

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

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S.C. Supreme Court

CHRISTOPHER A. WOODY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001686

APPENDIX

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1 I don't know whether or not that was the killing shot if I
2 stand corrected if the .25 to the chest was the shot that
3 killed him. The .25 - I mean the .45 to the neck or the
4 head which ever that may be was a significant fact.

5 Q. In regardless of whether or not the .25 and the .45 is
6 the killing shot, is Mr. Woody still as culpable as Mr.
7 Campbell that fired the .25?

8 A. Yes, sir. I'm sorry to say, yes.

9 Q. And culpable of what?

10 A. Well the use of a firearm during the commission of
11 a violent offense, a conspiracy to engage in activity and
12 then possibly a murder because the hand of one is the hand
13 of all. And whether or not his was the killing shot, the
14 jury could have concluded that notwithstanding he was
15 acting in concert with Mr. Campbell and therefore is guilty
16 or not whether or not the .45 even penetrated the body.

17 Q. And Mr. Woody gave police a statement which was
18 deemed voluntary by the court which implicates him in this
19 crime; isn't that correct?

20 A. Yes, sir.

21 Q. Or he admits that he shot somebody?

22 A. Yes, sir.

23 Q. Mr. Bagley. And then he makes a statement later on
24 or else he goes and then drinks more heavily because he
25 thinks that he may have killed somebody?

1 A. Yes, sir. He was very remorseful and very upset
2 over what had happened. And to be very candid with you,
3 Chris was a fine fellow. Before this incident he had no
4 prior record. And to be very candid the Campbell brothers
5 were the wrong crowd and when you say that Chris was with
6 the wrong crowd he certainly was because the Campbell
7 brothers were - and this fellow Bagley - certainly the
8 criminal. But Chris unfortunately cast his lot with these
9 fellows and had been associated with them for a period of
10 time and that night happened to be with them and the
11 occurrences happened at that residence.

12 Q. A matter of fact the facts at trial that come out
13 are that they were driving Mr. Woody's Nissan Maxim around.
14 They were driving by Paces River Apartments?

15 A. Something like that yes, sir.

16 Q. They see the victim's car and turn around and then go
17 to where Mr. Bagley lives, the Paces River Apartment, and
18 engaged him. Mr. Campbell and Mr. Woody are standing -
19 they are not together and they're not on either side,
20 they're kind of off to the sides of Mr. Bagley. Isn't that
21 the facts that come out?

22 A. My recollection Mr. Bagley was confronted by Mr.
23 Campbell straight away face to face and that Chris was off
24 to the side.

25 Q. But Mr. Bagley didn't - The facts show that Mr. Bagley

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1 didn't go search them out?

2 A. No, sir, I'm sorry to say that they came towards Mr.
3 Bagley both into the apartment complex and then they both
4 got out of the car and proceeded on foot to where they
5 confronted Mr. Bagley.

6 Q. And because of this do you feel that those facts would
7 kill the first element of self defense?

8 A. I don't know if it would kill it. It certainly did
9 not help it. We had a - We had to be - I was very
10 concerned as to whether or not I was even gonna get the
11 charge of self defense. When the court finally came around
12 to it I was greatly relieved. I thought for a long while
13 the judge - that Judge Alford wasn't even gonna charge that
14 and I was just absolutely scared to death that that was the
15 only case I had.

16 Q. And would you agree with me that the only evidence
17 that the victim had a gun in this case is Mr. Campbell's
18 statement that says he thought the guy was reaching behind
19 his back? And then the statement that Mr. Woody
20 subsequently gives that I could have been killed out there?

21 A. Yes, sir.

22 Q. No guns ever found?

23 A. No gun was ever found.

24 Q. And the gunshot residue was only on the palm of the
25 hand?

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BY MR. DEVOE

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1 A. Yes, sir.

2 Q. In your experience as a criminal defense attorney
3 when you fire a weapon, do you usually find it on the
4 outside of the hand as well? Is that what your expert
5 testified to?

6 A. Exactly, sir. The outer surface of your hand will
7 show the residue. The palm surface of the hand can
8 sometimes be absolutely clean and you can still have
9 gunshot residue on the outside. That's the reason law
10 enforcement would swab the inside of the palm and then take
11 another device and swab the back of the hand, the non-palm
12 side, to determine whether or not there is gunshot residue.

13 MR. JOHNSON: That's all I have at this time, Your
14 Honor.

15 THE COURT: All right. Mr. Devoe, any redirect?

16 MR. DEVOE: Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 JOHN DELGADO BY MR. DEVOE:

19 Q. Did Mr. Woody tell you that he was scared he was
20 gonna be killed at the scene?

21 A. He also told - As I recall he also told the police
22 officers on the day of his arrest or shortly thereafter
23 while he was confined and while in custody he said that he
24 thought he was going to be killed that night. He could
25 have been killed that night. He reiterated that to me in

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1 my conversations with him and times I met with him prior to
2 the trial yes, sir.

3 Q. And why - Any idea why he said that to you?

4 A. Because it probably was true.

5 Q. Killed by what?

6 A. He didn't know what was present at the scene and with
7 the gun shots that were being directed towards Mr. Bagley I
8 think he was in the thought that Bagley being a drug dealer
9 could have had a weapon and that he could have been killed
10 that night. That's what he at least to me indicated. I
11 sure wish I could have been able to proven that though, Mr.
12 Devoe. That's the problem. That would help tremendously.

13 Q. Did he tell you that he saw Bagley reaching behind
14 him?

15 A. Sir, I can't recall specifics. He may have said that
16 but that wasn't in the police incident report. If he had
17 said that that would helped him. He said as best I recall
18 to law enforcement in his custody statement that he thought
19 he could have been killed that night. I wish he could have
20 been able to say something more specific that would have
21 been laid on the foundation that Mr. Campbell had said.
22 You know affirmative motion with the same hand towards the
23 back which could have indicated that he had - that Bagley
24 had some sort of weapon on him. But he didn't never see a
25 weapon, he never saw the glint of a weapon. Neither did

1 Mr. Bagley and neither did Mr. Campbell.

2 Q. But didn't Mr. Woody insist that you check into the
3 residue of the hand because of the hand going behind him of
4 Mr. Bagley?

5 A. I don't recall that, sir. I'm certain that I gave Mr.
6 Woody the discovery. We went over that here at the
7 Detention Center. I don't recall any specific request for
8 that one way or the other.

9 Q. Who was the SLED expert you consulted with concerning
10 gunpowder residue?

11 A. Mr. Devoe, it was a woman, a white woman who testified
12 in the trial. I don't recall her name at this moment. I'm
13 sorry.

14 Q. Ms. Stoner?

15 A. I'm sorry.

16 Q. Ms. Stoner?

17 A. Could be. Sir, if she's a ballistic expert from
18 SLED that probably was a woman.

19 Q. Well the record shows she was the one that testified
20 about gunpowder residue.

21 A. All right, sir.

22 Q. That would be the one you think?

23 A. I'm sorry.

24 Q. That would be the one you think you talked to?

25 A. Sir, the only one that I talked to was a woman who

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1 testified in the trial.

2 Q. Did you ever think of trying to work out a deal for
3 a lesser charge for Mr. Woody?

4 A. Did I think about it?

5 Q. Yes.

6 A. Of course I tried to - -

7 Q. To the Solicitor about it?

8 A. Yes, sir. Sir, I was begging. We started this case
9 I think on a Monday. I remember getting some evidence from
10 Mr. Pope on Sunday afternoon when I came here to the
11 office. Stuff that had just been developed like on
12 Thursday before - Mr. Pope hadn't had it before Thursday
13 and I got it from him on Sunday. I remember talking,
14 Tommy, is there anything we can do about this case? Is
15 there any way we can resolve it? I remember hawking on Mr.
16 Thompson during the trial about is there anyway we could
17 take care of this case without the necessity of having to
18 go to a trial. Sure yes, sir.

19 Q. Well this evidence you got on Sunday before the
20 trial starts on Monday, was it CD's you got?

21 A. Yes, sir, I believe it was. It was some things
22 relating to the Campbell's as I recall. I could be wrong
23 about that.

24 Q. And how many CD's were there?

25 A. I don't recall, sir.

1 Q. Was it one?

2 A. I don't recall, sir.

3 Q. Well did you think of asking for a continuance so
4 you could look at the CD's?

5 A. Well my recollection is that Mr. Pope and I and
6 possibly Mr. Thompson and I worked out some sort of a
7 stipulation about what - rather than having to listen to
8 all of them and require the jury to have to listen to all
9 of them, to under the rule I think is' 1006 make a synopsis
10 of what that evidence would or would not have shown and
11 used that in front of the jury. But I want to say this,
12 MR. Devoe, the Solicitor didn't have this until Thursday
13 itself. It didn't surface - He wasn't withholding anything
14 and the first time I could get up here to get it was on a
15 Sunday afternoon. I remember coming here to the courthouse
16 and meeting -

17 Q. Isn't there a rule you get the evidence ten days
18 before trial?

19 A. Well, sir, if the State knows about it ten days
20 before trial they're required to do that.

21 Q. Did they continue the trial until you have a chance
22 to look at it?

23 A. It depends on what the nature of that evidence is,
24 sir. In other words if it's stuff that is going to help
25 the case I sure as the dickens wanted that. My

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1 recollection of it, sir, it went to the Campbell's and not
2 to Chris necessarily. And I still had the problems of self
3 defense. That was all we had. It didn't change the
4 aspects of self defense which is what I wanted to propose
5 before the jury.

6 THE COURT: Mr. Devoe, I hate to interrupt you, I'm
7 gonna have to take a break. Let's take a short - about a
8 five minute break.

9 (COURT IN RECESS AT 11:03 A.M..)

10 (COURT BACK IN SESSION AT 11:16 A. M..)

11 THE COURT: Be seated. Be seated.

12 (WITNESS RETURNS TO WITNESS STAND.)

13 (APPLICANT, CHRISTOPHER WOODY, REENTERS COURTROOM.)

14 THE COURT: All right, Mr. Devoe, you may continue.
15 Sorry to interrupt you. Go ahead, you may continue.

16 REDIRECT EXAMINATION - CON'T

17 JOHN DELGADO BY MR. DEVOE:

18 Q. Mr. Delgado, did you ever get a record concerning the
19 statement Mr. Woody made on July 29th to Sergeant Blackwell
20 at the Rock Hill City police?

21 A. Did I get it?

22 Q. Yes.

23 A. Yes, sir, I did.

24 Q. And in that record I believe Mr. Woody stated that
25 he being Mr. Bagley was like reaching in his back and he

1 was backing up and then my gun came out and I fired three
2 shots.

3 A. Read that last part again, sir.

4 Q. He's saying he was reaching in his back like and he
5 was backing up and then my gun came out and I fired three
6 shots.

7 A. Yes, sir.

8 Q. So you're saying even then that he thought Mr. Bagley
9 was reaching in his back ---

10 A. Yes, sir.

11 Q. --- that's why he fired the three shots.

12 A. Yes. But that may not be self defense either, sir.
13 That's the problem.

14 Q. But --

15 A. No. Well the problem - -

16 Q. At that time --

17 A. If - If - If Chris had a gun permit to be able to
18 have the gun that he used, if - Bless his heart, if Chris
19 had been at that scene without any prior knowledge that
20 Bagley and Campbell were engaged in a illicit activity
21 maybe. But, sir, that wasn't - that's not a great fact in
22 any means. That doesn't mean that he had a gun it just
23 means he was backing up. Maybe he was bluffing. But his
24 gun came out. The gun came out because Chris grabbed his
25 gun and the gun went off because Chris fired the gun.

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1 Q. But the maybe is the only defense you raised in this
2 trial.

3 A. Mr. Devoe, that's because that's the only defense I
4 had in the trial.

5 Q. But you knew about this situation. You said he was
6 reaching behind him.

7 A. Sure. And I'm certain I tried to emphasize that as
8 much as possible.

9 Q. But therefore he knew?

10 A. Yes. Yes.

11 Q. And you knew that Woody, Mr. Woody, had a gun permit
12 from Virginia?

13 A. I did, sir.

14 Q. I know that's not good in South Carolina --

15 A. That's exactly the point. It is no good in South
16 Carolina.

17 Q. He had a gun permit there and he had not been down
18 here that long actually.

19 A. Yes. But that's not a defense.

20 Q. No but a self defense.

21 A. Sure. And if Chris had been able to get on the stand
22 he might a been able to have mitigated a bit more of his
23 understanding of the law.

24 Q. Well why didn't he get on the stand?

25 A. Because he was not in my estimation wasn't gonna make

1 a very good witness in the over all analysis because there
2 were too many things he had to explain away that were not
3 gonna be helpful to his case. And he ask me whether or not
4 he ought to get on the stand and I told him that's what is
5 his absolute right only for him to be able to decide. But
6 that if he ask me I would think that his getting on the
7 stand could hurt him more than it could help him.

8 Q. Well was it a dead case what was to loose?

9 A. Sir, there's nothing to loose except that it's his
10 decision and his decision was not to take the stand. I
11 can't force anybody to take the stand.

12 Q. You can't force him. You could have talked to him
13 about it and give him the advantages and disadvantages of
14 taking the stand.

15 A. Sure. That's exactly what I did I'm certain.

16 Q. Why didn't you seek to ask the judge to charge the
17 jury on a lesser offense?

18 MR. JOHNSON: Objection. That's outside the scope of
19 cross.

20 THE COURT: Yeah, I sustain the objection.

21 BY MR. DEVOE:

22 Q. Why was there - Was there a missing coroner's report?

23 A. Was there a missing coroner's report?

24 Q. Is there a missing coroner's report?

25 A. Mr. Devoe, sorry, I don't have the slightest idea

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1 about that aspect, sir. I'm sorry I don't know.

2 Q. Well for the trial did you have a corner's report?

3 A. Sir, I'm sorry, I don't recall one way or the other.

4 If I didn't have a report from the coroner I probably would
5 have ask for it. I don't recall one way or the other, sir.

6 I'm sorry.

7 Q. The cell phone we're talking about that was missing.

8 A. Yes, sir.

9 Q. Did you ever seek to ask the State for the cell phone
10 record, cell phone records?

11 MR. JOHNSON: That's also outside the scope of cross.

12 I did not say anything --

13 THE COURT: Same objection. We went into that on
14 direct but that was no covered in cross.

15 BY MR. DEVOE:

16 Q. I guess it was the same thing. The crime scene log,
17 you had that. Right?

18 A. The crime scene log?

19 Q. Log.

20 A. I'm certain if it was turned over to me I'm certain
21 I reviewed it, sir. I'm sorry I don't recall specifically.

22 Q. Well was it turned over to you as far as you know?

23 A. Sir, I'm sorry, I do not know.

24 Q. Other than talking to the SLED expert, I think it was
25 Ms. Stoner, did you think of getting any other experts?

1 A. Did I think of any other experts? Sir, I can't recall
2 if I thought of any other experts. I can't recall one way
3 or the other, sir. I must have thought of some. The most
4 important thing I could do was try to use a private
5 investigator to see if I could get some evidence that would
6 relate to the self defense and we could not find anything -
7 anything.

8 Q. Just one more question on the Jackson v. Denno
9 situation. You read that report.

10 A. Yes, sir.

11 Q. Did it strike you that the person who signed the
12 report as a witness actually was not there the whole time
13 when the statement was being made?

14 A. Sir, I don't recall or know now whether or not that
15 individual was there the whole time or not. I don't know
16 that to be a fact but if you say so. You know the
17 interrogation, the custodial questioning could have ceased
18 for a minute while the law officer went outside to do
19 something and then come back and continued it. That
20 doesn't necessarily mean it's involuntary.

21 Q. Well I think that Ms. Blackwell stated Lieutenant
22 Burris was coming in and out.

23 A. I don't think that makes it involuntary, sir.

24 Q. And he's the one who witnessed the statement.

25 A. Because what he may have done is witness Chris's

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1 signature. That doesn't mean that Chris didn't sign it in
2 his absence but I can stand corrected about that.

3 Q. Well I do think he witnessed his signature. It also
4 I think that it implies he witnessed his statement to him.

5 A. All right, sir.

6 MR. JOHNSON: Objection. Strike that from the record.

7 THE COURT: Whatever he believes I ---

8 MR. DEVOE: I have no further questions.

9 THE COURT: --- categorically do not believe that
10 witnessing one's signature indicates that they witnessed or
11 read the entire document. So that's Mr. Devoe's take on it
12 and I take that into consideration. But witnessing one's
13 signature - and I don't have a copy of the statement and I
14 was looking for it to see but witnessing one's signature is
15 not related to the document other than the witness of his
16 signature.

17 Go ahead.

18 MR. DEVOE: Well I only have one more question on his
19 statement then.

20 Q. The statement if you read it takes about a little
21 over four minutes to read it. And yet it seems to indicate
22 that Mr. Woody was in that room for at least an hour, maybe
23 an hour and a half. Is there any indication to you was
24 suspicious what happened in that room the remainder of the
25 time?

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1 A. No, sir.

2 MR. JOHNSON: That calls for speculation, Your Honor.

3 THE COURT: He has no way of knowing but I'll let him
4 tell you that himself.

5 A. Sir, that seems to be the case in a lot of custodial
6 interrogations. The timing that someone is involved in a
7 room can reach all sorts of questions and answers that may
8 or may not be relevant or may or may not be reflected in
9 the written statement that the defendant signed. But I
10 wasn't there and I wouldn't have the slightest idea about
11 what --

12 Q. Have you ever been able to see a custodial statement
13 situation that wasn't recorded or taped?

14 A. No, sir.

15 Q. Or video taped?

16 A. No, sir. That's not the law necessarily in the
17 State of South Carolina although some jurisdictions now do
18 employ that yes, sir.

19 Q. A lot of them are.

20 A. Should absolutely.

21 MR. DEVOE: Thank you. I have no further questions.

22 THE COURT: Recross?

23 MR. JOHNSON: Two questions, Your Honor.

24 RECCROSS EXAMINATION

25 JOHN DELGADO BY MR. JOHNSON:

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1 Q. Mr. Delgado, what effect would hiring another gunshot
2 residue expert have on your self defense claim?

3 A. I don't think it would have advanced that a bit and I
4 think it would have continued to focus on a death by a
5 gunshot that I wanted to try to remove myself from as far
6 as possible. I didn't think that would have helped the
7 defendant.

8 Q. And you argued that way based on your experience as
9 a criminal defense attorney?

10 A. Yes, sir.

11 MR. JOHNSON: No further questions, Your Honor.

12 THE COURT: You can step down and be excused. We
13 appreciate your time.

14 MR. DELGADO: Thank you, Your Honor. It's nice seeing
15 you, sir.

16 THE COURT: Good to see you.

17 (WITNESS LEAVING WITNESS STAND.)

18 THE COURT: Call your next witness, Mr. Devoe.

19 MR. DEVOE: Bring up Steven Howard.

20 THE COURT: If you'll step up and put your left hand
21 on the Bible and raise your right.

22 (WHEREUPON: STEVEN HOWARD,
23 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

24 DIRECT EXAMINATION

25 STEVEN HOWARD BY MR. DEVOE:

1 Q. Good morning.

2 A. Good morning, sir.

3 Q. Mr. Howard, for the record could you give us your full
4 name and address.

5 A. I can't hear you.

6 Q. Could you give us your full name and your address.

7 A. Steven Charles Howard. Business or home address?

8 Q. Pardon me?

9 A. Business or home address?

10 Q. Business.

11 A. 209 North Walnut, Lansing, Michigan 48933.

12 Q. And are you an attorney?

13 A. Yes.

14 Q. In what state are you qualified to practice?

15 A. Michigan and Federal Court too but I don't do much in
16 Federal Court.

17 Q. And have you ever been consulted by - consulted
18 police or prosecutors?

19 A. With some frequency yes.

20 Q. Have you been consulted by police and prosecutors or
21 defense attorneys or what is the ratio of one to the other?

22 A. Twenty to one probably. Many more defense attorneys
23 than prosecutors. Prosecutors have their own experts that
24 they can consult. Some actually call me in if they're guts
25 enough to call me and manners enough to ask me nicely I

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1 usually answer their questions.

2 Q. And have you - How long have you been practicing?

3 A. As a lawyer or as an expert?

4 Q. Both.

5 A. Oh I been doing consulting since 1980 on a variety of
6 subjects. I started being an expert witness in gun related
7 matters beginning about 2002.

8 THE COURT: In what kind of related matters?

9 A. Firearms related matters.

10 THE COURT: I didn't hear you say firearms. Go ahead.

11 A. Covers a multitude of individual subjects.

12 BY MR. DEVOE:

13 Q. Have you ever taught the subject of gunshot residue
14 testing?

15 A. Yes. I've taught to lawyer's groups, some
16 prosecutors, some police departments.

17 Q. All right.

18 A. Some police departments through a company called
19 Lawmen which is a continuing education company and they've
20 brought me in as a guest speaker, you know, the individual
21 entities once or twice.

22 Q. And how many homicide trials have you had as an
23 attorney?

24 A. As an attorney none. I always ended up handing the
25 case to another attorney and being the expert.

1 Q. And how many homicide trials have you testified to as
2 an expert?

3 A. I don't know I'd have to look at my resume. I'm
4 recognized in twelve states.

5 Q. Twelve states?

6 A. Yes.

7 Q. South Carolina is not one of them is it?

8 A. No. But the day is not over.

9 Q. Pardon me?

10 A. But the day is not over.

11 Q. But generally speaking you've testified mostly in the
12 mid-west or what?

13 A. No I've been recognized from Massachusetts to Florida
14 to California.

15 Q. Because most of the country you listed twenty I guess.

16 A. I can try and name the states if you want.

17 Q. And how many - As an expert how many times have you
18 testified you think?

19 A. Testified or been consulted? Testified or been
20 consulted?

21 Q. Consulted. I'm sorry.

22 A. Well over a hundred. I rarely even bother to write
23 them down any more. There's just so many.

24 Q. And how many have you had tested showing that there
25 were not homicide testing going on?

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1 A. That they were not homicide cases? The vast minority.
2 I've worked a couple of cost liability cases, some
3 aggravated assault cases, not much else. Almost all of the
4 rest are homicides.

5 Q. And how many cases have you consulted on that
6 gunshot residue testing being performed?

7 A. The vast majority. I couldn't tell you specifically
8 without weeks of research in my files.

9 Q. And could you tell the court how much was the most
10 common residue in a situation you find or test that you do?

11 A. You mean test that's done? The most common test is
12 what's called the SEM also known as scan electron
13 microscope. You take a small adhesive, bottle that has a
14 basically a disc that's got sticky on it and you blot it
15 against the subjects hands or clothes or whatever else,
16 seal it back up and it's basically put in a scanning
17 electron microscope these days and a lot of the people that
18 do the testing, I mean literally plug them into the machine
19 and press the button and the machine does all the work.

20 But this is the most common because it's the most
21 accurate. It can detect not only if the three - what we
22 call the three magic metals, antimony, lead and barium are
23 present but whether their present in a single molecule
24 because any of us can probably go roll out in the dirt and
25 get covered with lead and antimony and barium. The exist

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1 actually in this big blue ball we call Earth. But in those
2 three particles or those three elements in one particle are
3 extremely rare and the only thing that are in man made
4 products are primers and some brake discs and we can tell a
5 difference in the brake discs from the primers ones because
6 the brake discs are shavings much like broken peanut
7 brittle. That's the best explanation I can have to what it
8 looks like. So we can visually look at it through the
9 scanning electron microscope and tell a difference. It's
10 not rocket science.

11 Q. Is SEM a standard test?

12 A. As far as I know yes. The FBI it was the one that
13 was exclusively used by the FBI when they stopped doing
14 prime residue test for outside law enforcement agencies but
15 they still use the test for their own cases.

16 Q. Is there another test called PIN?

17 A. I can't hear you with your hand in front of your face.

18 Q. What?

19 A. I couldn't hear you with your hand in front of your
20 face.

21 Q. Is there another fairly standard test called PEM?

22 A. There's several different test. There's metal
23 allergical color metrics. There is the paraffin test which
24 is based on difalamin and sulfuric acid and a couple of
25 others that will either test for the nitrates or for the

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1 presence of the metals. But the problem with all these
2 tests is they are not source specific. Again you can go
3 put your hand in the dirt and get these test and it will
4 look like you're positive just because the metals are there
5 but they're not together so there is no definitive
6 compelling evidence that a gun was fired, it's just
7 present. The difalamin test was developed in the '30s and
8 it tested for nitrates.

9 The problem with it is it couldn't tell the difference
10 between fertilizer, pharmaceuticals, gun powder, or even
11 these days cigarettes. The cigarettes are loaded with
12 potassium nitrate that keep it from going out when you're
13 out puffing on them every second. It can't tell a
14 difference. It's good science in the fact that these
15 things are definitely present and no question about it.
16 What was the source is the question. And it can't tell you
17 that.

18 With the SEM it's gonna tell you because you're gonna
19 be able to look at it. One's from primers are globular
20 shaped and what they look like is if you've ever cut metal
21 with a torch it looks like the slag that burned off metal
22 as opposed to broken peanut brittle if it's from such as
23 breaks. So we can tell a difference in readily just
24 looking at it. And it's quite reliable.

25 Q. In your opinion should any attorney go to trial under

STEVEN HOWARD: BY MR. DEVOE
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1 a gun case before exploring the gunshot residue thoroughly?

2 A. On something that was self defense absolutely not.

3 MR. JOHNSON: Strike that, Your Honor. He had not
4 been qualified as an expert yet and his personal opinion as
5 to whether or not a criminal defense attorney, not being
6 one himself, is irrelevant in this case.

7 MR. DEVOE: Your Honor, I guess I could ask him --

8 THE COURT: I sustain the objection. You hadn't got
9 him qualified particularly in that area.

10 MR. DEVOE: I'll ask him.

11 THE COURT: You hadn't qualified him in any area yet.
12 You had not ask him to be qualified.

13 MR. DEVOE: I would ask Your Honor to accept Mr.
14 Howard as an expert in the area of gunshots.

15 THE COURT: Guns and - Guns and gunshot residue.
16 Any objection or any voir dire?

17 MR. JOHNSON: Yes, sir. Yes, Your Honor.

18 CROSS EXAMINATION

19 STEVEN HOWARD BY MR. JOHNSON:

20 Q. Mr. Howard.

21 A. Sir?

22 Q. Have you ever done any testing yourself? Any gunshot
23 testing yourself?

24 A. Yes.

25 Q. And you didn't answer the question. How many times

STEVEN HOWARD: BY MR. JOHNSON

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1 have you testified as an expert in gunshot residue cases?

2 A. I don't remember. I'd have to look at my resume but
3 a couple of dozen at least.

4 Q. But you've never testified in this state have you?

5 A. No I have not. Not yet.

6 Q. What testing have you done?

7 A. Both the SEM test and the difalamin. I've tested
8 them very extensively for reliability; for cross
9 contamination issues, a variety of things.

10 Q. What all have you reviewed in this case?

11 A. Reviewed in?

12 Q. Have you read the trial transcript?

13 A. I've read parts of it yes.

14 Q. Not the whole thing, just parts of it?

15 A. Just parts of it.

16 Q. Seen the sentencing sheets, everything of that nature?

17 A. No.

18 Q. So you just basing your testimony on what you reviewed
19 even though you haven't been qualified in this state
20 before?

21 A. I'm not sure I understand the question, sir.

22 Q. What in the transcript did you review?

23 A. I reviewed the gunshot residue expert of the State's
24 testimony. And I reviewed a general covering of the facts,
25 parts of the police reports; things of this nature. Looked

1 at the autopsy reports. I think part of the pathologist
2 testimony. I forget what else.

3 Q. You say that you testified mostly on the defendant's
4 behalf's?

5 A. Yes.

6 Q. You're paid here today. Correct?

7 A. Yes.

8 Q. What - You say you do testing. You've done the SEM
9 testing. How many cases have you done SEM testing?

10 A. Well I did - I did my own private research years ago.
11 At the time I did it just because I wanted to know how
12 reliable the science was. I was a federal agent and a
13 federal police officer at the time and it's just one of
14 those things that just struck me as interesting so I
15 started testing. And I found that cross contamination was
16 a big problem.

17 Q. But you didn't name any specific cases which you have
18 done testing.

19 A. Not if you can in fact get a copy of my resume I mean
20 they are in my resume you were provided under recognized
21 cases. Let's see, People of the State of Michigan, the

22 --

23 THE COURT: You may approach.

24 Let him refresh your memory.

25 A. Thank you.

STEVEN HOWARD: BY MR. JOHNSON

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1 MR. DEVOE: Your Honor, that's been provided to the
2 Solicitor's office or the Attorney General's office.

3 BY MR. JOHNSON:

4 Q. Mr. Howard, did you receive any formal training from
5 an organization like State Law Enforcement Division?

6 A. I was - I did receive training at Federal Law
7 Enforcement Training Academy.

8 Q. For gunshot residue testing?

9 A. Yes.

10 Q. Okay. And what all did that consist of?

11 A. How to take samples correctly.

12 Q. Classes?

13 A. Yes.

14 Q. On site work?

15 A. Yes.

16 Q. From homicide victims?

17 A. No. From the instructors and we had people that would
18 come in and who had allegedly fired a weapon or not fired a
19 weapon and to see how well we performed the test and they'd
20 go get them analyzed and give us the results.

21 Q. Have you ever - Were you ever or have you ever taken
22 samples from a homicide victim?

23 A. Yes. I took samples from homicide victim's clothing
24 Friday, this last Friday. But I don't have a scanning
25 electron microscope because they're about a third of a

1 million dollars. They're a bit pricy. I just send it off
2 to the company that does so much of the testing for law
3 enforcement outfit out in Pennsylvania.

4 Q. Have you ever been certified or qualified to perform
5 testing?

6 A. I don't know what they gave us from the academy so I
7 don't know.

8 Q. Is there any certificates you have that say that you
9 are qualified in gunshot residue testing?

10 A. I just have the certificate from the Federal Law
11 Enforcement training Academy saying I completed the
12 training.

13 Q. And that's a generalized training. That's not
14 specifically for gunshot residue?

15 A. Not that I'm aware of no.

16 Q. And that's not for analyzing but just only on
17 collecting. Correct?

18 A. Yes. Like I said you need a scanning electro
19 microscope and it's not in my budget but understanding the
20 science it's not rocket science. In fact mixing a good
21 margarita is easier.

22 Q. But you're not trained in analyzing gunshot residue.

23 A. Don't need to be. I just need to be trained to
24 interpret the results.

25 MR. JOHNSON: No other questions at this time, Your

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1 Honor.

2 THE COURT: I find he is qualified as an expert in
3 gunshot residue.

4 MR. DEVOE: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 STEVEN HOWARD BY MR. DEVOE:

7 Q. In your opinion shouldn't an attorney go to trial of
8 this type with gunshots involved before exploring the
9 gunshot residue?

10 A. Absolutely not. In my opinion this is parallel to
11 saying, you know, he raped my daughter and there is no DNA
12 done. There is not even a DNA test performed. That's how
13 blatten this is to me. This is especially in this case
14 this is absolutely essential. We can figure out so many
15 things both pro and con from properly performed test.

16 Q. So in a shoot out shouldn't a SEM test begin?

17 A. Yes. Several things should be tested. Especially a
18 deceased who obviously isn't going anywhere; isn't moving
19 around. They throw around these numbers of hours of how
20 long stuff stays on your hands. Well with people who are
21 no longer with us, those rules change. They're not moving,
22 they're not throwing off the material.

23 The material last a quarter of a million years
24 conservatively and in this case police did a beautiful job
25 in fact his hands were bagged. So whether it's, you know,

1 an hour or six hours, six years, you can still do it and it
2 would still be accurate. Because unlike nitrates say the
3 difalamin test primer residue will not break down and if
4 the hands are bagged and from what I've seen they were
5 bagged and bagged correctly this stuff stays on
6 indefinitely. It can tell us okay if there's none on his
7 body but there is on his hands he was handling a weapon.
8 But likewise if there's some in his hands and some on the
9 rest of his body that proves nothing basically.

10 Something else it can tell us if somebody fires
11 multiple rounds and is captured quickly, the proper cross
12 contamination preventative measures are taken and they
13 still test completely clean you've probably got somebody
14 that you can eliminate as a suspect. If they test negative
15 after one shot that's one thing.

16 But multiple rounds, each primer produces about a
17 million particles and if somebody fires multiple shots and
18 after all that having supposedly handled the gun, carried
19 the gun, if they are tested; their clothing are tested and
20 after all the possibilities of being cross contaminated by
21 the police, by their cars, by the holding cells, by the
22 handcuffs, et cetera, they still turn up negative, that's
23 in my mind pretty compelling the person didn't do it. But
24 that's not the case in this particular case. So we can
25 learn a lot from it.

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1 I'm sorry, Your Honor, may I have some water?

2 THE COURT: Yes. The bailiff will get you some water.

3 We'll take care of it.

4 You go ahead.

5 BY MR. DEVOE:

6 Q. So in your opinion - In your opinion the situation in
7 which we're talking about for example is the failure to
8 explore these kind of situation SEM's and so on, is it
9 effective or ineffective?

10 THE COURT: Now Mr. Johnson couldn't hear you.

11 A. I couldn't hear him either.

12 Q. Can you hear me? Okay. In your opinion this
13 exploration is not done thorough is that failure to do that
14 is it ineffective or not?

15 MR. JOHNSON: Objection. This is a legal conclusion.

16 THE COURT: I sustain. He is not qualified in that
17 area. He's qualified in gunshot residue but not as to
18 trial strategy. I sustain the objection.

19 BY MR. DEVOE:

20 Q. Should a scanning electron microscope be done?

21 A. Yes.

22 Q. Why?

23 A. Again, as I testified earlier, we can find great
24 evidence one way or another and while sometimes we can't
25 prove conclusively something other things can be

1 eliminated. For example, if somebody test positive for
2 their hand and there's only say a very few particles, ten
3 or so, there can be a product of cross contamination.
4 Police are taught to handcuff people palms out and it's for
5 a very good reason. Even if they have the key they can't
6 unlock the handcuffs so it's a good safety precaution.

7 The problem is when they sit down in a chair it puts
8 their hands right up against the seat and this is in the
9 same vehicle that police go to the range and go qualify in
10 it from anywhere from once a year to once a month depending
11 on the department. Then they come out most of them shoot
12 in an indoor range they come out covered with GSR, they get
13 in their cars where the heater or the air conditioner are
14 both blowing all over the place. And like I said this
15 stuff is forever. And so just a few particles just because
16 they're there can really mean nothing. But if they're
17 apprehended quickly preventative measures against cross
18 contamination are taken and they get high particle counts
19 say anywhere from twenty to two hundred that can be very
20 compelling.

21 During the Tony Blake trial it came out that they took
22 the weapon that he allegedly used to kill his wife and they
23 fired two rounds and two rounds only. They tested the
24 shooter and it came back with two thousand four hundred and
25 forty particles. That's pretty compelling. Again,

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1 likewise if the person is apprehended quickly tested
2 carefully and is completely clean and there's been multiple
3 shots fired, they've had no chance to wash, change clothes,
4 et cetera, this is strong evidence of innocence. The
5 problem is while the court's are under the assumption
6 innocent until proven guilty the police are under no such
7 obligation. They're not in the innocence business they're
8 in the convicting business. And people, it's human nature
9 they see what they want to see and we all have our
10 prejudices. We're all human.

11 Q. Have you - You say - I think you've already said that
12 you reviewed the testimony given by the State's expert in
13 gunshot residue, Ms. Stoner.

14 A. Yes.

15 Q. And you've reviewed that?

16 A. The last - -

17 Q. You've reviewed that?

18 A. Yes I have.

19 Q. And what is your conclusion of that testimony?

20 A. Its very inconclusive. It proves that the three
21 elements are there but to give you an idea of the size of
22 the particles involved, if you take a human hair and you
23 blow it up to the size of a coke can, in terms of the human
24 hair is as wide as a coke can, the gunshot residue
25 particles are in comparison about the size of the eraser

1 tips on your pencils, Your Honor, compared to a coke can.
2 That's how small they really are. Now when they go ahead
3 and show up with the test that's described it - its not
4 source specific. But likewise we can rule out other
5 things.

6 Now in light of the fact that there's no evidence that
7 there was any gunshot residue on his clothing, his face,
8 his hair, the fact that its only on the palm of one hand is
9 reasonable evidence that at some time prior to his death he
10 handled a firearm because everything else could test
11 positive for the same reason. The hand tested positive
12 even with the test used.

13 Q. Couldn't that not have been transferred from his
14 clothing to that palm?

15 A. It is possible. But it's my understanding none
16 was found on his clothing.

17 Q. Or from a gunshot hole couldn't the powder residue
18 be transferred to the palm of his hand?

19 A. The distances involved it would be very unlikely.
20 While bullets have been known to drag some of these
21 particles with them, when any bullet moves through the air
22 there is a big hollow suction behind it causes a lot of
23 drag. That's why bullet tail bullets were invented. Cuts
24 down on that amount of space and it can carry some of them
25 a ways to the target. But enough to go ahead and show up

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1 on the hand? In my professional opinion no. Enough to be
2 picked up by a SEM doing a very careful analysis? Yes
3 that's possible. The amount for this test I do not believe
4 is possible.

5 Q. In this case concerning the unique - any case is
6 unique in itself - but this one can you say that this is
7 gunshot residue?

8 A. I believe it is. I mean just in the fact we can
9 rule out about everything else.

10 Q. Personally do you shoot with right hand or the
11 left hand?

12 A. I primarily shoot with the right but I can shoot
13 almost as well with my left hand. My right hand is faster
14 and a little more accurate just because I use it more for
15 practice.

16 MR. JOHNSON: Your Honor, I'd move to strike that.
17 That's clearly irrelevant to ineffective assistance of
18 counsel claim.

19 THE COURT: I can give the proper weight to his
20 testimony.

21 Go ahead.

22 BY MR. DEVOE:

23 Q. In your opinion should the defense attorney in this
24 case have ask for the testing of the residue on that hand?

25 A. Yes. Or with the SEM?

STEVEN DEVOE: BY MR. DEVOE
BY MR. JOHNSON

1 Q. With the SEM.

2 A. Yes.

3 Q. Why?

4 A. The SEM leaves no doubt.

5 Q. You're here as sort of a paid hand.

6 A. Yes.

7 Q. Do you have any reason at all to tell anything but
8 the truth?

9 A. None whatsoever.

10 MR. DEVOE: I have no further questions. Thank you.

11 THE COURT: All right. Mr. Johnson.

12 CROSS EXAMINATION

13 STEVEN HOWARD BY MR. JOHNSON:

14 Q. Mr. Howard, you're testimony was that you can say for
15 sure that it was gunshot residue?

16 A. I think there is a very high probability that it --

17 Q. You didn't test it did you?

18 A. No.

19 THE COURT: You say it. What is it? High probability
20 that it was gunshot residue.

21 MR. JOHNSON: Particles found on the victim's hand.

22 THE COURT: The record needs to show --

23 A. I believe that that was what you were referring to,
24 sir.

25 Q. Okay. And you also state that it's possible to

STEVEN HOWARD: BY MR. JOHNSON

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1 transfer from a article of clothing but you say in this
2 case it was not likely.

3 A. Under these circumstances very unlikely because there
4 is no evidence it was on his and it was on his clothing
5 anywhere else.

6 Q. There was no testing done on the clothing was there?

7 A. Hence no evidence.

8 Q. Can you answer my question?

9 A. Can you restate it please?

10 Q. There was no testing done on the clothing.

11 A. No. And there should have been.

12 Q. Okay. Like you said you've never been trained to
13 analyze gunshot residue have you?

14 A. Analyze the results yes but not the - not to do the
15 analyzation with a microscope.

16 Q. Is it possible when a person gets shot if they were
17 to touch the gunshot itself as in if you shoot me in the
18 heart I grab my chest it would be transferred, the gunshot
19 residue from the bullet hole to the hand?

20 A. At close range yes. But enough to show up on the
21 testing question they would have to be fairly close.

22 MR. JOHNSON: No further questions, Your Honor.

23 THE COURT: Any redirect?

24 MR. DEVOE: Yes.

25

REDIRECT EXAMINATION

STEVEN HOWARD: BY MR. DEVOE

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1 STEVEN HOWARD BY MR. DEVOE:

2 Q. Let me ask you how close, fairly close is?

3 MR. JOHNSON: Objection. He's not qualified as an
4 expert in ballistics on distances. He's just here for
5 gunshot residue.

6 THE COURT: I over rule the objection. I'll allow him
7 testify to that.

8 A. They'd have to be close enough to be hit by the gas
9 cloud and that's gonna vary from firearm to firearm. But
10 in this case a .45 using most of the am munitions that are
11 available I'd say they'd have to be within five to ten feet
12 maybe. After that it starts getting really iffy assuming
13 there isn't a big ton of wind.

14 Q. And in your review of the evidence in this case, did
15 you notice if there was any testing that was done on
16 clothing of the deceased?

17 A. None to my knowledge.

18 Q. Should that have been done in your opinion?

19 A. Absolutely.

20 Q. Is that not done for reasons of the economy or is it
21 just --

22 A. Since most state labs don't have scanning electron
23 microscopes, I don't know if this state does or not, a lot
24 of times they just send them out to somebody like the RJ
25 Lee Group out in Pennsylvania and they charge them Five

STEVEN HOWARD: BY MR. DEVOE

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1 Hundred Dollars. It's where a lot of these test are done
2 in house with lesser cheaper equipment and the chemicals
3 are just pennies. The gunshot residue kits or SEM test
4 kits themselves are maybe Twelve Dollars. Less if you buy
5 them in bulk. But to get four individual sampling's done
6 cost Five Hundred Dollars.

7 Q. So if that had been done with anybody that would
8 answer that question?

9 A. I know a certain number of states are trying to get
10 away from it just because the budgets are tight and so it's
11 possible it wasn't done just because of the cost involved.

12 Q. I was saying that would solve the question, the
13 problem.

14 A. I'm not sure I understand the question.

15 Q. If that test had been done and it came up positive
16 for gunshot residue that might have answered the question
17 of how the residue would have been on the palm.

18 A. Yes.

19 Q. And if it came up negative that would have taken away
20 that explanation as to how that gunshot residue got on the
21 palm.

22 A. Yes it would have.

23 Q. So it would solve the problem - -

24 A. It would give us - it revealed specific answers.

25 Q. So in a homicide case with the course is less of a

STEVEN HOWARD: BY MR. DEVOE
BY MR. JOHNSON

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1 problem or should be anyway in your opinion that should
2 have been done?

3 A. Absolutely.

4 MR. JOHNSON: No further questions.

5 Thank you.

6 THE COURT: Any recross?

7 RECCROSS EXAMINATION

8 STEVEN HOWARD BY MR. JOHNSON:

9 Q. Mr. Howard, you've never tried a criminal case
10 have you?

11 A. Myself?

12 Q. Have you ever tried a criminal case?

13 A. Yes.

14 Q. Have you ever tried any homicide case?

15 A. No.

16 Q. So you can't give this court the opinion that is
17 essential for counsel to get the testimony of an outside
18 expert can you?

19 A. I beg different, sir.

20 Q. So you're an expert in criminal defense?

21 A. The criminal defense lawyers look to me to say should
22 we go to trial or should we not go to trial.

23 Q. Have you ever been qualified as an expert in criminal
24 defense?

25 A. No.

STEVEN HOWARD: BY MR. JOHNSON

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1 Q. You're not an expert in the law? You hadn't been
2 qualified as a legal expert have you?

3 A. Other than being a card carrying member of the bar.

4 Q. It doesn't make you a legal expert does it?

5 A. Not that I know of.

6 Q. And also here is something that is in your expertise.
7 When you fire a gun, when you fire a gun, that gunshot
8 residue comes out from all the different holes in the gun.

9 A. Yes.

10 Q. And you would expect to find some on the back of the
11 hand if you were to fire it?

12 A. If they fired it but if they fired it washed their
13 hands and only handled the gun it would only be on the
14 inside.

15 Q. Because this victim had that much time when Mr. Woody
16 shot him. Right? That's what you're saying? If you were
17 take what you just said and put it in this scenario.

18 A. Oh, no, no, no.

19 Q. He fired the gun and run and washed his hands come
20 back touch it.

21 A. No. No. Not the case at all.

22 Q. And you also realize that there is absolutely no
23 evidence that any of the co-defendant's saw the victim with
24 a gun? Saw the gun.

25 A. I'm not brought in on whether the shooting was

STEVEN HOWARD: BY MR. JOHNSON

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1 justified or not. I'm here to explain the gunshot residue.

2 MR. JOHNSON: No further questions, Your Honor.

3 A. Your Honor, I'm not finished.

4 THE COURT: Go ahead and finish.

5 A. If I pick up a gun and fire it and set it down and
6 then wash my hands and pick it up twenty years later, I'm
7 still gonna test positive on the inside of the hand and no
8 where else. Because like I said this stuff does not break
9 down it does not go away.

10 THE COURT: Appreciate your time. You can be excused.
11 Thank you.

12 MR. HOWARD: Thank you, Your Honor.

13 (WITNESS LEAVING WITNESS STAND.)

14 THE COURT: Call your next witness.

15 MR. DEVOE: I would call Adel Shaker to the stand.

16 MADAME CLERK: Place your left hand on the Bible and
17 raise your right.

18 (WHEREUPON: ADEL SHAKER,
19 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

20 MADAME CLERK: Come around and have a seat.

21 MR. SHAKER: Good morning, Your Honor.

22 THE COURT: Good morning.

23 DIRECT EXAMINATION

24 ADEL SHAKER BY MR. DEVOE:

25 Q. For the record would you give your name.

DOCTOR ADEL SHAKER: BY MR. DEVOE

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1 A. My name is Adel Shaker.

2 Q. Mr. Shaker, you live not in South Carolina ---

3 A. No.

4 Q. --- so what part do you live?

5 A. I live in Alabama.

6 Q. Huntsville, Alabama?

7 A. Yes.

8 Q. And are you a citizen of the United States?

9 A. I'm an American citizen yes.

10 Q. Were you born in the United States?

11 A. No I was born over seas.

12 Q. Specifically where?

13 A. Egypt.

14 MR. JOHNSON: Your Honor, the State has a copy of
15 his CV and I'll be glad to share it with you but I'll ask
16 him some questions about it first.

17 Q. Where did you get your education from?

18 A. I got most of my medical degree and law degree in
19 Egypt but I practiced as a medical doctor all my life.
20 And when I came to the states I have to choose to pursue my
21 medical degree or law degree so I pursued my medical degree
22 and because in America they do not acknowledge any foreign
23 medical graduate. It was a British based school, Canadian.
24 I have to go through a series of examination. Step one,
25 two, three, but the exam and the degree from the scratch.

1 Even the residency and the fellowship and I did that.

2 Q. And that was done when?

3 A. That was done in - between 2001 to 2004.

4 Q. And I believe you worked at one point in Iraq in
5 mass graves for example.

6 A. Yes. This was a mission, an honorable mission done
7 for the federal government. Again it's the four month Iraq
8 regime Saddam Hussain and his cabinet ministers which
9 includes mass graves where the Iraq regime used to kill
10 their own people using machine guns and different kinds of
11 guns, so I did that in 2005, 2006.

12 Q. Have you been recognized as an expert in the court's
13 in the United States?

14 A. Correct.

15 Q. And could you tell the judge what court's you were
16 recognized in and give me an example of what court you were
17 recognized ---

18 A. Yes.

19 Q. --- as an expert?

20 A. It's criminal courts and most of the time I'm on
21 the stand for the Attorney General or District Attorney.
22 It's an awkward position today because I'm on this side
23 which is a different side. But it doesn't matter whether
24 here or there I'm for the truth and only for the truth.

25 Q. Rough count, how many court's you've been recognized

DOCTOR ADEL SHAKER: BY MR. DEVOE

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1 as an expert in?

2 A. Maybe seven or eight states.

3 Q. States?

4 A. States, yes.

5 Q. Right now you basically work in California in this
6 regard?

7 A. Yes, for the government.

8 Q. Bakersfield?

9 A. Yes.

10 MR. JOHNSON: Your Honor, I can go on and on with
11 his resume but I would ask you to recognize him as an
12 expert in this court on gunpowder residue expert.

13 THE COURT: As what?

14 MR. JOHNSON: Gunpowder residue.

15 MR. JOHNSON: He said absolutely nothing about
16 gunpowder residue. He doesn't have -

17 THE COURT: I don't find him to be qualified in regard
18 to gunshot residue. I haven't heard anything about that.

19 MR. DEVOE: Sorry I haven't done that.

20 Q. Have you --

21 THE COURT: I sustain the objection. I do not find
22 that you are qualified at this time.

23 Q. Have you done some work - expertise work in gunpowder
24 residue?

25 A. On a daily basis when I'm doing an autopsy as a

1 physician, as a forensic pathologist medical examiner, I
2 collect the gunpowder residue myself. I do that myself.

3 Q. And you testified in court concerning gunpowder
4 residue?

5 A. Yes.

6 Q. And what courts have you done that in?

7 A. Criminal courts everywhere whether its Mississippi,
8 Alabama, California.

9 Q. You also did some work in Pennsylvania?

10 A. Yes.

11 Q. Now how many times did you say the court qualified
12 you as an expert in gunpowder residue?

13 A. Generally in firearm injuries. Many times most of my
14 testimony as I sit for the state or for the county or for
15 the local government.

16 MR. DEVOE: I would ask you now to recognize him as
17 an expert in gunpowder residue?

18 THE COURT: Any voir dire?

19 MR. JOHNSON: The State objects. He is shown that
20 he has not had any formal training, you know, no SLED or
21 FBI type stuff. All he's saying is that he's testified and
22 he does the gunshot residue collection on his own, not as
23 his profession but on his own. The State objects to him
24 being qualified as an expert in gunshot residue.

25 THE COURT: What exactly are you qualifying him for?

DOCTOR ADEL SHAKER: BY MR. DEVOE

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1 I'm a little lost.

2 MR. DEVOE: He's gonna testify to the residue,
3 gunpowder residue found on the victim.

4 THE COURT: And what's his qualification other than
5 he's collected it at times?

6 MR. DEVOE: Well I thought he said he - I got to ask
7 him the next questions.

8 Q. Have you been to crime scenes to look at gunpowder
9 residue?

10 A. Yes.

11 Q. In your role as a pathologist?

12 A. Yes.

13 Q. Do you go out to the crime scene?

14 A. Yes I do.

15 Q. And you look at the residue at the crimes in these
16 scenes?

17 A. Either in the crime scene or in my office when the
18 body comes to it.

19 Q. Have you testified in court on gunpowder residue?

20 A. Yes.

21 Q. And you've qualified as a witness once at the scene?

22 A. As a witness in forensic pathology and then firearm
23 injuries generally, Your Honor.

24 THE COURT: He's just gonna testify as to the presence
25 or lack of presence of gunshot residue based on the record?

1 MR. DEVOE: Yes.

2 THE COURT: Well I find he's qualified to do that.
3 Go ahead.

4 MR. DEVOE: Thank you.

5 Q. In this case - Do you have any medical specially
6 certifications from any boards?

7 A. Yes I'm double boarded by the American Board of
8 Pathology in Anatomic Pathology and Forensic Pathology.
9 And anatomic pathology it has multiple sub-specials like
10 ten or twelve and I sub-specialize in forensic pathology
11 regarding the cause and manner of death.

12 Q. What are the requirements to get so certified?

13 A. I'm sorry.

14 Q. What are the requirements to get so certified?

15 A. You have to finish the training, the resident program
16 and fellowship program and to sit for the exam and to pass
17 that exam. There are two exams for that.

18 Q. And you're licensed to practice medicine in the
19 United States?

20 A. Yes.

21 Q. In what states?

22 A. I'm licensed in California, Alabama, Mississippi,
23 Tennessee, Texas, Oklahoma, Pennsylvania, New York, New
24 Jersey and Virginia.

25 Q. Did you say Virginia?

DOCTOR ADEL SHAKER: BY MR. DEVOE

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1 A. Yes.

2 Q. How did you miss South Carolina?

3 Do you belong to any medica societies?

4 A. Yes. A fellow of the College of American Pathologist,
5 Fellow of the National Association of Medical Examiners,
6 American Medical - Association member of American Medical
7 Association and fellow of the United States and Canadian
8 Pathologist. I'm a member of the task group TASA which is
9 a technical advisory services for attorneys in America.
10 And I'm a fellow of the American Society of Clinical
11 Pathologist and a couple of others.

12 Q. Have you ever testified in legal proceedings before?

13 A. Yes I do.

14 Q. How many would you say?

15 A. Many times. Over twenty-nine years I've been on a
16 national and international level.

17 Q. And what kind of proceedings have you testified?

18 A. Criminal cases most of the time.

19 Q. And how many times on these cases have you testified
20 for the government?

21 A. It's more than ninety percent or ninety-five percent
22 for homicide cases. Its really an awkward position today
23 to be on this side for the defense.

24 Q. So you remain for the defense?

25 A. Maximum very few, very few.

1 Q. And do you evaluate cases for attorneys?

2 A. Yes I do.

3 Q. Outside of testifying you evaluate the cases?

4 A. Yes.

5 Q. And how often do you seem to do that?

6 A. I've reviewed them and if it doesn't have the merits
7 I turn it down and I apologize if it doesn't have a merit
8 as a case.

9 Q. How much time would you say estimated that you say
10 that you spent on medical legal practices versus your
11 examiner activities?

12 A. Its more than ninety percent medical examiner working
13 for the government and less than ten percent consultation.

14 Q. And what do you actually do in this case?

15 A. I reviewed the testimony of Doctor Maynard. I have
16 reviewed the crime scene photographs, the autopsy
17 photographs, the testimony by Agent Stoner and another
18 agent for the -I can't recall her name - for the trace
19 evidence, police reports and a couple of other documents.

20 Q. And what were your general findings as a result of
21 this reading of the material?

22 A. Yes. I found that the deceased received four
23 projectiles or four gunshot wounds. Three of them
24 according to Mike Ligon were from .45 and one is .25. And
25 Mike Ligon mentioned in his testimony that .25 perforated

DOCTOR ADEL SHAKER: BY MR. DEVOE

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1 the left side of the chest lacerating the left lung,
2 perforating the heart and he retrieved the bullet from the
3 right lung. And he found that the decedent bled more than
4 thirty-three percent of his own blood inside the chest
5 cavity. And according to Mike Ligon he said the other
6 three projectiles one was to the left lower back - or I'm
7 sorry, right buttock of the decedent.

8 And he said that it was not detriment that as it did
9 not perforate any major artery only the soft tissue and the
10 bone. And one is perforated that left forearm in and out
11 through and through and the other one was to the head which
12 is a .45 and that this one, the .45 caliber, it was ----
13 shell according to my colleague. What I mean by that, it
14 was under the skin, the skin of the head, in and out
15 without penetrating or perforating the cranial cavity, the
16 skull bone or doing injury inside the meninges, the
17 covering of the brain of the brain itself.

18 So those are the four gunshot wounds according to my
19 colleague. And he mentioned that this one was the first
20 one, the one which hit and perforated the chest, the heart,
21 the lungs, and he retrieved it and the others were after
22 that. And he was ask how many minutes and he said a few
23 minutes.

24 Q. Did you make a diagnoses of the cause of death of
25 Mr. Bagley?

1 A. According to what I have seen from the photographs,
2 from the crime scene photographs, from the testimony of
3 Mike Ligon, Doctor Minion, I can compare or agree or
4 approve what he said but with only a little reservation.
5 The main cause of death is the perforating gunshot wound to
6 the heart or to the chest that resulted in extensive damage
7 to the heart and both lungs and extensive hemorrhaging
8 inside the chest cavity. But I cannot exclude the other
9 bullets because I'm here to present facts to the Honorable
10 Judge. I can consider the one that hits the head as a
11 contributing cause of his demise but not the main cause of
12 his demise.

13 Q. Well if he was not shot in the heart, and just shot in
14 the head,

15 A. No it was not said that. It was said he was shot in
16 the heart, the lungs was extensive bleeding inside the
17 chest cavity the .25. The other - the three others, the
18 .45 - I reiterate that. One is to the lower right butt and
19 did not cause any damage according to Mike Ligon. One to
20 the left forearm through and through. And he said this one
21 just went under meninges and exited here without entering
22 the cranial cavity or the skull bones or perforating the
23 brain.

24 Q. Wasn't there some - My question though if there had
25 not been a shot to the heart, and it was the shot to the

DOCTOR ADEL SHAKER: BY MR. DEVOE

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1 head you said was the contributing cause but would that
2 alone have caused the death?

3 A. Yes. He said one he was ask by the DA he said yes it
4 was fatal. That's what he said.

5 Q. Right.

6 A. He concluded that both shots were fatal.

7 Q. And you concur with that conclusion?

8 A. This is only reservation. I said this is the main
9 cause of death. The one which perforated the lung,
10 the heart, the other lung that resulted in extensive
11 hemorrhaging inside the chest cavity of approximately two
12 quart of blood is what he said. More than thirty-three
13 percent of his blood was inside his chest cavity.

14 Q. How much blood does it take to loose before he died?

15 A. Approximately twenty-five to thirty-five percent of
16 the total blood in our body which is a total blood in our
17 body approximately five quarts or one gallon and one quart.

18 Q. People have been known to be shot in the head before
19 and managed to survive. Is that a possibility in this
20 case?

21 A. If it was only the other shot gun or gunshots and
22 projectiles, because it did not penetrate or perforate the
23 wall of chest but I'm not sure what are the chances to
24 survive that.

25 Q. Wouldn't it have caused death as quickly?

1 A. I'm sorry?

2 Q. Would it have caused death as quickly?

3 A. For the heart? Of course the heart bled to death and
4 the lungs.

5 Q. Is a GSR test a sensitive test?

6 A. It is sensitive and its specific. It depends upon the
7 time so the State or Ms. Stoner she did both. One of them
8 and by her testimony is for FAAS, F as in Frank, Flame less
9 Absorption Atomic Spectrometric which is a sensitive and
10 quantentative test. And it depends upon the color change
11 and the quantity also of the lead antimony and barium. And
12 she did the lifting which is a conform battery test like
13 using your scotch tape and lift it but it was not
14 confirmative later on so she did both.

15 Q. I use the word GSR. That's gun shot residue?

16 A. Yes gun shot residue, correct.

17 Q. And you found some gunshot residue on the left palm
18 of the deceased according to the records?

19 A. According to Doctor Maynard he did not see any
20 evidence of gunshot residue or soot, blackening around the
21 gunshot wound of - through the chest, lower right butt,
22 left forearm, or through the skull he did not find any.

23 Q. The elements you're talking about, the antimony,
24 barium and there was a third one.

25 A. Yes. There are three elements and cooper also which

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1 is a forth element that is specific for the bullet jacket,
2 the cartridge and the barrel of the gun.

3 Q. And what's the source of those elements?

4 A. The source will be the primer, or the jacket of the
5 bullet, or the barrel itself from previous firing. Three
6 sources.

7 Q. And in your own profession performed GSR for cases in
8 gunshot wounds?

9 A. I beg your pardon?

10 Q. In your own profession do you do that testing?

11 A. I collect it and we have in the autopsy room something
12 we call a dissecting microscope. It's different from the
13 regular microscope to see tissue but it's a dissecting
14 magnifying everything. I use it and many jurisdictions
15 they use it but I do not know if they have it here in this
16 state or not. Dissecting microscope to examine. And I do
17 that for every patient.

18 Q. Do you as a coroner - not a coroner but in your role
19 as an examiner do you check the clothes of the victim for
20 GSR?

21 A. It's part of the autopsy yes. It's part of the
22 autopsy process we have to examine the clothes.

23 Q. Is it a standard process?

24 A. Yes.

25 Q. Is there any difference in long sleeve or short sleeve

1 shirt a person has on?

2 A. It doesn't matter clothes s clothes. Whatever type of
3 clothes I have to examine them yes.

4 Q. Can gunshot residue I guess metal be transferred to
5 the upper arm to the palm hand or the left hand?

6 A. According to what I read from the testimony of Mike
7 Ligon the attorney for the government give him two
8 scenarios that the source of this one could be touching his
9 wound here so I found that it's a little bit not practical.
10 How can you touch with the palm of your hand your entrance
11 and exits? And the second scenario is like handling a gun
12 which could not be confirmed or executed by the deceased or
13 the defense lawyer who was handling that case at that time.
14 So those two scenarios.

15 One could not be excluded beyond any reasonable doubt
16 and the other one is not practical. But Mike Ligon was
17 agreeing with the testimony saying yes it can. You cannot
18 just - If it was the right hand, yes. But this is the left
19 hand.

20 Q. Was there any other wound he could have touched?

21 A. Which other wounds? I mean there is no gunpowder
22 residue on the body. Mike Ligon said that and I have to
23 believe him. I have no doubt that he did a good job.

24 Q. Didn't you say there was a wound to the upper arm?

25 A. In the forearm.

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1 Q. The forearm. Did that wound come in the forearm from
2 front to back or --

3 A. Yes from in to out.

4 Q. So to be shot -

5 A. From the medial aspect to the left arm aspect. Yes
6 like here.

7 (WITNESS DEMONSTRATED.)

8 A. In and out.

9 Q. The testimony in the case indicate Mr. Bagley was
10 shot by my client in the heart.

11 A. The arm or the upper arm or the forearm including
12 the hip or movable organs. So at the time of shooting
13 you're not standing still until the shooter shoot me. You
14 move. So we are assuming the stand upright position of the
15 decedent usually then we say front to back back to front
16 but the real time of shooting the position of the arm or
17 the forearm and the head could have been moving, could have
18 been on the side, somebody shoot from the side.

19 But it shows us forensic pathologist in the upright
20 standing position we say back to front front to back to
21 make it easy for the jury. So it does not mean that the
22 actual site of the shooting it happened so that there will
23 be moving. I'm not gonna be shot and I stand still like
24 that. So I'm moving.

25 Q. Bu there was some testimony that the left arm - the

1 left arm was going behind the victim's back with some
2 allegations he was trying to get a gun for self defense.

3 A. Yeah.

4 Q. The hand went behind his back.

5 A. Yeah.

6 Q. Which would make the forearm inside out.

7 A. Exactly. That's what I read.

8 Q. And you say the bullet went inside the forearm?

9 A. In and out yes.

10 Q. Not the back of the forearm to the front?

11 A. No. So what I read is the decedent was holding
12 something with his right hand and he was trying to reach
13 something in the back like this.

14 (WITNESS DEMONSTRATED.)

15 A. So the shot - this is the position yeah. To the lower
16 right back and to the left arm.

17 Q. So you can't say for sure one way or the other where
18 the arm was on his hip?

19 A. No I cannot.

20 Q. Inside out?

21 A. Yes.

22 Q. Is there anything else you'd like to say about this
23 case I that forgot to ask you?

24 A. Just the main cause of death on my opinion is a
25 perforated gunshot wound to the chest. Although it is.25

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BY MR. JOHNSON

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1 and I was wondering how the .45, the big bullet, and I was
2 discussing that with the other expert, it did not perforate
3 or penetrate the skull. He was wondering and I told him
4 there is something reported in the forensic pathology
5 tangential gunshot wound so it is under the skin.

6 So what resulted, Your Honor, into a fracture of
7 the cranial cavity but it did not perforate or penetrate
8 into the brain or did not penetrate the integrity of the
9 meninges covering of the brain.

10 MR. DEVOE: I have no further questions. Thank you
11 very much.

12 MR. JOHNSON: Just a few.

13 CROSS EXAMINATION

14 DOCTOR ADEL SHAKER BY MR. JOHNSON:

15 Q. Doctor Shaker, you testified that it's a tangential
16 gunshot wound?

17 A. Yes.

18 Q. But that's not what Doctor Maynard testified to was
19 it?

20 A. What he said it did not penetrate or perforate the
21 cranial cavity.

22 MR. JOHNSON: May I approach, Your Honor?

23 THE COURT: You may.

24 MR. JOHNSON: It's page 317.

25 Q. Have you reviewed the transcript?

1 A. Yes.

2 Q. If you'll read Line 16 through 23 to the Court.

3 A. The question "Would you probably say to the jury
4 please?"

5 And there is a long answer about the x-ray of the
6 skull.

7 And I'm skipping the lines 7 to line 16 and starting
8 reading the line 16. "A fracture lines - these are breaks
9 in the wound - this is actually a piece of skull, this area
10 here that was blow into brain that caused the massive
11 destruction to the brain. When bullet hit it hit the skull
12 it did not go through the skull. It actually just closed
13 the larger fragment of the skull to be blown into the brain
14 and then the bullet or remainder of the jacket was found
15 sticking out of the skin of this side."

16 Q. Thank you. That would sound a little bit more than
17 a tangential gunshot wound wouldn't it?

18 A. Tangential gunshot wound it is not --

19 We call it, Your Honor, penetrating when the bullet
20 hits, penetrate the skull and stays and will open the
21 cranial cavity and you remove it. We call it perforating
22 when it is go through and through. Hit, perforate, then
23 perforate again and go out. So he did not mention
24 penetration or perforation.

25 Q. But again, --

DOCTOR ADEL SHAKER: BY MR. JOHNSON

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1 A. Sir, I agree with what he said but I'm sensing it is a
2 tangential result and it resulted in a fracture of the
3 skull. I do not argue with that.

4 MR. JOHNSON: But, Your Honor, on Page 318 Doctor
5 Shaver said there was massive damage to the brain. It
6 compressed the brain against the sides of the skull and
7 banged downward where it broke the little plate in the nose
8 forcing brain tissue out into the nose into the mouth.

9 Q. It sounds a little more than tangential doesn't it?

10 A. I read that and I have an explanation for that. And
11 Mike Ligon has an explanation also in the same testimony.

12 Q. Would you disagree with me that's --

13 A. No, no. I agree with you for that.

14 Q. The testimony and that's the only question I have.
15 That's the testimony that was presented at trial?

16 A. Correct, sir.

17 Q. Okay. And you didn't do any of this testing did you?
18 You never examined this body?

19 A. No.

20 Q. Okay. And are you also aware that the State ask
21 Doctor Maynard if the gunshot to the back of the head would
22 have been fatal to which he replied yes?

23 A. I agree.

24 MR. JOHNSON: No further questions, Your Honor.

25 MR. JOHNSON: I have no further questions, Your Honor.

1 THE COURT: You can step down and be excused. We
2 appreciate your time.

3 DOCTOR SHAKER: Thank you, Your Honor. You have a
4 blessed day.

5 THE COURT: You too.

6 (WITNESS LEAVING WITNESS STAND.)

7 THE COURT: Mr. Devoe, it's twenty to one, it's
8 getting
9 close to lunch time. Do you have about a twenty minute
10 witness or should we go ahead and break now?

11 MR. DEVOE: We'll break now.

12 THE COURT: All right. We'll break until two o'clock.

13 MR. JOHNSON: Your Honor, we have one case that's
14 gonna withdraw.

15 THE COURT: We can do that real quick.

16 (HEARING FOR MICHAEL JETER V. STATE, PUT ON THE RECORD
17 AT 12:40 P.M..)

18 (COURT IN LUNCH RECESS AT 12:43 P.M..)

19 (COURT BACK IN SESSION AT 02:21 P.M..)

20 THE COURT: Take your seat. Have a seat.

21 (APPLICANT CHRISTOPHER WOODY REENTERS COURTROOM.)

22 THE COURT: Mr. Devoe, you can call your next witness.

23 MR. DEVOE: I call Christopher Woody to the stand.

24 MADAME CLERK: Mr. Woody, place your left hand on the
25 Bible and raise your left as best you can.

CHRISTOPHER WOODY: BY MR. DEVOE

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1

(WHEREUPON: CHRISTOPHER WOODY,

2

BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

3

MR. DEVOE: Thank you, Your Honor, may it please the

4

Court.

5

DIRECT EXAMINATION

6

CHRISTOPHER WOODY BY MR. DEVOE:

7

Q. Mr. Woody, ---

8

A. Yes, sir.

9

Q. -- -- you are the applicant in this post conviction

10

relief here?

11

A. Yes, sir.

12

Q. You've waited a long time.

13

A. Very long.

14

Q. And I think you've heard the testimony today?

15

A. Yes, sir.

16

Q. And part of the testimony was that by your former

17

attorney that you are looking for either the co-defendants

18

in the case that did drugs and drinking and looking for

19

more drugs more or less?

20

A. Yeah. Yes, sir.

21

Q. Which raises the question the fact that you worked

22

with one of the Campbell brothers Desmond Campbell?

23

A. Uh-huh. I worked with Desmond.

24

Q. At Black and Decker?

25

A. Yeah. Yes, sir.

1 Q. Which is located close to Charlotte but in South
2 Carolina?

3 A. Yeah. Half and half. The plant is half and half.

4 Q. And you lived where at that time?

5 A. I lived in Charlotte, North Carolina.

6 Q. And you are from where?

7 A. Virginia. Danville, Virginia.

8 Q. Right on the North Carolina line?

9 A. Yes, sir.

10 Q. And in Virginia how do you carry a handgun?

11 A. When you go get a gun they want it showing. They
12 want it to be showing on your person and not concealed.

13 Q. Did you have a license to carry a gun?

14 A. Yes, sir. Your driver's license is your license to
15 carry a gun. When it comes back as yours and it's your gun
16 you don't have to have a license to carry you have to have
17 a license to conceal.

18 Q. And in North Carolina how do you carry a gun?

19 A. The same way. As long as it's showing they don't
20 worry about it and won't ask you for it.

21 Q. Does it strike your mind that South Carolina laws
22 are different than North Carolina or Virginia?

23 A. No, sir.

24 Q. So you never checked into it?

25 A. No, sir. I never frequented South Carolina. It was

CHRISTOPHER WOODY: BY MR. DEVOE

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1 rare.

2 Q. Would you have been in Charlotte working for how long?

3 A. For since February 2nd, 2004.

4 Q. This happened June of 2004.

5 A. In June.

6 Q. So you were there approximately five months?

7 A. Yes, sir.

8 Q. Did you come into South Carolina very often except to
9 go to work?

10 A. No, sir. Very rare.

11 Q. But you became friendly with Desmond?

12 A. Yes, sir..

13 Q. Why did you come down from Charlotte which is a big
14 nice town, plenty of girls I guess?

15 A. Yeah.

16 Q. To Rock Hill?

17 A. There are girls in Rock Hill too.

18 Q. That's true but any reason the girls in Rock Hill were
19 any better girls than in Charlotte?

20 A. No. I was a skirt chaser.

21 Q. You were what?

22 A. I was just a skirt chaser. I'm just always looking
23 for different women.

24 Q. All right. And so you came to work with Desmond
25 Campbell. He was your friend.

1 A. Uh-huh.

2 Q. Did you know his brother Debrezio at that point?

3 A. I knew who he was I just didn't like him too much.

4 Q. Well how did you know him well enough not to like him?

5 A. I mean because sometimes when I'm around Desmond he
6 would be around too when they were nothing alike
7 personality wise.

8 Q. And what occasion - Did you do drugs with them?

9 A. No. Alcohol that's all the drugs. Nothing but
10 alcohol.

11 Q. Because you were trying to stay in shape to play
12 football?

13 A. Yes, sir.

14 Q. You planned on playing football at that time?

15 A. Sir?

16 Q. You were playing football at that time?

17 A. I was practicing. The season hadn't started yet but
18 we were going, we were getting ready for the season.

19 Q. And what position did you play in football?

20 A. Defensive end.

21 Q. And that team was in Charlotte, what - -

22 A. Carolina Cardinals. It's a semi pro team.

23 Q. Were you a starter?

24 A. Both ways.

25 Q. Did you hope to become a pro and go up the ladder?

CHRISTOPHER WOODY: BY MR. DEVOE

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1 A. According to my coaches I would have been by the
2 next season.

3 Q. You played for Ole Dominion before that?

4 A. No, sir. I didn't play football. The only thing -
5 Ole Dominion doesn't have football, college football team.
6 They only have flag football but they have a traveling
7 team. I was on that team too.

8 MR. JOHNSON: Your Honor, I understand this is his one
9 shot, this doesn't relate to ineffective assistance of
10 counsel. This is irrelevant

11 THE COURT: It is but he wants to go into it a little
12 bit more.

13 BY MR. DEVOE:

14 Q. So the day in question, the fatal day in question in
15 many ways, you were down visiting Desmond?

16 A. Yes, sir.

17 Q. And Debrezio was there at the apartments?

18 A. Yeah. Yes, sir.

19 Q. And he came that same day or the night before or what?

20 A. No it was that day however I didn't get in town until
21 about sixish I think.

22 Q. I can't hear you.

23 A. I didn't get into town until about six, six o'clock
24 maybe.

25 Q. All right. And when you got there what occasioned you

1 to decide to leave those apartment complexes and go to
2 Stone Haven?

3 A. We kind of had rule about not dealing with girls where
4 you are because your girl is there. Or their girl was
5 there.

6 Q. You heard your attorney for your trial make a
7 statement you did drugs with the Campbell's; is that
8 correct?

9 A. That's what he said but it's not true.

10 Q. So as far as drugs are concerned you didn't do drugs?

11 A. No.

12 Q. Did anybody test you for drugs?

13 A. No.

14 Q. You played football, were you tested for drugs?

15 A. Oh, yeah. I thought you meant the cops. You have to
16 be tested for drugs before you can play.

17 Q. Every time or one time or what?

18 A. It's more a random thing. It's more random with
19 football.

20 Q. And when you got arrested here did - were you tested
21 for drugs also?

22 A. No, sir.

23 Q. And of course some people consider alcohol a drug so
24 I'm assuming you were drinking that day?

25 A. Yeah heavily.

CHRISTOPHER WOODY: BY MR. DEVOE

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1 Q. And you went over to - One other question. Were you
2 aware that the Campbell's dealt drugs?

3 A. No. I don't really believe that they did.

4 Q. Or at least Debrezio Campbell whether he dealt drugs?

5 A. I wasn't that aware of his drug activity. I mean
6 I've seen him with some before but I automatically assumed
7 he used them because of his personality.

8 Q. So you've heard testimony from the trial and from here
9 Desmond testified at the trial?

10 A. Yes, sir.

11 Q. And he testified to a lot of money being owed by his
12 brother to Mr. Bagley?

13 A. Uh-huh.

14 THE COURT: You got to say yes or no.

15 A. Yes, sir. Yes, sir.

16 Q. And you were aware that they were going to go over
17 and pay off Mr. Bagley part of the debt they owed him?

18 A. No.

19 Q. Are you aware that they were saying that Mr. Bagley
20 was their supplier?

21 A. No.

22 Q. So you weren't involved at all?

23 A. No. I didn't know. I don't believe there were
24 drugs involved.

25 Q. But yet it's likely?

1 A. No.

2 Q. Why were you going over to those apartments with
3 Debrezio and Desmond?

4 A. The same thing, chasing women.

5 Q. Pardon me?

6 A. Chasing women.

7 Q. Was the woman at the apartment complex Campbell's
8 girlfriend?

9 A. Yeah but that's where his girl lived with so he
10 wouldn't do anything in front of her so we to another
11 apartment complex up the street.

12 THE COURT: He who?

13 A. Desmond Campbell.

14 Q. And they told you there were plenty of girls over
15 at Stone Heaven or something like that?

16 A. Yeah. They said sometimes they're always out in
17 those apartment complex.

18 Q. And did you mention to think that apartment complex
19 had a swimming pool?

20 A. Yeah. It was supposed to be a swimming pool and it
21 was summertime so I automatically thought more skin.

22 Q. I think I understand the phrase but I've never heard
23 it before.

24 So you went to the apartments. There's also some
25 statements about you circled around and what have you

CHRISTOPHER WOODY: BY MR. DEVOE

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1 before you found the apartment. Why did that happen?

2 A. Say it again.

3 Q. You were driving right?

4 A. Yeah I think I was still driving at that time.

5 Q. Did you go up there and park or did you circle
6 around and come back?

7 A. We circled around and then we parked. Went back
8 into the apartment complex and parked.

9 Q. Why did that happen?

10 A. Same reason. Well in my mind same reason. Now I see
11 it wasn't the reason.

12 Q. So you parked and got out. You and Debrezio split
13 up a little bit or did you walk together or what?

14 A. Well I was on the sidewalk around where you get out
15 of the car at. He was kind of right beside the sidewalk.
16 Just wasn't no car there, he wasn't walking on the
17 sidewalk.

18 Q. And you saw Mr. Bagley?

19 A. Yeah I saw Bagley.

20 Q. Did you recognize him?

21 A. No. I had never laid eyes on him. I just heard about
22 him.

23 Q. Had you ever met him before?

24 A. No, sir.

25 Q. So you didn't know who he was?

1 A. No, sir. Only I guess in reputation.

2 Q. So some people said at the trial you were sort of
3 stalking Mr. Bagley.

4 A. Can't stalk someone you don't know.

5 Q. So what in your mind happened right then?

6 A. With me? A bad reaction.

7 Q. One of the questions you saw Mr. Bagley was on the
8 phone talking to somebody?

9 A. Yeah he was talking. He was on his cell phone.

10 Q. How was he holding his phone?

11 A. Had his phone to his ear and had a bag in his hand.

12 Q. Did he have the phone in his left hand, right hand?

13 A. Phone in his left hand.

14 Q. Okay. And there's some testimony he had bag also?
15 Are you aware of that?

16 A. In his other hand. In his right hand.

17 Q. He had a cup and a bag in the right hand?

18 A. I remember a brown bag. I don't necessarily remember
19 a cup. I remember a brown bag.

20 Q. So at that point somebody shot Mr. Bagley; is that
21 correct?

22 A. Yeah at that point.

23 Q. Who shot Mr. Bagley and why?

24 A. Who shot first?

25 Q. Yeah.

CHRISTOPHER WOODY: BY MR. DEVOE

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1 A. I'm pretty sure Debrezio shot first but ---

2 Q. And what -

3 A. --- Bagley went for - and I think Bagley went for
4 the gun first.

5 Q. How do you know if he had his phone in his left hand
6 and a bag in the right hand?

7 A. He dropped the phone.

8 Q. He dropped the phone and went for his gun?

9 A. Yeah.

10 Q. Are you saying Debrezio was shot before he got to the
11 gun?

12 A. Yeah cause I didn't see a gun. I just saw him reach.

13 Q. And where was his gun located?

14 MR. JOHNSON: Your Honor, he's trying to testify and
15 he had his opportunity to do so and chose not too. He
16 shouldn't be able to now testify just because of the
17 outcome of his trial didn't go like he planned.

18 THE COURT: Well I think I'll let him go ahead and
19 testify.

20 Go ahead.

21 MR. DEVOE: What did you say, Judge?

22 THE COURT: Go ahead. You can go ahead.

23 Q. So he dropped it and he got shot.

24 A. Yes, sir.

25 Q. And so he never got to his gun did he?

1 A. No, sir.

2 Q. Now the Solicitor just interrupted me by saying that
3 you shouldn't testify because you didn't testify at trial.
4 And why didn't you testify at trial?

5 A. Delgado warned me against it because when Desmond got
6 on the stand he said something; he embellished the story
7 way too much and it wasn't true and I wasn't gonna - I
8 wasn't gonna lie behind him and Delgado thought that the
9 conflicting statements would have hurt me like he said
10 before. But I wasn't gonna lie.

11 Q. Well when Desmond testified he said he had monies to
12 give to Bagley.

13 A. Uh-huh.

14 Q. And there were - because they were drug dealers and
15 they owed him money or something like that?

16 A. That's what he said.

17 Q. Did you have any idea that was true?

18 A. No. . I still don't believe it.

19 Q. So because he said that more or less in your trial
20 and sort of on your behalf I guess. Is it correct what he
21 said?

22 A. What was what correct?

23 Q. Did you agree with what Desmond said?

24 A. No I didn't agree with what Desmond said.

25 Q. Because it wasn't true?

CHRISTOPHER WOODY: BY MR. DEVOE

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1 A. No it wasn't true.

2 Q. But your lawyer wouldn't let you testify because you
3 couldn't testify against that testimony?

4 A. Yeah. I wouldn't go - He wanted me to stick with that
5 testimony but I didn't want to lie.

6 Q. So the jury didn't hear your side, your side of the
7 story?

8 A. No.

9 THE COURT: I'm a little bit lost. He didn't want -
10 Is what he testified he didn't want to testify because the
11 testimony was going to be different form Desmond's?

12 MR. DEVOE: Yes.

13 A. No.

14 THE COURT: He wanted it to be the same as Desmond's
15 and said that Desmond told a lie and then why didn't you
16 want to testify?

17 A. I said I didn't want to testify. I said I didn't want
18 to testify to a lie and Delgado told me if I wasn't gonna
19 say the same thing then he wasn't gonna put me on the
20 stand.

21 THE COURT: But Desmond said something that wasn't
22 true and you didn't want to testify to what Desmond said
23 because it wasn't true?

24 A. Yeah.

25 THE COURT: I follow you.

1 A. Okay.

2 THE COURT: Go ahead.

3 BY MR. DEVOE:

4 Q. So you didn't have a chance to tell the jury what
5 happened as far as you're concerned?

6 A. No, sir.

7 Q. Except of course when the gun fires - commenced - you
8 did shot - you did pull your gun and shoot?

9 A. Yes, sir.

10 Q. And you fired three shot?

11 A. Yes, sir.

12 Q. And I guess that was because Mr. Bagley I think you
13 testified was going for his gun.

14 A. Uh-huh.

15 Q. But Desmond shot?

16 A. No. Debrezio.

17 Q. I meant Debrezio shot.

18 A. Yeah. I think it was all pretty much right there
19 together quick grouping.

20 Q. So Desmond pulls his gun and he pulled about the same
21 time or shortly ---

22 THE COURT: Debrezio.

23 Q. --- like a second later?

24 A. Yes, sir. Yeah, Debrezio.

25 THE COURT: Debrezio.

CHRISTOPHER WOODY: BY MR. DEVOE

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1 Q. Pardon me?

2 A. It's Debrezio that shot.

3 Q. I'm sorry. Debrezio.

4 A. Yes, sir. It was pretty much back to back.

5 Q. And since that time you've been sitting here ---

6 A. Yes, sir

7 Q. --- pretty much? Now, in your statement to the
8 police at the jail, it had to be pretty much when we had
9 this hearing for the Jackson v. Denno hearing you testified
10 you went to see them because of the girls.

11 A. Uh-huh.

12 Q. You didn't testify you were looking for drugs?

13 A. No.

14 Q. You testified girls and liquor basically.

15 A. Yeah. Yes, sir.

16 Q. Is that the truth?

17 A. Yes, sir.

18 Q. So you didn't know the Campbell's did drugs?

19 A. No, sir. I knew one of them smoked marijuana.

20 Q. Well smoked but they didn't deal drugs?

21 A. No I didn't know that.

22 Q. If you had known that would you have stuck around?

23 A. No. My mother had already warned me against doing -
24 I used to smoke marijuana. My mother warned me against it
25 and she cried one day and I stopped.

CHRISTOPHER WOODY: BY MR. DEVOE
BY MR. JOHNSON

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1 Q. Didn't you have two marijuana charges in Virginia?

2 A. Yes I did.

3 Q. And you decided to come play football with marijuana?

4 A. I couldn't smoke marijuana and do anything because it
5 was a hindrance.

6 Q. But you did drink too much from time to time?

7 A. Yeah I still would drink. I was automatically
8 thinking that since I only drank at night and it wasn't
9 affecting my playing on the field I thought it was still
10 okay plus it was illegal.

11 Q. It may be illegal but it may not be good for you too.

12 A. Yeah that's true.

13 Q. This is where you are because of the drinking?

14 A. Pretty much.

15 Q. And your lawyer would just not let you testify because
16 of the conflict with the testimony from Desmond?

17 A. Yes, sir.

18 MR. JOHNSON: I have no further questions.

19 Thank you. Please answer any questions the
20 Attorney General has.

21 MR. JOHNSON: May it please the Court, Your Honor.

22 CROSS EXAMINATION

23 CHRISTOPHER WOODY BY MR. JOHNSON:

24 Q. You still say your testimony is that Mr. Delgado did
25 not let you testify; isn't that correct?

CHRISTOPHER WOODY: BY MR. JOHNSON

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1 A. Yes.

2 Q. However you were questioned by the Court whether you
3 wanted to exercise your right to remain silent or to
4 testify; isn't that correct?

5 A. Yes.

6 Q. And you chose to say no.

7 A. Based on what my attorney said at the time.

8 Q. But it's your trial, their your rights, and it's you
9 in prison not your attorney. Correct?

10 A. And he's the professional. I was listening to my
11 professional.

12 Q. And it was your choice wasn't it? You chose to listen
13 to him did you not?

14 A. I had to. I didn't know what to do.

15 Q. You had to? You had an option but you chose not to
16 testify. Correct?

17 A. Yeah I chose not to testify based on my counsel.

18 Q. You also chose to drink that night didn't you?

19 A. Yes I did.

20 Q. You also chose to drive the car?

21 A. Yes I did.

22 Q. You also chose to load that gun?

23 A. The gun was already loaded. It's always loaded.

24 Q. Who loaded it?

25 A. I did.

1 Q. When you buy it did it come loaded?

2 A. No.

3 Q. No, you must have put the bullets in it. Correct?

4 A. Yeah.

5 Q. And you chose to do that?

6 A. Yes, sir.

7 Q. You chose to carry a gun in South Carolina?

8 A. Yes, sir.

9 Q. And you drove to the apartments and you chose to get
10 out of that car, you chose to fire shots. Correct?

11 A. Yes.

12 Q. And now you're claiming that you were that drunk yet
13 you hit the victim three times with a bullet, one in the
14 back of the head; isn't that correct?

15 A. Yes.

16 Q. The .45 caliber?

17 A. Yes.

18 Q. Killing him?

19 A. No.

20 Q. You don't think the .45 shot would have killed
21 somebody?

22 A. I think it could have, I don't think it did.

23 Q. The testimony at trial is that it was one of the
24 shots that would have killed him. Correct?

25 A. Okay.

CHRISTOPHER WOODY: BY MR. JOHNSON

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1 Q. All right. Even if it hadn't been, even if Mr.
2 Campbell's shot, the .25, would have killed him. Are you
3 knowledgeable about the theory of the hand of one is the
4 hand of all it doesn't matter who pulled the gun - pulled
5 the trigger, you're still responsible?

6 A. I've heard of it.

7 Q. Okay. And you made a lot of choices that night that
8 resulted in Mr. Bagley's death; isn't that correct?

9 A. No.

10 Q. You chose to drive and you chose to drink and you
11 chose to fire three shots.

12 A. Those aren't all the choices though.

13 Q. But those are the choices that you did make that
14 night.

15 A. I agree to that.

16 Q. And Mr. Bagley's dead because of them. Correct?

17 A. He's not dead because I shot him in the head. I've
18 seen plenty of people through a head shot that was supposed
19 to die. Well I haven't seen it but I heard witnesses' of
20 it. I've seen it on TV.

21 Q. You chose --

22 A. I'm not gonna chose to gun somebody down that I don't
23 know.

24 MR. JOHNSON: Your Honor, I have no further questions.

25 THE COURT: Redirect?

REDIRECT EXAMINATION

1

2

CHRISTOPHER WOODY BY MR. DEVOE:

3

Q. Did you fire the first shot?

4

A. No, sir.

5

Q. Did you fire the second shot?

6

A. Yeah. I guess the second, third and fourth.

7

Q. But you saw Mr. Bagley reaching for a gun before the first shot went off?

8

9

A. You know what I might have just told -

10

Excuse me, I might have lied.

11

Because I hit him with the second, third and fourth

12

shot but I probably didn't fire the second third and fourth

13

because Debrezio was already firing.

14

Q. That's not the question I ask you. My question was

15

the first shot was fired by?

16

A. Debrezio.

17

Q. And you did see Mr. Bagley reaching behind him by

18

his left hand?

19

A. Yes, sir.

20

Q. For what you felt was a gun?

21

A. Yes, sir, and I panicked.

22

Q. Which hand had the gunpowder residue on it.

23

A. Yes, sir.

24

Q. And you decided he was going for the gun and you

25

fired at him?

CHRISTOPHER WOODY: BY MR. DEVOE
BY MR. JOHNSON

1 A. Yes, sir.

2 MR. JOHNSON: I have no further questions.

3 Thank you.

4 MR. JOHNSON: Just briefly, Your Honor.

5 RE CROSS EXAMINATION

6 CHRISTOPHER WOODY BY MR. JOHNSON:

7 Q. Mr. Woody.

8 A. Yes, sir.

9 Q. Mr. Bagley did not come to your apartment complex did
10 he? You drove to Pace's River Apartment complex. Correct?

11 A. Correct.

12 Q. He did not come and get you out of your car, you got
13 out of the car. Correct?

14 A. Mr. Bagley is not my purpose for going to Pace's
15 River.

16 Q. You got out of that car and walked toward Mr. Bagley;
17 isn't that correct?

18 A. True.

19 Q. He didn't come at you did he?

20 A. No.

21 MR. JOHNSON: No further questions, Your Honor.

22 THE COURT: You can go back and have a seat with your
23 attorney.

24 (WITNESS LEAVING WITNESS STAND.)

25 MR. DEVOE: Your Honor, the applicant rest.

1 THE COURT: Okay.

2 Does the State have any witnesses'?

3 MR. JOHNSON: No, Your Honor.

4 THE COURT: All right. Now the State's heard the
5 testimony. Do you wish to have a day or two to think as to
6 whether or not you wish to call reply testimony as far as
7 the gunshot, those two experts or do you want the court to
8 go ahead and take the case under advisement?

9 MR. JOHNSON: You can take the case under advisement,
10 Your Honor. I don't think we need any rebuttal testimony
11 unless you require it.

12 THE COURT: I'll take the case under advisement.
13 Thank everybody for their courtesies.

14 MR. DEVOE: Your Honor, I want to ask one other thing.

15 THE COURT: Well you said you rested but I'll let you
16 reopen to do so. I might as well, this is Mr. Woody's only
17 shot at this. I'll let you go ahead but you did say
18 you rested.

19 MR. JOHNSON: Huh?

20 THE COURT: You did say you rested but this is Mr.
21 Woody's one shot so I'll let you go forward.

22 MR. JOHNSON: I just wanted to enter the criminal
23 record of Mr. Bagley into the record.

24 THE COURT: Any objection.

25 MR. JOHNSON: I can't hear him. I haven't seen

1 whatever he's trying to -

2 THE COURT: Mr. Bagley's record.

3 MR. JOHNSON: It's irrelevant.

4 THE COURT: I do --

5 MR. JOHNSON: I do object to this coming in.

6 THE COURT: I --

7 MR. DEVOE: I did mention it.

8 MR. JOHNSON: And he's not laid any foundation for
9 this.

10 THE COURT: Well I sustain the objection, it is
11 irrelevant, but I'll make it a Court's Exhibit.

12 MR. DEVOE: Thank you, Your Honor.

13 THE COURT: Anything else?

14 MR. DEVOE: Your Honor, I think this is the CV for
15 Doctor Shaker who testified earlier. I don't know if you
16 want to put it in evidence or not.

17 THE COURT: He didn't. I qualified him as an expert
18 based on his testimony so I'll leave that up to you.

19 MR. DEVOE: The State has a copy, Your Honor. I'd like
20 to put it into evidence.

21 THE COURT: It would have been better if he testified
22 and you laid a foundation by holding his hand and saying
23 that this is my CV but you're an officer of the court and
24 I'll let you put it in and take it at face value.

25 MR. DEVOE: Thank you.

1 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE AND TWO,
2 IDENTIFIED AND MARKED, RECEIVED INTO THE RECORD.)

3 THE COURT: Anything else?

4 MR. DEVOE: I don't unless you want a closing
5 argument.

6 THE COURT: Yeah I'd like a brief argument. I'd like
7 to hear exactly what - Not so much about what Mr. Woody
8 testified to because I've looked at where Judge Alford
9 talked to him about his right to testify. I mean I'll be
10 glad to hear from you on that but I'm a little more
11 interested in what Mr. Woody's position is as to why the -
12 an expert such as either of the two that testified this
13 morning should have been called on his behalf.

14 MR. DEVOE: Your Honor, I didn't quit hear you.

15 THE COURT: Well just tell me your position on the
16 gunshot residue.

17 MR. DEVOE: The position on the gunshot residue, Your
18 Honor, as I understand it was the gunshot residue is on the
19 left palm only. I think everybody -

20 THE COURT: Yeah I've got it.

21 MR. DEVOE: I think it was ---

22 THE COURT: I've got it.

23 MR. DEVOE: --- in no other place because in reaching
24 back behind his hand he touched the holster of the gun but
25 he gets shot before he pulled it out. There is no other

1 way he can get the gunshot - that kind of gunshot residue
2 --

3 THE COURT: Well one of the experts testified as to
4 that's now he did it. The only testimony - And I'll be
5 glad to hear from Mr. Johnson. I'm not trying to make his
6 argument, but the gunshot residue on his left palm and
7 nobody has explained - neither one of these experts, nor
8 could they, testify to how it got there. The record
9 reflects that he had - -

10 MR. DEVOE: I think Mr. Shaker testified it was the
11 only way it could get there.

12 THE COURT: He doesn't know that. He couldn't testify
13 to that. He certainly -

14 MR. DEVOE: He said there was no gunshot residue
15 anywhere else on the body including the wound exits. He
16 said it wasn't there.

17 THE COURT: Well one of your witnesses testified also
18 that gunshot residue could stay on somebody's hands much
19 longer. I think it was the first one. Then the hour or
20 two that SLED testified he knew - testifies to or says what
21 if he had the gun fifteen minutes before they showed up?

22 MR. DEVOE: Well unless he washed his hands between
23 those two times it stays there.

24 THE COURT: No. Since we're speculating and we're not
25 speculating but isn't it just as logical or just as

1 imaginable and that's sort of where we are that he handled
2 a pistol or some gun at sometime before the Campbell's and
3 Mr. Woody even showed up?

4 MR. DEVOE: Well I think that's - its obviously a
5 possibility coming from that direction. You might want to
6 say that the gun - -

7 THE COURT: But we don't know there was a gun there.
8 I'm assuming - I'm not assuming. I hate to say assuming
9 because we tell people we can't assume. But let's for the
10 purposes of argument say there was or was not a gun there.
11 The gunshot residue arguably just as arguably as it could
12 have come from touching the holster. There is no testimony
13 about any gunshot residue being able to come from the
14 holster or any holster being involved. But it could have
15 just as likely come from having a pistol fifteen minutes
16 before the Campbell's even arrived and Mr. Woody.

17 MR. DEVOE: There is of course probably a whole bunch
18 of situations. They only found a gun in Bagley's residence
19 or on him but they found a bullet in Bagley's apartment. I
20 don't know a cartridge, the whole bullet. You can't
21 explain it away. They didn't find a lot of things of
22 Bagley's.

23 THE COURT: That's right. They probably didn't find
24 any - somewhere - I haven't read the testimony - something
25 about Twenty Seven Hundred Dollars, the telephone he was on

1 they didn't find that.

2 MR. DEVOE: I think the money - my client said there
3 was no money, that was a fabrication.

4 THE COURT: They didn't find any money.

5 MR. DEVOE: I think that the State covered that in
6 their testimony. The amount of bills you have in Twenty
7 Seven Hundred dollars would be twenty-seven bills. If they
8 go floating around and somebody gets shot.

9 THE COURT: We're getting way afar. We're starting to
10 do too much speculating. But he did have a phone to his
11 ear.

12 MR. DEVOE: He did. The phone was found and it was on
13 the girl who went to Bagley first received a phone call on
14 that phone.

15 THE COURT: Well that's not in the record. Did they
16 find the phone there at the scene?

17 MR. DEVOE: Huh?

18 THE COURT: Was the testimony that they found the
19 phone at the scene?

20 MR. DEVOE: They did.

21 THE COURT: Okay.

22 MR. DEVOE: But the phone never became part of the
23 evidence. The phone was never checked into for calls in
24 the trial. That's one of the big paradox in this whole
25 situation. Why in a murder case did the phone get over

1 looked or it disappeared. I recall it cleansed up when you
2 try to sanitize the place before when the people got there
3 because it was five to seven minutes before they got there
4 after the 9-1-1 call.

5 THE COURT: Anything else?

6 MR. DEVOE: They also testified that when they got
7 there Mr. Bagley's father was at the body with his hands
8 going in the pockets. So who knows what was going on there
9 either. The whole thing seems to be strange at best. So
10 the gun itself could have disappeared the same way the
11 phone disappeared. Why couldn't they find it?

12 THE COURT: I thought you just told me the phone
13 didn't disappear?

14 MR. DEVOE: It did. Its not in evidence. People saw
15 it.

16 THE COURT: Oh, I see what you mean.

17 MR. DEVOE: People saw it and then poof gone never to
18 reappear again as far as I know. So that's what I mean
19 paradox this case has. I thought the gunpowder residue
20 people testified that the handle of the gun would hold
21 residue unless you wash the handle out, it's tough to get
22 the residue out of the handle and so was the gun there? I
23 don't know if the gun was there or not I wasn't there,
24 neither of us was there.

25 THE COURT: I'm kind of glad.

1 MR. DEVOE: Well me too. But the fact is somebody
2 goes behind 'em for something like that you got to figure
3 something's going on. Maybe unfortunately Desmond fired
4 first and then that led to my client backing him up. Mr.
5 Bagley is not here and he's sitting in jail for the rest of
6 his life for it right now. And Debrezio because he pled
7 for thirty years because he wouldn't take a plea. Mr.
8 Delgado said things that I think were he knew that the
9 Campbell's did drugs and went over there to do drugs with
10 him and drink. I'm sure he went over there to drink but
11 not to do the drugs part of it and looking for girls. It's
12 a sad story, the whole thing's a sad story.

13 And my client is sitting there the rest of his life
14 with this situation. It's too bad we don't have a way to
15 make it parolable for life instead of non parolable for
16 life but we're deal the cards we're played. We play the
17 cards we're dealt.

18 THE COURT: That's right.

19 MR. DEVOE: So I'm just saying I think that Mr.
20 Delgado seem to act from the stand that he didn't want to
21 do the case and if he didn't want to do it he shouldn't a
22 done it and maybe somebody would a come in and done it a
23 little differently with better results even if the results
24 was pleading to a thirty year situation. And we got
25 preparing to go to trial.

1 THE COURT: Okay. All right. Thank you.

2 Let me hear from Mr. Johnson.

3 MR. JOHNSON: Just briefly, Your Honor.

4 The State's position is that Mr. Delgado was not
5 ineffective and Mr. Woody cannot show any prejudice
6 resulting from Mr. Delgado's actions. Clearly he
7 interviewed the SLED agent who testified at trial and
8 consulted with her and then realized that he did not need
9 to get another SLED or another gunshot residue expert. The
10 State's position also is is Mr. Howard is not credible in
11 his gunshot residue analysis.

12 Furthermore, even if a gunshot residue expert comes
13 in, Mr. Woody's own testimony here today has destroyed his
14 self defense claim. He testified that he chose to drank,
15 he chose to drive the car, he chose to load the gun. He
16 got out of the car towards Mr. Bagley. Mr. Bagley never
17 approached him. There is no testimony that there was a
18 gun, there was no gun ever found. He's got up and produced
19 a gun here to show this new evidence. He has failed to do
20 that.

21 The self defense claim he clearly testified that he
22 shot the second, third, and forth shots that Debrezio
23 Campbell shot the first one. Even if he didn't shot the
24 first one, or didn't shot at all, the fact that he is there
25 with Mr. Campbell is the hand of one the hand of all. He

1 is guilty of murder. And I do agree with Mr. Devoe, this
2 is a sad case but it's not because of Mr. Delgado's
3 representation. The State is asking you to deny his
4 application, Your Honor.

5 THE COURT: All right. I'll take it under advisement.

6 Thank you.

7 (END OF TRANSCRIPT OF RECORD IN THE MATTER OF
8 CHRISTOPHER WOODY VERSUS STATE OF SOUTH CAROLINA.)

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22

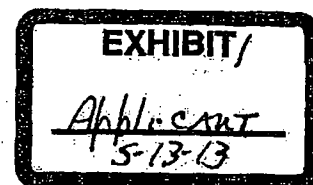
23

24

25

Adel Shaker, MD, LLB, FCAP, FNAME
1302 Chandler Road SE
Huntsville, Alabama 35801
 adola2001@hotmail.com
 TEL & FAX #: 256-880-9253
 CELL PHONE #: 814-244-1916

Curriculum Vitae [RÉSUMÉ]



EDUCATION:

GRADUATE AND POST GRADUATE MEDICAL & LAW STUDIES:

1977 To 1984: M.B.B.Ch., Assiut University Faculty of Medicine, Egypt.

1995: License of Law Baccalaureate **LLB.** (Equivalent to Juris Doctorate (JD) degree)

My Medical and Law degrees are evaluated by the International Education Research Foundation Inc. at California, USA.

****American Board Certified Anatomic & Forensic Pathologist****

EXPERIENCE:

- Apr 12-NOW : Medical Examiner/Forensic Pathologist
Kern County, Bakersfield, California
- Dec11-March12 : Medical Examiner/Forensic Pathologist
Huntsville, Alabama.
- Nov10-Nov11 : State Medical Examiner/Forensic Pathologist
Jackson, Mississippi.
- August05-Oct10 : State Forensic Pathologist/Medical Examiner,
Montgomery, Alabama.
- Jan05-Feb07 : RCLO(Regime Crime Liaison Office)-Mass Graves in Iraq
working with USACE (US Army Corps of Engineers) and attached to
the department of Justice involved with the IST
(Iraqi special Tribunal); The former regime of Saddam Hussein.
- 2004-2005 : Fellow at the Allegheny County Coroner's Office, Pittsburgh, PA.
- 2001-2004 : Resident at Memorial Medical Center In the Dept. of Pathology.
- 2000-2001 : Pathologist Assistant at JFK Medical Center, NJ USA. (Training)
- 2000-2001 : Histopathology technologist at Quest Diagnostic Inc., NJ USA
- 2000-2001 : Instructor at American Business Academy, USA. (Part Time)
- 1992-1999 : Physician working with National Health Insurance Corporation,
Egypt.
- 1991-1992 : Medical Examiner In Ministry of Justice In Egypt.
- 1988-1991 : Forensic Pathologist attached to (The Office of The
President of Kenya in Nairobi).
- 1990-1991 : Expert in The Medico-Legal Department,
Seconded by the Egyptian Ministry of Foreign Affairs
(The Egyptian Fund for Technical Co-operation in Africa)
Attached to the office of the President, working with
National Public Health Labs In NAIROBI, KENYA.

- 1988-1990 : MD In Charge of Park Road Nursing home in both General clinical Practice, Radiology, and Toxicology "part time".
- 1987-1988 : Volunteer MD & Administrator at Coptic Church Clinic, Kenya.
- 1985-1987 : Medical Examiner in the Ministry of Justice in Egypt.
- 1984-1985 : Internship at Assiut University Hospitals, Egypt.

MEDICAL LICENSES, CERTIFICATIONS AND REGISTRATION BY MEDICAL BOARDS & AWARDS:

****I have full licenses to practice Medicine and Surgery in AL, CA, MS, & PA.**

**** Board Certified Pathologist****

- 1- Diplomate & certified by the American Board in Anatomic and Forensic Pathology.
- 2- Member of the American Medical Association.
- 3- Fellow of College of American Pathologists (FCAP).
- 4- Fellow of the American Society of Clinical Pathologists (FASCP).
- 5- Fellow of the National Association of Medical Examiners (NAME), USA
- 6- Member in the United States and Canadian Academy of Pathology.
- 7- Member of TASA (Technical Advisory Services for Attorneys) in USA.
- 8- Fellow of the American Board of Forensic Medicine. Diplomate of The American College of Forensic Examiners, since 1996.
- 9- Associate Member of The American Academy of Forensic Sciences, USA
- 10- Member of The Egyptian Medical Syndicate, since March 1985, Egypt.
- 11- Member of The Kenya Medical Association and Registered by The Kenya Medical Board of Medicine and Surgery, since 1988
- 12- Unrestricted License to practice in the Medical Profession with The Egyptian Ministry of Health since 1985.

POST GRADUATE COURSES:

1. 1985 (March-September), course In the Forensic Medicine and Pathology in Egypt.
2. Continued Medical Education (Follow up of cases in AIDS, 1989 to 1990 "Kenya")

PROFESSIONAL, RESEARCH & PUBLICATION ACTIVITIES:

- Speaker at National Radiology Technology; "The Pivotal Role of Radiology in Modern Mass Graves," Bakersfield, CA November 2012
- Speaker at Trials, Tribulations & Trauma Conference; "Modern Approach to Global Mass Graves," Huntsville, AL October 2012
- Pakula, A MD, MPH. Shaker, A MD. Martin, M MD. Skinner, R MD. "High Risk Behavior Commands Deadly Driving Patterns: Evaluation of CNS Fatalities in a Large Coroner's Series." September 2012
- Guest Speaker at Mississippi Association of Coroners, Gulfport, MS June 2011
- Presenting speaker at Society of Historical Archeology Symposium; "The role of Forensic Pathology in Modern Mass Graves Analysis" Albuquerque, NM Jan. 2008.

- Telepathology; Mass Graves of the former Iraqi Regime
- Clinical Pathological Conferences, Departments of Internal Medicine & Pathology, Memorial Medical Center
- Tumor Board Conferences, Trauma Conferences and Mortality & Morbidity Conferences, Departments of Surgery & Pathology, Memorial Medical Center
- Checkpath, Checksamples, PIP, California Tumor Tissue Registry
- Involved in CAP inspection of the laboratory

LANGUAGE ABILITIES:

1. ENGLISH : Excellent
2. FRENCH : Fair
3. ARABIC : Excellent; All dialects
4. KISWAHILI* : Good Spoken, Fair written

*It is an African Language Spoken by nearly 80 million of Africans in Kenya, Uganda and Tanzania.

PERSONAL INFORMATION:

NAME : ADEL SHAKER
SEX : MALE
MARITAL STATUS : MARRIED
CITIZENSHIP : US CITIZEN
PERSONAL HOBBIES : MUSIC, TEACHING, AND MEDITATION

SLED CATCH
Citizens Access to Criminal Histories
Results

Hello **

Name **Arvell Bagley**
Date of Birth **1977**
Maiden Name
Gender **Male**
SSN
Transaction **004579355**
Date of Check **December 27, 2011 at 08:44**

ARREST RECORD
S.C. Law Enforcement Division
WWW

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

INTERNET RAP SHEET REQUEST
ORI-SCLED0000 SID-SC00950519 FBI-***** PUR-E
ATN-WEB, ACCOUNT

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

PAGE-01 DATE-12/27/2011 TIME-08:43:10
REQ ORI-SCLED0000 S C LAW ENF DIV
SID-SC00950519 FBI-
NAME-BAGLEY, ARVELL DERRELL SEX-M RACE-B
HEIGHT-509 WEIGHT-160 EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC-PO1315PO14DI1514PI15 HENRY-13 O 13 U OOO 14
I 18 U OOI
PHOTOGRAPH AVAILABLE AUTHORIZED USE ONLY
PALM PRINTS AVAILABLE AUTHORIZED USE ONLY
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAPIS

EXHIBIT 1
Coert's
5-13-13

DATE RECORD ENTERED--05/11/1994 DATE OF LAST UPDATE--05/19/2009

ADDITIONAL IDENTIFIERS: NAME	BIRTH DATES	MARKS	SOC SEC	MISC NUM
BAYLEY, ARVELL DERRELL	1977			
BAGLEY, ARNELL DERELL				
BAGLER, ARVELL				
BAGLEY, ARVELLE D				
BAGLEY, ARVELL DARELL				
BAGLEY, ARVEL DEVELL				
BAGLEY, ARVELL D	1972			
BAGLEY, ARVELL DERELL				
BAGLEY, ARVELL DARRELL				
BAGLEY, DERRELL				
BAGLEY, ARVELL DERALL				
BAGLEY, ARVELL DURELL				
BAGLEY, DERELL				
BAGLEY, ARVELL				
BAGLEY, ARVELLE				
BAGLEY, ARVELLE DORAL				

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC

BAGLEY, ARVELL DERRELL 03/16/1994
 SC0120000 CHESTER CNTY SO
 CASE-9433450
 ARREST CHARGE 01-INDECENT
 EXPOSURE
 OFFENSE DATE-03/16/1994
 PHOTOGRAPH AVAILABLE
 ARREST CHARGE 02-POSSESSION
 OF CRACK COCAINE W/I TO
 DISTRIBUTE
 OFFENSE DATE-03/16/1994
 WARR-D739583 COURT CHARGE 01-POSSESSION
 OF CRACK COCAINE WITH
 INTENT TO DIS
 COURT DISP-NON-CONVICTION;
 DISMISSED
 COURT DATE-09/11/1996

 BAGLEY, ARVELL D 04/25/1994
 SC0120000 CHESTER CNTY SO
 CASE-9443856
 WARR-D739816
 @
 ARREST CHARGE 01-SIMPLE ASSAU
 LT AND BATTERY
 OFFENSE DATE-04/25/1994
 PHOTOGRAPH AVAILABLE
 CIT-N/A MISDEMEANOR
 DOC-R84 WARR-D739816 COURT CHARGE 01-SIMPLE ASSAULT AND BATTERY
 COURT DISP-CONVICTED; 30D. OR
 \$250
 COURT DATE-05/05/1994

 BAGLEY, ARVELL DERRELL 06/01/1994
 SC0120000 CHESTER CNTY SO
 CASE-94649
 WARR-5385YM
 ARREST CHARGE 01-VIOLATION
 OF ABC LAW
 OFFENSE DATE-06/01/1994
 PHOTOGRAPH AVAILABLE
 WARR-5386YM
 ARREST CHARGE 02-POSSESSION
 OF DRUG PARAPHERNALIA
 OFFENSE DATE-06/01/1994
 CIT-N/A-MISDEMEANOR
 DOC-R84 WARR-5385YM COURT CHARGE 01-VIOLATION
 ABC LAW
 COURT DISP-NON-CONVICTION;
 DISMISSED
 COURT DATE-12/10/2008
 CIT-44-53-391-UNCLASSIFIED
 DOC-R84 WARR-5386YM COURT CHARGE 02-PARAPHERNALIA
 /UNLAWFUL POSS, SELL, ADVERT
 ISE ETC
 COURT DISP-CONVICTED; DISMISSE
 D
 COURT DATE-12/10/2008

 BAGLEY, ARVELL DERRELL 06/22/1994
 SC0120100 CHESTER PD
 WARR-B169228
 ARREST CHARGE 01-POINTING A
 FIREARM
 OFFENSE DATE-06/22/1994
 CIT-16-23-410 FELONY

DOC-00GS12 WARR-E169228 COURT CHARGE 01-POINTING A
 FIREARM
 COURT DISP-NON-CONVICTION;
 NOLLE PROSSED
 COURT DATE-09/15/1994

 BAGLEY, ARVELL DERRELL 08/22/1994
 SC0120000 CHESTER CNTY SO
 CASE-238
 WARR-D740117
 ARREST CHARGE 01-SIMPLE ASSAU
 LT

OFFENSE DATE-08/22/1994
 PHOTOGRAPH AVAILABLE
 WARR-D262616
 ARREST CHARGE 02-VIOLATION
 OF SOUTH CAROLINA GUN LAW
 OFFENSE DATE-08/22/1994

CIT-17-25-30
 DOC-94GS1200733 WARR-D262616 COURT CHARGE 01-COURT CHARGE
 NOT SUBMITTED

COURT DISP-NON-CONVICTION;
 NOLLE PROSSED
 COURT DATE-09/11/1996
 CIT-17-15-30
 DOC-R84 WARR-D740117 COURT CHARGE 02-COURT CHARGE
 NOT SUBMITTED

COURT DISP-NON-CONVICTION;
 DISMISSED

 BAGLEY, ARVELL DARRELL 08/25/1994
 SC0120000 CHESTER CNTY SO
 CASE-275
 WARR-7339VZ
 ARREST CHARGE 01-RESISTING
 ARREST

OFFENSE DATE-08/25/1994
 PHOTOGRAPH AVAILABLE
 WARR-7337VZ
 ARREST CHARGE 02-DISORDERLY
 CONDUCT
 OFFENSE DATE-08/25/1994

WARR-7338VZ
 ARREST CHARGE 03-ASSAULT AND
 BATTERY
 OFFENSE DATE-08/25/1994
 WARR-7338VZ
 ARREST CHARGE 04-DESTRUCTION
 OF PERSONAL PROPERTY

OFFENSE DATE-08/25/1994
 WARR-7341VZ
 ARREST CHARGE 05-DAMAGE TO
 COUNTY PROPERTY
 CIT-16-9-320 (A) MISDEMEANOR
 DOC-95GS1200085 WARR-07339VZ COURT CHARGE 01-RESIST ARREST
 LAW ENFORCE OFFICER SERVE
 NOTICE

COURT DISP-CONVICTED; YOA NOT
 TO EXCEED 1 YR
 COURT DATE-09/11/1996
 CIT-16-17-530 MISDEMEANOR
 DOC-R84 WARR-7337VZ COURT CHARGE 02-PUBLIC DISORD
 ERLY CONDUCT

COURT DISP-CONVICTED; FINED
 \$200
 COURT DATE-09/06/1994
 CIT-N/A MISDEMEANOR

WARR-5395TJ
 ARREST CHARGE 02-POSSESSION
 OF BEER UNDERAGE
 OFFENSE DATE-11/21/1994
 ARREST CHARGE 03-CITY NOISE
 ORDINANCE
 OFFENSE DATE-11/21/1994
 WARR-5394TJ
 SUSPENSION 2ND
 COURT DISP-NON-CONVICTION;
 DISMISSED
 WARR-5395TJ
 OF BEER UNDERAGE
 COURT DISP-CONVICTED;\$75
 COURT CHARGE 03-CITY NOISE
 ORDINANCE
 COURT DISP-CONVICTED;\$75

COURT CHARGE 01-DRIVING UNDER

COURT CHARGE 02-POSSESSION

 BAGLEY, ARVELL DERELL 12/16/1994
 SC0120000 CHESTER CNTY SO
 CASE-175
 WARR-D740211

ARREST CHARGE 01-CON TO A&B
 * HIGH AGGRAVATED NATURE
 W/VEHICLE
 OFFENSE DATE-12/16/1994
 PHOTOGRAPH AVAILABLE
 WARR-4454XM

ARREST CHARGE 02-POSSESSION
 OF BEER UNDER AGE
 OFFENSE DATE-12/16/1994
 WARR-E170064
 ARREST CHARGE 03-TRESPASSING
 AFTER NOTICE
 OFFENSE DATE-12/16/1994
 CIT-16-3-620(2)-FELONY
 DOC-95GS1200156 WARR-D740211

COURT CHARGE 01-ASSAULT AND

* BATTERY W/INTENT TO KILL
 COURT DISP-NON-CONVICTION;
 DISM/NOL PROS/PROS ENDED
 COURT DATE-09/11/1996
 COURT CHARGE 02-POSSESSION
 OF BEER UNDER AGE
 COURT DISP-CONVICTED;FINED
 \$100
 WARR-E170064
 COURT DISP-CONVICTED;FINED
 \$150
 COURT DATE-01/05/1995

COURT CHARGE 03-TRESPASSING

 BAGLEY, ARVELL DURELL 01/14/1995
 SC0120000 CHESTER CNTY SO
 CASE-188
 WARR-E170117

* ARREST CHARGE 01-ASSAULT AND
 BATTERY WITH DEADLY WEAPON
 OFFENSE DATE-01/14/1995
 PHOTOGRAPH AVAILABLE
 CIT-16-3-610-MISDEMEANOR
 DOC-95GS1200199 WARR-E170117
 * CONGEALED WEAPON
 COURT DISP-NON-CONVICTION;
 DISM/NOL PROS/PROS ENDED
 COURT DATE-09/11/1996

COURT CHARGE 01-ASSAULT WITH

 BAGLEY, DERELL 02/18/1995
 SC0120000 CHESTER CNTY SO

WARR-E170831
 ARREST CHARGE 03-MINOR IN
 POSSESSION OF ALCOHOL
 OFFENSE DATE-07/26/1995
 DOC-R84 WARR-E170832
 ABC LAW
 COURT DISP-CONVICTED;\$188
 COURT DATE-09/26/1995
 DOC-R84 WARR-E170833
 EARLY CONDUCT
 COURT DISP-CONVICTED;\$188
 COURT DATE-09/26/1995
 DOC-R84 WARR-E170831
 POSSESSION OF BEER OR WINE BY
 MINOR
 COURT DISP-CONVICTED;\$188
 COURT DATE-09/26/1995

COURT CHARGE 01-VIOLATION

COURT CHARGE 02-PUBLIC DISORD

COURT CHARGE 03-PURCHASE/POSS

 BAGLEY, ARVELL DERALL
 SC0120100 CHESTER PD
 CASE-324

A07/26/1995

WARR-E418617
 *ARREST CHARGE 01-SIMPLE ASSAULT
 AND BATTERY
 OFFENSE DATE-07/26/1995
 PHOTOGRAPH AVAILABLE
 WARR-E418617
 BATTERY
 COURT DISP-CONVICTED;\$152

COURT CHARGE 01-ASSAULT AND

 BAGLEY, ARVELL DURELL
 SC0120100 CHESTER PD
 CASE-73

08/04/1995

WARR-E418705
 *ARREST CHARGE 01-ASSAULT &
 BATTERY, HIGH & AGGRAVATED
 NATURE
 OFFENSE DATE-08/04/1995
 PHOTOGRAPH AVAILABLE
 CIT-C/L,
 DOC-95GS1200466 WARR-E418705
 REASON OF HIGH AND AGGRAVATED
 NATURE
 COURT DISP-NON-CONVICTION;
 NOLLE PROSSED
 COURT DATE-09/11/1996

COURT CHARGE 01-ASSAULT/BATTE

 BAGLEY, ARVELL D
 SC0120000 CHESTER CNTY SO
 CASE-183

08/17/1995

WARR-E170904
 *ARREST CHARGE 01-HARRASMENT
 OFFENSE DATE-08/17/1995
 PHOTOGRAPH AVAILABLE
 CIT-16-3-1710(A) MISDEMEANOR
 DOC-R84 WARR-E170904
 COURT DISP-NON-CONVICTION;
 NOLLE PROSSED
 COURT DATE-09/07/1995

COURT CHARGE 01-HARRASMENT

 BAGLEY, ARVELLE DORAL
 SC0200000 FAIRFIELD CNTY SO
 WARR-E496388

05/31/1996

*ARREST CHARGE 01-ARMED ROBBER
 PHOTOGRAPH AVAILABLE
 WARR-E496397

* ARREST CHARGE 02-ASSAULT AND BATTERY WITH INTENT TO KILL

WARR-E496393

ARREST CHARGE 03-ASSAULT AND

* BATTERY WITH INTENT TO KILL

CIT-16-11-330(A) FELONY

DOC-00GS20 WARR-E496388

COURT CHARGE 01-ARMED ROBBERY

* ROBBERY ARMED WITH DEADLY WEAPON

COURT DISP-NON-CONVICTION;

NOLLE PROSSED

COURT DATE-09/20/1996

CIT-16-3-620 FELONY

DOC-00GS20 WARR-E496397

COURT CHARGE 02-ASSAULT AND

* BATTERY WITH INTENT TO KILL

COURT DISP-NON-CONVICTION;

NOLLE PROSSED

COURT DATE-09/20/1996

CIT-16-23-440 FELONY

* COURT CHARGE 03-DISCHARGING FIREARMS INTO A DWELLING

COURT DISP-CONVICTED; YOA 5C

NOT TO EXCEED 6YRS

CIT-16-3-620 FELONY

COURT CHARGE 04-ASSAULT AND

* DOC-00GS20000000 WARR-E496393 BATTERY WITH INTENT TO

KILL

COURT DISP-NON-CONVICTION;

NOLLE PROSSED

COURT DATE-09/20/1996

SC040055C R & E CENTER COLA CASE-237151

09/25/1996 CUSTODY STATUS-RECEIVED
START DATE-09/25/1996

* COURT CHARGE 01-DISCHARGING FIREARM IN DWELLING

COURT DISP-CONVICTED; YOA 5C

NOT TO EXCEED 6Y

* COURT CHARGE 02-POSSESSION OF WEAPON

COURT DISP-CONVICTED; YOA 5C

NOT TO EXCEED 6Y

COURT CHARGE 03-RESISTING

ARREST

COURT DISP-CONVICTED; YOA 5C

NOT TO EXCEED 6Y

COURT CHARGE 04-DRIVING UNDER

SUSPENSION

COURT DISP-CONVICTED; YOA 5C

NOT TO EXCEED 6Y

BAGLEY, ARVEL DEVELL

02/13/1999

SC0120100 CHESTER PD

WARR-F954312

ARREST CHARGE 01-MALICIOUS

INJURY TO PROPERTY

OFFENSE DATE-12/23/1998

PHOTOGRAPH AVAILABLE

CIT-16-11-520(B) (3) MISDEMEANOR

DOC-R84 WARR-F954312

COURT CHARGE 01-MAL INJURY

TO PROPERTY, \$1000 OR LESS

COURT DISP-CONVICTED; \$250 OR

15 DAYS

COURT DATE-02/17/1999

BAGLEY, ARVELL DARELL 04/04/1999
SC0120000 CHESTER CNTY SO
ATN-WARR-E253533

* ARREST CHARGE 01-INCITING A
RIOT
WARR-E253534

* ARREST CHARGE 02-ASSAULT &
BATTERY, HIGH & AGGRAVATED
NATURE
WARR-E253532

ARREST CHARGE 03-RESISTING
ARREST
CIT-16-5-130(2)-MISDEMEANOR
DOC-99GS1200521 WARR-E253533
ID/PARTICIPATE IN RIOT(VIO
LENCE)

COURT CHARGE 01-INSTIGATING/A

COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED
COURT DATE-11/05/2002
ATN-CIT-C/L, MISDEMEANOR
DOC-99GS1200522 WARR-E253534
RY OF HIGH AND AGGRAVATED
NATURE

COURT CHARGE 02-ASSAULT/BATTE

COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-02/25/2003
CIT-16-9-320(A) MISDEMEANOR
DOC-99GS1200522 WARR-E253532
ARREST

COURT CHARGE 03-RESISTING

COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-02/25/2003

BAGLEY, ARVELL DERRELL 10/06/1999
SC0120100 CHESTER PD
ATN-WARR-G285090

ARREST CHARGE 01-MALICIOUS
INJURY TO PERSONAL PROPERT
Y
OFFENSE DATE-10/01/1999
WARR-G285088

ARREST CHARGE 02-SIMPLE ASSAU
LT & BATTERY
OFFENSE DATE-10/01/1999
DOC-R84 WARR-G285088

COURT CHARGE 01-SIMPLE ASSAUL

T AND BATTERY
COURT DISP-NON-CONVICTION;
DISMISSED
COURT DATE-10/06/1999

ATN-CIT-16-11-510(B)(2) FELONY
DOC-00GS1200108 WARR-G285090
PERSONAL PROP>\$1000 BUT<\$5
,000

COURT CHARGE 02-MAL INJ TO

COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-01/18/2002

BAGLEY, ARVELL DERRELL 12/12/1999
SC0120200 GREAT FALLS PD
ATN-

ARREST CHARGE 01-DRIVING

UNDER SUSPENSION 2ND
OFFENSE DATE-12/12/1999
PHOTOGRAPH AVAILABLE
ARREST CHARGE 02-OPEN CONTAIN
ER

OFFENSE DATE-12/12/1999
ARREST CHARGE 03-SPEEDING

49/35

OFFENSE DATE-12/12/1999
CIT-61-9-87-MISDEMEANOR
DOC-R84

COURT CHARGE 01-OPEN CONTAINE

R

COURT DISP-CONVICTED;\$100
FINE

ATN-CIT-56-5-1520(D)(1)-MISDEMEANOR
DOC-R84

COURT CHARGE 02-SPEEDING

COURT DISP-CONVICTED;\$50 FINE

BAGLEY, ARVELL DERRELL

04/12/2000

SC0120000 CHESTER CNTY SO

ATN-WARR-55083BM

ARREST CHARGE 01-TRESPASSING

WARR-55084BM

ARREST CHARGE 02-DISORDERLY

CONDUCT

COURT CHARGE 01-TRESPASSING

DOC-R84 WARR-55083BM

COURT DISP-NON-CONVICTION;

DISMISSED

COURT DATE-07/13/2000

ATN-DOC-R84 WARR-55084BM

COURT CHARGE 02-PUBLIC DISORD

ERLY CONDUCT

COURT DISP-NON-CONVICTION;

DISMISSED

COURT DATE-07/13/2000

BAGLEY, ARVELL DERRELL

07/14/2000

SC0120000 CHESTER CNTY SO

ATN-WARR-55332BM

ARREST CHARGE 01-DISORDERLY

CONDUCT

WARR-55333BM

ARREST CHARGE 02-SIMPLE ASSAU

LT & BATTERY ON POLICE

DOC-R84 WARR-55333BM

COURT CHARGE 01-SIMPLE ASSAUL

T AND BATTERY

COURT DISP-CONVICTED;\$425

COURT DATE-08/10/2000

ATN-DOC-R84 WARR-55332BM

COURT CHARGE 02-PUBLIC DISORD

ERLY CONDUCT

COURT DISP-CONVICTED;\$225

FINE BENCH WARRANT

COURT DATE-08/10/2000

BAGLEY, ARVELL DERRELL

07/19/2000

SC0120100 CHESTER PD

ATN-WARR-G285878

ARREST CHARGE 01-POINTING A

FOREARM

WARR-G285877

ARREST CHARGE 02-ASSAULT &

BATTERY

WARR-G285855

ARREST CHARGE 03-POINTING A

FIREARM

WARR-G285853

ARREST CHARGE 04-ASSAULT &

BATTERY

CIT-N/A-MISDEMEANOR

DOC-R84 WARR-G285877

COURT CHARGE 01-SIMPLE ASSAUL

T AND BATTERY

COURT DISP-NON-CONVICTION;

DISMISSED
COURT DATE-07/20/2000
ATN-CIT-N/A-MISDEMEANOR
DOC-R84 WARR-G285853
T AND BATTERY
COURT DISP-NON-CONVICTION;
DISMISSED
COURT DATE-07/20/2000
CIT-16-23-410-FELONY
DOC-00GS12 WARR-G285878
PRESENTING FIREARMS AT A
PERSON
COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED
COURT DATE-10/31/2000
CIT-16-23-410-FELONY
DOC-00GS12 WARR-G285855.
PRESENTING FIREARMS AT A
PERSON
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-08/25/2000

COURT CHARGE 02-SIMPLE ASSAUL

COURT CHARGE 03-POINTING AND

COURT CHARGE 04-POINTING AND

BAGLEY, ARVELL D
SC0120100 CHESTER PD
ATN-WARR-G285980
ARREST CHARGE 01-POSS OF A
FIREARM BY CONVICTED FELON
OFFENSE DATE-08/18/2000
WARR-G285981
ARREST CHARGE 02-POSS W/INT
TO DIST CRACK COCAINE
W/IN PROX SCH
OFFENSE DATE-08/18/2000
WARR-76033BC
ARREST CHARGE 03-POSS DRUG
PARAPHERNALIA
OFFENSE DATE-08/18/2000
CIT-44-53-375(B) (1)-FELONY
DOC-00GS12 WARR-G285981
T,ETC OF COCAINE BASE 1ST
COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED
COURT DATE-11/08/2000
ATN-CIT-44-53-960-MISDEMEANOR
DOC-R84 WARR-76033BC
OF DRUG PARAPHERNALIA
COURT DISP-NON-CONVICTION;
DISMISSED
COURT DATE-08/21/2000
CIT-16-23-20-MISDEMEANOR
DOC-00GS12 WARR-G285980
CARRYING OF WEAPON
COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED
COURT DATE-02/04/2003

08/18/2000

COURT CHARGE 01-DRUGS/MAN, DIS

COURT CHARGE 02-POSSESSION

COURT CHARGE 03-UNLAWFUL

BAGLEY, ARVELLE D
SC0120100 CHESTER PD
ATN-WARR-G294163
ARREST CHARGE 01-POINTING A
FIREARM
WARR-G294158
ARREST CHARGE 02-MALICIOUS
DAMAGE TO PROPERTY
CIT-16-23-410-FELONY
DOC-00GS12 WARR-G294163

10/18/2000

COURT CHARGE 01-POINTING AND

PRESENTING FIREARMS AT A
PERSON

COURT DISP-NON-CONVICTION;

DISM/NOL PROS/PROS ENDED

COURT DATE-03/08/2001

ATN-CIT-16-11-520(B) (3)-MISDEMEANOR

DOC-R84 WARR-G294158

COURT CHARGE 02-MALICIOUS

INJURY TO PROPERTY

COURT DISP-NON-CONVICTION;

NOT GUILTY

COURT DATE-10/18/2002

BAGLER, ARVELL

11/22/2000

SC0120000 CHESTER CNTY SO

ATN-WARR-F253885

ARREST CHARGE 01-LYNCHING 2ND

CIT-16-3-220 FELONY

DOC-01GS1200140 WARR-E253885

COURT CHARGE 01-LYNCHING -

SECOND DEGREE

COURT DISP-NON-CONVICTION;

NOT GUILTY

COURT DATE-10/30/2001

ATN-

BAGLEY, ARVELL DERELL

04/11/2001

SC0120000 CHESTER CNTY SO

ATN-WARR-75081BF

ARREST CHARGE 01-OPEN CONTAIN

ER

WARR-75282BF

ARREST CHARGE 02-FAIL TO

STOP FOR POLICE VEHICLE

CIT-61-9-87-MISDEMEANOR

DOC-R84 WARR-75081BF

COURT CHARGE 01-OPEN CONTAIN

R

COURT DISP-CONVICTED; TIME

SERVED

COURT DATE-05/01/2001

ATN-

BAGLEY, ARNELL DERELL

06/13/2001

SC0460300 ROCK HILL PD

ATN-

ARREST CHARGE 01-DAMAGE TO

PROPERTY (\$200-\$1000)

OFFENSE DATE-09/23/2000

PHOTOGRAPH AVAILABLE

PALM PRINTS AVAILABLE

BAYLEY, ARVELL DERRELL

09/30/2001

SC0460000 YORK CNTY SO

ATN-WARR-60263BV

ARREST CHARGE 01-FAIL TO

STOP FOR BLUE LIGHT

OFFENSE DATE-09/30/2001

PHOTOGRAPH AVAILABLE

WARR-60262BV @

ARREST CHARGE 02-SPEEDING

OFFENSE DATE-09/30/2001

CIT-56-5-750(B) (1) MISDEMEANOR

DOC-01GS4602911 WARR-60263BV

COURT CHARGE 01-FAIL TO STOP

FOR BLUE LIGHT, NO INJURY/D

EATH

COURT DISP-CONVICTED; 3 YEARS

& \$500 S/O 90 DAYS WEEKEND

3 & 3 YEARS PROBATION

TRANSFER TO CHESTER COUNTY

COURT DATE-02/04/2002

ATN-CIT-56-25-40(B)-MISDEMEANOR
 COURT CHARGE 02-FAIL TO APPEAR FOR UNIFORM TRAFFIC CITATION
 COURT DISP-CONVICTED;\$150
 COURT DATE-11/28/2001

 BAGLEY, ARVELL DERRELL 02/15/2002

SC0120000 CHESTER CNTY SO
 ATN-WARR-G795157
 CIT-C/L,-UNCLASSIFIED
 ARREST CHARGE 01-ASSAULT/BATTERY OF HIGH AND AGGRAVATED NATURE
 WARR-G795167
 CIT-C/L,-UNCLASSIFIED
 ARREST CHARGE 02-ASSAULT/BATTERY OF HIGH AND AGGRAVATED NATURE
 WARR-G795158

CIT-16-23-410-FELONY
 ARREST CHARGE 03-POINTING AND PRESENTING FIREARMS AT A PERSON
 WARR-G795176

CIT-16-23-410-FELONY
 ARREST CHARGE 04-POINTING AND PRESENTING FIREARMS AT A PERSON
 CIT-C/L,-MISDEMEANOR

DOC-00GS12 WARR-G795157
 COURT CHARGE 01-ASSAULT/BATTERY HIGH & AGGRAVATED NATURE

COURT CHARGE 01-ASSAULT/BATTERY

COURT DISP-NON-CONVICTION;
 DISMISSED AT PRELIM
 COURT DATE-04/17/2002

ATN-CIT-16-23-410-FELONY
 DOC-00GS12 WARR-G795158
 PRESENTING FIREARMS AT A PERSON
 COURT DISP-NON-CONVICTION;
 DISMISSED AT PRELIM
 COURT DATE-04/17/2002

COURT CHARGE 02-POINTING AND PRESENTING FIREARMS AT A PERSON

CIT-C/L,-MISDEMEANOR
 DOC-00GS12 WARR-G795167
 COURT CHARGE 03-ASSAULT/BATTERY HIGH & AGGRAVATED NATURE

COURT CHARGE 03-ASSAULT/BATTERY

COURT DISP-NON-CONVICTION;
 DISMISSED AT PRELIM
 COURT DATE-04/17/2002

CIT-16-23-410-FELONY
 DOC-00GS12 WARR-G795176
 PRESENTING FIREARMS AT A PERSON
 COURT DISP-NON-CONVICTION;
 DISMISSED AT PRELIM
 COURT DATE-04/17/2002

COURT CHARGE 04-POINTING AND PRESENTING FIREARMS AT A PERSON

CIT-16-17-530-MISDEMEANOR
 ARREST CHARGE 01-PUBLIC DISORDERLY CONDUCT
 CIT-16-17-530-MISDEMEANOR
 DOC-R84 WARR-57413BM
 COURT CHARGE 01-PUBLIC DISORDERLY CONDUCT

 BAGLEY, ARVELL DERRELL 05/27/2002

SC0120000 CHESTER CNTY SO
 ATN-WARR-57413BM
 CIT-16-17-530-MISDEMEANOR
 ARREST CHARGE 01-PUBLIC DISORDERLY CONDUCT
 CIT-16-17-530-MISDEMEANOR
 DOC-R84 WARR-57413BM
 COURT CHARGE 01-PUBLIC DISORDERLY CONDUCT

COURT CHARGE 01-PUBLIC DISORDERLY CONDUCT

COURT DISP-NON-CONVICTION;
NOT GUILTY
COURT DATE-09/12/2002
ATN-

BAGLEY, ARVELL DERELL
SC0120000 CHESTER CNTY SO
ATN-WARR-H142707
CIT-16-11-510 (B) (2)-FELONY
ARREST CHARGE 01-MAL INJ TO
PERSONAL PROP>\$1000 BUT<\$5
,000
CIT-16-11-510 (B) (2)-FELONY
DOC-02GS1200564 WARR-H142707
PERSONAL PROP>\$1000 BUT<\$5
,000

07/15/2002

COURT CHARGE 01-MAL INJ TO

COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-06/28/2004
ATN-

BAGLEY, ARVELL DERRELL
SC0460000 YORK CNTY SO
ATN-WARR-92751CM
CIT-N/A-MISDEMEANOR
ARREST CHARGE 01-SIMPLE ASSAU
LT AND BATTERY
OFFENSE DATE-07/23/2003
PHOTOGRAPH AVAILABLE
WARR-92752CM
CIT-16-11-520 (B) (3)-MISDEMEANOR
ARREST CHARGE 02-MALICIOUS
INJURY TO PROPERTY
OFFENSE DATE-07/23/2003
WARR-92753CM
CIT-16-17-725 (B)-MISDEMEANOR
ARREST CHARGE 03-GIVING FALSE
INFORMATION
OFFENSE DATE-07/23/2003

07/23/2003

SC040015C SC DEPT CORRECTIONS
CASE-237151
CIT-56-5-750 (B) (1)-MISDEMEANOR
COURT CHARGE 01-FAIL TO STOP
FOR BLUE LIGHT
COURT DISP-CONVICTED; 1 YR
REV SS
ATN-500300030168
CIT-14-5-320 UNCLASSIFIED
COURT CHARGE 02-CONTEMPT OF
CIRCUIT COURT
COURT DISP-CONVICTED; 15 DYS
CC

09/22/2003 CUSTODY STATUS-RECEIVED
START DATE-09/22/2003

BAGLEY, ARVELL DERELL
SC0120000 CHESTER CNTY SO
ATN-WARR-64811CO
CIT-16-17-530-MISDEMEANOR
ARREST CHARGE 01-PUBLIC DISOR
DERLY CONDUCT
OFFENSE DATE-04/25/2004
WARR-H626385
CIT-16-9-320 (A)-MISDEMEANOR
ARREST CHARGE 02-RESISTING
ARREST
OFFENSE DATE-04/25/2004
CIT-16-17-530-MISDEMEANOR

04/25/2004

DOC-R84 WARR-64811CO COURT CHARGE 01-PUBLIC DISORD
ERLY CONDUCT
COURT DISP-CONVICTED;\$275
ATN-CIT-16-9-320(A)-MISDEMEANOR
DOC-00GS12 WARR-H626385 COURT CHARGE 02-RESISTING
ARREST
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-06/29/2004

@ - WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

BASED ON SEARCH OF SLED CJIS CCH FILE USING SID/SC00950519
THIS CRIMINAL HISTORY RECORD IS FOR SOUTH CAROLINA ARRESTS AND
CONVICTIONS ONLY AND IS BASED ON THE INFORMATION PROVIDED. SINCE
CHANGES MAY OCCUR DAILY A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT
USE OF THIS RECORD IS ALLOWED.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.USC 922(G)).

** S C CJIS END OF RECORD **

Credit Card Transaction Number **1324993330ICE584111227084348**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Christopher A. Woody, 309141,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 Case No.: 2012-CP-46-3279
 0

ORDER

FILED-RECEIVED
 2013 MAY 24 PM 3:41
 L.A. BROWN
 C.C. P. & GS
 YORK COUNTY, SC

Applicant filed his application for Post-Conviction Relief (PCR) on August 2, 2010. The case was heard by the undersigned on the 13th day of May 2013. The State of South Carolina was represented J. Rutledge Johnson, Esquire, and the Applicant was represented Harry Devoe, Esquire.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the February 2005 term of the York County Grand Jury for Murder (2005-GS-46-0858), Possession of a Firearm During the Commission of a Violent Crime (2005-GS-46-0858A), Criminal Conspiracy (2005-GS-46-0859), and Unlawfully Carrying a Pistol (2005-GS-46-0860). Mr. Woody was represented by John Delgado, Esquire. From May 2-6, 2005, the Applicant proceeded to a jury trial and was found guilty as indicted of all charges. The Honorable Lee S. Alford sentenced the Applicant to life without parole for murder, five (5) years for possession of a firearm, five (5) years for conspiracy, and one (1) year for the unlawful carrying of a pistol, all running concurrent.

A Notice of Appeal was filed on the Applicant's behalf, and an appeal was perfected by Joseph L. Savitz, III, Esquire. The S.C. Court of Appeals affirmed. State v. Woody, 2008-UP-

534 (filed Sept. 11, 2008). The Petition for Rehearing was denied by Order dated December 19, 2008. The S.C. Supreme Court denied the Applicant's Petition for Writ of Certiorari by Order dated November 4, 2009. The Remittitur was issued on November 9, 2009.

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

1. Ineffective assistance of trial counsel
2. Ineffective assistance of appellate counsel

Applicant's PCR counsel stated the underlying issues for the Court's consideration as to the general Ineffective Assistance of trial counsel claim were:

1. Discovery Failures
2. Trial Attorney Failed to Hire Gunshot Residue Expert to Counter State
3. Trial Attorney Failed to Hire Pathology Expert

The Applicant alleges he received ineffective assistance of counsel. The Application lists fifteen (15) issues; however, because the Applicant bears the burden of proving allegations made in his Application, only those addressed in the hearing, listed above, will be considered by the Court. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Additionally, only arguments in regards to the ineffective assistant of trial counsel were heard. Therefore, ineffective assistance of appellate counsel will not be considered by the Court.

Because the Applicant bears the burden of proving the allegations in his Application, where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

JH #2

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

The Applicant's PCR counsel stated that one of the bases of Trial Counsel's ineffective assistance was a failure during the discovery stage of the trial process. At the PCR hearing, no evidence was presented by the Applicant to support this allegation. Because there was no evidence presented in support of this matter, the Court finds that the Applicant failed to meet his burden of proving Ineffective Assistance of Counsel based on a failure during the discovery process of the Applicant's trial.

The Applicant's PCR counsel stated that a secondary basis of Trial Counsel's ineffective assistance was the failure to hire a pathology expert. At the PCR hearing, no evidence was presented by the Applicant in support of this allegation against Trial Counsel. Because there was no evidence presented to show that Trial Counsel was deficient in failing to hire a pathology expert nor was there evidence presented to support a finding that the Applicant was prejudiced by Trial Counsel's failure to hire such an expert, the Court is in no position to find that Trial

Counsel provided ineffective assistance to the Applicant based on his decision against hiring a pathology expert.

PCR Counsel also presented, without the support of testimony, that Trial Counsel was ineffective for failing to pursue the finding of a bullet in the victim's apartment. Nothing was offered at the Applicant's PCR hearing to give credence to this contention.

The Applicant testified at his PCR hearing that he was not given the opportunity to testify on his own behalf at the time of his trial. The Applicant testified that Trial Counsel did not want the Applicant to testify, because it would come off as unfavorable to the Applicant should he testify in a way that was inconsistent with a co-defendant. The Court finds that it is the job of legal counsel to make a recommendation to his or her client as to whether or not it is in the client's best interest to testify; however, it is ultimately a defendant's decision to take the stand or not. The Court finds that the Applicant was notified of his right to testify by Trial Counsel. The Court further finds that the Applicant was notified of his right to testify on his own behalf by the Trial Court, and the Applicant waived his right to do so. (TR p. 710, LL 2-25; p. 711, LL 1-4). The Court finds that the Applicant exercising his right to remain silent, even if based on the recommendation of Trial Counsel, is not sufficient evidence to show that Trial Counsel's assistance was deficient or ineffective in any way.

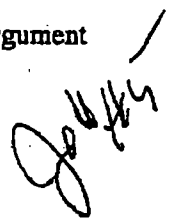
At the Applicant's PCR hearing, the bulk of the evidence presented, if not the totality, was testimony concerning the gunshot residue found on the victim in this case and Trial Attorney's decision against hiring an expert in gunshot residue for the Applicant's defense.

The Applicant called as his first witness B.J. Barrowclough, Deputy Public Defender for York County. Mr. Barrowclough testified that the York County Public Defender's Office represented Mr. Woody, as well as his co-defendants, Debrezio Campbell and Desmond

Campbell. It was later determined that there was a conflict in representation of the three co-defendants together by the Public Defender's Office. Mr. Barrowclough testified that, based on the conflict, his office ceased representation of the Applicant and Desmond Campbell. The Applicant's counsel attempted to question Mr. Barrowclough about the Jackson v. Denno hearing conducted in the Applicant's pre-trial; however, Mr. Barrowclough said that he was not present for the hearing and, therefore, could not attest to what was or was not argued in such hearing.

The Applicant then called his trial counsel, John Delgado (Trial Counsel), as a witness. Trial Counsel testified that the Applicant refused a thirty (30) year plea offer from the solicitor. Trial Counsel testified that the Applicant told him that he was scared he would be killed the night of the crime and that he had seen the victim reaching behind for a gun when the victim was shot. Trial Counsel testified that, based on these allegations by the Applicant, the best and only defense for Applicant was an "imperfect self-defense." Trial Counsel testified that there existed many facts adverse to Applicant's self-defense, making it difficult to argue that the Applicant was without fault in bringing about the crime. Mr. Delgado testified to the existence of such adverse facts as the Applicant advanced to the scene of the crime while in possession of his loaded .45 caliber gun without a valid SC concealed weapons permit, Applicant knew that a drug deal was going to take place at the scene of the crime, and Applicant knew there was bad blood between Debrezio Campbell and the victim they were visiting.

Trial Counsel testified that there was gunshot residue found on the victim's left hand, but he was unable to find anyone to testify to the victim being left-handed. Trial Counsel also testified that he thought delving into the specifics of the forensics, the "blood and guts," would ultimately harm his client rather than help his case. Trial Counsel testified that the self-defense theory was so unstable based on the adverse facts stated above that only after extensive argument



on the matter by Trial Counsel did Judge Alford agree to charge the jury on self-defense. Trial Counsel testified that he had hired a gunshot residue expert in cases he had handled in the past but that he did not believe hiring a gunshot residue expert would have been of any help in the Applicant's case.

The Applicant then called two expert witnesses. The first, Steven Howard, was qualified as an expert in gunshot residue, and the second, Dr. Adel Shaker, was qualified as an expert in determining the presence of gunshot residue in firearm incidences. The Court finds that the testimony of neither expert shows that Trial Counsel's decision against hiring his own gunshot residue expert in defense of the Applicant's case renders Trial Counsel's assistance ineffective. Neither expert could offer definitive testimony that testing of the gunshot residue found on the scene would add any evidence or benefit to the Applicant beyond that done by the State's expert in trace evidence.¹ Agent Jennifer Stoner, the State's expert, could show that the victim had or was reaching for a gun at the time he was shot. At trial, Agent Stoner testified that both the palm and back of each hand of the victim were tested and that particles were found on the left palm of the victim's hand consistent with those of gunshot residue. (TR p. 505, LL 18-24). Agent Stoner further testified that, while the gunshot residue found on the palm of the victim's left palm was not consistent with the victim having fired a weapon, she could not rule out the victim having handled the a gun. (TR p. 507, LL 23-24). In Ard v. Catoe, the Supreme Court of South Carolina found that, based on trial counsel's failure to acquire an expert witness to dispute the negative results from the tests for presence of gunshot residue, trial counsel's decisions were "unreasonable and clearly deficient" and his assistance was ineffective. 372 S.C. 318, 336 (2007). In the present case, however, the presence of gunshot residue on the person of the victim was not at issue. The prosecution's expert testified to the presence of gunshot residue on the


¹ Trace evidence includes but is not limited to that of gunshot residue.

victim, Trial Counsel cross-examined the expert, and the prosecution's expert arguably provided testimony that was not definitively refuted by any testimony presented by the Applicant at his PCR hearing. In point of fact the testimony presented at trial regarding the presence of gunshot residue and that presented at the PCR hearing are consistent.

The Court finds that Trial Counsel's decision against hiring a gunshot residue expert does not render his assistance deficient, as it was reasonable under the circumstances. Even if Trial Counsel's assistance could be construed as deficient, the Court finds that such a deficiency would not prejudice the Applicant, as the Court is not convinced that new testimony regarding the gunshot residue would change the result of the Applicant's case.

Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge #7

May 23, 2013
York, South Carolina

mailed 5/31/13

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL DISTRICT
COUNTY OF YORK)	
	)	CASE NO: 2010-CP-46-3279
CHRISTOPHER A. WOODY,)	
)	
APPLICANT,)	
	)	MEMORANDUM IN SUPPORT OF
- VS -	)	APPLICATION FOR POST CONVICTION
	)	RELIEF
)	
STATE OF SOUTH CAROLINA)	
)	
RESPONDENT,)	
_____)	

COMES NOW the Applicant, Christopher A. Woody, by and through counsel Harry L. Devoe, and hereby submits this Memorandum In Support of Application For Post Conviction Relief. Therefore, and notwithstanding all other issues presented at the post conviction relief ("PCR") hearing, Applicant would respectfully show this Court the following three matters for consideration.

**I.
STATEMENT OF THE CASE**

The PCR hearing in this case was held on May 13th 2013 at the Moss Justice Center in York South Carolina, before the Honorable Judge Hayes. At the hearing Applicant entered evidence and presented testimony and expert opinion in support of his application for PCR. Accordingly this memorandum is being submitted for the purpose of clarifying and supporting three of the issues raised by Applicant at the PCR hearing, and is notwithstanding any and all other issues.

II.
LESSOR INCLUDED OFFENSE

At the PCR hearing counsel John Delgado testified that during trial and in his defense of Applicant he had been trying to find a way to lessen the offense. Applicant would show this Court that the facts and evidence brought out at trial were sufficient for the jury to reasonably find that the elements of voluntary manslaughter were present in the case. However trial counsel John Delgado failed to request the Judge to give the jury charge.

Applicant would ask this honorable court to take note of the fact that his PCR application raised the claim of ineffective assistance of trial counsel for failing to seek a voluntary manslaughter charge. In Applicants amended PCR application on page 3, at lines 15-17, he raises an ineffective assistance claim and states "... Applicant asserts that by the failure of trial counsel to motion the court on a specific self-defense or lesser-included offense of voluntary manslaughter instruction ..." Therefore this issue was properly raised and correctly argued at the May 13th 2013 hearing.

Under South Carolina law, manslaughter involves the unlawful killing of another human being without "malice aforethought" or intent. Involuntary manslaughter occurs when the unlawful killing of another human being is due to the criminal negligence of the defendant. South Carolina's case law supplements the statutory definition of criminal negligence by defining it as "reckless disregard for the safety of others" and to mean conduct that is unreasonable and has a high likelihood of causing death or serious harm to

another; the actor is aware that his actions are unreasonable and likely to cause death or serious harm to another; and continues to act in the risky manner.

The trial court record shows testimony and evidence that reveals the offense of voluntary manslaughter. The trial court record shows that Applicant was drunk and carrying a loaded weapon at the time of the incident. (See Applicants' statement and the trial testimony of Charlene Blackwelder and others). These two facts alone demonstrate a "reckless disregard for the safety of others" and which were the main contributing cause of Mr. Bagley's death. Furthermore, a complete reading of the trial court transcript reveals additional evidence and testimony showing a need for the jury to be charged on the lesser offense of voluntary manslaughter. Accordingly, the trial court Judge would have been required by law to charge the jury on the lesser crime of voluntary manslaughter if counsel John Delgado had simply made the request.

It should also be noted by this court that Applicants' statement was entered as evidence at trial and shows that he did not have any "malice aforethought or intent" in causing the victims death. Applicants' statement reveals that he was simply responding to what he perceived as a threat. However even in light of the abundance of trial court testimony and evidence indicating the possibility of voluntary manslaughter, Mr. Delgado failed to request the Judge to charge the jury on the lesser offense.

Accordingly, and pursuant to Strickland v. Washington, 466 U.S. 668, 687-88 (1984), ineffective assistance of counsel is established in this case. Mr. Delgado's performance fell below and objective standard of reasonableness in that he failed to request the Judge to charge the jury on the offense of voluntary manslaughter when abundant trial court evidence demonstrated a need for such a charge. Furthermore, Mr.

Delgado's deficient performance prejudiced the Applicant, because given the evidence; the Judge would have been required by law to charge the jury on the lesser offense of voluntary manslaughter. However due to Mr. Delgado's failure to request the lesser offense charge, the jury was deprived of the option of convicting for voluntary manslaughter, in a case where the evidence more fit that crime than murder.

III. FAILURE TO INVESTIGATE AND PRESENT EXPERT TESTIMONY

During the trial court proceedings the state entered testimony from expert witnesses claiming that the victim had been shot from behind and that no evidence existed showing that he either had a gun or had been reaching for a weapon as claimed by Applicant. The states case was in fact built around those two allegations. At the PCR hearing counsel Mr. Delgado, testified that he had only consulted with the state Experts in his preparation for trial. Mr. Delgado had just simply accepted the opinions and conclusions of the state Experts as to how the incident occurred. Importantly, throughout trial and in closing the prosecution relayed heavily on the states expert testimony claiming that the victim had been shot from the back and had not been reaching for a gun as argued by the Applicant. The state arguing that Mr. Bagley had been gunned down from behind and without provocation.

At the PCR hearing gunshot residue expert Steven Howard, entered testimony showing that his opinion the residue found on the victims left palm was in fact gunshot residue. Further, PCR testimony from expert Dr. Adel Shaker demonstrated that the

victim had not been shot from behind as claimed by the states expert testimony, but instead, from the side as claimed by Applicant. Additionally, Dr. Shaker entered testimony showing how the victims wound to the inside of his left forearm could not possibly have occurred if the victim had been shot from behind as claimed by the states Expert. Dr. Shaker demonstrated on the stand how the victim had received the wound to the inside of his left forearm. Dr. Shaker showed the PCR court that given the other 45 caliber bullet wounds, the 45 caliber shot to inside of the victims left forearm could only have occurred if the victim had been reaching behind his back with his left hand which thereby exposed the inside of his forearm. Common sense confirms Dr. Shaker's conclusion. It is simply impossible to shoot someone in the inside of his forearm from standing behind a persons back.

This irrefutable evidence should have been presented to the jury for consideration during its deliberation process. Especially given that it completely refuted the states version of events and therefore discredited the states case. However this evidence did not come out because Mr. Delgado chose not to consult with and/or hire outside expert testimony. Stated again, Mr. Delgado chose simply to accept the states version of events and not put it to the test.

At the PCR hearing Mr. Delgado stated that the Applicants' self defense claim was imperfect. Given that Mr. Delgado failed to mount a significant challenge to the states version of events, he spoke true in this regard. However Applicants self defense claim was rendered imperfect due mostly to Mr. Delgado's failures in representation. Had Mr. Delgado properly done his job, the jury would have been in possession of irrefutable

and conflicting Expert opinion which would have supplied the missing elements of Applicants self defense claim.

During the criminal court proceedings the trial judge stated that self defense contained four elements or factors. First: "The Defendant was not at fault in bringing about the immediate difficulty," Second: That at the time the Defendant fired the fatal shot he believed in good faith that he was in imminent danger of losing his life or sustaining serious bodily harm," Third: "That such belief was reasonable," and Fourth: "That the Defendant had no other reasonable safe, adequate or obvious means of escape or a way of avoiding the danger of losing his own life or sustaining serious bodily injury." (See Trial Tr. Page 806, lines 2-20).

During trial and due to Mr. Delgado's deficient performance, Applicant was only able to present evidence and testimony that satisfied some of the elements of his self-defense claim. However, had the jury been in possession of Dr. Shakers' or other similar expert testimony showing that the victim could only have received the wound to the inside of his left forearm by reaching behind his back, in all likelihood Applicant would have been found not guilty of the murder charge. The expert testimony would have established that Applicant believed in good faith that the victim had been reaching for a gun and that Applicant could not retreat due to imminent danger. Therefore Applicant would have shown justification for taking the action necessary to save himself from the danger of losing his life or sustaining serious bodily harm. These facts when coupled with Applicants statement showing that he did not go to the site of the incident for the purpose of killing the Mr. Bagley, raise serious doubt as to the outcome at trial. ¹

¹ As a side note, Applicant would point out that actual proof of the victim having a weapon at the time of the incident is irrelevant for the purposes of his self-defense claim. The legal standards are that at the time

Clearly Mr. Delgado provided ineffective assistance in this matter. Mr. Delgado's performance was deficient in that he failed to fully investigate and prepare by consulting and/or hiring outside expert testimony in order to submit contesting evidence to the jury for consideration. Moreover, Applicant's case suffered prejudiced because the jury did not have the outside expert testimony showing that in all probability the residue on the victims' left hand was gunshot residue. And importantly, the jury did not have expert testimony from someone like Dr. Shaker establishing that it would have been impossible for the victim to have received the wound to the inside of his left forearm if he had been shot from behind as alleged by the prosecution. That based on the positioning of Mr. Bagley's other wounds, he could only have received the shot to the inside of his left forearm by reaching behind his back.

Therefore and based on the above, this court should find that Mr. Delgado provided ineffective assistance in the matter of failing to investigate, consult with and/or hire outside expert testimony.

IV. PROSECUTORIAL MISCONDUCT

At the PCR hearing, testimony and evidence was entered showing that the state had suppressed a request for appointment of trial counsel made by Applicant prior to the taking of his statement. Importantly, Applicants' request for appointment for counsel had also been withheld from the trial Judge during a suppression hearing on the statement.

Applicant "fired the fatal shot he believed in good faith that he was in imminent danger of losing his life or sustaining serious bodily harm," and "That such belief was reasonable." Although Applicant strongly asserts that the victim did in fact have a weapon and argues that the PCR hearing testimony of gunshot residue expert Mr. Howard adds strong contributing evidence to that claim.

Second: PCR testimony was entered showing that the state had failed to obtain either the cell phone or cell phone records of the phone that the victim was said to have possessed and dropped at the time of the incident. At trial, state witness Kimberly Bowden testified that the victim had dropped the phone and that it had range while she was administering to the victim. Ms. Bowden further testified that she had handed the cell phone to the victim's father, Floyd Grant, and that he had talked with the person who had made the call. However the state failed to either obtain the cell phone or its call records. This is very unusual in a criminal case, especially given that the phone be considered evidence, and the person who made the call a material witness to the incident of the shooting.

Third: At the PCR hearing testimony was entered demonstrating that the state had failed to conduct a gunshot residue conformation test on the residue found in the victims left palm. In light of the Applicants' statement claiming that the victim had been reaching for weapon when he fired his gun, the test should have been done. Although a positive result showing it to be gunshot residue would not in and of itself have exonerated Applicant, it would have added strong circumstantial evidence in support of his version of events. In fact, at the PCR hearing gunshot residue expert Steven Howard testified that based on the evidence it was in his opinion gunshot residue. Without question the state was required to conduct the conformation test if it had any possibility of bringing out evidence that supported Applicants' version of events.

There are many other examples in the trial record showing that the state failed to conduct testing or collect evidence that had the potential to support Applicants' version of events. Here however, Applicant has only presented three instances of withholding and

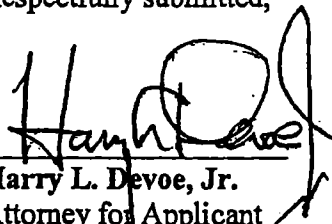
suppression of evidence. First: the prosecution suppressed Applicants' request for appointment of trial counsel. Second: the prosecution failed to obtain either the victims cell phone or the phones call records. Third: the prosecution failed to conduct the necessary gunshot residue conformation test. It seems that any investigation or test that had the potential to aid Applicants' defense, the prosecution failed conduct.

The South Carolina Supreme Court has held that prosecutorial misconduct can be raised at any time, even in a PCR. Accordingly this matter is properly before this Honorable Court for review.

V.
CONCLUSION

Based on the foregoing facts and evidence Applicant respectfully requests this court to find that trial counsel John Delgado provided ineffective assistance during the trial court proceedings and that prosecutorial misconduct is present in this case.

Respectfully submitted,


Harry L. Devoe, Jr.
Attorney for Applicant
7411 Black River Road
New Zion, SC 29111



State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

John C. Hayes, III
Judge

Moss Justice Center, 2nd Floor
1675-1H York Highway
York, SC 29745-7434
Phone: (803) 628-3047
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jhayesj@sccourts.org

June 3, 2013

Mr. Harry L. Devoe, Jr., Esq.
7411 Black River Road
New Zion, South Carolina 29111

Re: Christopher A. Woody v. State of South Carolina, C/A#: 2010-CP-46-3279

Dear Mr. Devoe:

I am in receipt of and appreciate your Memorandum in Support of Application for Post Conviction Relief in the above-referenced PCR case. I, however, issued my order on this matter on May 22, 2013. Thank you for your attention to this matter.

Very Truly Yours,

A handwritten signature in cursive script that reads "John C. Hayes, III".

John C. Hayes, III

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL DISTRICT
COUNTY OF YORK)	
	)	CASE NO: 2010-CP-46-3279

CHRISTOPHER A. WOODY,)	
)	
APPLICANT,)	
	)	RULE 59(e), MOTION TO ALTER
-VS-	)	OR AMEND JUDGMENT AND ORDER
)	
STATE OF SOUTH CAROLINA)	
)	
RESPONDENT,)	
_____)	

Applicant, Christopher A. Woody ("Woody"), by and through counsel, Harry L. Devoe, Jr., and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure; hereby submits this Motion To Alter or Amend Judgment and Order. Applicant is seeking reconsideration of the Court's May 23, 2013 Order ("May Order"), and asking that Applicant's Petition for Post-Conviction Relief be granted. Therefore, and notwithstanding any other matters addressed and preserved in the May Order, Applicant would respectfully show this Court the following three issues for consideration.

**I.
STATEMENT OF THE CASE**

The PCR hearing in this case was held on May 13th 2013 at the Moss Justice Center, York, South Carolina, before the Honorable Judge John C. Hayes, III. At the hearing, Applicant entered evidence and presented testimony and expert opinion in support of his Application for PCR. On May 23, 2013 the Judge signed an Order denying and dismissing Applicant's Application For Post Conviction Relief ("PCR"). The Order

was filed with the Court on May 24, 2013 and received by the Applicant on May 31, 2013. Therefore, this Rule 59(e) Motion to Alter or Amend is timely.

Applicant is filing this Rule 59(e) Motion to more fully clarify and explain three of the issues raised in his Amended Application and as presented at the PCR hearing. This Rule 59(e) Motion is notwithstanding any and all other issues presented at the PCR hearing, and as addressed in the Court's May Order. Moreover, Applicant respectfully requests this Honorable Court to fully consider and rule on the issues and arguments as presented below.

A party may file a Rule 59(e) motion when he believes the Court has misunderstood, failed to fully consider, or, perhaps, failed to rule on an argument or issue, and the party wishes for the Court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." See e.g. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9,602 S.E.2d 772, 780 (2004). Accordingly, Applicant would show this Honorable Court the following:

II. ARGUMENTS

Issue 1, Lesser-Included Offense

Applicant submits that the Court's "May Order" failed to address Applicant's claim that trial counsel was ineffective for not seeking a jury charge on the lesser-included offense of voluntary manslaughter. This issue was properly raised in the Amended PCR Application on page 3, lines 15-20, and addressed at the PCR hearing. Accordingly, this issue is before this Court for review.

At the PCR hearing trial counsel, John Delgado, testified that during trial Applicant's self defense claim had been "imperfect", and that he was trying to find a way to "lessen the offense". Without question voluntary manslaughter is considered a lesser offense than murder. Therefore, and based the fact that the issue was both preserved and presented, Applicant would respectfully ask this Honorable Court to reconsider this matter, and to note that the facts and evidence brought out at trial were sufficient in and of themselves for the jury to reasonably find that the elements of voluntary manslaughter were present in the case.

Under South Carolina law, manslaughter involves the unlawful killing of another human being without "malice aforethought" or intent. Voluntary manslaughter occurs when the unlawful killing of another human being is due to the criminal negligence of the defendant. South Carolina's case law supplements the statutory definition of criminal negligence by defining it as "reckless disregard for the safety of others" and to mean conduct that is unreasonable and has a high likelihood of causing death or serious harm to another; the actor is aware that his actions are unreasonable and likely to cause death or serious harm to another; and continues to act in the risky manner.

The trial court record reveals testimony and evidence that establishes the offense of voluntary manslaughter. The trial court record shows that Applicant was drunk and carrying a loaded weapon at the time of the incident, and his statement shows that he did not go to the location of the incident to intentionally kill the victim. (See Applicants' statement and the trial testimony of Charlene Blackwelder inter alia). These facts alone demonstrate a "reckless disregard for the safety of others" and which were the main contributing cause of Mr. Bagley's' death. Furthermore, a complete reading of the trial

court transcript reveals additional evidence and testimony establishing the lesser offense of voluntary manslaughter: therefore, there is a need for the jury to be charged on the lesser offense of voluntary manslaughter. However trial counsel, John Delgado, failed to request the Judge to give such a jury charge, even though the evidence warranted it. Had the request been made, the trial court Judge would have been required by law to give the lesser crime of voluntary manslaughter charge to the jury.

It should also be noted that Applicant's statement was entered as evidence at trial and shows that he did not have any "malice aforethought or intent" in causing the victim's death. Applicant's statement reveals that he was simply responding to what he perceived as a threat. Yet, even in light of the abundant trial court testimony and evidence indicating the possibility of voluntary manslaughter, Mr. Delgado failed to request the Judge to so charge the jury.

Accordingly, and pursuant to Strickland v. Washington, 466 U.S. 668, 687-88 (1984), ineffective assistance of counsel is established in this case. Mr. Delgado's performance fell below an objective standard of reasonableness in that he failed to request the Judge to charge the jury on the offense of voluntary manslaughter when trial court evidence demonstrated a need for such a charge. Furthermore, Mr. Delgado's deficient performance prejudiced the Applicant, because given the evidence; the Judge would have been required by law to charge the jury on the lesser offense of voluntary manslaughter. However due to Mr. Delgado's failure to request such a charge, the jury was deprived of the option of convicting for voluntary manslaughter, in a case where the evidence more fit that crime than murder.

Issue II, Failure to Investigate and Present Outside Expert Testimony

During trial court proceedings the State entered testimony from several expert witnesses claiming that the victim had been shot from behind and that no evidence existed showing that he either had a gun or had been reaching for a gun as claimed by Applicant. The State's case was in fact largely built around those three allegations. At the PCR hearing, trial counsel, John Delgado, testified that he had not consulted with or hired any outside gunshot residue or pathologist Experts and, further, that he had only consulted with the State's Experts in his preparation for trial. Mr. Delgado just simply accepted the opinions and conclusions of the State's Experts as to how the incident occurred.

Throughout trial and in closing, the prosecution relayed heavily on the State's expert testimony and opinions claiming that the victim had been shot from the back and that no evidence existed showing that he had a gun or had been reaching for a gun, as claimed by the Applicant. Simply put, the State argued that Mr. Bagley had been gunned down from behind and without provocation

At the PCR hearing, gunshot residue expert Steven Howard testified that in his opinion "...the residue found on the victim's left palm was in fact gunshot residue." Mr. Howard also testified that it was not unusual to find a right-handed person who shoots a gun with both the right and left hand. Moreover, all of Mr. Howard's PCR testimony and opinions were entered without objection by the State.

At the PCR hearing, trace evidence Expert, Dr. Adel Shaker, demonstrated to the Court, how in his opinion the victim had come to have gunshot residue on his left¹ palm. Dr. Shaker testified that the victim had not been shot from behind as claimed by the State's expert, but instead, from the side as claimed by Applicant. Dr. Shaker further testified, that in his opinion the victim's 45 caliber bullet wound to the inside of his left forearm could not possibly have occurred if the victim had been shot from behind as claimed by the State. Dr. Shaker demonstrated on the stand, how the victim had received the wound to the inside of his left forearm by showing how the victim's left forearm would be turned and exposed to a side shot if the victim had been reaching behind his back with his left hand. The importance of this testimony cannot be overstated!² Moreover, common sense confirms Dr. Shaker's conclusion, it would have simply been impossible for the Applicant to have shot the victim in the inside of his forearm if he had been standing behind his back as claimed by the State. The conclusions and opinions of expert Dr. Shaker would have had a major impact at the trial had they been presented. Clearly the jury should have been exposed to this testimony during its deliberation process.

This Honorable Court in its "May Order" states that trial counsel had been unable "...to find anyone to testify to the victim being left-handed." This again underlines the importance of the Expert testimony of Steven Howard. As stated above, he testified at the PCR hearing that it is not unusual to find situations where a right-handed person will use

¹ Applicant was not claiming that the victim had fired the gun, only that he had reached behind his back for the gun, and that Applicant responded by firing his own weapon first in order to defend himself. The fact that the gunshot residue was only found in the victim's palm area supports Applicant's claims. Had the victim fired his gun the residue would have also been over his fingers and on the back of his hand.

² It should also be noted by this Honorable Court that the State's Attorney, J. Rutledge Johnson, did not object to any of Dr. Shaker's testimony or expert opinions.

a gun with his left hand. This is an important fact that should have gone to the jury for consideration, and a fact that the Court failed to note in its "May Order."

In addition, trial evidence establishes that the victim had been carrying a sack of liquor with a cup in his right hand, and that his cell phone had been found on the ground at the scene. It is clearly feasible that the victim had been carrying the cell phone in his left hand³ and dropped it at the time of the incident in order to reach behind his back and grab for a gun as claimed by the Applicant. It is highly likely that the victim was on the phone holding it with his left hand when this event happened. These facts support the evidence showing the 45-caliber bullet wound to the inside of the victims left forearm, and the gunshot residue found in his left palm. Most certainly, expert opinions of those such as Mr. Howard and Dr. Shaker should have been made available to the jury. When taken together, the expert testimony of Mr. Howard and Dr. Shaker paints a much different picture than that presented by the State at trial, and, importantly, supports Applicant's claim of self-defense. Sadly, this evidence did not come to light because Mr. Delgado chose not to consult with, and/or hire any outside expert testimony.

At the PCR hearing, Mr. Delgado testified that the Applicant's self defense claim was quote, "imperfect". Given that Mr. Delgado failed to mount a significant challenge to the State's version of events, he spoke true in this regard. Applicant's self-defense claim was rendered imperfect mostly due to Mr. Delgado's failures in representation. Had Mr. Delgado adequately done his job, the jury would have been in possession of conflicting

³ It is common knowledge that nearly every right-handed person holds a cell phone in the left hand to talk

expert opinions of Experts like those of Steven Howard and Dr. Adel Shaker, which would have supplied the missing elements of Applicant's self defense claim⁴.

During the criminal court proceedings the trial Judge stated that self defense contained four elements or factors. First: "The Defendant was not at fault in bringing about the immediate difficulty," Second: That at the time the Defendant fired the fatal shot he believed in good faith that he was in imminent danger of losing his life or sustaining serious bodily harm," Third: "That such belief was reasonable," and Fourth: "That the Defendant had no other reasonable safe, adequate or obvious means of escape or a way of avoiding the danger of losing his own life or sustaining serious bodily injury." (See Trial Tr. Page 806, lines 2-20).

At trial, and due to Mr. Delgado's deficient performance, Applicant was only able to offer evidence and testimony that satisfied some of the elements of his self-defense claim. However, had the jury been in possession of the expert testimony of Dr. Shaker and Mr. Howard, or other similar Expert's, showing that the residue on the victims left palm was in fact gunshot residue, and that the victim could only have received the wound to the inside of his left forearm from a side shot and from reaching behind his back, the results at trial would have almost certainly been different. This expert testimony would have established that Applicant believed in good faith and correctly, that the victim had been reaching behind his back for a gun, and that Applicant could not retreat due to imminent danger. Thereby, Applicant would have been able to show the jury that he took action necessary to save himself from the danger of losing his life or sustaining serious

⁴ The Court in its "May Order states that there were adverse trial facts against Applicants self-defense claim. However, those facts came at trial from the ever-changing statements and testimony of Desmond Campbell. It should be noted that Applicant's statement that was entered at trial by the State refuted those adverse facts.

bodily harm. These facts when coupled with Applicant's statement showing that he did not go to the site of the incident for the purpose of killing the Mr. Bagley, raises serious doubt as to the outcome at trial.⁵

Clearly Mr. Delgado provided ineffective assistance in this matter. Mr. Delgado's performance was deficient in that he failed to fully investigate and prepare for trial by consulting, and/or hiring outside expert testimony in order to submit contesting evidence to the jury. Moreover, Applicant's case suffered prejudice because the jury did not have the outside expert testimony showing that in all probability the residue on the victims' left hand was gunshot residue, and that it would have been impossible for the victim to have received the wound to the inside of his left forearm if he had been shot from behind as alleged by the prosecution. That based on the positioning of Mr. Bagley's other wounds, he could only have received the shot to the inside of his left forearm from a side shot and by reaching behind his back.

Accordingly, Applicant seeks this Court to find that Mr. Delgado provided ineffective assistance in failing to investigate, consult with and/or hire outside expert testimony. Accordingly, Applicant respectfully requests this Honorable Court to alter or amend its "May Order" to more fully address these claims and arguments.

Issue III, Prosecutorial Misconduct

⁵ Applicant would respectfully point out that proof of the victim actually having a weapon at the time of the incident is irrelevant for the purposes of his self-defense claim. The legal standards are that at the time Applicant "fired the fatal shot he believed in good faith that he was in imminent danger of losing his life or sustaining serious bodily harm," and "That such belief was reasonable." Although Applicant strongly asserts that the victim did in fact have a gun, and that the PCR hearing testimony of gunshot residue expert Mr. Howard adds strong contributing evidence to that claim.

At the PCR hearing, testimony and evidence was entered showing that the State had suppressed Applicant's request for appointment⁶ of trial counsel made prior to the taking of his statement. Importantly, Applicant's request for appointment for counsel had been withheld from both trial counsel and the trial Judge during a suppression hearing on his statement. The "Defense of Indigent Act Form" subtitled "Indigence and Application for Counsel," which was never entered into evidence at either the trial or the Jackson v. Denno hearing shows that "on June 28, 2004 bond had been denied and defendant was approved for appointment of counsel." Since this document was withheld, this matter could not have been raised on direct appeal as it was also unknown to appellate counsel.

The facts in this issue are clear. The trial transcript of the Jackson v. Denno hearing shows that Rock Hill Police Officer, Sgt. Charlene Blackwelder, testified she was the assigned caseworker responsible for the collection and cataloging of evidence, that she conducted Mr. Woody's interview on June 29, 2004, without the benefit of it being either taped or videoed. She acted like she was unaware that Mr. Woody had (June 28, 2004) ever asked for an attorney or that he had actually been appointed one that day when his bond was denied not so coincidentally in the same building where this interview was taking place⁷. A criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary proceedings that trigger attachment of the Sixth Amendment right to counsel. State v. Stahlnecker, 690 S.E.2d 565, 571 (S.C. 2010). Sgt. Blackwelder reemphasized that, "we have no way of appointing you an attorney but one will be appointed you by the court if you so wish." It should also be noted; that at the PCR hearing Mr. Delgado

⁶ The request was entered as evidence at the PCR hearing.

⁷ At the PCR hearing, York County Deputy Public Defender, Bryson Barrowclough, testified that his office had been appointed on June 28, 2004, to represent Mr. Woody.

testified he did not have any prior knowledge of either the request for or the appointment of counsel. This being due to the misconduct of the State as, apparently such appointment document had not been given to him and, thus, was not made a part of the record and adversely affected his Jackson v. Denno arguments.

Second: PCR testimony was entered showing that the State had failed to obtain either the cell phone, or the records of the cell phone that the victim was said to have been carrying at the time of the incident. At trial, State witness Kimberly Bowden testified that the victim had dropped a cell phone and that it had rung while she was administering to the victim. Ms. Bowden further testified that she had handed the cell phone to the victim's father, Floyd Grant, and that he had talked with the person who had made the call. However the state failed to either obtain the cell phone or its call records, or bring Mr. Grant to the stand to explain what actually happened to the victim's cell phone. This is very unusual in a criminal case, especially given that the cell phone would, by necessity, have to be considered evidence, and the person who made the call a material witness to the incident of the shooting. Importantly, and at trial, the cell phone matter became a major consideration in the case.

Third: At the PCR hearing, testimony was entered demonstrating that the State had failed to conduct a gunshot residue conformation test on the residue found in the left palm of the victim. In light of the Applicant's statement claiming that he had fired his gun because the victim had been reaching behind his back for a weapon, the test should have been conducted by the State. Although a positive test result showing it to be gunshot residue would not in and of itself have exonerated Applicant, it would have added strong circumstantial evidence in support of his version of events. In fact, at the PCR hearing

gunshot residue expert, Steven Howard, testified that based on the evidence in the case, the residue in question was in his opinion, "gunshot residue". Without question, the State was required to conduct the conformation test if it had any possibility of bringing to light evidence that supported Applicant's version of events.

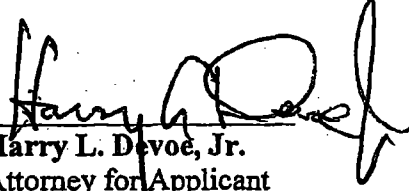
The South Carolina Supreme Court has held that prosecutorial misconduct can be raised at any time, even in a PCR. Accordingly this matter was properly raised in the Amended PCR Application and presented at the PCR hearing. Therefore, Applicant would respectfully ask this Honorable Court to alter or amend its "May Order" for the purpose of addressing this claim.

III. CONCLUSION

Based on the foregoing facts, evidence and arguments, Applicant respectfully requests this court to reconsider and alter or amend its "May Order" as necessary.

Respectfully submitted,

Dated this 5th day of June, 2013


Harry L. Devoe, Jr.
Attorney for Applicant
7411 Black River Road
New Zion, SC 29111

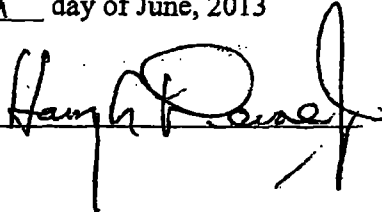
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL DISTRICT
COUNTY OF YORK)	
	)	CASE NO: 2010-CP-46-3279

CHRISTOPHER A. WOODY,)	
)	
APPLICANT,)	
	)	MAILING CERTIFICATE
-VS-)	
)	
STATE OF SOUTH CAROLINA)	
)	
RESPONDENT,)	

I do hereby certify that on the date shown below, I sent a true and correct copy of the attached RULE 59(e) MOTION, to Respondent by prepaid postage mail at the following address.

J. Rutledge Johnson
Assistant Attorney General
Rembert Dennis Building, Room 519
1000 Assembly Street
Columbia, South Carolina 29201

Dated this 5th day of June, 2013

Signed 

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	SIXTEENTH JUDICIAL CIRCUIT
Christopher A. Woody, #309141,)	2010-CP-46-3279
Applicant,)	
v.)	RETURN TO 59 (e), MOTION TO
State of South Carolina,)	ALTER OR AMEND JUDGMENT
Respondent.)	AND ORDER

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRCPP, in which the Applicant, through counsel, asks the Court to direct the entry of a new judgment and/or to alter or amend its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

This PCR matter came before the Court for an evidentiary hearing on May 13, 2013. Thereafter, this Court issued an Order of Dismissal with Prejudice dated May 23, 2013. The Applicant was represented in this matter by Harry Devoe, Esquire.

The Applicant submitted a Motion to Alter or Amend Pursuant to Rule 59(e), SCRCPP dated June 5, 2013, and filed with the clerk on June 7, 2013 ("Motion").

II.

The State submits the Motion should be denied.

The Applicant is requesting this Court to alter or amend the findings of fact and conclusions of law. The State submits this Court has properly addressed the issues about which the Applicant complains:

1. In the Order of Dismissal, the Court properly found the issues which were presented at the PCR hearing concerning ineffective assistance of counsel were: "Discovery Failures; Trial Attorney failed to hire gunshot residue expert to counter State; Trial Attorney failed to hire a pathology expert." The issue of counsel's ineffectiveness concerning a voluntary manslaughter charge, while raised in the amended application, was not clearly presented at the PCR hearing. Neither the Applicant nor Applicant's counsel specifically testified or argued that Counsel should have asked for a jury charge for voluntary manslaughter. Thus, this allegation should be dismissed.
2. Further, the Applicant would not have been entitled to a charge of voluntary manslaughter based on the facts of the case. Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. State v. Starnes, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010) (citing State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009)). In this case, the Applicant saw Victim driving his car towards Victim's apartment. The Applicant then turned his vehicle around and followed Victim. While he parked his vehicle across the parking lot from Victim, Applicant and a co-defendant, with loaded guns, began to approach Victim from two separate angles. The evidence, through the locations of the bullet wounds, shows Applicant was either to the side or behind Victim. While Applicant claims he saw Victim reaching for a gun, no gun was ever found on or around Victim. None of the facts presented in the case show there was either the sudden heat of passion or a sufficient legal provocation.

Therefore, even if Counsel would have requested such a charge, the trial judge likely would have denied his request based on the facts as presented at trial.

Moreover, Applicant cannot show the jury would have convicted him of this lesser included offense to murder, and thus, cannot prove resulting prejudice.

Therefore, this allegation should be dismissed.

3. The Applicant also claims this Court ignored Steven Howard's and Adel Shaker's "expert" opinions as to this case. The Applicant claims Counsel was ineffective for not hiring a gunshot residue expert or a pathologist. In its Order, the Court clearly ruled on these issues, lending no credence to how these experts' testimony would have changed the outcome of the trial. As such, this issue is preserved for appeal and no subsequent order, changing the findings of fact, need written.
4. The Applicant lastly alleges this Court failed to address prosecutorial misconduct as a claim. First, this claim was never raised or presented at the PCR hearing and therefore, is not proper for review. Second, prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure

to do so has waived this allegation as grounds for relief. Thus, this allegation should be dismissed.

III.

The State submits the Applicant is merely asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court).

IV.

The State therefore requests that the relief requested by the Applicant be denied and asserts a hearing on this matter would be unnecessary.


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

BY: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

June 25, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Christopher A. Woody, 309141,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2010-CP-46-3279

FILED-RECEIVED
2013 JUL 16 PM 3:32
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

ORDER

By Order dated May 23, 2013, this Court denied and dismissed Applicant's application for Post-Conviction Relief. Applicant has timely filed a Rule 59(e) Motion asking the Court to alter or amend said Order.

Applicant alleges the State was guilty of prosecutorial misconduct in the prosecution of Applicant on three grounds. The Court addresses the grounds for the motion in reverse order.

The first ground is related to the State not presenting, at trial, a "Defense of Indigent Act Form Subtitle of Indigence and Application for Counsel." Applicant argues this form was "suppressed" by the State. This assertion is without evidentiary support.

First, this claim was never raised or presented at the PCR hearing and therefore, is not proper for review. Second, prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(B) (2003) and could have been raised on appeal. Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215, S.E.2d 883, 885 (1974). In his testimony at the hearing, Applicant stated he asked for an attorney at his bond hearing. The failure to appeal has waived this allegation as grounds for relief. Thus, this allegation must be dismissed.

Additionally, a review of the Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964), hearing reflects that the Applicant, after being mirandized, did freely, voluntarily, knowingly, and intelligently give a statement affirmatively waiving his right to remain silent and his right to counsel. There is no testimony to support an argument that Applicant was unaware of his right to counsel, regardless of whether or not Applicant signed a form requesting counsel. The Trial Transcript reflects Applicant appeared to understand what the interviewer was saying, was read his rights, and was neither threatened nor promised anything. Applicant had fifteen years of "schooling," did not appear to be under the influence at the time of the giving of the statement, and was free to, "at any time," stop answering questions. Applicant reviewed the written statement before he signed and was given the opportunity to make changes to the statement. (See Trial Transcript p. 99, L 9 through p. 124, L 14).

In regard to the issue, further observations are warranted, the trial judge asked questions of the interviewer as to Applicant's request for an attorney and any request to stop the interview by Applicant. (TR 112, LL 8-14). These questions were both answered in the negative. Also, the record reflects that Applicant's request for an attorney was presented to the trial judge at the Jackson vs. Denno, supra, hearing. While the actual form was not produced, Applicant testified he asked for an attorney on the night of his arrest and that he had asked for an attorney appointment from the bond judge.¹ (TR p. 114, L 13 through p. 115, L 16). Applicant also testified he asked for an attorney at the time of his interrogation, but that he understood his rights as read to him from a "statement form."¹ (TR p. 99, LL 18-25). Applicant, during the Jackson v. Denno, supra, hearing, repeatedly asserted he wanted to talk to an attorney, but acknowledged that he signed the "statement of rights" form, that he understood the form, that he gave his

¹ His statement form was State's Exhibit 5 and placed in the record. (TR p. 94, LL 18-25)

statement "voluntarily," and that he was in a hurry to "tell them what happened" in hopes he would get to go home. (TR p. 113, L 10 through p. 121, L 7).

Applicant's position that the State suppressed his form from the bond hearing is without merit and if it did have merit would not have been prejudicial to Applicant based on his testimony at the Jackson v. Denno hearing. Prosecutorial misconduct is not a reviewable issue in a post-conviction relief proceeding.

Applicant's second ground for his motion is simply a rehashing of his argument regarding trial counsel's failure to investigate and employ a gunshot residue expert. The May 23, 2013 Order fully addresses and disposes of this ground.

Applicant's remaining ground for his motion is that trial counsel was ineffective for not requesting the Court submit to the jury the lesser included offense to murder of voluntary manslaughter. As discussed hereafter, this issue was not presented to the Court.

Applicant states in the instant motion that this issue was presented by his Amended Application filed April 29, 2013, fourteen days before the Court heard this case. This Amended Application was not in the package of file material presented to the Court at the hearing and the Court was unaware of its existence until the instant motion referenced it. If it was called to the Court's attention at the PCR hearing, the Court does not recall.

Applicant's motion states the issue was raised at the PCR hearing. The Court has not reviewed the Transcript of the hearing, but the Court's notes on the response of counsel as to the issues the Court was being asked to address reflect this:

1. Jackson v. Denno - Discovery
2. Gunshot residue - mishandled - no expert to counter State.
3. Pathology

JCH#3

Applicant's Amended Application, filed April 29, 2013, does state that trial counsel should have requested an instruction on voluntary manslaughter.²

As to the issue of ineffective assistance regarding the failure to request a charge or voluntary manslaughter, Applicant cites two cases, Battle v. State, 305 S.C. 460, 409 S.E.2d 400 (S.Ct. 1991) and State v. Stone, 294 S.C. 286, 363 S.E.2d 903 (S.Ct. 1988).

Battle, supra, addresses trial counsel's ineffectiveness, where self-defense was charged, for not requesting a more detailed self-defense charge based on the facts of the case. Based on the facts in Battle, trial counsel was found ineffective for not requesting a charge that Battle could have acted on appearances and a charge on retreat.

Frazier, supra, does not address counsel's effectiveness regarding a charge; rather, it addresses trial counsel's effectiveness regarding failing to file a timely appeal. The issue regarding the trial judge's charge was addressed as a direct appeal issue.

In Stone, supra, trial counsel was found ineffective for failing to request a charge on self-defense. Trial counsel testified, in Stone, that he did not request a self-defense charge as it did not cross his mind. In Stone, the Court found that Stone was entitled to a charge of self-defense on the facts and that trial counsel was ineffective for failing to request such a charge.

Looking, first, at the record before the Court, including the post-conviction relief hearing, there is no evidence addressing a charge on voluntary manslaughter. The trial record reflects that trial counsel did offer to the Court some requests to charge (TR p. 826, L 7 through p. 827, L 16) and that an in chambers charge conference took place. (TR p. 727, L 24 through p. 723, L 2). However, nothing regarding the charge was reflected on the record.

² The paragraph Applicant references also mentions self-defense. The trial judge charged the jury on self-defense. (TR p. 805, L 23 through p. 813, L 8)

The Court's post-conviction relief hearing notes do not reflect trial counsel being asked any questions by Applicant's counsel regarding the charge of voluntary manslaughter. Therefore, the Court is unable to assess trial counsel's effectiveness regarding whether or not he was ineffective for failing to request such a charge. However, trial counsel did testify that the self-defense defense was "an imperfect self-defense." Trial counsel testified that Applicant was not without fault in bringing on the difficulty that resulted in the victim's death. Trial counsel testified that Applicant went to the scene with a loaded pistol, had been drinking, knew that a drug deal was to take place, knew of bad blood between his co-defendant and the deceased, knew his co-defendant was armed, and exited a car to place himself on the scene of the murder. Trial counsel also testified that Applicant told him the victim reached for a gun which precipitated Applicant's shooting the victim, who was facing away from Applicant at the time. Applicant testified that his co-defendant shot first and that the victim had gone for his gun first but never got his gun. Applicant testified he actually never saw victim with a gun. There is no testimony establishing that the victim reached for a gun, and no gun was found at the scene of the shooting.

As to voluntary manslaughter, our Supreme Court has held that a defendant is entitled to a charge on voluntary manslaughter where the facts warrant. State v. Starnes, 388 S.C. 590, 698 S.C.2d 604 (S.Ct. 2010).

Starnes set forth that at the time of the killing there must be both heat of passion and sufficient legal provocation. In his statement Applicant described the incident thusly:

"I drunk to where I was overly intoxicated. I felt like I was ready to hurl and I was like, let's ride out so we can get some air. So the three of us left and I was driving at first, but then I was too drunk to drive and I pulled over and either Desmond or Debrezio drove. I don't know which one. I think I got in the back seat. I don't remember getting in or out of the car. 'Brezio stated, there goes the nigger that snucked me. I had my gun in my pants pocket. It was a .45 Auto. Whoever was driving did a U-turn and then we

Debrezio

got out of the car and all I saw was the nigger reaching and pulling out. He was like reaching in his back and was like, no, and he was backing up and then my gun came out and I fired three shots. We jumped back in the car and I started drinking more liquor that I had in my car, because I thought that I had killed somebody. We went back to the crib and I went to sleep. When I woke up, the police was there. "Brezio called me like a couple of days before and told me about this nigger snucking him and I was like, do I know the nigger? And he told me that I had seen him one time in Stone Haven. I thought that this was, like, going to be a fight, but they told me that the dude was a drug dealer and he had bad boys." (TR p. 364, L 17 through p. 370, L 14).

The trial transcript reflects that the individuals involved in the shooting saw the victim reach toward his back before shots were fired. (See testimony of Desmond Campbell regarding what he was told by co-defendant Debrezio Campbell).

Based on the above, at the time of the charge, if requested, the trial judge may have charged voluntary manslaughter, but it is hard to conceive of any action by the victim rising to the level of legal provocation since Applicant was expecting a "fight." Starnes, supra, however, postdates Applicant's trial and so its analysis would not have been available to the trial judge. A review of the pre-Starnes cases exhibit a very fact specific analysis regarding whether or not a defendant is entitled to a charge of the lesser included offense of voluntary manslaughter in a murder trial.

The undersigned's analysis is of little, if any, value in judging what Applicant's trial judge would have done if requested to charge voluntary manslaughter. The most the Court, at this time, can say is that the trial judge very well may have afforded Applicant a charge on voluntary manslaughter, as the evidence supports a jury finding that the victim reached behind his back, as if for a weapon, prior to Applicant's co-defendant firing the first shot. On the other hand, where two armed men confront a third, expecting a fight and knowing the victim was a drug dealer with "bad boys," the trial judge may have refused the charge.

Jeff H.C.

Because this issue was not presented to the Court at the post-conviction relief hearing, the allegation as it reflects on trial counsel was not addressed. As indicated above, references solely to the record do not allow the Court the opportunity to analyze whether or not, as to this issue, Trial Counsel performed effectively or not. This being the case, the Court must find, as to the lesser included charge issue, that Applicant has failed to establish by a preponderance of the evidence that Trial Counsel was ineffective in his representation of Applicant.

Trial counsel was not given an opportunity to address the charge issue as he was asked no questions about it at the post-conviction relief hearing. Therefore, it would be difficult for the Court to find trial counsel's failure to request a voluntary manslaughter charge to constitute ineffective assistance of counsel. The burden is on Applicant to prove his allegations, and neither Applicant nor the Court may rely on an absence of evidence on an issue to support a ground for ineffective assistance of counsel.

Assuming trial counsel was ineffective for failing to request a charge on voluntary manslaughter, Applicant has failed to show he was prejudiced thereby. In addition to being charged and tried for murder, Applicant was charged and tried for criminal conspiracy. The criminal conspiracy indictment reads:

Christopher Woody did in York County, South Carolina on or about June 26, 2004, willfully and unlawfully unite, combine, conspire, confederate, agree and/or have tacit understanding with Debrezio Campbell and/or others for the purpose of committing the crime of Murder against Arvell Bagley, in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

The jury found Applicant guilty of conspiring to commit Murder. Therefore, a finding that Applicant was guilty of voluntary manslaughter would have been inconsistent with the conspiracy verdict.

8-21-07

The trial judge charged the jury that they could convict Applicant on a charge only if the State has established guilt beyond a reasonable doubt. (TR p. 792, LL 24-25). Further, as to conspiracy, the trial judge charged:

To establish conspiracy it is necessary first that an agreement to commit the offense alleged in the Indictment be established. (TR p. 814, LL 14-16) (Emphasis added).

X X X

The State must prove further that one or more of the parties engaged in the agreement committed some act to effect the object of the conspiracy as alleged in the Indictment. (TR p. 814, LL 22-25).

X X X

... before any person can be found guilty of the charge of conspiracy, it must appear beyond a reasonable doubt that the conspiracy was found, in this instance, to commit murder and that the particular person was an active party to it. (TR p. 815, LL 19-23) (Emphasis added).

From the trial judge's charge to the jury on the law regarding what findings of fact are required to find a person guilty of criminal conspiracy, and based on the jury's return of a guilty verdict on that charge of conspiring to commit murder, it appears to the Court that a finding of guilt of voluntary manslaughter would have been inconsistent with the guilty conspiracy verdict.

Based on the above discussion and analysis, the Court finds that Applicant has not presented any issues to the Court in his Motion to Reconsider that would necessitate the Court's reversal of its previous order and granting of Applicant's petition for post-conviction relief.

Therefore, Applicant's Motion to Reconsider is denied.

IT IS SO ORDERED.

John C. Hayes, III
John C. Hayes, III #9
Presiding Judge

July 15th, 2013
York, South Carolina

DOCKET NO. 2005-GS-46-0858

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

February 17, Term 2005

THE STATE

vs.

Christopher Woody

WITNESSES

IPD/Blackwelder

ARREST WARRANT NUMBER

98625

98732

ACTION OF GRAND JURY
TRUE BILL

Stacia Walker

representor of Grand Jury

Feb. 17, 2005

VERDICT

T1 Guilty

T2 Guilty

Hammer vs. Long
representor of Petit Jury
ite: 5-6-05

Indictment for

COUNT I - MURDER

SC Code: 16-3-10

CDR Code: 0116

COUNT II - POSSESSION OF A
FIREARM DURING THE COMMISSION
OF A VIOLENT CRIME

SC Code: 16-23-490

CDR Code: 549

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2005 MAY 27 PM 2:50

DAVID HAMILTON

At a Court of General Sessions convened on February 17, 2005 the Grand Jurors of York County present upon the return: SC

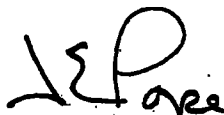
COUNT I - MURDER

Christopher Woody did in York County on or about June 26, 2004, with malice aforethought, kill one Arvell Bagley by means of shooting the victim with a firearm and said victim died as a result thereof, all in violation of Section 16-3-10, Code of Laws of South Carolina (1976, as amended). The murder occurred in front of Arvell Bagley's apartment located at [redacted] Paces River Ave. in Rock Hill, South Carolina.

COUNT II - POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

Christopher Woody did in York County on or about June 26, 2004, possess a firearm while committing the crime of Murder, a violent crime as defined in Section 16-1-60, Code of Laws of South Carolina (1976, as amended). This crime occurred in the City of Rock Hill, South Carolina, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

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



SOLICITOR

WITNESSES

PD/Blackwelder

DOCKET NO. 2005-GS-46-0854

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

February 17, Term 2005

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

96731

ACTION OF GRAND JURY

TRUE BILL

Christopher Woody

THE STATE

vs.

David Blackwell
representing of Grand Jury
file: *Feb. 17, 2005*

VERDICT

Guilty

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410
CDR Code: 0049

Paula W. Gray
representing of Petit Jury
file: *5-6-05*

1156

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2005 MAY 27 PM 2:50

DAVID HAMILTON

At a Court of General Sessions of the County of York, South Carolina, on February 17, 2005 the Grand Jurors of York County present upon the body of

CRIMINAL CONSPIRACY

Christopher Woody did in York County, South Carolina on or about June 26, 2004, wilfully and unlawfully unite, combine, conspire, confederate, agree and/or have tacit understanding with Debrezio Campbell, Desmond Campbell and/or others for the purpose of committing the crime of Murder against Arvell Bagley, in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

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



SOLICITOR

DOCKET NO. 2005-GS-46- 0860

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

Pl./blackwelder

Defendant

The State of South Carolina

County of York

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

February 17, Term 2005

Defendant

ARREST WARRANT NUMBER

96733

THE STATE

vs.

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Christopher Woody

Christopher Woody

representor of Grand Jury

date: Feb. 17, 2005

VERDICT

Guilty

Indictment for

CARRYING PISTOL UNLAWFULLY

Pamela W. Perry

representor of Petit Jury

date: 5-6-05

SC Code: 16-23-20
CDR Code: 044

STATE OF SOUTH CAROLINA

INDICTMENT

CERTIFIED TRUE COPY

COUNTY OF YORK

2005 MAY 27 PM 2:50

DAVID HAMILTON

At a Court of General Sessions convened on February 17, 2005 the Grand Jurors of York County present their verdict

CARRYING PISTOL UNLAWFULLY

Christopher Woody did in York County, South Carolina on or about June 26, 2004, unlawfully carry about his/her person a pistol. All in violation of §16-23-20, Code of Laws of South Carolina, (1976, as amended).

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



SOLICITOR

1160 STATE OF SOUTH CAROLINA
COUNTY OF York
 STATE VS.
CHRISTOPHER ALLEN WOODY
 AKA:
 Race: B Sex: M Age: 25
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#
2005-GS46-858
 A/W#: H-596625
 Date of Offense: 06-26-2004
 S.C. Code § : 16-03-0010, 0020
 CDR Code #: 0116

CASE RESTORED
 SENTENCE
 PLEA TRIAL
 CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was
 TO: MURDER
 in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

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
Wally Thompson Solicitor
[Signature] Defendant
John Delgado Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of Life without Parole 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: _____

The Defendant is 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/B 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) (Surcharge) _____ \$ 100
 § 14-1-211(A)(2) (Surcharge) _____ \$
 § 56-5-2995 (DUI Assessment) _____ \$
 3% to Count (if paid in installments) _____ \$
 § 73.3, 1B TP (Law Enforce. Funding) _____ \$ 25
 § 33.7, 1B TP (Drug Court Surcharge) _____ \$
 § 50-21-114(BUI Breath Test Fee) _____ \$
 § 56-5-2942(J) (Vehicle Assessment) _____ \$
 TOTAL _____ \$ 125.00

Appointed PD or appointed other counsel, §15.13 TP
 Requires \$500 be paid to clerk during probation.
 PRESIDING JUDGE [Signature]
 Judge Code: 011113
 Sentence Date: 5-6-05

David Hamilton
 Clerk of Court/Deputy Clerk
 Court Reporter: Shawna McGilberry

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE

VS.

CHRISTOPHER ALLEN WOODY

AKA:

Race: B Sex: M Age: 25

DOB: [redacted] SS#: [redacted]

Address: [redacted]

DL#: [redacted] SID#: [redacted]

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#

1161

2005-GS46-858 A

A/W#: H-596732

Date of Offense: 06-26-2004

S.C. Code § : 16-23-30, 50

CDR Code #: 2364

CASE RESTORED

SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: **POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME**

in violation of § 16-23-30, 50 of the S.C. Code of Laws, bearing CDR Code # 2364

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

Willy Thompson
Solicitor

[Signature]
Defendant

John Delgado
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 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: all sentences this date

The Defendant is 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: \$ _____

PTUP _____ days/hours Public Service Employment

Payment Terms:
 set by SCDPPPS _____

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

Recipient: _____

*Fine:	\$ _____
§ 14-1-206 - (Assessments 107.5 %)	\$ _____
§ 14-1-211(A)(1) (Surcharge)	\$ <u>100</u>
§ 14-1-211(A)(2) (Surcharge)	\$ _____
§ 56-5-2995 (DUI Assessment)	\$ _____
3% to Court (if paid in installments)	\$ _____
§ 73.3, 1B TP (Law Enforce. Funding)	\$ <u>25</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$ _____
§ 50-21-114(BUI Breath Test Fee)	\$ _____
§ 56-5-2942(J) (Vehicle Assessment)	\$ _____

Other: _____

TOTAL David Hamilton
Clerk of Court/Deputy Clerk

Appointed PD or appointed other counsel, §5.13 TP
Requires \$500 be paid to clerk during probation.

Court Reporter: Sharon McElberry

PRESIDING JUDGE [Signature]
Judge Code: 1113

Sentence Date: 5-6-05

VS.

CHRISTOPHER ALLEN WOODY

AKA:
Race: B Sex: M Age: 25
DOB: SS#:
Address:
DL#: SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#

2005-GS46-859

A/W#: H-596731
Date of Offense: 06-26-2004
S.C. Code §: 16-17-410
CDR Code #: 0049

CASE RESTORED SENTENCE
PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was TO: CONSPIRACY TO COMMIT MURDER

CONVICTED OF or PLEADS

in violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0049

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:
Solicitor: Defendant: Attorney for Defendant:

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 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: All sentences this date

The Defendant is 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

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 - (Assessments 107.5 %), § 14-1-211(A)(1) (Surcharge) \$100, § 14-1-211(A)(2) (Surcharge), § 56-5-2995 (DUI Assessment), 3% to Count (if paid in installments), § 73.3, 1B TP (Law Enforce. Funding) \$25, § 33.7, 1B TP (Drug Court Surcharge), § 50-21-114(BUI Breath Test Fee), § 56-5-2942(I) (Vehicle Assessment), TOTAL \$125.00

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, \$15.13 TP
Requires \$500 be paid to clerk during probation.

PRESIDING JUDGE
Judge Code: 111B

David Hamilton
Clerk of Court/Deputy Clerk

Court Reporter: Shannon McGilberry

Sentence Date: 5-6-05

SOUTH CAROLINA

COUNTY OF York

VS.

CHRISTOPHER ALLEN WOODY

AKA:

Race: B Sex: M Age: 25

DOB: [redacted] SS#: [redacted]

Address: [redacted]

DL#: [redacted] SID#: [redacted]

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#

1163

2005-GS46-860

A/W#: H-596733

Date of Offense: 06-26-2004

S.C. Code § : 16-23-20.50

CDR Code #: 00044

CASE RESTORED

SENTENCE

PLEA TRIAL

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: UNLAWFULLY CARRYING A PISTOL

in violation of § 16-23-20, 50 of the S.C. Code of Laws, bearing CDR Code # 0044

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

Willy Thompson
Solicitor.

[Signature]
Defendant

John DeLeon
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 1 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: all sentences this date

The Defendant is 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) (Surcharge) \$ 100

§ 14-1-211(A)(2) (Surcharge) \$ _____

§ 56-5-2995 (DUI Assessment) \$ _____

3% to Count (if paid in installments) \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$ _____

§ 50-21-114(BUI Breath Test Fee) \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$ _____

TOTAL \$ 12500

David Hamilton
Clerk of Court/Deputy Clerk

Court Reporter: *Shannon K. Gilberry*

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, §5.13 TP
Requires \$500 be paid to clerk during probation.

PRESIDING JUDGE *[Signature]*

Judge Code: 111B

Sentence Date: 5-6-05