back, and the golden hour is long gone by the time
4 they got him there.

5 The real cause of this man's death was the
6 State, was the Highway Patrol, and they get their
7 paychecks, no offense to Mr. Jones, they get their
8 paychecks from the same coffers from which the
9 Solicitor's office gets theirs, from the State of
10 South Carolina, and they would very much like to
11 throw this death on somebody and they said, "Well,
12 we've got to find somebody, so what are we going to
13 do?" Well, first of all they give Miss Brown a
14 deal of two years. First of all she's charged
15 along with Mr. Christopher Landrum and Shondra
16 Martin with the same crimes but she swings a deal
17 for two years, and her veracity is really great,
18 with the history that she has.

19 There has been no presentation whatsoever
20 that my client had any prior criminal record until
21 his federal plea and he pled guilty to it and he
22 told you all exactly what happened and exactly how
23 it came to his knowledge about this man's homicide.
24 He didn't say, "I shot the man." There is nobody
25 that took that stand, we've been up here, what, six

1 days and I have yet to hear a witness for the State
2 or for the defense get up on that stand under oath
3 and say Shondra Martin killed that man.

4 Mr. Martin himself acknowledged that he
5 acquired knowledge of it and when he acquired
6 knowledge of it he told the authorities about it
7 under the guise of giving him immunity. Mr.
8 Gambrell, Investigator Gambrell himself, I had to
9 ask the question, no offense, I had to ask the
10 question three or four times that but for Mr.
11 Martin they never would have solved this murder,
12 and his answer to that question was, "But for the
13 information that he gave you all, would you all
14 know anything about how this homicide happened?"
15 "No." "The information that he gave you all was
16 essential to finding out who really fired the gun,"
17 which they don't have, even though they have combed
18 and combed, and Mr. Martin admitted that he had a
19 .38, but the deceased was not shot with a .38. He
20 was shot with a nine millimeter. They combed the
21 whole area for a gun. No gun.

22 The deceased had cuts on his hands. We've
23 got two pocket knives, no blood. He's shot through
24 the ankle from the ground. They want you to
25 believe that he's shot through the leg running.

1 Well, that's not too feasible either when you have
2 a man about 6-4, approximately, and about 300
3 pounds, with abrasions on his fist and cuts on his
4 hands, or hand, rather, and shot through the leg,
5 through the ankle and shot through the thigh, and
6 all you have, all we have to go by is that
7 according to them at sometime or another my client
8 or his Ford Excursion is seen driving around the
9 lake where Heavy D's house is.

10 Now, first of all Rosiland Brown says, the
11 first, the first statement, well, trying to get her
12 head out of the noose, "I just showed the two of
13 those men, Mr. Martin and Mr. Landrum, where they
14 could cop some dope." And then when she gets
15 implicated in the plot, so to speak, the alleged
16 conspiracy, it becomes, "Well, yes, I took somebody
17 out there to show them where to rob Heavy D," and
18 in exchange for that she gets a two year sentence.

19 My client on the other side, just flipping a
20 45 record, he gives the authorities the essential
21 information concerning the crime and gets charged
22 with it. That's kind of like, you know, calling
23 the police and getting arrested, which happens
24 every day.

25 Now, in order for somebody to conspire to do

1 anything, and the common law definition, per se,
2 under our statute, 16-17-410, 1976 as amended, a
3 common law crime known as, quote, conspiracy,
4 unquote, is defined as a combination between two or
5 more persons for the purposes of accomplishing an
6 unlawful object or lawful object by unlawful means.

7 It's pretty obvious to me what's going on
8 here, if you put all this evidence together.
9 What's going on here is that, A, sometime or
10 another you have Mr. Christopher Landrum and
11 Rosalind conspiring to rob Heavy D, who's been
12 robbed twice before, almost executed with his kids,
13 by somebody else, a borrowed Excursion, somebody
14 rolling to get their head, somebody ratting on
15 somebody to get their head out of the noose and
16 saying, "Oh, I didn't have anything to do with it,
17 somebody else did over here," and then agents
18 converge on this somebody else and say, "Well, you
19 were there, weren't you, you did the shooting,
20 didn't you?" That's what we commonly know, is
21 known among criminal defense attorneys as Mutting
22 and Jeffing somebody.

23 And the Solicitor is right about the hand.
24 Most folks, no offense, don't know the hand of one
25 is the hand of all, so what they will do is put one

1 person in one room and right across the hall
2 another person in the other room and say, "He says
3 you shot him," and then they will go over to the
4 other person and say, "They say you're the trigger
5 man," or you're the trigger woman, and both of them
6 point their finger at each other and the whole time
7 they're laughing, they don't care who points the
8 finger at each other or which one because the hand
9 of one is the hand of all and that way they get
10 everybody.

11 And that's the way they work, just like when
12 they say, "Well, tell us everything you know about
13 anybody, tell us everybody that you know that does
14 drugs, tell us everybody you know that sold drugs,
15 tell us everything you have heard on the street and
16 we won't do anything to you. We'll work out a plea
17 arrangement with you and you've got absolute
18 immunity." And then two years later or three years
19 later or four years later they come back and charge
20 somebody with murder.

21 Now, do you think, and let's assume that he
22 did it, which he didn't, but let's assume that he
23 did, who in their right mind would get up there and
24 tell somebody about that they were involved in
25 driving a car after Mr. Landrum shot the deceased,

1 if they didn't think that they were going to have
2 immunity for it? That does not even make sense.

3 This gentleman was upright, forthright, they
4 waited until he had no attorney present, where he
5 admittedly was going through heroin withdrawal,
6 then they converge on him with seven or eight
7 agents, "Tell us everything you know, draw it right
8 here, draw it right here, sign your name, with a Y,
9 with an A, who cares, sign your name right there,
10 tell us, yes, there you go, now you're charged with
11 murder," and that's the way it works. "By the way,
12 you had an attorney present for 15 minutes. Oh, I
13 forgot to give you Miranda warnings, wait a minute.
14 Okay, now tell us, tell us again."

15 If they weren't so worried about it, why
16 would they go back down to the Atlanta prison and
17 drive all the way to Atlanta, Georgia and try to
18 get him to talk again and he said, "No, I'm not
19 going to tell you anything, I got tricked, I got
20 duped the first time in trying to help you all out
21 in your investigation, I'm not going to talk to you
22 any more," and I wouldn't either. "I'm not going
23 to tell you another thing, not one more thing," and
24 I wouldn't either.

25 And then, unlike most defendants charged with

1 a crime like this, he got saved while he was in
2 prison and decided that he would take the risk,
3 knowing that the Solicitor can ask him about his
4 past criminal record, and say, "I do want to come
5 clean, I do want to tell you the truth." And why
6 did they go down there and talk to him? Because of
7 the Defendant's Exhibit Number 10, and in this
8 letter he doesn't say "I shot" anybody, he doesn't
9 say "I killed" anybody, he doesn't even say he or
10 anybody else had any part in any homicide.

11 What he says, when you take this back to the
12 room, to the jury room to deliberate, if you really
13 read this carefully, what it says is that he has
14 done a lot of praying and soul searching and has
15 decided to come clean about Mr. Landrum, that he
16 told the agents what he had heard about Mr. Landrum
17 and in order to try to get immunity said, "Well, I
18 was in the car, I heard three shots after we left,
19 after we withdrew. I did a lot of soul searching
20 and implicated somebody in something I don't really
21 know anything about except what I heard, not what I
22 saw, not what I took part in, but what I heard."

23 Anybody in a small room under Kinko's or
24 whatever in Spartanburg, with seven or eight agents
25 standing over them, with no attorney and they're

1 saying, "Well, in order for you to get credit for
2 this it can't just be something you heard, you have
3 to have been there," anybody is going to say,
4 "Well, I was there." But the truth is it's just
5 exactly what Mr. Martin told you all on the stand
6 today, he was not there. He did tell you, "Yes, I
7 was involved in federal counterfeiting checks or
8 helping cash them, yes, I was involved in a
9 conspiracy to go out to California and buy blow,"
10 or cocaine, blow, we call it on the street, "yes, I
11 pled guilty to that, yes, I'm doing 151 months
12 without parole for that, 12 and a half years for
13 that. But I can't live with myself any more
14 because I told them a lie that wrongfully
15 implicated not only myself but for all I know, an
16 innocent man," who may or may not be innocent
17 because, after all, it was not Mr. Martin's
18 eyeglasses that were found out there, ~~it was Mr.~~
19 ~~Landrum's eyeglasses that were found out there.~~
20 ~~Mr. Landrum often borrowed his vehicle, which~~
21 obviously if this is his son's book bag, would be
22 in his car, which anybody, if they did have a gun
23 or guns or a knife they could carry in that book
24 bag and throw out of the car as they were leaving,
25 but still no gun. There are no statements here

1 saying, "I saw Mr. Martin shoot him." However,
2 miss Rosalind Brown says she didn't see any book
3 bag. She said she saw a black dufflebag, and when
4 I asked her what was in it she said, "I don't
5 know." She didn't look in it. It could have been
6 dirty clothes, for all we know.

7 Then out rushes SLED to the scene, they start
8 putting their yellow flags up, they start picking
9 up essential evidence for DNA, and the first thing
10 they grab, or one of them, is Heavy D's shirt with
11 blood all over it. But you don't ever hear another
12 thing about it. It's sent off for a lab analysis
13 to SLED, for DNA analysis, there is lab reports for
14 this, that and the other, including stuff under the
15 deceased's fingernails but it's never used.
16 Extensive laboratory results, they never try to
17 match them up to anybody. I mean, DNA is pretty
18 easy to match up these days. They even use it in
19 Family Court for paternity testing.

20 If they thought that my client were guilty
21 why didn't they try to match some DNA up there with
22 him? That's not done. You all didn't hear any
23 evidence on any of that. What you all have is, you
24 have a bunch of pictures, you have a bunch of typed
25 up statements by the police, not handwritten

1 statements by my client, typed up statements, you
2 have handwritten statements by other people who
3 don't have any credibility whatsoever in this
4 courtroom, or any other courtroom, for that matter,
5 and the State wants you to find that man right
6 there guilty of murdering Mr. McCoppin based on
7 nothing. I can pile paper to the sky and it sure
8 does look mighty convincing but if it has no
9 probative value, then what's it worth in trying to
10 prove that somebody murdered somebody else?

11 Does that not create a reasonable doubt in
12 your mind? Don't you have a reasonable doubt in
13 your mind whether or not that man was even there?
14 Don't you have a reasonable doubt in your mind
15 whether or not he murdered somebody? Don't you
16 have a reasonable doubt in your mind on what the
17 real cause of his death was? Don't you have a
18 reasonable doubt in your mind as to why the
19 co-defendant is not here but his eyeglasses are?
20 Who killed Mr. McCoppin? That is why we're here
21 today.

22 I told you all at the beginning, not just
23 who, but what? What really caused his death? And
24 regardless, what is somebody doing at a known drug
25 pusher's house at 12:30, 1:00, 1:30 in the morning

1 way off the road on a rural drive? What are they
2 doing? That just makes no sense to me. It's
3 ludicrous to think that somebody could believe
4 beyond a reasonable doubt, by beyond all reasonable
5 doubt that that gentleman over there murdered
6 somebody.

7 All you have, the only thing that you have
8 that may even implicate him in anything is the fact
9 that he has this right here that Mr. Gambrell
10 himself typed up, once again, which is not a signed
11 statement, it's interview notes, and it says that
12 everybody decided to leave. Well, even if he were
13 there, they decided to leave and withdraw, and
14 again that's a defense under the law, withdraw.
15 But there is nobody else who can put them there.

16 Mr. Martin told those agents exactly what
17 they wanted to hear. They told him what they
18 wanted to hear to help try to get his sentence
19 reduced in federal court. That's the usual game
20 plan. He told him, "I told them exactly what they
21 wanted to hear," and they told him first what it
22 was they wanted to hear and he went along with the
23 game and they said, "You just play along with us,
24 son, and you're going to be just fine, we're going
25 to take care of you," and they did, in their normal

1 fashion, "We're going to give you 12 and a half
2 years in the federal prison without parole and then
3 we're going to drag you back up to Abbeville County
4 and we're going to charge you with murder because
5 you gave us information which led to our finally
6 cracking a case which we couldn't do on our own,
7 and again there is somebody and something missing
8 here, and that is where is Christopher Landrum?

9 Mr. Landrum is charged with murder, Rosalind
10 Brown was charged with murder until she decided to
11 try to rat on everybody she could to get her head
12 out of the noose. There are no exhibits as far as
13 actual physical evidence. I mean, I could come out
14 here and take three shotgun shells, I'm a gun
15 enthusiast myself, I could go outside and fire a
16 nine millimeter handgun three times and pick up
17 those casings and put them in a bag and throw them
18 down and say, "Well, look, you know, that will look
19 good in front of the jury, let's put that right
20 there, there is the three bullet casings, there are
21 Mr. Landrum's glass frames, glasses and glass
22 frames, there are two pocket knives we found there
23 but they don't have any blood on them, even though
24 the victim's hands were cut. Here is a tape, here
25 is a picture of the deceased portraying him playing

1 baseball. Which is fine.

2 I introduced this, I was able to get my hand
3 on this through discovery where somebody saved the
4 envelope as well as the letter from Mr. Landrum to
5 Rosalind Brown, who just so happens to dot his i's
6 with a heart.

7 Here is a memorandum that was typed up by
8 Officer Gambrell, not signed by Shondra Martin.
9 Here is a letter from Mr. Martin writing, writing
10 Investigator Alford right here saying, "I want you
11 all to know that," right here, "that when you all
12 were standing over me telling me that you wanted to
13 hear this and you wanted to hear that and I told
14 you exactly what you wanted to hear, that I wasn't
15 entirely truthful and now that I've been saved I
16 want to come, I want to take the risk of taking the
17 stand and telling you all what happened and tell
18 you exactly what happened."

19 Heavy D, his credibility is just wonderful.
20 And then a bunch of photographs, a stack of
21 photographs, a real pretty schematic drawing right
22 here based on, I believe it was an etching made by
23 a SLED agent or somebody that drew something on a
24 piece of legal pad. "That looks good to a jury,
25 let's do that, let's go on down here to Kinko's and

1 make us a real pretty exhibit, that will get him
2 convicted there, that drawing."

3 And you all have to remember this, too. When
4 you sign that, read that proffer agreement, it says
5 that you have to tell everything about everything,
6 everything about everything you know about
7 everybody, whether it's true or not, whether you
8 hear it on the street, whether it's hearsay,
9 whether it's not hearsay, no matter how it comes to
10 you, whether it's true or not, everybody always
11 tries to tell everybody what they want to hear to
12 save themselves or herself. He's already in the
13 penitentiary for 12 and a half years. If he hadn't
14 written them that letter and told them what he knew
15 nobody would have ever known or had any inkling as
16 to what really happened.

17 What ~~really happened~~ was this man was granted
18 immunity, ~~he told them~~ what he had heard on the
19 street, ~~apparently it was pretty accurate because~~
20 ~~they found Mr. Landrum's glasses.~~ They have found
21 no evidence whatsoever to link my client to a
22 murder except for a Ford Excursion, which Mr.
23 Landrum borrowed at least at one point in time on a
24 regular basis, and a self serving letter written to
25 his girlfriend who is getting ready to do two years

1 herself, who was also charged with murder along
2 with Mr. Christopher Landrum.

3 Then you have, the State has to prove under
4 the felony murder rule, that in order for a
5 homicide to be, to be covered by and to constitute
6 a felony murder it has to be, take place when a
7 felony is in progress.

8 Now, the Solicitor takes the position that a
9 conspiracy ends when the ability ends. Well, if
10 that's the case, even if my client were there
11 driving the car, it ended when he got in the car.
12 There was no felony. What they are trying to do
13 is, they are trying to pole vault into felony
14 murder based on a conspiracy to commit robbery,
15 which they have now dismissed because they can't
16 prove robbery. If they can't prove robbery, how
17 are they going to prove felony murder? Doesn't
18 that create some reasonable doubt?

19 But I don't have to create any reasonable
20 doubt. My client doesn't have to create any
21 reasonable doubt. This is the United States of
22 America. The prosecution has the burden in any
23 criminal proceedings, federal or state, in proving
24 my client's guilt or alleged guilt beyond all
25 reasonable doubt, all doubt. In other words, the

1 12 of you all have to go back in there and come
2 back out and say, "We don't have any reasonable
3 doubt in our mind and in our hearts and in our
4 souls whatsoever but that this man right here
5 killed Mr. McCoppin."

6 The reasonable doubt is created by the
7 State's own exhibits. I mean, they look real
8 pretty and nice stacked all out there but that
9 doesn't prove murder beyond all reasonable doubt.
10 You can have no exhibits and prove murder on
11 somebody if you had evidence of it, if you had
12 somebody with a smoking gun in their hand, or even
13 if you found a gun that had been used and matched
14 up to ballistics.

15 These folks didn't even try to match up DNA.
16 They picked out Mr. Martin, Mr. Martin goes up
17 there and tells them, "Well, this is what I heard."
18 "Well, you got to, in order for us to use that,
19 now, in order for us to charge Miss Brown who we
20 have been after for awhile because we've known
21 about Heavy D and we got him, so we've got to have
22 something to base it on, we've got to get Miss
23 Brown and we've got to get Christopher Landrum
24 because we've been after them for awhile, so
25 somehow or another we've got to get, we have to

1 prove that you know that that happened."

2 "Well, I could say maybe that I was driving
3 the car." "That's good, you got immunity, son,
4 don't worry about it, that'll do, thank you, thank
5 you for cracking that, thank you for cracking a
6 crime that we couldn't do ourselves, thank you for
7 cracking that case. Now we're going to give you 12
8 and a half years and then three years later we're
9 going to call you back up here and try you for
10 murder. That's your reward, have a nice day."

11 And that's the way they work. That is,
12 coercion, that is trickery, that creates some doubt
13 in my mind as to the credibility of law
14 enforcement, period. That means they can go pick
15 out any one of you all, any of you all could be
16 next if they need some kind of --

17 MR. JONES: Judge, he's trying to impose on
18 this jury by trying to suggest that they -- do you
19 want to have them -- I object to this argument, he
20 knows it's highly improper and he's doing it anyway
21 and I object to it.

22 THE COURT: The objection is sustained. Do
23 not bring jurors' personalities into this case.
24 Your time is extremely limited.

25 MR. McLAIN: Thank you, Your Honor. Anyway,

1 my point is this. They can go get anybody they
2 want to scare them into saying what they want to,
3 use the information that they get, tell you that
4 you have to place yourself there in order for them
5 to use that information and before they grant you
6 your immunity, tell you that you have immunity and
7 then come back and try to convict you of a murder
8 that you had nothing to do with, absolutely
9 nothing, absolutely nothing.

10 And this man has the right not to tell you
11 all a thing. If he hadn't gotten up on that stand
12 and testified you all would have never known that
13 he was in the federal penitentiary because the
14 State did not ask him about his criminal record.
15 He had no other criminal record. Instead, he chose
16 to write a letter to this officer of the law right
17 here and tell him, "I told a lie because I told you
18 all what you all wanted to hear."

19 THE COURT: You've got five minutes and no
20 more.

21 MR. McLAIN: "What you all wanted to hear,"
22 and law enforcement themselves had to have a
23 reasonable doubt or they wouldn't have gone back
24 down to Atlanta, all the way down to Atlanta,
25 Georgia to try to get another statement from my

1 client to fix what they had botched up, and the
2 only way that they can fix what they botched up is
3 to have you all convict my client, which is the
4 worst thing in the world that could happen to the
5 victim's family on this civil case. All I want you
6 all to do is go back there, look at all, read these
7 things, I know you will, but look at all the
8 pictures, read all the stuff, look at all the
9 evidence, go back through all the testimony, and
10 remember that you have to convict him of murder, of
11 murder beyond all reasonable doubt, that he with
12 malice aforethought killed Adarryl McCoppin, that
13 he went down there and he conspired and he killed
14 him, and there is no evidence in the record that
15 even gets near enough to establish that beyond all
16 reasonable doubt.

17 Regardless of what the Solicitor may tell
18 you, when you hear His Honor instruct you and you
19 go through all the exhibits and other evidence, I
20 contend that you cannot convict him or should not
21 convict him, because they have to prove, he doesn't
22 have to prove his innocence, he's clothed with the
23 cloak of innocence, they have to prove that he is
24 guilty beyond all reasonable doubt of murder.

25 Thank you.

1 THE COURT: Madam Forelady, ladies and
2 gentlemen, we're going to take just a few minutes,
3 it means a few minutes, so that you can relax. The
4 closing will be by the State, they will take your
5 dinner order, as we talked. Do not talk about the
6 case by, between and among yourselves and take just
7 a couple minutes to relax. Retire to the jury
8 room.

9 (The Jury was excused from the courtroom
10 at 7:04 p.m.).

11 THE COURT: We'll be in recess for six
12 minutes. It's four minutes after 7:00.

13 (Recessed at 7:04 p.m.).

14 (Reconvened at 7:10 p.m.).

15 THE COURT: Are you missing somebody?

16 MR. McLAIN: Mr. Sutton went home.

17 THE COURT: Is he gone?

18 MR. McLAIN: Yes, sir, he had to go on home.

19 THE COURT: The record is open. We'll open
20 the record. State of South Carolina versus Shondra
21 Lamont Martin, indictment 2002-192.

22 Show the jury in, Mr. Busby.

23 (The jury returned to the courtroom
24 at 7:14 p.m.).

25 THE COURT: All the jurors are present, with

1 the foreman and the alternate seated in proper
2 places.

3 Solicitor, the jury is with you.

4 MR. JONES: Thank you, Your Honor.

5 Madam Forelady and ladies and gentlemen, let
6 me say one thing at the outset. I assure you Chris
7 Landrum will have his day in court in Abbeville
8 County. It's not of your concern today, Chris
9 Landrum will have his day in court, he'll have his
10 opportunity to go to trial, Chris Landrum will,
11 he's on that indictment, he's charged with murder
12 and he is either going to be found guilty of murder
13 or cut loose, one of the two.

14 Now, his day will come, he's not in here with
15 him, we're concerned with him today, Mr. Martin,
16 Shondra Martin.

17 The other thing I want to mention to you is
18 this. I'm not going to stand here and try to tell
19 you that somewhere sometime in this great land of
20 ours, and it's a good place to live, it's a good
21 place to live, somewhere sometime in this land of
22 ours people aren't mistreated by law enforcement.
23 They are, it happens, it happens, it happens in
24 this great land of ours, people are mistreated by
25 law enforcement people are done wrong by law

1 enforcement, it happens.

2 But I'm going to stand here and tell you
3 today that it did not happen in this case, it did
4 not happen in this case. He was not mistreated by
5 the police officers that testified to you in this
6 courtroom, he was not mistreated by Earl Gilliam,
7 Secret Service Agent, he was not -- the evidence
8 speaks to that, he was not mistreated by Steve
9 Gambrell, the evidence speaks to that, this SLED
10 agent. He was not mistreated by Mr. Lijoi. It
11 happens but it didn't happen in this case. He was
12 not mistreated, he was not tricked, he was not
13 duped, he was not --

14 Well, actually I honestly could not tell
15 whether his lawyer was wanting to ask you to
16 believe, he asked you to believe a lot, I just
17 couldn't tell if he went all the way as far as his
18 client went, because his client asked you to
19 believe that everything said about him by these
20 officers was a conspiracy, a conspiracy involving
21 everybody, to have him convicted of this crime,
22 right down to the point of signing his name on
23 State's Exhibit Number 11 and drawing the diagram
24 themselves, that's what, he would not even concede,
25 the defendant, while on the witness stand that he

1 signed this piece of paper, he would not concede
2 that to you. He would not give you that concession
3 and yet he was able to stand on this witness stand
4 and tell me, "I'm here to tell the truth,
5 Solicitor. I've been saved, I'm ready to clear the
6 air."

7 Ladies and gentlemen, there is nobody any
8 more cunning, nobody any more cunning, and I submit
9 to you based on the facts of this case, that what
10 you have seen in this courtroom this week, I submit
11 this to you, there's nobody any more dangerous than
12 this defendant, period.

13 Do you know something that just, I want to
14 ask you this, why do you think, when the defendant
15 is on the stand, because you heard him say a lot of
16 things, why do you think, while he's on the stand,
17 that he didn't go ahead and say, "You know what,
18 now that you mention it, I believe Landrum did have
19 my Excursion that night, I believe I did loan it to
20 him."

21 He said he loaned it to him, he suggested to
22 you that, and his lawyer even said Landrum could
23 have had it, that's how the book bag got there,
24 that's what they're suggesting to you, the lawyer
25 talked about, "Well, he didn't do it but if, but

1 Landrum could have had his car and Landrum could
2 have done it, Landrum probably did do it, not my
3 client."

4 Why do you think this man, why do you think
5 he didn't get on the stand and tell you Landrum had
6 my car that night, why, it was Landrum and Rosiland
7 Brown that did this? Why do you think he didn't do
8 that? Why do you think he didn't tell you that
9 Landrum borrowed his car and went out there and
10 committed this crime with Rosiland Brown? I
11 suggest to you the reason he didn't do that is
12 because it would have been a lie.

13 Now, he's not concerned about lying to you,
14 okay? He's concerned about telling a lie on Chris
15 Landrum. Do you understand? He didn't get on the
16 stand and tell you it was Landrum and Rosalind that
17 got his car because Landrum, the lie is Landrum
18 didn't borrow his car. You see, he can't tell that
19 kind of lie on Landrum, the code that they have
20 with one another, the relationship that they have
21 with one another, the business that they are in
22 puts him in worse shape to tell that kind of lie on
23 Landrum than the risk of being convicted of murder.
24 Do you understand what I'm saying? If he tells
25 that kind of lie on Landrum he's facing a different

1 sentence in Landrum's eyes. If he tells a lie on
2 Landrum, not that Landrum was there, but that
3 Landrum was there without him, that Landrum took
4 his car and went with Rosalind and did it without
5 him, that lie is unforgiveable in Landrum's eyes,
6 and he's not going to get on this stand and tell
7 you Landrum took his car, he'll risk being
8 convicted of murder before he will do that because
9 he would rather have a conviction of murder than he
10 would Landrum knowing he had left him out there.

11 And let me show you something interesting
12 about the statement. You talk about cunning, you
13 talk about somebody that absolutely has manipulated
14 the system, well, let me just show you something
15 here. He says, you know, he couldn't remember if
16 he told Gambrell this statement, okay? But it's
17 interesting the way he told, if you believe that he
18 told Steve Gambrell in that room that day these
19 things, listen to what he said, it's intelligent,
20 adroit and skirting the boundries. Have you ever
21 heard of somebody that gets right out on the edge,
22 they get right on the edge but they know that you
23 just can't cross that line there, you can get right
24 out there but they are smart enough and cunning
25 enough.

1 In the statement his lawyer kept saying, you
2 know, said, actually somebody commented he put it
3 all on Landrum. He didn't. He didn't put it on
4 Landrum in his statement. Let me tell you what he
5 did. He had him and Landrum out there just, you
6 know, kind of around and deciding, he had them
7 deciding, "Hey, wait a minute, we were going to see
8 what we could do but we decided not to do it." And
9 he had them leaving, going on their way, and then
10 he says, in this statement, you can read it, he
11 says that, "Landrum started fussing at somebody,
12 said, hey, get your hand off my car."

13 It wasn't Landrum's car but he said Landrum
14 said, "Hey, get your hand off my car, he said hey,"
15 and then he was going and getting in the car and he
16 said he heard some scuffling. He didn't say
17 Landrum and the big guy were scuffling, did he?
18 Not in this statement he didn't, no. He said he
19 got in the car, he didn't see what was going on.

20 Do you see? He said he didn't see what was
21 going on in this statement. This man, this
22 defendant, he said, "I got in the car, I didn't see
23 what was going on, I heard some scuffling." Okay?
24 He didn't say he saw Landrum scuffling, he didn't
25 say anything on Landrum, okay?

1 Then he said, "I heard some shots." He
2 didn't say, "I saw Landrum shoot." He didn't say,
3 "Landrum shot the guy," he didn't say that. He
4 said, "I heard some shots," implying, if he had to
5 at the appropriate point in time, that Landrum
6 didn't shoot, some other body out there at the
7 party shot. Maybe even trying to shoot Landrum and
8 missed and shot McCoppin, after he left it open.
9 He left it open for you to draw that inference, he
10 left it open for Landrum to claim that, he left it
11 open for Landrum in his trial to claim he didn't
12 shoot the man, that somebody else did, he left it
13 open that way when he gave this statement, that's
14 how adroit he is.

15 He's talking about how he was having to give
16 it up, how the agents were on top of him and
17 pushing. Man, he's over here now putting on a -- I
18 suggest to you he is, I suggest to you he is
19 continuing to prey on you in any and every
20 manipulative way he can. While I'm talking to you
21 he's doing it. That's fine, that's his business.

22 And then he said Landrum jumped in the car,
23 right? He did. And then he said, he never says in
24 here, "Landrum told me I had to shoot him, Landrum
25 shot him," he never said that. He never says, he

1 never says, he says, "Martin again confirmed that
2 Landrum was armed," but he doesn't say, "Landrum
3 told me he shot him," he doesn't say, he doesn't
4 say anything that would force him to testify
5 against Landrum with incriminating statements about
6 seeing Landrum shoot anybody.

7 And there are two reasons for that. Like I
8 told you, one, he's cunning. And two, I'm going to
9 suggest to you that the evidence in this case is
10 actually stronger, stronger, stronger than this. I
11 suggest it doesn't matter. If you find that either
12 he or Landrum shot Adarryl McCoppin, they are both
13 guilty of murder because it was murder, they had
14 malice, they committed the murder, and the hand of
15 one is the hand of the other.

16 But I'm suggesting to you even the evidence
17 in this case points more to him being the one that
18 shot than Landrum. It really does. It really
19 does, if you piece it together. And then, I mean,
20 they asked him why would he give that statement,
21 it's almost kind of confounding. First they want
22 to say, look, he was given immunity, so why would
23 he give the statement if he wasn't given immunity?
24 Are they saying, okay, he thought he had immunity,
25 therefore he was telling the truth? Is that what

1 they are saying? Consider why was he giving the
2 statement. Why do you think he would have told
3 them he was involved in a murder if he didn't think
4 he had immunity? Because he didn't tell them he
5 was involved in a murder, he didn't tell them Chris
6 Landrum shot anybody, he told them he was there
7 when something happened. That's all he told them
8 and he knew that's all he told them.

9 But he told them, he told them, you can count
10 on that. Either that or you can, you can suggest
11 and agree with this defendant that Earl Gilliam
12 made it up and that Lijoi made it up and that Steve
13 Gambrell made it up and go along with what he's
14 trying to sell you hook, line and sinker, and that
15 they drew this up and signed his name on it.

16 They say we can't put him there? That
17 motorcycle positioned where it is on the other side
18 of the car, why would he, then, why would he, why
19 would he, what opportunity and reason would he have
20 to give this information up at that meeting? I'm
21 going to suggest to you that he was at a point in
22 time where he figured, you know, "Things are
23 closing in, you know, what is going to happen,
24 where am I going, what's Landrum going to do?"

25 At some point in time you've got to figure

1 that his manipulation was going to catch up with
2 him. It has. He's manipulated a long, long time,
3 dealing drugs and counterfeiting and hurting
4 people.

5 The theory that I want to suggest to you
6 about how Adarryl died that is consistent with him
7 pulling the trigger is this. They go there,
8 they're casing out Lamencyon Sutton, Heavy D's
9 house, they are in the woods doing it, they park
10 their vehicle to get away like the witness said it
11 was parked, and they noticed somebody on a
12 motorcycle come up and pull next to the car. They
13 decide it's time to get out of here. They're
14 surrounded. These people are really coming in, and
15 the motorcycle stopped, you know, as long as cars
16 were leaving and going, but the motorcycle, it's
17 time to get out of here, so they are heading down
18 to get out of there. And when they do, Chris
19 Landrum does come around to Adarryl and, "Get away
20 from the car, get away from the car." And he does
21 go around to the driver's side, he does, not to put
22 his gun up like he said in his statement, but maybe
23 so, to put it in here in this bag, to get out of
24 there, and he hears the scuffle, he hears scuffling
25 around there, and Chris Landrum calls for help,

1 that his manipulation was going to catch up with
2 him. It has. He's manipulated a long, long time,
3 dealing drugs and counterfeiting and hurting
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16 were leaving and going, but the motorcycle, it's
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20 from the car, get away from the car." And he does
21 go around to the driver's side, he does, not to put
22 his gun up like he said in his statement, but maybe
23 so, to put it in here in this bag, to get out of
24 there, and he hears the scuffle, he hears scuffling
25 around there, and Chris Landrum calls for help,

1 "He's got me, the big guy's got me, my glasses are
2 knocked off on the ground," and he comes around,
3 this one comes around with this bag where his gun
4 is, the knives are in the bag, the gun is in the
5 bag, he runs around and shoots Adarryl McCoppin,
6 Adarryl gets shot while on the ground, while on the
7 ground with Chris Landrum, fighting him, in this
8 leg, the shot goes down and through, from this man.

9 When he gets shot he gets up and starts
10 running down, or crawling away and gets shot in
11 this leg, in this ankle, and the third shot misses
12 him. The shot that missed him could have been the
13 first shot or the second shot, but the shots that
14 hit him happened in that sequence. They get up and
15 leave, leaving glasses, leaving three nine
16 millimeter cartridges, leaving this bag and these
17 knives that were in it.

18 His cuts on his hand could have come
19 scuffling on the ground, the injuries to his hands,
20 I'm talking about Adarryl McCoppin now, could have
21 come from that way, the injuries to his hand on a
22 gravel road there, these injuries could have been
23 injuries, the doctor didn't say they were
24 positively knife cuts, he said they were consistent
25 with or could have been. I'm suggesting to you

1 that there is evidence in this case that would
2 allow you to, to beyond a reasonable doubt conclude
3 that it happened in the way that I just told you,
4 from a circumstantial evidence scenerio.

5 The letter that came from Atlanta was not to
6 fess up. It was to clear up the mistake that he
7 had made for even mentioning Chris Landrum's name.
8 He wanted this on record, "Chris, you know, I'm
9 going to tell them when I get a chance, believe me,
10 brother, I'm going to tell them you didn't have
11 nothing to do with it, I made all that up, okay?
12 Are we clear? I want everybody to know, I want
13 everybody to know Chris Landrum didn't have nothing
14 to do with it. I want to clear that up right now,
15 I had a weak moment, I had a weak moment, it will
16 never ever happen again, trust me, trust me, I
17 won't even get on this stand and say you borrowed
18 my car that night."

19 I asked him, "Did you say anything, tell me,
20 tell me, tell me did Chris Landrum tell you he had
21 shot anybody?" "Oh, no. Chris Landrum, tell me
22 tell me what, that he shot somebody? No." "Did he
23 kill somebody?" "He was just talking, you know."
24 He wanted to skirt and skirt and manipulate and
25 maneuver the issues, the truth, the honesty.

1 You know, it's, I don't want to say smoke and
2 mirrors. When they start talking about causation,
3 the cause of this man's death was the bullet wound
4 to his leg, that's what killed him, not a police
5 officer that stopped him. I'm not saying the
6 police officers used the right judgment. And I
7 assure you of one thing, you know, I'm not here,
8 grateful for the opportunity to represent the
9 people of this circuit as Solicitor and I've done
10 it in a fashion that will allow me to walk away
11 from it without owing anybody anything, no police
12 officer, nobody, I don't, I'm not going to come in
13 here and try to prosecute somebody because some
14 police officers asked me to. I have a commitment
15 to seek justice and I have a commitment to do
16 what's right, and I'm walking away from this
17 without owing anybody anything. I have gratitude
18 for the opportunity to have done the job, I mean
19 gratitude, and I'm humbled by the opportunity, and
20 greatness has come my way because of it but I ain't
21 going to participate in something that they
22 suggested I would do, no, sir, that's taking it a
23 little bit too far, even the suggestion of that.

24 MR. McLAIN: Your Honor, I'm going to have to
25 object to that. I don't think that I suggested

1 that Mr. Jones did anything.

2 THE COURT: The objection is overruled, the
3 jury will take it as they will.

4 MR. JONES: No, sir. Sly suggestions, sly
5 innuendos, round after round after round after round
6 after round after round of deceit and deception and
7 excuses, blame shifting, finger pointing, inability
8 to accept responsibility, truth.

9 You know, I'm not telling you there is an
10 overwhelming amount of evidence that comes from
11 these photographs that you, that you have to have
12 back there to reach a proper verdict in this case
13 but we thought that you might need and might desire
14 and might want to be able to see where this
15 happened and what it looked like out there. This
16 911 tape when Lamoneyon Sutton called in to tell
17 them what happened, we played that tape for you and
18 the main reason was because we felt like they would
19 try to tell you, trip up witnesses about whether it
20 was an Excursion or Explorer, and he said clearly
21 on that tape five minutes after he called in a
22 voice, he said it was an Excursion, Lamoneyon
23 Sutton said he saw it, it was an Excursion, and
24 this lawyer tried to get up here and suggest that
25 his voice didn't sound like he was upset about his

1 nephew being shot.

2 You talk about, you talk about turning on and
3 turning off, you talk about insincere presentation,
4 suggested to that man that he didn't have, that he
5 didn't feel sad. That man told him, he said, "I
6 didn't sound like it was bothering me, to you?"
7 That, you know, some people, maybe that is what
8 threw him off, maybe he should have been yelling,
9 some people are easy to come to tears, I'm one of
10 them, some people aren't. So, people don't, you
11 know, they don't, it's hard for you to detect the
12 shift in your emotion, but for him to suggest at
13 that point in the trial that the uncle, that Heavy
14 D didn't care that his nephew had been shot and was
15 bleeding to death and was being carried to the
16 hospital and he was calling an ambulance was, I
17 suggest to you, the first effort to do anything and
18 everything to break down, tear down, knock over,
19 improperly suggest, get you filing bad towards
20 them, get you where you don't like them. All this
21 kind of stuff was designed to do that.

22 But we put the tape in primarily so you would
23 know that they saw it was a white Excursion early
24 on, a white Excursion. That's circumstantial
25 evidence, by the way, that his vehicle was there,

1 that's circumstantial evidence that white Excursion
2 was there when the shooting happened and was gone
3 right after it happened.

4 Talk about people that didn't give, people
5 that didn't give, Adarryl McCoppin, he even
6 suggested, do you know what he said here, even a
7 Boy Scout knows to put a tourniquet on a pumping
8 blood wound, anybody ought to know to apply
9 pressure, he didn't get any help from that crowd
10 out there at . . . That's what he said.
11 Well, you know, sometimes when blood is coming and
12 somebody has been shot you do the best you can.
13 These men tried to get him to the hospital, they
14 didn't know how to attend the wounds. As a matter
15 of fact, you know, even applying pressure, it could
16 have been bleeding inside under the skin. It would
17 have slowed down the bleeding but it wouldn't have
18 stopped the bleeding. But to suggest that they,
19 the people there should have done something more
20 than they did to try to save Adarryl McCoppin's
21 life is a strained effort to keep your focus off
22 this man.

23 Who was the first person that left the scene
24 after the shooting, that left a man bleeding to
25 death in the woods? Whoever was in that white

1 Excursion, that's who it was, whoever was in that
2 white Excursion were the first people to leave the
3 scene, that could have given some aid to Adarryl
4 McCoppin, and if it was all just a misunderstanding
5 and an accident, why did they leave the scene, why
6 didn't they help the man, if they weren't doing
7 anything wrong? If they were just there, if they
8 were just there to check things out, if this was a
9 misunderstanding, if he had jumped on them, why
10 didn't they stay, why didn't they help him?
11 Because they didn't want to be found out, number
12 one, and number two, because they cared less about
13 Adarryl McCoppin's life, less than anybody else on
14 earth. Cowards, cowards. Take it to the bank,
15 along with this, got to say it now, anything other
16 than a guilty verdict is injustice, injustice, a
17 travesty to it. Rest assured, rest assured you
18 won't be in a room with anybody any more dangerous
19 than this man, based on the evidence in this case,
20 period, no conscience whatsoever.

21 I tell you another reason why the theory that
22 I posed to you is valid, plausible and proper, and
23 probably, you know, the theory that he did the
24 shooting while Adarryl was fighting, was fighting
25 with Chris Landrum. And it comes to you from

1 Adarryl. It comes to you from Adarryl. It comes
2 to you from Adarryl McCoppin. He told his uncles,
3 "They shot me, they shot me, they shot me." If
4 Adarryl had just come into contact with Chris
5 Landrum on the other side, on the other side of the
6 Explorer, where his motorcycle was and didn't see
7 this man get in the driver's side and stay in the
8 driver's side the whole time he was fighting with
9 Chris Landrum and shot by him, he would have said,
10 "He shot me, he shot me, he shot me." But when
11 he's fighting with both of them and when he's
12 dealing with both of them and he sees what happens
13 it's, "They shot me, they shot me." And that's
14 evidence in this case, if you find it credible
15 evidence, if you find it believable evidence, if
16 you believe that Adarryl McCoppin said, "They shot
17 me," then it's evidence that goes to a theory that
18 two people were attacking him, and not one as is
19 portrayed in his statement.

20 The judge is going to charge you on aiding
21 and abetting. Do you give any, you are an aider or
22 abetter if you are present there and you are
23 assisting in any way whatsoever, driving the
24 getaway car, providing the gun, providing the gun.
25 As adroit, as slick as he is, he had, I suggest to

1 you he didn't know that providing a gun to somebody
2 actually puts you in an aiding and abetting
3 scenerio. He's going to count on that. If I can't
4 prove they shot him it doesn't prove anything, but
5 if you do believe they were there and they did
6 shoot him, then providing Chris Landrum with a gun
7 is aiding and abetting in the commission of this
8 murder. It's an act in furtherance and support of
9 accomplishing the crime they set out to accomplish.

10 The circumstances that you can rely upon in
11 this case, if you believe Rosalind Brown, that she
12 was with them earlier and she showed them where he
13 lived and that she wasn't with them, and I'm going
14 to suggest to you this. We put her on the witness
15 stand, we gave her a chance to answer questions,
16 okay? That gave you a chance to decide whether she
17 was telling you the truth or not, all right?

18 Now, we did have an agreement with her, we
19 did reduce the charges and had her plead guilty to
20 what we believe we could prove she was guilty of
21 and what we believed she was guilty of, and the
22 sentence she got was decided by me, I accept
23 service on that, the two years in jail, she's never
24 served any time in jail before in her life, she's
25 got three children and she's going to serve a

1 sentence of two years in jail for showing them
2 where Heavy D lived and for conspiring with them to
3 possess drugs, and she's going to serve time for
4 that. If it's not enough for you, I apologize, but
5 we came to that agreement and she testified and she
6 was cross-examined for you to decide whether she's
7 telling the truth or not, and when she was asked
8 about this and that, she said, "Well, I'll tell you
9 this, I didn't go out there to rob anybody."

10 He was trying to suggest that she was with
11 Heavy D and that they were in love, and she
12 answered the questions, she said, "I don't have a
13 relationship with him, I've got a relationship with
14 somebody else." But she testified and gives you
15 evidence that she showed them where they were, that
16 they went out there and they told her what they
17 were going to do and that is when she backed out,
18 "I'm not going to be in any part of a robbery
19 situation like that," that's why she didn't go.

20 There is an overwhelming amount of
21 circumstantial evidence in this case. It is
22 consistent circumstantial evidence. It points to
23 the guilt of this man of murder, aiding and
24 abetting, conspiracy to commit armed robbery, and
25 being in possession of firearm during the

1 commission of a felony, and I believe you will
2 reach a proper verdict and a just verdict of guilty
3 on every count and I sincerely appreciate,
4 regardless, the attention, the work, the effort and
5 the consideration that you have given this trial.

6 THE COURT: Madam Forelady, ladies and
7 gentlemen of the jury, you will not discuss the
8 case by, between and among yourselves, and retire
9 to the jury room. The Clerk of Court will appear
10 momentarily and take your orders for your meal.
11 Retire to the jury room.

12 (The jury was excused from the
13 courtroom at 7:48 p.m.).

14 THE COURT: We're going to be at ease for a
15 few minutes, please.

16 (Recessed at 7:49 p.m.).

17 (Reconvened at 7:55 p.m.).

18 THE COURT: Mr. Busby, show the jury in, and
19 you and Mr. Manning will stay present and you will
20 take an oath. What they want to do is walk outside
21 and kind of take a breath of fresh air and I will
22 have to administer you all an oath in your presence
23 for you to take them out and let them walk around,
24 you will have to go with them. You can go with
25 them, too, Mr. Bowie, if you want to. Just come on

1 around here.

2 BAILIFF: We couldn't do it without him,
3 anyway.

4 (The jury returned to the courtroom
5 at 7:56 p.m.).

6 BAILIFF: I didn't know it at the time, but
7 there is one more.

8 THE COURT: We'll wait just a minute, that's
9 all right, everybody be seated and relax.

10 The clerk went in, Madam Forelady and ladies
11 and gentlemen, and took your order for dinner and
12 was advised that you would like to have a few free
13 moments out and about the square to relax
14 yourselves and to stroll about. In order to do
15 that, the bailiffs, Mr. Bowie, Mr. Manning and Mr.
16 Busby, please raise your right hands.

17 Do you and each of you swear or affirm that
18 you will keep the jurors sworn in this case and
19 appointed to try this case without being fed,
20 without drinking or without eating until they shall
21 have returned from their venture in and about the
22 area to relax their body and their minds, and you
23 are ordered that you shall suffer no person to
24 speak to them nor any of them to speak to each
25 other about the case at bar or you will not speak

1 to them yourself about anything unless it be such
2 emergency as to cause you to have to speak to them,
3 so help you God? Do you accept this oath?

4 MR. BOWIE: Yes, sir.

5 THE COURT: Do you accept this oath?

6 MR. MANNING: Yes, sir.

7 THE COURT: Mr. Busby?

8 MR. BUSBY: Yes, sir.

9 THE COURT: You all as jurors may speak in
10 and about yourselves but these bailiffs may not
11 speak to you but they are to escort you and you may
12 talk about anything, but be relaxed. It is hoped
13 that you will limit your stroll to as short a time
14 as possible, it's now one minute until 8:00, maybe
15 about 10 after 8:00 you will return and we will be
16 ready to charge you. That will take some time, it
17 will take about 45 minutes to charge you, so you
18 should be refreshed and ready to have the charge
19 given to you.

20 Yes, sir, Mr. Manning?

21 BAILIFF: To what extent, when you said walk
22 about the square, as a scattered group?

23 THE COURT: You will have to keep them as a
24 group.

25 BAILIFF: Close enough together or whatever.

1 THE COURT: Madam Forelady, you will be in
2 charge of your jurors.

3 JUROR: We just want to walk outside the door
4 and get some air.

5 THE COURT: All right, then help yourself to
6 walk out through the doorway.

7 (The jury was excused from the courtroom at
8 8:00 o'clock p.m.).

9 THE COURT: We'll rest at ease, please.

10 (Recessed at 8:01 p.m.).

11 (Reconvened at 8:12 p.m.).

12 THE COURT: All right, show the jury in, Mr.
13 Busby, please.

14 (The jury returned to the courtroom
15 at 8:13 p.m.).

16 THE COURT: Madam Forelady and ladies and
17 gentlemen of the jury, the State of South Carolina
18 charges the defendant Shondra Lamont Martin with
19 the crimes of conspiracy to commit armed robbery,
20 murder and possession of a firearm or knife during
21 the commission of a violent crime.

22 You are familiar with the allegations of the
23 indictment. The Court has already read those to
24 you when you were members of the venire, and the
25 Court will not read them to you again because they

1 are simply allegations and the indictment does not
2 constitute evidence of any kind.

3 The only evidence is the testimony of the
4 witnesses whose statements and comments and words
5 you have heard from this witness stand under oath,
6 exhibits that have been introduced during the
7 course of the trial, and stipulations. The Court
8 recalls at least one stipulation that was entered
9 into by the parties. Testimony, exhibits and
10 stipulations. Nothing else is evidence. And the
11 indictment certainly should never be considered
12 evidence. It is simply a charging paper and the
13 means by which the matter is brought to this court
14 for determination of innocence or guilt.

15 Now, to this indictment the defendant comes
16 before the Court and pleads not guilty. This
17 places upon the State of South Carolina the burden
18 of proving the defendant's guilt beyond a
19 reasonable doubt. A person charged with committing
20 a crime is never required to prove himself or
21 herself innocent of that crime but the burden
22 remains upon the government throughout the case and
23 until the end of the case, until you reach a
24 verdict, to prove the guilt of the defendant beyond
25 a reasonable doubt. It is a vital and important

1 and fundamental rule of law that a defendant in a
2 criminal trial, no matter how serious the offense
3 may be with which he is charged, must always be
4 presumed to be innocent until his guilt has been
5 proved to your satisfaction beyond a reasonable
6 doubt. This presumption of innocence remains with
7 the defendant at all times throughout the trial and
8 is only removed when and if the State has proved
9 the guilt of the defendant beyond a reasonable
10 doubt. It is your solemn duty, Madam Forelady and
11 ladies and gentlemen, if you are not clearly
12 convinced of the guilt of the defendant beyond a
13 reasonable doubt to the contrary, to find the
14 defendant to be not guilty.

15 It has been the intention of this Court to be
16 absolutely fair and impartial both to the State of
17 South Carolina and to the defendant Shondra Lamont
18 Martin throughout the trial. If you have drawn any
19 inference whatsoever from anything that the Court
20 may have done, said or any word or deed that has
21 been spoken or done by the Court during this trial
22 please disabuse yourself of it no matter how
23 inconspicuous or slight it may have been, because
24 it's been the intention of the Court to be fair and
25 impartial to both sides and you should absolutely

1 disabuse yourself of any inference you may have
2 gained from anything the Court may have done or
3 said from which you may have drawn an inference of
4 the Court's favor toward or against either party.
5 The Court has no interest in the outcome of this
6 trial.

7 So, the burden of proof is upon the State to
8 establish by evidence to your satisfaction the
9 guilt of the defendant here on trial beyond a
10 reasonable doubt. The Court will not attempt to
11 define for you what is meant by the phrase beyond a
12 reasonable doubt. This is up to you. A reasonable
13 doubt is simply a doubt that you find to be
14 reasonable. A reasonable doubt can arise from the
15 evidence presented or from a lack of the evidence
16 presented. If the State has presented evidence to
17 you that has removed all reasonable doubt from your
18 minds as to the defendant's guilt, it's your duty
19 to find him to be guilty. If, however, you are
20 left with a reasonable doubt in your mind as to the
21 defendant's guilt you should find the defendant to
22 be not guilty.

23 If you have a reasonable doubt in your mind
24 as to the defendant's guilt as to any or either of
25 the charges with which he stands accused or if you

1 have a doubt about it, reasonable doubt, you should
2 resolve it in favor of the defendant.

3 Madam Forelady and members of the jury, under
4 our constitution you and you alone are the finders
5 of facts in this case. The Court nor no other
6 person can invade that rail and invade your
7 province as fact finders. The Court has no right
8 nor any other person has no right to pass upon the
9 facts or express any opinion as to what the facts
10 may be. The Court may not suggest in any way what
11 the Court may think about the guilt or the
12 innocence of the defendant here on trial. You
13 should form no opinion as aforesaid from anything
14 the Court has done or from any ruling the Court has
15 made concerning any objection or comment by either
16 attorney.

17 You, Madam Forelady and ladies and gentlemen
18 of the jury, are also the judges and the sole
19 judges of the credibility, which means the
20 believability, of the witnesses who testified here
21 in front of you during the course of this trial.
22 In passing upon the credibility of witnesses, by
23 way of suggestion only here are some things that
24 you might consider, and you might not consider
25 these things, but to give you some idea as to what,

1 how to go about the business of whether you believe
2 or disbelieve a witness or the credibility of a
3 witness or the believability of a witness you could
4 consider the demeanor or the manner that a witness
5 had when he or she testified, you could consider
6 whether the witness was forthright or hesitant in
7 his or her testimony, you could consider whether
8 the witness had a reason to be biased or
9 prejudiced, you could consider a witness, whether a
10 witness' testimony was contradicted on the one
11 hand, or supported or corroborated on the other
12 hand by testimony of that same witness or testimony
13 of another witness. You can consider whether, you
14 could consider the opportunity that the witness had
15 to observe or to know what he or she testified
16 about.

17 Now, you don't decide the credibility or
18 believability of witnesses by counting the number
19 of witnesses that either side may have put up.
20 That's not how you go about deciding the truth in
21 any case tried in any court. It is up to you and
22 you alone to decide the credibility or the
23 believability of the witnesses as stated, based
24 upon your assessment of their believability. You
25 may believe a small portion of a witness' testimony

1 or disregard the larger portion, or vice versa.

2 You may believe some of a witness' testimony
3 and none of another witness' testimony. You may
4 believe some of a witness' testimony and disbelieve
5 the rest of it. You may believe all of a witness'
6 testimony and none of another witness' testimony.

7 So, any way, it's mixed up any way that you
8 want to so that you and you alone decide the
9 credibility of the witnesses' testimony so that you
10 may arrive at what, what use you may make of that
11 evidence to reach the truth in this case.

12 All of these things you will consider,
13 bearing in mind that you should give the defendant
14 the benefit of every reasonable doubt.

15 Where a witness' testimony has been impeached
16 or placed in question by a prior statement that he
17 may have made, you are instructed that the prior
18 statement is introduced for the purpose of
19 impeachment of the witness and only for the purpose
20 of impeachment and it is for you the jury to
21 determine what, if any, effect such prior statement
22 may have upon the credibility or the believability
23 of the witness. It may also be given some
24 consideration by you as to the guilt or as to the
25 innocence of the defendant if you so determine that

1 it has a bearing upon that issue.

2 The Court will instruct you further
3 concerning a statement, admission or confession of
4 a defendant, so don't take that alone, you'll have
5 some more information about that later.

6 Now, you have heard the testimony of a
7 witness who has been determined to be an expert in
8 the field of pathology and particularly forensic
9 pathology during the course of this trial. In
10 considering the opinion of an expert witness you
11 should consider the factual evidence first. An
12 expert, differing from others, may base his or her
13 opinion upon factual evidence but also upon
14 evidence, or upon facts and information that is
15 relied on by experts in that particular field. You
16 must consider expert testimony in the same manner
17 as you do any other testimony and give it such
18 weight as you may believe it to be entitled when
19 considering it with all the other evidence in the
20 case.

21 The testimony of an expert witness is given
22 to you for the purpose of helping you to understand
23 the evidence and not for the purpose of controlling
24 your judgment. The value of the testimony of an
25 expert witness does not depend upon the skill which

1 the expert witness may claim to have but upon the
2 actual skill, knowledge and expertise which he does
3 in fact possess, and that's up to you and you alone
4 to assess.

5 In this regard you may consider the training,
6 experience and ability to communicate ideas, the
7 logic of the witness' opinion and the factual
8 support for such opinions and all other factors
9 just as you would judge and weigh the testimony of
10 any other witness. The value and effect of expert
11 testimony is a matter solely to be estimated by you
12 the jury.

13 No mere opinion of an expert can be accepted
14 in and of itself to be truthful or reliable but
15 must be weighed by you and considered by you in
16 your better judgments and you must determine beyond
17 a reasonable doubt that the facts proved by the
18 expert witness are reliable, if you should so find,
19 before you can rely upon such opinions as a basis
20 for conviction in a criminal case.

21 You have heard the testimony of an expert
22 witness who has or claims to have knowledge, skill,
23 experience, training or education in the field of
24 forensic pathology, who has given his expert
25 opinion. In determining the weight to be given to

1 such opinions you should consider the
2 qualifications and credibility of the expert and
3 the reason for the opinions given by the expert.
4 You are not bound by the opinions and you may give
5 the opinions such weight, if any, to which you deem
6 the opinions are entitled.

7 Now, Madam Forelady and ladies and gentlemen,
8 there are two types of evidence in every case that
9 comes to court, direct evidence and circumstantial
10 evidence. Direct evidence is the testimony of a
11 person who asserts to have or actually does have
12 eyewitness testimony or actual knowledge of the
13 event in question. That's direct evidence.

14 Circumstantial evidence is proof of a chain
15 of facts or the existence of circumstances which
16 indicate the existence of a fact. The Court makes
17 no distinction between the weight or value to be
18 given either to direct or to circumstantial
19 evidence. Nor is a greater degree of certainty
20 required of circumstantial evidence than is
21 required of direct evidence.

22 When it is undertaken by the prosecution in a
23 criminal case to prove the guilty of an accused by
24 circumstantial evidence, not only must the
25 circumstances be proven beyond a reasonable doubt,

1 but they must point conclusively, that is, to a
2 moral certainty to the guilt of the accused and
3 they must be wholly and in every particular
4 perfectly consistent with each other and they must
5 further be absolutely inconsistent with any other
6 reasonable hypotheses than the guilt of the
7 accused.

8 Corroborating evidence is any evidence which
9 strengthens or adds to or adds weight to or
10 believability to or makes more certain any other
11 evidence which you may have heard and has been
12 introduced into the trial, and the jury may give
13 such corroborating or supporting evidence such
14 weight as you deem it deserves.

15 The evidence upon which you are to decide
16 this case with, on which you have already been
17 instructed, consists of the sworn testimony of
18 witnesses, both on direct and cross-examination by
19 the attorneys, regardless of who called the
20 witness, the exhibits which have been introduced
21 during the course of the trial for your
22 consideration, and any stipulations which have have
23 been entered into by the parties through their
24 attorneys.

25 In reaching your verdict you may consider

1 only the testimony and exhibits and stipulations
2 that have been introduced during the course of the
3 trial and nothing else whatsoever. Certain things
4 are not evidence and they will be, you will be
5 reminded of them now. The argument and statements
6 by the attorneys are not evidence. You may not
7 consider those things to be evidence. The
8 attorneys are not witnesses. They have not
9 testified. What they have said in their opening
10 statements, their closing arguments and their
11 questioning of witnesses and their statements of
12 objections from time to time is intended to help
13 you interpret the evidence and help the Court keep
14 a record straight but it's not evidence. If the
15 facts as you remember them differ from the way the
16 lawyers have stated them, your memory of the facts
17 controls.

18 Also not evidence is questions and objections
19 by attorneys. Attorneys have a duty to their
20 clients to object when they believe a question may
21 be improper or a matter of procedure may not be
22 correct under our rules. You should not be
23 influenced by an objection or by the Court's ruling
24 on it. You should not hold against a party, either
25 the State nor this defendant, an objection by an

1 attorney or the Court's ruling upon the objection,
2 it's not evidence at all, has nothing to do with
3 the evidence in the case.

4 Also not evidence is testimony that has been
5 excluded or stricken. If you have been instructed
6 to disregard any testimony it's not evidence and it
7 must not be considered. Anything that you may have
8 seen or heard outside of court and while court was
9 not in session is not evidence. You are on your
10 oath, as you know, to decide this case solely and
11 only upon the evidence that's been presented in
12 front of you in this courtroom during the course of
13 this trial.

14 The same constitution that makes you and you
15 alone to be the sole and only judges of the facts
16 makes the Court to be the sole and only instructor
17 of the law. Madam Forelady and ladies and
18 gentlemen of the jury you are required to accept
19 the law as the Court charges it to you and apply
20 the law to the evidence as you find it to be as you
21 reach your verdict. You must put aside any
22 conceptions that you may have had before you came
23 here as to what the law was, and accept the law as
24 you are being instructed that it is. For your duty
25 as jurors today, you should not be concerned with

1 what you think the law might be, ought to be, could
2 be or should be, but only what the law is as it is
3 being instructed to you now.

4 This defendant is charged with conspiracy in
5 violation of Section 16-17-14 of the laws of this
6 state. The common law crime known as conspiracy is
7 defined as a combination between two or more
8 persons for the purpose of accomplishing an
9 unlawful object or lawful object by unlawful means.
10 A person who commits the crime of conspiracy is
11 guilty of a felony.

12 Ladies and gentlemen, the defendant here is
13 charged with conspiracy to commit armed robbery.
14 If you were charged with armed robbery the State
15 must prove beyond a reasonable doubt that he took
16 personal property from a person or from the
17 presence of another person while armed in some way.
18 Property is in the presence of a person if it's
19 within the person's reach, inspection, observation
20 or control so that he could, if not overcome with
21 violence or prevented by fear, keep possession of
22 it.

23 The State would be required to prove beyond a
24 reasonable doubt that the defendant carried the
25 property away intending to permanently deprive the

1 owner of the property and keep the property for the
2 defendant's own use. The slightest removal of the
3 property or complete possession of the property as
4 the case may have been or were even for an instant
5 by the defendant in such case of armed robbery is
6 sufficient to show a taking and carrying away of
7 the property. The taking and carrying away of
8 property must have been done with violence or by
9 putting the owner of the property in fear of
10 violence. The State must prove beyond a reasonable
11 doubt in a case of armed robbery, which is not
12 before you, that the defendant was armed with a
13 deadly weapon. A deadly weapon is any article,
14 instrument or substance which is likely to cause
15 death or serious bodily harm. Whether an
16 instrument has been used as a deadly weapon depends
17 upon the facts in each case. Examples of a deadly
18 weapon are pistols, shotguns, rifle, dirk, dagger,
19 knife, slingshot, metal knuckles, razors, gasoline,
20 firebomb, Molotov cocktail or such things of that
21 name.

22 Now, the defendant here on trial is not
23 charged with and he is not defending himself
24 against a charge of armed robbery but he is
25 defending himself against a charge of conspiracy to

1 commit armed robbery.

2 Madam Forelady and ladies and gentlemen, this
3 is a fine distinction but an important one. The
4 defendant is charged in Count One with conspiracy.
5 The State must prove beyond a reasonable doubt that
6 the defendant combined with one or more persons for
7 the purpose of committing an unlawful act or of
8 committing an unlawful, or committing a lawful act
9 by unlawful means.

10 A person who commits the crime of conspiracy
11 is guilty of a felony. In order for there to be a
12 conspiracy there must be a mutual understanding,
13 agreement or common intention and plan. Mere
14 passive knowledge of or consent to the criminal
15 conduct of another person is not enough to make a
16 person a conspirator. There must be guilty
17 knowledge, a guilty knowing and participation in
18 the actions to carry out the agreement. The mere
19 fact that a person may have associated with another
20 person or met with another person and discussed
21 common aims and interests does not necessarily
22 establish proof of a conspiracy or that the
23 defendant was involved in a conspiracy.

24 On the other hand, it's not necessary that
25 the agreement be in any formal fashion, that it be

1 in writing, that two persons hold a meeting and
2 expressly state the terms of the common plan, or
3 that the agreement be stated in words between them.
4 The agreement of a criminal conspiracy may come
5 into being through an implied mutual understanding.
6 The willful, intentional adoption by two or more
7 persons of a common plan to commit a crime or by
8 lawful means to commit a crime is sufficient. No
9 overt acts need to be shown to establish a
10 conspiracy to commit a crime.

11 A conspiracy may be shown by the
12 circumstantial evidence and the conduct of the
13 parties. In order to convict this defendant of
14 conspiracy the State must prove beyond a reasonable
15 doubt not only that he knew of the unlawful conduct
16 but the defendant agreed to combine with another or
17 other persons for the purpose of accomplishing the
18 unlawful act.

19 The essence of a conspiracy is the agreement
20 itself. It may be proven by specific overt acts
21 done in furtherance of the conspiracy, but the
22 crime is the agreement. Overt acts committed in
23 furtherance of a conspiracy are not elements of the
24 crime.

25 You will recall that the charge is conspiracy

1 to commit armed robbery. You will remember the
2 elements of armed robbery. You are charged that
3 overt acts committed in furtherance of the
4 conspiracy to commit armed robbery are not elements
5 of the crime of conspiracy because the conspiracy
6 and the essence of it is the agreement, the
7 agreement is the crime. Nothing overt or actually
8 done needs to be shown to establish a conspiracy.

9 Mere presence at the scene of a crime is
10 insufficient to convict a defendant as a principal
11 on the theory of aiding and abetting. You will be
12 charged further on that.

13 The gravamen or the essence of a conspiracy
14 is the agreement to combine and go about together
15 one or more persons, excuse me, two or more persons
16 to commit a crime. Proof of an expressed agreement
17 is not necessary to establish the existence of a
18 conspiracy, and direct evidence is not essential,
19 but the conspiracy may be sufficiently shown by
20 circumstantial evidence and the conduct of the
21 parties. A conspiracy may be proved by direct or
22 circumstantial evidence or by circumstantial
23 evidence alone.

24 The conspiracy commences with the entering
25 into the agreement and ends with the last act of

1 the carrying out of the act agreed upon or the
2 crime agreed upon in the agreement.

3 The defendant here on trial is charged with
4 the crime of murder. As you are well aware, that
5 charge is existing, so it becomes necessary to
6 instruct you on the law of that crime as it is in
7 South Carolina. Under the principle recognized in
8 South Carolina, the Court must define murder by
9 definition. Murder may be defined as the willful
10 and felonious killing of a human being by another
11 human being with malice aforethought. That malice
12 being either expressed malice or implied malice.

13 Now, what is malice, Madam Forelady and
14 ladies and gentlemen, what do we mean when we speak
15 of malice? Malice is defined in the law of
16 homicide, and it's a term of art, it's a technical
17 term and it means and imports these things.
18 Wickedness and excluding just cause or legal
19 excuse, it's something which springs from
20 wickedness, from depravity, from a depraved spirit,
21 from a heart devoid of social duty and fatally bent
22 upon mischief.

23 The words expressed or inferred malice do not
24 mean different kinds of malice, but merely the
25 manner in which the only kind of malice known to

1 the law may be shown to exist, and that's to say
2 either by direct or by, by direct evidence or by
3 inference, which also is known as circumstantial
4 evidence.

5 Malice may be expressed as where previous
6 threats of vengeance or lying in wait or other
7 circumstances show directly that an intent to kill
8 was entertained. The jury also may conclude by
9 deductive reasoning that under certain
10 circumstances malice may arise even though there is
11 no expressed or direct evidence of an intent to
12 kill. Malice may be inferred where no express
13 intent to kill another human being by another human
14 being is proved by direct evidence, it may be
15 inferred from the facts and circumstances which are
16 proved, whether by direct or circumstantial
17 evidence. Malice may be inferred from the willful,
18 deliberate and intentional doing of an unlawful act
19 without just cause or legal excuse. In other
20 words, in its general signification malice means
21 the doing of an unlawful act intentionally without
22 justification or legal excuse, but even if the
23 facts proved are sufficient to raise an inference
24 of malice this inference would simply be an
25 evidentiary fact to be taken into consideration by

1 you the jury along with all the other evidence in
2 the case and you may give such facts such weight as
3 you determine they should receive as to whether or
4 not malice has been proved beyond a reasonable
5 doubt.

6 When there is an absence of a specific fixed
7 and deliberate intent to take a life of a
8 particular person by another person the law says
9 that if it is proved beyond a reasonable doubt that
10 one intentionally killed another with a deadly
11 weapon or with a dangerous instrumentality such as
12 a knife, dirk, dagger, slingshot, razor, metal
13 knuckles, gasoline, firebomb, Molotov cocktail,
14 lighter fluid or the same such things, an
15 implication of malice may arise. The use of a
16 deadly weapon permits you, ladies and gentlemen, to
17 infer malice but it does not require you to infer
18 malice.

19 If facts are proved to your satisfaction
20 beyond a reasonable doubt sufficient to raise an
21 inference of malice to your satisfaction, this
22 would be a fact to be considered by you as an
23 evidentiary fact to be taken into consideration by
24 you the jury together with all the other evidence
25 in the case and you may give it such weight as you

1 find it should receive. You as jurors are free to
2 accept or reject this permissive inference,
3 depending upon your view of the facts. In other
4 words, if such conduct results directly in the
5 death of another human being and if such conduct
6 was so culpable and inexcusable, so aggravated and
7 so grossly negligent to show an active and
8 intentional disregard for human life and a
9 malignant spirit, a heart devoid of social duty and
10 fatally bent on mischief, an implication of malice
11 may arise. Furthermore, it is not just the
12 carelessness nor recklessness or passive
13 indifference to the safety of others, malice is the
14 wrongful intent to injure another and indicates a
15 wicked or depraved spirit intent on doing wrong.
16 This conduct, when it shows a deliberate and
17 intentional design to so use or employ or handle a
18 deadly weapon or a dangerous instrumentality so as
19 to endanger the life of another human being without
20 any just cause or excuse may be sufficient to raise
21 an implication of malice. However, it's for you
22 the jury to decide beyond a reasonable doubt
23 whether all of the facts and circumstances in this
24 case that the defendant's alleged use of a
25 dangerous instrumentality such as a pistol or gun

1 demonstrated such an intentional disregard for
2 human life that malice may be implied or inferred
3 in the use of such dangerous weapon such as a
4 pistol or a knife, and it is for you the jury to
5 decide what weight, if any, should be given to such
6 fact.

7 It will be observed, Madam Forelady and
8 ladies and gentlemen of the jury that there must be
9 malice aforethought, and while the law does not
10 require that malice shall exist for any particular
11 length of time before the commission of an act it
12 must be a forethought. There must be a combination
13 of a previous evil intent and an act producing the
14 fatal result.

15 Malice is a word suggesting wickedness,
16 hatred and a determination to do what one knows to
17 be wrong without just cause or excuse or legal
18 provocation. Malice need not be in the mind of the
19 one doing the killing at any particular length of
20 time before the act of killing in order to render
21 the killing to be murder. If it is present in the
22 mind of the one doing the killing any length of
23 time before the act, then its presence would be
24 sufficient to render the killing to be murder.

25 Malice is said to be expressed where there is

1 manifested a violent deliberate intention
2 unlawfully to take away the life of another and
3 implied where one intentionally and deliberately
4 does an unlawful act which he then knows to be
5 wrong and in violation of his duties to another and
6 where no excuse or legal provocation appears and
7 when the circumstances attending a killing show an
8 abandoned heart, a malignant heart fatally bent
9 upon mischief.

10 Malice as an essential ingredient of murder
11 does not necessarily import ill will toward the
12 individual killed but signifies, rather, a general
13 malignant recklessness of the lives and safety of
14 others or a combination or a conviction of the mind
15 which shows a conscious disregard for social duty
16 and fatally bent upon mischief.

17 If the evidence should show under what
18 circumstances such dangerous instrumentality such
19 as a pistol or gun were fired which took the life
20 of another, then you the jury would have to
21 determine whether under such circumstances such act
22 was malicious.

23 If during the commission of a felony a person
24 intentionally kills another the inference of malice
25 may arise. If facts are proved beyond a reasonable

1 doubt sufficient to raise an inference of malice to
2 your satisfaction, such as the use of a gun or
3 pistol, this inference would simply be an
4 evidentiary fact to be taken into consideration by
5 you along with all the other evidence in the case
6 and you may give it such weight as you decide it
7 may deserve.

8 Now, Madam Forelady and ladies and gentlemen
9 of the jury, if two or more persons agree to
10 conspire to commit a felony such as grand larceny,
11 robbery, burglary or armed robbery, each of those
12 persons is criminally responsible for the acts of
13 his associates and confederates which are done in
14 furtherance or in prosecution of the common purpose
15 for which they have combined. The common purpose,
16 ladies and gentlemen, may not have included or may
17 not have involved or not have contemplated the
18 killing and the murder of anyone, but if in
19 executing the common design and purpose and if it
20 were unlawful, for instance, such as breaking in
21 and stealing, burglary or armed robbery, or in the,
22 or the conspiracy to commit armed robbery, and in
23 the execution of such common purpose a murder is
24 committed by one of the confederates or one of the
25 associates and you the jury determine from proof

1 beyond a reasonable doubt that the homicide was a
2 probable or natural consequence of the acts which
3 were done in pursuance of a common design or plan,
4 then, ladies and gentlemen, all who are present
5 either actually or constructively and participating
6 in the unlawful common design are as guilty as the
7 slayer himself.

8 The State must also prove beyond a reasonable
9 doubt that the defendant's act was the proximate
10 cause of the death of the deceased. Proximate
11 cause is the direct cause. It is that cause
12 without which the death of the victim would not
13 have resulted. There must be a chain of causation
14 from the time of the injury inflicted by the
15 defendant, if any you should find, until the time
16 of the victim's death. Proximate cause does not
17 necessarily mean that the acts causing the deceased
18 to die occurred immediately prior to the deceased's
19 death.

20 There may be more than one proximate cause.
21 The acts of two or more persons may combine
22 together to be a proximate cause of the death of a
23 person. The defendant's act, if any you should
24 find, may be regarded as a proximate cause if it is
25 a contributing cause to the death of the victim.

1 The fact that other causes may have also
2 contributed to the death of the victim does not
3 relieve a defendant from responsibility, if any you
4 should find.

5 The defendant's act need not be the sole
6 cause of death but may be and must be the proximate
7 cause contributing to the death of the victim. It
8 is not a defense to show that the victim might have
9 recovered had she, had he been treated according to
10 the most approved surgical or medical standards.
11 In other words, negligence on the part of someone
12 else would not relieve a defendant from liability
13 if the injury were the proximate cause, that is,
14 the direct cause and efficient cause of the
15 victim's death.

16 The defendant is charged in this indictment
17 with possession of a firearm or knife during the
18 commission of a violent crime as set out in 16-1-60
19 of the Code of Laws of the State of South Carolina.
20 Possession of a firearm or knife during the
21 commission of a crime of violence means during the
22 commission of a violent crime or attempting to
23 commit a violent crime a person has in their
24 possession a firearm or visibly displays what
25 appears to be a firearm or visibly displays a

1 knife.

2 If you find the defendant not guilty of
3 murder, then you do not even have to consider the
4 charge of possession of a firearm or knife during
5 the commission of a violent crime, then you would
6 write not guilty on that part of the verdict form.

7 If you find the defendant guilty of murder or
8 of conspiracy to commit armed robbery, you must go
9 to the charge involved here, and that is possession
10 of a firearm or knife during the commission of a
11 violent crime. If you find beyond a reasonable
12 doubt that either of those two crimes were
13 committed while in the possession of a firearm or
14 knife which was displayed, then you will write a
15 verdict of guilty to that charge. If you are not
16 convinced beyond a reasonable doubt as to the guilt
17 of the defendant of this charge, then you will
18 write a verdict of not guilty.

19 Madam Forelady and ladies and gentlemen you
20 are instructed and it is now emphasized to you that
21 while the Court generally determines the
22 admissibility of evidence, you as regards any
23 alleged statement made by this defendant, as
24 members of a jury make the ultimate determination
25 of whether or not the defendant made such

1 statement, and if he made the statement, whether
2 the statement was made of his own free will and
3 accord and voluntarily by him. And finally, just
4 what weight, if any, you should give to the alleged
5 statement.

6 You are instructed that you must determine if
7 the alleged statement was the product of an
8 essentially free and unconstrained choice by its
9 maker, the defendant herein. The statement would
10 include any drawings, markings or papers that may
11 have been made or caused to be made by the
12 defendant herein.

13 If you determine that such statement, whether
14 written and signed or whether a drawing which may
15 have been made, if you should determine that it
16 was, and the burden is upon the State to prove this
17 fact, as all other facts, beyond a reasonable
18 doubt, then you may give the statement and anything
19 else that may have been done or made by the
20 defendant such weight as you deem it is proper to
21 give it.

22 If you determine the alleged statement and
23 any accompanying drawings or markings were not the
24 free and voluntarily willed expression of the
25 defendant, then you should not consider the

1 statement or any accompanying drawings or things
2 whatsoever.

3 In determining whether a defendant's will was
4 overcome in obtaining a statement, you should
5 consider both the characteristics of the accused
6 and the details of the interrogation, which is
7 referred to in the law as the totality of the
8 circumstances. Some of the factors that you may
9 consider are the age of the accused, his education
10 or his lack thereof, his mental ability, his
11 capacity to think, his IQ or intelligence level,
12 his background and environment, the advice or lack
13 thereof to the accused, the defendant herein, of
14 his constitutional rights, including but not
15 limited to the procedural safeguards known as the
16 Miranda warnings concerning the right to remain
17 silent, that a statement could be used against him
18 in a court of law, his right to have a lawyer
19 present, and if indigent and could not afford a
20 lawyer, then a lawyer would be appointed to
21 represent him without any cost. Other factors to
22 be considered by you are the place and length of
23 the detention and the nature of questioning.

24 You the jury must carefully scrutinize all of
25 the surrounding circumstances before you give any

1 weight to an alleged statement or accompanying
2 drawing or paper. You must be satisfied beyond a
3 reasonable doubt that the statement was made by the
4 accused uninfluenced by any promise of reward,
5 threat of injury or reduction of his rights.

6 As you already know, the defendant is charged
7 with three offenses. They are conspiracy, murder
8 and possession of a firearm or knife during the
9 commission of a violent crime. Madam Forelady, we
10 have prepared for you and your fellow jurors a jury
11 verdict form which will assist you in reaching this
12 verdict. You are to consider each charge
13 separately and consider the evidence separately in
14 each offense. Therefore, the evidence, if the
15 evidence warrants it you may convict the defendant
16 on all counts, on one but not the others, and on
17 two and not the other, and so on. Or you may find
18 the defendant not guilty on all counts.

19 If you have a reasonable doubt as to whether
20 the defendant is guilty, you should determine the
21 defendant is not guilty because it's your solemn
22 duty to resolve that doubt in the defendant's
23 favor.

24 Mere presence at the scene of a crime is not
25 enough to find a defendant guilty. A defendant

1 cannot be found guilty on any charge solely because
2 he was merely present at the scene of a crime. To
3 be found guilty, a person must personally commit
4 the crime or be present at the scene and
5 intentionally take a role in the commission of the
6 crime.

7 Now, ladies and gentlemen of the jury, prior
8 knowledge that a crime is going to be committed
9 without anything else shown to you is not
10 sufficient to make a person guilty of any crime.
11 However, if two or more persons in furtherance of a
12 common design or scheme commit an unlawful act and
13 set out together and each takes part agreed upon or
14 assigned to him and one of them commits the act
15 while the others may watch at proper distances or
16 provides implements or weapons to commit the
17 unlawful act, or stationed to prevent interference
18 or surprise in the commission of the unlawful act
19 or encourage the commission of the unlawful act, or
20 to favor and aid if necessary the escape of those
21 immediately engaged in the commission of the
22 unlawful act, under these circumstances if the
23 unlawful act is committed, the act of one is the
24 act of all and all are guilty.

25 Criminal intent is a necessary element of

1 each and every crime that must be proved by the
2 State beyond a reasonable doubt. Criminal intent
3 is always a matter that must be determined by the
4 jury from the circumstances surrounding the
5 situation. There is no way to prove intent to a
6 mathematical certainty, as there is no way that
7 medical science can dissect a person's brain and
8 determine what he then had in his mind. So, the
9 law says that criminal intent may be inferred from
10 the circumstances shown to have been in existence
11 at the time alleged in this matter. This is how a
12 jury makes a determination whether or not the
13 element requiring criminal intent was present.
14 Criminal intent is the state of mind which operates
15 jointly with an act in the commission of a crime.
16 Criminal intent is a mental state, a conscious
17 wrongdoing, so it's for you the jury to determine
18 what the defendant intended to do based upon the
19 circumstances shown to have existed at the time.

20 You are instructed that the State must prove
21 criminal intent beyond a reasonable doubt just as
22 the State must prove every element of each and
23 every crime beyond a reasonable doubt. It's not
24 necessary to establish intent by direct and
25 positive evidence, but intent may be established by

1 inference or circumstantial evidence in the same
2 way as any other fact by taking into consideration
3 the acts of the parties and all the facts and
4 circumstances of the case. While the State may
5 prove motive, it's unnecessary that the State prove
6 motive. However, the State must prove intent.

7 You are to disregard any testimony from
8 witnesses who may have inferred that the defendant
9 has been charged or convicted of a crime other than
10 that which he is now accused, as that would be
11 improper, as there is no inquiry as to such other
12 crimes and his commission thereof. Such other
13 crimes, if any were committed, were in no way
14 connected with the crimes with which the defendant
15 stands accused and is on trial here today.

16 You have been selected as fair and impartial
17 jurors and sworn to impartially try and determine
18 the facts of this case. When you comply with your
19 oath to do so, then no one will have any right to
20 criticize your verdict and you will have fully
21 discharged your duty as jurors.

22 You know and you have been told that you may
23 discuss the case after your verdict but you may not
24 discuss the case until the evidence is given to
25 you, together with the verdict form. You may

1 discuss the case after the verdict is rendered if
2 you wish but if anyone bothers and pesters you and
3 you did not wish to discuss the case you have the
4 right to not discuss the case after the verdict is
5 rendered. To say it again, you have the right not
6 to discuss the case after the verdict is rendered.
7 If anyone bothers or pesters you, you should call
8 the authorities, the authorities will be in touch
9 with this judge and that will be attended to
10 immediately. If you wish to discuss the case you
11 can talk about it with anybody as long as you want
12 to after the verdict has been rendered.

13 If you have made any notes during the course
14 of the trial that would make you better jurors and
15 have made you more attentive to the testimony and
16 evidence as it has been developed. But you must
17 disregard and destroy completely any notes and do
18 not share them or the fact that you made notes, if
19 you did, with your fellow jurors. Your doing so
20 certainly has made you more attentive and assisted
21 you in preserving your memory, but the actual notes
22 may render your recollection be stronger in clarity
23 than your fellow jurors, and all are entitled to
24 equal recollection of the evidence. You must
25 utterly and completely destroy such notes as soon

1 as you enter the jury room and not share with your
2 fellow jurors that you have made such notes.

3 Madam Forelady and ladies and gentlemen,
4 there is a verdict form here. The top part of the
5 form is not really essential, it's the title of the
6 case, the number of the case and it says verdict
7 form. I realize you can't read it from there but
8 we'll go over it briefly. It has three parts that
9 are essential and you can just disregard, as
10 aforesaid, the top part of this paper and start
11 with the first charge.

12 As to conspiracy, we the jury find the
13 defendant Shondra Lamont Martin, and it has two
14 choices, guilty or not guilty. There is a bracket,
15 you may be able to vaguely see that there is a
16 bracket beside each choice. You are to make no
17 inference as to the order in which the choices
18 appear. They could just as easily be reversed and
19 say not guilty or guilty. So, don't make anything
20 of the way, one simply has to appear first, so the
21 Court is not attempting to imply anything by the
22 word guilty and the choice guilty appearing first.
23 It could be reversed. One has to appear first.

24 So, the conspiracy issue should be considered
25 by you first, Madam Forelady and ladies and

1 gentlemen.

2 Then after you make a determination on that
3 the next question is, as to murder we the jury find
4 the defendant Shondra Lamont Martin guilty or not
5 guilty. And you would make a determination on
6 that.

7 If in both cases you find the defendant not
8 guilty you needn't consider the third, which is we
9 the jury find the defendant Shondra Lamont Martin,
10 as to possession of a firearm or knife during the
11 commission of a violent crime, guilty or not
12 guilty. You would only consider the third charge
13 if you found the defendant guilty in one or both of
14 the first two charges because that would not be
15 necessary in the case of the last charge. If he
16 were acquitted by you after your deliberations on
17 the first, or both of the first two charges, the
18 last charge you would not consider.

19 Your verdict must be nuanimous, that means
20 all and every one of you and each of you must agree
21 on the verdict.

22 Madam Forelady, when the jury agrees upon a
23 verdict you will fill in the form as you go about
24 your business of reaching the verdict, fill in the
25 form when all verdicts have been reached. You may

1 reach a verdict on one or two or three or none, as
2 the case may be, and sign your name over where it
3 says foreperson.

4 Now, the Court must consult with the
5 attorneys to determine if there is a need for
6 additional instructions. Hopefully the Court has
7 covered all of the necessary instructions with you.
8 You must not discuss the case while you are excused
9 briefly, and Mr. Alternate, you will go on in with
10 your fellow jurors for this brief moment. We'll
11 ask you out momentarily, but we have to consult
12 with each other and if we need to bring you out we
13 will bring you back out and accomplish that. If we
14 don't, the bailiff will come in with the verdict
15 form and all the evidence and that is the signal,
16 Madam Forelady and ladies and gentlemen, for you to
17 commence your deliberations and commence your
18 thoughts, statement of your thoughts and discussion
19 of this case. Do not discuss the case until you
20 receive the signal. Retire to the jury room,
21 please. When you have reached a verdict please
22 knock on the door, we will gather about and we will
23 receive it.

24 (The jury was excused from the courtroom
25 at 9:08 p.m.).

1 THE COURT: Mr. Kauffman, you are excused,
2 sir.

3 MR. KAUFFMAN: Thank you very much.

4 THE COURT: Exceptions to the charge or
5 requests for additional charge, by the State?

6 MR. JONES: Your Honor, it was an excellent
7 charge. I have no exceptions.

8 THE COURT: Thank you. Exceptions to the
9 charge or requests for additional charge by the
10 defense?

11 MR. McLAIN: Your Honor, an excellent charge
12 but for the record I would like, I think I have
13 three other charges that I had requested and asked
14 that they be made exhibits and part of the record.

15 THE COURT: Have they been marked?

16 MR. McLAIN: Court's Exhibits 8, 9 and 10,
17 Your Honor.

18 THE COURT: Exception is noted.

19 MR. McLAIN: Thank you, Your Honor.

20 THE COURT: And thank you for it.

21 MR. McLAIN: Thank you, sir.

22 THE COURT: All right, ask Mr. Michael
23 Overholt out, please, and tell them we'll get the
24 food to them as quick as we can.

25 Mr. Overholt, you may remain standing where

1 you are, sir. The Court on behalf of the parties
2 involved and the court staff and the Court extends
3 to you its deep gratefulness for your service as an
4 alternate juror. You saw that we had an emergency
5 circumstance arise and the first alternate was
6 asked to serve. It could have been that some
7 emergency circumstance such as sickness, illness,
8 accident, death could have happened during the
9 course of this trial which has been lengthy and we
10 would have needed your services. The Court
11 gratefully extends its thanks to you, deeply and
12 sincerely thanks you on behalf of everybody in this
13 state and the United States for your service as an
14 alternate juror.

15 I think we have some food for him, don't we,
16 Madam Clerk?

17 THE CLERK: Yes.

18 THE COURT: You're excused, you can just
19 relax and get your food and either eat it here or
20 take it home with you.

21 JUROR: I'll take it home, my wife is sick,
22 Your Honor.

23 THE COURT: Thank you, Mr. Overholt.
24 Anything for the record?

25 MR. JONES: Nothing from the State.

1 MR. McLAIN: Nothing from the defense.

2 THE COURT: Will you please marshal the
3 evidence together and with your court reporter to a
4 degree that all of the evidence is going into the
5 jury room.

6 MR. JONES: Yes, Your Honor.

7 MR. McLAIN: Yes, sir.

8 THE COURT: And here is the verdict form,
9 Madam Clerk.

10 We are at ease, please, ladies and gentlemen.

11 (Recessed at 9:11 p.m.).

12 (Reconvened at 11:15 p.m.).

13 THE COURT: State versus Shondra Lamont
14 Martin, indictment 2002-192.

15 The jurors have a question, "Does the
16 possession of firearm mean that Shondra Lamont
17 Martin, parenthesis, himself, end parenthesis, have
18 the firearm," period, paragraph, "Or does the same
19 rule apply as to --" strike that, "Or does the
20 same rule apply as to the murder as far as if he
21 was on the scene with someone that had a firearm?"

22 Now, we are trying to get a case, State
23 versus Jennings, that seems to answer this question
24 so far as constructive possession and possession,
25 knowledge of possession by another during the

1 commission of a crime, violent crime. I don't have
2 it in my hand right now but I'll try to have it
3 momentarily.

4 MR. McLAIN: Judge, I'm sorry, would you mind
5 repeating that question?

6 THE COURT: You can come up and read it.

7 MR. McLAIN: Yes, sir. I didn't quite
8 understand what the question was.

9 THE COURT: Solicitor, if you want to come up
10 and look at it, too, and if anyone has any idea,
11 certainly --

12 We'll rest at ease, please, close the record.

13 (Recessed at 11:23 p.m.).

14 (Reconvened at 11:29 p.m.).

15 THE COURT: Open the record momentarily.

16 This is State versus Martin, indictment 2002-192.

17 A line has been added under which foreman has been

18 written for foreperson to sign it, "Ladies and

19 gentlemen, we will answer your inquiry in a few

20 minutes. Madam Forelady, please sign this message

21 above and hand it back to the bailiff. Thank you."

22 And I signed it, Mr. Busby, if you will take it in

23 there and just wait for her to read it to everybody

24 and hand it back to you, and then if you will hand

25 it to the court reporter and it will be marked as

1 an exhibit.

2 BAILIFF: All right.

3 THE COURT: Thank you. Stand at ease.

4 (Court Exhibit Number 12 was marked).

5 (Recessed at 11:31 p.m.).

6 (Reconvened at 11:35 p.m.).

7 THE COURT: State versus Shondra Lamont

8 Martin, indictment 2002-192. Ask the jury in, Mr.

9 Busby, please.

10 (The jury returned to the courtroom

11 at 11:36 p.m.).

12 THE COURT: Madam Forelady and ladies and

13 gentlemen, you have asked, made an inquiry, does

14 the possession of a firearm mean that Shondra

15 Lamont Martin himself had the firearm, or does the

16 same rule apply as the murder as far as if he was

17 on the scene with someone that had a firearm, and

18 the Court made a request of Madam Forelady to sign

19 that, which she did do and it has been marked as a

20 Court's exhibit.

21 You are charged that a person can be

22 convicted of possession of a firearm based upon

23 proof of either actual or constructive possession.

24 Proof of constructive possession, along with the

25 knowledge of the presence of the firearm, is

1 sufficient to support a conviction for the
2 possession of a firearm during the commission of a
3 violent crime. To prove constructive possession
4 the State must show that the defendant had dominion
5 and control or the right to exercise dominion and
6 control over the firearm. Constructive possession
7 may be established through either direct or
8 circumstantial evidence and possession may be
9 shared. Possession requires more than mere
10 presence.

11 Thank you. Return to the jury room and
12 continue deliberations.

13 (The jury was excused from the courtroom
14 at 11:39 p.m.).

15 THE COURT: Any comments or remarks from the
16 State?

17 MR. JONES: None, Your Honor.

18 THE COURT: From the defense?

19 MR. McLAIN: Yes, sir.

20 THE COURT: Yes, sir.

21 MR. McLAIN: On that case that we were
22 talking about, State versus Jennings.

23 THE COURT: Yes, sir.

24 MR. McLAIN: That case involved a ringleader
25 or head of a gang directing the use of a weapon,

1 and it's my understanding of the cite on that case,
2 335 South Carolina 82, 515 Southeastern 2d 107,
3 Court of Appeals, 1999.

4 THE COURT: Yes, sir.

5 MR. McLAIN: That what that requires, I
6 think, and I stand to be corrected, was that in
7 order to have in that case constructive possession,
8 the person not having the firearm had to direct the
9 control over it, for instance, "Point that gun at
10 that person," or, "Shoot that person," and I would
11 like for the Court to instruct the jury to that
12 extent.

13 THE COURT: The position that you take is
14 appreciated but the Court will refrain from
15 additional instructions, as a reading of Jennings
16 is clearly linking possession of a firearm during
17 the violent crime with the, quote, long recognized
18 rule that possession of contraband drugs could be
19 shown by either actual or constructive possession,
20 and that is quoting State v. Hudson at 284
21 Southeastern 2d at 773, and State v. Peay, P-e-a-y,
22 at 468 Southeastern 2d at 669. And further stating
23 that the Court held in Halyard, which is the more
24 leading case, in 1980, State versus Halyard, 264
25 Southeastern 2d at 841, that the principles

1 relating to constructive possession are also
2 applicable in regard to possession of firearms or
3 other objects.

4 So, the distinction that you make is
5 appreciated but the Court declines to further
6 instruct the jury.

7 MR. McLAIN: Thank you, Your Honor.

8 THE COURT: Thank you. We stand in recess.

9 (Recessed at 11:421 p.m.).

10 (Reconvened at 11:46 p.m.).

11 THE COURT: Ladies and gentlemen, we will
12 come to order. This is the State versus Shondra
13 Lamont Martin, indictment 2002-192. We understand
14 the jurors have reached a verdict. Show the jury
15 in, please.

16 (The jury returned to the courtroom
17 at 11:48 p.m.).

18 THE COURT: Madam Clerk, will you inquire?

19 THE CLERK: Madam Forelady, has the jury
20 reached a verdict?

21 JUROR: Yes, ma'am.

22 THE CLERK: Okay.

23 THE COURT: The verdict form is in order. It
24 may be published, Madam Clerk.

25 THE CLERK: All right. State of South

1 Carolina, County of Abbeville, in the Court of
2 General Sessions, 2002-GS-01-192, the State versus
3 Shondray Lamont Martin.

4 As to ~~conspiracy~~, we find the, we the jury
5 find the defendant Shondra Lamont Martin guilty.

6 As to ~~murder~~, we the jury find the defendant
7 Shondra Lamont Martin guilty.

8 As to ~~possession of a firearm or knife during~~
9 the commission of a violent crime, we the jury find
10 the defendant Shondra Lamont Martin guilty.

11 Dated this 20th day of March, 2004,
12 Abbeville, South Carolina, signed Donna Horne,
13 foreperson. Mrs. Forelady, ladies and gentlemen of
14 the jury, if this be your verdict, so say you all,
15 please indicate by raising your right hand and
16 saying it is.

17 JURORS: It is.

18 THE CLERK: Thank you.

19 THE COURT: The record will indicate that
20 each and every juror did make a show of their right
21 hand upon that inquiry by the clerk. Is there any
22 motions? Are there any motions?

23 MR. JONES: None from the State, Your Honor.

24 THE COURT: From the defense?

25 MR. McLAIN: There might be some outside the

1 hearing of the jury. I would like, if we're
2 talking about post-trial motions --

3 THE COURT: Yes, sir, I mean regarding the
4 jury.

5 MR. McLAIN: No, sir.

6 THE COURT: Thank you. Madam Forelady and
7 ladies and gentlemen of the jury, the Court on
8 behalf of the parties and the court staff extends
9 to you deep and sincere gratitude for your service
10 on this case. Your service has been, and sometimes
11 probably not understood by you but a lot of things
12 happen that are unexpected and take time because
13 all cases are important and all cases deserve time
14 and sometimes we're not able to anticipate with any
15 degree of accuracy the time involved. The Court
16 extends its appreciation again to you for your
17 service as a juror on this case on behalf of the
18 people of the United States of America.

19 You are excused.

20 (The jury was excused from the courtroom
21 at 11:51 p.m.).

22 THE COURT: Post-trial motions, counsel?

23 MR. McLAIN: Your Honor, if Mr. Jones has no
24 objection, I would like to reserve my right to file
25 some written, if need be, post-trial motions rather

1 than just making them on the spot.

2 THE COURT: The Court prefers that you go
3 ahead if you feel, if you feel comfortable. They
4 are rather standard in their making and sometimes
5 the Court is able to rule upon them, but you know
6 what they are.

7 MR. McLAIN: Yes, sir. Well, let me just say
8 that I would renew my post-trial motions upon the
9 same grounds as my motion to dismiss and my motion
10 for directed verdict.

11 THE COURT: ~~The Court would deny that motion.~~

12 MR. McLAIN: Thank you, Your Honor.

13 THE COURT: Anything further? We'll give
14 the clerk time to do some work, and rest at ease.
15 Madam Clerk, you will just work as quickly as you
16 can.

17 MR. JONES: Judge, these are sentencing
18 sheets that we have prepared now. I don't know
19 whether you require the attorney for the defendant
20 to sign and the defendant to sign there or not when
21 you have a verdict. I haven't worked with you on
22 that.

23 THE COURT: Mr. McLain, you do not have to
24 sign but you can, if you wish, sign as attorney for
25 the defendant.

1 MR. McLAIN: Yes, sir.

2 THE COURT: Madam Clerk, hand these to Mr.
3 McLain, he can just sign them right there.

4 The defendant will approach, please. Are
5 there any remarks or comments?

6 MR. McLAIN: Yes, Your Honor, I just want to
7 make sure I did in fact preserve all post-trial
8 motions, and those were the same grounds upon which
9 I had, had based my motions to dismiss and for
10 directed verdict.

11 THE COURT: Counsel for the State and for the
12 defense will approach the bench, please.

13 (Unrecorded bench conference).

14 MR. McLAIN: Your Honor, if I may?

15 THE COURT: Yes, sir.

16 MR. McLAIN: In addition to the motions that
17 I have already made and preserved and reserved as
18 post-trial motions, I would also make a motion for
19 a judgment NOV and a motion for a new trial based
20 upon the ground that the evidence does not support
21 the verdicts, and therefore there is not enough
22 evidence to prove any guilt on behalf of this
23 defendant beyond a reasonable doubt.

24 THE COURT: Thank you. The motion is
25 respectfully denied.

1 The lead indictment will be Count Two of
2 indictment 2001-192, wherein Shondra Lamont Martin
3 has been convicted of the crime of murder.

4 MR. JONES: If it please the Court, Your
5 Honor.

6 THE COURT: Yes, sir, Solicitor.

7 MR. JONES: I don't mean to interrupt you but
8 I believe a family member would like to address the
9 Court, if given the opportunity, for the victim's
10 family.

11 THE COURT: Anyone who wishes to speak may,
12 either from the victim's family or from Mr.
13 Martin's family. Anyone who wishes to speak will
14 please state your name before you speak and then
15 you will be heard.

16 KATHLEEN MCCOPPIN: Kathleen T. McCoppin.

17 THE COURT: Yes, ma'am, Mrs. McCoppin.

18 KATHLEEN MCCOPPIN: Your Honor, I would just
19 like to say on behalf of my son, we raised a son to
20 be a God fearing son and a productive citizen of
21 Abbeville County and the United States. He was a
22 respectable young man, he had never committed a
23 crime and he did not deserve for his life to be
24 taken in the way that it was. He took away from
25 us, took away from me my baby. Even though he was

1 29 years old, he was my baby.

2 J. W. McCOPPIN: 28.

3 KATHLEEN McCOPPIN: He volunteered, he would
4 help anybody in need. He worked for what he got,
5 he was an honest, honest citizen and everybody he,
6 he treated everybody alike. Not only will we miss
7 him but the whole community will, and I feel like
8 justice has been done.

9 THE COURT: Thank you, Mrs. McCoppin.

10 J. W. McCOPPIN: My name is J. W. McCoppin,
11 I'm Adarryl's father. When I lost him I lost me.
12 Look at me. I'm on a walking cane, I lost half of
13 me. Adarryl didn't smoke, didn't drink, he didn't
14 do nothing. He didn't fool with drugs, he didn't
15 do none of the stuff. I was looking for that child
16 home, I knowed he was coming home every Saturday
17 night, every Saturday night by 12:00 o'clock. That
18 child was coming home to me every day, he was
19 coming home to me 5:30. Every day I'm looking for
20 that child. You don't know what you took from me,
21 you don't know what hurt. Son, you're not saved.
22 I can tell you what saved is, I know what God did
23 for me, because God brought me from two years of
24 living hell from what I lost. That was my baby, my
25 baby I lifted up out of a bed before my wife seen

1 him and I raised him from there up and he would
2 never say a cussword in front of me or his mama,
3 and anybody, any law officers in this building knew
4 him knew he would never mistreat no one. He would
5 never harm nobody. Son, I hope God do get your
6 soul because you ain't did no good here on this
7 earth.

8 THE COURT: Thank you, Mr. McCoppin.

9 J. W. McCOPPIN: And this is his sister right
10 here, his baby sister, who loved him dearly, and if
11 she can say something, let her say something.

12 THE COURT: Thank you.

13 APRIL McCOPPIN: My name is April Denise
14 McCoppin.

15 THE COURT: Yes, ma'am.

16 APRIL McCOPPIN: For two years we have lived
17 in hell. Not only did you and your partners take a
18 life but you have taken life out of my family so
19 much. He wasn't only my brother -- don't hold your
20 head down, look at me, I'm talking to you. You had
21 so much to say earlier and we had to listen to you,
22 so you listen to me.

23 My babies, he was more than just an uncle to
24 them, he was like a brother to them. They looked
25 for him to come home every night. My brother

1 didn't do nothing to deserve to die the way he did,
2 and you got boys, you got kids of your own, would
3 you want them to do that to them, would you want
4 somebody to do that to them? My brother never even
5 had a chance to make babies. And you say you're
6 saved? You ain't saved, you are far from being
7 saved. Ain't no right in you, you're a menace to
8 any society. I hope to God they never let you walk
9 this earth as a free man. Not man, whatever you
10 want to be called, definitely not a man.

11 Don't hold your head down, look at me. I
12 know I'm not supposed to hate but I ain't saved and
13 I ain't proclaiming to say I'm saved. I hate you
14 for what you took from me and my family, you and
15 your partners. A lie is a lie, no matter who tell
16 it, and you have done nothing all week but lie.

17 THE COURT: Thank you, Miss McCoppin.
18 Anything further, Solicitor? Anything further from
19 the State?

20 MR. JONES: No, Your Honor.

21 THE COURT: Thank you. Mr. McLain, anyone,
22 any other words will be heard.

23 MR. McLAIN: I have no words, Your Honor,
24 unless the defendant wishes to speak.

25 THE COURT: If he wishes to speak he will be

1 heard.

2 THE DEFENDANT: My name is Shondra Martin. I
3 know I done a whole lot of things in my life that
4 wasn't right, and it wasn't good that I came, I got
5 these officers did what they done, however they
6 did, all the negative stuff they did, ~~unlawful~~
7 ~~stuff they done to me to bring me in here, you~~
8 know, I got to forgive them because they don't know
9 what they doing, this system built up like that and
10 that's they job.

11 I guess God gave all of us a choice, we can
12 do whatever we want to do. This family, I'm sorry
13 that they lost their son. I just don't know, we
14 lost about three people in our family, I know what
15 they going through. It just don't make no sense to
16 me, it just don't make no sense, it just don't make
17 no sense.

18 THE COURT: Thank you, Mr. Martin. Anything
19 further, counsel?

20 MR. McLAIN: No, sir.

21 THE COURT: In 2001-192, Count Three, in
22 which Shondra Lamont Martin has been convicted by a
23 jury of the crime of murder, he is confined to the
24 State Department of Corrections ~~for his lifetime.~~
25 That is consecutive to the sentence he is presently

1 serving in the federal penitentiary.

2 In Count One of the same indictment wherein
3 Shondra Lamont Martin has been convicted of
4 conspiracy to commit armed robbery, he is committed
5 to the State Department of Corrections for a term
6 of ~~30 years consecutive to Count Three of this~~
7 indictment.

8 In Court Four of the same indictment wherein
9 Shondra Lamont Martin has been convicted of
10 possession of a firearm during commission of a
11 violent crime, he is confined to the State
12 Department of Corrections for a term of ~~five years~~
13 consecutive to Count One of this indictment.

14 Is there anything other or additional from
15 any quarter, please?

16 MR. JONES: Your Honor, may I approach the
17 bench?

18 THE COURT: Yes, sir.

19 (Unrecorded bench conference).

20 THE COURT: There is a question that has been
21 raised as to the sentence on the conspiracy charge
22 and we have to do a little research on that to be
23 sure that we're pronouncing the correct sentence on
24 it. We will be at ease, please, just a moment.

25 (Recessed at 12:10 p.m.).

1 (Reconvened at 12:17 p.m.).

2 THE COURT: The Court has investigated the
3 correctness of the sentence in Count One of
4 indictment 2002-192, wherein Mr. Martin was
5 convicted of conspiracy to commit the crime of
6 armed robbery. The sentence as pronounced stands.
7 He is committed to the State Department of
8 Corrections for a term of 30 years consecutive to
9 Count Three of this indictment.

10 And on Count Four, it is believed that this
11 was pronounced but were it not to have been
12 pronounced, on Count Four wherein Mr. Martin was
13 convicted of possession of a firearm during
14 commission of a violent crime, he's confined to the
15 State Department of Corrections for a term of five
16 years consecutive to Count One of this indictment.

17 Is there anything additional or other remarks
18 or comments from any quarter?

19 MR. JONES: No, Your Honor.

20 MR. McLAIN: No, sir, Your Honor.

21 THE COURT: These proceedings are closed.

22 (The Hearing was concluded at 12:18 p.m.).
23
24
25

1
2
3
4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Abbeville County,
11 South Carolina, on the 20th day of March, 2004.

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

14 June 8, 2004
15
16

17
18 
19 Court Reporter
20
21
22
23
24
25

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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

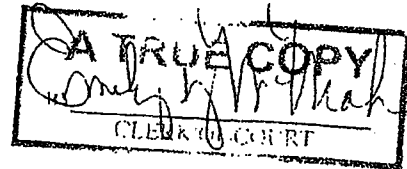
The State,

Respondent,

v.

Shondray Lamont Martin,

Appellant.



Appeal from Abbeville County
Wyatt T. Saunders, Jr., Circuit Court Judge

Unpublished Opinion No. 2007-UP-241
Submitted May 1, 2007 – Filed May 17, 2007

APPEAL DISMISSED

Assistant Appellate Defender Robert M. Dudek,
Office of Appellate Defense, of Columbia, for
Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,

Assistant Deputy Attorney General Donald J. Zelenka, all of Columbia; and Jerry W. Peace, of Greenwood, for Respondent.

PER CURIAM: Shondray Martin appeals his convictions and sentences for of murder, conspiracy to commit armed robbery, and possession of a firearm during the commission of a violent crime. He maintains the trial court erred by allowing the solicitor to argue in closing arguments that Martin was accusing him of being involved in a conspiracy. Martin also asserts numerous pro se arguments. After a thorough review of the record, counsel's brief, and Martin's pro se brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ Martin's appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

ANDERSON, HUFF and BEATTY, JJ., concur.

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

TORNEY GENERAL'S OFFICE
RECEIVED 6-29-07

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ADMINISTRATIVE INSTRUCTIONS
FILE 271 OPEN END

HAVE COPIES MADE

ROUTE TO

ORDER: TRANSCRIPT
PEN RECORDS CLERK RECORDS

OTHER:

State of South Carolina,

Respondent,

v.

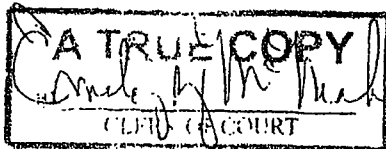
Shondray Lamont Martin,

Appellant.

Appeal from Abbeville County
Wyatt T. Saunders, Circuit Court Judge

ORDER DENYING PETITION FOR
REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, this court is unable to discover any material fact or principle of law that has been overlooked or disregarded, and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the petition for rehearing be denied.



Columbia, South Carolina
June 28, 2007

C. M. King
Clerk of Court

Thomas E. Huff
J.

D. B. Bally
J.

12738
87

FORM 5

STATE OF SOUTH CAROLINA

County of ABBEVILLE

Shondray Lamont Martin #98244-071
Full name and prison number (if any) of Applicant

v.

State of South Carolina

09-CP-01-238

IN THE COURT OF COMMON PLEAS



EMILY Y MCMAHAN
CLERK OF COURT

FILED
STATE OF SOUTH CAROLINA
COURT OF ABBEVILLE
2009 SEP 29 PM 3:49

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 The Department of Corrections/ but Plaintiff is currently held in the Federal Bureau of Prisons.
2. Name and location of Court which imposed sentence In The General Sessions Court of Abbeville, County.
3. Name(s) of co-defendant(s) (if any) Christopher Frank Landrum/Rosalind Brown
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2002-GS-01-00192 - indictment
 - (b) 2003-GS-01-00080 -re-indictment

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) The 20th day of March 2004 life for murder, 30 years consecutive for conspiracy
- (b) to commit armed robbery, and five years consecutive for possession of a weapon.
- (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. The State of South Carolina in the Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. The 28th day of June 2007
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2007-UP-241
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See attachment sheet. #1
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attachment sheet. #2
- (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? See attachment sheet. (affidavit)
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. PCR.
- ii. direct appeal.
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Abbeville County Clerk of Court P.O. Box 99 Abbeville, SC 29620.
- ii. The South Carolina Court of Appeals P.O. Box 11629 Columbia, SC 29211.
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Petitioner did not receive disposition (see affidavit).
- ii. Direct appeal was denied.
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Petitioner did not receive disposition to PCR(see affidavit).
- ii. Direct appeal was denied December 15, 2005.
- 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?

Yes, in my PCR (see affidavit) Also on direct appeal.

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

(a) which grounds have been presented:

- i. See attachment sheets, #3
- ii. _____
- iii. _____

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

- i. PCR.
- ii. direct appeal.
- 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) The issues weren't presented due to ineffective assistances of Trial Counsel for failure to present the issues during Trial.
- (b) The reason weren't presented due to failure of Appellate Counsel to file in-effective assistance of Trial Counsel on direct appeal because Trial Counsel Failed to perserve the issues at Trial.
- (c) _____

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. Mr. W. Benjamin McClain Jr., Attorney at Law, 501 Pettigru Street, Greenville, SC 29601. (Trial Counselor)
 - ii. Mr. Robert M. Dudek, Assistant Appellate Def, SC Appellate Defense, 1205 Pendleton Street, Columbia, SC 29201. (Appellate Counselor)
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. During Trial.
 - ii. On direct appeal.
 - iii. _____

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

Conviction and sentence to be overturned/vacated.

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

Yes, Federal United States District Court, County of Anderson South Carolina.

STATE OF SOUTH CAROLINA)

County of ABBEVILLE)

VERIFICATION

I, Shondray L. Martin, 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.

X Shondray L. Martin

SWORN to and subscribed before me this _____ day of _____, _____.

Notary Public

(L.S.)

My Commission Expires: _____

I certify under penalty of perjury under the laws of the United States of America in the nature of [28 U.S.C. § 1746 (1)], that I have read the foregoing request for information and know the contents thereof, and that the information listed above is true, correct and complete.

Executed this 8th day of August, 2009.

FCC Coleman, Florida Sumter County

Subscribed and sworn before me this

24 day of September, 2009

[Signature]
Case Manager

Shondray L. Martin
Signature

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

I, Shondray L. Martin, 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.

Shondray L. Martin
Applicant

✓ SWORN or affirmed to and subscribed before me this _____ day of _____, _____.

Notary Public

My Commission Expires: _____

FCC Coleman, Florida Sumter County

Subscribed and sworn before me this 24 day of September, 2009.
[Signature]
Case Manager

Authorized by the Act of June 1, 1955, as amended, to administer oaths (F.S. 400.01 & 400.04)

I certify under penalty of perjury under the laws of the United States of America in the nature of [28 U.S.C. § 1746 (1)], that I have read the foregoing request for information and know the contents thereof, and that the information listed is true, correct and complete.

Executed this 6th day of August, 2009.

Shondray L. Martin
Signature

Affidavit of Truth

State of South Carolina)
) Scilicet
County of Abbeville)

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABERDEEN
2009 SEP 23 PM 3 49
EMILY MCMAHON
CLERK OF COURT
675

"Indeed, no more than (affidavits) is necessary to ~~make~~
the prima facie case" United States v. Kis, 658 F.2nd, 525,
536 (7th Cir.1981); Cert. denied, 50 U.S. C.W. 2169; S.Ct.
March 22, 1982.

That I, Shondray Lamont Martin, a living breathing man, being first duly sworn, depose and say and declare by my signature that the following facts are true, correct and complete to the best of my knowledge and belief.

That, on June 23, 2008, I mailed my Post Conviction Relief brief/motion to the Clerk of the Nancy S. King, the District Court of Abbeville and the Prosecutor Mr. William T. Jones.

That I, Shondray Lamont Martin did not receive any response acknowledging that my Post Conviction Relief Brief/Motion was filed or docketed.

That, on May 30, 2009 I wrote a letter to the Clerk of the Court requesting to know the status of my Post Conviction Relief Brief /Motion that I mailed to the Clerk of the Court and received the the response that the Clerk was unable to find a Post Conviction Relief Case filed on my behalf.

That, this Affidavit if not rebutted point for point by any man, representing the State of South Carolina at any level, in any matter, at any time within 7 days upon receipt, these facts stand as true in both the private and public record... as true.

Note: Maxim of law; 1. In Commerce- Truth is sovereign. 2. For a matter to be resolved, it must be expressed. Point of law- Silence equates to agreement.

I certify under penalty of perjury under the laws of The United States of America in the nature of [28 U.S.C. § 1746(1)], that I have read the foregoing request for information and know the contents thereof, and that the information listed above is true, correct and complete.

Executed this 13th day of July, 2009

Shondray L. Mante
Signature

Attachment Sheet #1

- (10) (1) Trial Counsel ineffective due to his failure to challenge for cause prospective juror (Ms. Ray #153).
- (2) Trial Counsel ineffective due to his failure to peremptorily challenge prospective juror (Ms. Ray #153).
- (3) Abuse of discretion by Judge/Court when Judge/Court failed to remove prospective juror (Ms. Ray #153) for cause and failed to develop the full extent of Juror Ray's extraneous knowledge of Martin and the case.
- (4) Defendant was denied a fair Trial because his jury trial was not free from outside influences or extraneous information.
- (5) There was insufficient or no evidence presented to find Defendant guilty of conspiracy to commit robbery beyond a reasonable doubt.
- (6) There was insufficient or no evidence presented to find the Defendant guilty of attempted robbery.
- (7) There was insufficient or no evidence to find the Defendant guilty of actual or constructive possession of felony possession of a weapon.
- (8) There was insufficient or no evidence presented to find the Defendant guilty of murder.
- (9) Judge denied defendant right to trial by jury when he entered a verdict of guilty of attempted robbery.
- (10) Prosecutor did not prove the elements of the crime for possession of a firearm or knife during the commission of a crime.
- (11) Prosecutor did not prove each and every element of the crime of attempted armed robbery.
- (12) Prosecutor did not prove each and every elements of the crime of murder.
- (13) Prosecutor did not prove each and every elements of the crime of conspiracy to commit armed robbery.
- (14) Prosecutorial Misconduct-Selective Prosecution.
- (15) Abuse of discretion by the Judge when he sentenced defendant to life sentence, (the maximum sentence allowed).
- (16) Prosecutor did not prove actual or constructive possession of a firearm .
- (17) Prosecution did not prove that defendant had dominion and control or the right to exercise dominion and control over the firearm.
- (18) Prosecution did not prove through either direct or circumstantial evidence that defendant had dominion and control or the right to exercise dominion and control over the firearm.
- (19) Prosecution did not prove criminal intent.
- (20) Prosecution did not prove defendant had a general malignant recklessness of the lives and safety of others or a combination or a conviction of the defendant's mind which shows a disregard for social duty and fatally bent upon mischief.
- (21) Prosecution did not prove any facts beyond a reasonable doubt to raise an inference of malice.
- (22) Prosecution did not prove the defendant during the commission of a felony intentionally killed anyone.
- (23) Prosecution did not prove malice aforethought was entertained by defendant or said co-defendant before the victim was killed.
- (24) Prosecution did not prove malice aforethought through direct or circumstantial evidence.
- (25) Prosecution did not prove beyond a reasonable doubt that the defendant's alleged use of a dangerous instrumentality such as a pistol or gun demonstrated such an intentional disregard

1 MRS. GOLDBERG: Yes, Your Honor; that -- essentially,
2 um, I -- my client may testify, I'm not sure, that there were
3 things sent at incorrect times and they sent -- we stipulate
4 and agree that that is an accurate copy of how The Clerk of
5 Court's file exists today.

6 THE COURT: Okay; very good. All right, I'll be glad to
7 hear from you.

8 MRS. GOLDBERG: Thank you, Your Honor. In defense of
9 this motion, I would like to ask, uh, my client, Shondray
10 Martin, to the stand.

11 THE COURT: Okay, sir; would you raise your right hand
12 and stand, please sir?

13 (WHEREUPON, SHONDRAY LAMONT MARTIN WAS DULY SWORN AND
14 TESTIFIED AS FOLLOWS:)

15 THE COURT: Okay. As far as the motion's concerned, I'm
16 gonna let him just testify from the table.

17 MRS. GOLDBERG: Okay.

18 THE COURT: All right; I'll be glad to hear what he's
19 got to say.

20 MRS. GOLDBERG: All right. Uh -- would you rather him
21 sit or stand or does it matter?

22 THE COURT: He can sit; excuse me, I'm sorry.

23 MRS. GOLDBERG: That's all right.

24 SHONDRAY LAMONT MARTIN, DIRECT EXAMINATION BY MRS. GOLDBERG:

25 Q Mr. Martin, where are you incarcerated right now?

1 A Uh -- McCormick.

2 COURT REPORTER: He's gonna have to speak up, Your
3 Honor.

4 Q And you are currently serving a life sentence?

5 A Yes, ma'am.

6 Q Mr. Martin, do you know when your appeal ended?

7 A (Inaudible.)

8 THE COURT: Uh -- Mr. Martin, I'm gonna ask you -- you
9 speak so, uh, so low, I'm gonna ask you to come around so
10 that way we'll have a microphone. I'm sorry.

11 ~~MRS. GOLDBERG: Thank you, Your Honor.~~

12 (WITNESS FORWARD)

13 THE COURT: And, Mr. Martin, I'm gonna ask you to speak
14 into the microphone, okay sir?

15 MR. MARTIN: Yes, sir.

16 THE COURT: You're still under oath.

17 Q Mr. Martin, your information -- I believe you are
18 stating that your appeal was dismissed or ended about June
19 28th of 2007?

20 A Yes, ma'am.

21 Q Okay; do you understand that your case was, uh -- the
22 remittitur in your appeal was August 3rd of 2007?

23 A Yes, ma'am.

24 Q Okay; were you aware at that time of your rights to
25 post-conviction relief?

1 A I think shortly after that I was aware of it. Uh -- I
2 had like, I think, roughly a year to file it.

3 Q So at that time you were -- you did understand you had a
4 year to file their P-C-R application?

5 A Yes, ma'am.

6 Q All right; and did you attempt to do so?

7 A Yes, ma'am.

8 Q All right.

9 MRS. GOLDBERG: Your Honor, at this time I'd like to
10 show the, uh, Applicant, uh, Exhibit one for identification
11 purposes which will be a copy of a document that is in the
12 file.

13 (WHEREUPON, APPLICANT EXHIBIT 1 WAS MARKED FOR
14 IDENTIFICATION.)

15 (WHEREUPON, PROCEEDINGS RESUMED.)

16 MRS. GOLDBERG: Thank you.

17 Q Mr. Martin, I've handed you a document. Um -- will you
18 turn to the second page of that document and tell me what it
19 is?

20 A Um -- this is the application for post-conviction
21 relief.

22 Q And did you draft that application yourself?

23 A Yes, ma'am.

24 Q Uh -- is there a date anywhere on that application of --
25 of when you completed it?

1 A Um -- I -- I believe it was -- it's the 23rd; (after
2 pause) June 23rd of 2008.

3 Q Okay; and did you write that date on that -- that
4 document?

5 A Yes, ma'am.

6 Q Did you sign that document as well?

7 A Yes, ma'am.

8 Q Is that application notarized in any way?

9 A No, ma'am.

10 Q Okay; why did you not have that application notarized?

11 A ~~Well, uh, I didn't have no knowledge of that's the way~~

12 I had to do it. I just did what I thought was right. I

13 mean---

14 Q Okay.

15 A ---and, um, filed this, uh, application as a motion --

16 as a motion. You know, I didn't know that I have to, you

17 know, have a---

18 Q Now---

19 A ---do a application.

20 Q ---yes, sir. I understand the date on that document

21 is -- I believe you said June 23rd 2008. Do you have any

22 recollection as to when you actually mailed that document?

23 A I believe I mailed it on that date.

24 Q The same day?

25 A I believe I did.

1 Q And do you know how you mailed it? Such as, was it
2 certified mail, was there anything like that?

3 A If I can recall, I think it was certified, but I don't
4 know. Between this -- this one and the application, I really
5 can't remember.

6 Q You're not sure?

7 A I'm not sure.

8 Q Do you remember if you ever received a green card back
9 or anything?

10 A I know I have seen it, but -- receive the green card
11 back, but I can't re- -- I can't really just -- just say what
12 for. But I -- I -- there's only two things that I brought
13 that possibly could have received a green card back; either
14 this or the application.

15 Q Or the application you sent later?

16 A Yes, ma'am.

17 Q And you're just not sure which one?

18 A Yes, ma'am.

19 Q Okay. Um -- but, your testimony is that you believe
20 that you mailed that application on June 23rd of 2008?

21 A Yes, I did.

22 Q Okay. Um -- the first page of that document is actually
23 another letter. Uh -- explain to me what that letter is.

24 A Uh -- concerning the P-C-R application?

25 Q Yes, sir.

1 A Um -- this -- this letter---

2 Q And is there a date on that first?

3 A Um -- yes, ma'am; August the 10th 2010 -- 9.

4 Q Okay.

5 A Um -- from The Clerk of Court. And I think that from
6 what I gathered right here, I think that what -- what was,
7 uh -- The Clerk is telling me that, um, I need to have a
8 notary present---

9 Q Okay.

10 A ---so that -- you know, to verify that, you know, I -- I
11 can put my signature on it.

12 Q Can you read the first line of that letter, please?

13 A Um -- your P-C-R application were received -- was
14 received today.

15 Q Okay.

16 A I am returning the application for a proper execution.
17 Please sign the -- the verification -- next to the last page
18 at the 'X' -- red 'X' -- in the presence of a notary public
19 who will sign and date at the -- at the red checkmark.

20 Q And what was the date on that letter again?

21 A (No response.)

22 Q That you're looking at right now?

23 A Okay; this is, uh, August 10th 2009.

24 Q So essentially The Clerk's stating that she received
25 your application over a year after you mailed it; is that

1 correct?

2 A Yes, ma'am.

3 Q Okay.

4 MRS. GOLDBERG: May I approach, Your Honor?

5 THE COURT: Yes, ma'am.

6 Q Mr. Martin, between June 23rd 2008 and August 10th 2009,
7 did you write to The Court on multiple occasions?

8 A Yes, ma'am.

9 Q Were you writing to ask about the status of your P-C-R
10 application?

11 A Yes, ma'am.

12 MRS. GOLDBERG: Your Honor, this will be exhibit two.

13 (WHEREUPON, APPLICANT EXHIBIT 2 WAS MARKED FOR
14 IDENTIFICATION.)

15 (WHEREUPON, PROCEEDINGS RESUMED.)

16 Q Mr. Martin, I've handed you another document. The first
17 page of that document is a letter. Who is that letter from?

18 A Um -- me; Shondray Martin.

19 Q And who is it to?

20 A Uh -- the Clerk of Court in Abbeville County.

21 Q And what is the date on that letter?

22 A Um -- it says May 30th 2009.

23 Q And what is the purpose of that letter?

24 A Um -- I wanted a appearance docket for the whole entire
25 case.

1 Q Okay; you were checking on the status of the case?

2 A Yes, ma'am.

3 Q And this is about the P-C-R application you filed?

4 A Yes, ma'am.

5 Q And read me the second paragraph; the first line in that
6 second paragraph please.

7 A I filed my P-C-R, uh, conviction -- I mean -- I mean
8 post-conviction relief on June 23rd 2008 and I -- and I
9 haven't yet received a response from The Court. Can you
10 please provide me with the status of my P-C-R?

11 Q Thank you, Mr. Martin.

12 THE COURT: Let me -- let me ask you something, Counsel.

13 MRS. GOLDBERG: Yes, sir.

14 THE COURT: The -- the -- in The Court's file there's a
15 letter dated May 30th 2009; is that the one you're referring
16 to---

17 MRS. GOLDBERG: Yes, sir---

18 THE COURT: ---exhibit number two?

19 MRS. GOLDBERG: ---May 30th 2009.

20 THE COURT: Okay; thank you.

21 MRS. GOLDBERG: Yes, sir.

22 Q Um -- Mr. Martin, the second page of that document, in
23 the second letter, can you tell me the date on that?

24 A Um -- I think it's June 12th 2009, but the -- 2009 --
25 twelve -- 2000 -- June 12, 2009.

1 Q And this is The Court's response to your letter?

2 A Yes, ma'am.

3 Q And basically does it say there is no pending
4 post-conviction relief case?

5 A Yes, ma'am. Uh...

6 (WHEREUPON, APPLICANT EXHIBIT 3 WAS MARKED FOR
7 IDENTIFICATION.)

8 (WHEREUPON, PROCEEDINGS RESUMED.)

9 Q Mr. Martin, I handed you Exhibit three for
10 identification purposes; can you tell me what that top letter
11 is?

12 A To my -- in reference to?

13 Q Is it -- who is it from?

14 A Um -- me.

15 Q To The Court?

16 A Yes, ma'am.

17 Q And what's the date?

18 A Uh -- July 13, 2009.

19 Q Okay. In this letter, do you reiterate that you filed
20 your application July 23rd 2008?

21 A Yes, ma'am.

22 Q And is there an affidavit attached to this application?

23 A I believe so.

24 Q Do you remember sending anything in addition to that
25 affidavit or is that the only document you sent with this

1 letter?

2 A No, I think I sent the, um, post-conviction, um, relief
3 motion in along with it.

4 Q You may have sent it a second time?

5 A Yes, ma'am.

6 Q Okay. Turn to the second page; there's an affidavit
7 there. Is this affidavit signed by yourself?

8 A Yes, ma'am.

9 Q Did you draft this affidavit?

10 A Yes, ma'am.

11 Q Okay. And in this affidavit, do you state the date that
12 you filed your post-conviction relief application?

13 A Um -- as to -- uh, yes, ma'am, I -- I did.

14 Q And what date did you say?

15 A Uh -- June 23rd of 2008.

16 Q Okay. And the next page; is that The Court's response?

17 A Yes, ma'am.

18 Q Does it basically state that your application has not
19 been faxed (sic) -- filed?

20 A Yes, ma'am.

21 (WHEREUPON, APPLICANT EXHIBIT NUMBER 4 WAS MARKED FOR
22 IDENTIFICATION.)

23 (WHEREUPON, PROCEEDINGS RESUMED.)

24 Q Mr. Martin, I've handed you exhibit four for
25 identification purposes; is this a letter that you drafted?

1 A Yes, ma'am.

2 Q What's the date on this letter?

3 A Um -- August 26, 2009.

4 Q Okay; and is this -- in this letter, did you explain why
5 your original application was not notarized?

6 A Yes, ma'am.

7 Q Okay; but you -- in this letter you're still trying to
8 make sure that your application can be -- proceed and your
9 case can proceed, correct?

10 A Yes, ma'am.

11 (WHEREUPON, APPLICANT EXHIBIT NUMBER 5 WAS MARKED FOR
12 IDENTIFICATION.)

13 (WHEREUPON, PROCEEDINGS RESUMED.)

14 Q Mr. Martin, I've handed you exhibit five for
15 identification purposes. This is a copy of your actual P-C-R
16 application that is pending right now. Is that correct?

17 A Yes, ma'am.

18 Q All right; and if you'll turn to the second page, you
19 can see where The Court stamped a date on that application?

20 A Yes, ma'am.

21 Q What is that date?

22 A Um -- September 20th, um, 2009.

23 Q Okay; and if you'll look further into that document, is
24 your affidavit attached again? The same affidavit you
25 originally saw?

1 A (After pause) Yes, ma'am; I see it.

2 Q Okay; and again it states that your application was
3 originally filed June 23rd 2008?

4 A Yes, ma'am.

5 Q Mr. Martin, all of the documents that I've shown you
6 here today, these are documents that I've actually provided
7 you with---

8 A Uh-huh.

9 Q ---since I've -- began representing you; is that
10 correct?

11 A Yes, ma'am.

12 Q And your understanding is that I obtained all these
13 documents from The Clerk of Court's Office?

14 A Yes, ma'am.

15 Q Okay; do you personally have any additional documents or
16 copies of documents that you would have sent to The Court?

17 A Um -- uh, not that I can think of at this time.

18 Q Okay; do you know -- I -- I mean, in addition to all of
19 this, you have written to The Court on multiple occasions
20 about your criminal conviction in general, correct?

21 A Yes, ma'am.

22 Q Asking for copies of indictments and subpoenas and
23 things like that; correct?

24 A Yes, ma'am.

25 Q Um -- are there any other documents relevant to what

1 we're talking about today that you remember mailing that we
2 don't have?

3 A It could be, but I just can't -- don't remember; it just
4 come up.

5 Q Or you just don't remember?

6 A Yes, ma'am.

7 Q And you don't have copies of them in your property
8 anyway?

9 A No, ma'am, I don't.

10 Q Mr. Martin, as -- as to when you filed your application,
11 uh, let me ask you this. The original application that you
12 signed and mailed was not notarized, correct?

13 A Yes, ma'am.

14 Q Uh -- where were you housed at the time you drafted and
15 mailed that application?

16 A I was in, um, Florida; at Federal institution in
17 Coleman, Florida.

18 Q Okay. Did you have any difficulty, uh, with
19 correspondence, with having things notarized, with
20 obtaining applications while you were there?

21 A Yes, ma'am.

22 Q And what was that?

23 A Well, staff was no longer able to, uh, notarize, uh,
24 anything, so, um -- documents. So, we would have to find
25 someone on the outside that -- that would come and visit us

1 and see us and we paid 'em like thirty-five bucks I think for
2 just coming and five dollars for each additional document
3 that had to be notarized. And I didn't -- I could -- I
4 didn't know nobody in Florida; I'm from Carolinas. So I
5 don't -- so I just said well, okay, I don't -- I'm asking
6 the -- the authorities there what do I do? And he said --
7 which and they tell me, well, you can use this, uh, oath --
8 or, this amendment oath that they had that I could use that.
9 And it was like -- be like equivalent to it. You know, and I
10 was just, okay, I'm gonna use that. And I used it and I
11 submitted it into The Court, you know?

12 Q So it was possible but it was difficult?

13 A Yes, ma'am.

14 Q Is there anything else about the timing of filing your
15 application, um, that you would like The Court to know that
16 we have not gone over today?

17 A Can you -- you state that again?

18 Q Is there anything else relevant to this hearing about
19 when you filed your application that you would like The Court
20 to know or have we covered all of the information today?

21 A Uh -- not I think -- I think so -- covered it.

22 Q Okay; do you have any idea why, uh, the application that
23 you've stated you mailed June 23rd 2008, do you understand --
24 is there any understanding as to why it wasn't filed with The
25 Court, um, soon thereafter?

1 A Well, I think that---

2 MR. JOHNSON: Your Honor---

3 A ---because of the procedure---

4 MR. JOHNSON: ---I believe -- I believe that's
5 speculation.

6 THE COURT: I'll allow it; go ahead.

7 MRS. GOLDBERG: Thank you.

8 Q Go ahead.

9 A I think that it's just like the proceeding processing of
10 it and since there wasn't like, you know, I guess, any -- any
11 way to prove of it, The -- The Courts or -- or -- or those
12 parties that had file it, maybe they -- it was ignored. But,
13 you know, I'm not a -- a attorney, I'm just doing what, you
14 know, my -- I'm -- I'm just trying to, you know, turn a
15 terrible situation, you know, for everybody involved -- you
16 know what I'm saying -- just a little bit better. You know?
17 I was...

18 Q So your best guess is that it was overlooked by The
19 Clerk of Court?

20 A Yeah.

21 Q Okay; uh, can I take those?

22 A Yes, ma'am.

23 MRS. GOLDBERG: All right, uh, nothing further.

24 THE COURT: Any questions with regard to this motion?

25 MR. JOHNSON: Yes, sir; just -- just briefly.

1 Uh -- first, the, uh -- we would ask that last bit of
2 testimony be stricken from the record as he has no personal
3 knowledge of what The Clerk of Court's procedures are.

4 THE COURT: I'll note your objection.

5 MR. JOHNSON: Okay; thank you, Your Honor.

6 SHONDRAY LAMONT MARTIN, CROSS-EXAMINATION BY MR. JOHNSON:

7 Q Mr. Martin, uh, this application that you claim you
8 filed in 2008, you say you signed it?

9 A Yes, sir.

10 Q And then you filed it?

11 A Yes, sir.

12 Q Um -- but you didn't get it notarized?

13 A No, sir.

14 Q And you have no proof whatsoever of the day that you
15 mailed it to the Abbeville Clerk of Court, do you?

16 A No, sir. I -- if I could -- could, like, get my hands
17 on my property when I left the Federal Institution, I may
18 have something in there that would kind-a like help. I could
19 get this, uh, green card so -- and -- and probably that would
20 be -- show proof of, you know, but---

21 Q But you---

22 A ---right now---

23 Q ---you testified that you, in fact, have seen a green
24 card maybe once or twice; right?

25 A Yes, sir.

1 Q Don't you think that would have been important to hold
2 on to?

3 A Oh, yes; if I'd-a had my property, I -- I -- I'd still
4 have it.

5 Q But from the time you sent it this June 23rd date until
6 this correspondence, that's almost a year after; isn't that
7 right?

8 A (No response.)

9 Q You didn't send any letters to the Clerk -- well,
10 there's no documented letters to The Clerk of Court that you
11 sent in-between that June to about May 30th, is there?

12 A From the---

13 Q Of the next year -- of 2009.

14 A ---I mean, are you meaning from the time that I -- I got
15 the letter from The Court stating that I had a year to file
16 my---

17 Q Right.

18 A ---right. Okay; no, sir.

19 Q Okay. And you didn't bring those -- those little green
20 cards with you here today?

21 A No, sir.

22 Q And that's not in the files?

23 A No, sir.

24 Q To -- to your knowledge?

25 A (No response.)

1 MR. JOHNSON: Your Honor, that's all I have at this
2 point.

3 THE COURT: All right, very good. I'm gonna take that
4 motion under advisement. I'm gonna go ahead and let, uh --
5 Ms. Goldberg, is that correct---

6 MRS. GOLDBERG: Yes, sir.

7 THE COURT: ---proceed with your remaining testimony as
8 to your grounds, please.

9 MRS. GOLDBERG: Um -- Your Honor, actually, because this
10 was just -- my understanding was this was just a motion to
11 dismiss, I don't believe either party's prepared to go
12 forward on the actual---

13 MR. JOHNSON: That's correct, Your Honor.

14 MRS. GOLDBERG: ---P-C-R.

15 THE COURT: Oh, is it? Okay.

16 MR. JOHNSON: And so, at this time, just put my argument
17 on the record if you don't mind?

18 THE COURT: I'll be glad to hear you.

19 MR. JOHNSON: Under the Statutes -- South Carolina
20 Statutes, Code Section 17-25-40 -- 17-27-45(A), uh, it says
21 that an application must be filed, uh, within one year of the
22 conviction or the remittitur. Uh -- and under, I believe,
23 Gary v. State, which is 347 S.C. 627, uh, when a Statute
24 requires the filing of a paper document (sic), it is filed
25 when it's delivered to and received by the proper officer.

1 Here that would be The Abbeville Clerk of Court. It's not
2 done so in this case. It's the -- you have the copies of the
3 entire file.

4 Uh -- therefore, we would ask that you dismiss this
5 based upon, uh, the failure to file under the Statute of
6 Limitations.

7 THE COURT: Are you gonna make The Clerk's file -- I
8 know it's stipulated as being a copy, are you gonna make this
9 an exhibit?

10 MR. JOHNSON: I would like for that to be introduced
11 into evidence; yes, sir.

12 THE COURT: I'll -- so the entire copy of the file will
13 be exhibit one as a collection?

14 MR. JOHNSON: Yes, Your Honor.

15 THE COURT: All right.

16 (WHEREUPON, DEFENDANT'S EXHIBIT 1 WAS ADMITTED INTO
17 EVIDENCE.)

18 (WHEREUPON, PROCEEDINGS RESUMED.)

19 THE COURT: Ms. Goldberg, I'll be happy to hear from
20 you.

21 MRS. GOLDBERG: Thank you, Your Honor. Um -- the -- the
22 Applicant here testified that he -- he testified under oath
23 that he mailed the application June 23rd 2008, which was
24 timely. The deadline in this matter was, um, August 4th 2008
25 so it would have been timely by about a month and a half.

1 Um -- Your Honor, he's been -- was consistent in that
2 date in a letter that he sent to The Clerk of Court shortly
3 thereafter as well as -- as -- as in an affidavit that he
4 provided to The Court shortly thereafter.

5 Um -- I would just argue that the consistency in that
6 date and with his testimony today, uh, shows that it would be
7 true rather than there being any presumption that he's making
8 this up today. There has been consistent documents
9 reflecting this date.

10 Uh -- Your Honor, I, as an Officer of The Court, I
11 reviewed the file. So did the Attorney General personally.
12 Um -- that letter -- that application, June 23rd 2008, there
13 was no envelope attached, there's no postmarked. Uh -- it
14 was not clocked; it was just mailed back to him. So, all we
15 have is -- are the documents in the file and my client's
16 testimony, um, under oath.

17 Your Honor, clearly my client made multiple efforts to
18 file the application but also to check on the status
19 thereafter and he did not sit on his rights. He was not, uh,
20 lazy in doing so; he did make every effort to make sure that
21 his P-C-R could go forward and be heard.

22 Um -- Your Honor, I do recognize that the Statutes -- my
23 understanding is the Statutes not only state that the P-C-R
24 should be on a formal application, um, but also should be
25 notarized. Um -- his original application was not. I would

1 argue that those aren't strict requirements for a pro se who
2 originally filed P-C-R application.

3 Uh -- I would argue that there is ample evidence that he
4 did, uh, attempt to mail the application in a timely manner.
5 Um -- given his testimony under oath, the only alternative
6 would be that, um, The Clerk of Court misplaced it.

7 But, as he said, he doesn't know what happened to it,
8 all he knows is when he sent it. Um -- so we're not sure why
9 it took so long.

10 Um, Your Honor, we would just ask that you allow
11 Mr. Martin to proceed with -- to an evidentiary hearing.

12 MR. JOHNSON: Your Honor, just -- just in reply, if you
13 don't mind. Um -- and Counsel made a very articulate
14 argument.

15 Um -- however, Mr. Martin has produced no proof that he
16 did mail it at that time -- that application, uh, that he
17 alleges that he sent on June 23rd 2008. There's no
18 notarization. He could have written that date any time and
19 sent that; there's no proof of that.

20 As this is his burden of proof, uh, The State alleges
21 that he has failed to meet his burden.

22 Um -- as Ms. Goldberg said, he showed a letter that
23 Mr. Martin sent to The Clerk of Court; it's documented with
24 an envelope. It's usually time stamped. There's no proof of
25 that; there's no proof of a return receipt that he sent. He

1 said he's seen a couple of those. He also testified that
2 that'd be very important to hold on to, but, um, I don't know
3 why he doesn't have it, but he does not have it here.

4 Uh -- therefore, he has failed to meet his burden of
5 proof in this case and we ask you, uh, just deny and dismiss
6 this application.

7 MRS. GOLDBERG: Your Honor, if I could add briefly one
8 thing just to clear up in case there was any confusion? The
9 exhibit one I entered for identification purposes was his
10 original application. Uh -- the front page attached to that
11 was a request for response over a year later. That wasn't a
12 guess on my part that those are related. In the actual
13 original Clerk of Court's file, those two items were stapled
14 together without an envelope or anything. So, I just wanted
15 to let The Court know that I'm not just willy-nilly assigning
16 a -- a letter that was a year and a half -- you know, over a
17 year later to that; they were stapled together in the file.

18 THE COURT: All right, Mr. Martin, would you step back
19 down, please sir?

20 (WITNESS STEPPED DOWN.)

21 THE COURT: All right, uh, I'm gonna go ahead and rule
22 on the motion.

23 Mr. Martin's testimony said that he understood, after he
24 received the -- the notice from The Court, he had a year to
25 file a P-C-R. He knew that within the year's period.

1 Uh -- the only evidence that's been presented in this
2 case was an afterthought type of, uh, a communication from
3 Mr. Martin saying what happened to my petition that was filed
4 on May (sic) the 23rd 2008.

5 Uh -- that, in and of itself, was over a year after the
6 alleged, uh, filing. There's absolutely no evidence
7 whatsoever that Mr. Martin, uh, made any type of filing with
8 The Clerk's office.

9 Uh -- the burden would be on him, uh, to establish that
10 he made an attempt to file this. Uh -- he has failed to meet
11 that burden.

12 So, I am granting the motion to dismiss the case based
13 on the Statute of Limitations.

14 If you would prepare me an order to that effect?

15 MR. JOHNSON: Yes, Your Honor; thank you.

16 MRS. GOLDBERG: Thank you, Your Honor.

17 THE COURT: Thank you too.

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25

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE PROCEEDINGS AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR LAURENS COUNTY, SOUTH CAROLINA, ON THE 27TH DAY OF NOVEMBER 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

JUNE 19, 2013

Vivian H. Cross
VIVIAN H. CROSS
CIRCUIT COURT REPORTER

Judge McIntosh

COURT OF COMMON PLEAS

COURT OF GENERAL SESSIONS

FAMILY COURT

EXHIBIT RECORD & RECEIPT FORM

CASE TITLE

Shondray Martin -v- State

DOCKET #

2009-CP-01-0238

PLAINTIFF'S EXHIBITS

Abberville Cafc Ltr. To Martin

DEFENDANT'S EXHIBITS

Cops of Abberville

COURT'S EXHIBITS

1. 8-10-09 App needs Notary Sig. (299) 11-20-12) Clerk's File (889) 1.

2. 5-30-09 PCR Ingoing Ltr. (30) 2.

3. 9-13-09 Request Aff. + PCA Filed (30) 3.

4. 8-26-09) Notary Issue (29) 4.

5. Filed 9-23-09) App. (14) 5.

6. 6. 6.

7. 7. 7.

8. 8. 8.

9. 9. 9.

10. 10. 10.

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2012 NOV 20 11:10:55
EMILY Y MCMAHAN
CLERK OF COURT

COURT REPORTER--Vivian H. Cross

DATE

11-27-12

CLERK RECEIVING EXHIBITS

Shondray Martin

PAGE 1 OF 1

TRUE COPY
BY [Signature]
ABBENVILLE COUNTY CLERK OF COURT



Emily P. McMahon
ABBEVILLE COUNTY CLERK OF COURT
P. O. BOX 99
ABBEVILLE, SC 29620
PHONE: (864) 366-5312
FAX: (864) 366-9188

August 10, 2009

Shondray Lamont Martin, #982440-071
Federal Corr. Complex-2
Coleman U. S. P.
P. O. Box 1034
Coleman, FL 33521

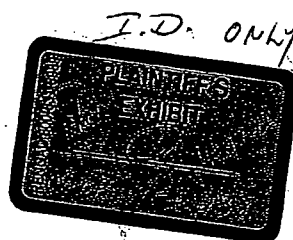
Re: Shondray Lamont Martin, #98244-071
PCR Application

Dear Mr. Martin:

Your PCR application was received today. I am returning the application for proper execution. Please sign the verification (next to the last page) at the red 'x' in the presence of a Notary Public who will sign and date at the red checkmark. Also, you did sign the very last page, but this also has to be in the presence of a Notary Public. Please have that section signed by the Notary as well. I am including a self-addressed envelope to return these pages to me. Processing of your application cannot be completed until these corrected pages are received.

Peggy A. Payne
Common Pleas Clerk
Phone: (864) 366-5312 ext. 202
Fax: (864) 366-9188
ppayne@abbevilcountysc.com

Enclosures



STATE OF SOUTH CAROLINA
ABBEVILLE COUNTY

Shondray Lamont Martin

vs.

State of South Carolina,
et.al.

APPLICATION FOR POST-CONVICTION RELIEF

Comes now the above with a request to this Honorable Court to review defendants rights that he was defaulted concerning constitutional violations.

Defendant was indicted by the Court of General Sessions for Abbeville Court on April 29, 2002 of conspiracy, attempted armed robbery, murder, and possession of a firearm during a violent crime. R.960-962. Trial began on March 15, 2004 before the Honorable Wyatt T. Saunders, Jr. Martin was represented by W. Benjamin McClain. On March 20, 2004 the jury found

Martin guilty of all counts. Supp. R. 301. The Court sentenced him to life for murder, 30 years consecutive for conspiracy to commit armed robbery, and five years consecutive for possession of a weapon. Supp. R. 309-310. The attempted armed robbery was dismissed before trial.

A timely appeal was filed on December 14, 2005 and October 13, 2006 appointed counsel Robert M. Dudek filed an "Anders" brief and requested to be dismissed off the case. On May 17, 2007, a Petition for Rehearing was entered and was denied on June 28, 2007. (Pro se motion). This cause follows:

Defendant (pro se) makes the affirmative defense of Ineffective Assistance of Counsel by his default of due process rights in which the United States Constitution guarantees under amendments 5,6,and 14, as are also under the guarantees of the States' Constitution...

GROUND FOR RELIEF

GROUND 1

At trial, counsel did not request the court to instruct the jury to view under the lesser charge of the homicide offense.

For instance, manslaughter or involuntary manslaughter. [And] Counsels neglect did not preserve the issue for a direct appeal, causing procedural problems in asserting this affirmative defense as to not guilty to 1st degree murder.

1) Defense counsel has a duty to request appropriate jury instructions and to object to erroneous ones. See U.S. v. Hooks, 781 F.2d 1166, 1172 n.8 (6th Cir. 1986). 2). Objections must be made to give the trial court an opportunity to correct any mistakes in the jury instructions. See U.S. v. Hamilton, 684 F.2d 380, 385 (6th Cir. 1982). 3). The omission of the lesser charges the juror could and would consider deprived defendant of a substantive right. The right to a jury trial. 4). In Keeble v. U.S. 412 US 205, 208, 935. Ct. 1993, 36 L.Ed 2d 844 (1973) the Supreme Court avered that the jury instructions will cover the elements of the crime charged and all lesser included crimes. Counsel's defaulted performance deprived Defendant of his Constitutional Right and added additional prison time, a life sentence without parole. The jury did not know they could have reached a guilty verdict on a lesser charge and still punish this defendant for a crime.

In U.S. v. Wolry, 133 F.3d 758 (10th Cir. 1998) the Court even went further, "it is reversible error not to instruct jury

on theory of defense that is supported by evidence and law." In this particular case the neglect of the State to provide medical attention to the victim resulted in his death. The jury could rationally have convicted (for the sake of argument) defendant of the lesser offense and acquitted on the greater offense. This resulted in no meaningful defense by attorney as clearly averred by defendant.

GROUND 2

Counsels' lack of knowing pre-existing law prejudiced the defendant, resulting in an unreliable outcome of this trial. See Everett v. Beard, 290 F.3d 500, 515-16 (3rd Cir. 2002) (counsel's failure to object to erroneous jury instructions prejudiced defendant because there was more than reasonable probability defendant would not have been convicted of 1st degree murder.)

Counsel should have requested additional jury instructions. He did not know pre-existing law concerning this case (murder) because he did not ask for the lesser charges penalty.

The Court did not inform the jury of the effect of their decisions if a guilty verdict was rendered. See Shafer v. S.C. 149 L.Ed. 2d 178 (2001). The fourteenth Amendments' due process clause held to require that in South Carolina Capital

Sentencing proceeding, whenever defendants future dangerousness was at issue, the jury should be properly informed that life sentence carried no possibility of parole.

The above is similar because, at trial the jury's verdict resulted in a life sentence without parole. The jury should have decided defendants faith if indeed a lesser penalty should apply but that simply did not happen, resulting in a questionable verdict and sentence.

Presumption has to be assumed denial of of as to effective assistance of counsel. Defendant does not have to prove more likely than not that the outcome would have been altered. See Woodford v. Visciotti, 537 US 19, 22-23 (2002). Counsels failure to review all the defenses defendant would be entitled to use as a defense was surely defective and this court must take the appropriate action to correct and insure the defendant did have his rights under the Sixth Amendment (Right to Counsel) granted.

GROUND 3

Martin was denied a fair trial when counsel nor the trial court removed juror for cause after she revealed knowledge of

extraneous information about defendant Martin and his criminal case.

During the Court's general voir dire examination of jury venire one prospective juror (Ms. Ray #153) revealed that her husband worked at the probation office and had told her that defendant had a history of prior drug charges. Tr. pg. 134, Ins10-25 - pg. 135, Ins. 5. Without developing the full extent of juror Ray's extraneous knowledge of Martin and the case, juror Ray stated that she could be fair and impartial. Tr. pg. 162, Ins4-13.

Martin told defense counsel (Benjamin McCain) that juror Ray should be removed, however counsel did not move to strick juror Ray for cause, or exercise a peremptory challenge.

Juror Ray was ultimately seated on Martin's petit jury panel and served as juror in the determination of Martin's criminal charges. Tr. pg. 187, Ins2-9; pg 1144 Ins. 4-5.

The right to a jury trial guarantees the accused a fair trial by a panel of impartial, indifferent, juror's who are free from outside influences or extraneous information. American Jurisprudence, Criminal Law, §1092;cf U.S. v. Cavell, 287 F.2d

at 792 (3rd Cir. 1961). Appellate Courts have a Constitutional duty to make an independent evaluation of the circumstances surrounding a juror's knowledge of extraneous information that may affect his/her decision making process related to defendant's guilt. Sheppard v. Maxwell, 384 U.S. 333 (1966).

In this case, Juror Ray clearly had access to and knowledge of information concerning Martin's past criminal record. Because the Court did not properly develop the full extent of Ms. Ray's knowledge--as conveyed by Probation Officer husband--this court is left to speculate what else this juror know and whether or not she informed the other jurors of such. Martin contends that prejudice should be presumed in this case. The Supreme Court has held that certain unapproved communications or knowledge by a juror is presumptively prejudicial. Remmer v. U.S., 347 US 227, 229 (1954); U.S. De LaVega, 913 F.2d 861 (11th Cir. 1990).

More specifically, a jurors knowledge of a defendant's past criminal record has long been recognized to be prejudicial U.S. v. Lewis, 787 F.2d 1318, 1323 (9th Cir. 1986)(observing that it is extremely difficult for jurors to ignore convictions when deciding guilt). Martin argues that had juror Ray not known about his prior criminal conduct, he would not have been compelled to take the stand in his own defense to "explain"

his criminal conviction.

At the very least, juror Ray should have been removed by counsel through peremptory challenge. It is obviously troubling to have a juror sitting in determination of a defendant's guilt or innocence while in possession of extraneous information such as a defendant's criminal history--juror Ray may have known much more about Martin's personal background and/or circumstances of the criminal case. The record only reflects that juror Ray did receive information about Martin's criminal background from her husband who worked as a probation office employee. Tr. pg. 134, Ins. 10-25.

Without a more developed record as to the full extent of Juror Ray's knowledge, this court should grant Martin the benefit of doubt and presume prejudice. Remmer, 347 US at 229. Trial counsel's sole rationale for Martin not taking the stand was because the prosecution would then be allowed to bring up Martin's criminal background.

GROUND 4

The trial court erred in failing to develop and address conflict of interest raised during trial between Martin and

his defense counsel. From the very beginning of trial and throughout the proceedings Martin and defense counsel constantly argued and could not agree about any aspect related to Martins defense. This conflict effectively prevented any meaningful attorney-client relationship to prevail. Although most of the conflict between Martin and counsel was concealed from the court, there was enough evidence for the court to discern that a problem did exist. For example, at one point in the proceedings defense counsel jumped up and threatened to quit if defendant took the stand. Tr. pg. 968 Ins. 7-9. At another point, Martin complained to the court that counsel was not properly representing him for among other reasons, counsel's failure to ask prosecution witnesses' specific questions posed by Martin. Tr. pg. 964 Ins. 7-20.

Notwithstanding these two obvious instances manifesting potential conflicts between Martin and defense counsel, the trial court did not conduct any type of fact development or seek to inquire further into the apparent conflict. If a trial court knows, or has reason to believe that a conflict exist, it has a constitutional obligation to initiate an inquiry into the matter. Cuyler v. Sullivan, 446 US 335 (1980); Mickens v. Taylor 152 L.Ed. 2d 291 (2002); Stoia v. U.S., 22 F.3d 766 (7th Cir. 1994)(Conflict of Interest established ineffective

assistance of counsel).

Moreover, a trial court has a duty to ascertain whether or not a conflict of interest exists, and if it fails to do so when the record indicates a potential conflict, the defendants Sixth Amendment rights are violated and new trial is required. Holloway v. Arkansas, 435 US 475 (1978). In this case there was ample evidence revealed to the trial court to warrant judicial inquiry, however, the trial court-for whatever-reason- chose to disregard obvious signs of conflict between Martin and his court appointed defense counsel.

This court should take this auspicious opportunity to expressly advise lower courts the proper practice to follow when faced with indications that a potential conflict is brewing between defendant and his attorney.

GROUND 5

No objection from counsel to the prosecutor's closing statement to the jury deprived Martin of a fair trial. Appellate counsel briefed a single issue on appeal related to prosecutorial misconduct during closing arguments. (See Initial Brief, pgs. 11 & 12).

This pro se argument is somewhat related to appellate counsel's argument, however, should be considered by the Court as independant claim of error. During closing argument prosecutor Townes Jones stated as follows:

And I assure you of one thing, you know, I'm not here, grateful for the opportunity to represent the people of this circuit as Solicitor and I've done it in a fashion that will allow me to walk away from it without owing anybody anything, no police officer, nobody. I don't, I'm not going to come in here and try to prosecute somebody because some police officers asked me to. I have a commitment to seek justice and I have a commitment to do what's right, and I'm walking away from this without owing anybody anything. I have gratitude for the opportunity to have done the job, I mean gratitude gratitude, and I'm humbled by the opportunity, and greatness has come my way because of it but I ain't going to participate in something that they suggested I would do, no sir, thats taking it a little bit far, even the suggestion of that. Tr. pg.1203, Ins.6-23. [Emphasis added]

Prosecutor Jones' closing arguments clearly run afoul of an acceptable argument insomuch as Jones contends that he would do ever do anything unjust or wrong in the prosecution of a criminal defendant. Jones attempts to cover his arguments by stating that the defense "suggested" something- that calls into question the prosecutor's integrity, or commitment to justice; however, the defense made no such implication. The defense simply argued that the State Patrol were liable for victim's death for delaying route to hospital. "It is pernicious for prosecutor to invoke his personal status as basis for conviction." Berger v. U.S., 295 US 78 (1934).

It should be noted that court appointed appellate counsel did not use Reply Brief to address any of Respondent's arguments, but merely filed an exact copy of initial argument and changed the dates. Apparently, appellate attorney Dydek did not feel that this appeal warranted specific argument in reply. (No Appeal is to the logical conclusion.)

GROUND 6

The trial court erred and deprived Martin of a fair trial when the court refused to allow Martin to confer with defense

counsel during recess in Martin's trial testimony. No objections by way of counsel were made. Unfortunately, Martin decided to take the stand in his own defense at trial. Tr. pgs. 972-1088. One reason Martin exercised his right to testify was because juror Ray was already privy to Martin's prior criminal record, and counsel's sole rationale for Martin not taking the stand was because the prosecution would reveal Martin's prior criminal record to the jury.

Counsel was infuriated by Martins' decisions to take the stand. At one point counsel threatened to quit as defense attorney if Martin exercised his right to testify. Tr. pg. 968 Ins. 7-9. Martin's testimony was a miserable blunder for the defense. In large part, counsel is to blame for Martin's poor performance on the stand. After Martin was determined to testify defense counsel would not do anything to assist Martin, or prepare him for cross-examination.

At a break during Martin's testimony, Martin wanted to confer with his attorney, however, the trial court refused by ordering that defendant not talk to defense counsel during break. Tr. pg. 1024, Ins. 19-22. Although defense counsel did not lodge any contemporaneous objection (which Martin

could not instruct counsel to do since Martin was prohibited from communicating with counsel), this Court may consider unpreserved errors under plain error standard. U.S. v. Olano, 507 US 725 (1993); Johnson v. U.S., 520 US 461 (1997).

Insofar as Martin's burden of proof related to prejudice, Martin would argue that the Court's refusal to allow him to confer with Counsel resulted in the prosecutions' ability to exploit Martin on cross-examination, thus allowing the jury to believe that Martin's testimony was not credible.

Alternatively, Martin would argue that the denial of his Sixth Amendment right to confer with counsel is not subject to harmless or plain error review because of the structural nature attached to such right. Arizona v. Fulminante, 499 US 279 (1991). Martin was effectively denied any legal representation related to his decision to testify and the resulting testimony.

The Court's have held a presumption of prejudice when defendant denied right to counsel. U.S. v. Cronin, 466 US 648 (1984); Smith v. Robbins, 528 US 259, 287 (2000)(listing categories of cases where prejudice is presumed as (1) denial of counsel,...)

GROUND 7

There was insufficient evidence for a reasonable juror find the existence of a conspiracy to commit robbery. Counsel failed to use this affirmative defense of not guilty.

Martin argues that there was absolutely no evidence submitted to the jury supporting conspiracy to commit robber. The only testimony that suggest that a conspiracy may have occurred between Martin and putative co-defendant Cris Landrum was that of Roselind Brown. Tr. pgs. 401-445. There surely was not any conspiracy between Martin and Brown or Martin, Brown and Landrum because Ms. Brown herself testified that she did not want any part of any robbery of her drug dealer "Heavy D". id. pg 411.

Brown further testified that Martin did not mention robbery of Heavy D., but merely asked Brown to go knock on Heavy D's door. id. pg. 413-14.

Even assuming that Browns testimony serves as probative evidence that a conspiracy existed between Martin and Landrum, Brown's testimony is not corroborated by any independent evidence. Moreover, Brown's testimony is incredulous considering that her October 2, 2001, statement to police stated that Brown Knew about the robbery of Heavy D. before hand

and Brown was going to get a cut of the money. Tr. pgs. 423, Ins. 15-16; pg. 424, Ins. 10.

The standard of reviewing for sufficiency of evidence claim is whether, after viewing the evidence and the reasonable inferences which flow therefrom in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the crime beyond reasonable doubt. Jackson v. Virginia, 443 US 307, 317-18 (1979). Martin contends that a conspiracy to commit robbery cannot rest solely upon the uncorroborated "unsubstantial" testimony of alleged accomplices. cf. U.S. v. Garner, 581 F.2d 481 (5th Cir. 1978).

Nowhere in the record before this court is there any evidence that Martin knowingly entered into an agreement with Landrum (or Brown) to commit robbery against Heavy D. The testimony of Brown cannot, as a matter of law, support a guilty verdict against Martin and this Court should reverse the lower court's denial of defendant's motion for direct verdict of acquittal on conspiracy to commit robbery charge.

COUNT 8

The lower court erred when it instructed/charged the jury in this case. Counsel did not object. Martin has one

main complaint about the trial court's charge to the jury. Specifically, the court's instruction that the jury must equate any "contributing cause" of death with proximate cause of death. Tr. pg. 1239, Ins. 8-25.

Considering the facts of this case (that law enforcement may have been the proximate cause of victims death), there is a reasonable probability that the trial court's tweeking of traditional proximate cause instruction served to deprive the defendant of a fair trial.

Again, Martin is a layman acting pro se in this appeal, and does not have access to South Carolina caselaw in order to support his legal propositions. However, it seems generally inconsistent with due process to effectively charge the fact finder to return a verdict of guilty for malice murder simply based on a contributing factor that may (or may not) have resulted in the victim's death.

Martin respectfully requests that this Honorable Court review the trial court's jury instructions in their entirety with special attention focused on the court's language related to proximate and contributing cause of victim's death.

GROUND 9

The court erred by sustaining a jury verdict for use of a firearm during the offense of conspiracy to commit robbery. Once again there was no objection from counsel. Based on the prosecution's theory of the case and its arguments before the jury, and the Court's jury instructions; it appears that Martins conviction for use of a firearm during a crime of violence is attached to the conspiracy to commit robbery conviction.

Initially, Martin was charged with attempted robbery which could have legally supported a conviction for use of firearm, however, the Court dismissed that charge for lack of evidence. Tr. 971, Ins. 1-3.

The question presented before this Court is whether a conviction for conspiracy to commit robbery (an inchoate crime) can support a conviction for "use" of firearm during a violent crime. Martin argues that, unless he and Landrum used the firearm while actually conspiring to commit robbery; there is no logical way to have a conviction for use of a firearm during a crime of violence such as conspiracy. The

jury apparently rejected the prosecution's felony murder theory, and therefore no actual robbery was being committed.

GROUND 10

The cumulative affect of numerous trial errors in this case deprived Martin of a fair trial and counsel's performance was defaulted at the bare minimum. Most State and Federal Courts of Appeal have accepted and practice the theoretical underpinnings of the cumulative error doctrine. See: U.S. v. Sepulveda, 15 F.3d 1161, 1196 (1st Cir. 1993)(Discussing cumulative error doctrine and expressly adopting the standard of review); U.S. v. Kartman, 417 F.2d 893, 898 (9th Cir. 1969); U.S. v. Meserve, 271 F.3d 314 (1st Cir. 2001).

Martin contends that the aggregated affect of the errors in this case deprived him of a fair trial as guaranteed by the Due Process Clause of the Fourteenth Amendment, U.S. Constitution, and the South Carolina State Constitution. As many other Courts of Appeals have held, "[A] column of errors may sometimes have a logarithmic sum of its constituent parts." Merserve, 271 F.3d at 332. To be sure, some of the errors complained of in this appeal are not so

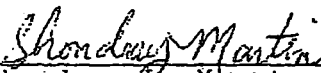
devoid of merit to warrant summary disposal. Martin complains about, among other errors, being deprived access to his trial lawyer (Ground #); and a juror whose husband told her extraneous information about defendant's criminal history and the case in general. (Ground #) Any of these issues should entitle Martin to a new trial, but together, they should demand that Martin be granted another (and fair) trial.

CONCLUSION

This writ should be granted and a evidentiary hearing ordered as to Ineffective Assistance of Counsel or other appropriate remedy this Honorable Court deems fit and fair.

I thank the Court in advance for its consideration in this most urgent matter.

Respectfully submitted this 23 day of June 2008.


Shondray L. Martin
F.C.C. U.S.P. 2
P.O. Box 1034
Coleman, Fl. 33421

CERTIFICATE OF SERVICE

I do hereby swear that a true and correct copy was served
via 1st. Class Mail to the address(s) below:

Donald J Zelenka
Assistant Deputy Attorney General
P.O. Box 11549
Columbia, S.C. 29211

This 23 day of ^{June} ~~May~~ 2008.

Shondray L. Martin
Shondray L. Martin

Shondray Martin #98244-071
Federal Corr. Complex-2
Coleman U.S.P.
P.O. Box 1034
Coleman, Fl. 33521

Date: may 30, 2009

Abbeville County Clerk of Court
Post Office Box 99
Abbeville, South Carolina 29620

RE: The State v. Martin, Shondray Lamont
2002-GS-01-00192;
2003-GS-01-00080

Dear Clerk of the Court:

Could you please send me a certified copy of my appearance docket of my whole entire case?

I filed my Post Conviction Relief on June 23, 2008, and I haven't yet received a response from the Court. Can you please provide me with the Status of my (PCR)?

Your timely response will be greatly appreciated.

Sincerely,

Shondray Martin

I.D. ONLY



FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2009 JUN 5 AM 11 09
EMILY Y MCMAHAN
CLERK OF COURT



Emily D. McElahan
ABBEVILLE COUNTY CLERK OF COURT
P. O. BOX 99
ABBEVILLE, SC 29620
PHONE: (864) 366-5312
FAX: (864) 366-9188

June 12, 2009

Shondray Lamont Martin, #982440-071
Federal Corr. Complex-2
Coleman U. S. P.
P. O. Box 1034
Coleman, FL 33521

Re: The State v. Martin, Shondray Lamont
2002-GS-01-00192
2003-GS-01-00080

Dear Mr. Martin:

Your letter of May 30, 2009, was received in our office on June 5. I have checked all files, including our court indexing system and civil docket sheets and have been unable to find a Post Conviction Relief case filed on your behalf.

You also requested certified copies of the above-referenced General Sessions cases. It is my understanding that the General Sessions Clerk has already provided these copies to you.

Peggy A. Payne
Common Pleas Clerk
Phone: (864) 366-5312 ext. 202
Fax: (864) 366-9188
ppayne@abbevillecountysc.com

Shondray Lemont Martin #98244-071
Federal Corr. Complex-2
Coleman U.S.P.
P.O. BOX 1034
Coleman, FL 33521

Emily Y. McMahan
CLERK OF COURT
P.O. BOX 99
ABBEVILLE, SC 29620

Date: *July 13, 2009*

RE: Correspondance and Affidavit concerning the Defendant's
Post Conviction Relief Motion/Brief.

Dear Ms. McMahan:

I am writing in regards to my Post Conviction Relief Motion/Brief that I filed with the Clerk of the Court, District Court, and the Government Prosecutor on June 23, 2008.

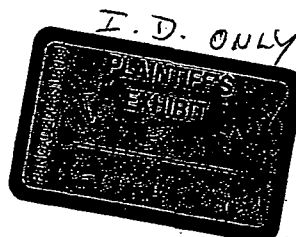
I am requesting that my affidavit and my Post Conviction Relief Motion/Brief be filed with this Court.

As I am unaware of the procedural process required in the circumstances regarding what is required for me to have my Post Conviction Relief Motion/Brief issues adjudicated on their own merits, I am requesting assistance of counsel and information regarding the Court procedures for filing a Post Conviction Relief Motion/Brief when I had previously filed such Motion/Brief but received no such acknowledgement from the interested parties.

Thank you for your consideration of my requests.

Sincerely,

Shondray L. Martin



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State of South Carolina)

) Scilicet

County of Abbeville)

"Indeed, no more than (affidavits) is necessary to make the prima facie case" United States v. Kis, 658 F.2nd, 526, 536 (7th Cir.1981); Cert. denied, 50 U.S. C.W. 2169; S.Ct. March 22, 1982.

That I, Shondray Lamont Martin, a living breathing man, being first duly sworn, depose and say and declare by my signature that the following facts are true, correct and complete to the best of my knowledge and belief.

That, on June 23, 2008 I mailed my Post Conviction Relief brief/motion to the Clerk of the Nancy S. King, the District Court of Abbeville and the Prosecutor Mr. William T. Jones.

That I, Shondray Lamont Martin did not receive any response acknowledging that my Post Conviction Relief Brief/Motion was filed or docketed.

That, on May 30, 2009 I wrote a letter to the Clerk of the Court requesting to know the status of my Post Conviction Relief Brief /Motion that I mailed to the Clerk of the Court and received the the response that the Clerk was unable to find a Post Conviction Relief Case filed on my behalf.

That, this Affidavit if not rebutted point for point by any man, representing the State of South Carolina at any level, in any matter, at any time within 7 days upon receipt, these facts stand as true in both the private and public record... as true.

Note: Maxim of law; 1. In Commerce- Truth is sovereign. 2. For a matter to be resolved, it must be expressed. Point of law- Silence equates to agreement.

I certify under penalty of perjury under the laws of The United States of America in the nature of [28 U.S.C. § 1746(1)], that I have read the foregoing request for information and know the contents thereof, and that the information listed above is true, correct and complete.

Executed this 13th day of July, 2009

Shendrach Martin
Signature



Emil P. McElahan
 ABBEVILLE COUNTY CLERK OF COURT
 P. O. BOX 99
 ABBEVILLE, SC 29620
 PHONE: (864) 366-5312
 FAX: (864) 366-9188

July 16, 2009

Shondray Lamont Martin, #982440-071
 Federal Corr. Complex-2
 Coleman U. S. P.
 P. O. Box 1034
 Coleman, FL 33521

Re: The State v. Martin, Shondray Lamont
 2002-GS-01-00192
 2003-GS-01-00080

Dear Mr. Martin:

Your letter of July 13, 2009 with attachments was received in our office today. We are unable to file your post conviction relief application as submitted. Enclosed you will find the required documents to be completed and returned to our office for filing. The paperwork filed with our office must be originals. After filing, we will return a certified copy to you, as well as furnish copies to the Office of the Attorney General and the Solicitor's Office for the Eighth Judicial Circuit. Upon authorization and notification from the Attorney General's Office, an attorney will be appointed to represent you.

I am returning the paperwork you submitted with your letter in the event you need this for completing your application.

Peggy A. Payne
 Common Pleas Clerk
 Phone: (864) 366-5312 ext. 202
 Fax: (864) 366-9188
 ppayne@abbevillecountysc.com

Enclosures

ALSO RET'D BY
 ADDRESSED TO
 DISTRICT COURT OF
 ABBEVILLE

Shondray Lamont Martin #98244-071
Federal Corr. Complex-2
Coleman U.S.P.
P.O. BOX 1034
Coleman, FL 33521

Emily Y. McMahon
CLERK OF COURT
P.O. BOX 99
ABBEVILLE, SC 29620

Date: August 25, 2009.

Re: PCR Application

Dear Ms. McMahon:

I am writing in regards to your letter I received on August 10, 2009, stating the proper procedures needed in order to complete the Application.

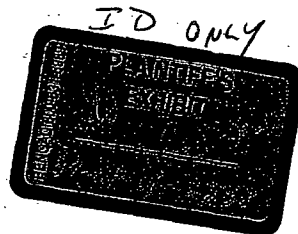
Please allow me to inform you that in this institution there is no Notary Public. I have been informed through corrective staff on how the process goes as far as getting a Notary Public to come in and notarize this Application. This process has procedures that could take anywhere from a 7 to 10 working days period starting from the date listed above.

Sorry for the inconvenience I just became aware of this myself. Could you Please allow me the time to complete this process? Your patience I would greatly appreciate.

Thank you for your consideration of my request.

Sincerely,

Shondray L. Martin



FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2009 AUG 31 PM 12 01
EMILY Y MCMAHAN
CLERK OF COURT

Shondray Lamont Martin #98244-071
 Federal Corr. Complex-2
 Coleman U.S.P.
 P.O. BOX 1034
 Coleman, FL 33521

*Shondray L. Martin
 Federal Correctional Complex-2
 Coleman, U.S.P.
 P.O. Box 1034
 Coleman, FL 33521*

on August 10, 2009, stating the
 plication.

ution there is no Notary Public. I
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 on. This process has procedures that
 ied starting from the date listed above.

this myself. Could you Please allow me
 ould greatly appreciate.

TAMPA, FL 335
 SAINT PETERSBURG, FL
 23 AUG 2009 PM 01

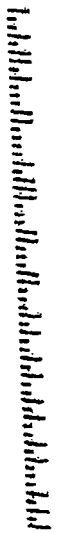


*Clerk of Court
 P.O. Box 99
 Abbeville, SC 29620*

GP

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 2009 AUG 31 PM 12 01
 EMILY Y MCMAHAN
 CLERK OF COURT

23620+0033



STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)Shondray Lamont Martin)

Plaintiff(s))

vs.)

The State of South Carolina)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

10 -CP- 10 - 10

(Please Print)

Submitted By: _____

Address: _____

SC Bar #: _____

Telephone #: _____

Fax #: _____

Other: _____

E-mail: _____

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20____-CP-_____	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☒ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
	☐ Transcript Judgment (740)	☐ Forfeiture-Petition (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture-Consent Order (850)	☐ SCDOT (950)
	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Other (899)	☐ Worker's Comp (960)
	☐ Other (799)		☐ Administrative Law Judge (980)
Special/Complex /Other	☐ Pharmaceuticals (630)		☐ Public Service Commission (990)
☐ Environmental (600)	☐ Unfair Trade Practices (640)		☐ Employment Security Comm (991)
☐ Automobile Arb. (610)	☐ Out-of State Depositions (650)		☐ Other (999)
☐ Medical (620)	☐ Sexual Predator (510)		
☐ Other (699)			

Submitting Party Signature: _____

Date: _____

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of ABBEVILLE)Shondray Lamont Martin #98244-071)

Full name and prison number (if any) of Applicant)

v.)

APPLICATION FOR)

State of South Carolina)

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 The Department of Corrections/ but Plaintiff is currently held in the Federal Bureau of Prisons.
2. Name and location of Court which imposed sentence In The General Sessions Court of Abbeville, County.
3. Name(s) of co-defendant(s) (if any) Christopher Frank Landrum/Rosalind Brown
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2002-GS-01-00192 - indictment
 - (b) 2003-GS-01-00080 -re-indictment

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STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2009 SEP 29 PM 4:17
EMILY MCNAUL
CLERK OF COURT

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) The 20th day of March 2004. Life for murder, 30 years consecutive for conspiracy
- (b) to commit armed robbery, and five years consecutive for possession of a weapon.
- (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. The State of South Carolina in the Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. The 28th day of June 2007
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2007-UP-241
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See attachment sheet. #1
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attachment sheet. #2
- (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? See attachment sheet. (affidavit)
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. PCR.
- ii. direct appeal.
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Abbeville County Clerk of Court P.O. Box 99 Abbeville, SC 29620.
- ii. The South Carolina Court of Appeals P.O. Box 11629 Columbia, SC 29211.
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Petitioner did not receive disposition (see affidavit).
- ii. Direct appeal was denied.
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Petitioner did not receive disposition to PCR(see affidavit).
- ii. Direct appeal was denied December 15, 2005.
- 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?

Yes, in my PCR (see affidavit) Also on direct appeal.

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

(a) which grounds have been presented:

- i. See attachment sheets. #3
- ii. _____
- iii. _____

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

- i. PCR.
- ii. direct appeal.
- 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) The issues weren't presented due to ineffective assistances of Trial Counsel for failure to present the issues during Trial.
- (b) The reason weren't presented due to failure of Appellate Counsel to file ineffective assistance of Trial Counsel on direct appeal because Trial Counsel Failed to preserve the issues at Trial.
- (c) _____

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. Mr. W. Benjamin McClain Jr., Attorney at Law, 501 Pettigru Street, Greenville, SC 29601. (Trial Counselor)
 - ii. Mr. Robert M. Dudek, Assistant Appellate Def, SC Appellate Defense, 1205 Pendleton Street, Columbia, SC 29201. (Appellate Counselor)
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. During Trial.
 - ii. On direct appeal.
 - iii. _____

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

Conviction and sentence to be overturned/vacated.

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

Yes, Federal United States District Court, County of Anderson South Carolina.

STATE OF SOUTH CAROLINA)

County of ABBEVILLE)

VERIFICATION

I, Shondray L. Martin, 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.

Shondray L. Martin

SWORN to and subscribed before me this _____ day of _____, _____.

_____, (L.S.)
Notary Public

My Commission Expires: _____

I certify under penalty of perjury under the laws of the United States of America in the nature of [28 U.S.C. § 1746 (1)], that I have read the foregoing request for information and know the contents thereof, and that the information listed above is true, correct and complete.

Executed this 6th day of August, 2009.

FCC Coleman, Florida Sumter County

Subscribed and sworn before me this 24 day of September, 2009

[Signature]
Case Manager

Shondray L. Martin
Signature

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

I, Shondray L. Martin, 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.

Shondray L. Martin
Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____,

Notary Public

My Commission Expires: _____

FCC Coleman, Florida Sumter County

Subscribed and sworn before me this
24 day of September, 2009.

[Signature]
Case Manager

Authorized by the Act of Jan. 7, 1955, as amended, to administer O.C.G.A. §§ 40-2-1 & 40-2-4

I certify under penalty of perjury under the laws of the United States of America in the nature of [28 U.S.C. § 1746 (1)], that I have read the foregoing request for information and know the contents thereof, and that the information listed is true, correct and complete.

Executed this 6th day of August, 2009.

Shondray L. Martin
Signature

Affidavit of Truth

State of South Carolina)
) Scilicet
 County of Abbeville)

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 2009 SEP 23 PM 3:17
 ERIC J. MCRAHAN
 CLERK OF COURT

"Indeed, no more than (affidavits) is necessary to make the prima facie case" United States v. Kis, 658 F.2d, 526, 536 (7th Cir.1981); Cert. denied, 50 U.S. C.W. 2169; S.Ct. March 22, 1982.

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That, on May 30, 2009 I wrote a letter to the Clerk of the Court requesting to know the status of my Post Conviction Relief Brief/Motion that I mailed to the Clerk of the Court and received the the response that the Clerk was unable to find a Post Conviction Relief Case filed on my behalf.

That, this Affidavit if not rebutted point for point by any man, representing the State of South Carolina at any level, in any matter, at any time within 7 days upon receipt, these facts stand as true in both the private and public record... as true.

Note: Maxim of law; 1. In Commerce- Truth is sovereign. 2. For a matter to be resolved, it must be expressed. Point of law- Silence equates to agreement.

I certify under penalty of perjury under the laws of The United States of America in the nature of [28 U.S.C. § 1746(1)], that I have read the foregoing request for information and know the contents thereof, and that the information listed above is true, correct and complete.

Executed this 13th day of July, 2009

Shondray L. Martin
 Signature

Attachment Sheet #1

- (10) (1) Trial Counsel ineffective due to his failure to challenge for cause prospective juror (Ms. Ray #153).
- (2) Trial Counsel ineffective due to his failure to peremptorily challenge prospective juror (Ms. Ray #153).
- (3) Abuse of discretion by Judge/Court when Judge/Court failed to remove prospective juror (Ms. Ray #153) for cause and failed to develop the full extent of Juror Ray's extraneous knowledge of Martin and the case.
- (4) Defendant was denied a fair Trial because his jury trial was not free from outside influences or extraneous information.
- (5) There was insufficient or no evidence presented to find Defendant guilty of conspiracy to commit robbery beyond a reasonable doubt.
- (6) There was insufficient or no evidence presented to find the Defendant guilty of attempted robbery.
- (7) There was insufficient or no evidence to find the Defendant guilty of actual or constructive possession of felony possession of a weapon.
- (8) There was insufficient or no evidence presented to find the Defendant guilty of murder.
- (9) Judge denied defendant right to trial by jury when he entered a verdict of guilty of attempted robbery.
- (10) Prosecutor did not prove the elements of the crime for possession of a firearm or knife during the commission of a crime.
- (11) Prosecutor did not prove each and every element of the crime of attempted armed robbery.
- (12) Prosecutor did not prove each and every elements of the crime of murder.
- (13) Prosecutor did not prove each and every elements of the crime of conspiracy to commit armed robbery.
- (14) Prosecutorial Misconduct-Selective Prosecution.
- (15) Abuse of discretion by the Judge when he sentenced defendant to life sentence, (the maximum sentence allowed).
- (16) Prosecutor did not prove actual or constructive possession of a firearm .
- (17) Prosecution did not prove that defendant had dominion and control or the right to exercise dominion and control over the firearm.
- (18) Prosecution did not prove through either direct or circumstantial evidence that defendant had dominion and control or the right to exercise dominion and control over the firearm.
- (19) Prosecution did not prove criminal intent.
- (20) Prosecution did not prove defendant had a general malignant recklessness of the lives and safety of others or a combination or a conviction of the defendant's mind which shows a disregard for social duty and fatally bent upon mischief.
- (21) Prosecution did not prove any facts beyond a reasonable doubt to raise an inference of malice.
- (22) Prosecution did not prove the defendant during the commission of a felony intentionally killed anyone.
- (23) Prosecution did not prove malice aforethought was entertained by defendant or said co-defendant's before the victim was killed.
- (24) Prosecution did not prove malice aforethought through direct or circumstantial evidence.
- (25) Prosecution did not prove beyond a reasonable doubt that the defendant's alleged use of a dangerous instrumentality such as a pistol or gun demonstrated such an intentional disregard

for human life that malice may implied or inferred in the use of such dangerous weapon such as a pistol or knife.

- (26) Prosecution did not prove there was manifested a violent deliberate intention to unlawfully take away the life of another.
- (27) Prosecution did not prove that the defendant intentionally and deliberately did an unlawful act which he then knows to be wrong and in violation of his duties to others and where no excuse or legal provocation appears and when the circumstances attending a killing shows an abandoned heart, a malignant heart fatally bent upon mischief.
- (28) Prosecution did not prove beyond a reasonable doubt that defendant combined with one or more persons for the purpose of committing an unlawful act or committing an act by unlawful means.
- (29) Prosecution did not prove there was a mutual understanding agreement or common intention and plan between the co-defendant's.
- (30) Prosecution did not prove that there was a guilty knowing and participation in the actions by defendant to carry out the agreement.
- (31) Prosecution did not prove that the agreement of a conspiracy came into being through an implied mutual understanding between the co-conspirator's or co-defendant's.
- (32) Prosecution did not prove that the defendant knew of the unlawful conduct but the defendant agreed to combine with another or other persons for the purpose of accomplishing the unlawful act.
- (33) Prosecution did not prove through direct or circumstantial evidence a conspiracy to commit a crime between the defendant and the co-conspirator's or co-defendant's.
- (34) Trial Counsel did not preserve any of the aforementioned issues during trial.
- (35) Appellate Counsel did not bring up the aforementioned issues on direct appeal.
- (36) Petitioner should be exempt from waiver of the issues presented to this Court because petitioner is claim "actual innocence" and miscarriage of justice.

FILED
STATE OF SOUTH CAROLINA
COUNTY OF HANCOCK
2009 SEP 29 PM 3 48
EMILY Y. HOGANAHAN
CLERK OF COURT

Attachment Sheet # 2

- (11) (1) Juror stated knowledge of defendant criminal history and background attained through a probation officer who happened to be her husband.
- (2) Defendant instructed Trial Counsel to peremptorily prospective juror Ms. Ray #153 based on her statements.
- (3) Prospective juror's Ray's statement required her removal for cause by the Judge/Court and full development of her extraneous knowledge of Martin and the case due to her husband's characterization of Martin.
- (4) Prospective Juror Ray stated she knew extraneous information about defendant told to her by her husband which would be impossible for her to ignore during deliberations.
- (5) See Trial Transcripts.
- (6) See Trial Transcripts.
- (7) See Trial Transcripts.
- (8) See Trial Transcripts.
- (9) This verdict prejudiced me with all the other charges and Defendant asked for trial by jury.
- (10) See Trial Transcripts.
- (11) See Trial Transcripts.
- (12) See Trial Transcripts.
- (13) See Trial Transcripts.
- (14) Prosecutor did not try State Trooper for murder of decedent. Expert witness testified State Trooper's detainment of decedent contributed to his death.
- (15) See Trial Transcripts.
- (16) See Trial Transcripts.
- (17) See Trial Transcripts.
- (18) See Trial Transcripts.
- (19) See Trial Transcripts.
- (20) See Trial Transcripts.
- (21) See Trial Transcripts.
- (22) See Trial Transcripts .
- (22) See Trial Transcripts.
- (24) See Trial Transcripts.
- (25) See Trial Transcripts.
- (26) See Trial Transcripts.
- (27) See Trial Transcripts.
- (28) See Trial Transcripts.
- (29) See Trial Transcripts.
- (30) See Trial Transcripts.
- (31) See Trial Transcripts.

(32) See Trial Transcripts.

(33) See Trial Transcripts.

(34) See Trial Transcripts.

(35) See Trial Transcripts.

(36) See Trial Transcripts.

FILED
STATE OF NORTH CAROLINA
COUNTY OF JOHNSON
2009 SEP 23 PM 3 48
EMILY HOGAN
CLERK OF COURT

Attachment Sheet #3

- (15) Trial Counsel was ineffective due to his failure to challenge for cause prospective juror (Ms. Ray #153).
- (2) Trial Counsel ineffective due to his failure to peremptorily challenge prospective juror (Ms. Ray #153).
- (3) Defendant was denied a fair Trial because his jury trial was not free from outside influences or extraneous information.
- (4) There was insufficient or no evidence presented to find defendant guilty of conspiracy to commit robbery beyond a reasonable doubt.
- (5) There was insufficient or no evidence presented to find the defendant guilty of attempted robbery.
- (6) There was insufficient or no evidence to find the defendant guilty of actual or constructive possession of felony possession of a weapon.
- (7) There was insufficient or no evidence presented to find the defendant guilty of murder.

FILED
STATE OF SOUTH CAROLINA
CLERK OF COURT
2008 SEP 23 PM 3 48
FRED T. HOGAN
CLERK OF COURT

STATE OF SOUTH CAROLINA,)
)
 COUNTY OF ABBEVILLE.)

IN THE COURT OF COMMON PLEAS.

Shondray Lamont Martin, #222785)

Applicant,)

v.)

State of South Carolina,)

AFFIDAVIT

2009-CP-01-238

The undersigned, Clerk of Court for the County of Abbeville, does hereby certify that the attached is a full and complete copy of the Clerk's file in the above-mentioned case.

Emily Y. McMahan
 Emily Y. McMahan, Clerk of Court

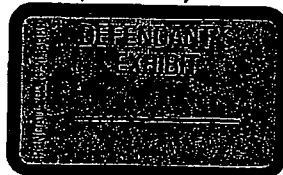
SWORN to before me this 20th

day of November, 2012.

Shandal B. Boagge (LS)

Notary Public for South Carolina.

My Commission Expires: 2-10-2020





Emily D. McMahon
 ABBEVILLE COUNTY CLERK OF COURT
 P. O. BOX 99
 ABBEVILLE, SC 29620
 PHONE: (864) 366-5312
 FAX: (864) 366-9188

November 16, 2012

Kristy Grafton Goldberg, LLC
 1720 Main Street, Suite 301
 Columbia, SC 29201

Re: Shondray Lamont Martin, #98244-071 v. State
 (09-CP-01-238)

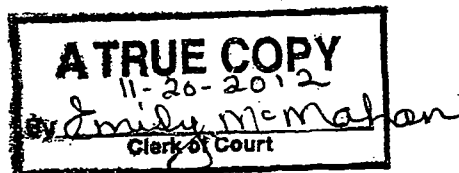
Dear Ms. Goldberg:

After reviewing the above file and realizing that some of the correspondence didn't seem to match up, I went back through my 'inmate correspondence' file and found the enclosed letters, etc. received before the PCR application was filed. It includes the requests from Mr. Martin as well as my responses. I have copied these exactly as they were stapled together when placed in the office file. I have put these in the PCR file, but kept them separated from the other documents. I apologize that these were not included.

Peggy A. Payne
 Common Pleas Clerk
 Phone: (864) 366-5312 ext. 202
 Fax: (864) 366-9188
ppayne@abbeyvillecountysc.com

Enclosures

J. Rutledge Johnson
 Asst. Attorney General
 P. O. Box 11549
 Columbia, SC 29211



Kristy Grafton Goldberg, LLC

ATTORNEY AT LAW

October 22, 2012

The Honorable Frank R. Addy Jr.
528 Monument St., Ste. 210
Greenwood, South Carolina 29646

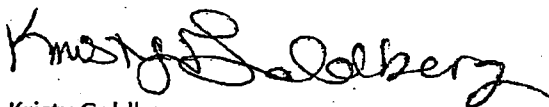
RE: Shondray Lamont Martin, SCDC # 222785 vs. State of South Carolina
2009-CP-01-238

Dear Judge Addy,

Please find enclosed two copies of a proposed consent order substituting counsel in the above referenced post-conviction relief action. I would greatly appreciate it if you would sign this order provide it to the Clerk of Court for filing. I have provided additional copies so that you may keep one for your records, and a stamped and self-addressed envelope, so that the Clerk can provide me with a copy of the signed and filed order when it is available.

Please let me know if you have any questions or concerns regarding this matter.

Respectfully,



Kristy Goldberg

CC: J. Rutledge Johnson
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

) IN THE COURT OF COMMON PLEAS
) FOR THE EIGHTH JUDICIAL CIRCUIT

Shondray Lamont Martin,
SCDC # 222785

2009-CP-01-238

Plaintiff,

vs.

ORDER SUBSTITUTING COUNSEL

State of South Carolina,
Defendant.

This matter comes before the Court on the Motion of R. Eugene Pruitt, Jr., Esquire, for substitution of counsel for Shondray Martin aka Shondra Martin in the above referenced matter. Kristy Goldberg, Esquire, has agreed to be substituted as counsel for the Applicant.

Pursuant to Rule 11(b), S.C.R.Civ.P., Eugene Pruitt, Jr. is hereby relieved as counsel for Applicant Shondray Martin aka Shondra Martin in the above referenced action, and Kristy Goldberg, Esquire is hereby substituted as counsel of record for said Applicant. As of the date of service of this Order, all further notices, papers or pleadings that are served under Rule 5(a) S.C.R.Civ.P., must be served on:

Kristy Goldberg
Law Office of Kristy Goldberg
1720 Main Street, Suite 301
Columbia, South Carolina 29201
Phone (803) 252-2299

AND IT IS SO ORDERED.

Greenwood
Abbeville, South Carolina
Oct. 26, 2012

I SO MOVE:

R. Eugene Pruitt, Jr.
R. Eugene Pruitt, Jr.

Frank R. Addy, Jr.
The Honorable Frank R. Addy Jr.
Chief Administrative Judge
Eighth Circuit Common Pleas

I CONSENT:

Kristy G. Goldberg
Kristy G. Goldberg

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

EMILY Y. ECKHART
CLERK OF COURT

2012 OCT 26 PM 2:05

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF (Select one.)

☒ COMMON PLEAS ☐ FAMILY COURT

8TH JUDICIAL CIRCUIT

Shondray Lamont Martin, #222785,
Plaintiff(s),

CASE NO.: 2009-CP-01-238

APPOINTMENT OF COUNSEL OR GAL

-vs-

(Select one.)

State of South Carolina,
Defendant(s).

☒ ORDER

☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

☒ Post-Conviction Relief (PCR)/habeas case

☐ Adoption

☐ Juvenile

☐ SVP case

☐ Custody and/or Visitation

☐ Abuse and Neglect

☐ Minor Name Change

☐ Other:

It appears that Shondray Lamont Martin, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- ☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- ☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- ☐ court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- ☐ Other:

Therefore, it is ordered that R. Eugene Pruitt, Jr., hereby is appointed as (Select one.)

☒ counsel

☐ lead counsel (if capital PCR case)

☐ guardian ad litem

for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

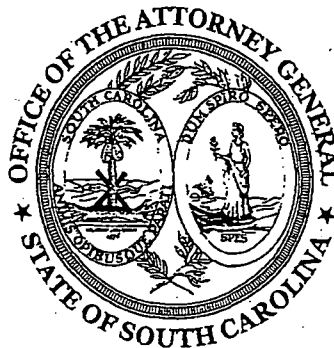
IT IS SO ORDERED THIS 22nd DAY OF March, 2012.

☒ Circuit Judge

☐ Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2012 MAR 22 PM 1:10
EMILY MCMAHON
CLERK OF COURT



ALAN WILSON
ATTORNEY GENERAL

March 20, 2012

The Honorable Emily Yeargin McMahan
Clerk of Court Abbeville County
Post Office Box 99
Abbeville, South Carolina 29620

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2012 MAR 22 AM 10 07
EMILY Y MCMAHAN
CLERK OF COURT

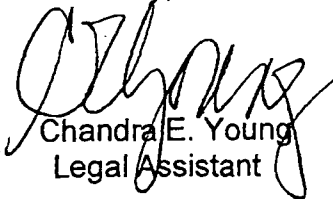
RE: Shondray Martin, 222785 v. State of South Carolina
2009-CP-01-0238

Dear Ms. McMahan:

The above-referenced individual has filed an Application for Post-Conviction Relief (PCR) in the Circuit Court and needs to have substitute of counsel appointed. If you will appoint an attorney and let me know his or her name, I will send him or her a copy of our file in this matter.

If you have any questions with regard to this matter, please let me know.

Sincerely,


Chandra E. Young
Legal Assistant

STATE OF SOUTH CAROLINA,)
)
 COUNTY OF ABBEVILLE.)

IN THE COURT OF COMMON PLEAS.

Shondray Lamont Martin, #222785)

Applicant,)

v.)

State of South Carolina,)

CERTIFICATE OF SERVICE BY MAIL

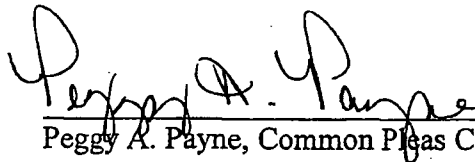
09-CP-01-238

The undersigned, an employee of the Abbeville County Clerk of Court's Office, does hereby certify that Order appointing counsel in the above-referenced PCR case was made upon the following persons by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 22nd day of March, 2012, addressed as follows:

Attorney General's Office
 ATTN: Chandra E. Young, Legal Asst.
 Post Office Box 11549
 Columbia, SC 29211

R. Eugene Pruitt, Jr.
 105 W. Pinckney Street
 Abbeville, SC 29620

Shondray Lamont Martin, #222785
 McCormick Correctional Inst.
 386 Redemption Way
 McCormick, SC 29899



Peggy A. Payne, Common Pleas Clerk

STATE OF SOUTH CAROLINA,)
)
 COUNTY OF ABBEVILLE.)

IN THE COURT OF COMMON PLEAS.

Shondray Lamont Martin, #222785)

Applicant,)

v.)

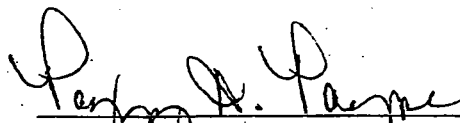
State of South Carolina,)

CERTIFICATE OF SERVICE BY MAIL

09-CP-01-238

The undersigned, an employee of the Abbeville County Clerk of Court's Office, does hereby certify that service of a certified copy of Applicant's Reply and Objections to Respondent's Conditional Order of Dismissal in the above-referenced case was made upon the following person by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 10th day of January, 2012, addressed as follows:

J. Rutledge Johnson
 Staff Attorney
 Post Office Box 11549
 Columbia, SC 29211


 Peggy A. Payne, Common Pleas Clerk

2009-01-01-238

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON
COUNTY OF ABBEVILLE	)	PLEAS
SHONDRAY LAMONT MARTIN	)	EIGHTH JUDICIAL CIRCUIT
#222785,	)	
APPLICANT	)	APPLICANT'S REPLY AND
V.	)	OBJECTIONS TO RESPONDENT
STATE OF SOUTH CAROLINA,	)	CONDITIONAL ORDER OF DISMISSAL
RESPONDENT		

EMILY Y MCMAHAN
CLERK OF COURT

2012 JAN 10 AM 8 42

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

January 6, 2012

This matter comes before this court by way of an Application for Post Conviction Relief filed Sept. 28, 2009. The State made its Return and Motion to dismiss on Dec. 19, 2011.

In its Return, Respondent requested that the action be summarily dismissed. The Applicant is presently confined in the South Carolina Department of Corrections, pursuant to orders of commitment from Abbeville County Clerk of Court. The Applicant was indicted at the April 2002 term of the Abbeville County Grand Jury for Criminal Conspiracy (2002-GS-01-0192, Count One), and Armed Robbery (2002-GS-01-0192, Count Two), Murder (2002-GS-01-0192, Count Three), and Possession of a Firearm or Knife During the Commission of a Violent Crime (2002-GS-01-0192, Count Four).

W. Benjamin McClain Jr., Esquire, represented the Applicant. On March 15, 2004, Applicant proceeded to a trial by jury before the Honorable Wyatt T. Saunders. At the conclusion of the State's case, the trial court granted defense counsel's Motion for a Directed Verdict on the charge of Attempted Armed Robbery. On March 20, 2004, Applicant was found guilty as charged of Conspiracy, Murder, and Possession of a Firearm or Knife during the Commission of a Violent Crime.

Applicant was sentenced to life imprisonment for Murder, consecutive to

a Federal sentence he was already serving five (5) years for Conspiracy, and five (5) years for the Possession charge. The sentences were run consecutive to each other and to the sentence Applicant was already serving for unrelated charges.

A timely Notice of Appeal was filed, and an Anders brief was submitted on the Applicant's behalf. Applicant also filed a Pro Se brief. The South Carolina Court of Appeals dismissed the Appeal. State v. Martin Op. No. 2007-VP-241 (S.C. CT. APP. Filed May 17, 2007). Applicant submitted a Pro Se Petition for Rehearing, dated May 24, 2007. The State made its return to Pro Se Petition for Rehearing on June 8, 2007. The Court of Appeals denied Applicant's petition by order dated June 28, 2007. The Remittitur was issued on August 3, 2007.

In his current Application for Post-Conviction Relief the Applicant alleges that he is being held in custody unlawfully for the reasons listed in the Conditional Order of Dismissal of the Post-Conviction Relief.

Comes the above Applicant, Shondray Lamont Martin, #222785, moves this Honorable Court to Deny and Dismiss the Respondent's proposed Conditional Order of Dismissal. But rather grant Applicant remedy under the Uniform Post-Conviction Procedure Act. S.C Code Ann. Section 17-27-10 to 160, for the following genuine issue of material facts:

Applicant contends he conceded the Respondent's procedural history with the exception to the below facts:

- I. During the date that the Remittitur was issued, Applicant was an inmate at the Coleman, Florida Federal Penitentiary. As such reasonable time as July, 21, 2008, he formulated a Motion. That as of September 23, 2008, he had received no response from the Abbeville County Clerk of Court nor the Attorney General's Office.

Therefore, on September 28, 2009 Applicant re-submitted his PCR

Application on the proper form.

II. Applicant asserts that the above mentioned dates may not clearly reflect true accuracy, as Applicant has been deprived of his personal property to include legal materials from Coleman, Florida Federal Institution, until present.

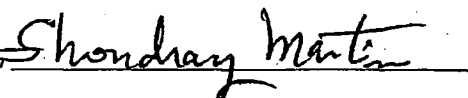
Applicant is currently pursuing all available Institutional and legal remedies to obtain his legal and personal property. Additionally, Applicant is currently attempting (and has previously attempted) to purchase complete copies of all pertinent and relevant legal documents on file at the Abbeville County Clerk of Court Office in connection with his PCR proceedings.

As such, Applicant did not deliberately make himself ignorant of the law. Upon being made aware of the proper Post-Conviction Relief Application, Applicant immediately re-submitted his PCR Application before the Clerk of Court for processing.

Wherefore, this Honorable Court should please deny and dismiss Respondent's proposed Order of Dismissal, for the record clearly establishes that the Applicant's Post Conviction Relief Application was timely filed,

And, this Honorable Court should please grant Applicant's request for a Post-Conviction Relief Hearing.

Respectfully submitted,



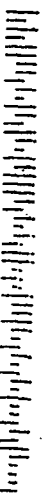
Shondray Lamont Martin
#222785, F3B243
386 Redemption Way
McCormick, S.C. 29899-0001

Gregory Martin, 242103
Dormick Correctional Inst.
Redemption Way
Dormick, South Carolina 29899

The Honorable Emily Yeagin McMahon
Clerk of Court, Abbeville County
Post Office Box 99
Abbeville SC 29620



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0008007260 JAN09 2012
MAILED FROM ZIP CODE 29835
\$01.08⁰⁰
PRIMEY BOWES





ALAN WILSON
ATTORNEY GENERAL

January 3, 2012

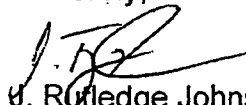
The Honorable Emily Yeargin McMahan
Clerk of Court, Abbeville County
Post Office Box 99
Abbeville SC 29620

Re: **Shondray Martin v. State of South Carolina**
2009-CP-01-0238

Dear Ms. McMahan:

Enclosed please find an original and a copy of an Order of Dismissal in connection with the above referenced case. Please file the original and return a certified copy to me in the self-addressed envelope provided for your convenience.

Sincerely,


U. Rutledge Johnson
Staff Attorney

JRJ:ab
Enclosures

cc: Shondray Martin, 222785

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Shondray Lamont Martin, #222785,

2009-CP-01-0238

Applicant,

v.

State of South Carolina,

Respondent.

CONDITIONAL ORDER OF DISMISSAL

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2012 JAN 4 PM 3 28
EMILY MACMAHAN
CLERK OF COURT

PROCEDURAL HISTORY

This matter comes before this Court by way of an application for post-conviction relief filed September 28, 2009. The State made its Return and Motion to Dismiss on

December 19, 2011

In its Return, Respondent requests that the action be summarily dismissed. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Abbeville County Clerk of Court. The Applicant was indicted at the April 2002 term of the Abbeville County Grand Jury for Criminal Conspiracy (2002-GS-01-0192, Count One), Attempted Armed Robbery (2002-GS-01-0192, Count Two), Murder (2002-GS-01-0192, Count Three), and Possession of a Firearm or Knife During the Commission of a Violent Crime (2002-GS-01-0192, Count Four). W. Benjamin McClain, Jr., Esquire, represented the Applicant. On March 15, 2004, Applicant proceeded to a trial by jury before the Honorable Wyatt T. Saunders. At the conclusion of the State's case, the trial court granted defense counsel's motion for a directed

verdict on the charge of Attempted Armed Robbery. On March 20, 2004, Applicant was found guilty as charged of Conspiracy, Murder, and Possession of a Firearm or Knife During the Commission of a Violent Crime. Applicant was sentenced to life imprisonment for murder, consecutive to a federal sentence he was already serving five (5) years for Conspiracy, and five (5) years for the possession charge. The sentences were run consecutive to each other and to the sentence Applicant was already serving for unrelated charges.

A timely Notice of Appeal was filed, and an Anders brief¹ was submitted on the Applicant's behalf. Applicant also filed a pro se brief. The South Carolina Court of Appeals dismissed the appeal. State v. Martin, Op. No. 2007-UP-241 (S.C. Ct. App. filed May 17, 2007). Applicant submitted a pro se Petition for Rehearing, dated May 24, 2007. The State made its Return to Pro Se Petition for Rehearing on June 8, 2007. The Court of Appeals denied Applicant's petition by Order dated June 28, 2007. The Remittitur was issued on August 3, 2007.

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

1. "Trial Counsel ineffective due to his failure to challenge for cause prospective juror(Ms. Ray #153)"
2. "Trial Counsel ineffective due to his failure to peremptorily challenge prospective juror(Ms. Ray #153)."
3. "Abuse of discretion by Judge/Court when Judge/Court failed to remove perspective juror (Ms. Ray #153) for cause and failed to develop the full extent of Juror Ray's extraneous knowledge or Martin and the case."
4. "Defendant was denied a fair Trial because his jury trial was not free from outside influences or extraneous information."
5. "There was insufficient or no evidence presented to find Defendant guilty of conspiracy to commit armed robbery beyond a reasonable doubt."
6. "There was insufficient or no evidence presented to find Defendant guilty of attempted armed robbery"

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

set 2/6

7. "There was insufficient or no evidence presented to find Defendant guilty of actual or constructive possession of felony possession of a weapon."
8. "There was insufficient or no evidence presented to find Defendant guilty of murder."
9. "Judge denied defendant right to trial by jury when he entered a verdict of guilty of attempted armed robbery."
10. "Prosecutor did not prove the elements of the crime of possession of a firearm or knife during the commission of a crime."
11. "Prosecutor did not prove each and every element of the crime of attempted armed robbery."
12. "Prosecutor did not prove each and every element of the crime of murder."
13. "Prosecutor did not prove each and every element of the crime of conspiracy to commit armed robbery."
14. "Prosecutorial Misconduct-Selective Prosecution."
15. "Abuse of discretion by the Judge when he sentenced defendant to life sentence, (the maximum sentence allowed)."
16. "Prosecutor did not prove actual or constructive possession of a firearm."
17. "Prosecution did not prove that defendant had dominion or control or the right to exercise dominion and control over the firearm."
18. "Prosecution did not prove through either direct or circumstantial evidence that defendant had dominion or control or the right to exercise dominion and control over the firearm."
19. "Prosecution did not prove criminal intent."
20. "Prosecution did not prove defendant has a general malignant recklessness of the lives and safety of others or a combination or a conviction of the defendant's mind which shows a disregard for social duty and fatally bent upon mischief."
21. "Prosecution did not prove any facts beyond a reasonable doubt to raise an inference of malice."
22. "Prosecution did not prove the defendant during the commission of a felony intentionally killed anyone."
23. "Prosecution did not prove malice aforethought was entertained by defendant or said co-defendants before the victim was killed."
24. "Prosecution did not prove malice aforethought through direct or circumstantial evidence."
25. "Prosecution did not prove beyond a reasonable doubt that the defendant's alleged use of a dangerous instrumentality such as a pistol or gun demonstrated such an intentional disregard for human life that malice may be implied or inferred in the use of such dangerous weapon such as a pistol or knife."
26. "Prosecution did not prove there was manifested a violent deliberate intention to unlawfully take away the life of another."

JEH 3/6

27. "Prosecution did not prove that the defendant intentionally and deliberately did an unlawful act which he then knows to be wrong and in violation of his duties to others and where no excuse or legal provocation appears and when the circumstances attending a killing shows an abandoned heart, a malignant heart fatally bent upon mischief."
28. "Prosecution did not prove beyond a reasonable doubt that defendant combined with one or more person for the purpose of committing an unlawful act or committing an act by unlawful means."
29. "Prosecution did not prove there was a mutual understanding agreement or common intention and plan between the co-defendants."
30. "Prosecution did not prove there was a guilty knowing and participation in the actions by defendant to carry out the agreement."
31. "Prosecution did not prove that the agreement of a conspiracy came into being though an implied mutual understanding between the co-conspirators or co-defendants."
32. "Prosecution did not prove that the defendant knew of the unlawful conduct but the defendant agreed to combine with another or other persons for the purpose of accomplishing the unlawful act."
33. "Prosecution did not prove through direct or circumstantial evidence a conspiracy to commit a crime between the defendant and the co-conspirators or co-defendants."
34. "Trial Counsel did not preserve any of the aforementioned issues during trial."
35. "Appellate Counsel did not bring up the aforementioned issues on direct appeal."
36. "Petitioner should be exempt from waiver of the issues presented to this Court because petitioner is claim "actual innocence" and miscarriage of justice."

Incorporated herein are the Clerk of Court records, the South Carolina Department of Corrections' records and the appellate records by reference. The Respondent reserves the right to amend this information upon receipt of any relevant materials.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on March 15, 2004. The Remittitur was issued after the Applicant's unsuccessful appeal on August 3, 2007. The Applicant therefore was required to file her application by August 4, 2008. This Application was filed on September 28, 2009, which was more than a year after the statutory filing period had expired.

A motion for summary judgement may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of

PEL 5/6

this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the ~~Sumter~~ ^{ABBEVILLE} County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 24th day of December, 2014.


EUGENE C. GRIFFITH, JR.
Chief Administrative Judge
Eighth Judicial Circuit

Newberry, South Carolina

Peggy Payne

From: Griffith, Eugene Law Clerk (Megan E. Harrigan) [egriffithlc@sccourts.org]
To: Peggy Payne
Cc:
Subject: Fw: Shondray Martin v. State (09-CP-01-238)
Attachments:

Judge Griffith says its more than fine to correct this. Thank you!
Sent via BlackBerry by AT&T

From: "Griffith, Eugene Secretary (Jacquelyn R. Lawrence)" <egriffithsc@sccourts.org>
Date: Wed, 4 Jan 2012 16:02:16 +0000
To: Griffith, Eugene Law Clerk (Megan E. Harrigan)<egriffithlc@sccourts.org>
Subject: FW: Shondray Martin v. State (09-CP-01-238)

Please ask how to respond to this

From: Peggy Payne [mailto:ppayne@abbevillecountysc.com]
Sent: Wednesday, January 04, 2012 10:38 AM
To: Griffith, Eugene Secretary (Jacquelyn R. Lawrence)
Subject: FW: Shondray Martin v. State (09-CP-01-238)

Hi Jackie - hope you had a great holiday this year!! Please see the below messages - it's just a simple mistake telling the applicant to contact Sumter County Clerk of Court instead of Abbeville in the last paragraph of the order. Please ask Judge Griffith if it's okay for me to correct or if he wants it sent back to him. THANKS.....

Peggy A. Payne
Common Pleas Clerk
Office: (864) 366-5312 ext. 202
Fax: (864) 366-9188

From: Rutledge Johnson [mailto:RJJohnson@scaq.gov]
Sent: Wed 1/4/2012 10:09 AM
To: Peggy Payne
Subject: Re: Shondray Martin v. State (09-CP-01-238)

It should read Abbeville- that is my mistake. Please contact Judge Griffith's office for permission to correct. Thank you very much!

J. Rutledge Johnson
Staff Attorney
South Carolina Attorney General's Office
(803) 734-1867

>>> "Peggy Payne" <ppayne@abbevillecountysc.com<mailto:ppayne@abbevillecountysc.com>> 1/4/2012 9:57 AM >>>
Just received Order of Dismissal on the above -- in the last paragraph it reads "The Applicant shall file any reasons he may have with the Sumter County Clerk of Court..." I'm assuming this should be Abbeville. If it needs to be corrected, let me know and I'll contact Judge Griffith's office and get his permission to correct the original and the copy to be returned to you.

Peggy A. Payne
Common Pleas Clerk
Office: (864) 366-5312 ext. 202
Fax: (864) 366-9188
--- Scanned by M+ Guardian Messaging Firewall ---



ALAN WILSON
ATTORNEY GENERAL

December 19, 2011

The Honorable Emily Yeargin McMahan
Clerk of Court, Abbeville County
Post Office Box 99; Room 103
Abbeville SC 29620

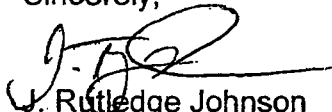
Re: Shondray L. Martin v. State of South Carolina
2009-CP-01-0238

Dear Ms. McMahan:

Enclosed please find the original Return and Motion to Dismiss of the Respondent, in the above-captioned case, Shondray Martin v. State, for filing in your office. We are also sending you copies of the following documents to accompany our Return:

- 1) PCR Application
- 2) SCDC Records
- 3) Clerk Records-Abbeville

Sincerely,


J. Rutledge Johnson
Staff Attorney

JRJ:cey
Enclosures

cc: Shondray Martin, 222785

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

Shondray Martin #222785

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

1395

CASE NO.

2009-CP-01-0238

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Shondray Martin, 222785, Bar No.

Address:

386 Redemption Way McCormick, SC 29899

phone: fax:

e-mail: other:

Defendant's Attorney:

J. Rutledge Johnson, Bar No. 78871

Address:

PO Box 11549 Columbia, SC 29211-1549

phone: 803-734-3737 fax: 803-734-4113

e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

December 19, 2011

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason)

☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE

CODE: _____ Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Shondray Lamont Martin, #222785,

2009-CP-01-0238

Applicant,

v.

RETURN AND MOTION TO DISMISS

State of South Carolina,

Respondent.

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2011 DEC 20 AM 3 11
EMILY Y MCCLAIN
CLERK OF COURT

In response to the post-conviction relief application filed September 28, 2009, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Abbeville County Clerk of Court. The Applicant was indicted at the April 2002 term of the Abbeville County Grand Jury for Criminal Conspiracy (2002-GS-01-0192, Count One), Attempted Armed Robbery (2002-GS-01-0192, Count Two), Murder (2002-GS-01-0192, Count Three), and Possession of a Firearm or Knife During the Commission of a Violent Crime (2002-GS-01-0192, Count Four). W. Benjamin McClain, Jr., Esquire, represented the Applicant. On March 15, 2004, Applicant proceeded to a trial by jury before the Honorable Wyatt T. Saunders. At the conclusion of the State's case, the trial court granted defense counsel's motion for a directed verdict on the charge of Attempted Armed Robbery. On March 20, 2004, Applicant was found guilty as charged of Conspiracy, Murder, and Possession of a Firearm or Knife During the Commission of a Violent Crime. Applicant was sentenced to life imprisonment for murder, consecutive to a federal sentence he was already

serving five (5) years for Conspiracy, and five (5) years for the possession charge. The sentences were run consecutive to each other and to the sentence Applicant was already serving for unrelated charges.

A timely Notice of Appeal was filed, and an Anders brief¹ was submitted on the Applicant's behalf. Applicant also filed a pro se brief. The South Carolina Court of Appeals dismissed the appeal. State v. Martin, Op. No. 2007-UP-241 (S.C. Ct. App. filed May 17, 2007). Applicant submitted a pro se Petition for Rehearing, dated May 24, 2007. The State made its Return to Pro Se Petition for Rehearing on June 8, 2007. The Court of Appeals denied Applicant's petition by Order dated June 28, 2007. The Remittitur was issued on August 3, 2007.

II.

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

1. "Trial Counsel ineffective due to his failure to challenge for cause prospective juror(Ms. Ray #153)"
2. "Trial Counsel ineffective due to his failure to peremptorily challenge prospective juror(Ms. Ray #153)."
3. "Abuse of discretion by Judge/Court when Judge/Court failed to remove perspective juror (Ms. Ray #153) for cause and failed to develop the full extent of Juror Ray's extraneous knowledge or Martin and the case."
4. "Defendant was denied a fair Trial because his jury trial was not free from outside influences or extraneous information."
5. "There was insufficient or no evidence presented to find Defendant guilty of conspiracy to commit armed robbery beyond a reasonable doubt."
6. "There was insufficient or no evidence presented to find Defendant guilty of attempted armed robbery"
7. "There was insufficient or no evidence presented to find Defendant guilty of actual or constructive possession of felony possession of a weapon."

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

8. "There was insufficient or no evidence presented to find Defendant guilty of murder."
9. "Judge denied defendant right to trial by jury when he entered a verdict of guilty of attempted armed robbery."
10. "Prosecutor did not prove the elements of the crime of possession of a firearm or knife during the commission of a crime."
11. "Prosecutor did not prove each and every element of the crime of attempted armed robbery."
12. "Prosecutor did not prove each and every element of the crime of murder."
13. "Prosecutor did not prove each and every element of the crime of conspiracy to commit armed robbery."
14. "Prosecutorial Misconduct-Selective Prosecution."
15. "Abuse of discretion by the Judge when he sentenced defendant to life sentence, (the maximum sentence allowed)."
16. "Prosecutor did not prove actual or constructive possession of a firearm."
17. "Prosecution did not prove that defendant had dominion or control or the right to exercise dominion and control over the firearm."
18. "Prosecution did not prove through either direct or circumstantial evidence that defendant had dominion or control or the right to exercise dominion and control over the firearm."
19. "Prosecution did not prove criminal intent."
20. "Prosecution did not prove defendant has a general malignant recklessness of the lives and safety of others or a combination or a conviction of the defendant's mind which shows a disregard for social duty and fatally bent upon mischief."
21. "Prosecution did not prove any facts beyond a reasonable doubt to raise an inference of malice."
22. "Prosecution did not prove the defendant during the commission of a felony intentionally killed anyone."
23. "Prosecution did not prove malice aforethought was entertained by defendant or said co-defendants before the victim was killed."
24. "Prosecution did not prove malice aforethought through direct or circumstantial evidence."
25. "Prosecution did not prove beyond a reasonable doubt that the defendant's alleged use of a dangerous instrumentality such as a pistol or gun demonstrated such an intentional disregard for human life that malice may be implied or inferred in the use of such dangerous weapon such as a pistol or knife."
26. "Prosecution did not prove there was manifested a violent deliberate intention to unlawfully take away the life of another."
27. "Prosecution did not prove that the defendant intentionally and deliberately did an unlawful act which he then knows to be wrong and in violation of his duties to others and where no excuse or legal provocation appears and when the circumstances attending a killing

- shows an abandoned heart, a malignant heart fatally bent upon mischief.”
28. “Prosecution did not prove beyond a reasonable doubt that defendant combined with one or more person for the purpose of committing an unlawful act or committing an act by unlawful means.”
 29. “Prosecution did not prove there was a mutual understanding agreement or common intention and plan between the co-defendants.”
 30. “Prosecution did not prove there was a guilty knowing and participation in the actions by defendant to carry out the agreement.”
 31. “Prosecution did not prove that the agreement of a conspiracy came into being though an implied mutual understanding between the co-conspirators or co-defendants.”
 32. “Prosecution did not prove that the defendant knew of the unlawful conduct but the defendant agreed to combine with another or other persons for the purpose of accomplishing the unlawful act.”
 33. “Prosecution did not prove through direct or circumstantial evidence a conspiracy to commit a crime between the defendant and the co-conspirators or co-defendants.”
 34. “Trial Counsel did not preserve any of the aforementioned issues during trial.”
 35. “Appellate Counsel did not bring up the aforementioned issues on direct appeal.”
 36. “Petitioner should be exempt from waiver of the issues presented to this Court because petitioner is claim “actual innocence” and miscarriage of justice.”

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

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower

court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on March 15, 2004. The Remittitur was issued after the Applicant's unsuccessful appeal on August 3, 2007. The Applicant therefore was required to file her application by August 4, 2008. This Application was filed on September 28, 2009, which was more than a year after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

IV.

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

V.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

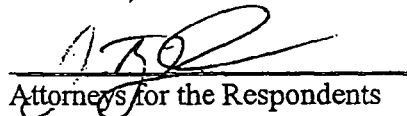
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Staff Attorney

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

Columbia, South Carolina
December 19, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS

2009-CP-01-0238

SHONDRAY MARTIN,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

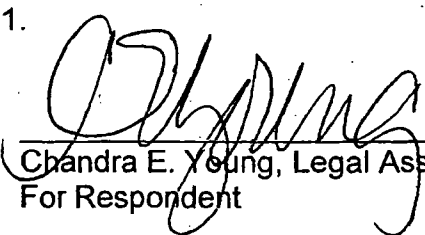
STATE OF SOUTH CAROLINA,)

Respondent.)

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

Shondray Martin, 222785
 McCormick Correctional Institution
 386 Redemption Way
 McCormick, SC 29899

DATED this 19th day of December, 2011.


 Chandra E. Young, Legal Assistant
 For Respondent

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 2011 DEC 20 AM 9 11
 EMILY Y MCMAHAN
 CLERK OF COURT



Emily D. McMahon
 ABBEVILLE COUNTY CLERK OF COURT
 P. O. BOX 99
 ABBEVILLE, SC 29620
 PHONE: (864) 366-5312
 FAX: (864) 366-9188

FILED COPY

April 1, 2011

Chandra Young
 Office of the Attorney General
 PCR Section
 P. O. Box 11549
 Columbia, SC 29211

Re: Shondray Lamont Martin, #98244-071 v. State
 (09-CP-01-238)

Dear Chandra:

Enclosed you will find copy of letter received from Shondray Martin. Mr. Martin was incarcerated in a federal facility at the time his PCR application was filed. I forwarded a copy of his application and GS paperwork to your office in October, 2009 (copy of certificate also enclosed). Mr. Martin is now serving time at McCormick Correctional and his SC inmate number is 222785. I had written Jennifer Kinzeler back in February (although my letter was not dated properly) enclosing the first letter from Mr. Martin, but have not had any response. I am sending him another copy of his PCR application today and advising him that both letters were being forwarded to your office. Please let me know if there's anything else that I need to do.

Peggy A. Payne
Common Pleas Clerk
 Phone: (864) 366-5312 ext. 202
 Fax: (864) 366-9188
ppayne@abbevillecountysc.com

Enclosures



Emily D. McMahon
ABBEVILLE COUNTY CLERK OF COURT
P. O. BOX 99
ABBEVILLE, SC 29620
PHONE: (864) 366-5312
FAX: (864) 366-9188

FILE COPY

April 1, 2011

Shondray Lamont Martin, #222785
McCormick Correctional Inst. F3B - 243
386 Redemption Way
McCormick, SC 29899

Re: Shondray Lamont Martin, #98244-071 v. State
PCR Application

Dear Mr. Martin:

Enclosed is another copy of your PCR application which was filed on 9/28/09. A copy was forwarded to you on 10/7/09, as shown on enclosed copy of Certificate of Service. However, this was mailed to you at the facility in Florida which was the address we had in our file.

The Attorney General's office was sent a cover letter and copy of your first letter in February, but this office has received no response from them. Their office will be contacted again enclosing copies of both letters. Once our office receives and files a PCR application, copies are sent to the AG office, Solicitor's office, and the applicant - nothing further is done until the application has been thoroughly reviewed and the AG's office requests appointment an attorney. Any and all scheduling, etc. is handled by the AG office, not the Clerk's office. You will be advised if our office receives a response from the AG.

Peggy A. Payne
Common Pleas Clerk
Phone: (864) 366-5312 ext. 202
Fax: (864) 366-9188
ppayne@abbevillecountysc.com

Enclosures

Shondray L. Martin #222785
 McCormick Corr. Inst. F3 B-243
 386 Redemption Way
 McCormick, SC 29899

March 28, 2011

The Honorable Ms. Emily Y. McHanan
 Abbeville County Clerk of Court
 P.O. Box 99
 Abbeville, SC 29620

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 2011 APR 1 AM 9 34
 EMILY Y. MCHANAN
 CLERK OF COURT

09-CF-01-238

Re: Shondray L. Martin v. State of South Carolina,
 Case No: 2002-GS-01-192; 2003-GS-01-080/
 PCR case No: - - - - - and PCR status.

Dear Clerk:

I am requesting the status of the above-titled case as well as the case number of the PCR Application I filed around or about September 2009 with your office. However, I have not yet received any notice that I will be appointed representation or anything regarding the Post-Conviction Relief. Ms. Emily as the Clerk of Court would you please be so kind as to inform me of the status of this case.

Thinking you in advance for your kindest regards in this matter.

Sincerely,
 Shondray L. Martin



Emily D. McMahon
ABBEVILLE COUNTY CLERK OF COURT
P. O. Box 99
ABBEVILLE, SC 29620
PHONE: (864) 366-5312
FAX: (864) 366-9188

FILE COPY

FEB. 18, 2011
~~JUNE 23, 2009~~

Jennifer Kinzeler
Office of the Attorney General
PCR Section
P. O. Box 11549
Columbia, SC 29211

Re: Shondray Lamont Martin, #98244-071v. State
(09-CP-01-238)

Dear Shandra:

Enclosed you will find copy of letter received from Mr. Martin. According to our records, the PCR application was filed September 28, 2009. On October 7, 2009, a copy of the PCR application and copies of documents from his General Sessions file were forwarded to the PCR department in the AG's office. I don't have anything filed since that time.

Peggy A. Payne
Common Pleas Clerk
Phone: (864) 366-5312 ext. 202
Fax: (864) 366-9188
ppayne@abbevillecountysc.com

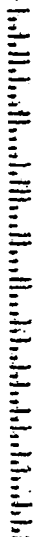
Shondray L. Martin #222785
 McCormick Corr. Inst. F3B-293
 386 Redemption Way
 McCormick, SC 29899

AUGUSTA GA, 306
 29 MAR 2014 194 2 L



The Honorable Ms. Emily Y. McHann
 Abbeville County Clerk of Court
 P.O. Box 99
 Abbeville, SC 29620

29620\$00\$919



Shondray L. Martin #222785
 386 Redemption Way
 McCormick, SC 28996

Date: 2/9/11

Ms. Emily Y. McHanan
 Clerk of Court
 P.O. Box 99
 Abbeville, SC 29620

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 2011 FEB 18 AM 9 11
 EMILY Y MCMAHAN
 CLERK OF COURT

RE: SHONDRA L. MARTIN Case No: 02 03-65-01-C80.

Dear Ms. Emily the reason for this correspondence is, I would like to know what is the status concerning my PCR? If you don't have this information could you please forward me a name or an address to whom I should write concerning this information.

Thanking you in advance regarding this matter.

Sincerely,
 Shondray Martin

Shondrayl L. Martin 2.22.85
 5500 Redemption Way
 McCormick, SC 29996

SECRET

[illegible]

USA 444

USA 44

SEABIRD'S COUNTRY

A BIRCHMOUNT COMPANY

Ms. Emily J. McKeown
Clerk of Court
W. B. 89
Abbeville, S. C. 29720

MEMORANDUM

[illegible]

STATE OF SOUTH CAROLINA,)
)
 COUNTY OF ABBEVILLE.)

IN THE COURT OF COMMON PLEAS.

Shondray Lamont Martin, #98244-071)

Applicant,)

v.)

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,)

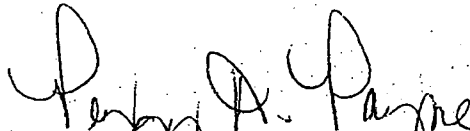
09-CP-01-238)

The undersigned, an employee of the Abbeville County Clerk of Court's Office, does hereby certify that copy of Application for Post Conviction Relief in the above-referenced PCR case was made upon the following persons by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 7th day of October, 2009, addressed as follows:

Attorney General's Office
 ATTN: PCR Dept. (+65 FILE)
 Post Office Box 11549
 Columbia, SC 29211

Shondray Lamont Martin, #98244-071
 Federal Corr. Complex-2
 Coleman U. S. P.
 P. O. Box 1034
 Coleman, FL 33521

Solicitor's Office
 P. O. Box 516
 Greenwood, SC 29648



Peggy A. Payne, Common Pleas Clerk

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLEShondray Lamont Martin

Plaintiff(s)

vs.

The State of South Carolina

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

09 -CP- 01 - 338

(Please Print)

Submitted By: _____

Address: _____

SC Bar #: _____

Telephone #: _____

Fax #: _____

Other: _____

E-mail: _____

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20____-CP-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Administrative Law Judge (980)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Sexual Predator (510)	☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)	

Submitting Party Signature: _____

Date: _____

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

09-CP-01-238

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of ABBEVILLE)Shondray Lamont Martin #98244-071)

Full name and prison number (if any) of Applicant)

v.)

APPLICATION FOR

State of South Carolina)

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 The Department of Corrections/ but Plaintiff is currently held in the Federal Bureau of Prisons.
2. Name and location of Court which imposed sentence In The General Sessions Court of Abbeville, County.
3. Name(s) of co-defendant(s) (if any) Christopher Frank Landrum/Rosalind Brown
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2002-GS-01-00192 - indictment
 - (b) 2003-GS-01-00080 -re-indictment

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2009 SEP 28 PM 3:47
EMILY Y MCMAHON
CLERK OF COURT

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) The 20th day of March 2004. life for murder, 30 years consecutive for conspiracy
- (b) to commit armed robbery, and five years consecutive for possession of a weapon.
- (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. The State of South Carolina in the Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. The 28th day of June 2007
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2007-UP-241
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See attachment sheet. #1
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attachment sheet. #2
- (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? See attachment sheet. (affidavit)
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. PCR.
- ii. direct appeal.
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Abbeville County Clerk of Court P.O. Box 99 Abbeville, SC 29620.
- ii. The South Carolina Court of Appeals P.O. Box 11629 Columbia, SC 29211.
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Petitioner did not receive disposition (see affidavit).
- ii. Direct appeal was denied.
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Petitioner did not receive disposition to PCR(see affidavit).
- ii. Direct appeal was denied December 15, 2005.
- 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?

Yes, in my PCR (see affidavit) Also on direct appeal.

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

(a) which grounds have been presented:

- i. See attachment sheets. #3
- ii. _____
- iii. _____

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

- i. PCR.
- ii. direct appeal.
- 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) The issues weren't presented due to ineffective assistances of Trial Counsel for failure to present the issues during Trial.
- (b) The reason weren't presented due to failure of Appellate Counsel to file ineffective assistance of Trial Counsel on direct appeal because Trial Counsel Failed to preserve the issues at Trial.
- (c) _____

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. Mr. W. Benjamin McClain Jr., Attorney at Law, 501 Pettigru Street, Greenville, SC 29601. (Trial Counselor)
 - ii. Mr. Robert M. Dudek, Assistant Appellate Def, SC Appellate Defense, 1205 Pendleton Street, Columbia, SC 29201. (Appellate Counselor)
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. During Trial.
 - ii. On direct appeal.
 - iii. _____

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

Conviction and sentence to be overturned/vacated.

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

Yes, Federal United States District Court, County of Anderson South Carolina.

STATE OF SOUTH CAROLINA)

County of ABBEVILLE)

VERIFICATION

I, Shondray L. Martin, 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.

X Shondray L. Martin

SWORN to and subscribed before me this _____ day of _____, _____.

(L.S.)

Notary Public

My Commission Expires: _____

I certify under penalty of perjury under the laws of the United States of America in the nature of [28 U.S.C. § 1746 (1)], that I have read the foregoing request for information and know the contents thereof, and that the information listed above is true, correct and complete.

Executed this 6th day of August, 2009.

FCC Coleman, Florida Sumter County

Subscribed and sworn before me this 24 day of September, 2009

[Signature]
Case Manager

Shondray L. Martin
Signature

Revised 3/2003

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

I, Shondray L. Martin, 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.

Shondray L. Martin
Applicant

✓ SWORN or affirmed to and subscribed before me this
_____ day of _____, _____.

Notary Public

My Commission Expires: _____

FCC Coleman, Florida Sumter County

Subscribed and sworn before me this
24 day of September 2009

Case Manager

Authorized by the Act of July 7, 1955, as amended, to administer oaths (10 USC & 4004)

I certify under penalty of perjury under the laws of the United States of America in the nature of [28 U.S.C. § 1746 (1)], that I have read the foregoing request for information and know the contents thereof, and that the information listed is true, correct and complete.

Executed this 5th day of August, 2009.

Shondray L. Martin
Signature

Affidavit of Truth

State of South Carolina)
) Scilicet
County of Abbeville)

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COUNTY OF ABBEVILLE
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"Indeed, no more than (affidavits) is necessary to make the prima facie case" United States v. Kis, 658 F.2nd, 526, 536 (7th Cir.1981); Cert. denied, 50 U.S. C.W. 2169; S.Ct. March 22, 1982.

That I, Shondray Lamont Martin, a living breathing man, being first duly sworn, depose and say and declare by my signature that the following facts are true, correct and complete to the best of my knowledge and belief.

That, on June 23, 2008 I mailed my Post Conviction Relief brief/motion to the Clerk of the Nancy S. King, the District Court of Abbeville and the Prosecutor Mr. William T. Jones.

That I, Shondray Lamont Martin did not receive any response acknowledging that my Post Conviction Relief Brief/Motion was filed or docketed.

That, on May 30, 2009 I wrote a letter to the Clerk of the Court requesting to know the status of my Post Conviction Relief Brief /Motion that I mailed to the Clerk of the Court and received the the response that the Clerk was unable to find a Post Conviction Relief Case filed on my behalf.

That, this Affidavit if not rebutted point for point by any man, representing the State of South Carolina at any level, in any matter, at any time within 7 days upon receipt, these facts stand as true in both the private and public record... as true.

Note: Maxim of law; 1. In Commerce- Truth is sovereign. 2. For a matter to be resolved, it must be expressed. Point of law- Silence equates to agreement.

I certify under penalty of perjury under the laws of The United States of America in the nature of [28 U.S.C. § 1746(1)], that I have read the foregoing request for information and know the contents thereof; and that the information listed above is true, correct and complete.

Executed this 13th day of July, 2009

Shondray L. Martin
Signature

- (10) (1) Trial Counsel ineffective due to his failure to challenge for cause prospective juror (Ms. Ray #153).
- (2) Trial Counsel ineffective due to his failure to peremptorily challenge prospective juror (Ms. Ray #153).
- (3) Abuse of discretion by Judge/Court when Judge/Court failed to remove prospective juror (Ms. Ray #153) for cause and failed to develop the full extent of Juror Ray's extraneous knowledge of Martin and the case.
- (4) Defendant was denied a fair Trial because his jury trial was not free from outside influences or extraneous information.
- (5) There was insufficient or no evidence presented to find Defendant guilty of conspiracy to commit robbery beyond a reasonable doubt.
- (6) There was insufficient or no evidence presented to find the Defendant guilty of attempted robbery.
- (7) There was insufficient or no evidence to find the Defendant guilty of actual or constructive possession of felony possession of a weapon.
- (8) There was insufficient or no evidence presented to find the Defendant guilty of murder.
- (9) Judge denied defendant right to trial by jury when he entered a verdict of guilty of attempted robbery.
- (10) Prosecutor did not prove the elements of the crime for possession of a firearm or knife during the commission of a crime.
- (11) Prosecutor did not prove each and every element of the crime of attempted armed robbery.
- (12) Prosecutor did not prove each and every elements of the crime of murder.
- (13) Prosecutor did not prove each and every elements of the crime of conspiracy to commit armed robbery.
- (14) Prosecutorial Misconduct-Selective Prosecution.
- (15) Abuse of discretion by the Judge when he sentenced defendant to life sentence, (the maximum sentence allowed).
- (16) Prosecutor did not prove actual or constructive possession of a firearm.
- (17) Prosecution did not prove that defendant had dominion and control or the right to exercise dominion and control over the firearm.
- (18) Prosecution did not prove through either direct or circumstantial evidence that defendant had dominion and control or the right to exercise dominion and control over the firearm.
- (19) Prosecution did not prove criminal intent.
- (20) Prosecution did not prove defendant had a general malignant recklessness of the lives and safety of others or a combination or a conviction of the defendant's mind which shows a disregard for social duty and fatally bent upon mischief.
- (21) Prosecution did not prove any facts beyond a reasonable doubt to raise an inference of malice.
- (22) Prosecution did not prove the defendant during the commission of a felony intentionally killed anyone.
- (23) Prosecution did not prove malice aforethought was entertained by defendant or said co-defendant's before the victim was killed.
- (24) Prosecution did not prove malice aforethought through direct or circumstantial evidence.
- (25) Prosecution did not prove beyond a reasonable doubt that the defendant's alleged use of a dangerous instrumentality such as a pistol or gun demonstrated such an intentional disregard

for human life that malice may implied or inferred in the use of such dangerous weapon such as a pistol or knife.

- (26) Prosecution did not prove there was manifested a violent deliberate intention to unlawfully take away the life of another.
- (27) Prosecution did not prove that the defendant intentionally and deliberately did an unlawful act which he then knows to be wrong and in violation of his duties to others and where no excuse or legal provocation appears and when the circumstances attending a killing shows an abandoned heart, a malignant heart fatally bent upon mischief.
- (28) Prosecution did not prove beyond a reasonable doubt that defendant combined with one or more persons for the purpose of committing an unlawful act or committing an act by unlawful means.
- (29) Prosecution did not prove there was a mutual understanding agreement or common intention and plan between the co-defendant's.
- (30) Prosecution did not prove that there was a guilty knowing and participation in the actions by defendant to carry out the agreement.
- (31) Prosecution did not prove that the agreement of a conspiracy came into being through an implied mutual understanding between the co-conspirator's or co-defendant's.
- (32) Prosecution did not prove that the defendant knew of the unlawful conduct but the defendant agreed to combine with another or other persons for the purpose of accomplishing the unlawful act.
- (33) Prosecution did not prove through direct or circumstantial evidence a conspiracy to commit a crime between the defendant and the co-conspirator's or co-defendant's.
- (34) Trial Counsel did not preserve any of the aforementioned issues during trial.
- (35) Appellate Counsel did not bring up the aforementioned issues on direct appeal.
- (36) Petitioner should be exempt from waiver of the issues presented to this Court because petitioner is claim "actual innocence" and miscarriage of justice.

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COUNTY OF ABBEVILLE
2009 SEP 28 PM 3 48
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- (11) (1) Juror stated knowledge of defendant criminal history and background attained through a probation officer who happened to be her husband.
- (2) Defendant instructed Trial Counsel to peremptorily prospective juror Ms. Ray #153 based on her statements.
- (3) Prospective juror's Ray's statement required her removal for cause by the Judge/Court and full development of her extraneous knowledge of Martin and the case due to her husband's characterization of Martin.
- (4) Prospective Juror Ray stated she knew extraneous information about defendant told to her by her husband which would be impossible for her to ignore during deliberations.
- (5) See Trial Transcripts.
- (6) See Trial Transcripts.
- (7) See Trial Transcripts.
- (8) See Trail Transcripts.
- (9) This verdict prejudiced me with all the other charges and Defendant asked for trial by jury.
- (10) See Trial Transcripts.
- (11) See Trial Transcripts.
- (12) See Trial Transcripts.
- (13) See Trial Transcripts.
- (14) Prosecutor did not try State Trooper for murder of decedent. Expert witness testified State Trooper's detainment of decedent contributed to his death.
- (15) See Trial Transcripts.
- (16) See Trial Transcripts.
- (17) See Trial Transcripts.
- (18) See Trial Transcripts.
- (19) See Trial Transcripts.
- (20) See Trial Transcripts.
- (21) See Trial Transcripts.
- (22) See Trial Transcripts .
- (22) See Trial Transcripts.
- (24) See Trial Transcripts.
- (25) See Trial Transcripts.
- (26) See Trial Transcripts.
- (27) See Trial Transcripts.
- (28) See Trial Transcripts.
- (29) See Trial Transcripts.
- (30) See Trial Transcripts.
- (31) See Trial Transcripts.

- (32) See Trial Transcripts.
- (33) See Trial Transcripts.
- (34) See Trial Transcripts.
- (35) See Trial Transcripts.
- (36) See Trial Transcripts.

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STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2009 SEP 28 PM 3 48
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CLERK OF COURT

- (15) Trial Counsel was ineffective due to his failure to challenge for cause prospective juror (Ms. Ray #153).
- (2) Trial Counsel ineffective due to his failure to peremptorily challenge prospective juror (Ms. Ray #153).
- (3) Defendant was denied a fair Trial because his jury trial was not free from outside influences or extraneous information.
- (4) There was insufficient or no evidence presented to find defendant guilty of conspiracy to commit robbery beyond a reasonable doubt.
- (5) There was insufficient or no evidence presented to find the defendant guilty of attempted robbery.
- (6) There was insufficient or no evidence to find the defendant guilty of actual or constructive possession of felony possession of a weapon.
- (7) There was insufficient or no evidence presented to find the defendant guilty of murder.

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2009 SEP 28 PM 3 48
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CLERK OF COURT

Shondray Lamont Martin #98244-071
Federal Corr. Complex-2
Coleman U.S.P.
P.O. BOX 1034
Coleman, FL 33521

Emily Y. McMahon
CLERK OF COURT
P.O. BOX 99
ABBEVILLE, SC 29620

Date: August 26, 2009.

Re: PCR Application

Dear Ms. McMahon:

I am writing in regards to your letter I received on August 10, 2009, stating the proper procedures needed in order to complete the Application.

Please allow me to inform you that in this institution there is no Notary Public. I have been informed through corrective staff on how the process goes as far as getting a Notary Public to come in and notarize this Application. This process has procedures that could take anywhere from a 7 to 10 working days period starting from the date listed above.

Sorry for the inconvenience I just became aware of this myself. Could you Please allow me the time to complete this process? Your patience I would greatly appreciate.

Thank you for your consideration of my request.

Sincerely,

Shondray L. Martin

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COUNTY OF ABBEVILLE
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CLERK OF COURT

Coleman U.S.P.

0. Box 1039

Coleman, FL 33521

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Introduction

THURSDAY JUL 31 1964
STANT PETERSBURG FL
23 AUG 2009 11:01 T

Clerk of Court

P.O. Box 99

Abbeville, SC 29620

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FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.



Emily P. McMahon
ABBEVILLE COUNTY CLERK OF COURT
P. O. BOX 99
ABBEVILLE, SC 29620
PHONE: (864) 366-5312
FAX: (864) 366-9188

August 10, 2009

Shondray Lamont Martin, #982440-071
Federal Corr. Complex-2
Coleman U. S. P.
P. O. Box 1034
Coleman, FL 33521

Re: Shondray Lamont Martin, #98244-071
PCR Application

Dear Mr. Martin:

Your PCR application was received today. I am returning the application for proper execution. Please sign the verification (next to the last page) at the red 'x' in the presence of a Notary Public who will sign and date at the red checkmark. Also, you did sign the very last page, but this also has to be in the presence of a Notary Public. Please have that section signed by the Notary as well. I am including a self-addressed envelope to return these pages to me. Processing of your application cannot be completed until these corrected pages are received.

Peggy A. Payne
Common Pleas Clerk
Phone: (864) 366-5312 ext. 202
Fax: (864) 366-9188
ppayne@abbeyvillecountysc.com

Enclosures

STATE OF SOUTH CAROLINA
ABBEVILLE COUNTY

Shondray Lamont Martin

vs.

State of South Carolina,
et.al.

APPLICATION FOR POST-CONVICTION RELIEF

Comes now the above with a request to this Honorable Court to review defendants rights that he was defaulted concerning constitutional violations.

Defendant was indicted by the Court of General Sessions for Abbeville Court on April 29, 2002 of conspiracy, attempted armed robbery, murder, and possession of a firearm during a violent crime. R.960-962. Trial began on March 15, 2004 before the Honorable Wyatt T. Saunders, Jr. Martin was represented by W. Benjamin McClain. On March 20, 2004 the jury found

Martin guilty of all counts. Supp. R. 301. The Court sentenced him to life for murder, 30 years consecutive for conspiracy to commit armed robbery, and five years consecutive for possession of a weapon. Supp. R. 309-310. The attempted armed robbery was dismissed before trial.

A timely appeal was filed on December 14, 2005 and October 13, 2006 appointed counsel Robert M. Dudek filed an "Anders" brief and requested to be dismissed off the case. On May 17, 2007, a Petition for Rehearing was entered and was denied on June 28, 2007. (Pro se motion). This cause follows:

Defendant (pro se) makes the affirmative defense of Ineffective Assistance of Counsel by his default of due process rights in which the United States Constitution guarantees under amendments 5,6,and 14, as are also under the guarantees of the States' Constitution...

GROUND FOR RELIEF

GROUND 1

At trial, counsel did not request the court to instruct the jury to view under the lesser charge of the homicide offense.

For instance, manslaughter or involuntary manslaughter. [And] Counsels neglect did not preserve the issue for a direct appeal, causing procedural problems in asserting this affirmative defense as to not guilty to 1st degree murder.

1) Defense counsel has a duty to request appropriate jury instructions and to object to erroneous ones. See U.S. v. Hooks 781 F.2d 1166, 1172 n.8 (6th Cir. 1986). 2) Objections must be made to give the trial court an opportunity to correct any mistakes in the jury instructions. See U.S. v. Hamilton, 684 F.2d 380, 385 (6th Cir. 1982). 3) The omission of the lesser charges the juror could and would consider deprived defendant of a substantive right. The right to a jury trial. 4) In Keeble v. U.S. 412 US 205, 208, 935 Ct. 1993, 36 L.Ed 2d 844 (1973) the Supreme Court avered that the jury instructions will cover the elements of the crime charged and all lesser included crimes. Counsel's defaulted performance deprived Defendant of his Constitutional Right and added additional prison time, a life sentence without parole. The jury did not know they could have reached a guilty verdict on a lesser charge and still punish this defendant for a crime.

In U.S. v. Wolry, 133 F.3d 758 (10th Cir. 1998) the Court even went further, "it is reversible error not to instruct jury

on theory of defense that is supported by evidence and law."

In this particular case the neglect of the State to provide medical attention to the victim resulted in his death. The jury could rationally have convicted (for the sake of argument) defendant of the lesser offense and acquitted on the greater offense. This resulted in no meaningful defense by attorney as clearly averred by defendant.

GROUND 2

Counsels' lack of knowing pre-existing law prejudiced the defendant, resulting in an unreliable outcome of this trial. See Everett v. Beard, 290 F.3d 500, 515-16 (3rd Cir. 2002) (counsel's failure to object to erroneous jury instructions prejudiced defendant because there was more than reasonable probability defendant would not have been convicted of 1st degree murder.)

Counsel should have requested additional jury instructions. He did not know pre-existing law concerning this case (murder) because he did not ask for the lesser charges penalty.

The Court did not inform the jury of the effect of their decisions if a guilty verdict was rendered. See Shafer v. S.C. 149 L.Ed 2d 178 (2001). The fourteenth Amendments' due process clause held to require that in South Carolina Capital

Sentencing proceeding, whenever defendants future dangerousness was at issue, the jury should be properly informed that life sentence carried no possibility of parole.

The above is similar because, at trial the jury's verdict resulted in a life sentence without parole. The jury should have decided defendants faith if indeed a lesser penalty should apply but that simply did not happen, resulting in a questionable verdict and sentence.

Presumption has to be assumed denial of of as to effective assistance of counsel. Defendant does not have to prove more likely than not that the outcome would have been altered. See Woodford v. Visciotti, 537 US 19, 22-23 (2002). Counsels failure to review all the defenses defendant would be entitled to use as a defense was surely defective and this court must take the appropriate action to correct and insure the defendant did have his rights under the Sixth Amendment (Right to Counsel) granted.

GROUND 3

Martin was denied a fair trial when counsel nor the trial court removed juror for cause after she revealed knowledge of

extraneous information about defendant Martin and his criminal case.

During the Court's general voir dire examination of jury venire one prospective juror (Ms. Ray #153) revealed that her husband worked at the probation office and had told her that defendant had a history of prior drug charges. Tr. pg. 134, Ins10-25 - pg. 135, Ins. 5. Without developing the full extent of juror Ray's extraneous knowledge of Martin and the case, juror Ray stated that she could be fair and impartial. Tr. pg. 162, Ins4-13.

Martin told defense counsel (Benjamin McCain) that juror Ray should be removed, however counsel did not move to strick juror Ray for cause, or exercise a peremptory challenge.

Juror Ray was ultimately seated on Martin's petit jury panel and served as juror in the determination of Martin's criminal charges. Tr. pg. 187, Ins2-9; pg 1144 Ins. 4-5.

The right to a jury trial guarantees the accused a fair trial by a panel of impartial, indifferent, juror's who are free from outside influences or extraneous information. American Jurisprudence, Criminal Law, §1092;cf U.S. v. Cavell, 287 F.2d

at 792 (3rd Cir. 1961). Appellate Courts have a Constitutional duty to make an independent evaluation of the circumstances surrounding a juror's knowledge of extraneous information that may affect his/her decision making process related to defendant's guilt. Sheppard v. Maxwell, 384 U.S. 333 (1966).

In this case, Juror Ray clearly had access to and knowledge of information concerning Martin's past criminal record. Because the Court did not properly develop the full extent of Ms. Ray's knowledge--as conveyed by Probation Officer husband--this court is left to speculate what else this juror know and whether or not she informed the other jurors of such. Martin contends that prejudice should be presumed in this case. The Supreme Court has held that certain unapproved communications or knowledge by a juror is presumptively prejudicial. Remmer v. U.S., 347 US 227, 229 (1954); U.S. De LaVega, 913 F.2d 861 (11th Cir. 1990).

More specifically, a jurors knowledge of a defendant's past criminal record has long been recognized to be prejudicial U.S. v. Lewis, 787 F.2d 1318, 1323 (9th Cir. 1986)(observing that it is extremely difficult for jurors to ignore convictions when deciding guilt). Martin argues that had juror Ray not known about his prior criminal conduct, he would not have been compelled to take the stand in his own defense to "explain"

his criminal conviction.

At the very least, juror Ray should have been removed by counsel through peremptory challenge. It is obviously troubling to have a juror sitting in determination of a defendant's guilt or innocence while in possession of extraneous information such as a defendant's criminal history--juror Ray may have known much more about Martin's personal background and/or circumstances of the criminal case. The record only reflects that juror Ray did receive information about Martin's criminal background from her husband who worked as a probation office employee. Tr. pg. 134, Ins. 10-25.

Without a more developed record as to the full extent of Juror Ray's knowledge, this court should grant Martin the benefit of doubt and presume prejudice. Remmer, 347 US at 229. Trial counsel's sole rationale for Martin not taking the stand was because the prosecution would then be allowed to bring up Martin's criminal background.

GROUND 4

The trial court erred in failing to develop and address conflict of interest raised during trial between Martin and

his defense counsel. From the very beginning of trial and throughout the proceedings Martin and defense counsel constantly argued and could not agree about any aspect related to Martins defense. This conflict effectively prevented any meaningful attorney-client relationship to prevail. Although most of the conflict between Martin and counsel was concealed from the court, there was enough evidence for the court to discern that a problem did exist. For example, at one point in the proceedings defense counsel jumped up and threatened to quit if defendant took the stand. Tr. pg. 968 Ins. 7-9. At another point, Martin complained to the court that counsel was not properly representing him for among other reasons, counsel's failure to ask prosecution witnesses' specific questions posed by Martin. Tr. pg. 964 Ins. 7-20.

Notwithstanding these two obvious instances manifesting potential conflicts between Martin and defense counsel, the trial court did not conduct any type of fact development or seek to inquire further into the apparent conflict. If a trial court knows, or has reason to believe that a conflict exist, it has a constitutional obligation to initiate an inquiry into the matter. Cuyler v. Sullivan, 446 US 335 (1980); Mickens v. Taylor 152 L.Ed. 2d 291 (2002); Stoia v. U.S., 22 F.3d 766 (7th Cir. 1994)(Conflict of Interest established ineffective

assistance of counsel).

Moreover, a trial court has a duty to ascertain whether or not a conflict of interest exists, and if it fails to do so when the record indicates a potential conflict, the defendants Sixth Amendment rights are violated and new trial is required. Holloway v. Arkansas, 435 US 475 (1978). In this case there was ample evidence revealed to the trial court to warrant judicial inquiry, however, the trial court-for whatever-reason- chose to disregard obvious signs of conflict between Martin and his court appointed defense counsel.

This court should take this auspicious opportunity to expressly advise lower courts the proper practice to follow when faced with indications that a potential conflict is brewing between defendant and his attorney.

GROUND 5

No objection from counsel to the prosecutor's closing statement to the jury deprived Martin of a fair trial. Appellate counsel briefed a single issue on appeal related to prosecutorial misconduct during closing arguments. (See Initial Brief, pgs. 11 & 12).

This pro se argument is somewhat related to appellate counsel's argument, however, should be considered by the Court as independant claim of error. During closing argument prosecutor Townes Jones stated as follows:

And I assure you of one thing, you know, I'm not here, grateful for the opportunity to represent the people of this circuit as Solicitor and I've done it in a fashion that will allow me to walk away from it without owing anybody anything, no police officer, nobody. I don't, I'm not going to come in here and try to prosecute somebody because some police officers asked me to. I have a commitment to seek justice and I have a commitment to do what's right, and I'm walking away from this without owing anybody anything. I have gratitude for the opportunity to have done the job, I mean gratitude, gratitude, and I'm humbled by the opportunity, and greatness has come my way because of it but I ain't going to participate in something that they suggested I would do, no sir, thats taking it a little bit far, even the suggestion of that. Tr. pg.1203, Ins.6-23. [Emphasis added]

Prosecutor Jones' closing arguments clearly run afoul of an acceptable argument insomuch as Jones contends that he would do ever do anything unjust or wrong in the prosecution of a criminal defendant. Jones attempts to cover his arguments by stating that the defense "suggested" something that calls into question the prosecutor's integrity, or commitment to justice; however, the defense made no such implication. The defense simply argued that the State Patrol were liable for victim's death for delaying route to hospital. "It is pernicious for prosecutor to invoke his personal status as basis for conviction." Berger v. U.S., 295 US 78 (1934).

It should be noted that court appointed appellate counsel did not use Reply Brief to address any of Respondent's arguments, but merely filed an exact copy of initial argument and changed the dates. Apparently, appellate attorney Dydek did not feel that this appeal warranted specific argument in reply. (No Appeal is to the logical conclusion.)

GROUND 6

The trial court erred and deprived Martin of a fair trial when the court refused to allow Martin to confer with defense

counsel during recess in Martin's trial testimony. No objections by way of counsel were made. Unfortunately, Martin decided to take the stand in his own defense at trial. Tr. pgs. 972-1088. One reason Martin exercised his right to testify was because juror Ray was already privy to Martin's prior criminal record, and counsel's sole rationale for Martin not taking the stand was because the prosecution would reveal Martin's prior criminal record to the jury.

Counsel was infuriated by Martins' decisions to take the stand. At one point counsel threatened to quit as defense attorney if Martin exercised his right to testify. Tr. pg. 968 Ins. 7-9. Martin's testimony was a miserable blunder for the defense. In large part, counsel is to blame for Martin's poor performance on the stand. After Martin was determined to testify defense counsel would not do anything to assist Martin, or prepare him for cross-examination.

At a break during Martin's testimony, Martin wanted to confer with his attorney, however, the trial court refused by ordering that defendant not talk to defense counsel during break. Tr. pg. 1024, Ins. 19-22. Although defense counsel did not lodge any contemporaneous objection (which Martin

could not instruct counsel to do since Martin was prohibited from communicating with counsel), this Court may consider unpreserved errors under plain error standard. U.S. v. Olano, 507 US 725 (1993); Johnson v. U.S., 520 US 461 (1997).

Insofar as Martin's burden of proof related to prejudice, Martin would argue that the Court's refusal to allow him to confer with Counsel resulted in the prosecutions' ability to exploit Martin on cross-examination, thus allowing the jury to believe that Martin's testimony was not credible.

Alternatively, Martin would argue that the denial of his Sixth Amendment right to confer with counsel is not subject to harmless or plain error review because of the structural nature attached to such right. Arizona v. Fulminante, 499 US 279 (1991). Martin was effectively denied any legal representation related to his decision to testify and the resulting testimony.

The Court's have held a presumption of prejudice when defendant denied right to counsel. U.S. v. Cronin, 466 US 648 (1984); Smith v. Robbins, 528 US 259, 287 (2000)(listing categories of cases where prejudice is presumed as (1) denial of counsel,...)

GROUND 7

There was insufficient evidence for a reasonable juror find the existence of a conspiracy to commit robbery. Counsel failed to use this affirmative defense of not guilty.

Martin argues that there was absolutely no evidence submitted to the jury supporting conspiracy to commit robber. The only testimony that suggest that a conspiracy may have occurred between Martin and putative co-defendant Cris Landrum was that of Roselind Brown. Tr. pgs. 401-445. There surely was not any conspiracy between Martin and Brown or Martin, Brown and Landrum because Ms. Brown herself testified that she did not want any part of any robbery of her drug dealer "Heavy D". id. pg 411.

Brown further testified that Martin did not mention robbery of Heavy D., but merely asked Brown to go knock on Heavy D's door. id. pg. 413-14.

Even assuming that Browns testimony serves as probative evidence that a conspiracy existed between Martin and Landrum, Brown's testimony is not corroborated by any independent evidence. Moreover, Brown's testimony is incredulous considering that her October 2, 2001, statement to police stated that Brown Knew about the robbery of Heavy D. before hand

and Brown was going to get a cut of the money. Tr. pgs. 423, Ins. 15-16; pg. 424, Ins. 10.

The standard of reviewing for sufficiency of evidence claim is whether, after viewing the evidence and the reasonable inferences which flow therefrom in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the crime beyond reasonable doubt. Jackson v. Virginia, 443 US 307, 317-18 (1979). Martin contends that a conspiracy to commit robbery cannot rest solely upon the uncorroborated "unsubstantial" testimony of alleged accomplices. cf. U.S. v. Garner, 581 F.2d 481 (5th Cir. 1978).

Nowhere in the record before this court is there any evidence that Martin knowingly entered into an agreement with Landrum (or Brown) to commit robbery against Heavy D. The testimony of Brown cannot, as a matter of law, support a guilty verdict against Martin and this Court should reverse the lower court's denial of defendant's motion for direct verdict of acquittal on conspiracy to commit robbery charge.

COUNT 8

The lower court erred when it instructed/charged the jury in this case. Counsel did not object. Martin has one

main complaint about the trial court's charge to the jury. Specifically, the court's instruction that the jury must equate any "contributing cause" of death with proximate cause of death. Tr. pg. 1239, Ins. 8-25.

Considering the facts of this case (that law enforcement may have been the proximate cause of victims death), there is a reasonable probability that the trial court's tweeking of traditional proximate cause instruction served to deprive the defendant of a fair trial.

Again, Martin is a layman acting pro se in this appeal, and does not have access to South Carolina caselaw in order to support his legal propositions. However, it seems generally inconsistent with due process to effectively charge the fact finder to return a verdict of guilty for malice murder simply based on a contributing factor that may (or may not) have resulted in the victim's death.

Martin respectfully requests that this Honorable Court review the trial court's jury instructions in their entirety with special attention focused on the court's language related to proximate and contributing cause of victim's death.

ROUND 9

The court erred by sustaining a jury verdict for use of a firearm during the offense of conspiracy to commit robbery. Once again there was no objection from counsel. Based on the prosecution's theory of the case and its arguments before the jury, and the Court's jury instructions; it appears that Martin's conviction for use of a firearm during a crime of violence is attached to the conspiracy to commit robbery conviction.

Initially, Martin was charged with attempted robbery which could have legally supported a conviction for use of a firearm, however, the Court dismissed that charge for lack of evidence. Tr. 971, Ins. 1-3.

The question presented before this Court is whether a conviction for conspiracy to commit robbery (an inchoate crime) can support a conviction for "use" of a firearm during a violent crime. Martin argues that, unless he and Landrum used the firearm while actually conspiring to commit robbery; there is no logical way to have a conviction for use of a firearm during a crime of violence such as conspiracy. The

GROUND 9

The court erred by sustaining a jury verdict for use of a firearm during the offense of conspiracy to commit robbery. Once again there was no objection from counsel. Based on the prosecution's theory of the case and its arguments before the jury, and the Court's jury instructions; it appears that Martins conviction for use of a firearm during a crime of violence is attached to the conspiracy to commit robbery conviction.

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The question presented before this Court is whether a conviction for conspiracy to commit robbery (an inchoate crime) can support a conviction for "use" of firearm during a violent crime. Martin argues that, unless he and Landrum used the firearm while actually conspiring to commit robbery; there is no logical way to have a conviction for use of a firearm during a crime of violence such as conspiracy. The

jury apparently rejected the prosecution's felony murder theory, and therefore no actual robbery was being committed.

GROUND 10.

The cumulative affect of numerous trial errors in this case deprived Martin of a fair trial and counsel's performance was defaulted at the bare minimum. Most State and Federal Courts of Appeal have accepted and practice the theoretical underpinnings of the cumulative error doctrine. See: U.S. v. Sepulveda, 15 F.3d 1161, 1196 (1st Cir. 1993)(Discussing cumulative error doctrine and expressly adopting the standard of review); U.S. v. Kartman, 417 F.2d 893, 898 (9th Cir. 1969); U.S. v. Meserve, 271 F.3d 314. (1st Cir. 2001).

Martin contends that the aggregated affect of the errors in this case deprived him of a fair trial as guaranteed by the Due Process Clause of the Fourteenth Amendment, U.S. Constitution, and the South Carolina State Constitution. As many other Courts of Appeals have held, "[A] column of errors may sometimes have a logarithmic sum of its constituent parts." Merserve, 271 F.3d at 332. To be sure, some of the errors complained of in this appeal are not so

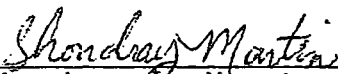
devoid of merit to warrant summary disposal. Martin complains about, among other errors, being deprived access to his trial lawyer (Ground #); and a juror whose husband told her extraneous information about defendant's criminal history and the case in general. (Ground #) Any of these issues should entitle Martin to a new trial, but together, they should demand that Martin be granted another (and fair) trial.

CONCLUSION

This writ should be granted and a evidentiary hearing ordered as to Ineffective Assistance of Counsel or other appropriate remedy this Honorable Court deems fit and fair.

I thank the Court in advance for its consideration in this most urgent matter.

Respectfully submitted this 23 day of June 2008.



Shondray L. Martin
F.C.C. U.S.P. 2
P.O. Box 1034
Coleman, Fl. 33421

CERTIFICATE OF SERVICE

I do hereby swear that a true and correct copy was served
via 1st. Class Mail to the address(s) below:

Donald J Zelenka
Assistant Deputy Attorney General
P.O. Box 11549
Columbia, S.C. 29211

This 23 day of ^{June} ~~May~~ 2008.

Shondray L. Martin
Shondray L. Martin



Emily D. McMahon
ABBEVILLE COUNTY CLERK OF COURT
P. O. Box 99
ABBEVILLE, SC 29620
PHONE: (864) 366-5312
FAX: (864) 366-9188

July 16, 2009

Shondray Lamont Martin, #982440-071
Federal Corr. Complex-2
Coleman U. S. P.
P. O. Box 1034
Coleman, FL 33521

Re: The State v. Martin, Shondray Lamont
2002-GS-01-00192
2003-GS-01-00080

Dear Mr. Martin:

Your letter of July 13, 2009 with attachments was received in our office today. We are unable to file your post conviction relief application as submitted. Enclosed you will find the required documents to be completed and returned to our office for filing. The paperwork filed with our office must be originals. After filing, we will return a certified copy to you, as well as furnish copies to the Office of the Attorney General and the Solicitor's Office for the Eighth Judicial Circuit. Upon authorization and notification from the Attorney General's Office, an attorney will be appointed to represent you.

I am returning the paperwork you submitted with your letter in the event you need this for completing your application.

Peggy A. Payne
Common Pleas Clerk
Phone: (864) 366-5312 ext. 202
Fax: (864) 366-9188
ppayne@abbevillecountysc.com

Enclosures

ALSO RET'D ENV.
ADDRESSED TO
DISTRICT COURT OF
ABBEVILLE

Shondray Lamont Martin #98244-071
Federal Corr. Complex-2
Coleman U.S.P.
P.O. BOX 1034
Coleman, FL 33521

Emily Y. McMahan
CLERK OF COURT
P.O. BOX 99
ABBEVILLE, SC 29620

Date: *July 13, 2009*

RE: Correspondance and Affidavit concerning the Defendant's
Post Conviction Relief Motion/Brief.

Dear Ms. McMahan:

I am writing in regards to my Post Conviction Relief Motion/Brief that I filed with the Clerk of the Court, District Court, and the Government Prosecutor on June 23, 2008.

I am requesting that my affidavit and my Post Conviction Relief Motion/Brief be filed with this Court.

As I am unaware of the procedural process required in the circumstances regarding what is required for me to have my Post Conviction Relief Motion/Brief issues adjudicated on their own merits, I am requesting assistance of counsel and information regarding the Court procedures for filing a Post Conviction Relief Motion/Brief when I had previously filed such Motion/Brief but received no such acknowledgement from the interested parties.

Thank you for your consideration of my requests.

Sincerely,

Shondray L. Martin

Affidavit of Truth

State of South Carolina)
) Scilicet
County of Abbeville)

"Indeed, no more than (affidavits) is necessary to make the prima facie case" United States v. Kis, 658 F.2nd, 526, 536 (7th Cir.1981); Cert. denied, 50 U.S. C.W. 2169; S.Ct. March 22, 1982.

That I, Shondray Lamont Martin, a living breathing man, being first duly sworn, depose and say and declare by my signature that the following facts are true, correct and complete to the best of my knowledge and belief.

That, on June 23, 2008 I mailed my Post Conviction Relief brief/motion to the Clerk of the Nancy S. King, the District Court of Abbeville and the Prosecutor Mr. William T. Jones.

That I, Shondray Lamont Martin did not receive any response acknowledging that my Post Conviction Relief Brief/Motion was filed or docketed.

That, on May 30, 2009 I wrote a letter to the Clerk of the Court requesting to know the status of my Post Conviction Relief Brief /Motion that I mailed to the Clerk of the Court and received the the response that the Clerk was unable to find a Post Conviction Relief Case filed on my behalf.

That, this Affidavit if not rebutted point for point by any man, representing the State of South Carolina at any level, in any matter, at any time within 7 days upon receipt, these facts stand as true in both the private and public record... as true.

Note: Maxim of law; 1. In Commerce- Truth is sovereign. 2. For a matter to be resolved, it must be expressed. Point of law- Silence equates to agreement.

I certify under penalty of perjury under the laws of The United States of America in the nature of [28 U.S.C. § 1746(1)], that I have read the foregoing request for information and know the contents thereof, and that the information listed above is true, correct and complete.

Executed this 13th day of July, 2009

Shondraugh Martin
Signature



Emily D. McMahon
ABBEVILLE COUNTY CLERK OF COURT
P. O. BOX 99
ABBEVILLE, SC 29620
PHONE: (864) 366-5312
FAX: (864) 366-9188

June 12, 2009

Shondray Lamont Martin, #982440-071
Federal Corr. Complex-2
Coleman U. S. P.
P. O. Box 1034
Coleman, FL 33521

Re: The State v. Martin, Shondray Lamont
2002-GS-01-00192
2003-GS-01-00080

Dear Mr. Martin:

Your letter of May 30, 2009, was received in our office on June 5. I have checked all files, including our court indexing system and civil docket sheets and have been unable to find a Post Conviction Relief case filed on your behalf.

You also requested certified copies of the above-referenced General Sessions cases. It is my understanding that the General Sessions Clerk has already provided these copies to you.

A handwritten signature in cursive script that reads "Peggy A. Payne".

Peggy A. Payne
Common Pleas Clerk
Phone: (864) 366-5312 ext. 202
Fax: (864) 366-9188
ppayne@abbevillecountysc.com



Emily D. McMahon
ABBEVILLE COUNTY CLERK OF COURT
P. O. BOX 99
ABBEVILLE, SC 29620
PHONE: (864) 366-5312
FAX: (864) 366-9188

June 12, 2009

Shondray Lamont Martin, #982440-071
Federal Corr. Complex-2
Coleman U. S. P.
P. O. Box 1034
Coleman, FL 33521

Re: The State v. Martin, Shondray Lamont
2002-GS-01-00192
2003-GS-01-00080

Dear Mr. Martin:

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Peggy A. Payne
Common Pleas Clerk
Phone: (864) 366-5312 ext. 202
Fax: (864) 366-9188
ppayne@abbevilcountysc.com

Shondray Martin #98244-071
Federal Corr. Complex-2
Coleman U.S.P.
P.O. Box 1034
Coleman, Fl. 33521

Date: may 30, 2009

Abbeville County Clerk of Court
Post Office Box 99
Abbeville, South Carolina 29620

RE: The State v. Martin, Shondray Lamont
2002-GS-01-00192;
2003-GS-01-00080

Dear Clerk of the Court:

Could you please send me a certified copy of my appearance docket of my whole entire case?

I filed my Post Conviction Relief on June 23, 2008, and I haven't yet received a response from the Court. Can you please provide me with the Status of my (PCR)?

Your timely response will be greatly appreciated.

Sincerely,

Shondray Martin

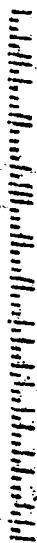
FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2009 JUN 5 AM 11 09
EMILY MCMAHAN
CLERK OF COURT

Shoukry Martin #98244-071
Federal Correctional Complex-2
Coleman U.S.P.
P.O. Box 1034
Coleman, FL 33521



OF

2562040093



TAMPA FL 335
SAINT PETERSBURG FL
DEC 20 2009 PM 8 T



Abbeville County Clerk of Court
Post Office Box 99
Abbeville, South Carolina 29620

CP Roster By Case
Abbeville County

(001)	Case Number 2000CP0100212 10/25/2000	Plaintiffs • (P1) HUGHEY, JOHN KENNEDY	Defendants • (D1) STATE OF SOUTH CAROLINA	Attorneys • (D1) ATTORNEY GENERAL OFFICE (803) 734-3970 • (P1) GROSE, JR; CHARLES E. (864) 229-9505 • (P1) SCHULTZ, TARA M (864) 229-9505
	Nature Of Action: OTHER Suit Amount: 0			
	Notes:			
(002)	Case Number 2003CP0100128 5/22/2003	Plaintiffs • (P1) SLAPPY, ISACC E	Defendants • (D1) OZMINT, JOHN	Attorneys • (P1) ROBERTSON, JAMES K
	Nature Of Action: OTHER Suit Amount: 0			
	Notes:			
(003)	Case Number 2006CP0100063 3/10/2006	Plaintiffs • (P1) BURTON, PATRICK	Defendants • (D1) STATE OF SC	Attorneys • (D1) MCMAHAN, ASHLEY A (803) 734-3737 • (P1) HITE, JR, THOMAS E (864) 366-5400
	Nature Of Action: PCR Suit Amount: 0			
	Notes:			
(004)	Case Number 2008CP0100004 1/8/2008	Plaintiffs • (P1) HAGAN, GAY D	Defendants • (D1) STATE OF SOUTH CAROLINA	Attorneys • (P1) RICHEY, RODNEY W (864) 467-0503
	Nature Of Action: PCR Suit Amount: 0			
	Notes:			

(005)	Case Number 2008CP0100085 3/27/2008	Plaintiffs • (P1) COMPTON, OTIS J	Defendants • (D1) STATE OF SOUTH CAROLINA	Attorneys • (P1) SHURLING, TARA DAWN (803) 738-8622
	Nature Of Action: PCR Suit Amount: 0			
	Notes:			
(006)	Case Number 2008CP0100099 4/18/2008	Plaintiffs • (P1) MILLS, #183702, BILLY R	Defendants • (D1) STATE OF SOUTH CAROLINA	Attorneys • (D1) ATTORNEY GENERAL OFFICE (803) 734-3970 • (P1) NEWLON, JON E. (864) 388-9100
	Nature Of Action: PCR Suit Amount: 0			
	Notes:			
(007)	Case Number 2008CP0100133 5/22/2008	Plaintiffs • (P1) SPENCER, #320776, JAMES S	Defendants • (D1) STATE OF SOUTH CAROLINA	Attorneys
	Nature Of Action: PCR Suit Amount: 0			
	Notes:			
(008)	Case Number 2008CP0100212 8/14/2008	Plaintiffs • (P1) BRYANT, #327281, LEROY DONTRELL	Defendants • (D1) STATE OF SOUTH CAROLINA	Attorneys
	Nature Of Action: PCR Suit Amount: 0			
	Notes:			
(009)	Case Number 2009CP0100105 4/20/2009	Plaintiffs • (P1) MILLER, #249557, MARSHALL	Defendants • (D1) STATE OF SOUTH CAROLINA	Attorneys
	Nature Of Action: PCR Suit Amount: 0			
	Notes:			

Shondray Lamont Martin #98244-071
Federal Corr. Complex-2
Coleman U.S.P.
P.O. BOX 1034
Coleman, FL 33521

Emily Y. McMahan
CLERK OF COURT
P.O. BOX 99
ABBEVILLE, SC 29620

Date: *July 13, 2009*

RE: Correspondance and Affidavit concerning the Defendant's
Post Conviction Relief Motion/Brief.

Dear Ms. McMahan:

I am writing in regards to my Post Conviction Relief Motion/Brief that I filed with the Clerk of the Court, District Court, and the Government Prosecutor on June 23, 2008.

I am requesting that my affidavit and my Post Conviction Relief Motion/Brief be filed with this Court.

As I am unaware of the procedural process required in the circumstances regarding what is required for me to have my Post Conviction Relief Motion/Brief issues adjudicated on their own merits, I am requesting assistance of counsel and information regarding the Court procedures for filing a Post Conviction Relief Motion/Brief when I had previously filed such Motion/Brief but received no such acknowledgement from the interested parties.

Thank you for your consideration of my requests.

Sincerely,

Shondray L. Martin



Emily D. McMahon
ABBEVILLE COUNTY CLERK OF COURT
P. O. BOX 99
ABBEVILLE, SC 29620
PHONE: (864) 366-5312
FAX: (864) 366-9188

June 12, 2009

Shondray Lamont Martin, #982440-071
Federal Corr. Complex-2
Coleman U. S. P.
P. O. Box 1034
Coleman, FL 33521

Re: The State v. Martin, Shondray Lamont
2002-GS-01-00192
2003-GS-01-00080

Dear Mr. Martin:

Your letter of May 30, 2009, was received in our office on June 5. I have checked all files, including our court indexing system and civil docket sheets and have been unable to find a Post Conviction Relief case filed on your behalf.

You also requested certified copies of the above-referenced General Sessions cases. It is my understanding that the General Sessions Clerk has already provided these copies to you.

Peggy A. Payne
Common Pleas Clerk
Phone: (864) 366-5312 ext. 202
Fax: (864) 366-9188
ppayne@abbevillecountysc.com

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Shondray Lamont Martin, #222785,

2009-CP-01-0238

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

TRUE COPY
EMILY Y. MCMAHAN
CLERK OF COURT
ABBEVILLE COUNTY CLERK OF COURT

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2012 DEC 26 AM 9:04

This matter comes before the Court by way of an application for post-conviction relief filed September 28, 2009. The Respondent made its Return and Motion to Dismiss on December 19, 2011. The Honorable Eugene C. Griffith Jr. issued a Conditional Order of Dismissal on December 21, 2011. The Applicant filed a timely response on January 10, 2012. An evidentiary hearing into the matter was convened on November 27, 2012, at the Laurens County Courthouse. The Applicant was present and represented by Kristy Goldberg, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

This Court had before it the Applicant's application, the Abbeville Clerk of Court records regarding the Applicant's conviction and sentence, the State's Return and Motion to Dismiss, the Conditional Order of Dismissal, and a certified copy, complete with affidavit, of the Abbeville County Clerk of Court's file on this case.

In its Return and Motion to Dismiss and at the hearing, the Respondent moved to dismiss the case because the Applicant's application was filed beyond the statute of limitations set forth in S.C. Code Ann. §17-27-45(a):

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

Additionally, The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Remittitur from the Applicant's unsuccessful appeal was issued on August 3, 2007. Therefore, the Applicant must have filed his application by August 4, 2008. This application was not filed until September 28, 2009.

At the hearing, the Applicant testified he sent his application, signed and dated, to the Abbeville Clerk of Court on June 23, 2008. However, he also testified the application was not notarized. The Applicant also stated, although he knew about the first-class mailing system with return receipts, he did not have a return receipt in his possession and thus, had no proof that he sent his application for filing on said date. He further testified he wrote the Clerk of Court multiple letters, attempting to check the status of his case, but admitted the first of these letters, was filed in late May of 2009.

On cross-examination, the Applicant admitted he did not have any proof that he sent his first application to the Clerk of Court on June 23, 2008. He also the court file did not contain a date-stamped envelope along with the application, although every other letter he wrote to the Clerk had a date-stamped envelope attached.

This Court finds the Applicant has failed to meet his burden of proof in this case. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985) (In PCR, Applicant has the burden of proving the allegations in his application). The Applicant has failed to provide any proof (i.e. Return receipt)

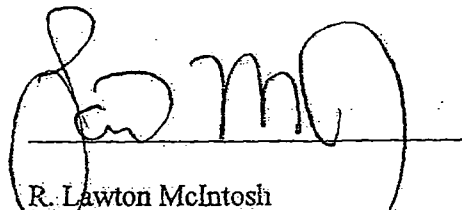
that he attempted to file his application timely. The Applicant also testified he waited until almost a year after his original 'attempt to file' to check the status of his case. Further, this Court had a certified copy of the entire Abbeville Clerk of Court's file in this case and finds while there was a copy of an application drafted by Applicant dated June 28, 2008, this application was neither notarized nor clocked or date-stamped and did not include a date-stamped envelope. The first filed document was Applicant's letter on May 30, 2009. Based on the foregoing reasons, this Court denies and dismisses this application with prejudice.

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



R. Lawton McIntosh
Presiding Circuit Court Judge
Eighth Judicial Circuit

12-20, 2012

Anders, South Carolina

STATE OF SOUTH CAROLINA,)
) IN THE COURT OF COMMON PLEAS.
 COUNTY OF ABBEVILLE.)

Shondray Lamont Martin, #222785,)

Applicant,)

v.)

State of South Carolina,)

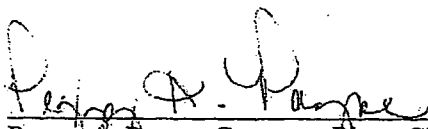
CERTIFICATE OF SERVICE BY MAIL

09-CP-01-238

The undersigned, an employee of the Abbeville County Clerk of Court's Office, does hereby certify that service of a certified copy of the Order of Dismissal in the above-referenced PCR case was made upon the following persons by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 26th day of December, 2012, addressed as follows:

J. Rutledge Johnson
 Asst. Attorney General
 Post Office Box 11549
 Columbia, SC 29211

Kristy Grafton Goldberg, LLC
 1720 Main Street, Suite 301
 Columbia, SC 29201


 Peggy A. Payne, Common Pleas Clerk

WITNESSES

Marion T. Johnson, Jr.

WARRANT NUMBERS

- a) G-676751 G-676803 G-676806
 b) INFO.
 c) ON INFO.

THE STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

April Term, 2002

Indictment # 02GS01-192

THE STATE

vs.

- a) CHRISTOPHER FRANK LANDRUM ✓
 b) SHONDRA LAMONT MARTIN ✓
 -c) ROSALIND BROWN ✓

(c) Assignment of Roadblock
 Broken June 23, 2002

(c) Bond set 6-3-02

(a) Assignment of Christopher
 Roadblock August 8, 2002
 (b) Roadblock \$150,000
 (c) Roadblock \$150,000

INDICTMENT FOR

- (1) CONSPIRACY (V.S. 16-17-410)
 (2) ATTEMPTED ARMED ROBBERY
 (3) MURDER
 (4) POSSESSION OF A FIREARM OR KNIFE DURING
 THE COMMISSION OF A VIOLENT CRIME

(5) Assignment of Shondra
 Lamont Martin Aug 4,
 2003

Date: 4-29-02
 Foreman of the Grand Jury
 b) Shondra Lamont Martin
 VERDICT

Guilty as to Count 1
 Guilty as to Count 3
 Guilty as to Count 4

Shondra Lamont
 Foreperson
 3-20-04

7-2-08
 11/16/05
 11/16/05
 11/16/05

I, CHRISTOPHER FRANK LANDRUM, THE DEFENDANT, IN
 COME TO THE BAR OF THIS COURT, WAIVE GRAND JURY
 VOLUNTARILY PLEAD _____ GUILTY TO THE

THIS _____ DAY OF _____ ATTEST:

DEPENDANT'S SIGNATURE _____ CLERK OF C

I, Shondra Lamont Martin, the
 my own Grand Juror, come to
 Court, Waive Grand Jury Action,
 Voluntarily plead Guilty to all

Guilty _____ Day of _____

Defendant's Signature _____ Clerk of

I, Rosalind Brown, the defendant
 Roger Brown, come to the bar
 Waive Grand Jury Action, and
 Voluntarily plead Guilty to

Guilty _____ Day of _____

Defendant's Signature _____ Clerk

THE STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

INDICTMENT FOR

1. CONSPIRACY (V.S.
16-17-410)
2. ATTEMPTED ARMED ROBBERY
3. MURDER
4. POSSESSION OF A FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on the 29th day of April, 2002, the Grand Jurors of Abbeville County present upon their oath:

COUNT ONE

That CHRISTOPHER FRANK LANDRUM, SHONDRA LAMONT MARTIN and ROSALIND BROWN, did in Abbeville County, state aforesaid, on or about the 29th day of July, 2001, wilfully and unlawfully unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other or with other persons whose names are unknown to the Grand Jurors, for the purpose of committing the act of Armed Robbery, in violation of Section 16-17-410 of the South Carolina Code of Laws, 1976, as amended

COUNT TWO

That CHRISTOPHER FRANK LANDRUM, SHONDRA LAMONT MARTIN, and ROSALIND BROWN, aiding, abetting and assisting one another, did in Abbeville County, state aforesaid, on or about the 29th day of July, 2001, wilfully and unlawfully attempt to commit robbery while armed with a deadly weapon, to wit: a firearm, or while alleging, either by action or words that he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, by wilfully, unlawfully and feloniously attempting to take goods and/or monies from the person of Lamoncyon Sutton, and the said goods and/or monies being owned by the said Lamoncyon Sutton, in violation of Sections 16-11-330 and 16-1-80 of the South Carolina Code of Laws, 1976, as amended

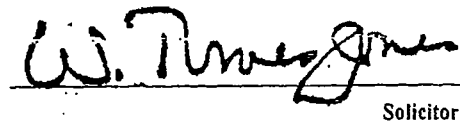
COUNT THREE

That CHRISTOPHER FRANK LANDRUM, SHONDRA LAMONT MARTIN, and ROSALIND BROWN, aiding, abetting and assisting one another, did in Abbeville County, state aforesaid, on or about the 29th day of July, 2001, with malice aforethought kill one Toriano Adarryl McCoppin by means of shooting and that the said Toriano Adarryl McCoppin did die in Abbeville County as a proximate result thereof on or about the 29th day of July, 2001, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended

COUNT FOUR

ROSALIND BROWN,
That CHRISTOPHER FRANK LANDRUM, SHONDRA LAMONT MARTIN, and/ aiding, abetting and assisting one another, did in Abbeville County, state aforesaid, on or about the 29th day of July, 2001, possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Attempted Armed Robbery and/or Murder, or any lesser included violent offense, said offense being defined as a violent offense in Section 16-1-60 of the 1976 Code of Laws of South Carolina, as amended, and the said defendant(s) was/were convicted of committing or attempting to commit the said violent crime, Attempted Armed Robbery and/or Murder, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended

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

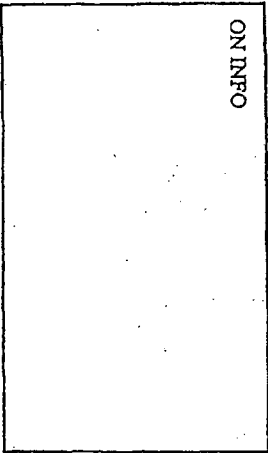

Solicitor

WITNESSES

Marion T. Johnson, Jr.

WARRANT NUMBERS

ON INFO



Howard L. Tate

Foreman of the Grand Jury

Date:

March 24, 2003

VERDICT

True bill

Foreman

Howard Tate

THE STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

March Term, 2003

Indictment # 03GS01-80

THE STATE

vs.

- a) ROSALIND RENEE BROWN ✓
- b) CHRISTOPHER FRANK LANDRUM ✓
- c) SHONDRA LAMONT MARTIN ✓

(c) Allegement of Shondra
Harriet Martin Aug 4.
360-3
Re-Indict of 02-192.
B/M as to (a) 01-07-03

INDICTMENT FOR

- 1) ACCESSORY BEFORE THE FACT
- 2) CONSPIRACY (V.S. 16-17-410)
- 3) ATTEMPTED ARMED ROBBERY
- 4) MURDER
- 5) POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

Wells process as to (a)

9.2-08

Defendant pled at 086501-274

File process as to (c)

I, ROSALIND RENEE BROWN, THE DEFENDANT, IN M
THE BAR OF THIS COURT, WAIVE GRAND JURY ACT.
VOLUNTARILY PLEAD _____ GUILTY TO

THIS _____ DAY OF _____ ATTES

DEPENDANT'S SIGNATURE _____ CLERK

I, CHRISTOPHER FRANK LANDRUM, THE DEFENDANT,
COME TO THE BAR OF THIS COURT, WAIVE GRAND J
VOLUNTARILY PLEAD _____ GUILTY TO
Voluntary Manslaughter, Attempted Robbery,
THIS 16 DAY OF Sept

Christopher Landrum ATTEST
DEPENDANT'S SIGNATURE _____ CLERK

I, SHONDRA LAMONT MARTIN, THE DEFENDANT, IN M
TO THE BAR OF THIS COURT, WAIVE GRAND JURY AC
VOLUNTARILY PLEAD _____ GUILTY TO

THIS _____ DAY OF _____ ATTEST

DEPENDANT'S SIGNATURE _____ CLERK

THE STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

INDICTMENT FOR

1. ACCESSORY BEFORE THE FACT
2. CONSPIRACY (V.S. 16-17-410)
3. ATTEMPTED ARMED ROBBERY
4. MURDER
5. POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on the 24th day of March, 2003, the Grand Jurors of Abbeville County present upon their oath:

COUNT ONE

That ROSALIND RENEE BROWN, did in Abbeville County, state aforesaid, on or about the 29th day of July, 2001, feloniously, wilfully and unlawfully harbor and assist Christopher Frank Landrum and Shondra Lamont Martin with knowledge that the said Christopher Frank Landrum and Shondra Lamont Martin were going to commit the act of Armed Robbery

COUNT TWO

That CHRISTOPHER FRANK LANDRUM, SHONDRA LAMONT MARTIN, and ROSALIND RENEE BROWN, did in Abbeville County, state aforesaid, on or about the 29th day of July, 2001, wilfully and unlawfully unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other or with other persons whose names are unknown to the Grand Jurors, for the purpose of committing the act of Armed Robbery, in violation of Section 16-17-410 of the South Carolina Code of Laws, 1976, as amended

COUNT THREE

That CHRISTOPHER FRANK LANDRUM, and SHONDRA LAMONT MARTIN, aiding, abetting, and assisting one another, did in Abbeville County, state aforesaid, on or about the 29th day of July, 2001, wilfully and unlawfully attempt to commit robbery while armed with a deadly weapon, to wit: a firearm, or while alleging, either by action or words that he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, by wilfully, unlawfully and feloniously attempting to take goods and/or monies from the person of Lamoncyn Sutton, and the said goods and/or monies being owned by the said Lamoncyn Sutton, in violation of Sections 16-11-330 and 16-1-80 of the South Carolina Code of Laws, 1976, as amended

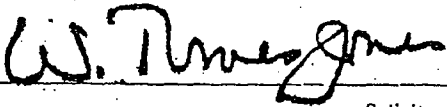
COUNT FOUR

That CHRISTOPHER FRANK LANDRUM, and SHONDRA LAMONT MARTIN, aiding, abetting, and assisting one another, did in Abbeville County, state aforesaid, on or about the 29th day of July, 2001, with malice aforethought kill one Toriano Adarryl McCoppin by means of shooting and that the said Toriano Adarryl McCoppin did die in Abbeville County as a proximate result thereof on or about the 29th day of July, 2001, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended

COUNT FIVE

That CHRISTOPHER FRANK LANDRUM, and SHONDRA LAMONT MARTIN, aiding, abetting, and assisting one another, did in Abbeville County, state aforesaid, on or about the 29th day of July, 2001, possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Attempted Armed Robbery and/or Murder, or any lesser included violent offense, said offense being defined as a violent offense in Section 16-1-60 of the 1976 Code of Laws of South Carolina, as amended, and the said defendant(s) was/were convicted of committing or attempting to commit the said violent crime, Attempted Armed Robbery and/or Murder, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended

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


Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Abbeville

VS.

Shondra Lamont Martin

AKA:

Race: Black Sex: male Age: 30

DOB: SS#: 1

Address:

City, State, Zip: Spartanburg SC 29301

DL# SID#

INDICTMENT/CASE#:

2002 -GS- 01 - 192

A/W#:

ON INFO

Date of Offense:

7-29-2001

S.C. Code §:

16-17-410

CDR Code #:

0101419

☐ CASE RESTORED

SENTENCE

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

TO: Conspiracy (16-17-410)

in violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0101419

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

W. Turner Jones

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 05 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Count 3 This indictment (murder).☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Recipient:

*Fine:

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

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

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

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

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

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

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$100	\$100.00
\$100	
\$12	
\$500	
\$25	\$25.00
\$100	
\$50	
\$40/ea	
\$	
\$	
\$125.00	

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

PRESIDING JUDGE

Judge Code:

Sentence Date:

W. Turner Jones

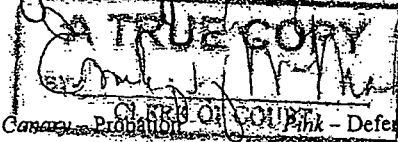
0101115

20 March 2004

Court Reporter:

Clerk of Court Deputy Clerk

Shondra Young



Nunc pro tunc 22 March 2004

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Abbeville

VS.

Shondra Lament Martin

AKA:

Race:

BLACK

Sex:

male

Age:

30

DOB:

SS#:

-WS-

Address:

City, State, Zip

DL#

SID#

-29801

INDICTMENT/CASE#:

2002

-GS-

01

192

AW#:

ON

INFO

Date of Offense:

7-29-2001

S.C. Code §:

16-3-10

CDR Code #:

01

11

11

16

☐ CASE RESTORED

SENTENCE

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: MURDERin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 011116☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

W. Turner
Solicitor

Defendant

Attorney for Defendant

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: presently serving in Federal Penitentiary
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

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

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

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

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

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

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

3% to County (if paid in installments)

TOTAL

\$	\$
\$	\$
\$100	\$100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$25.00
\$100	\$
\$50	\$
\$40/ea	\$
\$	\$
\$125.00	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

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

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

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

Emily McMechan
 Clerk of Court/Deputy Clerk

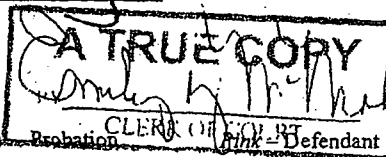
Court Reporter: Henry Young

PRESIDING JUDGE

Judge Code:

Sentence Date:

W. Turner
011115
20 March 2004



White - Clerk

Green - Corrections

Canary - Probation

CLERK OF COURT

Defendant

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Abbeville
 STATE VS.
Shondra Lamont Martin
 AKA:
 Race: Black Sex: male Age: 36
 DOB: WS SS#: WS
 Address: WS
 City, State, Zip: Spartanburg, SC 29301
 DL# WS SID# WS

INDICTMENT/CASE#: Count 4
2002 -GS- 01 - 192
 A/W#: ON INFO
 Date of Offense: 7-29-2001
 S.C. Code §: 16-23-490
 CDR Code #: 0151419
☐ CASE RESTORED
 SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: Possession of Firearm is Commission of Violent Crime
 in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0151419
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

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

ATTEST:

W. Turner Jr.
 Solicitor

Defendant

[Signature]
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 05 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Count 1, This indictment.
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$120	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
TOTAL		\$125.00

PTUP

 days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

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

pmts. of \$ beginning\$ paid to Public Defender FundOther:

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

PRESIDING JUDGE

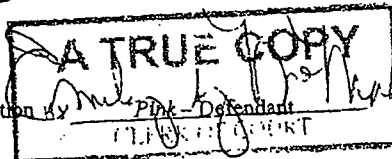
Judge Code:

Sentence Date:

W. Jannus
011115

20 March 2004

Emily McMahon
 Clerk of Court/Deputy Clerk
 Court Reporter: Henry Young



White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)