

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

R. Knox McMahon, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

RANDY YONSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002653

APPENDIX

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Randy Yonson - Cross-Examination by Mr. Gourley

1 right?

2 A I was trying to get my keys out of my pocket --

3 Q Trying to get your keys out?

4 A Yes, sir.

5 Q Okay. So your hand was in the pocket at the time
6 the officers -- Officer Bolen approached you?

7 A He approached me from behind. My back was turned.

8 Q Okay. And your hand was in your pocket?

9 A Yes, sir. It was in my pocket looking for my keys.

10 Q You had --

11 A My front right pocket. Not the back right pocket.

12 Q Okay. But you also had a gun in your other front
13 pocket?

14 A I had a gun in my left front pocket, yes, sir.

15 Q Okay. Your testimony today is that you weren't
16 able to review all of your discovery with your counsel?

17 A Yes, sir, that's correct.

18 Q Okay. And that you only met with him a couple of
19 times prior to your trial?

20 A One time in McDougal and 5 minutes on that one day,
21 January 9th.

22 Q And due to your lack of satisfaction -- being
23 satisfied with your counsel, you filed a motion to relieve
24 him, right?

25 A Yes, sir, I did.

Randy Yonson - Cross-Examination by Mr. Gourley

1 Q And you went up before Judge James and explained
2 everything that you said here today with your lack of being
3 satisfied with your counsel, right?

4 A Yes, sir, that's correct.

5 Q Okay. And Judge James ultimately denied your
6 motion, right?

7 A Yes, he did.

8 Q And Mr. Williams moved for a continuance at that
9 point in time, right?

10 A No, sir, I asked for a continuance.

11 Q But it can't come from you it has to come from your
12 attorney, correct?

13 A He did not do it.

14 Q But the judge ruled on a motion for continuance,
15 right?

16 A Because I asked for it.

17 Q But it was denied?

18 A Yes, sir.

19 Q Okay. You recall your counsel moving for a motion
20 for continuance during the trial?

21 A No, sir, I don't.

22 Q You got the transcript?

23 A Yes, sir, I do.

24 **MR. GOURLEY:** Page 17, Your Honor, lines 4 through
25 7. Specifically lines 5 and 6.

Randy Yonson - Cross-Examination by Mr. Gourley

1 THE WITNESS: You said 17?

2 BY MR. GOURLEY:

3 Q Yeah 17, 4 through 7. You see that part?

4 A Yes, sir.

5 Q He made a motion for a continuance because some of
6 the indictments weren't proper, right?

7 A Yes, sir.

8 Q Okay. And that you were indicted under some wrong
9 section codes and you didn't feel -- Mr. Williams didn't
10 feel you had adequate notice to prepare for trial based on
11 those errors in the indictment, right?

12 A He should have. He gave me the indictments that
13 same day.

14 Q But they were wrong, so you didn't have notice to
15 proceed -- is what Mr. Williams' argument was. As a result
16 of that argument, he got a couple of the charges against
17 you dismissed. You remember that?

18 A Yes, sir, it was a charge where -- it was
19 possession of a firearm under the age of 21.

20 Q Uh-huh.

21 A Something like it was unconstitutional or
22 something. He just -- matter of fact, they did away with
23 three charges.

24 Q Yeah. Okay. And then I think the third charge we
25 were talking about was the cocaine charge that your defense

Randy Yonson - Cross-Examination by Mr. Gourley

1 counsel moved for a directed verdict on and because the
2 State hadn't presented any evidence whatsoever that you had
3 cocaine on you, they dismissed that charge, right?

4 A Yes, sir. I don't know where that one came from.

5 Q Apparently neither did the State.

6 Now, you're saying that you weren't able to get a
7 copy of your discovery, right?

8 A Yes, sir, that's correct.

9 Q Now, you were housed in McDougal, correct?

10 A Yes, sir.

11 Q And I think you mentioned you were in a dorm room?

12 A Yes, sir, it's an open ward. It's two wings and
13 it's got 24 cubes, like concrete cubes and it's got two
14 inmates in each one.

15 Q Okay. So you had somebody else in there with you?

16 A Yes, sir.

17 Q Okay. Were you ever concerned, you know, that he
18 could look at some of your paperwork and snitch on you?
19 Come to trial and testify against you?

20 A None of that.

21 Q You never thought about that?

22 A I wasn't even worried about it.

23 Q But you would agree with me that it was a
24 possibility that he could see your paperwork and then come
25 in and testify against you at trial?

Randy Yonson - Cross-Examination by Mr. Gourley

1 A It's nothing in that paperwork that he could
2 testify that would hurt me.

3 Q Okay. And your testimony is that when you met with
4 Mr. Williams that day at court, I believe it was what,
5 January 9th?

6 A January 9th, yes, sir.

7 Q January 9th, that there were six SCDC guards back
8 there and y'all didn't have a chance to review anything?

9 A He stood across the table from me and handed me the
10 indictment and relayed a plea bargain from the solicitor.
11 That's all he did that day, sir.

12 Q Okay.

13 A He didn't say anything about preparation for trial
14 or nothing. He just --

15 Q Okay. But again, you addressed all those issues
16 with Judge James in your motion to relieve him as counsel?

17 A Yes, sir, I did.

18 Q Now, you testified earlier that you weren't aware
19 of your constitutional rights, that your counsel had failed
20 to discuss anything with you about trial or about your
21 right to confront witnesses, so on and so forth, right?

22 A Yes.

23 Q You weren't aware of any of that?

24 A No, sir, I wasn't.

25 Q But you'd already pled guilty to a burglary second

Randy Yonson - Cross-Examination by Mr. Gourley

1 just a little while ago, right?

2 A Pled guilty to a burglary second, I did that, sir.

3 Q Okay. So you've been in the system, you understand
4 your rights. You've been advised of your rights a previous
5 time, right?

6 A I didn't know about no Jackson versus Denno
7 hearing, rights about that, though.

8 Q Okay. But some of your --

9 A Some rights -- some of the rights I understood.

10 Q Okay. And your testimony here today is that during
11 the Jackson v Denno hearing, you were never advised by your
12 counsel that you could testify during that?

13 A No, sir.

14 Q He never spoke to you, never stopped and said, Your
15 Honor, may I have a moment, let me discuss this with my
16 client?

17 A No, sir, he did not.

18 Q But, again, you got to testify at trial?

19 A I think I was forced to testify.

20 Q You were forced to testify?

21 A Yes, sir.

22 Q Okay. Now, you remember the judge advising you
23 that it was your right to testify at trial and that you
24 didn't have to testify at trial and this jury wouldn't hold
25 that against you if you didn't testify?

Randy Yonson - Cross-Examination by Mr. Gourley

1 A Yes, sir, I -- and I waived that right.

2 Q In regards to the bullets found, the SLED expert
3 came and testified that there could be nine .380 shells in
4 that .9 mm, right?

5 A Yes, sir, that's correct.

6 Q Okay. There was one bullet found in Officer Bolen
7 that matched your .9 mm gun that you had in your
8 possession, right?

9 A Yes, sir.

10 Q And that goes along with your accident defense?

11 A Yes, sir. The one shell casing.

12 Q Now, you're alleging that he failed to adequately
13 cross-examine both of the officers on their inconsistent
14 statements, correct?

15 A Yes, sir.

16 Q Now, he did cross-examine, I believe it was officer
17 Williams, as you pointed out. It was a discrepancy as to
18 Officer Bolen's testimony of three shots fired and Officer
19 Williams' testimony of only hearing one shot fired, right?

20 A Yes, sir.

21 Q And that makes you kind of question if they're
22 telling the truth, right?

23 A Somebody's lying.

24 Q Right. And that went before the jury, wouldn't you
25 agree with me on that?

Randy Yonson - Cross-Examination by Mr. Gourley

1 A They heard it.

2 Q They heard it. So your counsel did bring out the
3 fact that there was some discrepancies between the two
4 officers' statements and recounts of the events that night?

5 A On his cross-examination, yes, sir.

6 Q Okay. And your testimony today is it was only one
7 shell found that matched a .380, right?

8 A Yes, sir.

9 Q And the other three shells came from, I believe,
10 Officer Bolen's gun?

11 A Yes, sir, that's correct.

12 MR. GOURLEY: Beg the Court's indulgence, Your
13 Honor.

14 THE COURT: Yes, sir.

15 BY MR. GOURLEY:

16 Q And, again, back to the cross-examination of the
17 shots fired, your defense counsel argued in closing
18 argument that there was only one shell found that matches
19 your gun, right? Remember that?

20 A Yes, sir, I do.

21 Q Okay. And that it was matched to your gun, but
22 there were no other shells found that matched your gun, you
23 remember that?

24 A Yes, sir, I do.

25 Q And that Officer Bolen testified to hearing three

Randy Yonson - Cross-Examination by Mr. Gourley

1 shots and that just didn't add up. So he argued that to
2 the jury in his closing argument, right?

3 A Yes, sir, but he didn't say nothing when he was
4 testifying to it. When the actual false statement was
5 given, he made no kind of objection to it.

6 Q He didn't object to it, but he cross-examined him
7 on it and he brought the inconsistencies out. Right?

8 A I don't believe so.

9 Q Okay. Go the page 141, Mr. Yonson.

10 A Yes, sir.

11 Q I apologize, Mr. Yonson, I actually want you to go
12 to page 147. I'm sorry about that. I'm starting on line
13 25.

14 A Line 25. Yes, sir.

15 Q Now, at this point in time, your counsel is
16 cross-examining, Mr. Williams on his statement, trying to
17 clarify whether he heard one shot and saw one shot or heard
18 two shots and saw one shot to get some sort of
19 clarification?

20 A Yes, sir.

21 Q And on-line 25, he asked, it's heard one, saw one.
22 And Officer Williams goes, Yes, sir, heard one, saw one.

23 And then your counsel asked him, Is this still all
24 different than your account written in the statement
25 immediately after this?

Randy Yonson - Cross-Examination by Mr. Gourley

1 And he said, Yes, a little bit, yes.

2 So you would agree with me that he adequately
3 cross-examined him on his recollection of the events,
4 right?

5 A Yes, sir, but he didn't say nothing to the fact
6 that it's different from what his partner said.

7 Q Right. Well, you wouldn't want to bring out --
8 he's already brought out that fact, though, wouldn't you
9 agree with me?

10 A I don't know.

11 Q He's showing Officer Bolen said here's three shots
12 and you got Officer Williams saying here's one shot, right?

13 A Yes, sir.

14 Q Okay. Now, let's turn page 149 and let's go to the
15 bottom of page -- or line 23, please.

16 A 149?

17 Q 149, yes, sir.

18 A 23?

19 Q Yes, sir.

20 A Yes, sir.

21 Q All right. Now, he's shows his statement to
22 Officer Williams again and this, again, is back to the fact
23 that Officer Williams put in his statement that he blocked
24 the trigger from actually firing?

25 A Correct.

Randy Yonson - Cross-Examination by Mr. Gourley

1 Q Okay. And officer -- through that little
2 cross-examination there, it goes onto page 150, line 13,
3 Officer Williams admits that that wasn't possible and that
4 he was incorrect, right?

5 A Yes, sir.

6 Q Okay. So you would agree with me that he
7 cross-examined him pretty thoroughly and got him to admit
8 that he was wrong in his statement regarding Mr. -- Officer
9 Williams?

10 A Um --

11 Q Well, let's go to page 151, line 2 and 3.

12 A 2 and 3?

13 Q He said, But now, so what's your testimony now,
14 today?

15 And he's referring to the issue of putting his
16 finger behind the trigger and he goes, I obviously couldn't
17 put it in there, right?

18 A Yes, sir.

19 Q Okay. So wouldn't you agree with me that he did
20 cross-examine Officer Williams regarding his statement and
21 pointed out some inconsistencies in regards to his own
22 statement and the statement of Officer Bolen?

23 A Yes, sir, but I don't think that would -- pointing
24 out those inconsistencies, you know what I'm saying, wasn't
25 enough to convince the jury, you know what I'm saying, that

Randy Yonson - Cross-Examination by Mr. Gourley

1 the officer lied on the stand, is what I'm trying to get
2 across.

3 Q Okay. But it does kind of make you question their
4 statements, right? Other than flat out coming and saying,
5 you're lying, it makes you question his statement, right?

6 A His statement and his testimony.

7 Q Right. Exactly. And now, regarding your statement
8 during the altercation --

9 MR. GOURLEY: Judge, excuse my language --

10 BY MR. GOURLEY:

11 Q -- but they allege that you said, Fuck this shit,
12 right?

13 A Yes, sir.

14 Q And you're saying here today that you didn't?

15 A I didn't say that, sir.

16 Q You remember Amanda Teal's testimony at your trial?

17 A Yes, sir, I do.

18 Q And she testified that everybody was cussing,
19 including you.

20 A Yes, sir, the police and all.

21 Q Okay. Absolutely.

22 Now, did you file a civil suit against the
23 officers?

24 A I started to.

25 Q Okay. And just a minute ago, you introduced a

Randy Yonson - Redirect Examination by Mr. Gourley

1 couple of exhibits listing a bunch of various witnesses,
2 right?

3 A Yes, sir.

4 Q They could have been called to trial, that you feel
5 should have been called to trial, right?

6 A Yes, sir.

7 Q Okay. Are any of those witnesses here today?

8 A No, sir, they're not.

9 Q Okay.

10 **MR. GOURLEY:** No further question, Your Honor.

11 **THE COURT:** Thank you. Thank you, Mr. Gourley.
12 Redirect, Mr. Kirkland?

13 **MR. KIRKLAND:** Maybe two questions, Your Honor.

14 **THE COURT:** All right.

15 **REDIRECT EXAMINATION**

16 BY MR. KIRKLAND:

17 Q Concerning the issue for continuance, you just read
18 from the transcript and he asked for a continuance on the
19 basis that there was something wrong with the indictment,
20 correct? However, what you wanted him to do, from what I
21 understand from your testimony earlier, was you wanted him
22 to ask for a continuance on the basis that you had not
23 properly been prepped for trial and assisted in your own
24 defense, correct?

25 A Yes, sir. I wasn't prepared to defend myself for

Randy Yonson - Redirect Examination by Mr. Gourley

1 thirteen charges that I just found out that I had.

2 Q And it was mentioned --

3 A The date of the trial is when I got that -- you
4 know what I'm saying, you know, the week before trial I got
5 the new indictment, so that would give me seven days to
6 come up with something -- come up with a defense for these
7 thirteen charges, when I didn't have none of the paperwork
8 to go with my discovery, you know what I'm saying.

9 Q Yes. And so the basis of what you wanted -- let me
10 restate that, it's going nowhere.

11 You thought the proper basis for the continuance
12 was that you had not given enough time to assist in your
13 defense and review your discovery and review the new
14 indictment, correct?

15 A Yes, sir, that's correct.

16 Q Was that motion made?

17 A No, sir.

18 Q Okay. There was also some mention of -- I'm trying
19 to think of how the assistant attorney general put it.
20 Some mention about the probability that your roommate at
21 McDougal could have viewed your discovery materials and
22 testified against you?

23 A Yes, sir.

24 Q My understanding is that they're going to suggest
25 later that Mr. Williams has an excuse for not giving it to

Randy Yonson - Redirect Examination by Mr. Gourley

1 you in that he didn't want other inmates looking at it.

2 But did he give you an actual reason? Did he tell you why
3 that he did not want to give you your discovery?

4 A Because it would cost him too much money.

5 Q So he mentioned nothing to you about someone else
6 looking at it and he's protecting you?

7 A Nothing to that fact, sir. That never came up in
8 none of our conversations. I know I repeatedly asked him
9 for copies of my discovery. I asked him so much I got
10 frustrated and started writing the bar association and
11 judges and all kind of stuff trying to get my discovery.

12 Q Yes, sir.

13 MR. KIRKLAND: I think that's all I have, Your
14 Honor, thank you.

15 THE COURT: Recross-examination?

16 MR. GOURLEY: No further questions, Your Honor.

17 THE COURT: Thank you. Thank you, Mr. Yonson, you
18 may step down.

19 All right. Court will be in recess about ten
20 minutes. Thank you. Thank you very much.

21 (WHEREUPON a recess was observed.)

22 THE COURT: All right. Let's see we're back on the
23 record, Yonson versus State.

24 Mr. Kirkland, you may call your next witness.

25 MR. KIRKLAND: Your Honor, that is the plaintiff's

Todd Williams - Direct Examination by Mr. Gourley

1 or the applicant's case and we will rest.

2 **THE COURT:** All right. Thank you. Thank you very
3 much.

4 Mr. Gourley?

5 **MR. GOURLEY:** Your Honor, we would call
6 Mr. Williams to the stand, please.

7 **THE COURT:** All right. If you'd come around and be
8 sworn for us, Mr. Williams.

9 **THE WITNESS:** Yes, sir, Your Honor.

10 TODD WILLIAMS,
11 having been duly sworn, testified as follows:

12 **THE BAILIFF:** Thank you. Just state your name and
13 spell your last for the record.

14 **THE WITNESS:** My given name is Theophilus Darius
15 Williams, IV, W-i-l-l-i-a-m-s. And I go by Todd.

16 **DIRECT EXAMINATION**

17 BY MR. GOURLEY:

18 Q Mr. Williams, were you appointed or retained in
19 this case?

20 A I was appointed by the public defender of Sumter
21 County.

22 Q Do you recall when?

23 A It was in October of 2006, I believe.

24 Q Okay. And did you file any motions on behalf of
25 the applicant in this case?

Todd Williams - Direct Examination by Mr. Gourley

1 A Ms. Biggers, the prior public defender who was
2 representing Mr. Yonson filed a Rule 5 and Brady Motion. I
3 reviewed it and it was the same one I would have filed, so
4 I did not.

5 Q Okay. Did you -- you of course received that
6 material?

7 A Yes.

8 Q Did you review it with the applicant?

9 A I did.

10 Q Do you recall when you did so?

11 A Yes, sir. Let me pull my notes. I initially met
12 with Mr. Yonson on December 20, 2006, at the Department of
13 Corrections.

14 Q Okay. I think it's already been testified to that
15 was about a two hour meeting. Does that seem about right?

16 A That's correct.

17 Q And I believe -- there's testimony already elicited
18 that you met with him January 9th; is that correct?

19 A Yes, sir, I met with him -- it was the grand jury
20 room in the old courthouse across the street.

21 Q Okay.

22 A Behind the main courtroom in the old courthouse,
23 there are two rooms, the petit jury room and the grand jury
24 room and my notes indicate that we met in the grand jury
25 room.

Todd Williams - Direct Examination by Mr. Gourley

1 Q Okay. And do you recall how long y'all met?

2 A A little over two hours.

3 Q And what did y'all review during that meeting?

4 A My notes say motion, continuance, venue and dismiss
5 as to Officer Williams and cocaine. So we discussed
6 motions for a continuance, a motion to change venue, and
7 motions to dismiss the indictment, or the charges against
8 him as to Deputy Williams and the cocaine charge.

9 Q Okay.

10 A You want me to go through the rest of my notes,
11 sir?

12 Q Yes, please.

13 A I explained to him the issues of Bolen -- my notes
14 say Bolen, obviously, Deputy Bolen -- the bullet in him,
15 either A, accident or B, no idea, which theory are we going
16 with. I asked was there cocaine on him or in his system
17 and he said in his system.

18 I have really worried, I don't know several times,
19 about the Bolen bullet that can tie it to the gun. He said
20 it's accident. It's only up to credibility. I told him
21 there were serious issues because we are admitting to the
22 to the two guns, which is very serious. He said he won't
23 consider more than ten years at 85 percent, maybe fifteen
24 years. I told him the State's offer was twenty-five. I
25 told him I can maybe get them to 20, but he said he could

Todd Williams - Direct Examination by Mr. Gourley

1 not do more than 15.

2 I told Randy, I'm very worried about the risk of
3 hanging our hats on the reasonable doubt, accidental
4 discharge of the pistol. That's very risky. Randy is
5 convinced the jurors will be skeptical and distrustful of
6 officers as he is.

7 Q Are you familiar with the law or the defense of
8 accident?

9 A I was at the time I believe.

10 Q And can you just briefly describe the elements of
11 accident, the defense of accident?

12 A Well, I believe the defendant must be acting --
13 must be acting lawfully and he was under 21 in possession
14 of a pistol, which I think affected our chance of getting
15 accident charge. I explained that to him.

16 Q Right. And then in the jury room -- when the judge
17 was addressing jury charges, I believe, page 320, lines
18 5-8, the judge testified -- you were asking for an accident
19 defense and the State actually objected, correct? And
20 that's line --

21 MR. GOURLEY: Page 319, Your Honor, I apologize.

22 THE WITNESS: That's correct. On page 319 at line
23 18, the prosecutor, assistant Solicitor, Harry Connor,
24 said, Well I think my question will be how we approach the
25 situation of charges in regards to accident. Whether

Todd Williams - Direct Examination by Mr. Gourley

1 accident is appropriate. Mr. Connor and I have obviously
2 discussed that.

3 The Court said, Do you want me to charge accident
4 as a defense and I said, Yes, Your Honor.

5 That was essentially -- that was Randy's case that
6 this gun went off accidentally.

7 BY MR. GOURLEY:

8 Q And that's what his side of events were right.

9 A Yes, that was his recount of the situation to me
10 and that was his -- how he wanted to proceed at trial.

11 Q Okay. And you advised him of what an accident
12 defense was actually about? What it entailed?

13 A Oh, yes. That's what my notes when we met on
14 the -- January 9th -- that's -- he says was an accident so
15 it's up to credibility. We're admitting -- I told him, the
16 problem was we're admitting possession of two guns, if we
17 don't get the accident charge that it's essentially he had
18 these guns and he -- these officers -- these deputies were
19 shot with those guns.

20 Q Okay. And because of the fact that y'all were
21 admitting to having -- that Mr. Yonson had these two guns
22 in his possession, unlawfully, a defense of accident would
23 not be appropriate, right?

24 A I explained that to him in depth.

25 Q Okay.

Todd Williams - Direct Examination by Mr. Gourley

1 MR. GOURLEY: Beg the Court's indulgence, Your
2 Honor.

3 THE COURT: Yes, sir.

4 BY MR. GOURLEY:

5 Q Regarding the video, Mr. Williams, did you review
6 that video with Mr. Johnson?

7 A Yes, I did. It's VHS here in my file. It was -- I
8 think it's been stated, there were two police cruisers that
9 had dash cam video recorders that were at the scene. The
10 State, in the discovery process put both videos on one
11 cassette tape and gave that to me. The -- because this was
12 an officer involved shooting, essentially as soon as the
13 shooting took place I think Sumter County, the deputies,
14 stepped away from it and went to -- the cars were left
15 there and the videos were left running until the tape
16 expired. It was a number of hours.

17 The relevant portion, obviously, is not -- I think
18 Mr. Yonson testified, but a couple of minutes when the
19 interaction occurred, the deputies and Mr. Yonson were shot
20 and he was apprehended placed under arrest.

21 So the relevant portion of the tape is very minor.
22 The tapes continue to roll for an extended period of time.
23 On the 15th of December, 2006, which was a Friday before I
24 met with Mr. Yonson at the Department of Corrections,
25 that's when I reviewed the videos from start to finish. I

Todd Williams - Direct Examination by Mr. Gourley

1 sat in a little library in our firms office and reviewed
2 them from start to finish.

3 Q Okay. Let's talk a little bit about your
4 investigation into the case. Can you just kind of give a
5 brief summary of what you did for trial?

6 A Yeah. Specific -- I mean anything specific?

7 Q Did you --

8 A I went out to the club, Friends, it's out -- golly,
9 it's out of Sumter, if you take -- I can't remember the
10 name of the road. You pass the country club and go out.
11 It's a small little club. I went there and saw the actual
12 scene.

13 Q Uh-huh.

14 A I think the club -- I believe the club may have
15 changed names since then. I know it has and it's gone
16 through several integrations. Just to see the actual scene
17 or where this happened. It's an unremarkable -- it's an
18 unremarkable place. It's just a grassy lot outside or a
19 grassy pavement in the lot, outside in the front of an old
20 club in the country.

21 Q Okay. A few letters have been introduced that were
22 exhibits. Did you send Mr. Yonson any initial letters
23 during this time period?

24 A I did. I sent him after -- and I can read through
25 it. I sent him a follow up after December 21st.

Todd Williams - Direct Examination by Mr. Gourley

1 Q Right.

2 A After our visit.

3 Q Okay.

4 A I wrote, Dear Mr. Yonson, I enjoyed meeting -- I
5 enjoyed finally meeting you yesterday in person. This
6 morning I talked in length with Mandy Teal as well as
7 assistant prosecutor or the prosecutor prosecuting your
8 case. The assistant, Harry Connor, informed me that he's
9 under the impression from conversations he had with
10 deputies involved in this incident that Deputy Williams'
11 cruiser did not have a camera in it at the time of the
12 shooting.

13 Mr. Connor indicated that SLED collected all the
14 evidence following the shooting and only two videos were
15 present. I would also like to explore this further, but I
16 wanted to update you on what I found this far.

17 I conveyed to Mr. Connor your interest in the
18 possibility of a plea to assault and battery of a high and
19 aggravated nature. He responded that if that is the case
20 it appears that this is going to be a case we will have to
21 try as we were quite desperate in negotiations.

22 Along those lines, I would like to reiterate what
23 we discussed yesterday regarding the advantages and
24 disadvantages of trying the case.

25 You indicated that your -- you believe the officers

Todd Williams - Direct Examination by Mr. Gourley

1 shot at you quite needlessly and I believe that would be
2 your testimony if you choose to testify at trial. We must
3 remember, however, that the State will present some very
4 compelling evidence as well. Namely, you were on probation
5 and in possession of two handguns, you tested positive for
6 cocaine and marijuana and three people were shot. We need
7 to produce some sort of defense in this matter. But thus
8 far, you've indicated that the gun may have discharged
9 accidentally.

10 I believe that any plea running all sentences
11 concurrently should be at the very least considered,
12 especially if it included any sentence less than the
13 maximum considering two law enforcement officers for shot.

14 Again, the decision to plead guilty or go to trial
15 is yours and yours alone. I say this simply to advise you.
16 Mr. Connor told me that he would look to call your case
17 during the week of January 15th, following the plea week of
18 January 8th. As I discussed with you yesterday, that is
19 certainly no guarantee that he will call the case on that
20 date, but we must anticipate that he will follow through at
21 that time.

22 As mentioned earlier, I also spoke at length with
23 Ms. Teal. She briefly told me her recollections of the
24 night of the shooting. As you said, it seems to me she
25 will not be returning to Sumter until January 9th, 2007.

Todd Williams - Direct Examination by Mr. Gourley

1 She said she will call my office when she returns from her
2 rehabilitation program in the Upstate so that she and I
3 could meet to discuss her possible testimony.

4 Lastly, I mentioned yesterday that assault and
5 battery with intent to kill, ABWIK is a most serious charge
6 in South Carolina meaning that upon your second conviction
7 or plea to a most serious charge, the only possible
8 sentence is life in prison without possibility of parole.
9 I believe section 17-25-50 of the South Carolina Code of
10 Laws would prohibit that sentence in your case; however,
11 because it requires that closely connected offenses be
12 treated as one offense. That being said, I do believe that
13 you can receive consecutive sentences on each count of
14 ABWIK though. If you are tried separately on each count
15 and the sentencing judge chooses to impose such a
16 punishment.

17 If you have any questions, please do not hesitate
18 to contact my office.

19 And the other letter was on November 3rd, of 2006.
20 I was appointed in October of 2006 and wrote him an
21 introductory form letter. I then wrote him on November
22 3rd.

23 Q Okay.

24 A At McDougal. Dear Mr. -- I'm sorry.

25 Q And that was an introductory form letter

Todd Williams - Direct Examination by Mr. Gourley

1 introducing yourself and everything?

2 A The October one then I wrote him a substantive
3 letter on November 3rd.

4 Q If you would go nice and slow so the court reporter
5 can get it.

6 A I apologize if I'm going too fast.

7 Dear Mr. Yonson, thank you for your recent
8 correspondence. I spoke with your mother this morning at
9 length and she indicated that she hopes to visit you this
10 weekend. I feel sure she can convey to you the substance
11 of our conversation better than this letter, but I wanted
12 to advise you of two things: First, I have now viewed two
13 videos from patrol cars that were at the scene of the
14 shooting. When I inherited your file from Ms. Biggers, it
15 contained a single video cassette.

16 I contacted the assistant solicitor prosecuting
17 your case to request the second video and he informed me
18 that both videos have been copied onto the single tape, the
19 one already in the file when I received it. As I said,
20 I've now watched two videos from police vehicles that were
21 at the scene of the shooting and unfortunately, the second
22 video is no more helpful than the first video.

23 Actually, the car from which the second video was
24 recorded was parked behind and slightly to the right of the
25 car from the video, which the first video -- slightly to

Todd Williams - Direct Examination by Mr. Gourley

1 the right of the car from which the first video was
2 recorded. Therefore, because the second video does not
3 show the shooting, it neither implicates or explicates you
4 regarding these charges.

5 I see that you and your family have contacted an
6 attorney in Columbia, Ms. Jennifer R. Purdy, regarding the
7 possibility of pursuing civil proceedings against law
8 enforcement officials in Sumter and I wanted to advise you
9 of the presence of the second video so you could inform
10 Ms. Purdy of this. Please remember that I am in no way
11 undertaking any civil representation of you or your family.

12 Secondly, I attempted to come visit you at McDougal
13 some weeks ago, but I was advised that attorneys are not
14 allowed to visit inmates on weekdays. I explained the
15 process of what I need to do to go visit him.

16 When we met -- when I met Mr. Yonson on the 20th,
17 he mentioned an attorney, Lawson in Columbia that he was
18 referred to by the bar. He wrote him. Mr. Yonson -- and I
19 point -- all he wants to talk about is the civil lawsuit,
20 not about the criminal charge. The substance of our
21 conversation just was essentially, he was upset that the
22 deputy shot him and he wanted to sue Sumter County.

23 Q Okay.

24 A And I told him we had a criminal charge that was
25 much more pressing at the time.

Todd Williams - Direct Examination by Mr. Gourley

1 Q Right. All right. Mr. Yonson filed a motion to
2 relieve you as counsel, right?

3 A Correct.

4 Q And that was heard on January 16th before Judge
5 James, correct?

6 A I believe, that's correct.

7 Q At that proceeding, Mr. Yonson expressed his
8 concerns about your representation in this case, right?

9 A Yes.

10 Q And you addressed that to the judge and explained
11 that you weren't copying -- that you didn't have the funds
12 available to copy nor the time to copy all of his
13 discovery.

14 A That's correct. I examined to Mr. Yonson -- I'd
15 had the public defender's office to copy it and send it to
16 him and they told me that they didn't have the budget to do
17 that.

18 Q Did you have any concerns about the discovery being
19 in his jail cell at the time?

20 A No, sir.

21 Q Okay. Now, at that hearing, you actually made a
22 motion for continuance due to the fact that Judge James
23 didn't relieve you as counsel and you wanted to address his
24 concerns --

25 A After -- whatever the record says.

Todd Williams - Direct Examination by Mr. Gourley

1 Q Okay. And the judge denied that continuance?

2 A I believe so.

3 Q Okay. And during the start of the trial, you made
4 another motion for continuance based on the indictments
5 being basically incorrect, right?

6 A That's correct. The -- as I mentioned earlier, I
7 discussed with Mr. Yonson some charges and whether or not
8 we had several counts of the indictment dismissed. I made
9 those motions pretrial. Judge Newman, I believe dismissed
10 two or three or some counts of the indictment when he said
11 he was allowing the others to go forward, I did ask for a
12 continuance and that was denied.

13 Q Okay. And then you made a motion to sequester the
14 witnesses?

15 A I did.

16 Q And all the witnesses were sequestered but the
17 victims in the case, correct?

18 A Yes, I believe that's correct. The fact witnesses
19 were.

20 Q All right. And then y'all conducted a Jackson v
21 Denno hearing on the issue of the statement?

22 A That's correct.

23 Q And Mr. Yonson alleged that he was under various
24 drugs and was not competent to give a statement at that
25 point in time, correct? He was under the influence of

Todd Williams - Direct Examination by Mr. Gourley

1 morphine and some various drugs due to the fact that he had
2 been shot three times, right?

3 A That was his testimony, yes.

4 Q Okay. And the officers testified that they had
5 spoken to a nurse and that they went in and talked to Mr.
6 Yonson and Mr. Yonson seemed aware of his senses and was
7 able to give a statement freely and voluntarily. It didn't
8 appear that he was under any kind of drugs that would
9 hinder him from giving such a statement, correct?

10 A That was their testimony.

11 Q And did you have any particular trial strategy
12 during that Jackson v Denno hearing?

13 A We had -- Mr. Yonson and I had discussed this. His
14 defense, again, he admitted having the pistols and wanted
15 to argue accident. The statement on page 29 of the record,
16 line 9, the officer testified, Mr. Abraham, and he said at
17 the time a struggle ensued. He went to the ground. He
18 said that somehow or another the gun came out of his pocket
19 and shot the deputies.

20 Q Uh-huh.

21 A That's consistent with his trial testimony, so
22 that -- the entire point of that coming in was to show that
23 he didn't make up this accident claim at the last minute.
24 This had been his immediate statement following the
25 incident and he maintained that.

Todd Williams - Direct Examination by Mr. Gourley

1 Q Right.

2 A So what we wanted to show was continuity of his
3 defense, that he didn't just pick this up on the day of
4 trial saying it must be have been an accident. He readily
5 admitted and I think when Mr. Yonson testified, or either
6 in my closing, I discussed that he mentioned to the jury
7 that he's admitting to breaking the law by having these
8 guns, but he said it was an accident all along.

9 Q Okay. And there was some hearsay that was
10 introduced regarding a nurse's statement. Did you have any
11 particular reason or feel a need to object at that point in
12 time?

13 A No, again, Mr. Yonson and I felt that statement was
14 beneficial so whether or not he was under the influence or
15 anything, that statement, again, it was a prior assertion
16 of our current defense.

17 Q Okay. No, Mr. Yonson has alleged that you had
18 failed to adequately cross-examine the two deputies in this
19 case, Mr. Bolen and Mr. Williams regarding their
20 inconsistencies at trial versus their statement, correct?

21 A That was his testimony.

22 Q Right. Do you feel you adequately cross-examined
23 them regarding their alleged inconsistencies?

24 A I believe I did. I believe Deputy Williams on page
25 150 of the transcript, line 4 -- this was when -- deputy

Todd Williams - Direct Examination by Mr. Gourley

1 Williams' statement was that he put the finger behind the
2 trigger so the trigger could not be pulled and I handed him
3 the actual gun and asked him, can you do that for me with
4 this gun and he answered, actually I cannot. That was a
5 miss on my part as far as my statement. I asked -- I said
6 because in your statement -- I guess I'll say a revolver,
7 is it's got a trigger that's just a little curve, you can
8 put your finger behind it and then would have to push down
9 your finger.

10 This trigger -- and I'm not familiar with guns, but
11 the trigger itself was solid behind it. It slides all the
12 way back so I certainly -- I was glad to make hay, if you
13 will, regarding this -- the way he told it, it was almost
14 like a movie script and I asked him if he watched movies
15 and like that, but clearly, he could not have put his
16 finger behind the gun in this -- behind this trigger in
17 this gun.

18 And then on page 327, I think we made points about
19 the shell casings in closing, so that was -- yes, I
20 cross-examined him on that.

21 Q You actually brought out this fact that any
22 inconsistent statements between Deputy Bolen's testimony
23 and Deputy Williams' testimony regarding how many shots
24 were actually fired, correct?

25 A Correct.

Todd Williams - Direct Examination by Mr. Gourley

1 MR. GOURLEY: Beg the Court's indulgence, Your
2 Honor.

3 THE COURT: Yes, sir.

4 BY MR. GOURLEY:

5 Q Going back to this one second, Mr. Williams, were
6 there any other people in the grand jury room at the time
7 on January 9th, when you met Mr. Yonson?

8 A We talked for over two hours -- or nearly two
9 hours. I'm very familiar with attorney/client privilege.
10 I would not have had conversations at such length with him
11 with SCDC guards sitting there beside me.

12 Q Okay. And Mr. Yonson had already -- was actually
13 on probation at this time, correct?

14 A Yes, he was on probation when the offense happened.
15 He had a violation hearing subsequent to this -- after this
16 arrest, subsequent to my appointment to represent him. I
17 believe he had -- I think I saw in my notes that Steve
18 McKinsey, a private attorney represented him at that
19 violation hearing. Judge Newman violated -- found he was
20 in violation of that probation and activated that sentence.

21 Q As part of his probation he wasn't supposed to have
22 weapons, correct?

23 A At the time, that's correct.

24 MR. GOURLEY: Beg the court's indulgence, Your
25 Honor.

Todd Williams - Direct Examination by Mr. Gourley

1 THE COURT: Yes, sir.

2 BY MR. GOURLEY:

3 Q There was actually a slug recovered from Officer
4 Bolen, correct?

5 A That's correct.

6 Q And that matched the gun -- or matched the .9 mm
7 found on Mr. Yonson?

8 A That's correct.

9 Q Now, the .9 mm actually had .380 shells in it,
10 correct?

11 A Yes. I believe someone referred to it at the time
12 as a ghetto load that you can use whatever bullets are
13 accessible -- or you can buy .380's which will fit in this
14 .9 mm and it's cheaper just to use those.

15 Q And the SLED expert came in and testified that that
16 .9 mm could hold actually .9 shells, correct?

17 A Whatever the record says, yes.

18 Q Tracy Broward, if that refreshes your memory. But
19 only one shell was found at the scene, correct?

20 A That's correct.

21 Q But I believe another witness came in and testified
22 that there's no way that other shells could have been found
23 at, correct?

24 A Right, and that's why I -- obviously I wouldn't
25 have expected to have found this shell two years later when

Todd Williams - Cross-Examination by Mr. Kirkland

1 I visited the scene, but that's why I went out to the scene
2 to see what it looked like for myself.

3 Q So if there's 9 casings -- 9 shells -- 9 shots in
4 the .9 mm and there was only 7 shells found afterwards,
5 correct?

6 A I don't.

7 Q When they were done --

8 A I don't recall.

9 Q If it's in the transcript --

10 A Whatever the transcript says, yes.

11 MR. GOURLEY: Your Honor, I have no other
12 questions.

13 THE COURT: Thank you, thank you very much,
14 Mr. Gourley.

15 Mr. Kirkland?

16 MR. KIRKLAND: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. KIRKLAND:

19 Q The first time you that met with Mr. Yonson was
20 December 20th, 2006, correct?

21 A I believe that's correct.

22 Q And from your testimony, what I understand, is that
23 what we -- well, we have in the records that you met with
24 him for two hours and one minute. But that you didn't go
25 over the case very much because he wanted to talk about the

Todd Williams - Cross-Examination by Mr. Kirkland

1 civil lawsuit. Is that what I understood? I may have
2 misunderstood that.

3 A I went to talk about the case. His questions kept
4 returning to the civil lawsuit and I explained to him I'm
5 not here for that. I'm here to represent him on the
6 criminal charges.

7 Q So you didn't get much of a time to talk to him
8 about his case at that meeting, no fault of your own,
9 necessarily, but you didn't talk about his case very much?

10 A We talked about his case, yes. I mean --

11 Q Okay. Well, I'm just trying to understand. So if
12 you're saying all he talked to you about was the civil
13 suit, did you -- then how did you talk to him about his
14 case?

15 A I talked about -- I talked about the criminal case
16 and he talked about the civil case. Whether he listened or
17 not, I don't know.

18 Q Okay. And that -- that was a two-hour meeting?

19 A Correct.

20 Q Now, this case, I can imagine in Sumter or I can
21 imagine in Columbia where I live, when you know two
22 officers get shot, that is a big deal, right? I mean, this
23 was one of the bigger cases in probably the last five or
24 eight years or something like that, would you agree with
25 that? Officers getting shot?

Todd Williams - Cross-Examination by Mr. Kirkland

1 A I would say it's a big deal. I guess I can't make
2 a comparison like that, but, yes, it was --

3 Q How about this, I'd be willing to bet in his
4 trial -- and I certainly wasn't there -- that you had all
5 sorts of officers and public officials and everybody was at
6 the trial so they were -- to the sheriff's department, this
7 was a big deal to them?

8 A I was concentrating on the courtroom. I didn't see
9 who was in the courtroom. The Item was there, the local
10 newspaper of record was there.

11 Q So the -- so the newspaper whatnot was covered?

12 A Correct.

13 Q So understanding some -- well, let me ask it like
14 this, then: So you didn't think that this case, as far as
15 you knew, was any different than any other case? As far as
16 how they were going to prosecute? The time and effort that
17 they were going to put into this?

18 A I -- I certainly expected Harry Connor, who is the
19 senior solicitor -- almost all of his cases were most
20 serious offenses, rapes, murder, things of this nature, so
21 I certainly expected him to prepare for it.

22 Q Here's what I'm -- here's what I'm talking to you
23 about: This is something that I would guess they're going
24 to put tremendous resources into. They're going to put a
25 lot of effort into. They are going to avenge these

Todd Williams - Cross-Examination by Mr. Kirkland

1 deputies because that's what -- first of all I think --
2 it's the community, there should be a connection between
3 law enforcement and a connection between solicitor's
4 office. And if -- you're telling me that you didn't think
5 it was that much different than any other case?

6 A I don't believe I said that.

7 Q Well, explain it to me.

8 A This was an important case. I agree with you on
9 that.

10 Q Okay. Well understanding that this is an important
11 case, I know you put a lot of resources into this, do you
12 think that it was appropriate then to only meet with your
13 client on one occasion outside of the courthouse?

14 A I think I met with him enough to be prepared for
15 trial.

16 Q You think two hours on December 20th was sufficient
17 to get him ready for trial, when during that meeting, he
18 kept talking to you about a civil suit?

19 A Again, I can't make him talk to me about the case.
20 But that morning along with the morning in January, yes...

21 Q At what point in time, did you find out there was
22 going to be -- the trial was imminent?

23 A When Mr. Connor either called me or sent me a trial
24 letter.

25 Q I think you've mentioned that you thought it might

Todd Williams - Cross-Examination by Mr. Kirkland

1 go in January?

2 A Yes, I think I wrote him on whatever date that was,
3 yes.

4 Q In this one.

5 A Yes.

6 Q Now, once you knew trial was imminent and the fact
7 that you knew he had maybe not listened to you the way he
8 needed to listen to you according to testimony, don't you
9 think it was incumbent upon you to get back out there and
10 talk to him and let him know that this is coming up and he
11 has to assist in his defense?

12 A I felt it -- I felt it was clear that Randy did not
13 want to assist me with his defense.

14 Q So you're saying that Randy Yonson had no interest
15 in defending himself and assisting you in his defense -- in
16 his trial?

17 A Yes, he went so far as to ask the -- his girlfriend
18 at the time, the only other witness, Mandy Teal not talk
19 with me.

20 Q He had asked Mandy Teal to do what? I just didn't
21 understand the sentence.

22 A Yes, he asked the other eyewitness, Mandy Teal to
23 not speak with me.

24 Q So Mandy Teal refused to meet with you?

25 A On January 7, 2007, Mandy and I talked on the

Todd Williams - Cross-Examination by Mr. Kirkland

1 phone. Mandy says Randy asked her not to talk with me. He
2 told her he is talking to me Tuesday morning and he will
3 instruct her further after that. I told the decision to
4 come talk to me is hers and she can come up here still. I
5 told her I want to talk with her and I want her to come up
6 here. She said she knows she's welcome to come talk with
7 me. It seems to me she does not know that Randy -- she
8 does not know what Randy is planning but she wants to
9 follow his directive and respect his wishes because -- and
10 I put quote, it's his life.

11 Q Well, it sounds to me like he's quite interested in
12 his defense. Don't you think when you hear something like
13 that, it would be a good idea to go down and talk to him
14 about it, find out what's going on, right?

15 A Again, I said he did not want to work with me.

16 Q And I understand that. I've been doing this 15
17 years and a lot of my clients don't want to talk to me.
18 But isn't it, as our job as attorneys, we have to get
19 through to them. We have to reach out to them. We can't
20 just completely get out of our duty to represent them just
21 because they don't want to talk to us, is that not correct?

22 A Very much. I don't think I completely got rid of
23 my duties to represent him.

24 Q You never went down to see him again?

25 A That's not the only way you prepare for a trial.

Todd Williams - Cross-Examination by Mr. Kirkland

1 Q Well, but isn't it his right to participate in his
2 defense.

3 A It is.

4 Q So what you're telling me it sounds like you didn't
5 go back down there because you felt he didn't want to work
6 with you, but I'm telling you isn't the standard of care
7 for us as criminal defense attorneys it's a hard job, it's
8 a thankless job and isn't it our duty to go down there and
9 reach out to them as hard as we can?

10 A I --

11 THE COURT: I think duties under Strickland.

12 MR. KIRKLAND: Yes, sir, Your Honor.

13 BY MR. KIRKLAND:

14 Q But you felt no obligation to go back down to talk
15 to him?

16 A I felt knowing the time I had to prepare for the
17 case, I spent my time and effort as best I could.

18 Q Now, you mentioned that there was no -- there was
19 no budget for copying discovery. Explain to me what you
20 meant by that.

21 A In the public defender's office at the time had a
22 number of attorneys that they assign cases to.

23 Q Yes, sir.

24 A I -- we weren't in the -- we didn't have an office
25 in that office space. We operate out of our own office,

Todd Williams - Cross-Examination by Mr. Kirkland

1 but they took care of paperwork, things of that nature. I
2 asked them to send the file to them and they said they
3 couldn't do that.

4 Q Okay. And here's probably part of my
5 misunderstanding. Were you a public defender at the time?

6 A Yes. I took this case as a public defender.

7 Q Was it a contract situation or --

8 A I guess you call it that, yes.

9 Q Well, I don't know how it works, that's why I'm
10 asking?

11 A I was not a full time employee, I took cases for
12 the public defender agency.

13 Q Okay. I got you. And they specifically told
14 there's no budget for copies?

15 A I asked them to do that and they said no, they
16 could not, yes. I don't know if they said no budget for
17 copies, but they said that's not something we can do.

18 Q So in Sumter -- we're in Sumter right, sometimes I
19 forget. In Sumter, defendants in 2006, they don't get
20 copies of their discovery?

21 A I can't speak to the other defendants, I'm just
22 here in Mr. Yonson case.

23 Q But there was clearly no budget for his, is what
24 you're maintaining?

25 A That's what I was told.

Todd Williams - Cross-Examination by Mr. Kirkland

1 Q Now, did you have -- well, let me back up. On the
2 January 9th meeting -- I don't know how it works, so you're
3 going to have to explain it to me. When inmates are
4 brought over from the Department of Corrections or from the
5 Sumter County Detention Center, where are they usually put
6 awaiting court?

7 A In either the grand jury room, the other jury room,
8 the small jury room, or there were two holding cells in the
9 old courthouse.

10 Q Okay. Now, Randy had been brought over from the
11 department of corrections, right?

12 A Correct.

13 Q And court was going on that day, correct?

14 A I believe court was --

15 Q Well, hadn't he been brought over for a plea?

16 A He had been brought over during plea week.

17 Q So it was a plea week?

18 A Yes, a week term where there was no jury present.

19 Q Okay. So if he'd wanted to plead, it would have
20 gone right then and there.

21 A I guess it certainly could have, if he'd told me he
22 wanted to. I -- the -- if he wanted to plead, yes, there
23 was a judge taking pleas.

24 Q Okay. So court was in session, things were going
25 on that week?

Todd Williams - Cross-Examination by Mr. Kirkland

1 A Yes.

2 Q So other inmates were over there that week having
3 court.

4 A Oh, I'm sure they're were.

5 Q Well, in these -- these inmates were kept in one of
6 these rooms that you just described, one of them being the
7 grand jury room and they didn't have any other inmates in
8 the room at the time that you met with him?

9 A The inmates from Sumter County Detention Center are
10 generally kept in the holding cell is where they were.

11 Q Okay.

12 A And I talked with Randy, my notes say in the grand
13 jury room.

14 Q Okay. And what you're maintaining, there was
15 absolutely no one else in there with you, no other
16 deputies, no other inmates from whatever institution,
17 nobody.

18 A I do not have that there was anybody in there in my
19 notes and I'm confident I would not have revealed confident
20 information with another inmate or guard sitting right
21 there.

22 Q So you don't have any specific recollection of
23 whether or not somebody was in there, you're basing this on
24 your common practice, your common practice. But there's
25 no --

Todd Williams - Cross-Examination by Mr. Kirkland

1 A Correct.

2 Q -- specific recollection?

3 A Correct.

4 Q Okay. Now, you mentioned that the Jackson v Denno
5 hearing that it was part of your -- your strategy to
6 introduce his statement that he made to the police,
7 correct?

8 A Correct.

9 Q And explain to me then, what is the purpose of the
10 motion to suppress his statement?

11 A There were -- the point is to get the statement --
12 to suppress it is different, I think. I'm sorry. Ask your
13 question again, please.

14 Q A Jackson v Denno hearing the -- basically a motion
15 to suppress a statement; it's to determine whether it's
16 admissible or not?

17 A Right. Correct. I think it -- I believe -- and
18 again we can consult the transcript, that the State
19 requested the hearing to determine its voluntariness.

20 Q Correct. What I'm saying is if you wanted the
21 statement in anyway, why -- because they expect every
22 criminal defendant to not want -- not want a confession or
23 admission to come in, so it's traditional to starting the
24 hearing. But if you're going to stipulate to it coming in
25 anyway, why don't just go ahead and say, we stipulate that

Todd Williams - Cross-Examination by Mr. Kirkland

1 he said those things, Your Honor? Part of your strategy?

2 A I don't think I would want to tell a defense -- the
3 prosecution my strategy.

4 Q Okay. Well, then just say we can dispense with the
5 Jackson v Denno hearing, Your Honor, we'll stipulate that
6 the statement was voluntary.

7 A I had no reason to make it easier for the State and
8 I don't think Randy would have liked that.

9 Q Well, here's what I'm wondering though, is your --
10 are you certain that your memory is correct at this point?
11 That that was the strategy that you and Randy had talked
12 about this being the strategy?

13 A I read my notes from the meeting I had with him.
14 That's all I can say.

15 Q Now, when the nurse testified -- and I understand
16 you're saying this is your strategy, you do understand that
17 hearsay is not admissible at these hearings, they needed to
18 bring the nurse, correct?

19 A Correct.

20 Q And you didn't object to that?

21 A No.

22 Q And you also failed to contemporaneously raise the
23 objection at that time of the officers -- there -- took the
24 stand and put his statement into evidence, correct?

25 A Correct.

Todd Williams - Cross-Examination by Mr. Kirkland

1 Q And that was the reason why Court of Appeals
2 refused to review that issue. I think you you've seen the
3 exhibit. Have you seen Court of Appeals decision in that
4 matter.

5 A Yes, I have.

6 Q And you saw that it was an unreserved issue;
7 correct?

8 And so you would admit at least in that regard,
9 your performance was deficient? Since you had the hearing,
10 you didn't re-raise -- you didn't contemporaneously object
11 to it at the time that it came in?

12 A I understand that a contemporaneous objection must
13 be made and I did not do that.

14 Q And you would agree then on that issue, by not
15 making a contemporaneous objection, that your -- your
16 conduct was deficient under the Strickland versus
17 Washington standard?

18 A As to the standard, certainly, I don't know. Court
19 of Appeals said I should have objected then and I did not.

20 Q Okay. And so are you -- I don't know if that's a
21 yes or a no. Is that a yes or a no?

22 A I guess I don't think I get to say whether or not I
23 was sufficient. Think that's the Court's ruling.

24 Q Well, I see -- you know what the standard is, of
25 care.

Todd Williams - Cross-Examination by Mr. Kirkland

1 A I do --

2 Q But don't think that's a deficient performance?

3 A I don't think I prejudiced Mr. Yonson in the case,
4 no.

5 Q That's the second issue under Strickland. Do you
6 think it was deficient?

7 A Yes.

8 Q Now, the discovery later on, you actually made him
9 a copy of discovery and you sent it to him, correct?

10 A Yes.

11 Q How did that come to pass with no budget for making
12 copies?

13 A I did it on my own.

14 Q You did it on your own?

15 A Yes.

16 Q Now, another thing I wanted to ask you about, I
17 forgot to ask you about earlier, you're maintaining here
18 today that the reason why you didn't make the copies is
19 because of this budgetary issue. However, when asked under
20 oath why you didn't make the copies, you told the judge
21 specifically, I'm not a copy shop, if I copy discovery for
22 my clients, then I'd just be standing in front of the
23 copier all day long. So you didn't tell the judge anything
24 about this budgetary issue at the time you were asked about
25 it?

Todd Williams - Cross-Examination by Mr. Kirkland

1 A I didn't.

2 Q And you as an officer of the Court, you know, you
3 would be telling the truth at that point in time, correct?

4 A Correct. As I said, I did it on my own for
5 Mr. Yonson at the completion of his case.

6 Q I'm talking about earlier. You remember there was
7 a hearing --

8 A I remember.

9 Q I'm just trying to get us all on the same page.
10 And the judge asked you about the discovery, right?

11 A Correct.

12 Q And why you hadn't given it to him?

13 A Correct.

14 Q And you said I reviewed the relevant portions, Your
15 Honor, right?

16 A Whatever I said, I'm not going to contradict --
17 whatever the transcript says.

18 Q Well, I'll get the transcript.

19 (WHEREUPON the transcript was given to the
20 witness.)

21 BY MR. KIRKLAND:

22 Q I'll let you look at it. I want to read it first.
23 I've gone through his discovery with him in depth. I did
24 inform him -- excuse me, I did inform him that I cannot
25 perform as a copy shop for all my clients. If I copied

Todd Williams - Cross-Examination by Mr. Kirkland

1 these papers, I would spend my entire day at the copy
2 machine.

3 And I'll let you look at it to make sure that I
4 read it correctly. So that's the reason that you gave for
5 not giving him discovery, correct?

6 A Correct.

7 Q So that was the truth? You weren't telling
8 something that was not true, right?

9 A No. I said the public defender's office would not
10 do it. So I could not do that, yes.

11 Q But -- so you're saying that that statement
12 consistent with you saying that you didn't have the budget
13 for it. That's what you were telling the judge? That's
14 what you meant by that, that we didn't have the budget for
15 it?

16 A Correct. The public defender's office won't do it.
17 I can't do it on any own for every client.

18 Q All right. Now, did you ever make any motion or
19 for investigative services or did they not have a budget
20 for that?

21 A They did not. I didn't make a motion for it.

22 Q They don't have a budget for that?

23 A No, they did not.

24 Q So you couldn't have gotten an investigator
25 regardless?

Todd Williams - Cross-Examination by Mr. Kirkland

1 A I possibly could have made a motion, yes, for the
2 State office, but the local office did not have that.

3 Q Okay. And then there was no -- and there were some
4 exhibits related to some witnesses, you didn't ever go
5 through the list and -- before I even ask this question,
6 let me back up. When these -- when these exhibits were
7 being introduced, did you have an opportunity to look at
8 these? I think I showed you one of them.

9 A I don't recall.

10 Q I'm just going to show it to you. I've got No. 16
11 and No. 17. And I know you're not completely familiar with
12 them and I'm not going to go into detail. My question is
13 easy. Did you have an opportunity to interview any of
14 those witnesses?

15 A I don't recall.

16 Q You don't recall doing that?

17 A No.

18 Q Okay.

19 MR. KIRKLAND: If I may have one moment, Your
20 Honor?

21 THE COURT: Yes, sir, certainly.

22 MR. KIRKLAND: That's it, Your Honor. I have no
23 more questions.

24 THE COURT: Redirect?

25 MR. GOURLEY: Very briefly, Your Honor.

Todd Williams - Redirect Examination by Mr. Gourley

REDIRECT EXAMINATION

1
2 BY MR. GOURLEY:

3 Q Mr. Williams, were you prepared for trial?

4 A Yes.

5 Q Did you feel there was any objections that needed
6 to be made to the jury selection in voir dire?

7 A If I did, I made it.

8 Q Okay. You stated that you feel you were deficient
9 for failing to preserve the issue regarding the
10 voluntariness of the statement?

11 A I understand that it can't be reviewed on appeal
12 unless there's a contemporaneous objection made and I did
13 not do that.

14 Q Did you feel like -- did you feel there was any
15 basis to suppress that voluntariness of the statement other
16 than what you argued in the Jackson v Denno.

17 A No. Again, Randy and I didn't believe that
18 statement hurt him.

19 Q And the judge denied that, correct?

20 A Correct.

21 Q Do you know what the standard is for a Jackson v
22 Denno hearing?

23 A That the statement must be freely and voluntarily
24 made.

25 Q So preponderance of the evidence?

Todd Williams - Redirect Examination by Mr. Gourley

1 A It's the standard -- the burden of proof?

2 Q Yes. The burden. I'm sorry.

3 A Yes.

4 Q And the officers testified to the -- regarding his
5 statement?

6 A Correct.

7 Q Did you feel you needed an investigator?

8 A No, I did not. Randy was an eyewitness to what
9 happened and Ms. Teal was as well.

10 Q So it was a pretty straightforward case, correct?

11 A There's -- there's audio of exactly what happened.

12 Q Okay. And you actually went out to the scene and
13 did a little investigation yourself, correct?

14 A Yes, I mean, I went to the scene, I talked with the
15 officer, you know.

16 Q Did Mr. Yonson ever give you a list of witnesses or
17 anybody to investigate?

18 A When we met on the 20th, December 20th, he gave me
19 this handwritten note. He gave me Ms. Teal's address and
20 phone number, his mom's address and phone number and he
21 wrote, I possibly have an attorney going to assist me in
22 possible lawsuit and he will be contacting you. Then I
23 asked him what witnesses he wanted me to talk with.

24 Q Okay. And did you talk with Ms. Teal?

25 A Yes, she came in. It was delayed, again, but yes,

1 we did meet and I called her to the stand.

2 Q Did you talk to his mom?

3 A A number of times.

4 MR. GOURLEY: No further questions, Your Honor.

5 MR. KIRKLAND: Nothing, Your Honor.

6 THE COURT: Thank you, thank you very much,

7 Mr. Williams. You may step down.

8 THE WITNESS: Thank you, Judge.

9 THE COURT: All right. Mr. Gourley, you may call
10 your next witness.

11 MR. GOURLEY: That's the State's case, Your Honor.

12 THE COURT: All right. Anything in reply,

13 Mr. Kirkland?

14 MR. KIRKLAND: No, sir, Your Honor.

15 THE COURT: All right. Be glad to hear from you,

16 Mr. Kirkland.

17 MR. KIRKLAND: Well, Your Honor, I think, based on
18 my -- I amended the application and my line of questioning,
19 you probably sort of understand where I'm going with this,
20 so I will be brief.

21 The first issue, of course is that Mr. Williams
22 failed to meet with the applicant a sufficient number of
23 times to prepare for trial and failed to review the
24 discovery materials. My position on that is that we think
25 we established that as a fact he did not meet with the

1 applicant a sufficient number of times. He testified that
2 in the first meeting he didn't really -- he talked at
3 Mr. Yonson, but apparently, Mr. Yonson was not necessarily
4 receptive, however, I think it's a duty to make absolutely
5 certain -- and I think the standard of care for attorneys
6 is to make sure that their clients understand what's going
7 on. A short time thereafter he found out there was a
8 trial. He didn't make any effort to go back down and see
9 him. The next time he saw him was at the courthouse.

10 Of course, you're going to have to decide -- I
11 think that's a credibility issue as to whether or not he
12 would have had a private meeting. Mr. Yonson testified it
13 was only a few minutes and there were others there.
14 Mr. Williams testified that it was approximately two hours
15 and that he went through various things. That's an issue
16 of credibility.

17 Our position is that that second meeting didn't
18 really occur, so consequently, there has been at this point
19 in time, no substantial or significant meetings with
20 Mr. Yonson. And then the trial began a week later after
21 that meeting. So we think that had Mr. Williams met with
22 Mr. Yonson and Mr. Yonson had been able to go over in more
23 detail his defense and his understanding of what happened
24 that night, that Mr. Williams would have been able to
25 better cross-examine the officers in the case and better

1 present the defense of accident.

2 I didn't hear anything even where Mr. Williams on
3 direct or cross, where he discussed preparing the defendant
4 for taking the stand. Of course that's a critical issue.
5 The things we believe could have gone much better had he
6 done them -- had he met with the defendant more and had he
7 understood the defense better and we think that outcome of
8 the trial would have been different if he'd done that.

9 The second issue, Your Honor, that he failed to
10 object to the introduction of hearsay at the Jackson v
11 Denno hearing. I think he's admitted the first prong of
12 Strickland, that he -- that he failed to preserve the
13 issue. He has indicated that it was a strategic decision,
14 but nonetheless, he admitted that he was deficient in
15 performance.

16 Our opinion, Your Honor, is that by not talking to
17 Randy Yonson prior to that hearing, by not calling his
18 father, but not allowing Mr. Yonson to take the stand, that
19 there was no opportunity whatsoever and not objecting to
20 the hearsay, there was no opportunity whatsoever for this
21 statement to have been suppressed and we believe that had
22 it been suppressed, the outcome of the trial may have been
23 different.

24 The third issue -- and this I'm going to let you
25 rely on your memory of this. We feel like Mr. Williams did

1 not properly cross-examine these witnesses. Mr. Williams
2 was one of the officers and Mr. Bolen was the other
3 officer. Our position is that by not preparing properly,
4 discussing the case with Mr. Yonson by going through the
5 discovery with Mr. Yonson, and not being -- Mr. Yonson --
6 by not talking to Mr. Yonson about the physical evidence he
7 was not able to effectively cross-examine these witnesses
8 and, therefore, it would have made a difference in the
9 trial.

10 However, I will not go through each and every piece
11 of evidence again. You heard that a moment ago.

12 The fourth issue that we raised was that Mr. Yonson
13 feels that there was no effort made throughout the trial to
14 establish that other people were talking on that tape and
15 that was not his voice. It is his feeling that by
16 presenting to the jury that he had said -- whatever the
17 sentence was -- that something about F this, that it helped
18 to establish malice and that his attorney made no effort to
19 combat the suggestion that it was his voice on the tape.

20 You have heard the testimony of Mr. Yonson about
21 and Mr. Williams, Your Honor. I won't go into the facts,
22 but we feel that if that had been established at the trial,
23 that it could have made a difference in the outcome of the
24 trial.

25 The last issue, which is not mentioned in my

1 amendment, but is mentioned in Mr. Yonson's original post
2 conviction relief hearing, is that witnesses were not
3 interviewed or called that would have had favorable
4 material to his defense and by not investigating that we
5 think it could have made a difference in the outcome of the
6 trial. And that's our position, Your Honor.

7 **THE COURT:** Thank you. Thank you, Mr. Kirkland.
8 Mr. Gourley?

9 **MR. GOURLEY:** Your Honor, may it please the Court?
10 With regards to the number of times Mr. Williams met with
11 the applicant in this case, Your Honor, under the
12 restrictions of Washington, the standard of care is a
13 reasonableness under professional norms. I submit to the
14 Court that Mr. Yonson was a difficult client, evidenced by
15 the fact that he filed a motion to relieve Mr. Williams
16 prior to the trial. Mr. Williams testified today that he
17 was prepared for trial, that he did, in fact, go out to the
18 scene, contacted with witnesses that Mr. Yonson requested
19 and was fully prepared to go to trial.

20 Your Honor, he also had multiple counts of
21 indictments dismissed. He did conduct a -- he did file two
22 motions for continuances, Your Honor, and he also did the
23 Jackson v Denno hearing, moving for a directed verdict and
24 so forth, Your Honor, and I would submit to the Court that
25 he was adequately prepared and met the reasonableness under

1 professional norms, Your Honor.

2 In regards to the defense of accident, Your Honor,
3 as you know, the defense of accident, one of the first
4 elements is that the defendant has to be in lawful
5 possession of a weapon. The defendant testified here today
6 and at trial that he had two weapons. He was not in lawful
7 possession. He was on probation. He was under the age of
8 21 and he was on ABC premises, Your Honor. That there
9 establishes that he was not in lawful possession of the
10 weapons at the time.

11 Your Honor, furthermore, Your Honor, we would
12 submit to the Court that no prejudice has been shown
13 regarding the defendant's -- or the counsel's alleged
14 failure to meet with the applicants a number of times. He
15 has failed to allege any type of evidence in support of his
16 allegation. Had he met with him a sufficient number of
17 times, things would have been different.

18 Your Honor, regarding cross-examinations, the
19 evidence in the record, Mr. Williams, I will submit to the
20 Court that Mr. Williams did adequately cross-examine them.
21 He brought out the inconsistencies of the two officers
22 statements. He had the officer testify that part of his
23 statement was incorrect and that that was not physically
24 possible.

25 Your Honor, he also -- I would submit to the Court

1 that the applicant has failed to allege anything in regards
2 to what could have potentially been done or what more could
3 have been done in the cross-examination. Your Honor, in
4 regards to the video, the applicant testified that he was
5 cussing along with the officers at that time. Your Honor,
6 I would submit to the Court that there's no way to tell
7 from that video whose voice is on there.

8 Through the applicant's testimony here today and
9 through the testimony of Amanda Teal at trial, it was
10 established that Mr. Yonson did cuss. I believe that both
11 Officer Williams and Bolen testified to that as well.

12 In regards to the witnesses, Your Honor, that's
13 just mere speculation.

14 Nothing further.

15 THE COURT: Thank you. Anything in response,
16 Mr. Kirkland?

17 MR. KIRKLAND: No, sir, Your Honor.

18 THE COURT: Thank you, thank you very much. If
19 y'all would please submit proposed orders within 30 days to
20 each other and to my law clerk.

21 MR. KIRKLAND: Yes, sir.

22 MR. GOURLEY: Yes, Your Honor.

23 THE COURT: Thank you, thank you very much.

24 Good luck to you Mr. Yonson.

25 * * * * * END OF TRANSCRIPT * * * * *

1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Eleventh Judicial Circuit of the
8 State of South Carolina, do hereby certify that I reported
9 the proceedings in the captioned case in the Court of
10 General Sessions in and for the State of South Carolina on
11 the 4th day of October 2013.

12 I FURTHER CERTIFY that the foregoing 146 pages,
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 5th day of June, 2014.

19
20
21
22 Brenda J. Sigwald
23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020.

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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2013 DEC -9 PM 12:29
THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Randy Yonson, #312280,

Applicant,

v.

State of South Carolina,

Respondent.

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2010-CP-43-2797

CERTIFIED TRUE COPY
OF ORIGINAL FILED

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief application filed on December 29, 2010. The Respondent made its Return on June 17, 2011. An evidentiary hearing into the matter was convened on October 4, 2013, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Bradley M. Kirkland. The Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted during the January 2007 term of the Sumter County Grand Jury for two counts of Unlawful Pistol, two counts of Possession of a Stolen Pistol, Possession of a Pistol by a person under the age of Twenty-One, Possession of a Pistol by a Person Convicted of a Crime of Violence, two counts of Assaulting a Law Enforcement Officer while Resisting, Resisting Arrest with a Deadly Weapon, and Possession of Cocaine (2006-GS-43-0179). T.D. Williams, Esquire, represented him. Applicant proceeded to a jury trial before

the Honorable Clifton Newman. Applicant was found guilty on all charges and on January 18, 2007, was sentenced to one year imprisonment for each count of Unlawful Pistol, two years imprisonment for Possession of a Pistol by a Person under Twenty-One, five years imprisonment for Possession of a Pistol by a Person Convicted of a Crime of Violence, twenty years imprisonment for the second count of Assault and Battery with Intent to Kill, ten years imprisonment for the first count of Assaulting a Law Enforcement Officer While Resisting Arrest, and five years imprisonment for Resisting Arrest with a Deadly Weapon, each of which to run concurrently to a twenty year sentence for the first charge of Assault and Battery with Intent to Kill. Additionally, those charges were to run consecutively to a five year sentence for Possession of a Firearm during the Commission of a Crime of Violence and a ten year sentence for the second charge of Assaulting a Law Enforcement Officer While Resisting Arrest, for a total sentence of thirty-five years imprisonment. The Applicant appealed to the South Carolina Court of Appeals, and the sentence was Affirmed in Part and Reversed in Part. Applicants conviction for Possession of a Pistol by a Person under Twenty-One was reversed. The Remittitur was issued on October 5, 2010.

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

1. Ineffective assistance of Counsel
 - a. Trial Counsel was ineffective when he made a motion in limine to suppress and exclude evidence of officers statement, but counsel failed to preserve such motion by making a contemporaneous objection when evidence was introduced.
 - b. Insufficient pre-trial preparation time with attorney; and
 - c. Counsel did not interview potential witnesses.

Through PCR Counsel, Bradley Kirkland, Applicant amended his application to include



the following grounds:

1. Applicant counsel, T.D. Williams, IV, failed to meet with the Applicant a sufficient number of times to prepare for trial and failed review the discovery materials with the Applicant or provide the Applicant with a copy of the discovery materials.
 - a. Originally, Melissa Biggers was appointed to represent the Applicant. She met with Mr. Yonson, introduced herself and informed him that she had filed a Rule 5/Brady motion on his behalf. Mr. Yonson never saw Ms. Biggers again.
 - b. On or about October 4, 2006, the case was reassigned to Mr. Williams. Mr. Williams met with Mr. Yonson on one occasion prior to trial to discuss the case. On December 20, 2006, Mr. Williams met with the Applicant from 10:24 a.m. until 12:25 p.m., MacDougall's Administration Building at SCDC. This was the only time Mr. Williams met with Mr. Yonson.
 - c. At that meeting Mr. Williams allowed Mr. Yonson to view the video tapes provided by the Solicitor's office. The videos, unfortunately, do not capture the events that led to Applicant's arrest.
 - d. Mr. Williams also reviewed a 35 page SLED report with Mr. Yonson. No other discovery was showed to Mr. Yonson. Mr. Williams refused to provide a copy of the discovery to Mr. Yonson and did not review any other materials with Mr. Yonson.
 - e. The next time that Mr. Yonson met with Mr. Williams was on January 9, 2007. Mr. Williams met with Mr. Yonson in a room in the Courthouse with several other inmate present. Mr. Williams explained to Mr. Yonson that he could plead to his offenses for a 25 year sentence. Mr. Yonson told Mr. Williams he believed he had a defense to the charges and did not accept the 25 year offer. Mr. Williams did not go over any discovery at this meeting as court was in session and Mr. Yonson was sitting with several other inmates. Mr. Williams did show Mr. Yonson a new indictment at this meeting.
 - f. After this meeting Mr. Yonson no longer believed that Mr. Williams was acting in his best interest and on January 10, 2007, Mr. Yonson filed 3 motions; alleging that Mr. Williams was ineffective, a request for a copy of his discovery materials and a request for a new attorney.
 - g. On January 16, 2007, a hearing was convened on the motions filed by Mr. Yonson. Mr. Yonson explained that he had only seen his attorney on two occasions and that he had not been provided a copy of the discovery. Mr. Williams admitted that he had not provided Mr. Yonson with a copy of the discovery. Mr. Williams maintained that he had met with Mr. Yonson for 2 days for "extended periods" and had "gone through his discovery with him in [depth]." Mr. Williams also agreed that he did not provide a copy of the discovery to Mr. Yonson as he was not a "copy shop" for his clients. (Motion Hearing Transcript p. 6).
 - h. The Court denied the motions by Mr. Yonson and the trial began later that same day.
 - i. The discovery materials in the possession of Mr. Williams were over 200 pages in length and there were approximately 4 hours of video tape. The only

- meeting Mr. Williams had with Mr. Yonson prior to bringing Mr. Yonson to the courthouse for a plea was a 2 hours and 1 minute meeting on one occasion. Mr. Yonson was denied a reasonable opportunity to assist in his own defense.
2. Counsel failed to object to the introduction of hearsay at the Jackson v. Denno hearing, failed to contemporaneously object to the introduction of Mr. Yonson's statement during trial and failed to discuss the hearing with Mr. Yonson prior to trial so that Mr. Yonson could assist in his defense.
 - a. During the Jackson v. Denno hearing the officer testified that a nurse told him that Mr. Yonson was not taking any medications that would interfere with his ability to understand questioning by the officers. Mr. Yonson was being administered morphine at the time and does not recall the meeting with officers. Mr. Williams should have objected to this hearsay being admitted for consideration at the hearing.
 - b. Mr. Williams failed to contemporaneously object to the introduction during the trial of the case. For this reason the Court of Appeals refused to review this issue on appeal as it was not properly preserved.
 - c. Mr. Williams failed to discuss the hearing with Mr. Yonson prior to trial. Consequently Mr. Yonson was unable to assist in his defense at the hearing. Mr. Yonson claims that he would have testified at the hearing and asked his family to testify as well if Mr. Williams had explained the nature of the hearing to him.
 3. Mr. Williams failed to properly present the defense of accident. Mr. Williams failed to effectively point out the differences between the written statements of Officers Abrams and Williams and their testimony. Furthermore, had Mr. Yonson had an opportunity to assist in his defense he could have reviewed the discovery materials, explained to Mr. Williams what had happened and helped him develop proper cross examination. It was critical to the defense to establish the testimony of these officers were not credible.
 4. Mr. Williams failed to effectively establish that Mr. Yonson's voice could not be heard on the video that was played for the jury in court.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, T.D. Williams, IV, Esquire (Counsel). This Court also had before it a copy of Applicant's trial transcript, motion hearing transcript, the records of the Sumter County Clerk of Court, and records from the South Carolina Department of Corrections. Additionally, Applicant introduced the following exhibits: exhibit one- Arrest warrants; exhibit two- letter dated October 6, 2006; exhibit three- letter dated October 4, 2006; exhibit four- letter

dated December 8, 2006; exhibit five- email dated February 8, 2013; exhibit six-SLED Lab report; exhibit seven-indictments; exhibit eight- three letters dated January 10, 2007; exhibit nine- transcript from motion to relieve counsel; exhibit ten- Court of Appeals Unpublished opinion No. 2010-UP-408; exhibit eleven-statement Williams; exhibit twelve- statement Boland; exhibit thirteen- SLED supplemental report; exhibit fourteen- Letter dated February 22, 2007; exhibit fifteen- letter dated March 9, 2007; exhibit sixteen-SLED interview; exhibit eighteen-list of witnesses provided by Applicant.

During the evidentiary hearing, Applicant testified Melissa Biggers (Counsel Biggers) was his original court appointed counsel. Applicant testified Counsel Biggers met with him one time to inform him that she had filed a motion for discovery but Applicant never saw her again. Applicant testified approximately fourteen months later, he was contacted by T.D. Williams (Counsel) via letter informing him that he was now his court appointed counsel. (Exhibit Two). Applicant testified he saw Counsel on December 20, 2006 for approximately two hours. (Exhibit Four, Five). Applicant testified during this meeting Counsel reviewed a portion of the videos recorded from the dash cams of the police cars present at the scene. Applicant testified there were thirteen hours of feed, however he only reviewed a small portion of the videos. Applicant further testified that one could not see the actual incident take place on the videos. In addition to the video, Counsel also reviewed a thirty-five page SLED report with the Applicant but no other discovery was discussed or reviewed. (Exhibit Six). Applicant testified that he requested a copy of all discovery materials but Counsel refused to provide any of the materials to the Applicant.

Applicant testified he met with Counsel again on January 9, 2007. Applicant was transported to the Sumter County Courthouse and placed in a room behind the court room with other inmates. Applicant testified that Counsel refused to review discovery due to the amount of



people located within the room. Specifically, Applicant recalled there being at least six South Carolina Department of Corrections officers or inmates present. During this meeting Counsel relayed a plea offer made by the State in which Applicant would plead to his charges for a negotiated 25 year sentence. Applicant further testified Counsel provided Applicant with a new indictment listing eight additional charges. (Exhibit Seven). Applicant testified Counsel left a copy of the new indictment with him but, again, refused to provide any other materials to the Applicant. Applicant testified that he refused to accept the plea offer because he believed he had a defense to the charges and he wanted to review all the discovery materials to assist in his defense prior to discussing a plea offer. Applicant was returned to SCDC and he immediately filed several motions alleging that Counsel was ineffective and demanding a copy of the discovery materials. (Exhibit Eight).

Applicant testified that the next time he met with Counsel was on January 16, 2007. Counsel met with Applicant for a few minutes and then a hearing was convened on the motions that Applicant had filed. (Exhibit Nine). At the hearing Applicant stated that he felt Counsel was ineffective during the course of his representation. Specifically, Applicant felt Counsel did not meet with him an adequate number of times. Applicant testified Counsel would not provide him with a copy of discovery and as a result, Applicant did not feel he could personally help with his case. Applicant testified that he and Counsel never had any meaningful conversations. Applicant testified that he felt Counsel did not have Applicant's best interest at heart. Applicant testified that the motions were ultimately denied and jury selection began immediately after the hearing.

Applicant testified that his statement made to law enforcement officers was involuntary. Applicant testified he was taking heavy medication, including morphine. Applicant testified he



never discussed the procedures for a Jackson v. Denno hearing with Counsel. Applicant further testified, Counsel never informed him that he could testify or call witnesses during the Jackson v. Denno hearing. Applicant testified he learned what a Jackson v. Denno hearing was through discussions with various inmates. Applicant testified had he known what a Jackson v. Denno hearing was he would have testified and had his father testify on his behalf. Applicant testified that his Counsel failed to object to hearsay testimony during the hearing and the officers were allowed to testify as to what a nurse had told them about Applicant's state of mind. Applicant testified that his statement was ultimately ruled admissible by the trial judge. Applicant explained that Counsel called no witness and only cross examined the officers who testified for the State during the hearing. Applicant testified that during the trial, Counsel failed to make a contemporaneous objection to the admission of Applicant's statement to law enforcement and the Court of Appeals refused to consider the issue on appeal as it was not properly preserved. (Exhibit Ten).

Applicant testified the incident took place on September 11, 2005 at a night club. Applicant testified Officer Williams and Officer Boland received gunshot wounds. Applicant testified he was shot three times. Applicant testified he was shot in the left leg, buttock, and back. Applicant recalled EMS arriving and attending to Officer Boland and Officer Williams. Applicant testified he was eventually transported to an ambulance where he was driven a quarter mile down the road to an empty parking lot. Applicant testified he was then air lifted to the hospital. Applicant testified he woke up two days later at a hospital and could not remember anything after being loaded onto the helicopter. Applicant testified he was in the hospital for six days prior to being transported to prison.

Applicant testified that during the incident an officer approached him from behind as he



was reaching his hand in his pocket to retrieve his keys. Applicant testified he was not aware that the Officer was approaching him and was startled when he grabbed him. Applicant testified the Officer asked for his driver's license. Applicant testified the Officer told him to stop resisting arrest and threw him to the ground. Applicant testified his shoulder was dislocated. Applicant testified a second officer came over and got on top of him. Applicant testified that when the second officer got on top of him the gun in his back pocket discharged. Applicant testified he had two separate guns, a nine millimeter pistol in his back right pocket (loaded with .380 caliber bullets) and a twenty-five millimeter pistol in his front left pocket. Applicant testified that he knew he was not in lawful possession of those weapons. However, Applicant claimed that the gun accidentally discharged when the officers were removing it from his pocket.

Applicant testified that Counsel failed to properly cross examine Officer Boland and Officer Williams. Counsel failed to adequately show that the officers gave inconsistent statements regarding the number of shots actually fired. Specifically Applicant testified, Officer Williams testified to seeing one shot and possibly hearing a second shot. Whereas, Officer Boland testified to hearing a possible three shots. Their testimony at trial was inconsistent with their written statements. (Exhibits Eleven, Twelve). Of particular importance to Applicant was the fact that only one .380 shell casing was found at the scene which, according to Applicant, proved his gun had only fired one bullet. (Exhibit Six, page 28). Applicant testified, Counsel should have more thoroughly cross examined the Officers on their statements and the physical evidence because "someone is lying." Applicant further testified Counsel should have cross examined Officer Williams on whether he actually was able to put his finger through the trigger guard to stop the Applicant from firing additional shots. Furthermore, Counsel should have explained to the jury that it was impossible to determine who is heard yelling on the video tape



that was produced during trial. Applicant testified that if he had been given a chance to review the discovery he could have assisted Counsel in preparing his defense.

Following Applicants testimony, Counsel was called to testify by the State. Counsel testified that he was appointed in this case in October 2006. Counsel testified Counsel Biggers had previously filed for and received discovery in Applicant's case. Counsel testified on November 3rd he reviewed the relevant portions of the videos recorded by the police car dash cams. Counsel testified he met with Applicant on December 20, 2006 for approximately two hours. During that meeting he attempted to review the discovery materials with Applicant but Applicant was more interested in a civil suit that he had filed against the officers. Counsel testified that he did the best he could to focus Applicant on the materials. During that meeting Counsel also showed the relevant portions of the in car videos to Applicant. Counsel testified he met with Amanda Teal (Teal), Applicant's girlfriend and witness on December 21st. However, for some reason unknown to Counsel, Applicant had instructed Teal not to cooperate fully with Counsel. Counsel testified he went to the incident location with Teal and viewed the scene.

Counsel further testified he met with Applicant a second time on January 9th in the grand jury room in the back of the courthouse. During this meeting, Counsel testified he reviewed a new indictment and additional discovery material. Counsel testified there was no one else present in the room while he met with the Applicant and he met with the Applicant for an extended period of time. Counsel testified he was unable to provide a copy of discovery material to Applicant due to a lack of funds from the Public Defender's Office. Counsel testified the State offered a twenty year plead deal, however Applicant refused to accept the offer and continued to assert that the shooting was an accident. Counsel further testified he challenged portions of the indictment and was able to get several charges dismissed prior to the trial.



Counsel testified he did not call any witnesses for the Jackson v. Denno hearing because Applicant readily admitted to having the pistols on his person. Counsel stated the statement was consistent with Applicant's testimony during trial and there was no reason to attempt to keep the statement out of evidence. Counsel explained, Applicant consistently asserted that the shooting was an accident and the statement supported Applicant's assertion. Counsel further testified he thoroughly cross examined all witnesses including both Officers Williams and Boland. Counsel testified Officer Williams admitted that he could not place his finger in between the trigger and trigger guard, despite his written statement saying he did such an act. Counsel further testified he did cross examine both Officers on difference between their two statements. Counsel specifically focused on the inconsistencies of Officer William's and Boland's statements regarding the amount of shots fired.

Additionally, Counsel testified he explained the defense of accident to Applicant and informed him that one of the elements of the defense of accident required Applicant to possess the weapons lawfully. Counsel testified Applicant was on probation during this time and as part of his probation he was not allowed to possess any weapons. Additionally, Applicant was under twenty-one years of age and had a prior felony conviction.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is less credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).



In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant counsel, T.D. Williams, IV, failed to meet with the Applicant a sufficient number of times to prepare for trial and failed review the discovery materials with the Applicant or provide the Applicant with a copy of the discovery materials.

This Court finds Applicant's allegation that Counsel was ineffective for failing to meet with him a sufficient number of times and for failing to prepare for trial is without merit. Counsel testified he met with Applicant at least two occasions and reviewed all the discovery materials. Counsel testified that he reviewed the relevant portions of the videos recovered from the police car dash cams. Counsel further testified he met with Amanda Teal, despite her reluctance to cooperate, and visited the scene of the incident to get a better understanding of the factual situation. Counsel testified he was able to get several charges dismissed including counts three and four of the indictments. Counsel further testified he successfully argued a directed verdict motion for possession of cocaine. Counsel further testified Applicant was unwilling to focus on his criminal case and was instead focused on his civil suit against the Officers. Counsel testified he was unable to give Applicant a copy of the discovery motion due to a lack of funding from the Public Defender's Office. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). Applicant can prove no prejudice when he presents no evidence at PCR hearing to show what Counsel could have further investigated in preparation for a trial. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997). Applicant provided no testimony or evidence which would substantiate this allegation and he has failed to show what further investigation Counsel should have undertaken in preparation for a trial. Applicant has failed to meet his burden of proof and thus, this allegation is denied.

Counsel failed to object to the introduction of hearsay at the Jackson v. Denno hearing, failed to contemporaneously object to the introduction of Mr. Yonson statement during trial and failed to discuss the hearing with Mr. Yonson prior to trial so that Mr. Yonson could assist in his defense.



This Court finds Applicant's allegation that Counsel was ineffective for failing to discuss the procedures of a Jackson v. Denno hearing, failing to object to the introduction of hearsay testimony during the Jackson v. Denno hearing, and failing to contemporaneously object to the introduction of Applicant's statement during trial is without merit. Counsel testified he knew Applicant's statement was consistent with the testimony Applicant was prepared to present at trial. Counsel testified Applicant consistently asserted that the shooting was an accident and Applicant's statement to police was consistent with that assertion. Counsel testified he saw no reason to object to the hearsay testimony or attempt to keep the statement out, because in his opinion the statement only furthered Applicant's defense that the shooting of the officers was an accident. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Counsel articulated a valid strategic reason for failing to object to the hearsay testimony introduced during the Jackson v. Denno hearing.

Furthermore, Applicant cannot show any prejudice as a result of Counsel's alleged deficiency. Applicant testified during both trial and the PCR hearing that he was not in lawful possession of the weapons. Applicant explained that he was not allowed to possess weapons as part of his probation requirements. Applicant further testified he was possessed both pistols in his pockets while present at a night club. Applicant testified he was in the process of leaving the club when an officer grabbed him and asked him for his identification. Applicant testified as a result, an altercation occurred and both arresting officers were shot. Applicant readily admitted to arming himself prior to the altercation and could offer no excuse as to why he possessed the



two pistols. In South Carolina, the defense of accident requires showing the harm caused was unintentional, the *defendant was acting lawfully* at the time of the incident, and due care was exercised in handling the weapon. State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994) (emphasis added). This Court finds Applicant cannot show any resulting prejudice as there is evidence of overwhelming guilt. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994).

Counsel failed to properly present the defense of accident.

This Court finds Applicant's allegation that Counsel was ineffective for failing to properly present the defense of accident is without merit. In South Carolina, the defense of accident requires showing the harm caused was unintentional, the *defendant was acting lawfully* at the time of the incident, and due care was exercised in handling the weapon. State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994) (emphasis added). Counsel testified he thoroughly explained the elements of the defense of accident to Applicant. Applicant testified during both the trial and the PCR hearing that he was not in lawful possession of the weapons. Applicant explained that a requirement of his probation was that he not be in possession of any weapons. Furthermore, Applicant was under the age of 21 and had a prior felony conviction. Applicant further testified during the PCR hearing that he did not own the weapons and had no reason to have them. Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of counsel. Applicant argued that had he been able to further review the discovery material and assist in his defense it would have led to a more thorough cross examination of the testifying officers regarding their statements and recollection of the events the night of the shooting.

However, this Court finds Counsel thoroughly cross examined both testifying officers and was able to elicit certain inconsistencies between their statements. Further, Counsel was able to impeach the credibility of Officer James Williams, by having him admit that his statement contained factual impossibilities. (Tr. p. 149 line 23—p. 150 line 13). The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation, and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant did not proffer any questions counsel allegedly failed to ask, and did not present any testimony showing the witnesses answers at trial would have been different. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense.

Ineffective assistance of counsel for failing to establish that his voice could not be heard on the video.

This Court finds Applicant's allegation that Counsel was ineffective for failing to establish that his voice could not be heard on the video is without merit. Applicant argues in support of his allegation that the videos do not actually depict the shooting. However, Counsel testified that he reviewed the relevant portions of the video with Applicant. Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, "failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C.

329, 496 S.E.2d 415 (1998). Applicant can prove no prejudice when he presents no evidence at PCR hearing to show what Counsel could have further investigated in preparation for a trial. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997). Applicant cannot show actual prejudice as a result of any alleged deficiency of counsel because he did not provide any evidence in support of his allegation.

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 Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

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

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate



procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 26 day of Nov, 2013.



R. KNOX MCMAHON
Presiding Judge
Third Judicial Circuit


_____, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
IN THE COURT OF COMMON PLEAS

Randy Yonson

RECORDED

2013 DEC 11 AM 10:16

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP4302797

South Carolina State of

ORIGINAL FILED

SUMTER COUNTY
SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2145

Judge Code

12/11/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Randy 312280 Yonson ,
Bradley Myers Kirkland 2007 Lincoln St. Columbia, SC
29201
Debra Ruilova Chapman 2007 Lincoln St. Columbia, SC
29201

Megan E. Harrigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

See attached Order.

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbara [Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

DOCKET NO. 2006-GS-43-179

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

JANUARY TERM 2007

THE STATE
vs.

RANDY ALAN YONSON

Indictment for

UNLAWFUL PISTOL, POSSESSION OF STOLEN PISTOL,
POSSESSION OF PISTOL BY PERSON UNDER THE AGE
OF TWENTY-ONE, POSSESSION OF PISTOL BY PERSON
CONVICTED OF A CRIME OF VIOLENCE, ASSAULT AND
BATTERY WITH INTENT TO KILL, POSSESSION OF A
FIREARM DURING THE COMMISSION OF A CRIME OF
VIOLENCE, RESISTING ARREST WITH A DEADLY
WEAPON, ASSAULTING LAW ENFORCEMENT OFFICER
AND UNLAWFUL DRUGS

C. KELLY JACKSON, SOLICITOR

WITNESSES

SLED

James Johnson

D/A: 9/17/05

ARREST WARRANT NUMBER

H907997 (1-6); H907994 (8)

H907993 (7,9,12); H907995 (10)

H907996 (11, 13)

ACTION OF GRAND JURY

True Bill

T. Chandler Strick

Foreperson of Grand Jury

Date: 1-4-07

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

INDICTMENT FOR
UNLAWFUL PISTOL, POSSESSION OF STOLEN PISTOL, POSSESSION
OF PISTOL BY PERSON UNDER THE AGE OF TWENTY-ONE,
POSSESSION OF PISTOL BY PERSON CONVICTED OF A CRIME OF
VIOLENCE, ASSAULT AND BATTERY WITH INTENT TO KILL,
POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME
OF VIOLENCE, RESISTING ARREST WITH A DEADLY WEAPON,
ASSAULTING LAW ENFORCEMENT OFFICER AND UNLAWFUL DRUGS
OF CHARGE FILE

At a Court of General Sessions, convened on January 4, 2007, the Grand Jurors

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

of SUMTER County present upon their oath:

COUNT ONE - UNLAWFUL PISTOL

That RANDY ALAN YONSON did in Sumter County on or about September 11, 2005, violate Sections 16-23-20 and 16-23-465 of the Code of Laws of South Carolina (1976), as amended in that he did unlawfully carry a firearm, to-wit: a .25 caliber Model GT26 pistol, serial number S14082, onto the premises of a business which sells alcoholic liquors, beers or wines for on-premise consumption.

COUNT TWO - UNLAWFUL PISTOL

That RANDY ALAN YONSON did in Sumter County on or about September 11, 2005, violate Sections 16-23-20 and 16-23-465 of the Code of Laws of South Carolina (1976), as amended in that he did unlawfully carry a firearm, to-wit: a 9mm Hi Point pistol, serial number P106176, onto the premises of a business which sells alcoholic liquors, beers or wines for on-premise consumption.

COUNT THREE - POSSESSION OF A STOLEN PISTOL

That RANDY ALAN YONSON did in Sumter County on or about September 11, 2005, violate Section 16-23-30(f) of the Code of Laws of South Carolina (1976), as amended, in that he did knowingly buy, sell, transport, pawn, receive or possess a stolen pistol, to-wit: a .25 caliber Model GT26 pistol, serial number S14082.

COUNT FOUR - POSSESSION OF A STOLEN PISTOL

That RANDY ALAN YONSON did in Sumter County on or about September 11, 2005, violate Section 16-23-30(f) of the Code of Laws of South Carolina (1976), as amended, in that he did knowingly buy, sell, transport, pawn, receive or possess a stolen pistol, to-wit: a 9mm Hi Point pistol, serial number P106176.

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

C. Kelly Jackson
SOLICITOR

UNLAWFUL PISTOL, POSSESSION OF STOLEN PISTOL, POSSESSION OF PISTOL BY PERSON UNDER THE AGE OF TWENTY-ONE, POSSESSION OF PISTOL BY PERSON CONVICTED OF A CRIME OF VIOLENCE, ASSAULT AND BATTERY WITH INTENT TO KILL, POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME OF VIOLENCE, RESISTING ARREST WITH A DEADLY WEAPON, ASSAULTING LAW ENFORCEMENT OFFICER AND UNLAWFUL DRUGS WITH THE AFORESAID NAME OF RANDY ALAN YONSON SHOWN THEREON:

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbara Shapiro
DEPUTY CLERK OF COURT

COUNT FIVE – POSSESSION OF A PISTOL BY PERSON
UNDER THE AGE OF TWENTY-ONE SUMTER COUNTY
SOUTH CAROLINA

That RANDY ALAN YONSON did in Sumter County on or about September 11, 2005, violate Section 16-23-30(c)&(E) of the Code of Laws of South Carolina (1976), as amended, in that he did carry about his person a pistol, while not authorized by law to do so; he being under the age of twenty-one.

COUNT SIX – POSSESSION OF A PISTOL BY PERSON
CONVICTED OF A CRIME OF VIOLENCE

That RANDY ALAN YONSON did in Sumter County on or about September 11, 2005, violate Section 16-23-30(a) & (e) of the Code of Laws of South Carolina (1976), as amended in that he did unlawfully possess a pistol, after having been convicted of a crime of violence as defined in Section 16-23-10.

COUNT SEVEN – ASSAULT AND BATTERY WITH INTENT
TO KILL

That RANDY ALAN YONSON did in Sumter County on or about September 11, 2005, violate Section 16-3-620 of the Code of Laws of South Carolina (1976), as amended, in that he did commit an unlawful act of a violent nature to the person of another, to-wit: Officer Erin R. Boland, with malice aforethought, either express or implied, by shooting the said Erin R. Boland.

COUNT EIGHT – ASSAULT AND BATTERY WITH INTENT
TO KILL

That RANDY ALAN YONSON did in Sumter County on or about September 11, 2005, violate Section 16-3-620 of the Code of Laws of South Carolina (1976), as amended, in that he did commit an unlawful act of a violent nature to the person of another, to-wit: Officer James B. Williams, with malice aforethought, either express or implied, by shooting the said James B. Williams.

UNLAWFUL PISTOL, POSSESSION OF STOLEN PISTOL, POSSESSION OF PISTOL BY PERSON UNDER THE AGE OF TWENTY-ONE, POSSESSION OF PISTOL BY PERSON CONVICTED OF A CRIME OF VIOLENCE, ASSAULT AND BATTERY WITH INTENT TO KILL, POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME OF VIOLENCE, RESISTING ARREST WITH A DEADLY WEAPON, ASSAULTING LAW ENFORCEMENT OFFICER AND UNLAWFUL DRUGS WITH THE AFORES NAME OF RANDY ALAN YONSON SHOWN THEREON:

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbara Hager

COUNT NINE – POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME OF VIOLENCE
CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

That RANDY ALAN YONSON in Sumter County on or about September 11, 2005, was in possession of and did visibly display a firearm during the commission of a violent crime as defined in Section 16-1-60, to-wit: assault and battery with intent to kill, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

COUNT TEN – ASSAULTING A LAW ENFORCEMENT OFFICER WHILE RESISTING ARREST

That RANDY ALAN YONSON did in Sumter County on or about September 11, 2005, violate Section 16-9-320(B) of the Code of Laws of South Carolina (1976), as amended, in that he did assault, beat or wound Officer Erin Boland, whom he knew or reasonably should have known was a law enforcement officer of this State while resisting the efforts of the said Erin Boland to make a lawful arrest of the said RANDY ALAN YONSON.

COUNT ELEVEN – ASSAULTING A LAW ENFORCEMENT OFFICER WHILE RESISTING ARREST

That RANDY ALAN YONSON did in Sumter County on or about September 11, 2005, violate Section 16-9-320(B) of the Code of Laws of South Carolina (1976), as amended, in that he did assault, beat or wound Officer James B. Williams, whom he knew or reasonably should have known was a law enforcement officer of this State while resisting the efforts of the said James B. Williams to make a lawful arrest of the said RANDY ALAN YONSON.

UNLAWFUL PISTOL, POSSESSION OF STOLEN PISTOL, POSSESSION OF PISTOL BY PERSON UNDER THE AGE OF TWENTY-ONE, POSSESSION OF PISTOL BY PERSON CONVICTED OF A CRIME OF VIOLENCE, ASSAULT AND BATTERY WITH INTENT TO KILL, POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME OF VIOLENCE, RESISTING ARREST WITH A DEADLY WEAPON, ASSAULTING LAW ENFORCEMENT OFFICER AND UNLAWFUL DRUGS WITH THE AFORESAID NAME OF RANDY ALAN YONSON SHOWN THEREON:

CERTIFIED TRUE COPY
OF ORIGINAL FILE
B. J. Jackson
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

COUNT TWELVE – RESISTING ARREST WITH A DEADLY WEAPON

That RANDY ALAN YONSON did in Sumter County on or about September 11, 2005, violate Sections 16-3-625 of the Code of Laws of South Carolina (1976), as amended in that he did resist the lawful efforts of Erin Boland and James Williams, law enforcement officers of this State, to arrest the said RANDY ALAN YONSON, by using or threatening to use a deadly weapon.

COUNT THIRTEEN – POSSESSION OF COCAINE

That RANDY ALAN YONSON did in Sumter County on or about September 11, 2005, knowingly and intentionally possess a quantity of cocaine, a controlled substance under the provisions of Act No. 445, Acts of 1971, General Assembly of South Carolina, as amended (Section 44-53-370 et. seq., 1976 Code of Laws of South Carolina, as amended), such possession not having been authorized by law.

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

C. Kelly Jackson
SOLICITOR