

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
D. Garrison Hill, Circuit Court Judge

RECEIVED

JAN 21 2015

S.C. Supreme Court

JONATHAN M. CAMPBELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001428

APPENDIX

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73, 144). Proctor and Ford drove Campbell and Southerland to the Bi Lo on Pleasantburg Road. (R. pp. 14, 73, 144). During the drive, Campbell indicated that he and Southerland had broken into an electronics store the previous night by breaking a side window.² (R. pp. 14, 15, 144, see R. pp. 73, 142-43). He pointed to the store as they passed it on the drive. (R. pp. 14, 15, 145). When Proctor and Ford dropped off Campbell and Southerland at the Bi Lo, Proctor told them he would see them later. (R. p. 16, see R. pp. 145-46).

That night, Proctor drove Ford to work a little before 11 p.m. (R. p. 17). Proctor took a nap in the parking lot, and he asked Ford to wake him at midnight.³ (R. p. 18). When she woke him later, Proctor told Ford he would be back to pick her up in the morning at 9 a.m. (R. p. 18). Ford did not know where Proctor planned to go that night/early morning. (R. pp. 17, 19).

The second and third meetings

Southerland testified that he saw Proctor later that evening back at the apartment complex. (R. p. 73). They talked about getting together later that evening. Proctor indicated that he did not have any drugs at that time because his girlfriend would not let him. However, he told the two that if they met with him between 11:30-12:30 that night, he would give them half a spoon of crack each if they would commit a couple of breakings and entering. (R. pp. 73-74).

² Campbell explained that was where they obtained the speakers that they tried to sell to Proctor at the apartment complex. (R. p. 14).

³ Ford noted it was not unusual for Proctor to take a nap in the parking lot on a Saturday night; he sometimes liked to go out on Saturdays, and he would have napped in the parking lot instead of going home. (R. pp. 18-19).

Southerland noted that the agreement was that only Campbell and Southerland would break into places in exchange for crack. (R. pp. 74-75).

Campbell testified that Proctor asked Campbell to pay Proctor's telephone bill with a bad check in exchange for some drugs. (R. pp. 146-47). When the telephone company indicated it would not take the check over the phone, Proctor made a second offer to Campbell for the drugs. (R. p. 147). Campbell stated Proctor offered Campbell and Southerland a couple ounces of dope and a little money if they would break into a store and steal DVD screens for Proctor's Jeep. (R. p. 147).

Proctor met with Southerland and Campbell a third time at the apartment complex shortly after midnight. (R. pp. 74-75, 148). Proctor was driving the Jeep. Southerland indicated that Proctor was initially hesitant to continue with the plan because it was raining, but Southerland and Campbell convinced Proctor into going forward. (R. p. 75).

Campbell testified Proctor gave him six crack rocks in exchange for Campbell and Southerland breaking into a store.⁴ (R. p. 149). They were not allowed to smoke the crack inside the Jeep. (R. pp. 76, 150). During that early morning, the three drove around to potential break-in destinations.⁵ Proctor drove, Campbell sat in the front passenger seat, and Southerland sat in the

⁴ Southerland testified Proctor gave them between three and four rocks of crack that night. (R. p. 76).

⁵ Southerland indicated the three only went to two locations. (See R. pp. 75-79). However, Campbell testified they visited at least five potential places for the break-in. (R. pp. 150-51).

middle of the back seat. (R. p. 76). Campbell and Southerland decided not to break into the first place because it had too much security. (R. pp. 75-76).

The confrontation and murder: Southerland's version

Southerland contended that while they were at another location, Southerland and Campbell finished smoking the last of the crack Proctor had provided. (R. pp. 77-78). Shortly thereafter, they told Proctor they were not going to break into the second store. (R. p. 78). When asked why they were not going through with the breaking and entering, Southerland testified that they told Proctor it was because of the security at the place. (R. p. 78).

Southerland asserted an argument between Campbell and Proctor ensued. (R. pp. 79, 83-84). Proctor continued asking why they were not going to break into the store. (R. p. 79). Southerland stated Proctor was getting upset because he had already given Southerland and Campbell the crack he promised, but they were not upholding their end of the bargain. (R. pp. 79, 84). Southerland testified that Proctor had put the Jeep in park in the middle of the road. (R. p. 79).

Southerland testified he thought Proctor was going to hit Campbell. (R. pp. 79, 80, 83). Southerland reached up and grabbed Proctor's shoulders and held him back. (R. pp. 79, 80, 83). As Southerland grabbed Proctor by his shoulders, Campbell started stabbing Proctor. (R. p. 80). Southerland described Campbell as going crazy. (R. p. 81). According to Southerland, Campbell hit Proctor several times in the upper chest area with a knife Campbell carried in the

back of his pants. (R. pp. 80, 81). Southerland testified that Proctor did not fight back. (R. p. 80). Instead, Proctor just fell over. (R. p. 80).

Southerland testified that he let go of Proctor after Campbell started stabbing Proctor. (R. p. 83). Southerland got out of the back seat of the Jeep, walked around to the driver's door, and grabbed Campbell to try to pull him off of Proctor. (R. p. 81). Campbell slammed his left elbow into Southerland's shoulder to knock him off. (R. pp. 81, 84). Campbell then finished stabbing Proctor. (R. p. 81). After Campbell crawled off of Proctor, Southerland helped Campbell move Proctor's body through the two front seats into the back seat. (R. p. 84). Campbell then jumped behind the wheel of the Jeep, and they took off. (R. p. 85). Southerland noted Proctor was not armed, and Proctor had not threatened to kill either Campbell or Southerland. (R. p. 83).

The confrontation and murder: Campbell's version

Campbell disputed Southerland's claim they had finished smoking all of Proctor's crack before the last stop. (R. p. 155). Campbell had given Southerland two of the six rocks Proctor provided, but kept four in his possession. (R. p. 155). Campbell claimed they did not break into the last place because they felt it was not a good idea; he told Proctor that too many people were around and they had waited too long to commit the break-in. (R. pp. 153-54). Campbell also testified that he told Proctor that he wanted to go home and see his family for Father's Day. (R. pp. 154-55). Campbell also stated that he offered to either pay for crack by either cashing a check, settling up with Proctor later, or completing the job at a later time. (R. pp. 154, 155). According to

Campbell, Proctor responded by stating "whatever, man . . . [W]hat are you going to do? Where do you want me to drop you?" (R. p. 155). Campbell asked if he could be let out of the Jeep where they were. (R. p. 155). As Campbell reached for the door handle, Southerland hit him in the back of the head with a hammer. (R. pp. 155, 156, 162).

Campbell indicated that he initially thought Proctor was the one who hit him. (R. pp. 157, 163). Campbell hit the dash and put his arm up. (R. p. 157). Proctor started leaning towards Campbell, and Campbell grabbed him. (R. p. 157, 163). Campbell then put his arm around Proctor's neck. (R. pp. 157, 163). Proctor responded by biting Campbell on his thumb. (R. pp. 157, 163). According to Campbell, as this was happening, Southerland got out of the back seat, opened the driver's side door, and stabbed Proctor in the leg. (R. p. 159).

[H]e's got the knife in his left hand. And he stabs him in his leg. And [Proctor] let me go. And I backed over to the door. And then he - he stabbed him in the gut. And then he stabbed him again. And I was like, oh, shit. And I reached over to grab the door - - -

...
I said, oh, shit. And I reached over and I grabbed - - I grabbed for the door handle. And this is the first time I've been in this car. And I grabbed for the door handle and it popped out of my hand. And it was locked. The door wouldn't open.

(R. p. 159, see R. pp. 163-64). Campbell testified that Proctor was trying to come over to Campbell's seat because Southerland was stabbing Proctor in the driver's seat. (R. pp. 160, 164). Campbell put his hands on Proctor's back, trying to hold him off. (R. p. 160). Campbell testified he eventually pushed Proctor back towards the middle of the front of the Jeep, and they both fell between the two front seats into the back. (R. p. 164). Southerland entered the

Jeep through the front door, climbed up, and stabbed Proctor twice in the chest, and in the side. (R. pp. 164-65). At the time, Proctor was in Campbell's lap. (R. pp. 164-65). Southland then stabbed Proctor in the face. (R. p. 165). Campbell testified that Proctor was yelling "please don't kill me, I'll give you what you want." (R. p. 165). Southerland then backed out of the vehicle. (R. p. 165). Then, Southerland closed the open doors, jumped in the driver's seat, and drove the Jeep from the scene with Campbell and Proctor in the floor of the back seat. (R. p. 166).

After the murder

Later that morning, Campbell called his mother and informed her that he had killed someone.⁶ (R. pp. 29-33, 87-89, 178-80). After making that call, Campbell and Southerland left Greenville in the victim's Jeep with the victim's body in the back seat.⁷ (R. pp. 89, 169-70, 180-82). The two headed west through Atlanta. (R. pp. 90-92, 182, 183). On June 21, 2005, the two were apprehended outside of Mobile, Alabama. They were caught after the Jeep they were driving overturned during a high speed car chase. (R. pp. 40-46, 96-97, 190-92).

⁶ Mrs. Saxon testified that Campbell indicated he shot the victim after the victim struck Campbell in the head with a hammer. (R pp. 32-33). Campbell told his mother that he and Southerland were being robbed by the victim at the time, and the victim had the gun that was used. (R. pp. 32-33).

⁷ Southerland testified that Campbell asserted their initial plan was to go to Florida, where Campbell stated he knew people who would buy the Jeep. (R. pp. 89, 91-92). He later testified that when he asked Campbell why they were no longer going to Florida, Campbell indicated the new plan was to go to Texas so they could escape to Mexico. (R. p. 99). Campbell testified that Southerland asserted their plan was to head to Louisiana to dispose of the body, and then to Texas so they could burn the truck and hide out in Mexico. (R. p. 171).

While processing the vehicle, law enforcement recovered a bloody knife from the back seat floor of the Jeep. (R. pp. 53, 56).

ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE REQUEST FOR AN ACCESSORY AFTER THE FACT CHARGE; THE ISSUE WAS NOT PRESERVED FOR APPELLATE REVIEW; CAMPBELL WAS NOT ENTITLED TO THE CHARGE UNDER STATE V. FULLER; AND CAMPBELL CANNOT ESTABLISH ANY OTHER BASIS UPON WHICH HE IS ENTITLED TO THE CHARGE.

The trial court did not abuse its discretion in denying Campbell's request for an accessory after the fact to murder jury instruction. First, the issue as raised on appeal is not preserved. Trial counsel did not raise the argument now raised on appeal in support of his request for the charge. Second, the trial court correctly denied the request for the accessory after the fact of murder charge under State v. Fuller, 346 S.C. 477, 552 S.E.2d 282 (2001). Third, Campbell's argument on appeal is without merit. A defendant is not entitled to a jury instruction on accessory after the fact of murder (or any other crime that is not a lesser included offense) when there is evidence to support the charge if the State has not sought to prosecute the defendant on that charge.

Argument at Trial

During the discussion regarding the jury charge, the defense requested the trial court instruct the jury on accessory after the fact of murder. (R. p. 246). The State opposed the charge, arguing that even under Campbell's testimony, he was holding the victim and was angry at the victim when the stabbing occurred. (R. p. 246).

[A]ssuming his version of the facts, he was with the perpetrator prior to getting with the victim. He was with the perpetrator when a deal was struck between the perpetrator and the two of them, not just individually, but the two of them were going to break in together.

They smoked - - the victim gave them crack jointly that they smoked. The deal breaker that he decided not to do this was made by both of them according to his testimony and Mr. Southerland's testimony, that they both backed out of the deal.

And I said previously, the altercation that resulted in the victim's death, based on his own testimony, puts him as a principal in holding the victim with a - - with malice at the time he was killed and, of course, everything that happened thereafter in terms of the - - his acts of continuing to hide the crime.

(R. p. 246).

Defense counsel responded by noting that Campbell did testify that he grabbed the victim, "but it wasn't done with malice, it was a response." (R. p. 247). He contended there was no intent to hold the victim. He continued on to argue that Southerland came around unbeknownst to Campbell. Campbell tried to get out, and both Campbell and Proctor were under siege at the same time. The trial court initially agreed with defense counsel there was evidence that would require an accessory after the fact charge. (R. p. 247).

After a lunch break, the State contended there was no accessory after the fact of murder as a lesser included offense of murder. (R. p. 251). The trial court agreed and stated it would not charge on accessory after the fact. (R. p. 251).

Defense counsel then asked the trial court to charge the jury with the elements of accessory after the fact since there were facts in evidence to support a charge, and so the jury could know what facts would be required to prove accessory after the fact. (R. p. 251). In support of his argument, counsel cited

State v. Fuller, 552 S.E.2d 282 (2001). He argued the case indicated that "when the defendant has not been indicted as an accessory it is proper to charge the jury on a difference between accessory and principal when the evidence points to the exclusionary offense which dictates that different proof is required as to each element." (R. p. 252). The State opposed. The solicitor noted that Fuller cited to State v. Gates, which held the defendant who drove the getaway car but did not enter the convenience store during a robbery was not entitled to an accessory after the fact charge. (R. pp. 252-53). The solicitor argued this was not a case where the defendant was not physically unable to have participated in the crime. All the evidence pointed to the fact he was physically able to participate in the crime. Defense counsel responded by stating he thought the solicitor just read that they would not charge accessory after the fact. Defense counsel noted he was only requesting the jury be instructed as to the difference between accessory after the fact and murder, based upon the elements. The solicitor responded by asserting the case cited by the defense supports the instruction of accessory after the fact in cases where the defendant is physically unable to have committed both the principal offense and the accessory offense. In this case, it could be either, thus rendering this case distinguishable. (R. p. 253).

The trial court decided it would not give a charge on accessory after the fact of murder. "Well, I'm not charging it. I don't read your State v. Fuller to support your position." (R. pp. 253-54).

Standard of Review

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct.App.2005) (quoting Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). Furthermore, "[t]o warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Patterson, 367 S.C. 219, 232, 625 S.E.2d 239, 245 (Ct.App.2006). "The law to be charged must be determined from the evidence presented at trial." Id. If there is any evidence to support the requested charge, the trial court should grant the request. Williams, at 195, 624 S.E.2d at 445. The evidence must be reviewed in the light most favorable to appellant. State v. Cottrell, 376 S.C. 260, 262, 657 S.E.2d 451, 452 (2008).

Discussion

A. The argument raised in this appeal is not preserved for appellate review.

Campbell's argument on appeal is not preserved for appellate review. In his brief, he contends that he was entitled to an instruction on accessory after the fact of murder. Specifically, Campbell argues that after State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), "a trial court has subject-matter jurisdiction to convict a defendant of any offense supported by the evidence of which the defendant has – or waives – notice." He further asserts that since there was evidence

supporting a charge of accessory after the fact of murder, and Campbell requested the charge, it should have been given.⁸ IBOA at p. 6.

This was not the argument raised by Campbell at trial. Instead, at trial Campbell argued he was entitled to an instruction on accessory after the fact of murder as an explanatory charge under State v. Fuller, 346 S.C. 477, 552 S.E.2d 282 (2001). At no point during the argument at trial did Campbell assert he was entitled to the charge under State v. Gentry. Since the argument now raised on appeal was not presented to the trial court, it is not preserved for appellate review. State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct.App.2003); see State v. Perez, 334 S.C. 563, 565-66, 514 S.E.2d 754, 755 (1999) (issue not raised and ruled upon by trial court is procedurally barred and not preserved for appeal); see also State v. Tucker, 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995) (party cannot argue one ground below and then another on appeal).

B. The trial court did not abuse its discretion in denying the request to charge accessory after the fact of murder; Campbell was not entitled to the instruction.

Campbell was not entitled to an instruction on accessory after the fact of murder. Accessory after the fact of murder is not a lesser included offense of murder. Campbell was not indicted for accessory after the fact of murder. Finally, he was not entitled to the instruction as an explanatory charge because the facts of his case did not support giving such a charge.

"The elements of accessory after the fact of a crime are 1) the felony has been completed, 2) the accused must have knowledge that the principal

⁸ Implicit in Campbell's argument is that his request for the charge constituted a waiver of notice.

committed the felony, and 3) the accused must harbor or assist the principal felon." State v. Fuller, 346 S.C. 477, 480, 552 S.E.2d 282, 283 (2001) (citing State v. Collins, 329 S.C. 23, 495 S.E.2d 202 (1998)). A defendant may not be found guilty as an accessory when indicted solely as a principal. Fuller, 346 S.C. at 480, 552 S.E.2d at 283.

"An indictment will sustain a conviction for a lesser offense only if the lesser offense is included within the greater charged offense." State v. Kirby, 325 S.C. 390, 397, 481 S.E.2d 150, 153 (Ct.App.1996) (citing State v. Fennell, 263 S.C. 216, 209 S.E.2d 433 (1974)). Accessory after the fact of murder is not a lesser-included offense of murder. Fuller, 346 S.C. at 481, 552 S.E.2d at 284; See Collins, 329 S.C. 23, 495 S.E.2d 202. "When the defendant has not been indicted as an accessory, it is proper to charge the jury on the difference between accessory and principal where the evidence points to an exclusionary offense which dictates that different proof is required as to each defendant." Fuller, 346 S.C. at 480, 552 S.E.2d at 283 (quoting State v. Good, 315 S.C. 135, 139, 432 S.E.2d 463, 466 (1993)). Conversely, it is improper to instruct on accessory after the fact when the defendant cannot be excluded as a principal to the underlying crime.

If accessory after the fact is not charged in the indictment, but is instructed to clarify mere presence, a finding of accessory after the fact is the equivalent to a finding of not guilty. The real impact of the instruction is that it permits the jury to reach a compromise verdict on a non-charged offense. Moreover, to require an accessory instruction on these facts opens the door for every criminal defendant to create a quasi lesser-included offense for which they could not be convicted.

Good, 315 S.C. at 138, 432 S.E.2d at 465.

Campbell was not entitled to an instruction on accessory after the fact of murder. First, it is undisputed that Campbell was not indicted for accessory after the fact of murder. Second, the evidence presented at trial did not eliminate Campbell as a possible principal first to the murder.⁹ As was the case in Fuller, Campbell admitted to being present during the stabbing. (R. pp. 156-63). There was evidence presented that Campbell could have participated in the murder as a principal. Southerland testified that Campbell was the one who stabbed the victim. (R. pp. 80-81). Also, Campbell testified that he was holding the victim when Southerland started stabbing him. (R. pp. 157-59). Since "there is no exclusionary situation which eliminates one [co-defendant] or the other from having participated in the murder as the principal," the trial court did not err in denying the request to charge on accessory after the fact of murder. Good, 315 S.C. at 139, 432 S.E.2d at 466; Fuller, 346 S.C. at 482, 552 S.E.2d at 284. As a result, Campbell's appeal should be denied, and his convictions should be affirmed.

C. Campbell was not entitled to the requested charge under State v. Gentry; a defendant is not entitled to an instruction on an offense for which he is not being prosecuted when that offense is not a lesser included offense of a crime for which he was charged.¹⁰

Campbell was not entitled to an instruction on accessory after the fact of murder based upon the argument raised on appeal. In his brief, Campbell

⁹ Campbell has presented no argument that he could be excluded as a principal in this murder.

¹⁰ Respondent would note that an argument similar to Campbell's argument on appeal was also raised by the appellant in State v. William O. Dickerson, a direct appeal in a Charleston County capital case currently pending before the South Carolina Supreme Court.

contends since the Supreme Court held in State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), that indictments were notice documents, and indictments did not confer subject matter jurisdiction, the trial court in Campbell's case would have subject matter jurisdiction to convict Appellant of any offense supported by the evidence. Campbell further contends that he waived notice of a charge on accessory after the fact of murder by requesting the charge; thus, the trial court should have charged the jury on accessory after the fact of murder.

This argument is without merit. First, Campbell simply ignores the fact that the State never charged him with accessory after the fact. Contrary to Campbell's argument, Gentry does not a defendant to waive notice of a charge for which the defendant was not indicted. In Gentry, the South Carolina Supreme Court noted

[A]n indictment is needed to give notice to the defendant of the charge(s) against him. See S.C. Const. Art. I, § 11 ("No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed ..."); S.C. Code Ann. § 17-19-10 (2003) ("No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury...."). A defendant must object if he is not presented with the indictment or if he has not waived his right to presentment. If the defendant does not object, he is deemed to have waived the right to presentment. See State v. Pollard, 255 S.C. 339, 179 S.E.2d 21 (1971) (individual may waive any provision of the Constitution intended for his benefit).

Gentry, 363 S.C. at 109 n.6, 610 S.E.2d at 503 n. 6. Implicit in this indictment requirement is that the State has chosen to prosecute the defendant for a specific charge. Accordingly, Respondent submits it is axiomatic that a

defendant cannot waive notice to a charge for which he is neither being prosecuted nor could be convicted.

"In our criminal justice system, the Government retains 'broad discretion' as to whom to prosecute." Wayte v. United States, 470 U.S. 598, 607 (1985). "[S]o long as the prosecutor has probable cause to believe that the accused committed an offense ... the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." Bordenkircher v. Hayes, 434 U.S. 357, 364-365 (1978). Accord United States v. Goodwin, 457 U.S. 368, 382 (1982) ("A prosecutor should remain free before trial to exercise the broad discretion entrusted to him to determine the extent of the societal interest in prosecution."). "[T]he discretion of the prosecuting attorney as to whether or not to prosecute is generally not subject to judicial interference, except in the narrow circumstances where it is necessary to do so in order to discharge the judicial function of interpreting and applying constitutional provisions. Absent evidence of a selective or discriminatory prosecutorial intent, or abuse of prosecutorial discretion, the judiciary normally is powerless to interfere with the prosecutor's charging authority." 16 C.J.S. Constitutional Law § 347 (2010 update). Similarly, this Court has declared:

[T]he South Carolina Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands.... Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they may simply decide not to prosecute the offense in its entirety. The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion...

State v. Needs, 333 S.C. 134, 146, 508 S.E.2d 857, 863 (1998), quoting State v. Thrift, 312 S.C. 282, 291-92, 440 S.E.2d 341, 346 (1994).

Gentry did not affect or attempt to limit this well-recognized authority. The defense can no more force a selected offense on the State than he can force a limitation on their case by stipulation. See State v. Jackson, 364 S.C. 329, 334, 613 S.E.2d 374, 376 (2005) ("The State, however, has the right to prove every element of the crime charged and is not obligated to rely upon a defendant's stipulation").

The Supreme Court has held that the States are not constitutionally required to instruct juries on crimes that are not lesser included offenses. Hopkins v. Reeves, 524 U.S. 88, 96-98 (1998) ("Almost all States, including Nebraska, provide instructions only on those offenses that have been deemed to constitute lesser included offenses of the charged crime. We have never suggested that the Constitution requires anything more."). In rejecting the position in Hopkins, the Court reasoned:

[s]uch a requirement is not only unprecedented, but also unworkable. Under such a scheme, there would be no basis for determining the offenses for which instructions are warranted. The Court of Appeals apparently would recognize a constitutional right to an instruction on any offense that bears a resemblance to the charged crime and is supported by the evidence. Such an affirmative obligation is unquestionably a greater limitation on a State's prerogative to structure its criminal law than is Beck's rule that a State may not erect a capital-specific, artificial barrier to the provision of instructions on offenses that actually are lesser included offenses under state law.

Id.

In all, Campbell has failed to establish he was entitled to a jury instruction on accessory after the fact of murder. Gentry cannot be read to allow for the instruction as requested by Campbell. In light of the concerns expressed by the United States Supreme Court regarding instructing on offenses that are not lesser included in Hopkins, supra, and the South Carolina Supreme Court's concerns as expressed in State v. Good, 315 S.C. at 138, 432 S.E.2d at 465, Respondent submits Campbell argument is without merit. Thus, Campbell's convictions should be affirmed, and his appeal should be denied.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests this Court to deny Campbell's appeal and affirm his conviction in the murder of Jermaine Proctor, and affirm his conviction for possession of a weapon during the commission of a violent crime.

Respectfully submitted,

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April 19, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

The Honorable Edward Miller, Circuit Court Judge

THE STATE

RESPONDENT,

V.

JONATHAN MILLARD CAMPBELL,

APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 19th day of April, 2011.



ALPHONSO SIMON, JR.
Assistant Attorney General

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

The Honorable Edward Miller, Circuit Court Judge

THE STATE

RESPONDENT,

V.

JONATHAN MILLARD CAMPBELL,

APPELLANT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via U.S. mail to his attorney of record, Robert M. Dudek, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. 401, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 19th day of April, 2011.



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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.

Jonathan Millard Campbell,

Appellant.

RECEIVED

APR 18 2012

SC OFFICE OF
APPELLATE DEFENSE

Appeal From Greenville County
Edward W. Miller, Circuit Court Judge

Unpublished Opinion No. 2012-UP-236
Submitted April 2, 2012 – April 18, 2012

AFFIRMED

Senior Appellate Defender Joseph L. Savitz III, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Donald J. Zelenka, and
Assistant Attorney General Alphonso Simon Jr., all

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

PER CURIAM: Jonathan M. Campbell appeals his conviction of murder, arguing the trial court erred in refusing to instruct the jury on accessory after the fact of murder. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authority: State v. Benton, 338 S.C. 151, 156-57, 526 S.E.2d 228, 231 (2000) (holding that an appellant cannot argue one ground in support of a jury charge at trial and another ground in support of the charge on appeal).²

AFFIRMED.

PIEPER, KONDUROS, and GEATHERS, JJ., concur.

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

² Alternatively, even if we were to find the issue on appeal preserved for review, we would affirm. See State v. Dickerson, 395 S.C. 101, 121, 716 S.E.2d 895, 906 (2011) ("[A] defendant is not entitled to a charge on lesser-related offenses.").



CLOSING LETTER SENT
ON 4-19-12

Attorney initials BR S

Assistant initials P

The South Carolina Court of Appeals

JENNY ABBOTT
KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1880
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May 04, 2012

Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Campbell, Jonathan Millard
Lower Court Case No. 2006GS2300329, 2006GS2300328
Appellate Case No. 2010-150787

Dear Mr. Wickensimer:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Jenny A. Kitching

CLERK

cc: Joseph L. Savitz, III
Salley W. Elliott

FORM 5

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
Jonathan M. Campbell #236007)
 Full name and prison number (if any) of Applicant.)

IN THE COURT OF COMMON PLEAS

NOV 19 12 01

2012-CP-23-07608

APPLICATION FOR

POST-CONVICTION RELIEF

v.)
 State of South Carolina)

ENTERED COMPUTER

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 2012 NOV 19 12 01
 WIDENSHINE

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 veified (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 car 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 thfees 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 Lee Correctional Institution
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) Carl Southerland
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder 16-03-0010
 - (b) Possion of a during the commission of a crime 16-23-0490
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Thursday, January 14, 2010
 - (b) 45 years for murder and 5 for possion of a weapon

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

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

yes

8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:

- i. The State of South Carolina Court of Appeals
- ii. _____
- iii. _____

- (b) the result in each such Court to which you appealed:
- i. Affirmed
 - ii. _____
 - iii. _____

- (c) the date of each such result:
- i. April-18-2012
 - 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:

- (a) ineffective assistance of counsel
- (b) ~~grossly negligent~~ ~~ineffective~~
- (c) _____

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

- (a) My lawyer had over 4 years to prepare ... → over
- (b) ~~grossly negligent~~ ~~ineffective~~

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 to the State Court of Appeals
- ii. _____
- iii. _____
- iv. _____

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

- i. The State of South Carolina Court of Appeals
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. ~~they affirmed~~ they Affirmed the court's decision
- ii. _____
- iii. _____

5 CONTINUED FROM QUESTION #11 PART A

for my case but in court he clearly proves he was not prepared and was grossly ineffective as my counsel and I was misrepresented. On page #12 through #25 he make clear he is not prepared for my trial. He had 4 1/2 years to get transcripts from Alabama courts concerning my Extradition hearing and the overruled waiver of Extradition to South Carolina. He clearly stated that he spoke with my lawyer in Alabama and that call took place the day of trial and it was the only attempt made to get evidence to support the motion. Mr. Abdella my lawyer clearly states that he was making a verbal motion of great importance in court after having 4 1/2 years to make one written and legible and gather evidence to support it and did not do so. That is very ineffective and was misrepresentable of me.

You can clearly understand that he was not prepared when he was presenting the Authority to the effect of his remedy. He was at the counsel table with me trying to read and find evidence to support this and he stated 17-10-10 article III and when the judge does not agree that that one has nothing to do with my case my lawyer ask for a moment to read and changes it to Article IV and then the judge says it doesn't apply either. It clearly shows that he was not prepared to try my case because he didn't have proper Authority to present at trial after 4 1/2 years and he is looking up Authority at the table at trial.

The judge plainly stated that my lawyer Mr Abdella had made a ~~jurisdictional~~ jurisdictional argument to dismiss the case but that there was no evidence to support it presented in my transcripts on page #23 line #3 through #8. That proves that he was ineffective when he had 4 1/2 years to gather evidence he needed. There is alot more but this is all the space im allowed. All this is in my
Transcripts

- iv. _____
- (d) the date of each such disposition:
 - i. The ~~app~~ direct appeal was Affirmed on April 12, 2012
 - ii. _____
 - iii. _____
 - iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. Affirmed
 - 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) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? yes Mr. John Abdella
- (b) your trial, if any? yes Mr. John Abdella
- (c) your sentencing? yes Mr. John Abdella
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes 2 different attorneys
- (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. John Abdella
 - ii. Joseph Savitz III Po Box 111589 Columbia Sc. 29211
 - iii. Breen Richard Stevens Division of Appellate Defense
- (b) the proceedings at which each such attorney represented you:
 - i. Criminal Trial
 - ii. in my direct Appeal
 - iii. in my direct Appeal

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

P.C.R. Relief and a new Trial

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

No

STATE OF SOUTH CAROLINA)
)
County of Greenville County)

VERIFICATION

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

Jonathan M. Campbell #236007

SWORN to and subscribed before me this 23
day of Aug, 2012.

D. D. Sisco (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

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.

Jonathan M. Campbell #236007
Applicant

SWORN or affirmed to and subscribed before me this

23 day of Aug, 2012
Debra Sikes
Notary Public

My Commission Expires: 11-4-2015



Office of the Clerk of Court

Paul B. Wickensimer
Clerk of Court for Greenville County
Greenville, South Carolina

www.greenvillecounty.org

DECEMBER 5TH 2012

JONATHAN M CAMPBELL 236007
LEE CORRECTIONAL INSTITUTION
990 WISACKY HWY
BISHOPVILLE SC 29010

2012 DEC - 5 A 9 21

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

ENTERED COMPUTER

JONATHAN CAMPBELL

ENCLOSED YOU WILL FIND A COPY OF YOUR POST CONVICTION RELIEF APPLICATION. YOUR CIVIL CASE NUMBER IS 2012CP2307608.

A COPY OF YOUR PCR HAS BEEN FORWARDED TO THE ATTORNEY GENERAL'S OFFICE.

ONCE IT IS DETERMINED THAT A HEARING SHALL BE SCHEDULED, THE PROCESS FOR ATTORNEY ASSIGNMENT WILL BEGIN. THIS MAY TAKE SEVERAL MONTHS.

WE ONLY FILE THE PCR APPLICATIONS. WE DO NOT SET COURT DATES NOR ARE WE ABLE TO ANSWER QUESTIONS CONCERNING YOUR CASE.

THANK YOU
CLERK OF COURT'S OFFICE

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Jonathan Millard Campbell,
S.C.D.C. #236007,

Applicant,

v.

State of South Carolina,

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-23-7608

ENTERED COMPUTER

RETURN

FILED - CLERK OF COURT
GREENVILLE CO., S.C.
MAY 11 11:05 AM '12
MAY 11 3 44 PM '12

In response to the post-conviction relief application filed December 5, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections. The Greenville County Grand Jury indicted the Applicant at the January 2006 term of General Sessions for murder (2006-GS-23-0328) and possession of a weapon during the commission of a violent crime (2006-GS-23-0329). John P. Abdalla, Esquire, represented the Applicant.

After the State took the case to trial, the Applicant was found guilty. On January 14, 2010, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of forty-five years for murder and five years for possession of a weapon during the commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Campbell, Op. No. 2012-UP-236 (S.C. Ct. App. filed April 18, 2012). The Remittitur was sent on May 4, 2012.

Appt. Atty 6-3-13

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the trial transcript, the appellate records, and the Department of Corrections records.

II.

In his application for post-conviction relief the Applicant alleges his conviction was unlawful for the following reason:

1. Ineffective assistance of counsel.
 - a. Counsel did not adequately prepare the case.

III.

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

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

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

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).

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

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

By:


Attorneys for Respondent

May 3, 2013

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2012-CP-23-7608

JONATHAN MILLARD CAMPBELL, 236007

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

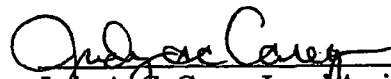
Respondent.

FILED-CLERK OF COURT
GREENVILLE CO., S.C.
PAUL R. DICHTENSHEINER
MAY 3 2013 10:29 AM

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Jonathan Millard Campbell, 236007
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010**

DATED this 3rd day of May, 2013.



July A.C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2012-CP-23-07608

JONATHAN MILLER CAMPBELL,
APPLICANT,

vs.

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.

ORIGINAL

April 22, 2014
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

CAROLINE M. HORLBECK, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Attorney for the Respondent

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
 (RW) - Denotes Respondent's Witness

Page No.(AW) JOHN PAUL ABDALLA:

Direct Examination by Ms. Horlbeck.....4
 Cross-Examination by Ms. Ratigan.....21
 Redirect Examination by Ms. Horlbeck.....26

(AW) JONATHAN MILLER CAMPBELL:

Direct Examination by Ms. Horlbeck.....30
 Cross-Examination by Ms. Ratigan.....48

(RW) JOHN PAUL ABDALLA:

Direct Examination by Ms. Ratigan.....54
 Cross-Examination by Ms. Horlbeck.....57

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

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THE COURT: Yes, ma'am.

MS. RATIGAN: Thank you, Your Honor.

May it please the Court.

This is the case of Jonathan Campbell v. the State of South Carolina. The docket number is 2012-CP-23-7608.

Mr. Campbell was indicted for murder and possession of a weapon during the commission of a violent crime. He was represented on these charges by Mr. Abdalla. The case was brought to trial in January of 2010. Mr. Campbell was found guilty of these charges on January 14th, 2010. Judge Miller sentenced him to concurrent terms of 45 years for murder, and five years for the weapons charge.

A notice of appeal was filed and perfected. The Court of Appeals affirmed Mr. Campbell's convictions and sentences in April of 2012.

And the State is ready to proceed.

THE COURT: Okay. Yes, ma'am, Ms. Horlbeck.

MS. HORLBECK: Judge, the Petitioner would call Mr. Abdalla.

THE CLERK: Mr. Abdalla, place your left hand on the Bible and raise your right hand.

WHEREUPON,

JOHN PAUL ABDALLA,

after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please state your full name for the record.

3 THE WITNESS: John Paul Abdalla.

4 DIRECT EXAMINATION

5 BY MS. HORLBECK:

6 Q Mr. Abdalla, do you recall representing Mr. John
7 Campbell on his charges?

8 A I do.

9 Q Okay. Were you appointed, or were you retained?

10 A Appointed.

11 Q Okay. Through the Public Defender's Office or --

12 A Yes.

13 Q Okay. And this is a case that -- where

14 Mr. Campbell -- where was he, originally, arrested? Was
15 it in this state, or somewhere else?

16 A Alabama or Texas. I can't -- it wasn't in this
17 state.

18 Q Was it Alabama?

19 A Yeah.

20 Q Okay. And you brought your discovery; right, or some
21 of it?

22 A Yes.

23 Q All right. And was there an issue with extradition
24 in this case?

25 A There was.

1 Q All right. To your understanding, did Mr. Campbell
2 have an attorney in Alabama who represented him on the
3 extradition issue?

4 A He did. And I don't remember the lady's name. I
5 know I spoke to her. I know I spoke do her at the last
6 minute. I think -- I made a few calls. I'd be lying if I
7 told you how many times I spoke to her. I know I spoke to
8 her one time, for sure, at the last minute. But I think I
9 spoke to her prior to that.

10 But, at any rate, yeah, he did have an attorney in
11 Alabama who represented him.

12 Q Okay. What -- when you say -- when do you think you
13 spoke to her? Was it, you know, right away, or was it
14 like right before trial?

15 A Oh, no, it was before trial.

16 Q Okay. And did she have the opportunity -- or was she
17 able to explain to you what happened on the extradition?

18 A I was getting a confirmation from her that he wasn't
19 given his extradition hearing that he requested.

20 Q Okay. Did Mr. Campbell -- did he waive extradition?
21 Do you know anything about --

22 A He didn't waive extradition. He asked for a hearing,
23 which wasn't provided.

24 Q Okay. Do you know if any of -- any Alabama judge
25 ever issued an order granting him an extradition hearing?

1 A No. He wasn't given a hearing.

2 Q Okay.

3 A I don't know if there was -- I don't recall now if
4 there had been an order that was not followed, or what the
5 situation was.

6 Q All right. Did Ms. Clark give any reason as to what
7 happened and why the hearing wasn't held?

8 A I don't know that they just came and got him without
9 doing the hearing. I don't know if it was intentional.
10 But the reality was he wasn't provided a hearing he should
11 have.

12 Q Okay. And, as a result of your conversation with
13 her, did you ask her to send you any of the documents --
14 the extradition documents that she may have had in her
15 possession?

16 A That, I don't recall. I'm sorry.

17 Q Okay. Do you have your file with you?

18 A I do.

19 Q Are they in there?

20 A I'm going to assume not.

21 Q Okay.

22 A I don't remember seeing it when I was looking through
23 the file earlier.

24 Q Do you recall presenting any extradition documents
25 from Alabama --

- 1 A No.
- 2 Q -- when you had -- when you did the pre-trial --
- 3 A When I made the pre-trial motion, no.
- 4 Q Okay. So no document -- no extradition document was
5 presented?
- 6 A I don't think so.
- 7 Q Okay.
- 8 A I know Mr. Silvaggio was the one who went and picked
9 him up, if I'm not mistaken.
- 10 Q And you -- and Mr. Silvaggio was called, but didn't
11 really provide any evidence --
- 12 A No, he didn't.
- 13 Q -- anything substantial or helpful to you; right?
- 14 A No.
- 15 Q Okay. And did you -- was Ms. Clark called as a
16 witness? Did you consider calling her?
- 17 A No. I never considered calling her. I didn't think
18 that was necessary. I thought just the fact that he
19 wasn't provided a hearing should have been enough.
- 20 Q Okay. But the Judge -- Judge Miller disagreed. Did
21 he require -- he wanted a showing from you?
- 22 A Yeah. He said that I didn't -- that that wasn't the
23 way -- that there was no evidence presented, and he wasn't
24 going to do anything on that.
- 25 Q Okay. Do you think -- just looking back, do you

1 think that Ms. Clark's testimony would have been helpful
2 in showing that he did exercise his right to a hearing,
3 that he wanted -- Mr. Campbell wanted a hearing and that
4 no hearing was ever held?

5 A Probably. It couldn't have hurt.

6 Q All right. And do you think her testimony would have
7 helped kind of make the showing that he was transported
8 from Alabama to South Carolina illegally?

9 A Yeah. I definitely, in hindsight, realize it
10 couldn't have hurt. Because I made the mistake of going
11 forward just on my own comments to the Judge, as opposed
12 to a record.

13 Q All right. And the motion that you made challenging
14 the legality of how he got -- of how Mr. Campbell got to
15 South Carolina, that was a pre-trial motion; correct?

16 A Yes. That's correct.

17 Q Okay. Was there -- I just can't recall. Was there a
18 written motion submitted?

19 A No. I didn't see the point. I didn't see any point
20 of having a written motion. I felt like strategically I'd
21 rather just present the motion to the Court as an oral
22 motion and argue it.

23 Q All right. And you're -- am I correct you're -- you
24 believe the burden of proof was on the State to show that
25 he was legally in South Carolina?

1 A That's what I argued to the Judge.

2 Q Okay. And other than just -- other than talking to
3 the attorney -- I think her name was Ms. Clark. Other
4 than speaking to Ms. Clark, is there any other
5 investigation that you did for the extradition issue?

6 A Not that I recall.

7 Q Okay. Do you think that -- and I can't remember if I
8 asked you this or not. Do you think that -- if you'd
9 gotten some of the extradition documents, do you think
10 that would have been helpful in making a showing?

11 A Yeah. I think we did talk about that. It couldn't
12 have hurt. It probably could have helped.

13 Q All right. And the -- Mr. Campbell, I think, was
14 incarcerated in Alabama on an Alabama charge. Do you
15 recall what happened to that Alabama charge?

16 A No.

17 Q Do you know if he was prosecuted on it, or not?

18 A I don't remember that at all, no. I mean, obviously,
19 I was more concerned with the murder charge we had to deal
20 with here.

21 Q Okay. Did you have any -- were you able to -- was
22 there any other evidence you were able to present during
23 that extradition -- during the hearing where you
24 challenged the extradition?

25 A No. Just challenging it. And presenting -- I think,

1 Mr. Silvaggio might have been the only detective,
2 Silvaggio.

3 Q All right. And you had asked Judge Miller to dismiss
4 the case?

5 A Yes.

6 Q Okay. And he denied that request?

7 A Correct.

8 Q And the basis for the denial was the absence of a
9 showing, or absence of evidence?

10 A Yeah.

11 Q All right. And, at the end of the case, do you
12 recall Judge Miller charging on the inference of malice,
13 that malice --

14 A I mean, I know they, generally, charge that. I can't
15 remember, specifically, the malice charge.

16 Q All right. I'm just going to hand you the
17 transcript. I'll tell you what page I'm looking at --

18 A And I left my transcript out in the car. I'm sorry.

19 Q That's okay.

20 A What page -- do you know what page --

21 Q I'm looking at Page 458.

22 A All right.

23 Q Yeah. 458, Lines 14 through 19.

24 A Yes. Okay.

25 Q Okay. That's the charge. In those lines, did Judge

1 Miller charge malice?

2 A Yes. That's a typical malice charge.

3 Q Did you make any objection?

4 A Not that I recall.

5 Q All right. Is that something that you think you
6 should have done, or maybe you don't think you should have
7 done it?

8 A Well, I don't like inferences. But I probably gave
9 up on challenging those. And I didn't challenge it.

10 Q Okay. Was this a situation where the Judge charged
11 on murder, but, also, on manslaughter?

12 A Yeah.

13 Q All right. That's all I've got on that. So I'll
14 grab that transcript, unless you want to hold it -- you
15 know, I'll just leave this up here. Because I think I've
16 got some stuff that I may be asking you about in a second.

17 A All right.

18 Q The next issue I wanted to talk to you about was the
19 DNA. Do you recall whether or not the State gave you
20 their DNA reports?

21 A I would assume so. But I don't recall now. And it
22 might not be in this part of the file. There was a lot of
23 other stuff that I didn't bring up.

24 Q I can point you to that part of the transcript. If
25 you'll just give me one second, I'll show you what page

1 I'm talking about.

2 A Okay.

3 Q It roughly starts around Page 186 of the transcript
4 during Investigator Silvaggio's testimony.

5 A 186? Yeah, Silvaggio.

6 Q Yes, sir.

7 A What am I...

8 Q Oh, okay. Actually, turn to Page 187, Line seven.

9 A All right.

10 Q And there I believe you say, I've never seen this
11 report.

12 Do you recall now that issue?

13 A Honestly, I don't remember having said that. But,
14 obviously, I said it --

15 Q Okay. Do you want to kind of just read through some
16 of this?

17 A Yeah.

18 MS. HORLBECK: I mean, is the Court all right if he
19 just reviews that for a little bit?

20 THE COURT: Sure.

21 MS. HORLBECK: Okay.

22 THE COURT: What page are you on again?

23 THE WITNESS: 187, Your Honor.

24 THE COURT: Okay.

25 (Pause.)

1 THE WITNESS: How far am I supposed to read?

2 BY MS. HORLBECK:

3 Q I'll kind of get you to where I need you to go. I
4 just wanted you to understand that there was --

5 A Yeah.

6 Q -- there's an issue.

7 A Yeah.

8 Q Am I correct?

9 A Yeah.

10 Q There was an issue that came up.

11 All right. And turn to Page 199. And I'm looking at
12 Lines eight through 10.

13 A You're looking at Line 10?

14 Q Lines eight through 10.

15 A Okay.

16 Q And there were -- am I correct when I say that there
17 were three cuttings that were, actually, taken from
18 Mr. Campbell's shirt?

19 A Yes.

20 Q Okay. And if you look at Line 12 on that same page,
21 is it true that blood was only found on two of those
22 cuttings?

23 A That's what it appears to be from looking at this
24 transcript.

25 Q And I think we're still on Mr. Silvaggio's

1 statement -- testimony; right?

2 A We are.

3 Q Okay. And if you look to Lines 14 through 16, there
4 was a partial DNA profile developed; is that correct?

5 A Yes.

6 Q Okay. But it looks like that the minor contributor
7 was too weak to interpret; correct?

8 A A second unknown male individual?

9 Q Right.

10 Well, I'm, actually, on the cutting from -- on the
11 DNA profile developed from 2.1. They identified a minor
12 contributor, but it was too weak --

13 A Correct.

14 Q -- for anybody to really find anything out about it;
15 correct?

16 A Correct.

17 Q Okay. Then on the next cutting, 2.2, they found that
18 DNA was from a second unknown male; is that correct?

19 A That's correct.

20 Q But it didn't match Mr. Southerland, who's the
21 co-defendant; correct?

22 A Correct.

23 Q Okay. And then if you look through on that same page
24 on Lines 20 through 22, there was, actually, no blood
25 sample or DNA sample ever taken from Mr. Campbell;

1 correct?

2 A That's correct.

3 Q All right. And then on Line 23, the victim's blood
4 was, actually -- or DNA was, actually, too decomposed to
5 do any comparison; correct?

6 A That's right.

7 Q Okay. And it's true that this trial was the first
8 time that you'd ever seen those DNA reports?

9 A Apparently. That's what I'm --

10 Q Okay. Because the State had never given them to you.
11 Is that -- does that -- is that --

12 A Well, as I said in the record, I wasn't accusing
13 anybody of anything, but I didn't have them.

14 Q All right.

15 A There's, also, a chance it was misplaced, but --

16 Q But that wasn't the case. You hadn't misplaced them.
17 The State just hadn't given them to you?

18 A Apparently so, right.

19 Q And you had requested a mistrial; is that right?

20 A Where was that?

21 Q Hold on. Let me see if I can find it. I'm looking
22 at Line 194 -- Page 194, Line 24.

23 A 194?

24 Q Uh-huh. Page --

25 A Oh, you backed up on me. Okay.

1 Q Yeah. You had asked for a mistrial five pages
2 before.

3 A Okay.

4 Q Okay. And your basis for that was Rule 5, and
5 that --

6 A Usually, Rule 5 and Brady.

7 Q Did you say Brady or did you say --

8 A Yeah. I said, I filed the Rule 5 and Brady.

9 Q Right. You filed Rule 5 and Brady. But what was the
10 basis for your mistrial motion?

11 A Oh, it should have been both. But it says, Under
12 Rule 5.

13 Q All right. And your argument was that the evidence
14 would have excluded Mr. Campbell, because Mr. Campbell's
15 DNA wasn't found on the cuttings?

16 A Correct.

17 Q Okay. Were you trying to say that the evidence would
18 have excluded -- potentially excluded Mr. Campbell as a
19 suspect, because Mr. Proctor's blood wasn't found on the
20 shirt?

21 A Well, yeah. I was trying to argue that that excludes
22 him and he -- yeah.

23 Q Okay. But -- and, I mean, that wasn't quite said,
24 though; right? I'm not trying to belabor it, but.

25 A Yeah. You're right.

1 MS. HORLBECK: I beg the Court's indulgence.

2 (Pause.)

3 MS. HORLBECK: That's all I have. Please answer any
4 questions that Ms. Ratigan -- actually, I'm sorry. Let me
5 get -- I've got one more question. I just didn't flip my
6 page.

7 BY MS. HORLBECK:

8 Q Do you recall somebody at the jail named Mr. Yearta
9 making a statement?

10 A I remember the name, but I can't remember anything
11 about that --

12 Q Okay. Let me see. Let me find it in my outline. It
13 looks like this comes up on Page 278 in the transcript,
14 which -- and I think you proffered his -- proffered
15 Tracy's testimony.

16 A I'm sorry.

17 Q Go ahead and read. I just want to make sure you --

18 A What page? Where am I supposed to be now?

19 Q Okay. I'm asking you about a statement that was made
20 by Mr. Yearta. And I think he was deceased at the time.
21 Does that jog your memory?

22 A It sounds familiar, but --

23 Q Okay. Do you recall Tracy Burkette getting on the
24 stand and you proffering her testimony --

25 A Yeah, I do.

1 Q -- about the fact that she took a statement?

2 A Yes.

3 Q Was that statement notarized? Do you know?

4 A I remember finding the sheet.

5 Do you have any information on that? Because I can't
6 find it on the Yearta think.

7 Q I don't. I'm just asking you if -- I wasn't sure.
8 That's all.

9 A I'm not sure.

10 Q Okay. Well, let me ask you this. Does Tracy
11 normally notarize statements that she takes?

12 A You know, I haven't worked with Tracy in seven --

13 Q If you don't know, that's okay.

14 A I don't know.

15 Q All right. Let me turn your --

16 A Attention.

17 Q -- attention to Page 285. Do you remember whether or
18 not the Judge -- Judge Miller allowed this evidence in?

19 A I don't recall.

20 Q Okay.

21 A Did you say 87 -- 287?

22 Q 285.

23 A 285. Okay. I apologize.

24 What was the question?

25

1 Q Did you -- were you able to read through the
2 substance of Ms. --

3 A The cross-examination right there?

4 Q Yes. And the substance of Ms. Burkette's testimony?

5 A Right.

6 Q Okay. Let me just ask you some questions about it.
7 On Page 285, Lines 1 through 6, Mr. Yearta had said that
8 the co-defendant had told him some things a year prior to
9 Mr. Yearta making the statement; is that correct?

10 A Correct.

11 Q Okay. Did Mr. Yearta say where the statement took
12 place? And I'm looking at Lines nine and 10 on that same
13 page.

14 A No. I saw where the cross-examination said nothing
15 like that was established.

16 Q All right. And Mr. Yearta, also, didn't say who was
17 present or what prompted the co-defendant to say these --
18 to make this statement?

19 A Correct.

20 Q Is that true?

21 A That's true.

22 Q Okay. Did Mr. Yearta, in his statement, explain why
23 he waited so long to make this statement?

24 A No.

25 Q Okay. Do you think that in--

1 A Well, other than the fact that he variously helps
2 other inmates, makes a kind of general statement.

3 Q What was the basis for keeping it out? What was the
4 Judge's reasoning? Was it lack of reliability, or
5 something else?

6 A I believe just lack of reliability.

7 Q Okay. Do you think that -- including that
8 information, do you think that would have helped make the
9 statement more reliable?

10 A I think it would have helped. I don't know that it
11 would have won the day. But it, certainly, would have
12 been something else for reasonable doubt.

13 Q Okay. After Ms. Burkette took the statement from
14 Mr. Yearta, did you have the opportunity to review it?

15 A I'm sure I did at the time. But I apologize that I
16 don't remember -- of course, I did. I mean, she took the
17 statement. I reviewed it and had a conversation. But I
18 don't recall now.

19 Q Okay. Did -- were you able to review any additional
20 notes of Ms. Burkette's where she went back and got some
21 more information to try to make this statement more
22 reliable?

23 A I don't recall right now. I would imagine I did.
24 But I don't recall right now.

25 Q Do you recall -- I mean, do you recall sending her

1 back to get more information?

2 A I recall her doing a lot of work on the case. But I
3 can't recall specifics.

4 Q Okay. So you don't recall that then?

5 A No.

6 MS. HORLBECK: That's all I have. Please answer any
7 questions that Ms. Ratigan has.

8 CROSS-EXAMINATION

9 BY MS. RATIGAN:

10 Q Mr. Abdalla, how many times would you have met with
11 Mr. Campbell? Can you recall?

12 A No.

13 Q Would it be fair to say you met with him numerous
14 times? One time? I mean, did you --

15 A Oh, no. I mean, it was several times, but, you
16 know -- I mean, I thought I met with him enough to present a
17 good defense, so. But I couldn't give you a number, whether
18 it was five, 10, 15.

19 Q Did you review the State's evidence with Mr. Campbell?

20 A Yes, I did.

21 Q Did he share with you his version of what had
22 happened that day?

23 A Oh, yeah.

24 Q And did you review with him the autopsy report that
25 stated the victim had been stabbed 18 times?

1 A I imagine I did. I can't remember the specifics of
2 everything. But I know we had a lot of conversations
3 about it. And I remember having a conversation about --
4 well, anyway.

5 Q Okay. Did you discuss with Mr. Campbell that his
6 co-defendant was going to testify against him at trial?

7 A Yes.

8 Q And what was your defense strategy at trial?

9 A The strategy was just that there wasn't enough
10 evidence to convict him, and it was the co-defendant who
11 did it. The problem is the co-defendant was testifying
12 because he had taken a deal.

13 I believed what Mr. Campbell told me. But,
14 unfortunately -- and I said this to Mr. Campbell. I don't
15 think he'd deny it. I said that because of the
16 circumstances, it was going to be tough to convince a jury
17 that you didn't know anything when you're in a car for
18 three days.

19 Q And Mr. Campbell never denied that he was there when
20 the murder took place?

21 A Right. I don't remember him ever denying that, just
22 that the other guy did it, Southerland.

23 Q And he never denied that when he was arrested in
24 Alabama, the victim was still in the backseat of the
25 victim's vehicle?

1 A I don't remember him ever denying any of those
2 things. No, the factual stuff wasn't denied. The only
3 thing that was denied was that he took part in the
4 killing.

5 Q Did you explain to Mr. Campbell the concept of the
6 hand of one?

7 A Yes.

8 Q Did he appear to understand that conversation when
9 you would explain to him the whole theory of accomplice
10 liability?

11 A Well, at the time, I thought he did. But he still
12 seemed like he was obsessed with the fact that the other
13 guy was the one who was really the person who was -- who
14 did all this. And after seeing that guy in court, I
15 believed Mr. Campbell.

16 Q Would it be fair to say that while you may have
17 explained accomplice liability to Mr. Campbell, he just
18 had difficulty accepting it? Would that be fair to say?

19 A I would imagine so, yeah.

20 Q And I believe that you flipped through the transcript
21 regarding the SLED reports. There was never any
22 indication and never any allegation from the State that
23 the Defendant's blood -- your client's blood was anywhere
24 on those items?

25 A No.

1 Q Okay. Would having those SLED reports prior to trial
2 have changed your defense theory, your trial strategy?

3 A It would have helped. But I don't know how it --
4 exactly would have changed, but, yes.

5 Q How would it have helped, do you think?

6 A Well, if nothing else, maybe just to go to the
7 prosecution and say, look, they don't have the blood on
8 him trying to argue for a better deal.

9 Q Did the State ever make a deal in this case?

10 A The State offered him 15 or 17 years on manslaughter.
11 Actually, the Judge offered it through the course of the
12 trial.

13 Q So did the State offer it prior to the trial, or was
14 it offered at --

15 A The State offered it before the trial.

16 Q Okay.

17 A The Judge offered it throughout the trial of the
18 case. We were in trial, at least, three days. And it was
19 offered several times during that time.

20 Q And when these offers were made both by the State and
21 by the Judge, did you discuss that with Mr. Campbell?

22 A Oh, yeah.

23 Q And based on the fact it went to trial, clearly, he
24 turned down those offers to plead guilty?

25 A Yes.

1 Q Now, regarding the extradition issue. Did -- when
2 you spoke to that Alabama attorney, did she ever tell you
3 that Mr. Campbell had articulated a valid reason to
4 challenge the extradition?

5 A No. I mean, the challenge was he wasn't given his
6 extradition hearing. As far as a legal reason why he
7 wasn't guilty of what he was being tried --

8 Q But did he -- did she ever tell you -- he, clearly,
9 was fighting extradition?

10 A Correct.

11 Q Did she ever tell you he had a valid reason to
12 challenge the extradition?

13 A No. I don't recall anything about that. But for the
14 fact that a hearing -- it was just a matter of him not
15 getting a hearing is my recollection.

16 Q Okay. And Judge Miller found at trial -- during your
17 pre-trial hearing, basically, that the State had personal
18 jurisdiction over your client at that point?

19 A That's correct.

20 Q And did you see any basis to challenge Judge Miller's
21 finding that there was personal jurisdiction?

22 A Well, I thought they had personal jurisdiction
23 because he was here in the courtroom. But I was arguing
24 that it was obtained improbably. And I lost the argument.
25 And the Judge, basically, said that I was arguing the

1 wrong statute, or something. I don't know.

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

3 THE COURT: Redirect?

4 MS. HORLBECK: Just briefly, Judge.

5 REDIRECT EXAMINATION

6 BY MS. HORLBECK:

7 Q You had discussed -- you testified that you'd
8 discussed with Mr. Campbell that Mr. Southerland would be
9 testifying against him?

10 A Yes.

11 Q Okay. Did Mr. Campbell have the same opportunity to
12 make a statement and give evidence against his
13 co-defendant, or was --

14 A Well, what happened was they were both offered deals.
15 And Southerland took it. And Mr. Campbell wasn't
16 interested.

17 Q All right. So Mr. -- but was Mr. Campbell offered a
18 deal to testify against Mr. Southerland?

19 A I think the deal he got was for that. I can't
20 remember all the specifics. But he was offered less time
21 than Southerland was. And Southerland ended up getting
22 like 20-something years.

23 Q All right. Now, there was no allegation that
24 Mr. Campbell's blood was on -- or DNA was on any items;
25 correct?

1 A I don't believe there was, no.

2 Q Okay. So the real issue was whether or not
3 Mr. Proctor -- the victim's blood was anywhere on -- or
4 DNA was anywhere on Mr. Campbell's possessions; correct?
5 Like his shirt; correct?

6 A Correct.

7 Q And the cuttings; correct?

8 A Correct.

9 Q Okay. And that's what could never really be linked
10 to --

11 MS. RATIGAN: I object to leading, Your Honor.

12 BY MS. HORLBECK:

13 Q Well, could that ever -- let me ask you. Could that
14 ever be linked? Could Mr. Proctor's DNA ever be linked to
15 Mr. Campbell's shirt?

16 A I don't recall that ever happening.

17 Q Okay. And, in your opinion, is that potentially
18 exculpatory.

19 A Of course, I -- that --

20 Q Okay. And, under Brady, is potentially exculpatory
21 evidence supposed to be disclosed by the State?

22 A It is. But I had an argument from the Judge. Maybe
23 he didn't like the way I was arguing it. But that wasn't
24 presented.

25 Q I understand. And it wasn't -- I know the Judge

1 disagreed with you. But the basis would have been a Brady
2 objection; correct?

3 A I guess so, Brady.

4 Q Okay.

5 A But, I mean, I filed Brady and Rule 5. So it was a
6 violation of the discovery requests.

7 Q All right.

8 A As I interpreted it.

9 Q Okay. Now, on the extradition matter -- well, you
10 don't -- do you do any extradition law?

11 A No.

12 Q Okay. Do you think if further investigation had been
13 done that there would have -- that you would have been
14 able to find out whether or not there was a valid reason
15 to challenge extradition?

16 A Well, a couple of things come to mind. One is -- and
17 maybe it was flawed thinking on my part. No matter what
18 happened with the extradition, I don't believe it would
19 have been the final decision. Even if the charge -- the
20 warrant was dismissed, a new one would have been issued.
21 I don't think it could be dismissed outright with
22 prejudice, but I could be wrong on that.

23 So I didn't see that as totally significant. I mean,
24 I did present it. Because I still thought there was a
25 violation of the way it was handled, or not handled. And

1 that's it.

2 Q All right. And since there was no hearing, to your
3 knowledge, was there ever any opportunity for a judge in
4 Alabama to determine the validity of Mr. Campbell's
5 challenge to extradition?

6 A Apparently, there wasn't.

7 Q And that's what you were challenging?

8 A Right.

9 MS. HORLBECK: That's all I have.

10 Thank you.

11 THE COURT: Yes, ma'am.

12 MS. RATIGAN: I have nothing further, Your Honor.

13 THE COURT: Thank you, Mr. Abdalla.

14 THE WITNESS: Thank you.

15 MS. HORLBECK: Judge, we would call Mr. Campbell.

16 THE CLERK: Mr. Campbell, please, place your left
17 hand on the Bible and raise your right hand, as best you
18 can.

19 WHEREUPON,

20 JONATHAN MILLER CAMPBELL,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 You may be seated.

24 Please state your full name for the record.

25 THE WITNESS: Jonathan Miller Campbell.

DIRECT EXAMINATION

1

2 BY MS. HORLBECK:

2

3

Q Mr. Campbell, do you recall Mr. Abdalla representing you on these charges at this trial?

4

5

A Yes, ma'am.

6

Q All right. And, at the very beginning of the trial, did Mr. Abdalla make a motion to dismiss your charge based on extradition violations?

8

9

A Yes, ma'am.

10

Q Okay. And let's talk about your extradition in

11

Alabama. Did you sign a waiver of extradition in Alabama?

12

A Yes. I had signed one. And then the -- my attorney took me before the Judge the next day and had it overruled because it wasn't presented correctly.

14

15

Q All right. When you say it "wasn't presented correctly," what do you mean?

16

17

A The clerk at the jail had offered me to sign it in order -- presented it to me to sign and said if I didn't have anything to hide that I would sign it, so I did.

18

19

20

And then once I went around the corner, she -- my attorney had told me not to sign anything. And I told her what I had done. And she said, well, she was going to get that overruled because, you know, it hadn't been presented correctly.

21

22

23

24

25

Q Okay. And did the Judge in Alabama -- was a written

1 order -- was there a written order drafted or submitted
2 formally, I guess, overruling your waiver and granting you
3 an extradition hearing?

4 A Yes, ma'am.

5 Q Okay. Do you have -- did you ever have a copy of
6 that order?

7 A No, ma'am.

8 Q Okay. Did --

9 A I thought it would be in my discovery. But, from
10 what I understand, none of that information -- anything
11 from Alabama was in my discovery.

12 Q Okay. Who represented you on the extradition matter?

13 A Jennifer Clark.

14 Q All right. Do you know if she's still around?

15 A From my knowledge, she's deceased now.

16 Q Okay. So was an extradition hearing ever held?

17 A No, ma'am.

18 Q Do you know why?

19 A No. I just know that Hurricane Katrina had hit
20 Louisiana when I was down there. And some Greenville
21 County officers had went down there to give some relief
22 help. And on their way back, they picked me up on that
23 bad waiver. And I thought I was going to my extradition
24 hearing and -- but we didn't go there.

25 Q Did you have a date certain for your extradition

1 hearing?

2 A No, not that I know of.

3 Q Did Ms. Clark ever tell you, okay, your hearing is
4 going to be scheduled in X amount of days?

5 A No.

6 Q Okay. So --

7 A They were waiting for the governor's warrant to be in
8 evidence before they scheduled it. That is my
9 understanding.

10 Q All right. Now, did you -- and did you explain --
11 did you tell Mr. Abdalla to contact Ms. Clark in Alabama?

12 A Yes.

13 Q All right. And, to your knowledge, did he do that?

14 A No.

15 Q All right. And did he ever -- did you and he ever
16 discuss any documents regarding extradition that he'd
17 gotten from Alabama?

18 A No.

19 Q Did he -- to your knowledge, did Mr. Abdalla get any
20 documents from Alabama regarding your extradition matter?

21 A No, ma'am.

22 Q Okay. And, certainly, Ms. Clark didn't testify at
23 your trial; correct?

24 A No.

25 Q Okay. And are you asking the Court today -- or is

1 your -- what is your argument today? Is your argument
2 that this case should have been dismissed because your
3 Constitutional rights were violated?

4 A Yes, ma'am. That and the fact that I'm in -- I was
5 brought back under the extradition act. And if I'm held
6 under that act, it says that the trial would, also, be
7 held within 180 days from my return from -- to the state.
8 And that wasn't given either.

9 Q Okay. How soon during Mr. Abdalla's representation
10 of you did you and he discuss your extradition issue?

11 A The day that I found out he was my attorney, I called
12 him from the jail cell I was in.

13 Q Okay. And what did you tell him during that call?

14 A I told him that I was brought back, that I -- on my
15 way back that I found out they had a bad waiver they
16 were -- I was not going to my trial. That they were
17 bringing me all the way back to South Carolina.

18 And he had told me that he would check into it, to
19 sit tight. And that, you know, it was a murder
20 investigation that I'd probably either be pleading, or
21 doing some time, or -- we didn't know that -- just to sit
22 tight and he'd get back with me.

23 Q All right. Was any kind of showing made to support
24 the dismissal of your charge, based on the extradition
25 issue?

1 A Not that I know of.

2 Q Was any evidence presented, I guess is what I'm
3 asking, from Mr. Abdalla --

4 A No.

5 Q -- to support why the Judge should dismiss this
6 charge?

7 A No.

8 Q Okay. And, ultimately, did the Court deny the
9 request to dismiss the charge?

10 A Yes.

11 Q All right. Now, you had, also, talked about a --
12 there was a meeting at the law enforcement center?

13 A Yes, ma'am.

14 Q Okay. When was that meeting?

15 A It was held the Saturday before the trial.

16 Q All right. Who was present at the meeting.

17 A My attorney, Carl Southerland, and his attorney,
18 Mr. Posey.

19 Q Okay. What was the purpose -- to your knowledge,
20 what was the purpose of the meeting?

21 A They -- Mr. Abdalla and Mr. Posey had told us that
22 they were trying to get us a plea agreement of 15 years
23 apiece, but that the family wanted to know who killed him
24 and why. And that that was one of the stipulations of it.

25 And I told Mr. Southerland that I wasn't going to

1 take responsibility for something I didn't do. And that,
2 you know, I knew I was guilty or accessory after that
3 fact, but I didn't kill him and he did. And he needed to
4 take responsibility for it. And he said that he would.
5 He said, Okay, I'll take --

6 Q Who said?

7 A Mr. Southerland said that --

8 Q Okay.

9 A -- he would tell the Court that he killed him and why
10 for the plea agreement of 15 years. And me and
11 Mr. Abdalla stepped to another -- Mr. Abdalla said, well,
12 don't say anymore. If that's -- you're going to admit to
13 it, then we'll drop it. And we stepped out of the room
14 and went to another room.

15 And he called Mr. Jeff Weston. And I don't know the
16 conversation. But I know after he got off, he said that
17 he was going to offer the -- present it to the Judge.
18 That Mr. Weston wouldn't present it, but he wouldn't
19 object to it.

20 Q Okay. Was that sentence -- was that ever offered to
21 the Judge, to your knowledge --

22 A Yes.

23 Q -- that 15-year --

24 A Yes, the day of trial.

25 Q Okay. Well, did you -- and you knew about it; right?

1 A Yes.

2 Q And you decided not to take it, ultimately?

3 A Oh, the Judge didn't go with the plea. He wouldn't
4 allow the plea.

5 And then the only other plea that was offered that
6 you [sic] informed me of was the day of trial before the
7 jury came back with their --

8 Q What offer -- was that the day of trial?

9 A 25 and manslaughter.

10 Q Okay. And any of the things that Mr. Campbell [sic]
11 said, were those addressed during the trial? The things
12 that Mr. -- I'm sorry. The things that Mr. Southerland
13 said during this meeting, were those addressed at the
14 trial?

15 A No, ma'am, they wasn't.

16 Q How long did Mr. Abdalla represent you on this case?

17 A For four and a half years.

18 Q All right. And did you request discovery?

19 A Yes.

20 Q Did you ever get a copy --

21 A Several times.

22 Q -- of it?

23 A No, ma'am.

24 Q Okay. When did you make your discovery request? Was
25 it before the trial, or after?

1 A Before the trial. I have requests from him and
2 Tracy. And I, also, have documents over there, motions
3 that I made or requests every year up to the trial.
4 Because I hadn't gotten them yet. And I still haven't
5 gotten them.

6 Q Now, while you were incarcerated, did the State ever
7 make any attempts to collect a sample of your DNA?

8 A Not that I know of.

9 Q Okay. Did they -- did the State ever try to take any
10 of your blood?

11 A No.

12 Q Did they swab your mouth with one of those little
13 swabs?

14 A No.

15 Q Okay. Did they take hair samples?

16 A No.

17 Q All right. And, to your knowledge, was your DNA ever
18 compared to the samples cut out of your shirt?

19 A No.

20 Q Okay. So, to your knowledge, was there any evidence
21 that connected that blood on those samples of your shirt
22 to Mr. Proctor?

23 A No.

24 Q Okay. Was that ever -- was a report -- like a DNA
25 report, was it ever reviewed with you?

1 A No. I never went over anything in my discovery.

2 Q Okay. During the trial when the DNA report came to
3 light, did anybody sit down and go over that with you?

4 A No. We sat there at the table and tried to look
5 through it real quick. But, I mean, it was too
6 complicated to understand.

7 Q All right. And then there was an issue with a
8 Mr. Yearta making a statement. Do you recall that issue?

9 A Yes.

10 Q Okay. And was that evidence proffered or offered to
11 the Court?

12 A It was proffered. Her [sic] testimony was proffered.

13 Q All right. And was that testimony allowed or not?

14 A No, it wasn't.

15 Q And Mr. Abdalla presented the evidence through Tracy
16 Burkette, the investigator; correct?

17 A Yes.

18 Q Okay. Was any videotape or audiotape presented to
19 the Court?

20 A No, there wasn't.

21 Q Okay. And was that -- was Mr. Yearta's statement
22 ever discussed with you?

23 A Yes, it was. It was discussed shortly after he gave
24 it. Tracy -- Mr. Abdalla and Tracy both had mentioned it
25 to me. And Tracy had told me that she had taken it in a

1 way that it could be preserved if something ever happened
2 to him, or if they couldn't find him.

3 The trial policy was, you know -- in the detention
4 center, it was -- you know, they didn't -- you know,
5 something might have happened to him. And I was concerned
6 about that.

7 Q Okay. But, ultimately, Mr. Yearta was dead -- was,
8 also, deceased at the time of your trial; correct?

9 A Yes. He died -- it was like three months before
10 trial.

11 Q All right. And the Judge wouldn't allow that
12 testimony or that -- or his statement into evidence;
13 correct?

14 A No, he wouldn't.

15 Q Okay. Was that -- was Mr. Yearta's statement ever
16 used by your attorney, to your knowledge, to try to
17 negotiate a lower sentence?

18 A No, it wasn't. And I had asked that it be. And then
19 on another visit, Mr. Abdalla told me that he didn't want
20 to plead, that he didn't want to deal. But then in trial,
21 Mr. Weston said that this was the first incident that he
22 had seen the statement.

23 Q Okay. Now, during the trial, Mr. Abdalla, also,
24 cross-examined your co-defendant, Mr. Southerland; is that
25 correct?

1 A Yes.

2 Q All right. And you had some issues with regard to
3 how that cross-examination was conducted; correct?

4 A Yes.

5 Q All right. What are some of the things that you
6 wanted Mr. Abdalla to cross him on?

7 A Well, one of the things was Dr. Ward had testified to
8 stab wounds. And there was 18 of them in all, and some
9 cuts to his left finger, and -- to his finger and hand.
10 And, according to Mr. Carl Southerland's testimony, that
11 couldn't have happened. The stab wounds 18 through 12
12 were to his face and neck. And the ones to his hand
13 couldn't have happened the way that he explained it in his
14 testimony.

15 And I asked him that he recall him the next day that
16 I was going to testify, and question him about those
17 inconsistencies. And he said that he had already
18 impeached him on a prior statement -- his prior statement
19 from Alabama. But he would let me get it in on the stand
20 and -- but I was never asked the question.

21 Q Okay. What about the issue of the cut to the finger?

22 A Yes. I think those are -- he was cut on the
23 left-hand finger and hand. And I thought that -- I felt
24 that was consecutive -- or consistent with defensive
25 wounds. And he never asked anything about that. And he

1 didn't ask --

2 Q Who's "he"? Who never asked?

3 A Mr. Abdalla.

4 Q Okay.

5 A And the expert witness -- the chief medical examiner,
6 Dr. Ward, had testified. And nothing was ever -- he
7 didn't ever recall him and ask him about that, or the stab
8 wounds, or anything like that.

9 Q Okay. While Mr. Southerland was testifying, did he
10 ever -- was there ever any question asked about his
11 weight -- Mr. Southerland's weight?

12 A Yes.

13 Q And tell the Court a little bit about that issue.

14 A They were -- Carl Southerland testified that he was
15 like 100 and something -- 115-pounds, or something like
16 that. And they were trying to -- going to call Tracy
17 Burkette up and let her testify that he was, actually,
18 157, or something like that, a lot more than what he had
19 testified to.

20 And then Mr. Proctor -- I mean Mr. Weston said
21 that -- he objected to that, to just letting her get up on
22 the stand and testify to it. He said that he had had four
23 and a half years to prepare, that he wasn't going to let
24 him halfway slide it under the rules.

25 Q Okay. Was Mr. Abdalla -- did he have someone from

1 the jail -- a records custodian from the jail waiting in
2 the wings?

3 A No. The Judge ordered somebody to go get it from the
4 LEC.

5 Q All right. And then you had an issue about the
6 amount of blood in the car versus how much was on you
7 versus how much was on Mr. Southerland. Do you want to
8 explain that to the Court?

9 A Yes. There was testimony that Carl Southerland only
10 touched him one time to help me put him in the backseat.
11 And I had no blood on my shorts or anything that I know
12 of. I mean, I -- they said I had a couple, you know --
13 blood was on a cutting from my shirt. But I guess -- I
14 don't know what that came from.

15 Because I never touched Mr. Proctor, except to help
16 Carl put him in the backseat. And Carl had -- was the one
17 that killed him and was the one that was struggling with
18 him. And he was covered in blood. His clothes were
19 covered in blood. His shirt was covered in blood.

20 Q Did Mr. Abdalla ever submit those pictures of Carl
21 Southerland covered in blood? Were those pictures
22 submitted before the jury?

23 A No. None of those were submitted.

24 Q Did you ask Mr. Abdalla to submit those pictures?

25 A Yes, I did.

1 Q Okay. And did he?

2 A No.

3 Q Okay.

4 A Or the clothes. The clothes, also, were -- they said
5 in the testimony the clothes were, also, gathered. And
6 they had those, too, pictures of the clothing and the
7 clothes -- the pictures themselves and the clothes
8 themselves.

9 Q All right. Did Mr. Abdalla discuss with you the
10 possibility of your testifying against Mr. Southerland?

11 A No. We never did. Nothing ever came up.

12 Q Okay.

13 A I asked did I -- he asked the Solicitor if that would
14 be possible. But nothing ever -- I never -- nothing ever
15 came of it.

16 Q Also, you had -- did you have an issue with the
17 self-defense charge? And let me just kind of get this
18 straight. Your defense was that you didn't do it;
19 correct?

20 A Yes. I didn't kill him.

21 Q Okay. But, nevertheless, you wanted Mr. Abdalla to
22 request a self-defense charge?

23 A Not at the time, no.

24 Q Okay.

25 A I mean, I felt --

1 Q Maybe I misunderstood that issue.

2 A Yeah. I felt that the jury since they did find it
3 that I -- that they thought I killed him. And they say
4 that you can -- they can believe what testimony they want
5 to.

6 I was hit in the head in the onset of this incident.
7 And I was acting defensively. And I stated that in my --
8 at the trial. And, you know, if they believed that I
9 killed him, then they could have believed that I was
10 acting defensively when I did it.

11 Q Okay. So you -- one of the allegations today is that
12 you wanted Mr. Abdalla to request that the Judge instruct
13 the jury on self-defense?

14 A Yes.

15 Q Okay. And that didn't happen, did it?

16 A No.

17 Q Okay. Also, the Judge instructed the jury on the
18 inference of malice; is that correct?

19 A Yes.

20 Q Did Mr. Abdalla object to that inference?

21 A No, he did not.

22 Q Okay. And do you recall the Judge, also, instructing
23 the jury on manslaughter and murder?

24 A Yes, he did.

25 Q All right. And how do you think -- that inference of

1 malice, how do you think that effected the jury and
2 effected the outcome of your case?

3 A I think the inference of malice when used with a
4 deadly weapon prejudiced me and -- because it overruled --
5 precluded manslaughter and -- I mean possession of a
6 weapon. And the Judge -- they couldn't have found me
7 guilty of nothing but murder.

8 Q Okay. And what other allegations -- are there any
9 allegations I've missed that you wanted to raise today
10 about Mr. Abdalla's representation of you?

11 A Could I have just a second to look through here?

12 Q Sure.

13 (Pause.)

14 MS. HORLBECK: I just had a couple -- he had -- he
15 left some of his notes at the table.

16 BY MS. HORLBECK:

17 Q I don't know if you want to look at those.

18 A Yes. Dr. Ward, in his testimony, he was talking
19 about the diagram of the stab wounds and the cuts on the
20 left hand and -- on Page 159. And he was talking about
21 they are not meant to indicate what we felt were the order
22 of occurrence. And, I mean, I felt like, you know, they
23 had the benefit of two chief medical examiners there,
24 their opinions. And it was their order of occurrence that
25 was never asked -- about the order of occurrence.

1 Q Are you saying that Mr. Southerland testified that
2 there was a certain order of the wounds?

3 A Yes, he did. He said that I stabbed -- he held him,
4 I stabbed him in the chest. And he fell over dead.

5 Q Was that distinction -- did Mr. Abdalla argue that
6 distinction to the jury during closing?

7 A No.

8 Q Okay. What's the next allegation?

9 A And, yeah, Dr. Ward talks about -- on Page 160, Lines
10 13 through 21, he talks about the stab wounds -- the stab
11 wounds three in Line 20. And he says there was
12 hemorrhaging adjacent to the aorta. And I was concerned
13 that, you know, postmortem stab wounds, bleeding and
14 hemorrhaging. And I thought that was -- could have
15 impeached Mr. Southerland's testimony, also.

16 Q Okay.

17 A And he had an expert witness there. And he didn't
18 ask him about any of that.

19 Q Okay. And the next issue?

20 A Yeah. And I was just talking about Mr. Ward
21 testified that the heart wound was, certainly, the fatal
22 one. But then there was hemorrhaging in the other wounds.
23 And I just felt like, you know, that could have went to
24 discredit his testimony and asserted he was committing
25 perjury.

1 Q But he wasn't -- Mr. Abdalla didn't cross-examine
2 Dr. Ward about that or Mr. Southerland; correct?

3 A Yes.

4 Q Okay. And did he argue those points in closing?

5 A No.

6 Q All right.

7 A And in the video -- they had a video from Alabama of
8 the chase. And Carl Southerland had testified that he
9 was -- that he had turned and was going across a median to
10 try to go to another road. And that just wasn't the case.
11 And they had video and stuff there that would have proved
12 that the turn that was made was pretty sharp. And it was
13 into a 20-foot barrier fence. So there was no going to
14 another road. I did that to stop the car, to end the chase.

15 Q Was that fact ever used to impeach Mr. Southerland?

16 A No, ma'am, it wasn't.

17 If you'll give me just a minute.

18 Q All right. Sure.

19 A Mr. Ward, also, testified that -- I mean, let's see.
20 Carl Southerland had, also, testified that I had put
21 Mr. Proctor under the backseat in Atlanta when he took a
22 nap, that I had gotten out and taken the backseat out and
23 put Mr. Proctor under it. And, you know, they had
24 pictures of the car and, also, video of the car that
25 showed the backseat was still in the -- in place. You

1 know, I didn't never take the backseat out.

2 And Mr. Proctor was 5'4". He was longer than the car
3 is wide, you know. I mean, I couldn't put him under a
4 backseat. And there was evidence there to show that the
5 seat was still in place. And, you know, it was never
6 used.

7 Q Okay. Mr. Abdalla, did he ever use that information
8 to try to impeach Mr. Southerland's testimony?

9 A No.

10 Q All right. Is that all?

11 A I believe so.

12 MS. HORLBECK: Please answer any questions that
13 Ms. Ratigan may have for you.

14 CROSS-EXAMINATION

15 BY MS. RATIGAN:

16 Q How many times would you say you met with Mr. Abdalla
17 before you went to trial? Do you recall?

18 A About six or seven.

19 Q Okay. And did you discuss the State's evidence with
20 him?

21 A No. I never seen any of the State's evidence. I
22 told you my story a few times.

23 Q So when you met with Mr. Abdalla or the investigator,
24 you never discussed any of the State's evidence?

25 A No, ma'am.

1 Q The first time you were seeing any of this stuff was
2 at trial?

3 A Yes.

4 Q Okay. Did you tell Mr. Abdalla your version of what
5 had happened with the victim that day?

6 A Yes, I did.

7 Q And you and Mr. Southerland were both there when the
8 victim was murdered?

9 A Yes, ma'am.

10 Q And there was nobody else there?

11 A Nobody else.

12 Q And the two of you left town with the victim in the
13 backseat of his vehicle?

14 A Yes, ma'am.

15 Q And you were, ultimately, arrested in Alabama. And
16 the victim was still in the backseat of the vehicle?

17 A Yes, ma'am.

18 Q Okay. Did you know when you went to trial that
19 Mr. Southerland was going to testify against you?

20 A Not until the day of trial.

21 Q And did you know when you went to trial that your
22 mother had given a statement that you called her and said
23 you'd killed someone?

24 A No. I didn't know that she had said I killed
25 someone. But I know she had given a statement. I had

1 never seen the statement.

2 Q And your testimony was that there was no physical
3 evidence that linked you to the victim -- to the murder?

4 A Excuse me?

5 Q You testified there was no physical evidence linking
6 you to the murder?

7 A Yes.

8 Q Was there any physical evidence linking
9 Mr. Southerland to the murder?

10 A I don't know.

11 Q Did Mr. Abdalla explain to you the concept of the
12 hand of one is the hand of all?

13 A Yes, he did.

14 Q Did he explain to you the State would likely use that
15 argument at trial?

16 A Yes. But I didn't understand the hand of one hand of
17 all theory. I thought the common design and purpose had
18 to be present. And there was no common design and purpose
19 to kill Mr. Proctor. So I didn't think it would apply
20 and -- but I was wrong.

21 Q So you understood this idea of common design or
22 purpose. You just didn't really understand --

23 A How it applied --

24 Q -- accomplice liability?

25 A Yes.

1 Q Okay. And you want to fight the extradition to South
2 Carolina?

3 A Yes, ma'am.

4 Q Why is that?

5 A Well, I really don't know. My attorney -- I know
6 it's a jurisdictional matter. But my attorney had asked
7 that there be evidence and stuff to bring me back to South
8 Carolina. So I was going on my attorney's advice.

9 Q So you, basically, were just fighting extradition
10 because you didn't want to go to trial here?

11 A No. I was fighting extradition because my attorney
12 advised me that I should.

13 Q But she never told you why?

14 A No.

15 Q And your testimony today is that some of these jury
16 charges prejudiced your case?

17 A Some of -- excuse me. Yes, ma'am. Yes, ma'am. Two
18 as a matter of fact or -- yeah, the presumption of malice
19 charges.

20 Q And you don't dispute that you left town with the
21 victim in the backseat, and you had numerous opportunities
22 to leave the situation before you went to Alabama?

23 A Yes.

24 Q Is that correct?

25 A That's correct.

1 Q And you chose to remain with your co-defendant?

2 A Yes, ma'am.

3 Q And that was all brought out at trial, was it not?

4 A Yes, ma'am.

5 Q And explain to me again, you stated you had a meeting
6 with Mr. Abdalla, and Mr. Southerland, and his lawyer at
7 the LEC the weekend before trial. And I believe you
8 testified Mr. Abdalla said he was not going to allow you
9 to plead guilty?

10 A No. The Judge said he wasn't going to allow me to
11 take the plea -- or the plea that they were offering, that
12 they was presenting to him.

13 Q So Mr. Abdalla did not try and prevent you from
14 pleading guilty?

15 A No.

16 Q And you believe that your attorney's acts and
17 omissions prejudiced you, and that's why you lost the
18 case?

19 A Yes.

20 Q But didn't you tell the jury that you had no remorse
21 about the killing?

22 A Yes. I didn't understand what remorse meant at the
23 time. I thought they were asking me if I was responsible
24 for the killing myself and I had remorse for it.

25 Q So you understood the idea of a common scheme or

1 design, but you didn't understand what remorse meant?

2 A Yes.

3 Q All right. And do you think telling the jury you had
4 no remorse about the killing may have hurt your case?

5 A Yes. That's what I thought at the time. I thought I
6 would be admitting to killing him. And I had remorse
7 about my part in what I played afterward. But I didn't
8 kill him, so I didn't think that I was -- should have
9 remorse for killing him. And I thought that was the
10 question.

11 MS. RATIGAN: Judge, I'll direct that's on Page 363.

12 BY MS. RATIGAN:

13 Q So when Mr. Abdalla said, Do you feel remorseful
14 about this? And you said, "Not about the killing, but
15 about being there afterwards" --

16 A Yeah.

17 Q You admit telling that to the jury?

18 A Yes.

19 Q And you think that probably hurt you in their eyes?

20 A Maybe, probably.

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

22 MS. HORLBECK: No further questions.

23 THE COURT: Thank you, Mr. Campbell.

24 You may call your next witness.

25 MS. HORLBECK: Judge, that's all I have. I just --

1 but I'd just make a few brief comments.

2 THE COURT: I don't know if --

3 MS. HORLBECK: Unless you have something else.

4 MS. RATIGAN: Yes.

5 MS. HORLBECK: Oh, you do.

6 MS. RATIGAN: We're going to recall Mr. Abdalla.

7 THE COURT: Okay.

8 MS. RATIGAN: Just very briefly just to address some
9 of the issues that came up.

10 THE COURT: Yes. Sure.

11 You're still under oath.

12 THE WITNESS: Yes.

13 DIRECT EXAMINATION

14 BY MS. RATIGAN:

15 Q I'm going to make this as quick and painless as
16 possible. I'll just go through some of the additional
17 issues that got brought up during Mr. Campbell testimony.

18 Mr. Campbell testified that y'all had a meeting at
19 the LEC with the co-defendant and his attorney the
20 Saturday before trial. Do you recall having that meeting?

21 A Actually, just vaguely. I forgot all about it until
22 he mentioned it.

23 Q And do you recall if Mr. Southerland, at that time,
24 said he would, basically, take the rap? Do you recall
25 him --

1 A I don't recall that.

2 Q Okay. And Mr. Campbell testified that when you went
3 to trial that day that the 15-year offer was presented and
4 the Judge would not accept it. Do you recall that
5 happening?

6 A No. Again, I don't recall. But if he said it, I'm
7 sure that's what happened. I just don't recall it.

8 Q You just don't recall --

9 A But I remember the Judge giving him the opportunity
10 to plead throughout the trial at different points, you
11 know, your guy could still plead. And I don't remember
12 the exact years that were offered.

13 Q So you recall the Judge making several comments about
14 pleading guilty, you just don't recall him ever saying
15 that he could not?

16 A No. I don't remember that. But I'm not denying
17 that. I just don't recall it.

18 Q Okay. And Mr. Campbell testified that he repeatedly
19 requested discovery materials from you, but he never
20 received them. Do you recall that?

21 A Not at all. But I know, typically, what I would do
22 is I would go over stuff with my client, but I would send
23 Tracy down to go over the whole thing because -- just for
24 a time factor. And I can't slough that off on an
25 investigator. That's my responsibility, but.

1 Q Your general practice would be for you --

2 A When there's a voluminous discovery, oftentimes, I
3 would send the investigator down to go over the discovery.
4 And then if they had questions, they could talk to me
5 about it more specifically.

6 Q Do you, generally, provide copies of discovery to
7 your clients?

8 A Almost never.

9 Q Okay. And why is that?

10 A Well, I just don't like the discovery floating around
11 the jail. And there's a lot of information in there that
12 everybody doesn't need to have. He's entitled to see his
13 discovery. I just don't believe that the clients should
14 have copies of the discovery in the jail.

15 Q Now, Mr. Campbell testified that you discussed with
16 him the statement given by Mr. Yearta, David Yearta.
17 Mr. Campbell testified that you did not want to use this
18 statement to negotiate a deal. Do you recall ever having
19 that conversation with him?

20 A I'm sorry. I don't remember. I don't have a
21 selective memory. I just really can't recall this. And
22 it's annoying me that I can't recall.

23 Q Based on the information you had in this case, is
24 it -- does it seem likely that you would have told him I'm
25 not going to take the statement and try and negotiate a

1 better deal, or not?

2 A I'd have to know my reasoning. I don't know why I
3 would do that. I just don't know what I was thinking at
4 the time.

5 I know I was concerned about the case the whole time,
6 because I just thought it was a bad set of facts. I told
7 Mr. Campbell I believed him. But I, also, told him that
8 it was going to be really tough to overcome the burden of
9 being in a car with a dead man for three days.

10 Q And did you ever contemplate arguing self-defense at
11 trial?

12 A No. I don't remember -- no. I don't think
13 self-defense would have been appropriate. Because if he
14 didn't do it, self-defense didn't -- isn't consistent, not
15 to mention the four elements you have to have for
16 self-defense, which are really hard to meet.

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

18 MS. HORLBECK: Just very quickly.

19 CROSS-EXAMINATION

20 BY MS. HORLBECK:

21 Q So no one prevented Mr. Campbell from pleading
22 guilty. But do you know if the State -- do you recall
23 whether or not the State had renewed their offer on the
24 day of trial?

25 A I can't remember what the State offered versus what

1 the Judge offered as far as the day of trial.

2 MS. HORLBECK: Thank you.

3 That's all I have.

4 MS. RATIGAN: I have nothing further, Your Honor.

5 And the State would rest, and ask that Mr. Abdalla be
6 excused.

7 THE COURT: Any objection?

8 MS. HORLBECK: No.

9 THE COURT: All right. Closing statements.

10 MS. HORLBECK: Judge, just quickly. I did try to
11 contact Ms. Page, the attorney from Alabama. She has,
12 unfortunately, passed away as of May the 27th, 2012. So
13 she was available to testify at trial had -- I guess had
14 she been called. I don't know her schedule. But she's
15 just not available for me to bring. And, you know, she
16 probably would have been the best evidence of this
17 extradition matter.

18 I did contact the Court to try to find some
19 documents. And I really just didn't find a whole lot. So
20 my best evidence just is not available at this time. And
21 I just wanted to let the Court know that.

22 Our -- we rely on State v. Belcher regarding the
23 issue we raised as to the malice charge.

24 And that's all I have.

25 THE COURT: Thank you.

1 Yes, ma'am, Ms. Ratigan.

2 MS. RATIGAN: Very, very briefly, Your Honor.

3 A lot of the issues being raised today appear to me
4 to be more issues that should have or could have been
5 raised on direct appeal, issues about the extradition,
6 about the purported Brady violation. They were properly
7 made at the trial. And I think Mr. Campbell was not
8 satisfied with Judge Miller's rulings. That's a matter
9 that should have been handled on appeal. The issue on
10 appeal that was raised had to do with accessory after the
11 fact of murder. These issues were not raised. But that's
12 the venue in which they should have been raised.

13 The issue about the extradition, I'll just note it's,
14 obviously, a lengthy transcript. But the pre-trial motion
15 goes from Page 12 to about Page 25 or 26.

16 And then the following day, Judge Miller comes back
17 and revisits the extradition issue, Pages 90 to about 92,
18 where he, basically, extrapolates further upon his
19 rational behind denying the extradition issue. And,
20 honestly, that's -- the arguments he makes are the State's
21 arguments, which there's been no evidence presented either
22 then or today of any of this documentation. We're all
23 talking about orders, and hearings, and waivers. There's
24 been no documentation provided either back at trial or
25 today. This is all completely speculative.

1 And Judge Miller made a couple of findings that I
2 will piggy back on to, which is, first of all, personal
3 jurisdiction, he was in the state, the state had him. And
4 that it seems as if -- if there's an allegation of
5 impropriety to be made, it would be made against Alabama
6 for potentially short circuiting this hearing and letting
7 him go. I would argue there's been no showing of any kind
8 of violation or any kind of prejudice.

9 And, lastly, I believe the issue about Belcher --
10 Belcher is not retroactive, as Your Honor knows. At the
11 time, it was permissible to charge a jury on the inference
12 of malice that arises from the use of a weapon during the
13 commission of a violent crime. Clearly, Belcher --

14 THE COURT: Well, Belcher is 2009 --

15 MS. HORLBECK: No --

16 MS. RATIGAN: Is it? I thought it was 2010.

17 MS. HORLBECK: No. It was decided October the 12th,
18 2009. So it was in play at the time of this trial.

19 MS. RATIGAN: Okay. Well, I would argue that you
20 really can't prove that that had any kind of prejudicial
21 impact. The State presented evidence that these two
22 gentlemen attacked the victim in his car. He was stabbed
23 18 times.

24 They put the victim in the backseat of his own
25 vehicle. Someone jumped into the blood-soaked front seat

1 of the car. They drove for two days. They were,
2 eventually, apprehended in Alabama with the victim's body
3 decomposing in the backseat after being in the car with
4 them for two days.

5 The victim's -- pardon me, the Defendant's mother
6 testified at trial and gave a statement that the Defendant
7 called her and said that he had killed somebody. He never
8 made any mention at the time that he talked to her that it
9 was somebody else, that he was coerced. Mr. Campbell
10 remained with the co-defendant and the deceased in the car
11 for several days.

12 And then Mr. Southerland testified at trial. And the
13 State would argue there's been no prejudicial impact. The
14 biggest thing that prejudiced Mr. Campbell's case was
15 probably when he told the jury that he did not show any
16 remorse and did not feel any remorse for the killing.

17 So the State would argue that even if Mr. Abdalla
18 could have objected to some of the jury charge issues that
19 they wouldn't have changed the outcome of the trial.

20 MS. HORLBECK: And, obviously, we feel differently,
21 Judge. The main evidence against Mr. Campbell in this
22 case was his -- was the testimony of his co-defendant,
23 Mr. Southerland. There was absolutely no DNA evidence to
24 connect Mr. Campbell to the killing of Mr. Proctor.

25 And, Judge, the case itself -- the Belcher case,

1 clearly, states that one of the reasons that they made the
2 decision they made is they were firmly convinced that
3 instructing a jury the malice charge is confusing and
4 prejudicial. And I just -- I don't see how it could have
5 done anything but impact the juries decision.

6 And that's all I have, Judge.

7 THE COURT: Thank you.

8 Was the -- I mean, clearly, with manslaughter to be a
9 charge there had to be evidence in the record that
10 mitigated -- potentially mitigated the murder, which would
11 have entitled him -- which would make an inference from
12 the deadly weapon charge improper.

13 Do you agree with that, Ms. Ratigan?

14 MS. RATIGAN: I'm sorry, Your Honor. I was busy
15 being a scribbler. Would you repeat that?

16 THE COURT: There was evidence presented that could
17 have reduced, mitigated, or excused the crime given the
18 manslaughter charge; right?

19 MS. RATIGAN: I believe so.

20 THE COURT: So that would have made the inference of
21 malice charge arising from a deadly weapon an error;
22 right?

23 MS. RATIGAN: The State's position would be that both
24 murder and manslaughter were charged.

25 THE COURT: Okay.

1 MS. RATIGAN: That would be the State's position,
2 Your Honor.

3 THE COURT: All right. Well, thank you for your
4 presentations.

5 And the findings I make are as follows: First of
6 all, as to the statement Mr. Campbell made about not
7 having any remorse, looking at the context of the
8 transcript and the context of how he made those
9 statements, I think it was clear he was stating that he
10 was denying he, actually, murdered the victim. So that's
11 why he didn't have remorse. He did say he had remorse for
12 being a part of it. So I do think that is a fair reading
13 of the transcript.

14 I do find that a failure to object to the malice
15 charge was deficient, based on Belcher. However, based on
16 State v. Stanko, I find that that is subject to harmless
17 error analysis. And, here, I don't find that the jury
18 instruction could have contributed to the verdict.

19 The jury, it appears, deliberated about five and a
20 half hours. They came back and asked a question about
21 reasonable doubt and about principle of -- the definition
22 of a principle. And they were recharged on that, which
23 although trying to read into the juries deliberation in
24 anything is hazardous, at best. The appearance is that
25 the jury was focussing on his -- Mr. Campbell's

1 responsibility as a principle, and not on whether malice
2 existed.

3 I don't find anything that would make the error
4 prejudicial within the meaning of Strickland, or within
5 the meaning of the harmless error concept. So I deny the
6 PCR on that basis. And, in my view, that's the most
7 significant issue that was raised here today.

8 As far as the extradition, I don't -- I find that
9 issue was raised. Judge Miller ruled on it. And I find
10 it was effectively presented to the trial court.

11 As far as the Rule 5/Brady issue -- or rather, Brady
12 issue, I don't see where that prejudiced the Defendant
13 either. I think it was, perhaps, a surprise to
14 Mr. Abdalla, but he handled it expertly. And there was no
15 prejudice in the withholding of the report. And arguments
16 were made about that that were sufficient and within the
17 realm of reasonableness for criminal defense
18 representation.

19 As far as the statement about Ms. Burkette that she
20 made, I believe that was a Defense witness. I'm not sure
21 I fully understand that argument.

22 What are you -- what is your point there,
23 Ms. Horlbeck? That Mr. Yearta's statement was allowed to
24 come in through Ms. Burkette?

25 MS. HORLBECK: Judge, the -- I believe that the

1 Court's basis for not allowing that testimony in was lack
2 of reliability. And what I was trying to argue and
3 question Mr. Abdalla about was whether -- and I'd ask my
4 client, also, if the -- and there was no -- I was trying
5 to kind of find out if there was further information that
6 could have been included in that statement, such as where
7 the statement was made, an explanation as to why the
8 statement was made a year later, a year after the
9 co-defendant told Yearta what he told him.

10 And I was trying to just establish further ways that
11 Mr. Abdalla could have made the statement more reliable.
12 The statement wasn't videotaped. It wasn't audiotaped.
13 And, unfortunately, you know, the reliability -- the ways
14 that could have been used to bolsterer the reliability
15 weren't done. And that's the point I was making, Judge.

16 THE COURT: But what's the statement again? I got a
17 little confused about exactly what it was.

18 MS. HORLBECK: And I apologize.

19 The co-defendant had told Mr. Yearta while they were
20 both in the detention center that the co-defendant was,
21 actually, the one who killed Mr. Roger [sic].

22 THE COURT: Right.

23 Ms. HORLBECK: That Mr. Campbell had nothing to do
24 with it. And Mr. Campbell, actually, ran. And I think --
25 there -- it was asked -- Mr. Campbell -- Mr. Oswald --

1 MS. RATIGAN: Southerland.

2 MS. HORLBECK: Southerland had asked -- had said
3 these things to Mr. Yearata kind of in the context of I
4 made this statement. I want to know if can I take it
5 back? Can you help me? It was in that context.

6 And I think there was, also, a context of Mr. Yearata
7 had done some research. He was one of those people at the
8 jail that would do research on things.

9 Am I correct, Mr. Abdalla?

10 MR. JOHN ABDALLA: That's my understanding.

11 MS. HORLBECK: That was sort of the context that the
12 statement was made by Mr. Southerland to Mr. Yearata.

13 THE COURT: So it never got into evidence?

14 MS. HORLBECK: It was proffered. And the Judge --
15 Judge Miller wouldn't allow it into evidence.

16 THE COURT: That's the proffer. Okay.

17 MS. HORLBECK: Yes, sir.

18 THE COURT: Was the co-defendant questioned about it?

19 MS. RATIGAN: Yes. On cross, Mr. Abdalla asked
20 whether or not he'd ever told a David Yearata that he
21 killed the victim.

22 THE COURT: And he denied it?

23 MS. RATIGAN: Yes.

24 THE COURT: So your position is he was deficient in
25 not being able to get that admitted?

1 MS. HORLBECK: Right.

2 It wasn't properly preserved in the event that the
3 speaker died, which the speaker did die.

4 THE COURT: How would he have gotten it in?

5 MS. HORLBECK: Well, I was thinking he could get it
6 in under 804(B)(3). I know that the Court had,
7 specifically, said it was not admissible. If I can just
8 find my notes.

9 I think the Court had ruled it was -- the Court had
10 said that the only way this could come in under -- was
11 under 804(B)(1). But it doesn't qualify as a deposition.
12 And this was said around Page 285. I don't know if you
13 have the exact line and date -- line and page. And I had
14 thought that, perhaps, 804(B)(3) would be a way this could
15 come in. And I don't believe that that specific rule is
16 argued, although 804 was.

17 MS. RATIGAN: The Judge's ruling on that is on 287.

18 MS. HORLBECK: That's probably right.

19 THE COURT: But Mr. Southerland was available; right?
20 He was at the trial?

21 MS. HORLBECK: That's true, yes.

22 THE COURT: So how could he -- but Mr. Yearta was
23 already dead?

24 MS. HORLBECK: Yes, sir. That's the situation.

25 And Mr. Yearta was the person that made the statement

1 to Tracy Burkette.

2 THE COURT: Right.

3 Okay. Well, I'll look at that. But all the other
4 issue, I don't find rise to the level of allowing
5 post-conviction relief.

6 So I'll look at that one issue. But I deny all the
7 rest of the issues at this time.

8 Thank you.

9 *****END OF TRANSCRIPT OF RECORD*****

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CERTIFICATE OF REPORTER

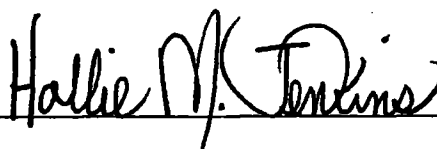
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 22nd day of April, 2014.

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

August 18, 2014



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Jonathan Millard Campbell,)
 S.C.D.C. #236007,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-7608

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL D. WICKENSIMMER
 2014 JUN 5 AM 10 24

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 5, 2012. The Respondent made its return on May 3, 2013. An evidentiary hearing was held on April 22, 2014 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, 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 P. Abdalla, Esquire. The Court had before it the trial transcript, the Greenville 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 Greenville County Clerk of Court. The Applicant was indicted at the January 2006 term of the Greenville County Grand Jury for murder (2006-GS-23-0328) and possession of a weapon during the commission of a violent crime (2006-GS-23-0329). He was represented by John P. Abdalla, Esquire.

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After the State brought the case to trial, the Applicant was found guilty. On January 14, 2010, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of forty-five years for murder and five years for possession of a weapon during the commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Campbell, Op. No. 2012-UP-236 (S.C. Ct. App. filed April 18, 2012). The Remittitur was sent on May 4, 2012.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Counsel did not adequately prepare the case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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"[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 met with trial counsel six or seven times about the case but that they never discussed the State's evidence. The Applicant stated he told trial counsel his version of events. The Applicant stated there was no evidence connecting the blood on his shirt to the victim. The Applicant stated there was an Alabama order granting him an extradition hearing but that he was returned to South Carolina before having said hearing. The Applicant stated he told trial counsel about the extradition issue but that counsel did not contact his Alabama attorney. The Applicant stated he met with trial counsel, his co-defendant, and his co-defendant's attorney at the Law Enforcement Center on the Saturday before trial. The Applicant stated the attorneys told them there was a fifteen-year plea offer but that the victim's family wanted to know what happened on the night in question. The Applicant stated his co-defendant said he would take responsibility. The Applicant stated the judge would not accept the fifteen-

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year offer. The Applicant stated trial counsel did not cross-examine the co-defendant at trial about the things he said during that meeting. The Applicant stated trial counsel never used the statement from David Yearta to negotiate a better offer. The Applicant stated trial counsel should have asked for a jury charge on self-defense. The Applicant stated trial counsel should have objected to the jury charge about the inference of malice.

Trial counsel testified he had several meetings with the Applicant and that these meetings were sufficient to present a good defense. Trial counsel testified he reviewed the State's evidence with the Applicant, as well as his version of events. Trial counsel testified he explained the theory of accomplice liability to the Applicant, who had difficulty accepting it. Trial counsel testified he generally does not provide clients with their own copy of the discovery materials because of issues with those materials circulating around the jail. Trial counsel testified he objected to SLED reports at trial because he did not receive them in discovery. Trial counsel testified he moved for a mistrial under Rule 5, SCRCrimP. Trial counsel stated the SLED report indicated the Applicant's blood was not on cuttings of the victim's clothes and that this information may have aided in his plea negotiations. Trial counsel testified he spoke to the Applicant's attorney in Alabama and confirmed the Applicant did not receive an extradition hearing. Trial counsel testified the Alabama attorney did not provide him with any valid reason the Applicant may have had to fight extradition. Trial counsel testified he vaguely recalled the meeting at the Law Enforcement Center but did not recall either the co-defendant saying he would admit guilt or the judge later refusing to allow the Applicant to plead guilty. Trial counsel testified he proffered testimony from his investigator at trial about a statement she had taken from David Yearta. Trial counsel testified he did not contemplate a self-defense argument because the trial strategy was that the Applicant was innocent. Trial counsel testified he did not

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object to the jury charge on the inference of malice.

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 trial counsel did not properly object to a violation of Rule 5, SCRCrimP. During the State's direct examination of a former investigator, a DNA report was mentioned. Trial counsel stated he had never seen this report and the jury was excused. (Trial transcript, p.187). Trial counsel moved for a mistrial, arguing "had we had the DNA results we could have done some further testing and made conclusions so the jury would have had some information to consider." (Trial transcript, p.191). Trial counsel argued the SLED report should have been disclosed under Rule 5, SCRCrimP. (Trial transcript, p.194). The assistant solicitor countered the SLED report was not material to the defense. (Trial transcript, p.195). Upon questioning by the judge, the former investigator stated there were two DNA profiles on the Applicant's clothing that could not be identified. (Trial transcript, pp.197-200). The assistant solicitor noted the State was not arguing the blood that was found belonged to the Applicant. (Trial transcript, p.204). The trial judge denied the motion for a mistrial. (Trial transcript, pp.197-205). This Court finds that while the SLED report was a surprise to trial counsel, he expertly handled the issue. This Court finds the Applicant has failed to demonstrate prejudice. While trial counsel testified he may have been able to use the SLED report to procure a better plea offer, this Court finds this is entirely speculative. Trial counsel testified both the Applicant and his co-defendant were offered plea deals and that the trial judge repeatedly told the Applicant throughout the trial that he could plead

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guilty. It is clear to this Court the Applicant wanted a jury trial in order to attempt to prove his innocence – he proclaimed his innocence both at trial and at the PCR hearing – and that he would have proceeded to trial even if trial counsel had received the SLED report in discovery. Further, the SLED report was not material to the defense, did not contain any exculpatory evidence, and would not have changed the outcome of the trial if it had been provided to trial counsel earlier. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly raise the extradition issue at trial. At the start of trial, trial counsel moved to dismiss the charges because the Applicant had been unlawfully transported to South Carolina before he received his extradition hearing in Alabama. (Trial transcript, pp.12-23). The trial judge denied the motion, finding there was no evidence the extradition violated due process or that the Applicant had a valid basis to challenge the extradition. (Trial transcript, p.25). The trial judge later revisited the extradition issue and held there was no showing of a constitutional violation, the Applicant's complaint with a violation of extradition laws would be with Alabama, South Carolina had jurisdiction over the Applicant, and the Applicant failed to demonstrate prejudice. (Trial transcript, pp.90-91): This Court finds trial counsel effectively presented the extradition issue to the trial judge and the Applicant has failed to present any evidence (such as court documents from Alabama or compelling case law) at the PCR hearing that may have bolstered this argument at trial. 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). As such, the Applicant cannot prove either error or prejudice.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not

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properly handle the events that occurred after the Saturday meeting at the Law Enforcement Center with the co-defendant and his attorney. The Applicant stated his co-defendant said at this meeting that he would take responsibility. The Applicant stated the judge subsequently would not allow him to plead guilty and that trial counsel should have cross-examined the co-defendant on his admission of responsibility during the trial. Trial counsel, however, testified he did not recall the co-defendant accepted responsibility for the murder during that meeting. Trial counsel also testified he did not recall the judge ever stating the Applicant could not plead guilty and noted the judge said throughout the course of the trial that he could enter a plea. This Court finds trial counsel's testimony on this issue is more credible. This Court notes trial counsel is an ~~an~~ experienced criminal defense attorney and would have capitalized on any admission of guilt or responsibility that the co-defendant would have made. This Court finds the absence of such cross-examination questions of the co-defendant supports trial counsel's testimony that the co-defendant never accepted responsibility for the murder. The Applicant has failed to meet his burden of proof. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding a PCR 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 did not properly handle David Yeara's statement. At trial, trial counsel wanted to call his investigator as a witness to testify that she took a statement from Yeara in which he said the co-defendant admitted to killing the victim. (Trial transcript, pp.278-81). Trial counsel proffered the investigator's testimony but the trial judge stated he would not allow the investigator to testify. (Trial transcript, pp.285-87). This Court finds trial counsel was not deficient. Trial counsel made a compelling argument for the admission of the investigator's testimony and then properly proffered it for the record. Regardless, this Court finds the Applicant cannot demonstrate any

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prejudice because he failed to articulate a cognizable basis upon which this testimony could have been admitted. See id.; Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have argued self-defense at trial. It is clear from the trial testimony that the defense strategy was to argue the Applicant did not kill the victim but was merely present when the co-defendant committed the murder. As such, this Court finds there would have been no reason for trial counsel to have argued self-defense or ^{to} request~~ed~~^{ed} such a jury charge. Regardless, this Court further finds that, given the facts of the case, it would have been exceedingly difficult for the Applicant to have prevailed on such an argument. See, e.g., State v. Bixby, 388 S.C. 528, 553-54, 698 S.E.2d 572, 585-86 (2010) (listing the elements of self-defense).

This Court finds the Applicant failed to meet his burden of proving he was prejudiced by trial counsel's lack of objection to the presumption of malice charge. Trial counsel did not object when the trial judge charged the jury that malice can be inferred from the use of a deadly weapon. (Trial transcript, p.458, lines 14-15). As this case was tried after the South Carolina Supreme Court issued State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), trial counsel was deficient in failing to object. This Court finds, however, the Applicant cannot prove resulting prejudice because of the overwhelming evidence of the Applicant's guilt. See State v. Stanko, 402 S.C. 252, 264-65, 741 S.E.2d 708, 714-15 (2013) (holding that, even though the judge's jury charge did not comply with Belcher, the error was harmless in light of the overwhelming evidence of guilt). This Court also finds this jury charge did not contribute to the verdict. This Court notes the jury asked about the jury charges of reasonable doubt and accomplice liability,¹ which indicates they were focusing upon the Applicant's responsibility as a principal and not

¹ (Trial transcript, pp.465-68).

whether malice existed.

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.

All Other Allegations

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel 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.

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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 23^d day of May, 2014.

D. Garrison Hill

D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

WITNESSES

Mary Fields

Marett / 5

Greenville County Sheriffs Office

9/9/2005

ARREST WARRANT NUMBER

1468701

ACTION OF GRAND JURY
TRUE BILL

[Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Josie Kemp
Foreperson of Petit Jury

1/14/10
Date:

DOCKET NO. 2006-GS-23-

WJW

The State of South Carolina

000328

County of Greenville

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE

vs.

JONATHAN MILLARD CAMPBELL

Indictment for

0116

MURDER

VIOLATION § 16-03-0010

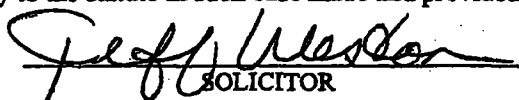
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on January 6, 2006 the Grand Jurors of Greenville County present upon their oath:

That JONATHAN MILLARD CAMPBELL did in Greenville County, on or about the 19th day of June, 2005, unlawfully and with malice aforethought kill JERMAINE PROCTOR by means of stabbing the victim repeatedly in the abdomen and chest and that JERMAINE PROCTOR 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

COUNTY OF Greenville
STATE VS.

Jonathan Millard Campbell

AKA:

Race: W Sex: M Age: 36

DOB: SS#: [redacted]

Address:

City, State, Zip: MAULDIN, SC 29662

DL#: 999999999 SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Murder / Murder

INDICTMENT/CASE#: 2006GS2300328

A/W#: 1468701

Date of Offense: 6/19/2005

S.C. Code §: 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS

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 §17-25-45 w/minor 1st or Lewd Act)

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: Jeff West 10047
Weston, Jeff SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 45 months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is 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

Table with columns for Recipient, *Fine, and various S.C. Code sections with associated fees (e.g., § 14-1-206 Assessments 107.5%, § 14-1-211(A)(1) Conv. Surcharge \$100, etc.)

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 Paul B. Wickens
Court Reporter S. Hudgins
SCCA/217 (11/2009)

Presiding Judge [Signature]
Judge Code: 2130
Sentence Date: 1-14-2010

WITNESSES

Mary Fields / *Marett / 15*

Greenville County Sheriffs Office

9/9/2005

ARREST WARRANT NUMBER

1468702

ACTION OF GRAND JURY

TRUE BILL

[Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Jessica Kemp
Foreperson of Petit Jury

1/14/10
Date:

DOCKET NO. 2006-GS-23-

WJV 000329

The State of South Carolina

✓
County of Greenville

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE

VS.

JONATHAN MILLARD CAMPBELL

✓
0549
Indictment for

POSESSION OF WEAPON DURING THE
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

337

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF WEAPON DURING THE COMMISSION OF A
CRIME

At a Court of General Sessions, convened on January 6, 2006 the Grand Jurors of Greenville

County present upon their oath:

That JONATHAN MILLARD CAMPBELL did in Greenville County, on or about the 19th day of June, 2005, possess or visibly display a Knife during the commission or attempted commission of a violent crime, to wit: 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

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

623

COUNTY OF Greenville)
STATE VS.)

Jonathan Millard Campbell)

AKA:)

Race: W Sex: M Age: 36)

DOB: [redacted] SS#: [redacted])

Address: [redacted])

City, State, Zip: MAULDIN, SC 29662)

DL#: 999999999 SID#:)

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life witho

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
 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: [Signature] 6047
[redacted] SC Bar# [redacted] Defendant Attorney for Defendant SC Bar# [redacted]

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on:
 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
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

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

Recipient: _____	\$
*Fine: _____	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100
§ 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 \$
§ 14-1-213 (Drug Court Surcharge)	\$100 \$ 25
§ 50-21-114(BUI Breath Test Fee)	\$.50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$ 5
3% to County (if paid in installments)	\$
TOTAL	\$

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

Clerk of Court/ Deputy Clerk Paul B. Wiebenschiner
Court Reporter: J. Hudgins
SCCA/217 (11/2009)

Presiding Judge [Signature]
Judge Code: 2130
Sentence Date: 1-14-2010