

Vol II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

RECEIVED

AUG 12 2014

S.C. Supreme Court

ROGER EUGENE SHEPARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002721

APPENDIX

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INDEX

INDEXi

TRIAL TRANSCRIPT (dated November 16, 2009).....1

APPLICATION FOR POST-CONVICTION RELIEF516

RETURN528

POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated October 21, 2013).....534

ORDER OF DISMISSAL583

COURT OF APPEALS OPINION592

INDICTMENTS, ARREST WARRANTS AND SENTENCE SHEETS594

The State -vs- Roger Eugene Shephard (2009-GS-39-0941, 0942, 0943, 0944)
Charge

501

1 As I mentioned earlier malice aforethought doesn't
2 require that it exists any particular time before the act
3 but it must exist in the mind of the Defendant just before
4 and at the time of the act being committed. In other
5 words there must be a combination of the previous evil
6 intent and the act.

7 Now, if facts are proved beyond a reasonable doubt
8 sufficient to raise an inference of malice to your
9 satisfaction this inference would simply be an evidentiary
10 fact to be considered by you, the jury, along with other
11 evidence in the case and you may give it the weight you
12 decide it's should receive. A specific intent to kill is
13 not an element of assault with intent to kill, but there
14 must be a general intent to commit serious bodily injury.

15 Intent means intending the results which actually
16 occur and not accidentally or involuntarily. And of
17 course, intent may be shown by acts and conduct of the
18 Defendant and other circumstances which you may naturally
19 and reasonably infer intent. Evidence of the character of
20 the assault, the character of the instrument used, the
21 manner in which it was used, the purpose to be
22 accomplished, resulting wounds or injuries, if any, may be
23 considered in determining the intent with which the
24 assault was committed. Intent may also be inferred when
25 it is demonstrated that the Defendant voluntarily and

1 willfully committed an act, the natural tendency of which
2 is to destroy another's life.

3 The Defendant in this case is also charged with the
4 offense of armed robbery. In order to prove this offense
5 the State must prove beyond a reasonable doubt that the
6 Defendant took personal property from the person or the
7 presence of another person. Now, property is in the
8 presence of a person if it's within that person's reach or
9 inspection or observation or control so that the person
10 could, if not overcome with violence or prevented by fear,
11 keep possession of that property.

12 The State must also prove beyond a reasonable doubt
13 that the Defendant carried the property away intending to
14 permanently deprive the owner of the property and to keep
15 the property for the Defendant's own use. The slightest
16 removal of the property or the complete possession of the
17 property even for an instant by the Defendant is
18 sufficient to show a taking and carrying away of the
19 property. The taking and carrying away of the property
20 must have been done with violence or by putting the owner
21 of the property in fear of violence. Finally, the State
22 must prove beyond a reasonable doubt that the Defendant
23 was armed with a deadly weapon during the robbery. A
24 deadly weapon is any article or instrument or substance
25 which is likely to cause death or great bodily harm.

The State -vs- Roger Eugene Shephard (2009-GS-39-0941, 0942, 0943, 0944)
Charge

503

1 Whether an instrument has been used as a deadly weapon
2 depends upon the facts and circumstances of each case.
3 Again, I've given you examples of what could be considered
4 as a deadly weapon.

5 The Defendant also is charged with possession of a
6 weapon during the commission of or attempt to commit a
7 violent crime. The State must prove beyond a reasonable
8 doubt that the Defendant was in possession of a firearm or
9 visibly displayed what appeared to be a firearm during the
10 commission of a violent crime. A firearm means any
11 machine gun or an automatic rifle or a revolver or pistol,
12 any weapon which will or is designed to or may be readily
13 converted to expel a projectile. In order to find the
14 Defendant guilty of possession of a weapon during the
15 commission of a violent crime, you must first find the
16 Defendant guilty of either committing a violent crime or
17 attempting to commit a violent crime. Under the laws of
18 South Carolina, murder and armed robbery are considered
19 violent crimes.

20 Now, Madame Forelady and ladies and gentlemen, I've
21 prepared verdict forms for you on each of these charges
22 and there's obviously two possible verdicts you can find,
23 either guilty or not guilty on each of these. As I've
24 stated to you earlier, they're to be considered separate
25 and distinct from each other.

1 All twelve of you must agree upon a verdict. Your
2 verdict cannot be based upon sympathy or passion or
3 prejudice or emotion, any other consideration not in
4 evidence in this case. Madame Forelady, after you have
5 reached a unanimous verdict on each of the charges I'll
6 ask if you would - I believe the verdict forms will be
7 self explanatory - to merely check the appropriate block.
8 There's no significance in the order in which they're
9 listed. One had to be listed before the other. You check
10 the appropriate block, you sign on behalf of your fellow
11 jurors and date it. Let the Bailiffs know that you have
12 reached a unanimous verdict. We will then receive the
13 verdicts back here in the Courtroom. I'll ask if you
14 would to go back to your jury room. Don't start
15 discussing the case just yet. There's one final matter of
16 law I need to take care of with the attorneys. After I've
17 done that I'll send the verdict forms back and send the
18 evidence back for you to examine and you can begin your
19 deliberations. I'll give you word when to start your
20 deliberations. But for right now, don't start
21 deliberating. You may retire to your jury room.

22 (WHEREUPON, the jury exited the open court at
23 approximately 2:46 p.m.)

24 THE COURT: Any exceptions to the charge, from
25 the State?

The State -vs- Roger Eugene Shephard (2009-GS-39-0941, 0942, 0943, 0944)
Charge

505

1 MS. MUNSON: No, sir.

2 THE COURT: From the defense?

3 MR. DEJONG: None on behalf of Mr. Shephard,
4 Your Honor.

5 THE COURT: All right. If you would make sure
6 all the exhibits are in order. Make sure that all the
7 exhibits with an A on them are left outside of those going
8 to the jury room, that being the ammunition, pursuant to
9 the rule. As soon as all the exhibits are -- here are the
10 verdict forms. Mr. Evans, s soon as you get everything
11 back if you'll have the alternates come out and then you
12 can tell them to start their deliberations.

13 (WHEREUPON, all exhibits and verdict forms were
14 delivered to the jury to commence their deliberations
15 at approximately 2:58 p.m.)

16 (WHEREUPON, the alternates were dismissed.)

17 THE COURT: All right. We'll be at ease till we
18 hear from our jury.

19 (WHEREUPON, court stood at recess awaiting the
20 verdict of the jury.)

21 THE COURT: I understand the jury has reached a
22 verdict in the case. Anything we need to take care of
23 before the jury comes back?

24 MS. MUNSON: Nothing from the State, Your Honor.

25 MR. DEJONG: Nothing on behalf of Mr. Shephard,

The State -vs- Roger Eugene Shephard (2009-GS-39-0941, 0942, 0943, 0944)
Charge

506

1 Your Honor.

2 THE COURT: Let's have our jury come in if
3 they're ready, Mr. Evans.

4 (WHEREUPON, the jury entered the open court at
5 approximately 4:04 p.m.)

6 THE COURT: Madame Forelady, I understand the
7 jury has reached a verdict; is that correct?

8 MADAME FORELADY: Yes, sir.

9 THE COURT: Is it a unanimous verdict on each of
10 the charges?

11 MADAME FORELADY: Yes, sir.

12 THE COURT: If you would please hand the verdict
13 forms to the Bailiff. Mr. Clerk, you may publish the
14 verdicts.

15 CLERK: In the case of the State versus Roger
16 Eugene Shephard, Case Number 2009-GS-39-941 as to the
17 charge of murder, we the jury unanimously find the
18 Defendant Roger Eugene Shephard guilty. In the State
19 versus Roger Eugene Shephard, Case Number 2009-GS-39-942
20 as to the charge of assault with intent to kill, we the
21 jury unanimously find the Defendant Roger Eugene Shephard
22 guilty. The State versus Roger Eugene Shephard, Case
23 Number 2009-GS-39-943 as to the charge of armed robbery,
24 we the jury unanimously find the Defendant Roger Eugene
25 Shephard guilty. The State versus Roger Eugene Shephard,

The State -vs- Roger Eugene Shephard (2009-GS-39-0941, 0942, 0943, 0944)
Charge

507

1 Case Number 2009-GS-39-944 as to the charge of possession
2 of a weapon during the commission of a crime, we the jury
3 unanimously find the Defendant Roger Eugene Shephard
4 guilty.

5 Is this your verdict and still your verdict, so say
6 you all by raising your right hand? Thank you very much.

7 THE COURT: Anything we need to take care of
8 with the jury before they're discharged in this case?
9 Anything from the State?

10 MS. MUNSON: No, sir.

11 THE COURT: From the defense?

12 MR. DEJONG: Nothing on behalf of Mr. Shephard,
13 Your Honor.

14 THE COURT: Madame Forelady and ladies and
15 gentlemen of the jury, thank you so much for your service
16 this week. It's been an honor for me to have this
17 opportunity to serve with you. You've been a valuable
18 asset. You've been good, conscientious jurors. You've
19 listened attentively as we've progressed during the trial.
20 Thank you for your cooperation.

21 It's not every day you'll get an opportunity to serve
22 as a juror. This might be your first experience, might be
23 your last experience, but you've performed a valuable
24 service for your community and for your state this week.

25 You may remember from your civics classes back in

1 school of the three branches of government. You never
2 have an opportunity to pass laws. You may have the
3 fortune one day to be elected to a legislative position,
4 serve in the county council or city council or even go to
5 Washington to pass laws, but as a citizen you can't do
6 anything to pass laws unless you are elected to those
7 positions. Same with executing laws. If you one day get
8 to be the mayor of your town or run for governor and get
9 to execute the laws then you'll have an opportunity to do
10 that. But short of that you'll have to petition those
11 representatives, we need this law or we don't need that
12 law. But the third branch, the judicial branch, you've
13 actively participated by being judges. As I stated to you
14 at the beginning, you were the judges of the facts. And I
15 appreciate the service, the honor that I had to get to
16 work with you. It's been a treat for me. Thank you for
17 your service. We have a hearing tomorrow that will not
18 involve the need for a jury. You're discharged for the
19 week.

20 Some of you may need statements for your employers to
21 show that you've been on jury service this week. If
22 that's the case the Clerk will certainly provide those for
23 you. You can stop by the Clerk's office. You're
24 dismissed for this trial. You're dismissed for the week.
25 Thank you very much for serving with us.

The State -vs- Roger Eugene Shephard (2009-GS-39-0941, 0942, 0943, 0944)
Charge

509

1 I would ask that the Foreperson if you would please,
2 I need you to sign some other documents. If you'll wait
3 in the hallway, the Clerk will be there to have you sign
4 those. Thank you very much and I wish you all the best.
5 Thank you for the honor I've had.

6 (WHEREUPON, the jury exited the open court at
7 approximately 4:09 p.m.)

8 THE COURT: Anything we need to take care of
9 before sentencing is imposed? Anything from the State?

10 MS. MUNSON: Nothing from us, Your Honor.

11 MR. DEJONG: Nothing on behalf of Mr. Shephard,
12 Your Honor.

13 THE COURT: All right, Mr. DeJong, if you'll
14 bring your client around, I'll be glad to hear from him.

15 MR. DEJONG: Thank you, Your Honor. If I may
16 have one moment to sign the sentencing sheets.

17 THE COURT: Yes.

18 MR. DEJONG: Come around please, Mr. Shephard.

19 THE COURT: Solicitor, I'll be glad to hear
20 anything from the victims, from the State, and then I'll
21 be glad to hear from you, Mr. DeJong, and I'll be glad to
22 hear from your client if he wishes to address the Court.
23 Ms. Munson.

24 MS. MUNSON: May it please the Court, Your
25 Honor. The Defendant has no prior record. Ms. Bruin nor

1 her family wish to make a statement. However they did --
2 they want the Court to know that all this Defendant had to
3 do was ask for the guns and he would have given them to
4 him. As she said on the stand, she would have helped
5 carried them out to the car for him.

6 He shot her husband and then shot at her. It's just
7 so unnecessary. And each individual thing, he could have
8 stopped before he did it. He inflicted harm on this
9 family consecutively and I'll ask you to sentence him
10 consecutively. Thank you, Your Honor.

11 THE COURT: Mr. DeJong?

12 MR. DEJONG: Thank you, Your Honor. May it
13 please the Court. In a case like this it's hard to know
14 where to start. There is a certain amount of closure for
15 everyone and the pall of tragedy hangs over us heavy right
16 now. And standing before Your Honor is a very young man
17 just turned twenty-four in June of this year. He is
18 single. He has never been married. He has no children.

19 Your Honor probably gleaned from the video from
20 Canada that we shared with the Court, he basically had an
21 alcoholic father who it is my understanding has now died,
22 not from alcoholism but from colon cancer, I believe, or a
23 combination.

24 He had a mother who was a drug addict who, to my
25 knowledge, he hasn't seen since he was three or four years

The State -vs- Roger Eugene Shephard (2009-GS-39-0941, 0942, 0943, 0944)
Charge

511

1 old. Throughout the week this week, Your Honor, seated in
2 the Courtroom behind me are his uncle and his aunt, Mr.
3 and Ms. Mitchell. They basically reared this young man.

4 And I certainly do not take away from their efforts
5 for what they did in rearing this young man. But he
6 really never knew the love of a mother. That is not to
7 take away from his aunt who loves him deeply and has shed
8 many tears over him this week, or his uncle.

9 He basically had a little contact with his father
10 again I think at about the age of thirteen or sixteen.
11 That basically eludes me. It was at Wren High School for
12 various reasons. He came out of Wren High School, pursued
13 and was successful in getting his GED. Joined the
14 National Guard. Was activated. Was in Washington, D.C.
15 for some period of time and then back to the Guard.

16 As indicated by the Solicitor, this young man has no
17 prior record whatsoever. And the jury has certainly
18 spoken and based upon their speaking, what this young man
19 did was a horrible thing. The tragedy is two-fold. My
20 heart as I stand here is heavy and certainly goes out to
21 Ms. Bruin and her family for their loss.

22 And my heart goes out to this young man standing
23 beside me and his family for this tragedy. Your Honor, I
24 don't think anyone in this courtroom will ever know what
25 really happened on June the 15th of 2006. I'm not

1 speaking of the facts, Your Honor. I'm speaking of what
2 went on in this young man's head. I don't know. We've
3 talked about it. He doesn't know. He has shared with me
4 the same remorse that he shared with the officers in
5 Canada. And certainly Your Honor has the ability at this
6 point in time and the power to see that this young man
7 would never draw a breath of freedom again. However, I
8 would humbly and respectfully ask the Court not to do
9 that. He is young. He has made a very tragic error. And
10 error is an understatement, I realize that. And there is
11 no question, Your Honor, that as we stand at this stage of
12 the proceeding that punishment will be meted out and based
13 on the jury verdict, deservedly.

14 But I would ask Your Honor to consider fashioning a
15 sentence that will not only meet with justice, but
16 somewhere down the road, and under the sentencing scheme
17 at best it would be way down the road, Your Honor, that
18 this young man might have a little life, pay for the
19 tragedy that he has caused but still have a little life.

20 Thank you, Your Honor. Anything you wish to share
21 with the Judge, Mr. Shephard?

22 THE COURT: Mr. Shephard, anything you wish to
23 state? I'll be glad to hear from you.

24 DEFENDANT: No, Your Honor.

25 THE COURT: All right, sir. It's pretty clear

The State -vs- Roger Eugene Shephard (2009-GS-39-0941, 0942, 0943, 0944)
Charge

513

1 the events that took place on this fateful day make no
2 sense. I think everybody agrees with that. Certainly the
3 Court extends sympathy to the victims and the family in
4 this tragic event that took place.

5 I've tried to follow the guidelines in the major case
6 issued recently and I'll try to articulate the intent of
7 the sentence for the benefit of the Court.

8 Mr. Shephard, there's different kinds of prisons.
9 There's the prison that requires physical restraint of the
10 body. But there's also the prisons of the soul and the
11 emotion and the mind. You can determine how confining
12 those prisons are going to be for you. I can determine
13 how confining the physical restraint of your body will be.
14 I certainly wish you the best.

15 This is Case 2009-GS-39-943, armed robbery. The
16 sentence of the Court is that the Defendant be committed
17 to the State Department of Corrections for a period of
18 thirty years. That's to be the first sentence to be
19 served.

20 Case 2009-GS-39-942, assault with intent to kill.
21 The sentence of the Court is that the Defendant be
22 committed to the State Department of Corrections for a
23 period of ten years. This is to be a concurrent sentence
24 to that previously imposed.

25 Case number 2009-GS-39-941, charge of murder. The

1 sentence of the Court is the Defendant be committed to the
2 State Department of Corrections for a term of his natural
3 life without any parole. This is to be a consecutive
4 sentence to that previously imposed.

5 Case number 2009-GS-39-944, the weapons violation,
6 there's a five-year sentence. But as I understand this
7 becomes non-applicable based upon Section 16-23-490(a), so
8 therefore that sentence will not be imposed. And of
9 course the intent of the Court would be for the five year
10 sentence to be imposed in the event the other charges were
11 to be determined that they're not upheld. But for the
12 sentencing today that will be eliminated under the
13 statute.

14 Thank you very much. Court is adjourned.

15 (END OF REQUESTED TRANSCRIPT OF RECORD)

The State -vs- Roger Eugene Shephard (2009-GS-39-0941, 0942, 0943, 0944)
Certificate of Reporter

515

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official Court
3 Reporter for the Thirteenth Judicial Circuit of the State
4 of South Carolina, do hereby certify that the foregoing is
5 a true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal, in
8 the Circuit Court for Pickens County, South Carolina, on
9 the day 16th day of November, 2009.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

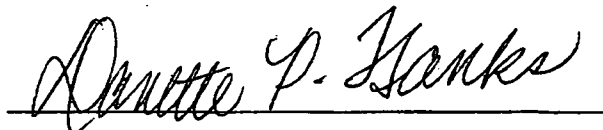
14 May 18, 2010

15

16

17

18



Circuit Court Reporter

FORM 5

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
2012 AUG -1 P 3: 59

STATE OF SOUTH CAROLINA)

COUNTY OF Pickens)

Roger Eugene Shepherd 338072)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

2012-CP-39-1100

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick C.I.
2. Name and location of Court which imposed sentence Court of General Sessions, Pickens, S.C.
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-39-943, Armed Robbery
 - (b) 2009-GS-39-942, Assault with intent to Kill
 - (c) 2009-GS-39-941, Murder / 2009-GS-39-944 possession of a
5. The date upon which sentence was imposed and the terms of the sentence: Firearm during the Commission of a Felon
 - (a) November 16, 2009, Armed Robbery - 30 years
 - (b) Assault with intent to Kill - 10 years

(c) MURDER - Life without parole, Possession of a Firearm - 5 years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

yes _____

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

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

i. The South Carolina Court of Appeals

ii. _____

iii. _____

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

i. APPEAL DISMISSED

ii. _____

iii. _____

(c) the date of each such result:

i. JUNE 28, 2011

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

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

(D) Prejudice

(a) Lack of Subject Matter Jurisdiction of Sentencing Co

(b) Ineffective trial Counsel

(c) ~~_____~~

Sentence was in violation of the SC Constitution

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

(a) _____

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

i. Direct Appeal

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Appeal Dismissed

ii. _____

iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. June 28, 2011
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) PREJUDICE - I was uninformed of the law of Sentencing Court
 - (b) Lack of Subject Matter Jurisdiction - I was previously unaware of the
 - (c) INEFFECTIVE trial Counsel - Direct Appeal was not the place to argue the
 - (e) ~~PREJUDICE~~ - I was previously unaware of Due Process
- (d) SEARCH VIOLATES SC CONSTITUTION

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

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

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

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

- i. trial lawyer - John Dejong _____
- ii. Appellate lawyer Robert M. Pachay - _____
- iii. _____

SC Commission on Indigent Def
 Division of Appellate Defen
 PO Box 11589
 Columbia, SC 29211

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

- i. TRIAL _____
- ii. Direct Appeal _____
- iii. _____

19. State clearly the relief you seek in filing this application:

That my Constitutional Rights be observed and therefore sentence Vacated

20. Are you now under sentence from any other court that you have not challenged?

No _____

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2012-CP-39-1100

STATE OF SOUTH CAROLINA

)
2012 AUG -1 P 3: 59 VERIFICATION
)

County of

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Royal E. Shepherd

SWORN to and subscribed before me this 21st
day of July, 2012

Stephanie Marshall (L.S.)
Notary Public

My Commission Expires: May 12, 2021

12-CP-39-1100

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

CLERK OF COURT
BECKENS COUNTY
SOUTH CAROLINA

2012 AUG -1 P 3: 59

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Roger E. Shepherd
Applicant

SWORN or affirmed to and subscribed before me this

21st day of July, 2012

Stephanie Marshall
Notary Public

My Commission Expires: May 12, 2021

To whom it may concern,

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

McCormick Correctional Institution was locked down for nearly 3 weeks, the cause of which was on the news. When the yard reopened, I was unable to travel to the mail room, I was told that it was not open. UPON my first chance to send my PCR application to the court, I now do so. I humbly request that the court allow an extension for my PCR application, seeing as I was physically unable to mail it due to institution lockdown.

Thank you for your time + consideration.

Roger E. Shepherd

11(a)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

11. State Consisely and in the same order ^{2012 AUG - 1 (VB) 11:00} the facts which support each of the grounds set out in (B) 11:00

(a) Lack of subject Matter Jurisdiction of sentencing Court

- IN the present case, I am concerned not with the sufficiency of a particular indictment, but with the legality and sufficiency of the process of the state Grand Jury which issued the indictment.
- ON July 14, 2009 only 15 Grand Jurors were present. A legally CONSTITUTED Grand Jury must consist of 18 Grand Jurors. Furthermore I, Roger Eugene Shephard, was not on the docket for indictment. Indictment on a date that was out of term for the Pickens County Grand Jury.
- AN indictment, or "Notice Document" issued by a Grand Jury which is established or constituted illegally is deemed a nullity. AN indictment which is a nullity would be insufficient as a matter of law to give the Required Notice to a defendant.
- SC CONST. ART 1, § 11 and ART. VI § 22
SC Code Ann. 17-19-10 (2003)
- Evans v State 611 SE2d 510 (SC 2005)
- State v. Gentry 363 SC 93, 610 SE2d 494 (2005)
- Anderson v. State, 527 SE2d 398, 338 SC 629 (SC 2000)



~~Lack of~~

11(b)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA11. (b) ~~Ineffective trial Counsel~~ AUG - 1 P 4:00

- Trial Counsel did not properly point out key discrepancies in Prosecution's case during closing Arguments. Transcript Vol 1 pg 482 line 1-13. / Transcript Vol 1 pg 73 line 4-5.

My booking records in Alexandria, VA just before my arrest will show that I, at the time of the incident, was 5'11 190 lbs. Not 5'7" 160-170 lbs.

During the security video, I noticed that Mrs. Bruin, who is listed at 5'6" is of a height with the man in the video. They are nearly the same height. Trial Counsel was ineffective for not pointing this out.

- During the security video, which was played for the trial court, and will certainly be available for the PCR court, I noticed an inconsistency with what was shown on the video and the evidence of the prosecution.

The suspect in the video picked up the DD4473 at the top of the packet, which consists of 7 pages. He then went on to replace the packet on the counter. At no time did the suspect on the video rifle through the packet.

My question is how did my fingerprints get on the (A2, A3, A second and third pages, but print A6 is not mine. The suspect in the video (if you will compare states exhibit 21 to the tape) is holding the DD4473 form in exactly the same place

- I brought this to attention of my trial counsel, and

↓

11(c)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

11.(C)

Sentence was in violation of the 2012 Amendment 4300 Constitution

- SC CONST. ART. 1 § 3 states Procedural Due Process requires (1) Adequate Notice (2) Adequate opportunity for a hearing.
- Also under SCRCRIMP Rule 2, a defendant charged with a crime not triable by a Magistrate May Request a preliminary hearing. The hearing is to be held within 10 days following the request but shall not be held if the defendant is indicted by a grand jury.
- Adequate notice was insufficient because Procedural Due Process was violated. I was not indicted by the Grand Jury.
- Upon My arrival to Pickens County, SC, I was placed in a detoxification cell. The kind commonly used to house drunks overnight. It is 5 Ft. wide and 7 Ft. long. I stayed in this cell for 1 year. I demanded my right to a fair and speedy trial and a preliminary hearing. I was told that I didn't get those rights "Round these parts." When I persisted, I was given a form for the preliminary hearing, but was not given anything to write with. I was told by the officers at the Pickens LEC that they were only following orders, when I asked why I couldn't have anything to write with, I was told these orders came from Cpt. Gene Patterson.

11(D)

11(D) PrejudiceCLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

- 2017 AUG -1 P 4:00
- In the Courtroom During trial I was restrained, in belly chains, shackles, handcuffs and leg shackles as well as a bulky, cumbersome shockbelt. This prejudiced me from the presumption of innocence for the jury to see me treated so dangerously. Transcript Vol 1 pg 14 line 1-5/ Vol 1 pg 23 line 5-7, 11-19. Transcript Vol 1 pg 153 line 16-25, page 154 line 1-6
 - Trial Court erred in admitting Canadian video. It prejudiced the outcome of the trial, and did not comply with Mirand Rights transcript Vol. 1 pg 190 pg 203 line 1-11.

Where is the presumption of innocence if I am in chains for the jury to view?

Not only was Mr. ~~Lombard~~ ^{Lombard} under investigation pending indictment, his partner Marco Roy required a translator to testify. This was prejudicial, especially since he was not present during the entire interview. transcript. vol 2 pg 253 line 15-25

Joseph Kelley's testimony was prejudice. As was the recording of the alleged conversation that was recorded. Mr. Kelley was being looked at by ATF transcript vol 1 page ^{line 12-18} Serial Number of the Murder weapon does not match states exhibit 78, the ^{Federal} DD4473 Record. transcript vol 1 pg 424-425 line 17-25/1. Agent Wildt did not have a record of this phone call.

↙ BACKSIDE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
 Roger Eugene Shepherd,)
 S.C.D.C. No. 338072,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-39-1100

RETURN

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

2013 APR 16 AM 10 51

In response to the post-conviction relief application filed August 1, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the July 2009 term of General Sessions for murder (2009-GS-39-0941), assault with intent to kill (AWIK) (2009-GS-39-0942), armed robbery (2009-GS-39-0943), and possession of a weapon during commission of a violent crime (2009-GS-39-0944). John W. DeJong, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On November 19, 2009, the Honorable G. Edward Welmaker sentenced the Applicant to consecutive terms of life without parole for murder and thirty years for armed robbery. Judge Welmaker levied concurrent sentences of ten years for AWIK and five years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak,

Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Shepherd, Op. No. 2011-UP-337 (S.C. Ct. App. filed June 28, 2011).

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Lack of subject matter jurisdiction.
2. Ineffective assistance of counsel.
3. "Sentence was in violation of the SC constitution."
4. Prejudice.

III.

The Respondent submits the Applicant's assertion that the court lacked subject matter jurisdiction is without merit. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). The Respondent further notes that indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. The indictments in this case were true-billed and clearly sufficient to put the Applicant on notice of the charges he was facing. See

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

IV.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

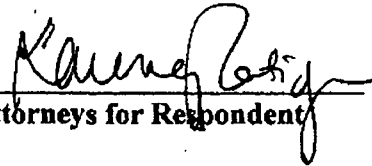
ALAN WILSON
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KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for Respondent

March 28, 2013

1 STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF PICKENS)
 3
 4 Roger Eugene Shephard,)
) TRANSCRIPT OF RECORD
 Applicant,) 2012-CP-39-1100
 5 -vs-)
)
 6 The State,)
) October 21, 2013
 7 Respondent.) Pickens, South Carolina

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B E F O R E:

HONORABLE EDWARD W. MILLER, JUDGE

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

R. MILLS ARIAIL, JR., ESQUIRE
Attorney for the Applicant

KAREN C. RATIGAN, ESQUIRE
Attorney for the Respondent

Margaret A. Woods
Circuit Court Reporter

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INDEX

WITNESSES

PAGE

ROGER EUGENE SHEPHARD

Direct examination by Mr. Ariail 8

Cross-examination by Ms. Ratigan 16

JOHN WILLIAM DEJONG

~~Direct examination by Ms. Ratigan~~ 28

Cross-examination by Mr. Ariail 33

Redirect examination by Ms. Ratigan 42

Certificate of reporter 49

NO EXHIBITS INTRODUCED

MOTIONS AND MATTERS

1 THE COURT: Yes, ma'am.

2 MS. RATIGAN: Thank, Your Honor, may it please the Court.
3 This is the case of Roger Eugene Shephard vs. the State of
4 South Carolina, Docket Number is 2012-CP-39-1100.
5 Mr. Shephard was indicted for murder, assault with intent to
6 kill, armed robbery and possession of a weapon during the
7 commission of a violent crime, he was represented on these
8 charges by Mr. DeJong. Case was brought to trial before Judge
9 Welmaker, Mr. Shephard was found guilty. On November 19th of
10 2009 he was sentenced to consecutive terms of life without
11 parole for murder and 30 years for armed robbery, he then
12 received concurrent sentences of 10 years for AWIK and 5 years
13 for the weapons charge. Notice of appeal was timely filed and
14 perfected as an Anders brief, that matter was dismissed June
15 28th of 2011. The State is ready to proceed, however, I'm
16 advised Mr. Ariail may have a motion to make at this time.

17 MR. ARIAIL: Sir. Yes, Your Honor, I have a motion in
18 regards to we talked with my client, he has a motion to
19 receive the impaneling records for the grand jury in this
20 matter.

21 THE COURT: The what records?

22 MR. ARIAIL: The grand jury records for his, he has
23 received documentation from he told me from, uh, Mr. Welborn
24 saying that there are only 15 grand jurors at the time he was,
25 uh, indicted for this, says he has this information, received

MOTIONS AND MATTERS

1 it, he also has information that says that he wasn't even on
2 the docket at the time. He was requested through me to make a
3 motion to get this grand jury -- grand jury impaneling
4 documents, basically review or have them submitted to the
5 Court for your review, uh, as part of his PCR saying he was
6 not indicted for this matter.

7 ~~THE COURT:~~ That's a, uh, sort of a novel approach. What
8 it -- so what is it he wants?

9 MR. ARIAIL: Well he wants to basically see that he had
10 the sufficient amount a grand jurors in there, that they had
11 him on the docket for the day, that they, uh, uh, considered
12 his case and he was indicted on that day. He has information
13 he's told me and I be glad to put him on the witness stand
14 that he's received this information, does not have 'em with
15 him today, problem is he has had that transferred and then
16 moved back and forth between Lee County and a couple others
17 but he had received information from the clerk's office saying
18 that there were not enough grand jurors there, that he was not
19 on the docket at the time and his question is whether or not
20 he was indicted. I've not discussed this with Mr. DeJong at
21 this time, I, uh, 'cause I was tryin' to get the documents
22 first but I don't know if that was sumtin' he looked at or,
23 uh, but he said he had received this after the fact, uh, and
24 that that was one of his grounds that he wanted to raise.

25 THE COURT: Alright. Ms. Ratigan, you got anything?

MOTIONS AND MATTERS

1 MS. RATIGAN: Your Honor, the State would simply argue
2 under cases such as *State vs. Griffin* which is 277 South
3 Carolina 193, the regulation of, uh, pardon me, the rega --
4 regularity of grand jury proceedings is presumed absent clear
5 evidence to the contrary. Uh, there's actually kind of the
6 dearth of case law about, uh, grand jury, grand jury
7 impanelment documents. There's a case *Evans vs. State* but
8 that's actually state grand jury which is this, you know,
9 statutorily different animal. I did find a case *State vs.*
10 *George*, that's 323 South Carolina 496, uh, and basically it
11 talks about grand jury impanelment documents and how one goes
12 about arguing that but it seems to be mostly in terms of equal
13 protection violations in terms of, um, uh, race, gender-type
14 issues. Um, I don't know that that's really been proven
15 today, I don't know there's been proven to be any kind of
16 equal protection violation, um, or actually there's been no
17 evidence presented at all, it's just kind of speculative
18 supposition that these things don't exist. Uh, I don't know
19 if a motion for discovery is something that we need to do to
20 get those documents or ---

21 THE COURT: Well he says ---

22 MS. RATIGAN: --- if that would ---

23 THE COURT: --- he's already ---

24 MS. RATIGAN: --- even be proper ---

25 THE COURT: --- got 'em.

MOTIONS AND MATTERS

1 MS. RATIGAN: He says he does but we haven't seen them
2 and they would have to be authenticated some way, uh,
3 obviously.

4 THE COURT: How would he have gotten 'em? How'd he get
5 'em?

6 MR. ARIAIL: I mean, I -- my, and you can question him
7 yourself, Your Honor, in regards

8 THE APPLICANT: I ---

9 MR. ARIAIL: --- to it ---

10 THE APPLICANT: --- would very much like to speak.

11 MR. ARIAIL: Well he he told me he got 'em, that
12 Mr. Welburn [sic] sent him a letter if I'm not stating it
13 incorrectly.

14 THE APPLICANT: I requested myself ---

15 THE COURT: Well wait, he's he's gonna ---

16 MR. ARIAIL: He ---

17 THE COURT: You got it from the clerk's office is what
18 you're sayin'?

19 MR. ARIAIL: That's what he's tellin' me that he got it
20 from the clerk's office that information about the grand jury
21 impanelment on that day and I think the specific date was and
22 I had it written down ---

23 THE APPLICANT: July 14th 2009.

24 MR. ARIAIL: July, yeah, the July 14, 2009.

25 THE COURT: I didn't bring the grand jury stuff with me

MOTIONS AND MATTERS

1 'cause I didn't realize this would be an issue but it doesn't
2 matter if he doesn't have all eighteen.

3 MR. ARIAIL: Right.

4 THE COURT: Doesn't matter.

5 MR. ARIAIL: Well his his issue also, Your Honor, is and
6 this is where where I don't know how to proceed, he's been
7 told that he was not even on the docket for that day or his
8 case was not even considered that day so that's my ---

9 THE COURT: This is a magical indictment that just came
10 outta ---

11 MR. ARIAIL: I ---

12 THE COURT: --- the clear blue sky ---

13 MR. ARIAIL: From what ---

14 THE COURT: --- but he he's gonna testify, I'm ---

15 MR. ARIAIL: Okay.

16 THE COURT: --- interested. Uh, ---

17 MR. ARIAIL: That was my understanding is that he just
18 did not have the information to show that he was indicted on
19 that day or had been provided documentation showin' that.

20 THE COURT: There was a signed indictment stamped as a
21 true bill on that day?

22 MR. ARIAIL: It -- I ---

23 THE COURT: So is he's alleging it's a forgery I guess.

24 THE APPLICANT: Uh, well yes.

25 THE COURT: Well just put him up, let's go forward.

ROGER EUGENE SHEPHARD - DIRECT EXAMINATION BY MR. ARIAIL

1 MR. ARIAIL: Okay. Call Mr. Shephard to the stand.

2 THE COURT: Alright.

3 (Whereupon, the applicant came forward.)

4 THE CLERK: Place your left hand on the Bible, raise your
5 right hand, please.

6 THE APPLICANT: Okay, thank you.

7 ROGER EUGENE SHEPHARD, having been
8 first duly sworn, testified as follows:

9 THE CLERK: State your full name for the record.

10 THE APPLICANT: Roger Eugene Shephard.

11 THE CLERK: Please be seated.

12 (Whereupon, a discussion was held off the record.)

13 DIRECT EXAMINATION BY MR. ARIAIL:

14 Q. Mr. Shephard, you've heard us discussing grand jury
15 impanelment documents, correct?

16 A. Yes, sir.

17 Q. Okay. And we went through and I wanna understand a
18 little bit more about that, one a your claims is that you were
19 not indicted properly by the grand jury, is that correct?

20 A. Yes, sir, it's it's not just a claim.

21 Q. Okay, well tell me when you say, "it's not just a claim",
22 tell me what evidence you have, what information you received
23 showing you were not indicted.

24 A. Well, when I was at a previous institution, I wrote and
25 requested Mr. Patrick Welburn [sic] that I could get the

ROGER EUGENE SHEPHARD -- DIRECT EXAMINATION BY MR. ARIAL

1 impanel of the grand jury, the names of who was on the docket
2 for the indictment, the number of grand jurors, time spent on
3 each case. Well he sent me somethin' back sayin' there was 15
4 grand jurors and 59 people indicted that day and not only
5 that, it was out of term and well I got shipped to Lee County
6 and I've been fightin', it's on the record I've been fightin'
7 for six months to get my legal work back and they will not
8 give it to me, there's nothin' I can do. I've been beat up,
9 I've been pepper sprayed, there's nothin' I can do, they won't
10 give it to me.

11 Q. Okay.

12 A. I also have a letter here where I've been denied impanel
13 of the grand jury from the clerk of court second time ---

14 Q. Okay, well just ---

15 A. --- after it was taken.

16 Q. --- go through tell me what you received from
17 Mr. Welburn, was it just a letter?

18 A. Yes, sir, just a letter tellin' me that 15 grand jurors
19 were present. No time was documented for the grand jury to
20 have deliberated and 59 people were indicted that day.

21 Q. Okay. You told me durin' one of our conversations that
22 you said you weren't on a docket or had information showing
23 your case wasn't considered that day, you have anything
24 showin' ---

25 A. I have, ---

ROGER EUGENE SHEPHARD - DIRECT EXAMINATION BY MR. ARIAL

1 Q. --- that?

2 A. --- I have nothin' now, no.

3 Q. But but did you receive information in regards to that?

4 A. Yes, sir, I did.

5 Q. What what information?

6 A. Well from Patrick Welburn I received the impanel of the
7 grand jury from him. I'm not sure how it actually goes but, I
8 mean, I'll take a polygraph, I'll swear to it that it's real,
9 I ---

10 Q. Well ---

11 A. --- saw.

12 Q. --- what I'm tryin' to figure out is one a your arguments
13 is that you weren't on the grand jury consideration for that
14 day, what information do you have showing your case was not
15 considered that day?

16 A. I have no information right now, you know that.

17 Q. But was the do -- letter you received from Mr. Welburn
18 did it say your case wasn't considered?

19 A. It didn't say that but it had a list of the names of
20 people who were indicted that day and ---

21 Q. Okay.

22 A. --- my name was not on that.

23 Q. Okay, so it listed all the cases, your name was not on
24 there.

25 A. No, sir, it was not.

ROGER EUGENE SHEPHARD - DIRECT EXAMINATION BY MR. ARIAL

1 Q. And that was for July 14, 2009, is that correct?

2 A. Yes, sir.

3 Q. Okay. Now as part a this we've gone through and and we
4 discussed your case in addition to the grand jury issues, uh,
5 tell me, uh, I think one a your claims is that you would have
6 liked to have testified at trial, is that correct?

7 A. Yes, it was.

8 Q. Okay, what conversation did you have with Mr. DeJong in
9 regards to testifying?

10 A. Well, he did everything he was supposed to do required by
11 law but at the same time I didn't understand nowhere near as
12 much as I do about the law now and still not nearly enough it
13 seems, but he told me that they were just gonna get up there
14 and make me look like a fool basically and ask me all kind of
15 questions that were gonna be unflattering and not really get
16 to the heart a the matter and we would lose our chance for to
17 have the last say, the last word in the trial so I decided not
18 to based on that.

19 Q. Okay. Did you understand your conversations with
20 Mr. DeJong durin' this time?

21 A. Uh, for the most part yes, I did.

22 Q. Did he as -- answer all your questions?

23 A. Yeah, I have no complaints on that.

24 Q. Okay. You you're just now saying you wanted to testify,
25 what grounds do you have against Mr. DeJong for him saying you

ROGER EUGENE SHEPHARD - DIRECT EXAMINATION BY MR. ARIAL

1 shouldn't testify or him any issues in regards to your
2 testimony?

3 A. Well, just I feel like I I should've testified. I feel
4 like it would've changed the outcome of the trial had I have
5 got up there and explained certain circumstances of why things
6 were the way they were.

7 Q. Okay. Now but you went through your, you went through
8 the evidence with Mr. DeJong, correct?

9 A. Yes, sir.

10 Q. Okay. Did he explain to you about the video evidence
11 they had in the case?

12 A. Yes, sir.

13 Q. Did he explain to you about your confession?

14 A. Yes, sir.

15 Q. Think there was a voicemail also that was involved in
16 this that you left at, is that correct?

17 A. Well, I'm gonna disagree that I left that voice message
18 but ---

19 Q. Okay, but ---

20 A. --- yes.

21 Q. --- you you explained that that with him about that
22 voicemail and how it could be used against you at trial,
23 correct?

24 A. Yes, sir.

25 Q. Okay. Do you also talk to him in regards to fingerprint

ROGER EUGENE SHEPHARD - DIRECT EXAMINATION BY MR. ARIATAL

1 evidence and other items that that could be used against ya?

2 A. Yes, sir.

3 Q. Okay. So he he explained all that to you, correct?

4 A. Yes, sir.

5 Q. Any complaints with him in regards to ---

6 A. There there actually is. If you know what a DD4473 Form
7 is it's a federal firearms transaction record and the man in
8 the video was holdin' it just like this (demonstrating) so
9 where's his fingerprints at? they're on the top page and the
10 bottom page. Well I was sittin' here in trial realizin' that
11 things were lookin' pretty bad for me despite the lack of
12 evidence so I noticed that those fingerprints on the top page
13 and bottom page were unidentified yet the man doesn't rifle
14 through this at any time, he puts it straight down so how are
15 my fingerprints on the second page, the third page and the
16 inside a the last page but not on the front and the back page
17 and I brought this up at trial and Mr. DeJong told me that we
18 had to wait 'til closin' arguments to bring that particular
19 fact up so I reminded him again before he got up and he sat
20 back down, he said, Well, I forgot, goes, it's too late now,
21 so here I am.

22 Q. So you're saying that the, uh, failure to bring up the
23 fingerprints on the back of the the form ---

24 A. On the front. It's it's clear in the video that the
25 man's holdin' it just like I am ---

ROGER EUGENE SHEPHARD - DIRECT EXAMINATION BY MR. ARIAL

1 Q. Okay.

2 A. --- and that fingerprint exactly on that spot it's not
3 him, ---

4 Q. Was ---

5 A. --- that's ---

6 Q. --- there any testimony from SLED or anybody in the
7 fingerprint analysis as to those fingerprints?

8 A. Uh, no, there was not, not that ---

9 (Cross-talk.)

10 Q. There wasn't anybody that said whether or not they could
11 take those or they could get those prints or anything like
12 that?

13 A. Well there's a little confusion on how those came about
14 in the first place in my legal work anyway in the or --
15 initial discovery.

16 Q. Okay. On the video in this case, there was a video from
17 pawn shop, correct?

18 A. Yes, sir.

19 Q. Okay. And the question was, I think you had a discussion
20 with Mr. DeJong in regards to this, whether it was tampered
21 with or any issues with that, is that correct?

22 A. Well my issue is why was I shown a different series of
23 events in my discovery than what was shown to the jury at
24 court. Once I arrived at court there was a different video
25 entirely and I just, I don't understand how that could be.

ROGER EUGENE SHEPHARD - DIRECT EXAMINATION BY MR. ARIAL

1 Why ---

2 Q. Okay.

3 A. --- is there two different sets of events for this?

4 Q. Now in regards to I guess you gave a confession, is that
5 correct, up in Canada?

6 A. Well I wouldn't de -- I definitely wouldn't call it
7 voluntary but yes, I ---

8 Q. Well ---

9 A. --- did.

10 Q. --- did you discuss that with Mr. DeJong in regards to
11 voluntariness of your confession?

12 A. Uh, yes, sir, I did.

13 Q. Okay, and ya'll argued about that, correct, at court?

14 A. Well not so much argued but I felt like I should've
15 testified on that issue ---

16 Q. Okay.

17 A. --- concernin' the circumstances to give that.

18 Q. But he, but he did what he I guess he told you gonna do
19 to try to get that confession, limit that confession,
20 correct?

21 A. Yes, sir.

22 Q. Okay. Now those are the main issues that we've talked
23 about, is there anything else that I have missed in your
24 application you'd like to bring up for the Court consider?

25 A. Ah, oh, yes, there there's one other thing also that, uh,

ROGER EUGENE SHEPHARD - CROSS-EXAMINATION BY MS. RATIGAN

1 was in the discovery: the placement of fingerprints. They
2 dusted for fingerprints. My fingerprints were not found in a
3 single place where this man on the video touched, not even
4 one, not even close. It was on the front display counter and
5 a few other places but I actually have the diagrams if I could
6 get my legal work back but it is in my motion of discovery.

7 Q. Okay.

8 A. Where my fingerprints were not found behind the counter,
9 they were not found on any a these guns the man's clearly
10 handling in the video and I don't know that's, I just feel
11 like that's enough in itself. If I'm standin' here in the
12 video touchin' this and these aren't my fingerprints and then
13 I go and I touch that, those aren't my fingerprints, that
14 wasn't me.

15 Q. Well I I understand you're saying' that those
16 fingerprints weren't there, Mr. DeJong do what he needed to do
17 to bring that out in court or, uh, raise that as an issue as
18 to why this wasn't you?

19 A. No, no, not particularly.

20 Q. Okay, then I think that's all I have, then I'll have some
21 questions for Mr. DeJong.

22 MR. ARIAIL: Thank Your Honor, no further questions.

23 THE COURT: Cross?

24 CROSS-EXAMINATION BY MS. RATIGAN:

25 Q. So you and Mr. DeJong did look at the video from the pawn

ROGER EUGENE SHEPHARD - CROSS-EXAMINATION BY MS. RATIGAN

1 shop together?

2 A. Yeah, we did.

3 Q. Okay, and you discussed with him the impact that video
4 would have on the case?

5 A. Yes, ma'am.

6 Q. Okay. And the same thing with the confession, you you
7 talked about the confession with him and the circumstances
8 behind the confession?

9 A. Yes, ma'am.

10 Q. Okay. And, uh, Harley Kelly made a phone call that was
11 reported, he made a phone call to you, is that correct?

12 A. No, that's definitely not but it's, uh, it's on the
13 record.

14 Q. Okay. Well did you discuss that phone call with
15 Mr. DeJong?

16 A. Uh, yes, ma'am, I did.

17 Q. And the fingerprints listed from that federal firearms
18 form you discussed with him that they have these prints they
19 said were yours?

20 A. Yes, ma'am. Well they said my fingerprints were on
21 them ---

22 Q. Yes.

23 A. --- and and they was ---

24 Q. Okay.

25 A. --- but not where they shoulda been.

ROGER EUGENE SHEPHARD - CROSS-EXAMINATION BY MS. RATIGAN

1 Q. Okay. And did you discuss with Mr. DeJong that Donald
2 Thompson would testify that he sold you the gun that turned
3 out to be the murder weapon?

4 A. Yes, ma'am, ---

5 Q. Okay.

6 A. --- three and a half years later ---

7 Q. Okay.

8 A. --- he decided to do that.

9 Q. Okay. And when you were having these conversations with
10 Mr. DeJong, did you understand these conversations?

11 A. Uh, more than not, certainly.

12 Q. Okay. So you knew going into the trial what the State
13 was gonna argue to prove your guilt?

14 A. Uh, basically yes.

15 Q. And had you discussed with Mr. DeJong before trial about
16 whether or not you would testify?

17 A. Uh, I don't exactly recall but I -- we did discuss it but
18 we didn't actually make a decision until during the trial.

19 Q. And your testimony today is that you wanted the chance to
20 be able to explain the circumstances behind some a these
21 facts?

22 A. Uh, well yes, I would.

23 Q. Okay. But the judge informed you have the right to
24 testify and you simply chose not to do it, is that fair to
25 say?

ROGER EUGENE SHEPHARD - CROSS-EXAMINATION BY MS. RATIGAN

1 A. No, not at all.

2 Q. Okay, well explain then. If the ju -- well let me back
3 it up. The judge did explain to you had the right to testify,
4 is that correct?

5 A. Yeah, he did.

6 Q. Okay. And Mr. DeJong said you would not testify, that
7 also is correct?

8 A. Well, he he did what he was required by law I say but he
9 did persuade me that it would not not to really.

10 Q. Now did he flat out tell you you cannot testify or did
11 he ---

12 A. No, of course not.

13 Q. Well how did -- what did he say? Did he say it wasn't a
14 good idea or, ---

15 A. No, he ---

16 Q. --- I mean, how did he phrase it?

17 A. --- he said that they're gonna get up there and ask me a
18 lot of irrelevant and unflattering questions and not really
19 get to the point that I wanted to get to and just to make
20 things look worse for me basically and I took his advice.

21 Q. And Mr. DeJong also told you that your testifying would
22 mean that you wouldn't get the last argument to the jury?

23 A. Yes, ma'am, he did say that..

24 MS. RATIGAN: That's all I have, Your Honor.

25 EXAMINATION BY THE COURT:

ROGER EUGENE SHEPHARD - EXAMINATION BY THE COURT

1 Q. What complaints exactly do ya have 'bout Mr. DeJong?

2 A. Well, for one I feel like it prejudiced me that the full
3 facts about my case were not known about the placement of the
4 fingerprints and the jury saw one side a the story and they
5 didn't really see entire information. If they'd a saw all
6 this information its entirety, I don't believe I woulda been
7 found guilty, Your Honor.

8 Q. Well what information?

9 A. The placement of my fingerprints at the scene of the
10 crime and basically a DD4473 form.

11 Q. So it's just all about the fingerprints, is that right?
12 that what you're sayin'?

13 A. So far as as that goes yes, Your Honor.

14 Q. What else is there? I hadn't heard anything else.

15 A. Well I have another one, uh, obviously lack of subject
16 matter jurisdiction under the Constitution Article One
17 that ---

18 Q. Why is that?

19 A. 'Cause without the grand jury, being indicted by a grand
20 jury the judge lacks subject matter jurisdiction impose a
21 sentence on me. And my trial counsel didn't properly point
22 out key discrepancies in the prosecution's case durin' the
23 closing arguments. Uh, there were some discrepancies in the
24 height and the weight. Uh, I believe the man in the video was
25 supposed to be 5'7, a hundred sixty, a hundred and seventy

ROGER EUGENE SHEPHARD - EXAMINATION BY THE COURT

1 pounds, it's in the transcript, and just there was a
2 inconsistency in the evidence. They forgot to test murder
3 weapon that possibly killed multiple people for fingerprints.
4 I've been in jail for three and a half years and then a cop
5 decides he's gonna write, he's gonna write a a whatever you
6 call it, had on a piece a paper, and, uh, say that he sold me
7 the firearm three and a half years ago. I've been on
8 America's Most Wanted for this case and .
9 te ---

10 Q. Yeah, what were ya doin' in Canada?

11 A. Well I was stationed in Fort Belvoir, Virginia just prior
12 to this incident and I have some friends up in Montreal and I
13 was goin' up there to play paintball and next thing ya know I
14 was bein' arrested.

15 Q. Oh, and then you confess to it up there?

16 A. Well if, uh, you call bein' in a a dark room where ya
17 can't see your hands in front of your face with no clothes
18 tellin' you that if you don't do that you're not gettin' outta
19 there.

20 Q. Did you tell that to your lawyer?

21 A. Yes, sir, I did. He advised me not to, uh, testify on
22 this. Even to this day I can't see very well from that.

23 Q. Well so you're -- and then this video that shows the
24 crime, ---

25 A. Yes, sir.

ROGER EUGENE SHEPHARD - EXAMINATION BY THE COURT

1 Q. Okay. That was shown at trial, right?

2 A. Yes, sir, it was but the copy I was given to review
3 didn't show the same thing that the one at the trial showed.

4 Q. What was the difference?

5 A. Well there were some things that were cut and pasted and
6 edited beside the one that I received but it didn't seem to be
7 those exact problems but they showed some some things that
8 just didn't seem right to me, Your Honor.

9 Q. Like what? Need to know. Now's your chance, you gotta
10 say it now?

11 A. Okay. I'm a little disorganized, I've had my legal work
12 taken. I have to ---

13 (Cross-talk:)

14 Q. You've said that, I've heard that.

15 A. Basically there's a thing where it kind of rewinds some.
16 You know, the the man's here at the desk and he's doin'
17 somethin' it rewinds and ---

18 Q. The man, who you talkin' about?

19 A. The the suspect in the video. And now he's at a
20 different spot in the same place and the people are gone that
21 were in there, there's different people in there so there's
22 time that's been cut outta this somewhere.

23 Q. So witnesses in there at the time a the murder?

24 A. I'm not sure about that but, I mean, they've got like a
25 hour and fifteen minute video of where he was supposed to be

ROGER EUGENE SHEPHARD - EXAMINATION BY THE COURT

1 in there, no time and date of course.

2 Q. Well the jury got to see the whole thing, right?

3 A. Yes, sir.

4 Q. They got to see the unedited version is whatch, is that
5 right?

6 A. I'm supposing that's what it is.

7 Q. Okay. Alright, so and you're, I take it you you're
8 claimin' that you're actually innocent, is that right?

9 A. Yes, sir, I guess I am.

10 THE COURT: Okay. Ya'll got any other questions?

11 MR. ARIAIL: No, Your Honor.

12 MS. RATIGAN: No, Your Honor.

13 EXAMINATION BY THE COURT:

14 Q. Okay. Anything else you need to say?

15 A. Yes, sir. Uh, well I wanted to, uh, bring up the
16 prejudice as well. I was -- it's it's in my transcript as
17 well in my PCR ---

18 Q. What's that?

19 A. --- I have a copy of.

20 Q. What's that?

21 A. Uh, prejudiced. I was prejudiced because I'm sitting in
22 court with handcuffs, shackles, leather chains, leg irons and
23 a shock belt for the jury to see and, Your Honor, I don't

24 really know what this falls under, I hope you'll indulge me

25 but ---

ROGER EUGENE SHEPHARD - EXAMINATION BY THE COURT

1 Q. You got any proof a that?

2 A. Yes, sir, I do, it's in my transcript in my bag over
3 there.

4 Q. Okay?

5 A. In fact, Mr. Young, uh, objected to it on several
6 occasions.

7 MS. RATIGAN: It's on Page 14, Your Honor.

8 THE COURT: Fourteen, okay.

9 A. Can I continue?

10 Q. Well let me just read this little part right here.

11 (Pause.)

12 A. Yes, sir.

13 Q. Well Mr. DeJong, uh, obviously was very adamant his
14 position that you be, uh, shackles be removed, so what did he
15 do wrong with respect to that?

16 A. Oh, he didn't do anything anything wrong respect to
17 that.

18 Q. Okay.

19 A. My argument was with the Court that I was prejudiced in
20 fronta the jury.

21 Q. Yeah, well, okay. Alright, anything -- any other
22 questions, anything else you need to tell me?

23 A. Uh, yes, sir. I also have another claim that, okay,
24 under the South Carolina Constitution a Article One states
25 that due process requires; one, adequate notice and; two,

ROGER EUGENE SHEPHARD - EXAMINATION BY THE COURT

1 adequate opportunity for a hearing and South Carolina Criminal
2 Procedures Rule 2, A defendant charged with a crime not
3 triable by a magistrate may request a preliminary hearing,
4 it's to be held within ten days following the request. Upon
5 my arrival in Pickens County I was placed in a detox drunk
6 cell five by seven which I spent one year there with no pen
7 and paper for the first two weeks or so, I'm not gonna say
8 that I know exactly how many days, ---

9 Q. Um-hum.

10 A. --- but now it makes sense a little later on because now
11 I don't, I don't have the opportunity for a preliminary
12 hearing even though I definitely wanted that. They told me
13 that Captain Patterson's it was his command, said I wasn't
14 allowed to have a pen or paper.

15 Q. Who's Captain Patterson?

16 A. Uh, he's in charge of the Pickens LEC Center.

17 Q. Okay. You have any proof a that? You you said you heard
18 that's what it was said?

19 A. Well that's what Lieutenant Galloway told me. I have no
20 actual physical proof.

21 Q. Well were you denied any discovery? Is there some
22 discovery that you didn't have you didn't get?

23 A. No, sir, I just didn't get my due process of law.

24 Q. Okay. Alright, anything else?

25 A. Yes, sir, one more thing.

ROGER EUGENE SHEPHARD - EXAMINATION BY THE COURT

1 Q. Alright.

2 A. Uh, this is malicious prosecution by the prosecutor. I
3 notice that I'm sittin' here in front of a jury with handcuffs
4 and shackles and shock belt so the jury can see it. They're
5 they're lookin' to see what the stuff is on there, it's in my
6 transcript as well, even in my PCR, and everyone in the trial
7 pointed me out: ATF agents from New York that's never
8 particularly saw my face, Yes, sir, that that's Mr. Shephard
9 over there. Everyone pointed me out except for the witness in
10 the case that saw me, saw whoever this was and she described a
11 totally and completely different man from what I look like
12 physically.

13 Q. Okay, those guys was identified you as being who you
14 were, right?

15 A. Yes, sir.

16 Q. Well they didn't identify you as --- they didn't claim to
17 be witnesses to the crime, did they?

18 A. No, they did not but my point was that I'm sittin' here
19 in front of a jury with handcuffs and shackles, this man's
20 like, Yes, sir, I'm the coroner of Greenville County, and, Oh,
21 that's Mr. Shephard right there, this man died boldly from a
22 gunshot that went through both of his lungs and his heart;
23 ye -- yes, sir, I'm I'm I'm the fingerprint expert, that's Mr.
24 Shephard right there, we found fingerprints on his DD4473 Form
25 that matched Mr. Shephard's, but what I'm not telling' you is

ROGER EUGENE SHEPHARD - EXAMINATION BY THE COURT

1 that if you actually look at the evidence it proves that it
2 couldn't even have been me.

3 Q. Yeah, okay.

4 A. That's my argument.

5 Q. Alright, well great. Thank you very much.

6 A. (Laughs.) Okay, uh, step down?

7 Q. Yes, be careful.

8 (Whereupon, the applicant left the stand.)

9 MR. ARIAIL: Your Honor, that's our case.

10 THE COURT: Alright.

11 MS. RATIGAN: Your Honor, State would call Mr. DeJong.

12 (Whereupon, the witness came forward.)

13 THE CLERK: Place your left hand on the Bible, raise your
14 right hand, please.

15 JOHN WILLIAM DEJONG, having
16 been first duly sworn, testified as follows:

17 THE CLERK: State your full name for the record.

18 THE WITNESS: John, J-O-H-N, William W-I-L-L-I-A-M,
19 DeJong, capital D-E capital J-O-N-G.

20 THE CLERK: Please be seated.

21 THE WITNESS: Thank you, ma'am.

22 THE COURT: How do you spell that last name?

23 (Laughter.)

24 THE WITNESS: I don't know D-E capital J-O-N-G.

25 THE COURT: Alright, thank you.

JOHN WILLIAM DEJONG - DIRECT EXAMINATION BY MS. RATIGAN

1 DIRECT EXAMINATION BY MS. RATIGAN:

2 Q. Mr DeJong, were you appointed to Mr. Shephard's case?

3 A. I was.

4 Q. Did you file the usual, uh, Brady and Rule 5 motions?

5 A. I did.

6 Q. Did you receive those materials from the State?

7 A. I did.

8 Q. Did you review them with Mr. Shephard?

9 A. I did on more than one occasion I believe.

10 Q. Was the -- in part a the discovery was there a confession
11 obtained, uh, by the Montreal police?

12 A. That came on a CD disc that's what you call, I believe it
13 was a audio/video confession.

14 Q. And did you review that, uh, that confession with
15 Mr. Shephard?

16 A. I did.

17 Q. Could you review with him the impact that that would have
18 on your case at trial?

19 A. We talked about that in light along with him testifyin'
20 that we would have to have a separate hearing on that if the
21 judge found the voluntariness, etcetera under Miranda that it
22 would be admissible but even though that may be admissible,
23 uh, he still could not be forced to testify at trial.

24 Q. Did Mr. Shephard tell you the circumstances behind that
25 confession from his point a view?

JOHN WILLIAM DEJONG - DIRECT EXAMINATION BY MS. RATIGAN

1 A. He did, yes.

2 Q. Okay. And you did in fact try and have that sequest at
3 trial?

4 A. I believe I did as memory serves me, yes.

5 Q. And in the discovery materials, did you also receive a
6 tape of a phone call between Mr. Harley and Mr. Harley Kelly
7 and, uh, your client?

8 A. I did. That doesn't stick in my mind quite as much as
9 the actual video from the pawn shop and the confession but I
10 believe I I have that.

11 Q. And did you discuss with Mr. Shephard again the impact
12 that that recording would have on your case?

13 A. We did. That was more of a cumulative effect basic in
14 light of the video from the pawn shop and then the taped
15 confession in Canada.

16 Q. Okay. And as part of the confession that he, uh, gave in
17 Canada, did he direct law enforcement to where the guns had
18 been hidden, do you recall?

19 A. As memory serves me it was not directly but he gave them
20 a general idea as to where the guns were located. Believe
21 they were slightly on this side, that is, United States side
22 of the Canadian boarder.

23 Q. Okay. And were you aware in the discovery materials that
24 a Donald Thompson would be testifying that he sold the
25 eventual murder weapon to your client?

JOHN WILLIAM DEJONG - DIRECT EXAMINATION BY MS. RATIGAN

1 A. Yes.

2 Q. Okay. And you discussed that again with Mr. Shephard?

3 A. I did.

4 Q. Now the pawn shop video, I believe you objected at trial
5 to something that Mr. Shephard was testifying to today just
6 that the video to you seemed different, ---

7 A. Correct.

8 Q. --- do you recall that being an issue?

9 A. I remember having raised that issue yes, ma'am.

10 Q. And do you recall what the outcome of of that was at
11 trial why there was some kind of difference, do you recall?

12 A. I think there was some testimony by some officer or
13 somethin' that as to the reason for the jumpiness of the video
14 but, uh, certainly there was, uh, how do I put it, certainly
15 no testimony or anything that the tape had been edited.

16 Q. But you did present that issue to the Court?

17 A. Yes.

18 Q. Okay. And did you watch the video with Mr. Shephard?

19 A. I did. You're speaking of the pawn shop video?

20 Q. Yes, sir.

21 A. Yes, ma'am, I think on more than one occasion.

22 Q. Okay. And did you review the fingerprint evidence
23 obtained by the State?

24 A. I did.

25 Q. Did you see any irregularities or any discrepancies with

JOHN WILLIAM DEJONG - DIRECT EXAMINATION BY MS. RATIGAN

1 that, uh, with the print evidence when you looked at the video
2 from the pawn shop?

3 A. I did not. I could, I could understand but could not
4 quite ever fully understand Mr. Shephard's argument and indeed
5 in listening to him today I think I understand his argument
6 but not fully.

7 Q. Okay. Did you see any reason to object to the
8 fingerprint evidence at trial?

9 A. No.

10 Q. Okay. Okay, prior to trial, did you discuss with
11 Mr. Shephard his right to testify?

12 A. I did and I always share with my clients and I know I
13 shared with Mr. Shephard prior to trial we never made the
14 decision whether or not he will testify, he has to understand
15 his right to testify, understand his right not to testify. I
16 shared with him prior to the close of the State's case, I
17 would ask for a recess at which time the decision would be
18 made by him whether he were to testify or not.

19 Q. And did that happen in this case?

20 A. It did.

21 Q. And you recall discussing the the pros and cons of
22 whether or not he should testify?

23 A. I do.

24 Q. Okay. Did you make a recommendation one way or the other
25 about whether or not Mr. Shephard testified?

JOHN WILLIAM DEJONG - DIRECT EXAMINATION BY MS. RATIGAN

1 A. A recommendation of such, no. When you get into the pros
2 and cons, obviously I shared with him that he certainly had a
3 right to testify, tell his side a the story, he certainly
4 would be subject to cross-examination by the solicitor and
5 that he would be required to answer those questions. I did
6 further discuss with him that in the event he did testify we
7 would lose last argument to the jury. We presented no other
8 evidence.

9 Q. Okay. And so ultimately Mr. Shephard decided he would
10 not testify?

11 A. That is correct.

12 Q. Okay. Now the issue about the shackles, I believe Judge
13 Miller has pointed out as in the transcript you did object to
14 him going to trial in the shackles?

15 A. I think I objected on the first day and then later on I
16 think the clerk, I referred to it as "butcher paper" draped.
17 Initially they were only gonna drape defense counsel table and
18 I said no, no, no, no, you're -- that only calls attention to
19 something going on so I think the first day the, uh, tables
20 were draped with which I refer to as "butcher paper" just
21 white, white paper. I think the issue was raised again on the
22 second day, I don't know if that was on the record or not, but
23 on the second day we came in the the again, what I'm referring
24 to as "butcher paper" had been taken down and I believe the
25 tables were then draped with some blue material if I'm not

JOHN WILLIAM DEJONG - CROSS-EXAMINATION BY MR. ARIAIL

1 mistaken which again I argued was probly more prejudicial in
2 my opinion than leaving the butcher paper up 'cause it was
3 simply drawing attention to something going on around the
4 table.

5 Q. In your opinion did you adequately preserve that issue,
6 the prejudice issue foꝛ the Court?

7 A. Thought I had, I ---

8 Q. Okay.

9 A. --- didn't know of any other time to preserve that
10 issue.

11 Q. Okay.

12 MS. RATIGAN: That's all I have, Your Honor.

13 THE COURT: Cross?

14 CROSS-EXAMINATION BY MR. ARIAIL:

15 Q. Alright. Mr. DeJong, just a few questions in regards to
16 this. Uh, the grand jury issue that you heard us arguin'
17 about in the beginnin', did you have ever have a discussion
18 with Mr. Shephard in regards to reviewing that grand jury
19 impaneling documents or anything like that?

20 A. I don't know that I did, Mr. Airial but I'm inclined to
21 think that I did because -- oh, I thought I had a dog ear in
22 my transcript. I think looking at, beginnin' on page probly
23 around Page 18 of the transcript there was some issue'

24 raised ---

25 Q. Okay.

JOHN WILLIAM DEJONG - CROSS-EXAMINATION BY MR. ARIAIL

1 A. --- about the indictments, now some not to the extent
2 that Mr. Shephard has raised in this PCR ---

3 Q. Right.

4 A. --- as I understand it but there was some argument over
5 the irregularity of the indictments ---

6 Q. Right.

7 A. --- at trial.

8 Q. That was more of a notice issue I believe, is that ---

9 A. I think ---

10 Q. --- correct?

11 A. --- it was, yes.

12 Q. Okay. Was there ever a conversation with you and
13 Mr. Shephard in regards to your reviewing those documents and
14 it showing that he was never indicted?

15 A. I do not remember such a conversation. I can't say it
16 did not happen but I cannot remember it.

17 Q. Okay. Well guess next question would be if you had known
18 of that or had information about that you would have objected
19 to that clearly at trial, correct?

20 A. Yes.

21 Q. Okay. So did he, uh, to best a your knowledge you can't
22 recall a conversation where he said this was an issue.

23 A. I cannot.

24 Q. Have you found since that time that this is an issue or
25 anything showing he was never indicted?

JOHN WILLIAM DEJONG - CROSS-EXAMINATION BY MR. ARIAIL

1 A. No.

2 Q. Okay. Now in regards to his testimony, uh, or his lack
3 of testimony not testify in this matter, did you go over that
4 fully with him and tell him how I guess it would play with his
5 confession and I -- after that came in?

6 A. Yeah, I don't know that I addressed it so much from his
7 confession as more from him being subject to cross-examination
8 by the solicitor and then of course the video confession was
9 there but I don't know that I played one off against the other
10 in trying to talk to him about his right to testify.

11 Q. Do you think he was of sound mind to understand what was
12 goin' on durin' this time?

13 A. Just to take a a moment, I apologize, Your Honor. This
14 is one of the most difficult factual cases I have ever tried
15 in my life, uh, probly go down as the most difficult. I had
16 Dr. Paul Baker Wood who is a clinical psychologist meet with
17 Mr. Shephard and I -- Dr. Paul Baker Wood has been around
18 Pickens County for years, you may or may not be familiar with
19 him. Dr. Wood came back and shared with me that he believed
20 Mr. Shephard was competent although somewhat delusional, of
21 course he was not qualified as a clinical psychologist to get
22 into any real mental health issues. In talking with
23 Mr. Shephard, he made a good presentation, uh, some things
24 were a bit bizarre. I think in retrospect that I should have
25 requested both a competency and a criminal responsibility on

JOHN WILLIAM DEJONG - CROSS-EXAMINATION BY MR. ARIAIL

1 Mr. Shephard. I did not really and and I'm not a psychiatrist
2 so I still can't say but the the disalu -- uh, now I might
3 forget the word now, uh, but his delusions, that's the word
4 I'm looking for, kind of were driven home to me at the end a
5 this trial. Factually as I said I did not feel like I had
6 anything to work with defense. Jury saw the pawn shop video,
7 the jury saw the taped confession and as the jury was leaving
8 the courtroom to deliberate, I will never forget it as long as
9 I live, Mr. Shephard stood up and said, I feeling -- feel
10 really good about this, which on the face may not mean a great
11 deal but having sat through this trial I don't remember how
12 long the trial lasted and the evidence that was presented it
13 it really drove home a point to me. If I have any regrets or
14 any, have erred in any way in this case, I regret that I did
15 not have him evaluated.

16 Q. Okay. Now when you say Dr. Wood had evaluate, he just
17 did -- he didn't give you a full evaluation ---

18 A. No, he did not. I I just asked him to look at him, uh,
19 in his opinion more to see if he thought he could effectively
20 communicate with me in his own defense.

21 Q. Was there any discussion between you and Mr. Shephard as
22 whether or not he understood right from wrong or was
23 competent?

24 A. I I can't say there was, Mr. Ariail, because there was
25 nothing really...some clients we have that it becomes pretty

JOHN WILLIAM DEJONG -- CROSS-EXAMINATION BY MR. ARIAIL

1 obvious pretty quickly.

2 Q. Right.

3 A. (Coughed.) Excuse me, this was not one a those cases, so
4 it was very ---

5 Q. Okay.

6 A. --- difficult. Uh, ---

7 Q. Yeah, I guess my -- you've said this is one a the most
8 factually difficult cases you have ---

9 A. True.

10 Q. --- and normally if it's factually difficult clients
11 would understand, Look this is not gonna be successful. In
12 this case he appeared to have no idea this was not goin' his
13 direction even though you knew this was very difficult, is
14 that ---

15 A. End result when the jury left the courtroom, yes, ---

16 Q. Okay.

17 A. ---- that's my, that's my perception.

18 Q. Okay.

19 A. Okay.

20 Q. But well anything else that he said or any other
21 information you can give us in regards to his competency or
22 that time durin' trial? Is that all ya have?

23 A. And well frankly a competency issue I think he was probly
24 competent ---

25 Q. Yeah.

JOHN WILLIAM DEJONG - CROSS-EXAMINATION BY MR. ARIAIL

1 A. --- under *Blair*.

2 Q. Yeah.

3 A. The que -- real question I would have had was as to
4 criminal responsibility ---

5 Q. Right.

6 A. --- after the fact.

7 Q. Okay. So not gi -- guilty by reason of insanity, is
8 that ---

9 A. I ---

10 Q. --- what ---

11 A. --- I'm sorry.

12 Q. Not guilty by reason of insanity is that what you're ---

13 A. That would conceivably have been a possibility if I had
14 had him evaluated and it came back that way 'cause we know
15 Department of Mental Health kinda as a fox is guarding
16 henhouse so to speak but ---

17 Q. Right.

18 A. --- uh, nonetheless I di -- I did not have him
19 evaluated.

20 Q. Okay. Now the the fingerprint evidence I wanna go
21 through in regards to that a little bit. Is that, uh, did you
22 have a discussion with him in regards to the fingerprints or
23 lack a fingerprints on the documents the ones that he
24 referenced I guess on the back and the front of the the form?

25 A. We did and I think we had that conversation more than

JOHN WILLIAM DEJONG - CROSS-EXAMINATION BY MR. ARIAIL

1 once, ---

2 Q. Okay.

3 A. --- okay.

4 Q. Do you remember, uh, it I guess, uh, how you presented
5 that at trial or through cross-examination or if you drew
6 attention to that?

7 A. I don't know that I drew attention to it in
8 cross-examination, I did argue it I think in closing
9 argument.

10 Q. Okay. What was your and I know you're listen to his
11 position now what was your strategy in regards to how you're
12 gonna use that or what you were tryin' to do with those I
13 guess fingerprints not showin' up?

14 A. Uh, well the and the strategy there wa -- obviously the
15 jury saw the video so it was gonna be up to them to determine
16 whether or not the person they saw in the video and the person
17 they saw counsel table ---

18 Q. Right.

19 A. --- was one in the same person. Uh, the fingerprints I
20 think we we simply ar -- argued that from a point of view that
21 getting into the reasonable doubt and all a that, uh, whether
22 or not that was the fingerprinting was actually accurate if
23 that was the fingerprints or not. Think I had a dog ear or I
24 think that was argued, uh, I think on about Page 483 of the
25 transcript, uh, think we talk about, start talking about

JOHN WILLIAM DEJONG - CROSS-EXAMINATION BY MR. ARIAIL

1 fingerprints on Line, um, ---

2 THE COURT: Well ---

3 A. --- yeah, I I I'm sorry yes, Your Honor, mean to say that
4 yeah, but I think that's about when we started talking about
5 fingerprints. Prior to that we talked about all the people
6 going through the crime scene but, uh, not lay persons but ---

7 Q. Right.

8 A. --- I I think every law enforcement officer in Easley
9 have gone through that crime scene.

10 Q. Okay. Now the the video and from your recollection of
11 this he was indicating it was tampered with and I think you
12 said there was think the unedited version was played at trial,
13 is that correct?

14 A. My understanding the video that they took from the pawn
15 shop is the one that was shown.

16 Q. Okay. Now when you went over this confession there was a
17 question as to whether or not one of the officers in Canada
18 was under suspension, whether or not it had been taken
19 appropriate way, what discussions did you have with
20 Mr. Shephard in regards to that?

21 A. I don't know necessarily that I had any discussions with
22 him about that prior to trial.

23 Q. Um-hum.

24 A. Uh, uh, I don't know if I was aware of that before trial
25 or not. I think it came out shortly before trial ---

JOHN WILLIAM DEJONG - CROSS-EXAMINATION BY MR. ARIAIL

1 Q. Okay.

2 A. --- that one of the individuals wa -- that was involved
3 was under suspension, I think that was brought to the
4 attention of the jury.

5 Q. Right. Did you think that was sufficient grounds try to
6 get it suppressed or, uh, you know, ---

7 A. Well I don't know that I argued that or not. I argued
8 more in in terms of suppression was I think the fifth prong of
9 Miranda was was not presented as memory serves me, that is,
10 you have the right to stop answering questions at any time. I
11 think the first four prongs, if you will, ---

12 Q. Right.

13 A. --- of Miranda were given but I don't think the fifth was
14 was and a course I did argue that the Canadian law enforcement
15 officials did the Miranding and did the taking of the
16 statement ---

17 Q. Right.

18 A. --- rather than sending someone from this country to do
19 it.

20 Q. Okay.

21 MR. ARIAIL: Your Honor, I have no further questions.

22 THE COURT: Okay. Got ---

23 MS. RATIGAN: Just ---

24 THE COURT: --- anything else?

25 MS. RATIGAN: --- a couple a quick ones, Judge.

JOHN WILLIAM DEJONG - REDIRECT EXAMINATION BY MS. RATIGAN

1 REDIRECT EXAMINATION BY MS. RATIGAN:

2 Q. Did Mr. Shephard appear to understand your discussions
3 when you'd talk about the facts and the evidence?

4 A. He did.

5 Q. Would you say he was helpful in participating in his own
6 defense prior to trial?

7 A: To the extent possible in this case, yes.

8 Q. Okay. Did he ever indicate to you he did not understand
9 in either the evidence or the elements or or what was going
10 on?

11 A. I don't recall any such occasion.

12 Q. Did he ever tell you he had any kind of past mental
13 health or psychiatric history?

14 A. No and I tried to delve into that but I could not gather
15 that there had been any. Uh, I think Mr. Shephard had been in
16 the National Guard at one point in time, uh, we had most of
17 his National Guard records. I I couldn't glean anything of
18 that would indicate that he had a mental health history.

19 Q. Okay.

20 MS. RATIGAN: That's all I have, Your Honor.

21 EXAMINATION BY THE COURT:

22 Q. I seem to remember this case. He was in Canada and there
23 was some extradition questions, is that right?

24 A. That is correct, Your Honor. The the initial question
25 was whether or not he would be extradited. The Canadian

JOHN WILLIAM DEJONG-- EXAMINATION BY THE COURT

1 officials would not extradite or allow extradition until or
2 unless the State took the death penalty off a the table.

3 Q. So this this was a capital case and international
4 relations between the two countries ended up with the result
5 that Mr. Shephard would not face the death penalty, is that
6 right?

7 A. That is my understanding, Your Honor.

8 Q. Okay. And when you say the most factually difficult
9 case, I'm not sure I understand what you mean.

10 A. By that, Your Honor, the video from the pawn shop
11 actually showed the individual shooting the deceased, shooting
12 at the victim of the assault and battery with intent to
13 kill.

14 Q. Um-hum.

15 A. I mean, this isn't like I have eyewitness testimony ---

16 Q. So ---

17 A. --- to argue against and the confession on top a that,
18 uh, telling them where ---

19 Q. --- so ---

20 A. --- the guns ---

21 Q. --- when you ---

22 A. --- were.

23 Q. --- you say that you don't -- you mean the most factually
24 challenging from a defense perspective.

25 A. That would've been a better choice of words, yes, ---

JOHN WILLIAM DEJONG -- EXAMINATION BY THE COURT

1 Q. Oh, ---

2 A. --- Your Honor.

3 Q. --- yeah, I just, I didn't ---

4 A. That ---

5 Q. --- understand.

6 A. --- the the fact, it was factually challenging from the
7 defense point of view.

8 Q. Okay. I I don't have any other questions. How how long
9 you been practicin' law?

10 A. Oh, mercy, uh, licensed?

11 Q. Well you don't have to answer that.

12 A. I was a ---

13 Q. How long have you been public defender in Pickens County?

14 A. Uh, over fourteen ---

15 Q. Okay.

16 A. --- years, Your Honor.

17 Q. Okay. How many cases -- I seem to remember you havin' an
18 active caseload ten years ago of 900 cases, would that be
19 fair assessment?

20 A. It might well be, I ---

21 Q. So you've handled thousands of cases?

22 A. I have, Your Honor.

23 Q. Okay. And, uh, this was not your first first, uh, time
24 at the rodeo with respect to a murder case, was it?

25 A. No, sir, it was not.

MOTIONS AND MATTERS

1 THE COURT: Okay. Alright. I don't have any other
2 questions. Anything else?

3 MS. RATIGAN: No, Your Honor, and the ---

4 THE COURT: Thank ---

5 MS. RATIGAN: --- State would rest.

6 THE COURT: Alright, any anything in reply?

7 MR. ARIAIL: Uh, no, Your Honor, we just ask those
8 impaneling documents that you take that into consideration, be
9 able take a look at that in camera whatever we ---

10 THE COURT: Well no, uh, I mean, you can send 'em to me
11 if you want to but there's no reason to wait. A subject
12 matter jurisdiction's never waived so if he can prove, uh,
13 that that no indictment was issued but I'm sittin' here
14 lookin' at at the indictments and they're signed by the
15 foreperson. If he's got evidence, I mean, that he he can
16 always raise that but so at this point I, uh, Mr. Shephard,
17 I'm I'm gonna deny your application. I don't find that that,
18 uh, Mr. DeJong did anything that fell below a an objective
19 standard of reasonableness, uh, in your case and, uh, and
20 without that there's I don't even need to really go to the
21 second prong but I don't see that anything he did prejudiced
22 you and while there might be a, uh, you know, he he second
23 guesses himself with respect to getting a a McNaughtan, uh,
24 examination. Uh, PCRs are not granted because of hindsight
25 bein' 20/20 and, uh, I mean, he testified there was even he

MOTIONS AND MATTERS

1 went through your National Guard records, found no evidence
2 that would suggest that there was a mental health history and
3 there was nothin' to put him on notice to do what he now
4 wishes he had done, uh, so, uh, I I'm gonna respectfully deny
5 your application, okay.

6 MR. ARIAIL: Your Honor, if I can just ask one thing in
7 regards to, I understand the ruling of the Court, there was
8 any letter that was sent to my client by the clerk of court,
9 is there any way that I can ask him to duplicate that or see
10 if they have a copy in their file to see 'cause that's what
11 he's, I don't know if he's gonna find it at Lee County, uh,
12 I'm just tryin' to find some way that I can get that
13 information if it was sent to him so I can submit it as part
14 or be able to raise that issue.

15 THE COURT: Sure.

16 (Whereupon, a discussion was held off the record.)

17 THE COURT: Alright we're -- she's gonna go check, see
18 what she can find out but, uh, I -- that's that's my ruling.
19 If she finds sumtin' different, I'll reconsider my ruling.

20 MR. ARIAIL: Thank Your Honor.

21 MS. RATIGAN: Thank Your ---

22 THE COURT: Okay.

23 MS. RATIGAN: --- Honor.

24 (Whereupon, a discussion was held off the record.)

25 (Whereupon, the witness left the stand.)

MOTIONS AND MATTERS

1 (Pause.)

2 THE COURT: Alright, we're back on -- you ready, Maggie?

3 COURT REPORTER: I sure am.

4 THE COURT: Okay, back on the case of, uh, Shephard vs.
5 the State and I have requested the deputy clerk to get grand
6 jury information. We have a copy of the letter sent from the
7 clerk a court to Mr. Shephard dated May 23rd of 2012, uh,
8 he -- I will quote the letter, "Dear Mr. Shephard, I am in
9 receipt of your letter slash motion dated colon" and it's
10 blank, uh, and that is because a copy of Mr. Shephard's, uh,
11 letter is attached and it is not dated although it is clocked
12 by the clerk a court May 23rd 2012 at 11:23 a.m., next
13 sentence, "We had 15 grand jurors present on July 14, 2009,
14 there was a total of 59 cases presented on this day. There is
15 no record of time kept pertaining each case. I will place
16 your letter in the Court's file. If I or my staff can be of
17 further assistance, please contact us at the address above,"
18 signed by the clerk. Reviewing the July 14, 2009 grand jury
19 documents, uh, there were 15 members present, uh, at least 12
20 members voted in favor of all true bill indictments, uh, and
21 Mr. Shephard's case is included, uh, four indictments: uh,
22 murder, assault with intent to kill, armed robbery, possession
23 of a weapon during the commission of a crime, all true billed,
24 okay. So I believe that answers any questions that -- do you
25 have any, anything you need to respond to with respect to

MOTIONS AND MATTERS

1 that? Anything from the State?

2 MS. RATIGAN: No, Your Honor, that that'll be a court
3 exhibit?

4 THE COURT: Well I'm not makin' it, I'm not makin' ---

5 MS. RATIGAN: Okay.

6 THE COURT: --- these documents a court exhibit.

7 MS. RATIGAN: Okay.

8 THE COURT: I am representing that they are the do --
9 they are the record of the Court, uh, and, uh, I have read it
10 verbatim unless I made some slight slip of the tongue here in
11 pronunciation or somethin' so, alright.

12 MS. RATIGAN: Thank Your Honor.

13 THE COURT: And so with respect to that if you would
14 include that in the order that we reviewed it and, uh, there
15 is no valid ground, court has ruled based on that.

16 MS. RATIGAN: Thank you, Judge.

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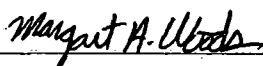
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1 CERTIFICATE OF REPORTER
2

3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on October 21, 2013 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 4 through 48, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

9 I further certify that I am neither attorney nor counsel
10 for, nor related to or employed by any of the parties
11 connected to the action, nor am I financially interested in
12 the action.

13 March 14, 2014

14
15 

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
 Roger Eugene Shepherd,)
 S.C.D.C. No. 338072,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-39-1100

2013 DEC 19 PM 12:49
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 1, 2012. The Respondent made its return on March 28, 2013. An evidentiary hearing into the matter was convened on October 21, 2013 at the Pickens County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, John W. DeJong, Esquire. The Court had before it the trial transcript, the Pickens County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the July 2009 term of the Pickens County Grand Jury for murder (2009-GS-39-0941), assault with intent to kill (AWIK) (2009-GS-39-0942), armed robbery (2009-GS-39-0943), and

possession of a weapon during commission of a violent crime (2009-GS-39-0944). He was represented by John W. DeJong, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On November 19, 2009, the Honorable G. Edward Welmaker sentenced the Applicant to consecutive terms of life without parole for murder and thirty years for armed robbery. Judge Welmaker levied concurrent sentences of ten years for AWIK and five years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Shepherd, Op. No. 2011-UP-337 (S.C. Ct. App. filed June 28, 2011).

ALLEGATIONS

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

1. Lack of subject matter jurisdiction.
2. Ineffective assistance of counsel.
3. "Sentence was in violation of the SC constitution."
4. Prejudice.

At the PCR hearing, the Applicant proceeded upon allegations of ineffective assistance of trial counsel and lack of subject matter jurisdiction (due to issues with the Grand Jury). This Court finds the Applicant has abandoned all other issues.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he and trial counsel reviewed all of the evidence (including the videotape, voicemail, confession, and fingerprint evidence) and how they would be used at trial. The Applicant stated he “basically” understood their conversations. The Applicant stated he was denied the opportunity to have a preliminary hearing. The Applicant stated the man on the

videotape held a piece of paper one way but that prints were found in a different place. The Applicant stated he mentioned this to trial counsel, who said he would address it in closing argument (but he did not). The Applicant also stated a different video was shown at trial. The Applicant stated he wanted to testify at trial in order to explain "the circumstances" but that trial counsel said he would look foolish and they would lose the final closing argument. The Applicant stated he was prejudiced because the "full facts" of the case were not known by the jury. The Applicant also stated he was prejudiced because he was in shackles during the trial.

Trial counsel testified he filed discovery motions with the State, received those materials, and reviewed them with the Applicant more than once. Trial counsel testified they reviewed the impact of the following evidence on the case: the videotape from the scene, the confession, the recorded conversation with Harley, and Donald Thompson's testimony. Trial counsel testified Dr. Paul Baker (a clinical psychologist) met with the Applicant and said he was competent but somewhat delusional. Trial counsel testified the Applicant appeared to understand their discussions and participated in his defense. Trial counsel testified the Applicant never said he did not understand their discussions. Trial counsel testified he had the Applicant's military records and there was no indication of a prior mental health issue. Trial counsel testified that he objected at trial to the videotape - arguing it was different - but that there was no evidence the tape had been edited. Trial counsel also testified that he recalled the Applicant explaining his concerns about the placement of the fingerprints but that he did not really understand his argument. Trial counsel testified he discussed the right to testify with the Applicant before trial. Trial counsel testified they discussed the advantages and disadvantages of testifying and that he did not make a recommendation as to what the Applicant should do. Trial counsel testified he objected on the first day of trial that the Applicant was wearing shackles. Trial counsel testified

the tables were draped with paper the first day and cloth the second day and that he argued this change was prejudicial because it drew attention.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving he did not understand his discussions with trial counsel. This Court notes both the Applicant and trial counsel testified they reviewed the State's evidence and how it would be used at trial. While the Applicant stated he did not understand some of these discussions, trial counsel testified the Applicant never indicated this to him. Trial counsel also testified the Applicant appeared to understand their conversations. This Court finds trial counsel's testimony is credible. This Court also finds the Applicant has failed to present any evidence that he was suffering from a physical or mental condition that would have prevented him from understanding the circumstances he was facing. Rather, trial counsel testified the Applicant's records did not indicate any prior mental health issues. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (finding that, in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested a preliminary hearing. This Court notes a defendant has no constitutional right to a preliminary hearing. State v. Keenan, 278 S.C. 361, 365, 296 S.E.2d 676, 678 (1982). This Court finds the Applicant to prove he was prejudiced by a lack of a preliminary hearing in his case.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly challenge the videotape or fingerprint evidence at trial. The Applicant argued the videotape at trial was not the same as the videotape they had reviewed. The Applicant also argued trial counsel failed to argue to the jury that the description of where the fingerprints were on the papers did not match with the videotaped image of where the person held the documents. Trial counsel moved to suppress the copy of the videotape and argued it appeared to have been edited. (Trial transcript, pp.58-62). Trial counsel later argued that he would not object to the original tape being admitted but would still object to the copy. (Trial transcript, pp.153-56). This Court finds the Applicant failed to provide any evidence or testimony that the videotape from the pawn shop had, in fact, been altered in some way. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814. This Court also notes the Applicant failed to present either the videotape or documents in order to demonstrate his issue about the fingerprint testimony. As such, this Court cannot speculate as to whether trial counsel should have pursued a different strategy with regard to those items. Cf. Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving trial counsel somehow misadvised him about his right to testify at trial. Trial counsel testified he discussed the risks and advantages of testifying and did not make a recommendation to the Applicant. The trial judge also discussed the Applicant's right to testify and the potential hazards therein. (Trial transcript, pp.468-71). After a brief recess, trial counsel informed the trial judge that the Applicant chose not to testify and the Applicant said this was correct. (Trial transcript, p.471).

It is clear that the Applicant's decision not to testify was both informed and voluntary. See Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) (holding a defendant's decision to testify or not must be made with knowledge of the consequences of either choice).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly challenge the fact that he was wearing shackles at his trial. This Court has examined the trial record and notes that trial counsel objected various times to: the existence of the shackles, the efforts used to hide the shackles from the jury, and the prejudice to the Applicant. This Court notes the trial judge denied all of trial counsel's objections. As such, they were properly preserved for appellate review. The Court of Appeals reviewed this case pursuant to Anders and clearly did not believe this was a meritorious issue. See State v. McKennedy, 348 S.C. 270, 279, 559 S.E.2d 850, 855 (2002) ("The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal.").

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Subject Matter Jurisdiction

The Applicant stated he wrote a letter to the Clerk of Court after his trial and asked about the Grand Jury. The Applicant stated he received a letter in return which listed the names of the cases that were indicted and that his case was not on that list. The Applicant also stated the letter noted there were 15 grand jurors during that term. The Applicant argued the trial court did not have subject matter jurisdiction.

The record was re-opened after the conclusion of this PCR hearing.² At that time, this Court received information on the issue from an employee of the Clerk of Court's office (Cheryl Watson). Watson stated there was a copy in the file of the letter from the Applicant (and the reply from the clerk's office) that the Applicant referred to. Watson stated the July 14, 2009 Grand Jury documents indicated 15 members of the jury were present and at least 12 members voted in favor of all true-billed indictments. Watson stated the Applicant's four indictments were listed as true-billed. This Court finds the Applicant failed to meet his burden of proving either that the Grand Jury did not properly issue indictments or that the trial court did not have jurisdiction to hear his case.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

² This occurred the same day as the hearing and the Applicant, his attorney, and the attorney for the Respondent were all present.

CONCLUSION

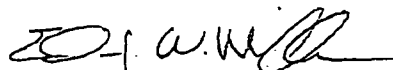
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 12 day of December, 2013.


 Edward W. Miller
 Presiding Judge
 Thirteenth Judicial Circuit

Greenville, South Carolina.

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

2013 DEC 16 PM 12 49

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Roger Shepherd,

Appellant.

Appeal From Pickens County
G. Edward Welmaker, Circuit Court Judge

Unpublished Opinion No. 2011-UP-337
Submitted June 1, 2011 – Filed June 28, 2011

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia,
for Appellant.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, and Assistant
Deputy Attorney General Salley W. Elliott, all of

Columbia; and Solicitor William W. Wilkins, III, of Greenville, for Respondent.

PER CURIAM: Roger Shepherd appeals his conviction for armed robbery, assault with intent to kill, murder, and possession of a weapon during the commission of a crime, arguing the trial court erred in giving an incorrect malice charge. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

HUFF and KONDUROS, JJ., and GOOLSBY, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

WITNESSES

D Patterson

Easley Police Department

6/6/2008

DOCKET NO. 2009-GS-39-0941

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

VS.

ROGER EUGENE SHEPHARD

ARREST WARRANT NUMBER

K097091

ACTION OF GRAND JURY

TRUE BILL

Date JUL 14 2009

Henry M. Bunker
Foreperson of Grand Jury

VERDICT

0116

Indictment for

MURDER

VIOLATION § 16-03-0010, 0020

Robert M. Davis
Foreperson of Petit Jury
Date: 11-19-09

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That ROGER EUGENE SHEPHARD did in Pickens County, on or about the 15th day of June, 2006, unlawfully and with malice aforethought kill JOHN BRUIN by means of shooting the victim in the chest, and that JOHN BRUIN died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

W 2006-2348
ARREST WARRANT

K-097094

STATE OF SOUTH CAROLINA
 County/ Municipality of
CITY OF EASLEY

THE STATE
against

ROGER EUGENE SHEPARD

Address: WILLIAMSTON, SC 29637

Phone: SSN: 5111 Weight: 190
Sex: Race: Height: 5111

DL State: SC DL #: Agency ORI#: SC03903000
Prosecuting Agency: EASLEY POLICE DEPARTMENT

Prosecuting Officer: CAPT. D E PATTERSON

Offense: POSSESSION OF A FIREARM DURING THE COMMISSIO
N OF A VIOLENT CRIME Offense Code: 549

Code/Ordinance Sec. 16-23-490

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Date: Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant Roger Eugene Shepard
on 6-6-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
D. S. WALSH, ADMINISTRATIVE JUDGE
Post Office Box 466

Easley, SC 29641
864-855-7915

5965

STATE OF SOUTH CAROLINA
 County/ Municipality of
CITY OF EASLEY

AFFIDAVIT

Personally appeared before me the affiant CAPT. D E PATTERSON who

being duly sworn deposes and says that defendant ROGER EUGENE SHEPARD
did within this county and state on June 15, 2006 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of CITY OF EASLEY)

DESCRIPTION OF OFFENSE: POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

- 1. POLICE REPORT AND INVESTIGATIVE NOTES
- 2. THE ACCUSED IS POSITIVELY IDENTIFIED AS ROGER EUGENE SHEPARD
- 3. FINGER PRINTS IDENTIFICATION FROM LATENT PRINTS LISTED AT THE INCIDENT LOCATION
- 4. SURVEILLANCE VIDEO OF THE ACTIONS OF THE ACCUSED

Signature of Affiant

STATE OF SOUTH CAROLINA
 County/ Municipality of
CITY OF EASLEY

Affiant's Address: 220 W/N MAIN STREET
EASLEY SC 29648
Affiant's Telephone: 864-839-1025

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
I appearing from the above affidavit that there are reasonable grounds to believe that
on June 15, 2006 defendant ROGER EUGENE SHEPARD
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of CITY OF EASLEY) as set forth below:

DESCRIPTION OF OFFENSE: POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of his execution, or as soon thereafter as is practicable.
Sworn to and subscribed before me
on 06/15/2006

Signature of Issuing Judge
Judge Code: 6634

Judge's Address: Post Office Box 466
Easley, SC 29641
Judge's Telephone: 864-855-7915
Issuing Court: Magistrate Municipal Circuit

ORIGINAL

K-097094

COUNTY OF Pickens
 STATE VS.
Roger Eugene Shephard
 AKA: Roger Eugene Shephard
 Age: W Sex: M Age: 24
 DOB: 03-12-1980 SS#: 1-1-1-1-1-1
 Address: Williamston, SC 29697
 DL#: SID#: 301520970

INDICTMENT/CASE#: 2009GS3900941
 A/W#: K097091
 Date of Offense: 6/15/2006
 S.C. Code § : 16-03-0010, 0020
 CDR Code #: 0116

SENTENCE SHEET

30 years - life

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 Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST: Munson SC Bar# 64040 Defendant JORN W. DEJONG SC Bar# 001670
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of Life w/o P.P.R. etc 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: 2009 GS 39-00943
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ plus 20% fee: \$
 Payment Terms:
 set by SCDPPPS

PTUP
 days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other:

Recipient:

*Fine:	\$	<u> </u>
§ 14-1-206 (Assessments 107.5 %)	\$	<u> </u>
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u> </u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u> </u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u> </u>
§ 47.12 (Public Def/Prob)	\$500	\$ <u> </u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$100	\$ <u> </u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ <u> </u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u> </u>
§ 90.7 (SCCJA Surcharge)	\$5	\$ <u>500</u>
% to County (if paid in installments)	\$	\$ <u>9.90</u>
TOTAL	\$	\$ <u>133.90</u>

Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Harold P. Welborn, Jr.
 Court Reporter: Danette Hanks
 SCCA/217 (06/2009)

PRESIDING JUDGE [Signature]
 Judge Code: 2-3-13-17
 Sentence Date: 11-19-09

WITNESSES

D Patterson

Easley Police Department

6/6/2008

DOCKET NO. 2009-GS-39-

JMM

0942

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

VS.

ROGER EUGENE SHEPHARD

ARREST WARRANT NUMBER

K097092

ACTION OF GRAND JURY

TRUE BILL

Date JUL 14 2009

Foreperson of Grand Jury

Henry M. Barber

VERDICT

0768

Indictment for

ASSAULT WITH INTENT TO KILL

VIOLATION § C/L, 17-25-0030

Paula M. Parn 11-19-09
Foreperson of Petit Jury Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
ASSAULT WITH INTENT TO KILL

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That ROGER EUGENE SHEPHARD did in Pickens County, on or about the 15th day of June, 2006, with malice aforethought commit an assault upon BETTY BRUIN and the defendant had the apparent present ability to complete the act. This is in violation of the Common Law of the State of South Carolina.

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



SOLICITOR

ARREST WARRANT 2006-2348

K-097091

STATE OF SOUTH CAROLINA
 County/ Municipality of
CITY OF EASLEY

THE STATE
against

ROGER EUGENE SHEPARD

Address: WILLIAMSTON, SC 29697

Phone: SSN: DL State: SC ni #:

Sex: M Race: Y Height: 5'11" Weight: 190

DOB: Agency ORI#: SC03903000

Prosecuting Agency: EASLEY POLICE DEPARTMENT

Prosecuting Officer: CAPT. D E PATTERSON

Offense: MURDER Offense Code: 116

Code/Ordinance Sec. 16-3-10

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Date: Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant Roger Eugene Shepard on 6-15-06

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

D. S. WALSH, ADMINISTRATIVE JUDGE
Post Office Box 466

Easley, SC 29641
4-855-7915

009

STATE OF SOUTH CAROLINA
 County/ Municipality of
CITY OF EASLEY

AFFIDAVIT

Personally appeared before me the affiant CAPT. D E PATTERSON

being duly sworn deposes and says that defendant ROGER EUGENE SHEPARD who did within this county and state on June 15, 2006 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of CITY OF EASLEY) in the following particulars:

DESCRIPTION OF OFFENSE: MURDER

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE ACCUSED DID WILLFULLY TAKE THE LIFE OF JOHN BRUN WHILE AT 604 WEST MAIN STREET WITHIN THE CITY LIMITS OF EASLEY, S.C. THE ACCUSED DID SHOOT THE VICTIM IN THE CHEST WHILE HAVING MALICE AFORETHOUGHT.

- POLICE REPORT AND INVESTIGATIVE NOTES
- THE ACCUSED IS POSITIVELY IDENTIFIED AS ROGER EUGENE SHEPARD
- FINGER PRINTS IDENTIFICATION FROM LATENT PRINTS LIFTED AT THE INCIDENT LOCATION
- SURVEILLANCE VIDEO OF THE ACTIONS OF THE ACCUSED

Signature of Affiant

STATE OF SOUTH CAROLINA
 County/ Municipality of
CITY OF EASLEY

Affiant's Address: 220 W. MAIN STREET
Easley, SC 29640
Affiant's Telephone: 864-859-4025

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on June 15, 2006 defendant ROGER EUGENE SHEPARD did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of CITY OF EASLEY) as set forth below.

DESCRIPTION OF OFFENSE: MURDER

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 06/15/2006

Signature of Issuing Judge (L.S.)

Judge Code: 6634

Judge's Address: Post Office Box 466
Easley, SC 29641

Judge's Telephone: 864-855-7915
Issuing Court: Magistrate Municipal Circuit

ORIGINAL

K-097099

COUNTY OF Pickens
 STATE VS.
Roger Eugene Shephard
 AKA: Roger Eugene Shephard
 Race: W Sex: M Age: 24
 DOB: SS#:
 Address: Williamston, SC 29697
 DL#: SID#: SC01520970

INDICTMENT/CASE#: 2009GS3900942
 A/W#: K097092
 Date of Offense: 6/15/2006
 S.C. Code § : C/L, 17-25-0030
 CDR Code #: 0768

SENTENCE SHEET 0-10 years

In disposition of the said indictment comes now the Defendant who was TO: Assault / Assault with intent to kill (AWIK)

CONVICTED OF or PLEADS

in violation of § C/L, 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0768
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST: 64040

Munson SC Bar# Defendant Attorney for Defendant SC Bar# 001630
JOHN W. DETONG

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 10 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: AR 2009 GS 39 - 00943
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
§ 47.12 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§ 90.7 (SCCIA Surcharge)	\$5	\$ 5.00
% to County (if paid in installments)		\$ 390
TOTAL		\$ 133.90

_____ 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, §47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Hank P. Welborn, Jr.
 Court Reporter: Denette Hanks
 SCCA/217 (06/2009)

PRESIDING JUDGE [Signature]
 Judge Code: 37
 Sentence Date: 11-19-09

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
POSSESSION OF A WEAPON DURING THE COMMISSION OF A
CRIME

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That ROGER EUGENE SHEPHARD did in Pickens County, on or about the 15th day of June, 2006, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: armed robbery and murder. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

309
WITNESSES

D Patterson

Easley Police Department

6/6/2008

ARREST WARRANT NUMBER
K097094

ACTION OF GRAND JURY

TRUE BILL

Date JUL 14 2009

Henry M. Burre
Foreperson of Grand Jury

VERDICT

Arden W. Gorman
Foreperson of Petit Jury
Date: 11-19-09

DOCKET NO. 2009-GS-39-0944

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

VS.

ROGER EUGENE SHEPHARD

Indictment for
0549

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

ARREST WARRANT 2006-2348

K-097093

STATE OF SOUTH CAROLINA

County/ Municipality of CITY OF EASLEY

THE STATE against

ROGER EUGENE SHERMAN

Address: WILLIAMSTON, SC 29697

Phone: SSN: DL State: SC ni #:

Sex: M Race: Y Height: 5'11" Weight: 190

DOB: Agency ORI#: SC03903000

Prosecuting Agency: EASLEY POLICE DEPARTMENT

Prosecuting Officer: CAPT. D R PATTERSON

Offense: ARMED ROBBERY

Offense Code: 2V

Code/Ordinance Sec: 20-11-330

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant Roger Eugene Sherman on 6/16/2006

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

D. S. WALSH, ADMINISTRATIVE JUDGE

Post Office Box 466

Easley, SC 29641

864-855-7915

604

STATE OF SOUTH CAROLINA County/ Municipality of CITY OF EASLEY

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SOCA 618

Personally appeared before me the affiant CAPT. D R PATTERSON who being duly sworn deposes and says that defendant ROGER EUGENE SHERMAN did within this county and state on June 15, 2006 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of CITY OF EASLEY) in the following particulars: ARMED ROBBERY

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: THE ACCUSED DID WILLFULLY AND DELIBERATELY TAKE, REMOVE AND CARRY AWAY ITEMS OF PERSONALITY FROM 684 WEST MAIN STREET WITHIN THE CITY LIMITS OF EASLEY, S.C. WITH THE INTENT TO DEPRIVE THE OWNER OF CONTROL AND POSSESSION AND WHILE BEING IN POSSESSION OF A FIREARM.

- 1. POLICE REPORT AND INVESTIGATIVE NOTES
2. THE ACCUSED IS POSITIVELY IDENTIFIED AS ROGER EUGENE SHERMAN
3. FINGER PRINTS IDENTIFICATION FROM LATENT PRINTS LIFTED AT THE INCIDENT LOCATION
4. SURVEILLANCE VIDEO OF THE ACTIONS OF THE ACCUSED

STATE OF SOUTH CAROLINA County/ Municipality of CITY OF EASLEY

Affiant's Address: 228 W MAIN STREET Easley, SC 29640 Affiant's Telephone: 864-859-4825

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: It appearing from the above affidavit that there are reasonable grounds to believe that on June 15, 2006 defendant ROGER EUGENE SHERMAN did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of CITY OF EASLEY) as set forth below:

DESCRIPTION OF OFFENSE: ARMED ROBBERY

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 6/16/2006

Signature of Issuing Judge: D S Walsh (L.S.) Judge's Address: Post Office Box 466 Easley, SC 29641 Judge's Telephone: 864-855-7915 Issuing Court: Magistrate

ORIGINAL

K-097093

COUNTY OF Pickens
STATE VS.
Roger Eugene Shepard
AKA: Roger Eugene Shepard
Age: 24
DOB:
Address: Williamston, SC 29697
DL#:
SID#: SC01520970

INDICTMENT/CASE#: 2009GS3900944
A/W#: K097094
Date of Offense: 6/15/2006
S.C. Code § : 16-23-0490
CDR Code #: 0549

SENTENCE SHEET 5 years

In disposition of the said indictment comes now the Defendant who was TO: POSSESSION OF A WEAPON DURING A VIOLENT CRIME

[X] CONVICTED OF or [] PLEADS

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury (defendant's initials)
The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence [] Recommendation by the State.

ATTEST: [Signature] 64040 SC Bar# Defendant [Signature] Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the [X] 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 \$16,284.90; 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 to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied the State Department of Corrections.
[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered PTUP
Total: \$ ___ plus 20% fee: \$ ___
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
Other: ___

Table with columns for description, amount, and total. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2995 (DUI Assessment), § 56-1-286 (DUI Breath Test), § 47.12 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-114(BUI Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), § 90.7 (SCCJA Surcharge), % to County (if paid in installments), TOTAL \$ 133.90

Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Harold P. Welborn, Jr.
Court Reporter: Doretha Hanks
SCCA/217 (06/2009)

PRESIDING JUDGE: [Signature]
Judge Code: 11-13-12
Sentence Date: 11-19-09

WITNESSES

D Patterson

Easley Police Department

6/6/2008

DOCKET NO. 2009-GS-39-0943

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

VS.

ROGER EUGENE SHEPPARD

ARREST WARRANT NUMBER

K097093

ACTION OF GRAND JURY

ROE BILL

Date JUL 14 2009

For person of Grand Jury

VERDICT

Indictment for

0026

ARMED ROBBERY

VIOLATION § 16-11-0330(B)

For person of Petitioner

Date: 11-19-09

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
ARMED ROBBERY

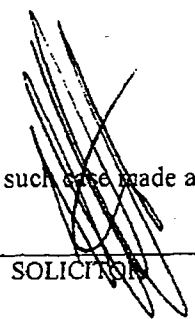
At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That ROGER EUGENE SHEPHARD did in Pickens County, on or about the 15th day of June, 2006, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: firearms from the person or presence of JOHN BRUIN AT ACTION PAWN SHOP. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Pickens)
 STATE VS.)
 Roger Eugene Shephard)
 AKA:)
 Race: W Sex: M Age: 24)
 DOB: SS#:)
 Address:)
 Williamston, SC 29697)
 DL#: SID#: SC01520970)

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: 2009GS3900943
 A/W#: K097093
 Date of Offense: 6/15/2006
 S.C. Code § : 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET 10-30 years

In disposition of the said indictment comes now the Defendant who was TO: ARMED ROBBERY

CONVICTED OF or PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST: Munson, John 64040 Defendant JOHN W. DE SONG 001630 SC Bar# SC Bar#
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 30 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: 1st sentence to be served
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied / the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

Recipient:		
*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
§ 47.12 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
§ 90.7 (SCCA) Surcharge	\$5	\$ 5.00
% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

_____ 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: _____

Clerk of Court/ Deputy Clerk Harold P. Weiborn, Jr.
Denette Hanks
 Court Reporter:
 SCCA/217 (06/2009)

Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.
 PRESIDING JUDGE [Signature]
 Judge Code: 11-19-09
 Sentence Date: 11-19-09