

VOLUME 2 OF 2

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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ORIGINAL

Appeal from Florence County

Thomas A Russo, Circuit Court Judge

SC Supreme Court

STACY L EVANS,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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1 he didn't try to have the negative in the photos thrown
2 out because it didn't add up to what she was saying

3 THE COURT You talking about the photos of the
4 left eye?

5 MR EVANS Yes, sir

6 THE COURT Okay

7 MR EVANS Why he didn't throw them out, that's
8 what I'm holding against him

9 THE COURT Okay I just wanted to understand

10 All right Go ahead, sir

11 BY MR BROOKS

12 Q Stacy, is that why you feel that you should be able
13 to look at her medical records because there may be other
14 abuse ---

15 A Well, she had ---

16 Q Hold on Other abuse on this victim that didn't have
17 anything to do with you?

18 A That is correct

19 Q Okay And that's why you wanted Mr Lawson ---

20 A That is correct I think somebody put a little bit
21 more on it than what it is I want to see what it is
22 cause I know ain't nothing like this happen

23 Q All right Now, is there anything else in regards to
24 Mr Lawson's representation of you that you want to tell
25 the Court And let me -- we talked about your not

1 testifying We talked about him not getting the witnesses
2 and investigating And we talked about the pictures and
3 we talked about why you think that getting her medicals is
4 vital to your case because of these pictures and where
5 these particular bruises may have come from and when these
6 pictures were taken Is there anything else about

7 Mr Lawson's representation that we haven't covered?

8 A Yes, there is I don't know why Mr Lawson when he
9 caught these people -- statements was -- it was like one
10 wasn't adding up with the next one I mean, what I'm
11 trying to say is as a word you use that's called
12 contradict

13 Q Impeaching?

14 A Yeah, impeaching

15 Q Inconsistent statements?

16 A Yeah, impeaching their statements because the simple
17 fact is he only waited until the last minute when he was
18 making closing arguments And then he brought up about
19 the statements But he didn't show them to Officer
20 Summerset statements and Helen Cain statement and the jury
21 where they made statements on the stand here He didn't
22 show none of that He just said, you know, the statements
23 don't add up He said they contradict each other And he
24 did not try to impeach none of them He waited until the
25 last minute to tell jury this Why he didn't try to

1 impeach them if they was up on the stand here? Why he
2 didn't impeach their statements when they was up on the
3 stand? That will show some kind of dis-credibility on
4 these people I was the one sitting there with two life
5 sentences because I listen to him I don't blame him for
6 it I'll be honest with you I was stupid for listening
7 to him I should have took the stand, okay I'm going to
8 be honest with you about that

9 Q All right Anything else?

10 A Your Honor, if I say no, I just hope it ain't I
11 mean, right now I'm boggled mind, I'll be honest with you
12 I did the best I know how to do

13 THE COURT All right, sir

14 MR BROOKS Answer any questions of
15 Mr Spencer

16 CROSS-EXAMINATION

17 BY MR SPENCER

18 Q Mr Evans, you testified before you were convicted of
19 CSC third When were you convicted of that?

20 A I think it was 1985

21 Q 1985 What kind of sentence did you get on that?

22 A I got three years probation?

23 Q Okay So you were released -- oh, you got probation
24 So you were not incarcerated for that?

25 A No, sir

1 Q And then you were convicted of voluntary manslaughter
2 in 1988, is that correct?

3 A That is correct

4 Q Okay And what was your sentence on that?

5 A I got 25 years I done 13 and a half on it

6 Q You did 13 and a half So you would have got out
7 about, out about ---

8 A 2001

9 Q 2001, okay Now, let me ask you this, you talked
10 with Mr Lawson about whether or not to testify, right?

11 A That is correct

12 Q Okay Did you talk with him about what your
13 testimony would be?

14 A Well, I was gone tell him everything what I wrote in
15 my own statement

16 Q So you explained what you would have testified, you
17 explained what happened to him, right?

18 A That is correct

19 Q Okay You -- my understanding you would have
20 testified that you left the bar with the victim in this
21 case?

22 A That is correct

23 Q All right And then what did y'all do?

24 A What we do when we left the barroom?

25 Q Yeah

1 A We was standing outside the bar where we at the
2 place

3 Q You leave the bar, you standing outside the bar what
4 happened?

5 A We were standing outside the barroom there, we walked
6 out where her vehicle was She was on the passenger side
7 sitting on the running board And I explain to her I
8 said, do you want to go She said, well, I got my house
9 right down there if you want to go, we can go there I
10 said, naw, we ain't gone go there cause I already know
11 what she want me to do

12 Q So you didn't want to go to her house with her?

13 A No cause ---

14 Q She already knew what she wanted to do?

15 A She wanted me to kill her husband for her I know if
16 he knocked on the door, he saw me in there with her, I
17 know he was gone show off

18 Q So she told you that in the bar?

19 A She told me that in the bar what she wanted me to
20 do

21 Q Okay But you're leaving with her after you start
22 talking about killing the husband?

23 A We didn't leave right then, sir We was in there
24 shooting pool when Legrand Poston

25 Q Okay Let's back up to that she says -- she asks you

1 if you would kill her husband for her?

2 A That's when we was at the bar when we was drinking
3 beer

4 Q Okay What did you say then?

5 A I explain to her -- she said she going through a
6 bitter divorce I say, Yeah I say, Oh, Lord, I know
7 what this is And I was just cutting up with her, I said
8 what you want me to kill your husband for you She said,
9 Would you do that, Honey And she started rubbing me on
10 my back I looked at Legrand like, damn, this woman gone
11 crazy

12 Q So you took her seriously you thought she was
13 actually asking you to kill?

14 A Well, if she didn't, sir, why did she go back and
15 shoot pool with me and we talk more about it She brought
16 the conversation

17 Q Okay So you were talking -- you didn't tell her
18 right away, no, I'm not do something like that You said
19 start you talking about it more?

20 A That is correct I didn't tell her I was gone do it
21 right then, no, sir

22 Q You didn't turn her down right away?

23 A No, sir, I did not

24 Q Okay And you want the jury to hear that you were
25 talking about killing somebody and somebody asked you to

1 kill somebody and didn't turn them down right away?

2 A No, sir, I didn't turn it down because it was all to
3 me like a joke at the time

4 Q And that's what you want the jury to hear?

5 A Sir, I'm not gone lie What you want me to lie
6 about?

7 Q You get on the stand you would tell the jury?

8 A That is correct I would tell that

9 Q Okay So you're talking about she ask you to kill
10 her husband and what did you say?

11 A I told her I do it for you She said what it gone
12 cost me I explain to her what it gone cost and she said
13 I ain't got no money now And me and her sitting there
14 cutting up And Legrand Poston's ride came and carried
15 him home We went outside me and her together We was
16 sitting outside when she drove off We was talking to
17 Legrand on the driver side car door Ms Matthews carried
18 him home

19 Q Okay So you leave the bar You get in the car and
20 who's in the car?

21 A No, no Legrand Poston got in the car and left The
22 ride came and picked him up

23 Q Okay Yeah, so he's gone and it's just you ---

24 A So me and her standing in the parking lot She said
25 what you gone do I said I'm going back in there and

1 shoot pool I said you want to shoot some She said,
2 yeah So we go back in there and we was shooting pool

3 Q Okay So y'all left together, but then Mr Legrand
4 left and you two go back in?

5 A That is correct

6 Q Thank you So you two go in and you're shooting pool
7 and you're talking about how she wants you to kill her
8 husband some more?

9 A That is correct She said what can you to do him I
10 said I can kill him What you want me to do shoot him --
11 how you want me to kill him? She just laugh at me She
12 didn't tell me how, she just laugh at me So we were
13 sitting there shooting pool We were feeling on each
14 other and we were kissing on each other, so nothing to it
15 I say when you get ready to go, I said all you got to do
16 is let me know So she looks at me I see pool table
17 gone -- I mean, finish with it She picks up her jacket,
18 keys were still in the seat The little seat we had
19 there So I picked up the keys and I started giving them
20 to her She walked around the pool table I say all
21 right then I see what you're saying, so I grabbed her by
22 the arm and I walked beside Nick And I tap Nick on the
23 shoulder, I said, Nick, I'll see you later man He looks
24 up at me looking kind of strange because I was with
25 Legrand Poston girlfriend or boss you can say

1 Q So you would have wanted Nick to testify that you two
2 left together?

3 A That is correct

4 Q Okay

5 A If he can recall, I tapped him on his shoulders
6 It's been two years, but I know good and well he can
7 remember I know his wife seen us They all was watching
8 us because they thought we all was fixing to get in a
9 fight me and Legrand

10 Q Okay So you leave the bar ---

11 A We go outside and we stand outside where her vehicle
12 is on the driver side car door and she sitting on the
13 running board We were sitting there talking I say look
14 here, I said what you want to do She said what you want
15 to do I said I told you what I want to do She said,
16 Stacy, well, I don't know I said, Well, if you don't
17 want to go, I said get up She got up I said open up
18 your hand, I put the keys in her hand and rolled her hand
19 back I said you go home before something happen I said
20 cause I know what you want me to do So I started to walk
21 off She called at me three times I got to the corner
22 of the Wooden Nickle She said, Stacy, Stacy, Stacy come
23 back I said what you want I said I ain't got time for
24 this bullshit, exact words I said to her She said -- I
25 say if you want to go, let's go If you don't want to go,

1 stay I hold my hands up right there, she put the keys
2 back in my hand She walked around me from behind and
3 walked around the other side, was on the driver side She
4 stumped her leg on the running board of the vehicle three
5 times She said damn it I open up the driver side and I
6 let her in We backed out, we put a CD in We standing
7 right there -- as soon as we got out, we stopped And I
8 put a red CD in the CD player and we was listening to
9 music We drove to this place Me and her was sitting
10 there talking

11 Q Where did you drove to?

12 A To the field where we went to

13 Q Okay

14 A I say look why you can't get Legrand to do this She
15 said because he's a pussy boy I say what I said that's
16 your boyfriend She said, no, he works for me I'm his
17 boss I said, well, that ain't what I seen when he was
18 grabbing on you She said he's work for me, he knows my
19 husband

20 Q So you were asking why she can't get Legrand to kill
21 her husband?

22 A That is correct

23 Q Okay

24 A And I asked her I said why can't you get Legrand to
25 do this? She said because he's a pussy boy I said,

1 well, okay then I said what you want to do then? She
2 said what you want to do? I said, well, I'll tell you
3 what I want to do She said okay So I was sitting in
4 the front seat and me and her was kissing And one thing
5 lead to another We got on the driver side car door and
6 she said what you want to do I said grab the car door

7 Q So you're not denying there wasn't any intercourse or
8 anything like that?

9 A No, I'm not We had oral sex, we had sex The whole
10 thing

11 Q You're saying it was consensual?

12 A It was consensual I'll take a polygraph test if
13 that what it takes I'll prove it If I pass the
14 polygraph test, give me some freedom If I don't pass it,
15 then give me my two life sentences and let me go back down
16 the road I want even appeal for nothing else

17 Q You recall her testifying at trial? She testified
18 you tackled her She fell down in the field

19 A That woman ain't been tackled That woman did not
20 fall down, she fell on her knees

21 THE COURT Listen up, Mr Evans He's asking
22 do you recall is that what she testified to

23 THE WITNESS I remember that yeah

24 THE COURT He's just saying is that what she
25 testified to

1 All right Go ahead, sir

2 BY MR SPENCER

3 Q Okay And so you recall her clothes were muddy,
4 right?

5 A Her clothes wasn't muddy, sir

6 Q Didn't get muddy?

7 A Only her knees got muddy and her boots

8 Q How about the car?

9 A The car wasn't even muddy

10 Q You're saying the car wasn't even muddy?

11 A The only kind of mud that was on that car was up
12 underneath the running board She took the car and she
13 went and washed it up, the inside cause she didn't want
14 nobody to find out we had sex in it

15 Q After -- did she clean it later after y'all?

16 A Before ---

17 Q Was it muddy?

18 A The back part was You get a little bit of mud on
19 you, but the inside of that car was not muddy We only
20 get out one time and that's when I get out on the
21 passenger side and gave her oral sex She laid on the
22 seat

23 Q So you're saying the inside wasn't muddy either?

24 A No, sir, it just had a lot of semen all over it

25 MR SPENCER All right Beg the Court's

1 indulgence

2 THE COURT Yes

3 (WHEREUPON, a pause in the proceedings)

4 MR SPENCER Your Honor, I have no further
5 questions

6 THE COURT Mr Brooks, anything further?

7 MR BROOKS No, sir

8 THE COURT All right Mr Evans, you may step
9 down And we will get those documents for you

10 (WHEREUPON, the witness leaves the witness
11 stand)

12 THE COURT Let's just take five minutes

13 (WHEREUPON, a break was taken)

14 THE COURT Are you all ready?

15 MR BROOKS I'm going to call Mr Lawson to the
16 stand

17 THE COURT All right, Mr Lawson, if you'll
18 come around to be sworn If you'll place your left hand
19 on the Bible and raise your right hand Do you swear or
20 affirm the testimony you give in this case will be the
21 truth, the whole truth, and nothing but the truth so help
22 you God?

23 THE WITNESS I do

24 THE COURT Thank you, sir Please have a seat
25 and state your name for the record

1 THE WITNESS Jack W Lawson, Jr

2 WHEREUPON,

3 Jack W Lawson, Jr

4 after first having been duly sworn, testified as follows

5 DIRECT EXAMINATION

6 BY MR BROOKS

7 Q Mr Lawson, you represented Mr Evans?

8 A I did

9 Q And there were some witnesses at the bar when you met
10 this lady Do you recall that?

11 A Well, I mean, we -- Ron Smith in my office is an
12 investigator He and I had gone to this bar several times
13 to talk with witnesses and try and find witnesses I
14 think the bartender actually testified in the trial We
15 did not find any witnesses that actually had seen them
16 leave together We saw -- we talk to witnesses that saw
17 them together at the bar, but nobody that actually saw
18 that leaving process So, yes, I talk with witnesses

19 Q Now, Mr Evans didn't get to testify in this case?

20 A He choose not to testify, that's correct

21 Q And did he tell you what happened from his own mouth?

22 A Yes, on a number of occasions

23 Q Was it pretty much consistent with what he testified
24 to here today?

25 A That's correct

1 Q And he didn't -- you advised him not to testify?

2 A It was my advice that he not testify, that's correct

3 Q Okay And if he had testified, would the only thing
4 that the State could have correctly brought out would have
5 been the spousal battery from 2001

6 A I'm not sure I don't think so The voluntary
7 manslaughter that was a 1988 conviction, he served 13
8 years He didn't get out until early 2000, that's less
9 than ten years prior to the trial And it's my
10 understanding under the rule that the time runs from
11 either point of conviction or point of release Plus,
12 there was the additional problem if he testified as he's
13 testified today, then the sequence of events would have
14 necessarily brought up his record even if I got it
15 suppressed initially from the Court

16 Q So what you're saying is if it come under Rule 609 in
17 terms of convictions, you had gotten an understanding from
18 the Court and all parties involved that that couldn't come
19 up in terms of the CSC from '85 and voluntary manslaughter
20 from '88, but what you're saying is it was your assessment
21 it would have come in through the back door Meaning
22 that, once Mr Evans would have said this is how Legrand
23 knew me and told me I been to prison and why she thought
24 that, you know, I'm a good candidate to kill her husband
25 Now, you're saying that once he testified to all that,

1 then that would have come out?

2 A That would have come out if the door would have been
3 open to his prior conviction as to why this lady thought
4 he would have done something such as kill her husband
5 You know, it was just my assessment that we were running a
6 tremendous risk on that coming into evidence one way or
7 the other because of what he would testify to

8 Q Now, there were -- and did you explain all this to
9 him?

10 A I tried to

11 Q Did you go over some picture that had come through to
12 your office through discovery with him that had 2005 on
13 them?

14 A I'm sure we did Everything that came -- I made
15 copies of all the discovery and gave it to him He had a
16 full -- he had everything I had

17 Q Did you try to get other records of the victim to
18 perhaps try to show that she had been abused before by
19 other people?

20 A We had subpoenaed records from every hospital that we
21 knew where that she had ever been to as far as I can
22 recall You know, the most important thing about the
23 photographs was that they testified and she testified the
24 right eye thing and using a picture of the left eye and I
25 thought that was the strongest that we could have in order

1 to question her varsity of whatever she was saying was
2 accurate But the fact that the pictures they were
3 referring to was the wrong eye and we brought that out I
4 don't know what else we could have done with that

5 Q Now, did you remember telling Mr Evans about what
6 possible witness that you had discovered, but didn't bring
7 to Court?

8 A There was the owner of the bar who we had talked to
9 on a number of occasions who we thought about subpoenaing
10 Actually had subpoena and did not bring him to the last
11 minute because we made a strategy decision that we
12 wouldn't put him up He was gone testify as to what he
13 observed inside the bar He couldn't have said anything
14 about the leaving process or anything else and that was of
15 any relevance

16 Q So now, it would be fair to say that your general
17 assessment of all the prosecutor's witnesses except for
18 the victim pretty much didn't really hurt Mr Evans They
19 were just pretty much saying they were at the bar?

20 A Well, I mean, you had his girlfriend that testified
21 as to events that transpired the night or the day that he
22 was arrested You had witnesses from the bar that
23 testified about what went on there The bartender
24 testified about what went on at the bar And on, you
25 know, one issue we were provided NCIC's on all state

1 witnesses even the ones that didn't have records I had
2 their NCIC

3 Q And you made that as part of your practice of asking
4 for that from the Solicitor when they call a person to the
5 stand?

6 A Yes, well, we were provided it And I questioned --
7 I know I questioned Legrand in relation to his prior
8 record I think we may have been the only one that had a
9 prior record I think he may have been the only one that
10 had a prior record

11 Q Mr Lawson, do you recall whether or not you showed
12 the inconsistencies in the witnesses statements between
13 what they testified to versus waiting to the end of
14 closing argument?

15 A Yeah, I thought that when I cross-examined the
16 witnesses I went into discrepancies in all of their
17 testimonies There may have been some issues that I
18 didn't I can't tell you at this point for sure one way
19 or the other, but I know it is normally my practice to
20 question witnesses on inconsistencies in their statements
21 and with their testimony if it's relevant as to what we're
22 trying to establish in the case

23 Q Mr Lawson, did you take notice that came out during
24 the trial that the victim had washed up her vehicle prior
25 to police investigating it?

1 A She had testified I think that she washed her car
2 before -- the outside before the police investigated it
3 The testimony of the officer was that it was muddy under
4 the running boards and on the inside there was some mud
5 But as I recall, there was testimony that she had cleaned
6 the car

7 THE COURT What was the victim's name?

8 MR SPENCER Her name was Gloria Williamson

9 THE COURT Just helps me find it in the
10 transcript here

11 MR BROOKS No other questions

12 THE COURT Anything further, Mr Spencer

13 MR SPENCER Briefly, Your Honor Your Honor,
14 in case you were looking for it There's some testimony
15 cross-examination on 110, it may start all over beforehand
16 cause I was actually not recall that trying to find it

17 CROSS-EXAMINATION

18 BY MR SPENCER

19 Q Mr Lawson, I wanted to quickly talk about the police
20 officer that saw the muddy floorboard That would have
21 been the police officer that responded the following day
22 when Mr Williamson had called the police to report that
23 she been raped Is that your recollection?

24 A I believe so, I think it was the -- we had a
25 situation where it look like a call went into the city

1 police and the city police may have responded And then a
2 deputy responded and actually took the report The reason
3 being that where she lived was in the county, though it
4 sits right in the middle of Florence It's in the county

5 Q Right I spoke in artfully, but it was actually a
6 deputy, I think, that actually testified and notice the
7 mud?

8 A The deputy testified I mean, Ron Smith in my office
9 is a former police officer And it was through his
10 efforts we were able to track down exactly who the police
11 officer was -- had taken the initial call

12 Q Beg the Court's indulgence

13 A Grant Summerford I think was the officer

14 Q Would it have been Kevin Summerset would have been
15 the sheriff's deputy?

16 A Summerset, I know him as Grant, but yeah

17 Q All right

18 MR SPENCER And just to give, Your Honor, the
19 sight Deputy Summerset talks about the mud on page 260 of
20 the transcript

21 THE COURT All right, sir

22 BY MR SPENCER

23 Q And then is it your recollection, Mr Lawson, that
24 they actually did the forensic inspection of the car, if
25 you will a couple days later?

1 A That's correct

2 Q And by that point the car had been washed?

3 A That may be how it was They didn't do the forensic
4 investigation initially It was later

5 Q Okay Now, actually, you did not put up any
6 witnesses or present any evidence on defense, did you?

7 A That's correct

8 Q And is there a tactical advantage when you do that?

9 A I mean, the last argument in a case like this is what
10 we were looking for

11 Q All right So if you brought up something in the
12 closing argument since you have last argument, the State
13 get to respond to that?

14 A No

15 Q And so if you brought something up on
16 cross-examination, is it a possibility the State could
17 have come back and countered whatever advantage you got on
18 cross-examination through redirect?

19 A I don't know if I understand the question, but, yeah,
20 on redirect they can always take advantage of the fact
21 that they can asked more questions after you make a point
22 on cross But they can't do that in closing argument

23 Q Right That was kind of what I was getting at I
24 appreciate it In terms of -- now, through the trial and
25 through closing, you attacked the credibility of the

1 victim as best as you could, is that fair to say?

2 A I think I did, yeah

3 Q Okay And would you agree with me an advantage of
4 not having Mr Evans testify is he didn't have to talk
5 about the relative credibility between the defendant and
6 the victim?

7 A I didn't have to talk about relative credibility and
8 I didn't have to talk about a possible murder case And I
9 mean that was a critical assessment in trying to win this
10 case was where we were going to be with or without his
11 testimony Of course, the decision was his My
12 recommendation was that he not testify, but as he said, I
13 let him think over lunch whether he was gone testify or
14 not And I didn't even speak back with him at the time
15 that the Court ask him if he had made his decision He
16 made that decision on his own as far as I'm concern

17 Q I miss part of this, I think, but you had mentioned
18 there was one witness that you had spoken to in the bar,
19 but he wasn't going to be able to say that they left --
20 that he saw them leave together, I guess

21 A That's the owner of bar that's correct

22 Q That's the owner of the bar

23 A He saw them in the bar together, but he didn't see
24 them leave

25 Q Is that this Nick person or is that someone else?

1 A Someone else

2 Q Okay Did Mr Evans make you aware of this
3 individual he talking about?

4 A I don't know I can't recall and that -- if there
5 was somebody he told us about, we tried to find them
6 that's all I can tell you And I have some of the best
7 investigators around And if they were here -- if they
8 were to be found, they would have found them I mean, we
9 actually went into her divorce and we got copies of all
10 the divorce papers to try and see if this was some hostile
11 -- if we could prove, it was a hostile divorce in our
12 investigation And there was nothing in the divorce file
13 that even indicated it was a hostile divorce It was an
14 armed length divorce with an agreement that was stated and
15 stipulated to on the record We had all those records
16 from the family court on what had transpired in the
17 divorce between these two particular parties was a
18 separation actually It was separation agreement that was
19 put on the record Husband wasn't even represented by
20 counsel You know, it just didn't add up

21 MR SPENCER Thank you Beg the Court's
22 indulgence one more time

23 (WHEREUPON, a pause in the proceedings)

24 MR SPENCER Your Honor, I have no further
25 questions

1 THE COURT Anything on redirect, Mr Brooks?

2 REDIRECT EXAMINATION

3 BY MR BROOKS

4 Q During the course of your representation, did you
5 discover that then some domestic battery between the
6 victim and her husband?

7 A I can't recall I remember looking at the family
8 court records I remember getting the divorce -- the
9 separation agreement and the statement as to that, but I
10 don't remember any evidence of spousal abuse There may
11 have been some talk about it I don't know I just
12 can't I'm not crystal clear on that

13 Q And do you recall in this case that this was going --
14 what you thought was going to be all or nothing either
15 they convict him of everything or not convict him of none
16 of it?

17 A I thought that was a pretty fair bet that it would be
18 either guilty of everything or not guilty based on the way
19 the evidence had come out I felt fairly confident of
20 that, but I was wrong

21 MR BROOKS No other questions

22 MR SPENCER Nothing further from the State

23 THE COURT All right Thank you, Mr Lawson
24 You may step down

25 (WHEREUPON, the witness leaves the witness

1 stand)

2 THE COURT All right Mr Spencer, anything
3 further from the State?

4 MR SPENCER Your Honor, nothing further If,
5 Your Honor, would think I was beneficial I can summarize
6 bit a little -- there was certainly a lot of testimony
7 covering it

8 THE COURT I'm sorry I don't mean to interrupt,
9 but any objection to Mr Lawson being excused?

10 MR SPENCER Absolutely not

11 MR BROOKS No objection

12 THE COURT Thank you, Mr Lawson I don't need
13 a recap of what occurred here today If you want to make
14 a closing remark, you certainly are welcome to

15 MR SPENCER Just briefly, Your Honor, there's
16 not a whole lot to say I would say obviously the
17 applicant has not met his burden Certainly, it's
18 reasonable advice and reasonable trial strategy not to put
19 your client on the stand to say that he was seriously
20 considering murder for hire and then that turned into a
21 consensual encounter Obviously, that defense would open
22 a voluntary manslaughter conviction

23 THE COURT Well, let me just say this, there
24 seems to be some question about that Based on my
25 understanding of the law, that manslaughter conviction

1 would have come in It's an '88 manslaughter conviction,
2 but the law says that for purposes of considering the ten
3 year time frame that as long as the person whose been --
4 who received the conviction is under the threat of
5 incarceration from that conviction or actually
6 incarcerated from that conviction that that -- until that
7 threat ceases, it is subject to the ten year statute, so
8 that in this case -- for example, the CSC case in '85
9 Mr Evans received a three year probationary sentence So
10 according to my understanding of the law, that three years
11 even though he was on probation and not incarcerated, that
12 three years whether or not that conviction would have been
13 open to be discussed, you would have been convicted in
14 '85, three years -- the probation ended in '88, so from
15 1998 back that conviction would have been subject to the
16 ten years In this case, he serves 13 and a half years
17 and was released in 2001

18 MR BROOKS That's on the voluntary
19 manslaughter

20 THE COURT And that's my point is that had he
21 taken the stand, the voluntary manslaughter conviction
22 would have come in

23 MR BROOKS Directly

24 THE COURT Well, the State could have that's my
25 pointed

1 MR BROOKS And that's why I asked the question
2 of Mr Lawson whether or not it would come in directly
3 Of course, what he had it was either it couldn't ---

4 THE COURT He said either direct or it would be
5 indirect

6 MR BROOKS Based on what he knew as to prior

7 THE COURT And that's certainly left open to
8 debate as far as how that testify would have come out, but
9 my point is just cause, Mr Spencer, you referenced it
10 I'm just saying that the State would have been able to
11 question him on the manslaughter case from '83 because
12 that does fall within the ten year frame I keep saying
13 '83, but I did mean '98 because of the release being in
14 2000 Of course, the sexual battery would have been able
15 to

16 MR SPENCER They both would have been inside
17 of the ten year for purposes of this rule

18 THE COURT Correct Correct

19 MR SPENCER Of course, that skips to the even
20 if part, which even if I think the door clearly be opened
21 at that point because he's -- he actually refers to the
22 conviction in his testimony here today in terms of that
23 must be how he knew -- she knew him or something like
24 that And, Your Honor, you know, I think Mr Lawson did
25 leave it up to the client, but he gave good advice on that

1 because it just wouldn't have been something that a jury
2 would have really appreciated and wouldn't have done much
3 to help the cause And I think in the balancing
4 credibility of two witnesses, Mr Evans is likely to be a
5 looser Strategic reasons Mr Lawson gave are pretty
6 important, having at last closing argument, having an
7 argument that the State can't even respond to, something
8 that could be the seeds of reasonable doubt and I think
9 that's a reasonable strategic decision

10 In terms of the photos, I pointed out where he
11 took advantage of that photo I mean, he can't get a
12 directed verdict on that photo, but he cross-examined on
13 that photo And he cross-examined if you look through
14 this transcript, that's replete with a number of things
15 that he cross-examined in the terms of statements and
16 credibility of witnesses And, Your Honor, quite simply
17 he provided competent representation And there's been no
18 errors on his part that have been shown today And
19 certainly would have been prejudicial You know, this
20 came down to -- fact intercourse wasn't an issue, they
21 actually had DNA evidence which would have -- so this was
22 not a matter of alibi or anything like that There was
23 testimony about mud in the car Mud on the outside And
24 Mr Lawson -- did fact the car got washed later
25 Mr Lawson did what he could with that In terms of being

1 any prejudice, there's not nothing in there that would be
2 prejudicial if you could find any deficiency of counsel
3 And I appreciate the Court's time on this I would just
4 ask that the application be denied

5 THE COURT Mr Brooks

6 MR BROOKS Please the Court, Judge This is
7 Mr Evans bite at the apple And since, he's looking at a
8 life sentence, received a life sentence, we think that
9 Mr Lawson could have gone further, should have gotten all
10 these medical records, should have been able to point out
11 instances of this person having prior abuses with her
12 husband, should have been able to point that out, should
13 have been able to point out inconsistencies in her
14 statement and done a better job in that with her
15 cross-examination in regards to advice of not testifying
16 We think in this particular situation where the issue was
17 consensual The only real way to get that in is to have
18 Mr Evans testify good or bad, with the good and the bad
19 to be able to talk about what this situation involved in
20 terms of the consensual sexual encounter And we think
21 that for all those reasons that Mr Evans should be
22 granted a post conviction relief and be given a new trial

23 THE COURT All right Let me just point out
24 some things that came out and what I'm seeing is some
25 concerns that Mr Evans has expressed and the way I see

1 it Obviously, there's a lot of latitude that the law
2 provides for what is called trial strategy And trial
3 strategy is not something that's left up to the defendant,
4 it is left up to the lawyer And so there's a lot of
5 leeway or latitude with regards to that One of the
6 concerns Mr Evans express and why didn't Mr Lawson when
7 he attempted to impeach witnesses on the stand, why did he
8 wait until closing argument to expound on it and not
9 expound on it with the witness Of course, I wasn't there
10 at the trial And I don't know anything about the trial
11 itself I just know from having been a trial lawyer
12 myself and then watching as a circuit judge, there are a
13 lot of reasons why you don't continue to question a
14 witness on the witness stand If you catch a witness in
15 an inconsistent statement or if you catch a witness who
16 has lied so to speak, if you question them much further,
17 you gave the witness an opportunity to explain it and to
18 come up with a good explanation You also give the State
19 an opportunity on redirect to rehabilitate that witness,
20 to basically repair any damage that the defense does

21 Now, there are times when you do go deeper into
22 it and I don't know that this was one of the times or not,
23 but there are times when you let it go intentionally
24 because you know this, you know that you are going to
25 revisit it on oral arguments, on closing arguments And

1 so -- Mr Lawson pointed that out the State has no right
2 and no ability to address when he brings out those
3 inconsistencies in closing, they have no ability to speak
4 to the jury about it because they don't get the
5 opportunity He has final argument and so the State
6 cannot respond to it That's another reason why sometimes
7 a person doesn't take the witness stand because they don't
8 want to put up any evidence Because if put up any
9 witness at all, if the defense puts up as much as just an
10 exhibit, they lose final argument They don't get to
11 argue last, the State gets to argue last These are all
12 trial strategies They are not right and wrong on their
13 face There's things that go into these things

14 There was the concern about he didn't bring
15 those witnesses or bring a witness into court who saw
16 Mr Evans leave with Mrs Williamson The testimony is
17 that he had his investigator and himself go to the bar on
18 several occasions and interview witnesses and they
19 couldn't find anyone else They couldn't find anyone --
20 now, whether or not that's true or not, I'm just telling
21 you what the testimony is here today They couldn't find
22 a witness who said they saw them leave together And then
23 there's an issue of the consent And Mr Evans is very
24 candid with the Court and says we did have a sexual
25 relationship, but it was a consensual relationship It

1 was -- we both consented to it Well, in any case
2 scenario, even in the best case scenario for Mr Evans,
3 there's nobody there -- even if you the brought person in
4 to say I saw them leave together, that that doesn't mean
5 -- that doesn't prove consent A lot of folks can leave
6 together and then have the night escalate into a situation
7 where it's un-consented sex So again, these are all
8 issues that there's a lot of if's and I could have done
9 this or he could have done that But the standard is
10 whether or not he fell below the appropriate standard

11 You mention Mr Brooks that sometimes the only
12 way to get stuff in is to testify Well, and I understand
13 that There's nobody to say it was consensual because
14 nobody on the victim's side is going to say that So the
15 only way it can be said is if Mr Evans either he says it
16 or has somebody say it, but unfortunately, when you take
17 the stand and the State is allowed to ask you about
18 manslaughter your conviction, and then there's testimony
19 that you talked about killing the girl's husband, whether
20 it was joking or not Then you got the sexual -- prior
21 offense for sexual battery which comes in Then you got
22 the conversation again whether it's joking or not, that
23 sure I'll kill your husband for you How much will you
24 pay me? All of that could, I'm not gone say it would,
25 could completely eliminate any chance that a jury would

1 believe it was consensual I mean, these are again trial
2 strategies

3 And based on what I've have heard here today, I
4 find that there has been no evidence to show that
5 Mr Lawson's conduct fail below the standard for
6 ineffective assistance of counsel I do believe this --
7 first of all, I believe Mr Evans' belief that this was
8 consensual and he is not guilty, I don't question that I
9 understand where he is coming from And I'm not going to
10 be sitting here to say that Mr Lawson or any lawyer
11 performed their job perfectly because that doesn't happen
12 either I am simply -- and I certainly understand where
13 Mr Evans would disagree with certain decisions that were
14 made But there does not appear -- well, I was up here
15 went through the transcript not cover to cover, but on the
16 issues that were brought out And it does appear in the
17 transcript that the decision to not testify that no one
18 forced or coerced Mr Evans into that That he was
19 advised by Mr Lawson that it would be a good idea not to
20 do that But I don't think he was forced into that and I
21 think it was his decision And I will say this this is
22 just a -- this court opinion I think it was the right
23 decision And if this case ever does go back for retrial,
24 I think it would be a big mistake based on what I have
25 read here and what I've seen here But having said that,

1 there is nothing in the record to show that it was a
2 coerced or forced decision I think it was Mr Evans'
3 decision after having consulted with his attorney, which
4 is appropriate obviously But I do understand that
5 Mr Evans doesn't agree with all the things that
6 Mr Lawson did But from a legal standpoint, I don't find
7 any evidence to show that Mr Lawson's representation fail
8 below the appropriate standard and I'm going to
9 respectfully deny the application for PCR

10 END OF REQUESTED TRANSCRIPT

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Stacy L Evans,)
 S C D C No 152040,)
)
 Applicant,)
)
 VS)
)
 State of South Carolina,)
)
 Respondent)
 _____)

IN THE COURT OF COMMON PLEAS
 C A NO 10-CP-21-1258

ORDER OF DISMISSAL

FILED
 2011 FEB 22 AM 11:15
 CONNIE REEL-SHEARIN
 CCCP & GS
 FLORENCE COUNTY SC

This matter is before this Court by way of an application for post conviction relief (PCR) filed April 29, 2010. The State filed its return on September 3, 2010. A hearing was held before this Court at the Florence County Courthouse. Applicant was present and represented by Charles T Brooks, III, Esquire. The State was represented by Assistant Attorney General David Spencer of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf and also called his trial counsel, Jack Lawson, Esquire, as a witness. This Court also had before it the PCR Application, the State's return, the transcript of Applicant's trial, the Clerk of Court's records regarding the subject convictions, and the records of Applicant's appeal to the Court of Appeals.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the December, 2008 term of the Florence County Grand Jury for kidnapping and three counts of criminal sexual

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Conie Reel Shearin
 CLERK OF COURT CP & GS
 FLORENCE COUNTY, SC

conduct in the first degree Jack Lawson, Esquire, represented the Applicant On December 8, 2008, Applicant was convicted of kidnapping and one count of criminal sexual conduct, and found not guilty of the other two counts of criminal sexual conduct The Honorable Judge J Ernest Kinard sentenced Applicant to life without parole Applicant appealed his conviction

Applicant was represented on appeal by Lanelle C Durant, Esquire, who perfected the appeal by filing an Anders brief Applicant then voluntarily withdrew the appeal and the Court of Appeals dismissed by order dated March 12, 2010 with remittitur issued the same day

ALLEGATIONS

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

- 1 Ineffective assistance of counsel,
- 2 Conflict of interest,
- 3 Prosecutorial misconduct,
- 4 Clear court error

The second and third allegations seem to simply restate allegations of ineffective assistance of counsel and the fourth allegation would allege direct appeal issues that are not proper to consider in PCR At the hearing, Applicant only brought allegations of ineffective assistance of counsel This Court considers all other issues waived

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony presented at the post-conviction relief hearing This Court has further had the opportunity

to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S C Code Ann § 17-27-80 (2003)

Ineffective Assistance of Counsel and Involuntary Plea

Applicant makes various allegations of ineffective assistance of counsel The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application Bell v. State, 321 S C 238, 467 S E 2d 926 (1996), Rule 71 1(e), SCRCF

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance Strickland v. Washington, 466 U S 668, 104 S Ct 2052, 80 L Ed 2d 674 (1984), Judge v. State, 321 S C 554, 471 S E 2d 146 (1996) In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different Johnson v. State, 325 S C 182, 480 S E 2d 733 (1997) A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial Id Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel Roseboro v State, 317 S C 292, 454 S E 2d 312 (1995), Stokes v State, 308 S C 546, 419 S E 2d 778 (1992)

This Court will now address each allegation of ineffective assistance of trial counsel below

Advice not to testify

Applicant alleges that counsel was ineffective in his advice not to testify Applicant alleges

counsel was ineffective in advising him that his criminal record would potentially come into evidence because some of his convictions were more than ten years old

Under Rule 609(b), SCRE, evidence of a conviction otherwise admissible under Rule 609(a), SCRE, is restricted as follows

(b) Time Limit Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is a later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect

Applicant testified that he was convicted of Criminal Sexual Conduct in the Third Degree in 1985, in which he received a probationary sentence of three years, a conviction for Voluntary Manslaughter in 1988, from which he was released in 2001, and three convictions for Spousal Sexual Battery in 2001. Of course, the Spousal Sexual Battery conviction falls within the time limit. Further, contrary to Applicant's testimony, the ten year limitation would not apply to the Voluntary Manslaughter conviction as Applicant was not released from custody until 2001.

At the PCR hearing, Applicant testified he wanted to take the stand at his trial based on his contention he had consensual sex with the victim. Applicant testified he was at a bar when Victim's friend, Legrand Poston approached him and indicated he knew Applicant. According to Applicant, he did not know Poston, but that Poston must have known him from when they both were previously incarcerated. Poston introduced Victim to Applicant. Applicant testified Victim then discussed having Applicant murder her husband. Victim and her husband were divorcing. Apparently,

Applicant took her idea seriously and did not immediately refuse. According to Applicant, he asked her why she did not ask Poston to do it and she did not think Poston was capable of it. According to Applicant, he refused her only when Victim admitted she did not have any money to pay him. According to Applicant, they left the bar together, and in the parking lot, decided to have sex. They both got in Victim's car and Applicant drove. Applicant testified that he did not want to go to her apartment, so they drove to a field and engaged in consensual sexual activity. He denied that Victim's clothes or the inside of Victim's car got muddy. He denied raping Victim.

Counsel testified that the ten year limit in Rule 609(b), SCRE would not apply to Applicant's spousal sexual battery convictions or Applicant's voluntary manslaughter conviction. Counsel testified that even if Counsel could successfully keep the State from admitting evidence of Applicant's convictions under Rule 609, SCRE, Applicant likely would have opened the door to the voluntary manslaughter conviction as an explanation of why Victim would approach Applicant for a murder-for-hire proposal. Further, Counsel did not think that testimony regarding Applicant and Victim's alleged discussion of murder-for-hire would have been favorable for the jury to hear. Additionally, Counsel testified that there was a strategic advantage in not presenting evidence, so as to gain the last closing argument. Counsel testified that part of his trial strategy was to challenge Victim's credibility. Had Applicant testified, the jury would be comparing the relative credibility of Applicant versus Victim, instead of merely considering Victim's credibility. Counsel testified that in his view, Applicant would not make a good witness regardless of the admissibility of the prior convictions.

This Court finds that Counsel was not ineffective in his advice and strategy concerning

whether Applicant should testify on his own behalf. This Court finds Counsel's advice on whether to testify was not deficient. Further, Counsel's strategy of not presenting a defense was reasonable trial strategy, in light of the strategic advantage of last closing argument and his valid assessment of Applicant's ability to convince a jury of his innocence through testifying. Finally, this Court does not find Applicant's proposed trial testimony probative or helpful in altering the outcome of the trial, nor does this Court find that Applicant is a credible witness. Accordingly, this Court finds Applicant did not meet his burden of showing prejudice from the alleged deficiency of counsel. This allegation is denied.

Photograph

Applicant makes an allegation that Counsel was ineffective because Victim testified she was scratched above her right eye during the assault while a photograph depicts a scratch above her left-eye. Counsel testified that he cross-examined the Victim on this discrepancy. See tr pp 109-110. This Court would also note he argued the inconsistency during closing argument. Tr pp 399-400. Applicant failed to prove counsel's performance was deficient or that Applicant was prejudiced by the alleged defect. This allegation is denied.

Medical Records

Applicant alleges Counsel was ineffective for failing to attain Victim's medical records. Counsel testified that he tried to find any medical records he could. Applicant did not provide any medical records to this Court. This Court finds that Applicant has not met his burden of proving either prong of Strickland and finds that Counsel was not ineffective in this regard.

Potential Witnesses

Applicant alleges Counsel was ineffective for failing to find any witnesses that could testify that Applicant and Victim left the bar together. Applicant did not call any witnesses at the PCR hearing and therefore failed to produce any evidence of prejudice. Further, Counsel testified that investigators working for his office searched extensively for favorable witnesses and found none. This Court finds counsel's testimony credible and finds his performance was not deficient. This Court finds that Applicant failed to meet his burden of proving prejudice from any alleged deficiency and denies this allegation.

Criminal records of State's witnesses

Applicant alleges Counsel should have attained criminal records of all the State's witnesses. Counsel testified that he did so and Applicant has failed to make any more specific allegation of which witnesses testified without making admissible prior convictions known to the jury. Applicant has failed to prove either prong of the Strickland test. Therefore, this allegation is denied.

CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

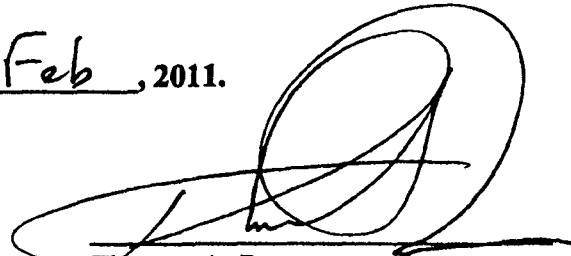
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes

that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order State v. Bray, 366 S C 137, 620 S E 2d 743 (2005) Also, pursuant to Austin v. State, 305 S C 453, 409 S E 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief Rule 71 1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf

IT IS THEREFORE ORDERED

- 1 That the Application for Post-Conviction Relief must be denied and dismissed with prejudice, and
- 2 The Applicant must be remanded to the custody of the Respondent

AND IT IS SO ORDERED this ^{18th} day of Feb, 2011.



Thomas A Russo
Presiding Judge
Twelfth Judicial Circuit

Flerance South Carolina

State of South Carolina
County of Florence
In The Court of Commomn Pleas

Stacy Evans #152040)	CA/No 2010-CP-21-1258
Applicant,)	
)	Supplemental 59 (e)
Vs)	Motion for a New Hearing or
)	Reconsideration on all unheard
State of South Carolina)	PCR Issues
Respondent,)	
)	

FILED
 2011 MAR -9 PM 12:44
 DONNIE REEL SILEARIN
 CLERK OF COURT
 S.C.P. & S.C.S.
 FLORENCE COUNTY, S.C.

Statement.

Pursuant to Rule 59(e) S.C.R.Civ.Pro and 71.1 and S Code of Laws § 17-27-80 applicant now submits all issues not raised by PCR counsel nor preserved for appealate review which supports his motion

Issues.

1. Counsel was ineffective for failing to object to the invalid indictment for a violation of §17-19-100 which changed the nature of the offense which deprived the court of subject matter jurisdiction.
2. Prosecutorial Misconduct-The state presented pictures from another crime, exhibits 5(a) and 5(b) to bolster the state's case in violation of due process.
3. Counsel was ineffective for failing to object to the state using this false evidence to bolster it's case in violation of rule 1003.
4. Counsel was ineffective for failing to object to the inconsistent statements that were different from the initial statements given to police and failed to impeach the state's witnesses with thier inconsistent written testimony which amounts to perjury See U.S v. Martinez, 988 F.2d 685,698(7th Cir.1993)
6. PCR and Trial counsel was ineffective for failing to subpoena James Langston in violation of the 6th amendment compulsory process and the court abused it's dcretion and violated the compulsory process when the court failed to secure the witness in his PCR hearing to show the victim was in the bar with the defendant after the state's witnesses left and would show a reasonable doubt that the victim was not kidnapped but they left together.
See Washington v. Texas, 388 U S. 14,19(1967).
7. Counsel was ineffective for failure to discover and utilize prior criminal records of the prosecutions witnesses and under Rule 609(a)(1).
8. Counsel was ineffective for failing to attack the character of the victim and the state's witnesses under Rule 404(2), and failing to attack reputation evidence under Rule 607,608
9. Counsel was ineffective for failing to recall witnesses to impeach thier ⁶⁸credibility under Rule 611(d)
10. Counsel was ineffective for failing to suppress evidence of pictures of 05 which were falsified.

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 FLORENCE COUNTY, S.C.

11. Counsel was ineffective for failing to object to leading the victim and the state's witnesses under Rule 611(c).
12. Counsel was ineffective for failing to authenticate pictures of victims face which were used in trial to bolster the state's case in violation of Rule 902(4), Rule 1005, and Rule 1002, requirement of originals.

Applicant requests a full hearing on his issues and for the court to secure his witness James Lanston pursuant to *Glover v. State*, 458 S.E.2d 538 (1995), and for the court to present specific findings of fact and conclusions of law in respect to all issues raised in his PCR application pursuant to S.C. Code Ann. §17-27-80 and to remove his PCR Counsel Charles T. Brooks and allow applicant to represent himself as his own counsel to raise all issues to preserve for appellate review.

Date 3-7-2011

Stacy Evans #152040

SHC x EK 25

McCormick C.I. F-1-A-251
386 Redemption Way
McCormick S.C. 29899

Certificate of Service

This is to certify that Stacy evans did mail to the Clerk of Court, Connie Reel Shearin, City-County Complex, 180 N. Irby St. MSC E, Florence S C 29501 his supplemental 59(e) motion. Placed in the mail on this 01 Day of March, 2011 with postage prepaid.

Sworn and Subscribed Before Me
This 07 Day of March, 2011

JCF Ranklin
Notary Public South Carolina
My Commission expires

12 16 2019

STACY EVANS
Stacy Evans #152040
McCormick C I.
386 Redemption Way
McCormick S.C. 29899

PLEASE SEND ME A STAMPED Clocked COPY
THANK YOU.

17MAR-9 PM12 45
CONNIE REEL SHEARIN
CLERK OF COURT
CITY-COUNTY COMPLEX, SC

17 MAR

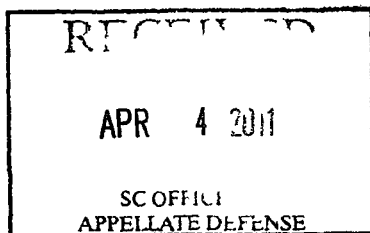
SOUTH CAROLINA OFFICE OF
APPELLATE DEFENSE
1330 LADY ST. SUITE 401
P.O. BOX 11599
COLUMBIA S.C. 29211

3-29-11

547

RE: NOTICE OF APPEAL
CA#00:2010-CP-21-1258

TO WHOM IT MAY CONCERN,
ENCLOSED IS A COPY OF MY NOTICE OF APPEAL AND A COPY
OF MY 59(E) MOTION WHICH WAS DENIED ON MARCH 23RD, 2011.
I FILED A MOTION TO BELIEVE PCR COUNSEL AT THE BEGIN-
NING OF MY PCR FOR A CONFLICT OF INTEREST AND THEN I
FILED AFTER MY PCR. I HAVE FILED NUMEROUS EXHIBITS
WITH THE LOWER COURT TO INCLUDE PICTURES, TRANSCRIPTS
AND AFFIDAVITS. I DID NOT GET TO FILE ALL AFFIDAVITS
TO PLACE ON THE RECORD. THE COURT AND MY PCR COUNSEL
PREVENTED ME FROM RAISING AND PRESERVING ALL MY ISSUES.
I AM REQUESTING A FULL REMAND TO FULLY DEVELOP MY
RECORD TO PRESERVE FOR APPELLATE REVIEW AND MY HABEAS.
I ASK THAT WHOEVER IS ASSISTING IN MY CASE ORDER MY
PCR TRANSCRIPTS AND ORDER A COMPLETE COPY OF MY MOTIONS
AND EXHIBITS. FURTHER, I NEED TO MAKE SURE THAT THE
TRANSCRIPTS SHOW WHERE HE DENIED ME THE RIGHT TO
REPRESENT MYSELF AT MY PCR. THIS ISSUE WAS NOT ADDRESSED
ON THE FINAL ORDER. ALSO MY COUNSEL IS DEFENSE WAS NO
DEFENSE WHICH WAS ON THE FINAL RULING. I WANT THESE ISSUES
RAISED FOR A REMAND.



SINCERELY,
STACY EVANS #152040
M^E CORNICK C.F.
386 REDEMPTION WAY
M^E CORNICK S.C. 29889

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS
HONORABLE THOMAS A. BUSSO, CIRCUIT COURT
JUDGE

CA/NO: 2010-CP-21-1258

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS
HONORABLE MICHAEL NETTLES, CIRCUIT COURT
JUDGE

STACY L. EVANS APPELLANT.
SCDC # 152040
v.
THE STATE RESPONDENT.

NOTICE OF APPEAL

STACY L. EVANS, APPEALS HIS DENIAL FOR POST CONVICTION
RELIEF IMPOSED BY THE HONORABLE THOMAS A. BUSSO, FEB. 18,
2011 AND APPEALS THE DENIAL OF HIS MOTION TO RELIEVE
COUNSEL AND MOTION TO FILE A SICE FOR REHEARING ON
ALL UNHEARD ISSUES IMPOSED ON MARCH 23, 2011 FROM HIS
MOTION FILED ON FEB 25, 2011.

APPELLANT
"PRO SE"

STACY EVANS
STACY EVANS #152040
MCCORMICK C/F
386 REDEMPTION WAY
MCCORMICK S.C. 29819

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY

COURT OF COMMON PLEAS

HONORABLE THOMAS A. RUSSO, CIRCUIT COURT

JUDGE

HONORABLE MICHAEL NETTLES, CIRCUIT COURT

JUDGE

CASE NO: 2010-CD-21-1258

STACY EVANS APPELLANT

v.

THE STATE RESPONDENT

CERTIFICATE OF SERVICE

I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT ON THIS 29 DAY OF 3-29 2011, I SERVED THE FOREGOING NOTICE OF APPEAL, ORDER OF DISMISSALS, AS WELL AS A CERTIFICATE OF SERVICE BY DEPOSITING A COPY IN THE U.S. MAIL POSTAGE PREPAID ADDRESSED TO THE FOLLOWING:

SOUTH CAROLINA SUPREME COURT

P.O. BOX 11330

COLUMBIA S.C. 29211

OFFICE OF ATTORNEY GENERAL

DAVID SPENCER, ESQUIRE

P.O. BOX 11549

COLUMBIA S.C. 29211

SOUTH CAROLINA OFFICE OF

APPELLATE DEFENSE

1330 LADY ST., SUITE 401

P.O. BOX 11589

COLUMBIA S.C. 29211

STACY EVANS

APPELLATE STACY EVANS #152040

"PRO SE"

State of South Carolina

Respondent

CA/NO 2010-CP-21-1258
Supplemental 59 (e)
Motion for a New Hearing or
Reconsideration on all unheard
PCR Issues

STATEMENT.

Pursuant to Rule 59 (e) S.C.R. CIV. PRO. and 71.1 and S.C. code of LAWS § 17-27-80
applicant now submits all issues not raised by PCR counsel nor Preserved for appellate
review which supports his motion

Issues

- 1. Counsel was ineffective for failing to object to the invalid indictment for a violation of §17-19-100 which changed the nature of the offense which deprived the court of subject matter jurisdiction.
- 2. Prosecutorial Misconduct- The state presented pictures from another crime, exhibits 5 (A) and 5 (b) to bolster the state's case in violation of due process.
- 3. Counsel was ineffective for failing to object to state using this false evidence to bolster its case in violation of rule 1003
- 4. Counsel was ineffective for failing to object to the inconsistent statement that were different from the initial statement given to police and failed to impeach the state's witnesses with their inconsistent written testimony which amounts to perjury, See *US v. Martinez*, 988 F.2d 685, 698 (7th Cir. 1993).
- 5. PCR and Trial counsel was ineffective for failing to subpoena James Langston in violation of the 6th amendment compulsory process and the court abused its discretion and violated the compulsory process when the court failed to secure the witness in his PCR hearing to show the victim was in the bar with the defendant after the state's witnesses left and would show a reasonable doubt that the victim was not kidnapped but they left together.
- 6. See *Washington v. Texas*, 388 U.S. 14, (1967),
- 7. Counsel was ineffective for failure to discover and utilize prior criminal records of the prosecution's witnesses and victim under Rule 609 (A) (1).
- 8. Counsel was ineffective for failing to attach the character of the victim and the state's witnesses under Rule 404 (2), and
- 9. Counsel was ineffective for failing to recall witnesses to impeach their credibility under Rule 611 (d).
- 10. Counsel was ineffective for failing to suppress evidence of pictures of 15 which were falsified

11. Counsel was ineffective for failing to object to reading the victim's and the state's witnesses under Rule 602(c).

12. Counsel was ineffective for failing to authenticate pictures of victim's face which were used in trial to bolster the state's case in violation of Rule 902(4), Rule 1005, and Rule 1002, requirement of originals.

Applicant requests a full hearing on his issues and for the court to secure his witness James Lanston pursuant to Glover v. State, 458 S.E.2d 538 (1995). And for the court to present specific findings of fact and conclusions of law in respect to all issues raised in his PCR application pursuant to S.C. Code Ann. § 17-27-80 and to remove his PCR counsel Charles T. Brooks and allow applicant to represent himself as his own counsel to raise all issues to preserve for appellate review.

STACY EVANS #152040

STACY EDWARDS
ME Cormick C.I. FI-A-251
386 Redemption Way
ME Cormick S.C. 29899

C Attorney General
RECEIVED

MAR 14 2011

D. Spencer

552 is to certify that STACY EUGENS did mail to the
ATTORNEY GENERAL PO BOX 11549 COL S.C. 29201 w/s Supplemental
59 (E) motion. Placed in the mail on this 07 Day of MARCH 2

Roll with
Postage prepaid.

Sworn and subscribed Before me

This 07 DAY OF MARCH 2011

J. A. Franklin

Notary Public South Carolina

My commission expires 12/6/2019

STACY EUGENS

STACY EUGENS # 152040

MC^{Cor} = MICK CF FIA-251

386 Redemption way

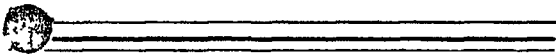
MC = cormick S.C. 29899

WITNESSES
LT BRETT CAMP FCSO

Cam helen

PROS PSP

D/O 02-23-2008



ARREST WARRANT NO
CAW08K002 (1) CAW08K003 (2)
CAW08K004 (3) CAW08K005 (4)

ACTION OF GRAND JURY
RUE D. H. H.

[Signature]
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date

DOCKET NO 2008 - GS - 21 - 01827
The State of South Carolina,

County of FLORENCE
PSP

COURT OF GENERAL SESSIONS

DECEMBER TERM 2008

THE STATE
vs

STACY LEE EVANS

Indictment for

KIDNAPPING
CRIMINAL SEXUAL CONDUCT
3 COUNTS

CERTIFIED A TRUE COPY
Conia Red Spain
CLERK OF COURT C P & G S
FLORENCE COUNTY, S C.

2008 NOV 20 PM 1 33

INDICTMENT FOR

STATE OF SOUTH CAROLINA)	KIDNAPPING CRIMINAL SEXUAL CONDUCT 3
)	COUNTS
COUNTY OF FLORENCE)	

At a Court of General Sessions, convened on NOVEMBER 20 2008, the Grand Jurors of FLORENCE County present upon their oath

COUNT ONE - KIDNAPPING

That STACY LEE EVANS did in FLORENCE County on or about February 23 2008, violate Sections 16-03-0910 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully seize, confine inveigle, decoy, kidnap abduct, and/or carry away one Gloria Williamson by any means whatsoever without authority of law and by the use of force

COUNT TWO - CRIMINAL SEXUAL CONDUCT (FIRST DEGREE)

That STACY LEE EVANS did in FLORENCE County on or about February 23 2008, violate Section 16-03-0652 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended in that he did commit or attempt to commit a sexual battery in and upon Gloria Williamson by using aggravated force and/or coercion upon Gloria Williamson by having vaginal intercourse with the victim while committing the crime of kidnapping and by assaulting her and threatening to kill her, while possessing a knife

COUNT THREE - CRIMINAL SEXUAL CONDUCT (FIRST DEGREE)

That STACY LEE EVANS did in FLORENCE County on or about February 23 2008, violate Section 16-03 0652 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did commit or attempt to commit, a sexual battery in and upon Gloria Williamson by using aggravated force and/or coercion upon Gloria Williamson, by forcing her to perform oral sex on him while committing the crime of kidnapping and by assaulting her and threatening to kill her while possessing a knife

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR KIDNAPPING
CRIMINAL SEXUAL CONDUCT 3 COUNTS WITH THE AFORESAID NAME(S) OF STACY LEE
EVANS SHOWN THEREON

COUNT FOUR - CRIMINAL SEXUAL CONDUCT (FIRST DEGREE)

That STACY LEE EVANS did in FLORENCE County on or about February 23, 2008 violate Section
16-03-0652 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did
commit, or attempt to commit, a sexual battery in and upon Gloria Williamson by using aggravated force
and/or coercion upon Gloria Williamson, by having vaginal intercourse with the victim while committing the
crime of kidnapping and by assaulting her and threatening to kill her while possessing a knife

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

E. L. Clement
SOLICITOR

Ernie Noel Spivey
CLERK OF COURT C P & G S
FLORENCE COUNTY, S C

CERTIFIED A TRUE COPY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 THE STATE)
)
 VS)
)
 STACY LEE EVANS)
)
 DEFENDANT)
 _____)

IN THE COURT OF GENERAL SESSIONS
 TWELFTH JUDICIAL CIRCUIT
 2008-GS-21-01827

VERDICT FORM

WE THE JURY, BY UNANIMOUS AGREEMENT, FIND THE DEFENDANT, STACY LEE EVANS

COUNT ONE - KIDNAPPING

_____ ✓
 _____ GUILTY
 OR
 _____ NOT GUILTY

COUNT TWO - CRIMINAL SEXUAL CONDUCT (FIRST DEGREE)

_____ ✓
 _____ GUILTY
 OR
 _____ NOT GUILTY

COUNT THREE - CRIMINAL SEXUAL CONDUCT (FIRST DEGREE)

_____ ✓
 _____ GUILTY
 OR
 _____ NOT GUILTY

COUNT FOUR - CRIMINAL SEXUAL CONDUCT (FIRST DEGREE)

_____ ✓
 _____ GUILTY
 OR
 _____ NOT GUILTY

12-10-08

 Date

Charles W Byrd

 Foreman's Signature

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence
STATE

INDICTMENT/CASE# 08 GS 21 1827

VS
Stacy Lee Evans
AKA Stacy Broach
Race W Sex M Age 41
DOB 10/20/67 SS#
Address
City, State Zip
DL# SID#

AW# CAW 08K003
Date of Offense 2/23/08
S C Code § 16-3-652
CDR Code # 0160

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO 2 Criminal Sexual Conduct (First Degree)
In violation of 16-3-652 of the S C Code of Laws, bearing CDR Code # 0160

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lowd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury (defendant Initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State

Caran Solicitor Defendant Attorney for Defendant SC Bar #

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 no parole

CONCURRENT or CONSECUTIVE to sentence on _____
 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
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C Code §17-25-185

SPECIAL CONDITIONS
 RESTITUTION Deferred Def Waives Hearing Ordered PTUP _____ days/hours Public Service employment

Total \$ _____ plus 20% fee \$ _____
Payment Terms: _____
 set by SCDPPPS
Recipient: _____

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.

*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)	\$12	\$
\$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)	\$	\$3.75
\$90 11 TP (SCCJA Surcharge)	\$5	\$5.00
TOTAL		\$133.75

M. Bell
Clerk of Court/ Deputy Clerk
Court Reporter F. Banks

PRESIDING JUDGE [Signature]
Judge Code
Sentence Date 12/12/08

CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.