

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2014-002623

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S.C. Supreme Court

RICHARD PATTERSON, 270085,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

David Spencer
Senior Assistant Attorney General
Post Office Box 11549
Columbia, S. C. 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT.

TARA DAWN SHURLING
Attorney and Counselor at Law
S. C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, S. C. 29204
(803)738-8622 Phone
(803)738-1600 Fax
Email: tdslaw@shurlinglaw.com

ATTORNEY FOR PETITIONER.

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*Appellate records have not been included in the Appendix inasmuch as Petitioner expressly waived any claims of ineffective assistance of appellate counsel in his PCR action. Those records, which include the material listed below, are available should this Honorable Court deem their inclusion appropriate.

Record on Appeal Volume I
Record on Appeal Volume II (Certificate of Counsel dated 2/25/02)
Final Brief of Appellant dated March 18, 2002
Final Brief of Respondent dated March 15, 2002
Court of Appeals Opinion No. 2003-UP-143 filed February 19, 2003
Petition for Rehearing dated 3/6/03
Return to Petition for Rehearing (No Return Filed)
Court of Appeals Order Denying Petition for Rehearing dated April 18, 2003
Petition for Writ of Certiorari filed August 18, 2003
Return to Petition for Writ of Certiorari filed September 17, 2003
Supreme Court Letter Denying Petition for Writ of Certiorari dated May 13, 2004
Remittitur from the Court of Appeals dated May 17, 2004

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1 A. Right.

2 Q. Did you consider arguing to the jury that if his
3 hands which would have been larger than hers presumably
4 ---

5 A. Right.

6 Q. --- were covering a good bit of her hand that it
7 would have arguably affected whether or not she got
8 gunshot residue on her hand?

9 A. Right. I'm pretty sure it came out during the
10 trial.

11 Q. And did you argue that based on your client's theory
12 of how the shot was fired, that his trying to affect the
13 movement of the gun may have been a logical explanation
14 for why the gun was further away from her head than you
15 would expect in a typical suicide when it was fired?

16 A. That was the whole reason we had Dr. Ward.

17 Q. Did you consider -- throughout this trial your
18 client's testimony was that the gunshot was fired when he
19 was struggling with the victim in an effort to keep her
20 from shooting herself, right?

21 A. Did I consider that?

22 Q. No. Is it fair to say that whether you were cross-
23 examining State's witnesses or arguing yourself, you
24 know, at every juncture in this trial, your client's
25 position was that the gun had gone off while he was

1 struggling with her in an effort to keep her from killing
2 herself?

3 A. Yes, right.

4 Q. Okay. So did you consider objecting at any point
5 when the solicitor is arguing this didn't happen -- this
6 wasn't a suicide, this didn't happen as a suicide? Did
7 you consider correcting or making an objection that some
8 of those statements were a misstatement of your client's
9 position?

10 A. I think you might have to be a little bit more
11 specific.

12 Q. Okay. Once again, going back to what I said
13 earlier, your client didn't claim that he watched this
14 woman pick up a gun, put it to her head and shoot
15 herself, right? He didn't claim that in his trial
16 testimony?

17 A. He kind of did.

18 MR. SPENCER: Your Honor, I think we had
19 testimony a few minutes ---

20 A. I mean, the ---

21 THE COURT: Hold on.

22 MR. SPENCER: I mean, if she's talking about
23 closing argument, this has been asked and answered too.

24 THE COURT: All right.

25 Well, I'll allow you to ask it this time.

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1 A. His testimony is he sees her with the gun, he sees
2 her raise the gun. And then when he goes to grab the
3 gun, the gun goes off. So he sees that. So his
4 contention isn't that he pulls the trigger; his
5 contention is she's pulling the trigger. I mean, we can
6 go back and forth about it, but ... Maybe I'm looking at
7 his testimony a little bit different -- our theory is she
8 committed suicide and that he is sitting there watching
9 her with a gun, legs folded, talking about killing
10 herself. She's already tried to kill herself in the
11 past. That's come out. She's raised the gun saying
12 she's going to kill herself and raises the gun, a loaded
13 gun, to her head. And the gun goes off. You know, our
14 theory was that she succeeded in killing herself.

15 Q. Okay. And I understood your earlier testimony --
16 the record will speak for itself. But if you did not in
17 your closing argument, was there any particular reason
18 why you did not emphasize to the jury the fact that your
19 client had admitted that the gun went off while he was
20 trying to stop her from shooting herself? Your client
21 had admitted that he was struggling with her for control
22 of the weapon as opposed to this being a straight-out
23 suicide.

24 A. Did I consider it?

25 Q. Well, is there any reason why you didn't do it if

1 the record reflects that you did not?

2 A. Yeah. That wasn't my theory was that she -- the
3 theory was is that she committed suicide. The theory
4 being, from my philosophy is, you know, short and -- not
5 short and simple. But you know, I don't want to confuse
6 the jury. I want to present a crystal clear defense, and
7 that was the crystal clear defense that we had. That she
8 was the one that had been suicidal, she had had
9 emotional, severe emotional problems. There's a gun
10 available. And if he had been hellbent on mischief or
11 had a malicious heart, he could have gone and gotten his
12 own gun. She introduces the gun, a gun that he didn't --
13 that their witnesses say he didn't know was in the house.
14 And then she talks about committing suicide. She's
15 crying and she has the gun, raises the gun to her head
16 and ultimately the trigger goes off. And you know, our
17 theory is that she -- her finger is on the gun -- her
18 finger is on the trigger and that's what kills her.

19 Q. And his hand is on her hand connected to that finger
20 on the trigger, right?

21 A. Right.

22 Q. Okay. All right. I'll move on.

23 Was there any reason why you did not subpoena Steve
24 Pearson, the exhusband of the deceased, as a witness for
25 the Defense?

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1 A. He was -- that name was given by Mr. Patterson to
2 not only myself, but we had hired a private investigator,
3 Tom Selfredge. Had Tom Selfredge investigated to find
4 out what information that individual would be -- what he
5 would be able to provide. I believe the -- I believe the
6 main reason his name was given to me in the first place
7 was about the previous or attempted suicide. So -- but
8 to my recollection, Mr. Selfredge went out and talked
9 with this individual. I got a note back from Mr.
10 Selfredge that said that this individual would not help
11 us. Something to the effect that he would not help us.
12 Not only would he not help us, he'll hurt us.

13 Q. Okay.

14 A. So we made the decision -- I made the decision.

15 Q. Did you personally interview this witness?

16 A. No. But ultimately that information that we were
17 looking to present at trial came out at trial.

18 MS. SHURLING: A moment's indulgence?

19 THE COURT: Yes.

20 MS. SHURLING: May I approach, Your Honor?

21 THE COURT: Yes, ma'am.

22 Q. Mr. Brehm, can you identify this investigative
23 report for me, please? Or this document. I shouldn't
24 identify it as what I'm asking you to identify as.

25 A. It looks like an investigative report from Tom

1 Selfredge.

2 Q. And that would be the gentleman that you hired to
3 investigate this case?

4 A. Right.

5 Q. Four-page document?

6 A. Correct.

7 Q. Can you look through that for me, if you will, and
8 tell me whether it documents any effort to interview the
9 exhusband?

10 A. It does not. But this is -- I don't believe this is
11 his complete investigation.

12 Q. Okay.

13 A. I mean, it was -- I was actually looking for ...

14 Q. For the record, we covered this in your earlier
15 testimony. You were gracious enough to give me access to
16 your file in preparation for the 2009 proceeding.

17 A. Right.

18 MS. SHURLING: And for the record, Your Honor,
19 the document shown to this witness was a copy of a
20 document found in that file.

21 Q. Is it your position that there was another written
22 report from this investigator?

23 A. I don't know that there was another written report.
24 I don't have another written report in my file. This is
25 the only one that I have in the file.

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1 Q. Okay.

2 A. I know that there was a -- that -- this four-page
3 report isn't an accurate fair depiction of the total
4 investigation that Mr. Selfredge did. He did a lot more
5 than that. I mean, he was with me from obviously March
6 28th through the trial, but this is the only report that I
7 have.

8 Q. Do you have anything else in your file that reflects
9 the results of his investigation other than this four-
10 page report?

11 A. I have -- hold on a second.

12 THE COURT: While you're looking for that, in
13 fact, take five minutes. I need to take a break. I've
14 just got something I need to ...

15 MS. SHURLING: Yes, Your Honor.

16 THE COURT: Take a break and look for that.
17 We'll be adjourned for five or ten minutes.

18 (WHEREUPON, court stood at recess for a short
19 break.)

20 THE COURT: Did y'all find what you were
21 looking for?

22 Q. Before we took a break, we were discussing what, if
23 anything, the investigator in this case -- well, actually
24 I had asked you whether or not you had interviewed the
25 deceased's exhusband, Mr. Pearson, concerning his exwife.

1 And you had indicated that you believed an investigator
2 hired by you for the Defense team had done so; is that
3 correct?

4 A. Right.

5 Q. And I asked you to identify -- I believe my copy is
6 still up there with you, Mr. Brehm -- a four-page
7 investigative report.

8 A. Right.

9 MS. SHURLING: Your Honor, at this time I would
10 move to introduce this report into evidence.

11 THE COURT: Any objection?

12 MR. SPENCER: No objection.

13 THE COURT: Any objection to ---

14 MR. SPENCER: I'm sorry. No objection.

15 THE COURT: Okay. Without objection.

16 MS. SHURLING: Madam Court Report, would you
17 like me to look and see what number we were on?

18 MADAM COURT REPORTER: I can look because I was

19 ---

20 MS. SHURLING: I've got it right here. One
21 moment. (Reviewing documents) Well, that's easy. It
22 says there were no exhibits presented during the hearing.

23 Your Honor, the record reflects that at the June
24 18th, 2009, proceeding, according to Renee Tollison, there
25 were no exhibits introduced. So this would be

1 Applicant's 1.

2 THE COURT: All right.

3 (WHEREUPON, Applicant's Exhibit Number 1 was marked
4 and admitted into evidence.)

5 Q. Before the break you had an opportunity to briefly
6 review this four-page report. Did it make any reference
7 to -- and if I've asked you this before the break, I'm
8 sorry. I don't recall. Does it make any references to
9 any interviews of Steve Pearson or any attempt to
10 interview him?

11 A. No. The only thing that I have been able to uncover
12 -- the investigative report is from March 28th until April
13 4th. On March 29th, an investigator met with Mr.
14 Patterson. At that time Mr. Patterson gave him the names
15 and phone numbers and addresses of friends, coworkers,
16 supervisors and relatives of his and Leann's. Subsequent
17 to that I met with Mr. Patterson. He pretty much did the
18 same thing with me. And I've got my notes. Note, Leann
19 had been married three times Anderson County, get Tom to
20 check the records, marital records. And then I've got,
21 need Tom, Tom Selfredge, to talk to exhusband.

22 Q. Okay.

23 A. And I recall -- I know for a fact that -- I don't
24 know what he did. But I know that he contacted me and
25 said that, yeah, that guy's not going to be any -- that

1 guy's not only -- his exact words were, he is not going
2 to help us, he will hurt us. But I don't have a report
3 from him to that effect.

4 Q. Okay. So ---

5 A. Or I can't find it.

6 Q. Pardon me. I didn't mean to interrupt you. Did his
7 report outlining people that he interviewed doesn't
8 reference having talked to the exhusband?

9 A. Right. That report's only for -- I'm not sure if
10 it's a week.

11 Q. I understand.

12 A. He was with me from -- or with us from that March, I
13 guess it's, 2000 until the trial.

14 Q. I understand. I'm just trying to figure out -- this
15 investigator did a rather detailed outline of every
16 action taken in this case for the time period that this
17 report covered, did he not?

18 A. Right, he did.

19 Q. Okay. And if I understand you correctly, he did a
20 lot more investigation, to the best of your recollection
21 ---

22 A. Oh, yeah.

23 Q. --- from the point where this left off ---

24 A. Correct.

25 Q. --- until trial? And you have no documentation in

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1 your file concerning what those actions were?

2 A. No, not that I can find.

3 Q. But you do have an independent recollection of him
4 telling you he interviewed this gentleman and he would
5 not be helpful?

6 A. I do because that was critical to our case that we
7 be able to establish that she had -- was suicidal.

8 Q. Now, as it turned out, were you able to get evidence
9 of her previous suicide attempts introduced at trial
10 through another source?

11 A. I believe so.

12 Q. Thank you.

13 MS. SHURLING: Let me start at the beginning,
14 Your Honor, and make sure that I've covered everything.

15 Q. In your -- we discussed at the last hearing the
16 questions involving whether or not the unmirandized
17 statement uttered by your client orally should have been
18 pursued in terms of it having tainted the poisonous tree,
19 so to speak, of the subsequent written statement.

20 A. Right.

21 Q. Do you remember ---

22 A. I do.

23 Q. --- that line of inquiry? Okay. And we covered the
24 fact that in a jury trial you have to charge the jury
25 that as a predicate matter decide that a statement was

1 voluntarily and intelligently entered before they can
2 consider it on issues of guilt, right?

3 A. Correct.

4 Q. Okay. Did you argue at trial that -- to the jury
5 that any statement made by your client immediately
6 following this tragic incident was inherently unreliable
7 because of the circumstances under which it was taken,
8 the fact that he was in shock and so forth?

9 A. No, because his statement was -- his initial
10 statement was taken right after he called -- well, the
11 statement to 9-1-1 and the statement after were
12 consistent with what the defense was, suicide.

13 Q. There was, however, a written statement in which he
14 claims to have admitted deliberately shooting her?

15 A. Right.

16 Q. And my question is did you consider arguing to the
17 jury that anything he may or may not have said in the
18 hours immediately following this traumatic event would be
19 inherently unreliable because of the state of shock your
20 client was in?

21 A. I argued, if memory serves me correctly, about the
22 written statement, but I did not specifically mention
23 shock. I think I alluded to the inconsistencies in the
24 statement versus the evidence.

25 Q. Okay.

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1 A. Such as it would have been virtually impossible to
2 take the gun from her, walk down the hall and turn around
3 and shoot her.

4 Q. Okay. Did you -- we covered at the last proceeding
5 -- I just to want to make sure there wasn't anything else
6 you wanted to add on this. We covered at the last
7 hearing the fact that you did not hire an expert to
8 address the inherent unreliability of statements that
9 were being attributed to your client based on the fact
10 that he was in shock. And we discussed that in terms of
11 resource allocations. Do you remember that?

12 A. Resource allocation. And then there were some
13 things that if that would have been -- if we would have
14 opened that door or there would have been some --
15 possibly could have opened the door to some more damaging
16 evidence or testimony coming in. So part of it was
17 resources. Part of it was actually ---

18 Q. Okay.

19 A. It was something that was thought of, but it was
20 something that was rejected by me. I didn't ---

21 Q. Well ---

22 A. I didn't think it would have been a good idea.

23 Q. Let's go back over it then because at the previous
24 proceeding you said you had considered it, but you had
25 limited resources and you decided it was more important

1 to put the resources toward hiring Dr. Ward. Do you

2 recall that?

3 A. I do recall that.

4 Q. Now you're saying that you feel that if you had

5 pursued an expert on this topic, it potentially would

6 have opened the door to other damaging evidence?

7 A. Right. I remember testifying at the prior

8 proceeding and driving back to Greenville thinking about

9 it, saying, you know, there was some reason why I didn't

10 do that. And again, I can't be specific. I talked to

11 Mr. Patterson about it earlier. I can't remember if it

12 was the bond hearing, if it was the hearing talking about

13 when Judge Macaulay said, give them the -- give the

14 defense the hair.

15 Q. No offense. But if you don't have a specific

16 recollection of what it is, I would prefer that you not

17 postulate. Do you recall what it was?

18 A. Well, I have a specific -- I know that there was a

19 lot of evidence that didn't come in. A lot of the

20 evidence that Ms. White wanted to have come in that

21 didn't come in that would have been -- but the specific

22 time and the specific -- I just don't ...

23 Q. Let me see if I might can help.

24 A. I don't want to get too ---

25 Q. There was what was characterized as a spontaneous

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1 utterance, an oral statement that he shot her, that
2 Druanne White agreed not to introduce at trial.

3 A. That's not what I'm talking about.

4 Q. That's not ---

5 A. That's not what I'm talking about.

6 Q. That's not what you were afraid of ---

7 A. That's not the type of evidence ---

8 Q. --- opening the door to?

9 A. Right. It was more prior bad acts.

10 Q. Okay. If you do not have a specific recollection

11 ---

12 A. Part of it ---

13 Q. --- as to what evidence it is you were concerned ---

14 A. Of course, it's tough to have a specific

15 recollection of anything thirteen years later. But at
16 the time when I testified, I remember thinking, you know,
17 the Pattersons weren't -- you know, they wanted to do
18 everything they could to help their son, but they didn't
19 have unlimited resources. So that's what stuck out.

20 So I had to -- one of my goals was to try to use
21 what money was available in the best possible way to help
22 in the defense of Mr. Patterson. Driving back to
23 Greenville thinking about the circumstances about that
24 expert, I recall Ms. White and I talking specifically on
25 one occasion about can't you offer him a plea, is there

1 some type of plea, can't we work something out. No.

2 This is the reason why.

3 She showed me -- she had a file. And she showed me
4 these different things and said, I'm wanting to put him
5 in jail for the rest of his life. And in that file were
6 -- was the first opportunity that I had. And I believe
7 it came out of the bond hearing. There was some
8 accusations that came out then that, whoa, this --
9 there's a lot more to this than I knew at the time. I
10 would later get with Ms. White and go over some of that
11 stuff that -- she pretty much didn't let me see the file
12 and what she had. Some of that stuff, you know, I told
13 her I was going to object that just didn't need to come
14 in.

15 All the while as a defense attorney you think all
16 these different scenarios. Competencies. You think
17 about having an expert for jury selection. You think
18 about an expert in a situation where he went to the
19 convenience store and bought two packs of cigarettes and
20 two drinks. Do I need to get an expert for that?
21 Thinking through that, I didn't want to open the door in
22 any manner whatsoever to what -- I knew that Mr.
23 Patterson had been in the military, for instance. I knew
24 that there were things that I didn't want her to be able
25 to get into in that regard.

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1 So there were -- it was a little bit more involved
2 than just me saying, hey, I just -- I didn't think about
3 it. I did think about it. I primarily thought about the
4 resources available to me, and I didn't think given the
5 scenario given to me at the time that it would have been
6 prudent to have an expert testify and possibly open the
7 door that would, in my opinion, hurt my client more than
8 it would help.

9 Q. Okay. Well, let's back up ---

10 A. Right.

11 Q. --- a couple of steps.

12 A. Right.

13 Q. Do you agree with me that Druanne White was a fairly
14 enthusiastic prosecutor in this and other cases?

15 A. Yeah, all cases.

16 Q. Okay. And did she attempt to introduce any prior
17 bad act evidence in this case?

18 A. Not that I -- I don't think so.

19 Q. Did she advance any argument for why any of this
20 information she's claiming she's itching to introduce
21 would be admissible under the 404 ---

22 A. She did not ---

23 Q. --- exception to the character evidence rule?

24 A. She did not. We didn't -- we obviously didn't put
25 Mr. Patterson's character in. We didn't have people

1 vouch for his credibility or character or anything like
2 that. So yeah, there was ---
3 Q. I understand. She didn't ---
4 A. No. I had to be careful.
5 Q. Sorry. Didn't mean to interrupt you. Aside from
6 the credibility issue though with regard to even the
7 traditional Lyle analysis, she did not make any attempt
8 to introduce any prior bad act evidence as justified
9 under one of the traditional Lyle exceptions, did she?
10 A. No, she did not.
11 Q. Okay. And I'm trying to understand your position.
12 Are you telling us that you thought that if you hired a
13 psychiatric expert to present expert testimony on the
14 impact of traumatic shock on a person's ability to give a
15 statement, to have reliable recall -- those factors ---
16 A. She didn't ---
17 Q. --- that that might have opened the door to bad
18 character evidence? How so?
19 A. Not bad character. Well, if you have an expert that
20 testifies that you see someone -- see a traumatic
21 scenario and that's a scenario that they've seen for the
22 first time and that it could make them act in a bad way
23 that Mr. Patterson did by going to the convenience store,
24 nonchalantly buying two packs of cigarettes and two
25 drinks, to me that opens the door up to Ms. White

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1 potentially asking that expert about what happens if
2 there are other situations. What happens if this person
3 is being exposed to scenario 'X' or scenario 'Y'?
4 Certainly I could object to that, but the damage is done.

5 I was presented with evidence by Ms. White
6 beforehand that I did not want in any form or fashion to
7 get in front of that jury. And that's -- you know,
8 that's a decision that I made.

9 Q. But you have no recall what that feared evidence was
10 specifically?

11 A. Yeah. If you want me to get into it, I can ...

12 Q. Well, how about this? Tell us how it is that you
13 believe that the evidence in question could have
14 potentially been admissible as a reaction to expert
15 witness testimony on the psychological effects of trauma
16 on your client. Why would that testimony have opened the
17 door to the testimony you referred?

18 A. If you have someone that's been exposed to more than
19 one traumatic event and there's a history of that, the
20 prosecution is going to argue that it's going to be less
21 traumatic on someone that's done stuff like that in the
22 past on numerous occasions, if that makes any sense
23 whatsoever.

24 Q. Okay.

25 A. If it's an isolated incident, you have a nun that

1 this happens to that's squeaky clean, yes. There's -- I
2 would see no inherent problem with -- and it's probably
3 prudent to get an expert to say, hey, this scenario
4 caused trauma to the nun and caused her to act in this
5 way or not say that's what caused it but they had seen in
6 their past -- they would be able to explain, give an
7 opinion as to try to explain that type of behavior. But
8 if you step back after the expert's testified and you let
9 the prosecution get into it, if that nun has five, six
10 seven, eight situations that were traumatic in the past,
11 that would -- that would not only undermine the expert's
12 testimony, but it would hurt your case.

13 Q. Well, in order for you to do that, she would have to
14 prove that the prior incidents were sufficiently related
15 or sufficiently similar for them to open the door?

16 A. Well, we know he was in the military, for instance.

17 Q. Okay.

18 A. So that was a consideration. And it goes beyond
19 that.

20 Q. Okay. I'm going to move on because I'm confident
21 the Respondent will get into that with you on cross. And
22 I'll address any lingering concerns I have on reply.

23 Okay?

24 A. Okay.

25 MS. SHURLING: Your Honor, at this point I'm

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1 going to move to introduce into evidence a transcript of
2 Dr. Thomas V. Martin, M.D., that was taken on August 5th,
3 2010, at Dr. Martin's office. Present on behalf of the
4 Applicant, of course, were myself and also present was
5 Mr. West Lee, counsel for the Respondent at the time.
6 I'll introduce the copy provided to me by the court
7 reporter that took that deposition under seal as
8 Applicant's 2 at this time and count on Your Honor to
9 open it.

10 THE COURT: Okay.

11 Q. Did you have an opportunity to briefly review this
12 deposition before today's hearing?

13 A. I think I read through the first two, three -- first
14 four pages. Five pages maybe.

15 Q. Okay.

16 MS. SHURLING: Your Honor at this time, we'd
17 move to introduce the original as Applicant's 2, and I
18 would also hand up an extra copy of the same deposition
19 to Your Honor for your convenience.

20 THE COURT: Thank you.

21 Any objection?

22 MR. SPENCER: No objection.

23 THE COURT: All right. Without objection.

24 (WHEREUPON, Applicant's Exhibit Number 2 was marked
25 and admitted into evidence.)

1 MS. SHURLING: Your Honor, I'm quickly checking
2 my list so I can sit down.

3 A. Just for the record, I read to page 5, line 8 or
4 line -- excuse me -- line 11, and then I gave it back to
5 the Attorney General.

6 MS. SHURLING: And Your Honor, the deposition
7 will speak for itself as the Applicant's proffer of the
8 type of expert testimony that would have been beneficial
9 in this case.

10 THE COURT: Okay.

11 MS. SHURLING: Your Honor, at this time I would
12 have -- well, let me. I will broach one more subject.

13 Q. Since the time of this trial, there have been some
14 significant developments with regard to jury instructions
15 given on the inference that may be drawn from the use of
16 a deadly weapon concerning malice?

17 A. Yes, ma'am.

18 Q. At the time of the Court's decision in the *Belcher*
19 matter, October 12, 2009, the Court recognized that their
20 ruling was a departure from the position taken in
21 previous holdings and said that it would only apply to
22 cases that were pending on direct appeal. This trial
23 occurred well before the *Belcher* decision. I understand
24 that. But did you consider raising any sort of objection
25 to a jury instruction on the inference that could be

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1 drawn from the use of a deadly weapon where ---

2 A. No.

3 Q. --- on the facts of this case? Let me rephrase
4 that.

5 MR. SPENCER: Your Honor, I don't think that's
6 an allegation anywhere in the amendments.

7 MS. SHURLING: I'm done.

8 THE COURT: Okay. Sustained.

9 MR. SPENCER: Your Honor, may it please the
10 Court.

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. SPENCER:

14 Q. Mr. Brehm, I wanted to first kind of go through the
15 various statements that Mr. Patterson gave. Do you
16 recall what the -- do you recall the substance of the
17 first oral statement that he gave to a sheriff's deputy
18 at the scene?

19 A. Well, he called 9-1-1 and then essentially
20 substantiated or gave the same statement to a deputy at
21 the scene.

22 Q. Okay. So in the 9-1-1 statement he said that
23 basically he went out to the store, he came home and the
24 victim had shot herself. And the oral statement, was
25 that essentially the same thing?

1 A. Yes.

2 Q. So basically his version of the events was the
3 victim shot herself while he wasn't even there?

4 A. I can't recall if he said, I wasn't there. I just
5 remember him saying she shot herself.

6 Q. He returned and found her with a gun in her hand and
7 had shot herself?

8 A. Right.

9 MS. SHURLING: Your Honor, I hate to interrupt.
10 I am not trying to be distracting. During my recent
11 illness, my right eardrum ruptured, and I'm almost deaf
12 in my right eardrum.

13 THE COURT: That's fine.

14 MS. SHURLING: I'm going to have to stand here
15 to be able to hear.

16 THE COURT: That's not a problem with me.

17 MR. SPENCER: This could be a while. If you
18 want to pull up a chair or something.

19 Q. So in the first two -- his 9-1-1 call and statement
20 to the -- oral statement to the officer, there's no
21 mention of him trying to pull a gun away. Is that fair
22 to say?

23 A. No.

24 Q. It was an unimpeded suicide?

25 A. Right.

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1 Q. And then he gives a written statement to a detective
2 at the scene also. Do you recall that?

3 A. I don't think the written statement was given at the
4 scene.

5 Q. Well, do you recall how many written statements
6 there were?

7 A. Well, I can't -- that came up before.

8 MR. SPENCER: Beg the Court's indulgence.

9 A. I can't recall where the next statement was given.
10 I know the one where he supposedly takes the gun from her
11 and walks down the hall, I know where that was given.

12 Q. That was the very last ---

13 A. Right.

14 Q. And that was a written statement?

15 A. Right.

16 Q. And do you recall a written statement given to the
17 -- one of the detectives still at the scene where he
18 basically gives more or less the same version as he has
19 already given twice now where ---

20 A. If you're saying he was at the scene, then I have to
21 agree with you. That's the part that I can't remember
22 where it was ---

23 Q. You wouldn't disagree with it if that's what's in
24 the record?

25 A. Right, I wouldn't disagree.

1 Q. And then there's an oral statement that's given to
2 one of the detectives at the police station before he's
3 mirandized; is that correct?

4 A. That's my understanding, yes.

5 Q. And do you recall the officers testifying during the
6 *Jackson v. Denno* hearing that he was not in custody, that
7 he was free to leave?

8 A. Yes.

9 Q. And do you recall them testifying that they had
10 actually wanted to bring him to the -- had decided it
11 would be a good idea to give him an opportunity to come
12 to the station because, for one thing, it was
13 unseasonably hot that day; and for another thing, there
14 were family members assembling who were beginning to get
15 hostile toward Mr. Patterson?

16 A. Right. I remember that.

17 Q. All right. And do you recall them testifying that
18 he was free to leave or free not to agree to go to the
19 station?

20 A. Right. I remember them testifying about that.

21 Q. Okay. And do you recall -- let me make sure I get
22 the case right: Do you -- are you familiar with case law
23 that just -- that says merely because someone is in a
24 patrol car or at a police station doesn't mean they're in
25 custody?

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1 A. Yes.

2 Q. And this would be a bit to remember. But do you
3 recall that one of the cases Ms. White cited in support
4 of the voluntariness of the statements was a case called
5 *Oregon versus Elstad*?

6 A. I don't.

7 Q. And if the record says that, would you ---

8 A. I would not dispute it.

9 Q. --- dispute it? And do you recall *Elstad* rejecting
10 an argument that merely because there's an unmirandized
11 statement and then followed by -- subsequently followed
12 by a mirandized statement, rejecting the argument that
13 the mirandized statement should be suppressed as fruit of
14 the poisonous tree?

15 A. Again, I don't recall the particulars of the case.

16 MR. SPENCER: And Your Honor, just for the
17 record, the case is *Oregon versus Elstad*, E-L-S-T-A-D.

18 THE COURT: All right.

19 MR. SPENCER: It's 470 U.S. 298. And there is
20 a footnote here. Let me find it. And I'm not looking at
21 the right thing. And Your Honor, you know, that's a case
22 I'll be relying on later for the proposition of the U.S.
23 Supreme Court at the time had rejected any application of
24 fruit of the poisonous tree to the voluntariness of a
25 statement.

1 THE COURT: Okay.

2 Q. I'm just returning to the concerns over whether or
3 not there should have been some attempt to suppress the
4 last written statement as fruit of the poisonous tree.

5 Do you recall the testimony that -- by the officers,
6 first of all, saying that he was free to go, testimony
7 that he was not under arrest? Do you recall that
8 testimony?

9 A. I recall the testimony.

10 Q. And you would have certainly challenged it?

11 A. Right. I didn't agree with it, but I recall the
12 testimony.

13 Q. But had an -- in the end Ms. White decided to not
14 use the oral statement; is that correct?

15 A. That's correct.

16 Q. And I guess had Ms. White had not done that, you
17 would have argued it was custodial?

18 A. Yes.

19 Q. However, there would have been some evidence, at
20 least some evidence to support the judge's ruling, that
21 it was -- that the statement was non custodial and
22 therefore not subject to *Miranda*.

23 MS. SHURLING: Your Honor, I object. He's just
24 answered that he was arguing it was custodial.

25 THE COURT: All right. Sustained.

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1 MR. SPENCER: Well, I'm ---

2 THE COURT: Mr. Spencer, I understand what
3 you're saying.

4 MR. SPENCER: Thank you, Your Honor.

5 Q. One of the things that was brought up at the prior
6 P.C.R. hearing was your motion for mistrial when there
7 was an emotional -- what's been described as sort of an
8 emotional outburst by the victim's family when a couple
9 of crime scene photographs were displayed?

10 A. Right.

11 Q. Okay. And you had argued to the judge in your
12 motion for a mistrial that there was an outburst by
13 several members and that were -- I don't want to
14 mischaracterize. But there was crying and screaming. Is
15 that -- does that ---

16 A. There were a number of them that created a
17 significant outburst.

18 Q. And you brought that to the trial judge's attention?

19 A. I did.

20 Q. And you moved for a mistrial?

21 A. I did.

22 Q. Now, Ms. White had a different version of what
23 happened that she argued to the judge. Do you recall
24 that? She felt that it was only one person and only one
25 person that had to be escorted out?

1 A. The issue that I ran into was Judge Nicholson on the
2 record says -- I guess he admonishes the crowd but
3 characterized it as only -- and I can't remember exactly
4 -- but only one or two people. You know, as I told Ms.
5 Shurling and I told you, I should have stood up and put
6 on the record that it was more than one or two people.
7 It was pretty much the whole family, the whole section
8 right there, that -- it caused a disturbance enough that
9 the jury took notice of it.

10 Q. And you felt ---

11 A. I think it had a profound impact on the jury.

12 Q. You felt it was a significant outburst?

13 A. I did.

14 Q. Okay. If you could just read page 125. Just read
15 your ...

16 A. 125 what ...

17 Q. Page 125. Yeah, just kind of ---

18 A. The whole thing? .

19 Q. Yeah, you make -- you twice state what happened.

20 A. Your Honor, I'm renewing my objection. The reason
21 I'm objecting is I'm asking for -- because I'm asking for
22 a mistrial. My reason is, Judge, I made the objection
23 based on the grounds that these photos are prejudicial.
24 The solicitor placed them on the camera, showed them in
25 front of the jury, showed them in front of the victim's

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1 family. The victim's family, as you know -- it's on the
2 record. I'm not sure exactly who it was. But there were
3 several friends and family members that blurted out,
4 started crying, screaming and creating a disturbance.
5 Ms. White says, objection, Your Honor. The court,
6 just a second, Solicitor. I'll hear from you. Just let
7 him finish. Don't interrupt him, okay? And I won't let
8 him interrupt.

9 Q. Yeah. And you can skip down to where you again
10 start addressing the judge.

11 A. Okay. There was an outburst from family and friends
12 and had to be escorted out. And again, I would ask for a
13 mistrial. That was highly prejudicial. It impacted the
14 jurors and was extremely prejudicial to show in front of
15 the family members. I don't think it had any purpose,
16 and I think it did prejudice the jury. The court says
17 ---

18 Q. And that's all I was trying to have you publish.
19 That's good.

20 A. The part that I was talking about was on 126. The
21 court says, I think some young lady started crying when
22 she saw the picture, and I asked them to escort her out.
23 And he escorted her out. I'll deny your motion. At that
24 time, I should have put on the record something a little
25 more substantial than -- it wasn't just -- it wasn't just

1 one woman crying out.

2 Q. But you had brought to the judge's attention already
3 that there were several family members, and he did not, I
4 guess, share that view?

5 A. Okay.

6 Q. And the Judge did, in fact, give a curative
7 instruction as to the -- to the jury to, you know,
8 disregard outburst and not let their passions be swayed
9 by reactions from the audience. Is that a fair
10 characterization of the curative?

11 A. That's fair. That's fair. You do this for long
12 enough, you can tell when something impacts the jury as
13 much as that. And I should have dealt with that a little
14 bit differently. His factual basis for -- well, I don't
15 -- I never like talking -- he is a circuit court judge.
16 But the factual basis was incorrect, and I should have
17 pointed that out for the record.

18 Q. Concerning -- and I'm going to back up a little bit.
19 You had actually already moved to suppress those two
20 photos; is that correct?

21 A. I believe so.

22 Q. Okay. And as I understand it, this would have been
23 the first time that -- if I'm to understand your
24 testimony from the prior P.C.R. hearing, this is the
25 first time Ms. White had put -- you'd seen Ms. White put

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1 photos like that on a projector screen?

2 A. That's the first time that I -- I'm not sure if
3 that's the exact same T.V. screen, but ---

4 Q. Something similar to that?

5 A. --- something similar to that. And that was the
6 first time that I had had that experience.

7 Q. And so you ---

8 A. The victim's family is right there. Jurors are
9 right there. She places the photograph and there it is.
10 I'm not sure what size TV that is, but it's pretty
11 significant.

12 Q. And my point is that's not something you would have,
13 that's not something that you could have anticipated
14 since it never happened before?

15 A. I could have anticipated it. And that's what ...

16 Q. But as I understand it, she had never ---

17 A. That's what attorneys do.

18 Q. She had never put photos up there before?

19 A. I'm not sure what she had done before. I had never
20 been -- I can't tell you what she had done. I know I had
21 never ---

22 Q. That you had never seen that done?

23 A. That was the first time that that had -- I'll deal
24 with that differently next time and have.

25 Q. I wanted to talk about the closing argument a little

1 bit. And you can turn -- that's very good. If you could
2 turn to page 650, please.

3 A. Okay.

4 Q. And if you could read -- actually, if you could turn
5 to 649.

6 A. Okay.

7 Q. And just -- you don't have to publish this. Just
8 read to yourself starting from line 18 and read through
9 650 down to line 20. And just let me know when you're
10 ---

11 A. On page 650?

12 Q. Yeah. So it would be 649, line 18 to 650, line 20.

13 Yeah. And anything else you think you need for context.

14 A. Okay.

15 Q. All right. Would you agree with me what Ms. White
16 is getting at is that the Defendant's claiming that this
17 last written statement -- which is highly inculpatory --
18 this last written statement is not right, that he never
19 pulled the gun away and walked down the hall and shot?

20 A. Partly right, yes.

21 Q. Okay. And would you agree with me the point that
22 Ms. White seems to be trying to get at is the police have
23 all these other details in the written statement correct?

24 A. Yeah, probably. Yeah, I have to agree with you.

25 Q. And do you recall at trial how she went through that

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1 statement with Mr. Patterson while Mr. Patterson was
2 being cross-examined?

3 A. Yes, I remember that.

4 Q. And had -- basically would ask him if that was
5 right, if that was wrong?

6 A. Right.

7 Q. And Mr. Patterson even suggested that the police
8 officers might have gotten some of this information from
9 family members that they would have interviewed at the
10 crime scene?

11 A. I don't really remember that, but ...

12 Q. And do you recall Ms. White in another part of the
13 closing argument arguing that basically there's facts in
14 that statement that only Mr. Patterson or the victim
15 could have known?

16 A. I remember her arguing that, yes.

17 Q. And so is it fair to say when she's saying that they
18 got it right, that means they got these details in this
19 written statement right?

20 A. You're asking me to vouch for her?

21 Q. Well, is that a fair representation of what the
22 argument could be interpreted as?

23 A. I guess I agree that that's her argument.

24 Q. And so that wouldn't be vouching at all, would it?

25 A. No.

1 Q. And so the argument's not even -- that portion of
2 the argument -- I'm limiting it to that part. That
3 part's certainly not objectionable then?

4 A. I'd agree with that.

5 Q. If you could turn to 656.

6 A. Okay.

7 MR. SPENCER: I beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 MR. SPENCER: I'm trying to find the right
10 spots.

11 Q. Actually, I'm looking on page 657, line 16 through
12 21. And that's where Ms. White's talking about this gun
13 was unloaded. Well, first of all, there was testimony
14 that the gun in the -- when it was in the drawer, was not
15 loaded?

16 A. Right.

17 Q. And then she says, do you remember what you have to
18 do to fire this gun? You've got to put it in, you've got
19 to ratch the gun, you've got to take off the safety, and
20 you've got to pull the trigger. Is that consistent with
21 your recollection of the ballistics expert when he
22 demonstrated how the -- what it would take to fire the
23 gun?

24 A. Where did you start again?

25 Q. At line 16 -- actually, line 18. And she says, even

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1 if the magazine was already loaded, you've got to put it
2 in, you've got to ratch the gun, you've got to take off
3 the safety, and you've got to pull the trigger.

4 A. I don't know what she meant by, if the magazine is
5 already loaded, you've got to put it in, and you ratch --
6 I mean, I can't say that that's what exactly their expert
7 said.

8 Q. Well, their expert demonstrated how to fire the gun,
9 right?

10 A. Yes.

11 Q. And their expert had indicated that you would have
12 to take the -- that it has a safety that you would have
13 to take off?

14 A. Yes.

15 Q. And he testified as to the amount of trigger pull
16 necessary for the trigger to be pulled?

17 A. Yes.

18 Q. And would you agree with me he testified that was
19 eight and three quarter pounds to nine pounds?

20 A. I couldn't tell you. But if that's what ---

21 Q. But if that's what the record says, you agree with
22 it?

23 A. Yes. I remember him testifying about that.

24 Q. And he would have testified about how to load the
25 gun?

1 A. Right.

2 Q. And -- you know, I don't know if she ever -- I don't
3 know if that expert ever used the actual term, ratch the
4 gun. But it was fair to say that he testified -- that he
5 demonstrated how to fire the gun?

6 A. Yes.

7 Q. And regarding the gun residue test, the expert on
8 the G.S.R. had testified that she didn't find any residue
9 on her hands, right?

10 A. Right.

11 Q. On the victim's hands?

12 A. Correct.

13 Q. And the point you tried to make was that if he had
14 her hands completely covered, there wouldn't be any
15 residue on the hands, right?

16 A. Right.

17 Q. And she agreed with that, right?

18 A. Yes.

19 Q. She originally testified that if their hand -- if
20 there was -- like if the hands were partly covered, she
21 would expect to see some gunshot residue?

22 A. Right.

23 Q. But in order for -- and basically your theory was
24 the guns had -- his hands were completely covering her
25 hand, and that's why there was no gunshot residue?

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- 1 A. Yeah. He had bigger hands; she had smaller hands.
2 And her hands were -- you know, obviously if she was
3 holding the gun, so her hand would have been like that.
4 And he had two big hands over that. So, yes, sir.
5 Q. All right. But he had no gunshot residue on him
6 either?
7 A. No, I don't think so.
8 Q. But there was some explanation of how that would
9 occur?
10 A. Right, yes.
11 Q. And when Ms. White is discussing the lack of gunshot
12 residue on either the victim or Mr. Patterson, she's
13 talking about her theory of the case, that he ---
14 A. Cleaned everything up.
15 Q. --- cleaned everything up?
16 A. Right.
17 Q. Okay. There was testimony too that -- well, first,
18 there was testimony from the pathologist, the State's
19 pathologist, that the gun -- that the gun being in her --
20 in the victim's hand in her lap was inconsistent with
21 what would have happened had it been a suicide where she
22 had pulled the trigger. Do you recall that?
23 A. Are you talking about having the gun in her lap
24 before the suicide or after?
25 Q. Well, after.

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1 A. After it, yes. Okay.

2 Q. And she testified that's -- and the pathologist
3 testified that's not what would have happened. The gun
4 should have dropped to the floor. Dropped. Now, do you
5 recall that testimony?

6 A. Yes.

7 Q. All right. And in fact, what we learned from Mr.
8 Patterson is that he put the gun back in the victim's
9 hand?

10 A. Right.

11 Q. His version of events was she pulled the trigger,
12 the gun fell in his hands. And then after he returned
13 from the store, he put the gun in her hand?

14 A. Yeah. I don't remember when it happened. But,
15 yeah, that's the general gist of it.

16 Q. So there was some evidence -- and he decided to go
17 to the store after the victim had been shot?

18 A. Right.

19 Q. And so there certainly was some evidence that he was
20 trying to cover this up and make it look like a suicide?

21 A. Are you asking me if the State felt they had enough
22 ---

23 Q. I guess I'm asking ---

24 A. Are you asking ---

25 Q. I'm asking you if the State's presenting --

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1 basically presenting that evidence?

2 A. The State presented that evidence, yes.

3 Q. And just to go off on a little bit of a tangent, but
4 was there a video of him at the store?

5 A. Yes.

6 Q. All right. And in that video, what was his demeanor
7 like in your view?

8 A. He seemed calm.

9 Q. Did he appear to you to be in shock?

10 A. I couldn't testify about that.

11 Q. Did you have a chance to talk with any ---

12 A. But the video isn't -- it's not really like it's
13 straight on of him. It was kind of more -- kind of like
14 -- it's not really a good angle. It just shows him going
15 to the counter and getting two drinks and two packs of
16 cigarettes and paying and walking out. It's not really a
17 whole lot to it.

18 Q. And what we learned later is that he's -- he
19 basically was buying a drink for himself, but he was also
20 -- he was buying two different drinks and two different
21 kinds of cigarettes to -- including her favorite
22 cigarettes and her favorite beverage?

23 A. Okay. Yeah. I can't remember if it was the same
24 cigarettes, different drinks. I can't remember all that.
25 But, yeah, there was two packs of cigarettes and two

- 1 drinks.
- 2 Q. And the victim's already dead at this point,
- 3 according to ---
- 4 A. Right.
- 5 Q. --- according to the evidence?
- 6 A. According to the witness -- their State's witness.
- 7 Q. And also in his statement? Because he -- well,
- 8 actually, he even admits at trial that he went to the
- 9 store after the gun had went off?
- 10 A. Yeah. But I'm not sure that he -- if there's any
- 11 testimony about she was dead when he was at the store.
- 12 Q. But the gun had already fired?
- 13 A. Right, yes.
- 14 Q. And he'd left her?
- 15 A. Yes.
- 16 Q. Didn't call 9-1-1 ---
- 17 A. Right.
- 18 Q. -- but went to the store and bought two drinks and
- 19 -- two kinds of drinks and two different kinds of
- 20 cigarettes?
- 21 A. Yes.
- 22 Q. Concerning an expert on post-traumatic stress
- 23 syndrome, is that something -- having looked at that
- 24 portion of the transcript, is that something you think
- 25 you would have wanted to do at trial?

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1 A. Looking at what portion of the transcript?

2 Q. The portion of the transcript of -- the deposition,
3 excuse me. The portion of the deposition transcript?

4 A. I really -- like I said, I think I read the page.
5 You handed it to me and I was a little more interested in
6 talking to the Judge about his having access to my
7 family.

8 Q. I understand.

9 A. But I think I read the first four or five pages and
10 gave it back to whoever.

11 Q. Okay.

12 A. I didn't really read it.

13 Q. And you expressed on cross-examination some concerns
14 about what might have come out on -- what that might have
15 opened the door to. And you know, I understand -- I get
16 the impression that it's something somewhat sensitive.
17 But you had mentioned his record in the military. What
18 was it you were concerned about opening the door to?

19 A. It wasn't so much record in the military as that he
20 had been in the military. That was something that Ms.
21 White kept talking about, how she was a Marine, what you
22 have to go through when you're in the military and the
23 training, formal gun training, and all this kind of
24 stuff.

25 You know, that was just a conversation between her

1 and I, but -- and again, I can't recall the specific -- I
2 think it was at the bond hearing. There was -- there
3 were some family members that began raising some, I
4 guess, issues that they had had with Mr. Patterson in the
5 past. And I think that was when it first happened. I
6 can't remember the specifics of it. I just remember
7 that, you know, Judge Epps let him out on bond.

8 And then I recall going to talk to Ms. White to try
9 to see if there was some kind of plea arrangement, plea
10 deal that we could work out. She said no. And I said,
11 why? You know, I was a prosecutor for six years, I want
12 to say six years. So you know, I kind of expected a, you
13 know, the victim's family's upset, that type of thing.
14 But it was more in line of this is the type of person he
15 is. And she had a box of stuff. And she began showing
16 me things out of that box. And I didn't -- I believe I
17 went back and had a conversation and said, where is this
18 -- with my client, Mr. Patterson, where is this coming
19 from? Provide us some reports.

20 Q. And could have -- could some of that relate to some
21 issues he might have had with his wife?

22 MS. SHURLING: I'm sorry. Could you repeat
23 that question?

24 Q. Did that have something to do with some issues that
25 he might have had with his wife?

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1 A. I think there might have been a report or two about
2 that. I can't remember. I can't be specific. But
3 again, there was a lot of stuff that she was showing me
4 that factored into her decision that when she would bring
5 that to my attention, I now knew that she didn't want to
6 work out some type of plea agreement, that we were going
7 to go to trial on this. And I knew that, you know, it
8 was imperative that I step up and say, hey, that's not
9 coming in, that's not coming in.

10 Q. And your investigator even had gotten some
11 information about the wife being afraid of him?

12 A. Right.

13 MR. SPENCER: Beg the Court's indulgence.

14 MS. SHURLING: Your Honor, I hate to interrupt.
15 But just so the record is clear, unless there is some
16 showing by the Respondent as to how there would have been
17 any theory under which the 404(b) character evidence the
18 Respondent is referring to could have been admissible in
19 response to psychiatric testimony about post-traumatic
20 shock, then I would object to even the evidence being
21 discussed in the setting of this hearing.

22 MR. SPENCER: Your Honor, that was opened up --
23 the door was opened on that. He testified on direct. He
24 testified -- gave some testimony -- and I understand
25 recollection's an issue here. And I'm just trying to --

1 trying to get a handle on the same testimony.

2 THE COURT: Okay. Yeah. Well, I understand
3 the objection, but I'll allow it, I think, under this
4 setting. Okay.

5 MR. SPENCER: Thank you, Your Honor.

6 A. The wife I wasn't -- Leann was married. Mr.
7 Patterson was married. It was crystal clear from the
8 get-go that Leann's spouse wasn't going to help us, and
9 neither was, you know, Kevin's estranged wife.

10 Q. Current wife or estranged wife?

11 A. Right.

12 Q. And specifically, I recall something in this
13 investigator's report that I'm trying to find right now
14 where the wife had said that she was afraid of him.

15 A. Yeah, but she kept taking him back. They split up
16 three separate times.

17 Q. Him and Leann or him and his wife?

18 A. Probably both. They would both -- they, meaning Mr.
19 Patterson and Leann, would leave their respective spouses
20 and get together, and then they'd go back. And then they
21 would -- they did it again. I guess the point I was
22 trying to make is that experts are always -- that was
23 something that was contemplated. It was something that
24 was -- and again, with the financial resources of the
25 Pattersons, I didn't want to spend money and have it

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1 backfire. I didn't want to have an expert that hurt us.

2 I wanted to have an expert that helped us. And ---

3 Q. And -- I'm sorry.

4 A. And there was -- in my opinion, there was the
5 possibility that that type of witness could hurt us. So
6 that's why I decided to allocate money towards an
7 investigator or ask the Pattersons to allocate their
8 money toward an investigator, Dr. Ward. That was my
9 decision.

10 Q. And concerning using such an expert, that expert
11 would be subject to cross-examination by the State if you
12 put that expert up; is that correct?

13 A. Right.

14 Q. And that expert could be cross-examined about sort
15 of self-protective measures like sticking the gun in the
16 victim's hand or going to the store and coming back with
17 things to make it look like he had -- he was away from
18 the scene when the victim shot herself?

19 A. Right.

20 Q. And that sort of thing is what you mean by this
21 could backfire. Is that fair to say?

22 A. Yes.

23 Q. And going back to Mr. Patterson's service in the
24 military, did he have combat training? Was that what you
25 think he had?

1 A. I don't believe that was an issue. I think it
2 mainly had to do with -- the conversations I had with Ms.
3 White had to do with firearm training.

4 Q. So he would have firearm training?

5 A. And she took the position, you know, he got the gun,
6 he knew what he was doing. He was systematic in it. And
7 that was -- you know, she kind of used the military, his
8 participation in the military, against him.

9 Q. I see. I see. And that would be used against him
10 through an expert if the expert was put on the stand?

11 A. Possibly.

12 Q. And it could be brought out as a scenario, for
13 instance, you know, are you aware that Mr. Patterson had
14 firearms training and Mr. Patterson was aware of how to
15 use firearms. It would be along the lines of those kind
16 of questions?

17 A. Right. I just felt uncomfortable with going down
18 that path.

19 Q. And so you made a strategic decision to focus on
20 having your forensic pathologist testify at trial?

21 A. Right. Our theory was that it was suicide. And you
22 know, obviously we had the statement to contend with, the
23 written statement to contend with. And we had lack of
24 gunshot residue on Leann's hands, trajectory, you know,
25 the three or four items that I mentioned earlier with Ms.

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1 Shurling. So that was pretty much the crux of our case
2 was -- you know, that was our theory, and we had to
3 design our defense around that. And I thought that's
4 what we did.

5 Q. And in fact, you used -- Dr. Ward, as I understand,
6 he's the Medical Examiner for Greenville County?

7 A. Dr. Ward is -- he's who I used when I was a
8 solicitor. I've used him or had used him a couple of
9 other times as a -- you know, when I had a question.
10 He's very well respected, and I'd had a conversation and
11 asked if he'd be interested in helping. And he
12 indicated, yeah, I would. He told me this is what he
13 needed, and the hair was one of the main issues.

14 Q. And concerning the hair, he testified about what he
15 saw was -- he testified about what he saw as things that
16 could have caused the gun -- any gunpowder residue to
17 fall off or be absorbed or dislodged while the body was
18 being handled at the crime scene?

19 A. Right. He never got to look at the hair.

20 Q. I understand that.

21 A. Right. But, yeah, he did testify about that.

22 Q. And he testified about how the hair being
23 manipulated without the pathologist's having gloves could
24 also cause some of that ---

25 A. Right.

1 Q. --- either to fall off or be absorbed?

2 A. Right.

3 Q. And their pathologist testified that he actually
4 examined the hair for gunshot residue or for powder and
5 didn't see any?

6 A. Right.

7 Q. And he had actually used magnification to see if
8 there was any?

9 A. Right.

10 Q. And the ballistics expert testified that there
11 should have been some stippling or gunpowder that should
12 have made it to the skin through the hair if it was
13 within six inches of the victim's head?

14 A. Right.

15 Q. The gun went off within six inches of her head?

16 A. Right. I recall that because I remember using a
17 dollar bill.

18 Q. And in fact, you used Dr. Ward to get in some of the
19 -- some evidence concerning the victim's prior mental
20 health history; is that correct?

21 A. Correct.

22 Q. And as a matter of fact, through him you were able
23 to get in that there was a report that she had put a gun
24 to her head once before and that the husband, Mr.
25 Pearson, took the gun away from her?

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1 A. Right.

2 Q. And is it fair to say -- is that why you might have
3 considered bringing Mr. Pearson in to testify about that
4 prior incident?

5 A. Right. Mr. Pearson was important because he was
6 supposedly the person that would have talked about her
7 past suicide attempt or attempts.

8 Q. And instead you got that same evidence in through
9 the expert?

10 A. Right.

11 Q. And what your indications were from the investigator
12 is that the husband would not be a good witness?

13 A. Right.

14 Q. Could potentially hurt?

15 A. Yes.

16 MS. SHURLING: Did you have a page cite to that
17 portion of Dr. Ward's testimony?

18 MR. SPENCER: I'm sorry?

19 MS. SHURLING: Did you give a page cite to that
20 portion of Dr. Ward's testimony?

21 MR. SPENCER: Sure. It's 396.

22 MS. SHURLING: Thank you.

23 Q. And you didn't have any doubts about Dr. Ward being
24 a good witness; is that correct?

25 A. Oh, no, not at all.

1 Q. Concerning a charge on involuntary manslaughter, is
2 trying to take a gun away from someone who's trying to
3 shoot themselves -- is there any illegal act involved in
4 that?

5 A. No, not in my opinion.

6 Q. If you try and take the gun away from someone who's
7 trying to kill themselves and they kill themselves
8 anyway, is there anything, any kind of wanton or reckless
9 behavior involved in that?

10 A. Not in my opinion.

11 Q. Do the facts that were presented at trial support
12 any sort of involuntary manslaughter charge?

13 A. Not -- no.

14 Q. If somebody tries to kill themselves and you try and
15 stop them, pull the gun away and they pull the trigger
16 and kill themselves anyway, is that an accident?

17 A. Not in my opinion.

18 Q. Because the victim did exactly what she intended to
19 do?

20 A. Right.

21 Q. And I think you agreed if the record said that it
22 took eight -- that there was testimony that it took eight
23 and three quarters pounds to nine pounds of pull to pull
24 the trigger -- well, you agree with me that if the record
25 says that, that would be accurate?

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1 A. Yes.

2 Q. And there's no testimony that the gun went off
3 without the trigger being pulled?

4 A. No.

5 MR. SPENCER: I beg the Court's indulgence.

6 THE COURT: All right.

7 Q. I was going to ask if you could turn to 641 of the
8 trial transcript. And this is your closing argument.

9 A. Okay.

10 Q. If you could read from the line 2 on -- you can just
11 read it to yourself. From line 2 on page 641 over to the
12 end of the paragraph on 642. And just let me know when
13 you've had a chance to look at that?

14 A. Okay.

15 Q. Is it fair to say that you're arguing in that that
16 the ballistics evidence, including the trajectory
17 evidence, actually supports Mr. Patterson's version of
18 events because it shows that the -- because he was saying
19 that he pulled the gun, was trying to pull the gun away
20 when it went off?

21 A. There are actually two things I'm arguing. One is
22 exactly what you just said. And secondly, that there was
23 a problem with this so-called confession that the police
24 wrote down as Mr. Patterson's statement. That that
25 version that Mr. Patterson gave to the police, the last

1 one, the written one, it couldn't have happened that way.
2 So there were two points to be made in that portion of my
3 closing argument.

4 Q. And so it's fair to say that you were arguing that
5 this discussion of -- you know, this evidence -- because
6 Ms. White's argument, it's not a suicide because the gun
7 -- the entrance wound is in the wrong place. It's behind
8 the ears and everything like that. You're coming back
9 and -- is it fair to say you're coming back and saying
10 that this is consistent with his version of events?

11 A. Yes.

12 Q. And it's inconsistent with the inculpatory statement
13 too?

14 A. Yes.

15 Q. And if you could turn to 579?

16 A. Okay.

17 Q. And I'm going to start at the -- I'm looking at
18 lines 3 and 4. And you ask Mr. Patterson, to your
19 knowledge is there any evidence of a struggle? And he
20 says, no?

21 A. Right.

22 Q. And then down at the bottom, lines 22 through 24,
23 you ask, when did this then get characterized as a
24 struggle. When was the first time that you heard there
25 was a struggle with the gun? And he answers, the

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1 solicitor. You see that?

2 A. Right.

3 Q. And then on page 580, next page.

4 A. Right.

5 Q. Lines 11 through 13?

6 A. Okay.

7 Q. You ask, did you mention anything about a struggle

8 at any point talking to anybody prior to coming to court?

9 A. Right.

10 Q. And he says, no.

11 A. Right.

12 Q. Is that fair to say that's completely consistent
13 with your theory of the case, that this was a suicide?

14 A. Yeah. We didn't know anything about a struggle
15 until Ms. White brought it up, yes.

16 Q. Basically, your theory of the case is he tried to
17 stop her and he just didn't succeed?

18 A. Right.

19 Q. And he agreed with that obviously by his answers?

20 A. Yes.

21 Q. And did he ever tell you it was an accident prior to
22 trial?

23 A. No. He was pretty consistent in my conversations
24 with him.

25 MR. SPENCER: I beg the Court's indulgence.

1 THE COURT: Sure.

2 Q. I did want to talk a little bit about that
3 trajectory testimony just because it's kind of hard when
4 you look at a record to know exactly what they're
5 indicating. Is it a fair characterization of what the
6 testimony was -- was -- and you're kind of pointing to
7 the very back of your head?

8 A. Back behind the ear, above the ear.

9 Q. And that's where the entrance wound would be?

10 A. Right.

11 Q. And the exit wound would be down on the jawbone?

12 A. Right.

13 Q. Or between the jawbone? Okay. So was it a downward
14 angle. Was that fair to say?

15 A. Yes.

16 Q. And so I just want to talk about the evidence from
17 the standpoint of what you had to deal with starting out.
18 But basically you had several statements where his
19 version -- where Mr. Patterson's version of events were
20 changing; is that correct?

21 A. I think four statements. Three are the same. One's
22 different.

23 Q. It starts out with him going to the store and
24 discovering that, you know, she's sitting on the couch
25 with the gun and blood coming out of her?

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1 A. Right.

2 Q. It comes later with the last statement and with this
3 trial testimony that actually he was there trying to stop
4 her from killing herself and he couldn't stop her?

5 A. He had three where he says she committed suicide.
6 One where -- the written where supposedly he says, I
7 killed her.

8 Q. Right. Oh, yeah. And then the testimony where he
9 says, well -- the testimony at trial where he says, well,
10 I tried to grab the gun from her but I couldn't -- but
11 she shot herself?

12 A. Right.

13 Q. So he had basically, I guess, we could say three
14 version of events on that point?

15 A. Three beforehand and then you had trial, so four
16 that were the -- four where he asserted suicide, one
17 where he supposedly said he killed her.

18 Q. And you have one where after she shot -- and you
19 have testimony -- he admitted at trial that he put the
20 gun in her hand after she had been shot?

21 A. I don't know that he puts the gun -- the gun's in
22 her hand. His hand -- his testimony is that she takes
23 the gun up here. He reaches up, grabs the gun, has both
24 hands over the gun. He's reaching -- I think he was
25 knelt down before. Yeah, he's knelt down. She's on the

1 couch with her legs kind of Indian style. She puts the
2 gun towards her head, I guess towards her temple, and
3 saying she's going to commit suicide. He jumps up from
4 being knelt down, jumps up and takes the gun this way at
5 which time she's pulling ---

6 Q. Pulling forward?

7 A. Pulling forward this way. And that's how the gun
8 ended up getting back here, that when he has his hands
9 over the gun -- I don't know the -- it's not like the gun
10 went somewhere down the hall and he picked it up and put
11 it back in her lap. I think the testimony was he had her
12 hands in his hands. And then he just put her hands and
13 the gun back down and like ...

14 Q. Okay. And I guess the record will reflect -- let's
15 do this. Let me find what I'm thinking of.

16 A. Again, she's sitting on the couch. And that couch
17 -- she's on the -- the couch is like up against this
18 wall. And at the end of the couch -- she's at the end of
19 the couch. And at the end of, I guess, the armrest, if I
20 remember correctly, is the start of the hall that goes
21 back down the house. So if he would have just -- if he
22 had, I guess, dropped it, it would have been on the
23 floor. But his testimony, I believe, was that it ended
24 up being back in the ...

25 Q. Actually, if you could turn to page 514 of the

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1 transcript?

2 A. Okay. I see her arms fall down, the gun is in my
3 hand. I fall back against the corner of the hallway.

4 Q. Right.

5 A. Okay.

6 Q. So the gun ends up in his hand ---

7 A. Yeah.

8 Q. --- and he ends up putting it back in her hand
9 later?

10 A. Okay. You're right.

11 Q. And so that's another thing you had to contend with,
12 the fact that he did that?

13 A. Right.

14 Q. And the fact that even at trial he's testifying that
15 after the incident happened, he went to the store?

16 A. Right.

17 Q. Comes back and then calls 9-1-1?

18 A. Right.

19 Q. And gives a version of events to the 9-1-1 operator
20 that would suggest he wasn't even there when she killed
21 herself?

22 A. Right.

23 Q. And then, of course, you do have to deal with an
24 inculpatory statement which you tried to attack?

25 A. Right.

1 Q. So you had a lot of -- is it fair to say you had a
2 lot to overcome or a lot to explain to the jury when you
3 presented this case?

4 A. Oh, yeah.

5 MR. SPENCER: I beg the Court's indulgence.

6 THE COURT: Okay.

7 Q. Concerning, again, Steve Pearson -- well, concerning
8 the investigative report -- I don't know if you have that
9 up there with you?

10 A. I do.

11 Q. What's the last date?

12 A. April 4th, I think. April 4th at 8:24 P.M.

13 Q. Can you flip to the next page?

14 A. I'm sorry. April 5th, you're right. April 5th,
15 eleven twenty-eight.

16 Q. All right. But the investigator did work since
17 then?

18 A. Oh, yeah.

19 Q. And do you recall if that would have been when Steve
20 Pearson would have been interviewed?

21 A. From his report it looks like Mr. Patterson gave him
22 the names on March 29th. So, yeah. And then I have --
23 in my own notes I have something similar. So when I met
24 with Mr. Patterson shortly thereafter, I made a note that
25 I needed Tom Selfredge to contact Steve Pearson -- some

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1 kind of record.

2 Q. And you would have made sure that one way or other
3 you would have found out whether Steve Pearson would have
4 been a beneficial witness?

5 A. At the time that was the only witness that was
6 provided to us that -- by Mr. Patterson -- no, I can't
7 say he was the only witness. He would have been the main
8 witness that I would have been interested in talking to
9 about the past attempted suicide. So I thought he was
10 critical.

11 Q. And you're certain the investigator informed you
12 that ---

13 A. Oh, yeah, because I was kind of disappointed.

14 Q. And actually do you recall there was testimony at
15 trial that the husband didn't like Mr. Patterson?

16 A. Oh, he hated him.

17 Q. And actually they were rivals in the sense that both
18 were -- well, obviously, the husband was married to
19 Leann, the victim, but Mr. Patterson was having an affair
20 with Leann?

21 A. Yes.

22 MS. SHURLING: Your Honor, I can save everybody
23 some time. We will withdraw the allegation with regard
24 to the failure to interview and present Steve Pearson.
25 At the break I had the opportunity to review Dr. Ward's

1 testimony. And in light of a specific reference in his
2 testimony that I had not made a note of previously, we
3 withdraw that allegation.

4 THE COURT: Okay.

5 MR. SPENCER: Thank you.

6 Beg the Court's indulgence.

7 THE COURT: All right.

8 MR. SPENCER: And I apologize, Your Honor. I'm
9 getting near the end here.

10 THE COURT: Okay.

11 MR. SPENCER: Your Honor, the only other thing
12 I would want to do is I think it would be beneficial to
13 introduce the two written statements. If I recall
14 correctly, I think both of them were introduced at trial.

15 MS. SHURLING: When you say witness statements,
16 I assume you're referring to the Applicant's statements?

17 MR. SPENCER: Oh, I'm sorry. Yeah. Excuse me.
18 Yes. Mr. Patterson's statements. And I would actually
19 have to unstaple this to put those in, but that's -- I
20 would just move those two exhibits in.

21 THE COURT: Any objection?

22 MS. SHURLING: None, Your Honor. I believe
23 technically, as I've said earlier, that all of the
24 exhibits are part of the record below which is
25 automatically part of the record anyway.

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1 THE COURT: Okay. Yeah, mark that as State's
2 1?

3 MR. SPENCER: And I just need to -- and I
4 apologize, Your Honor. I just have a packet of stuff,
5 and they're in this packet of stuff that's stapled
6 together. So I'm trying to figure out how to get them
7 out to put them in. And maybe at some point I can use a
8 staple remover and bring them up. And Your Honor, maybe
9 I can do that while Ms. Shurling has any redirect she
10 might have and I can offer them to come in.

11 THE COURT: Do you have any redirect?

12 MS. SHURLING: I do, Your Honor.

13 THE COURT: Well, I can't make everybody stay
14 here. I mean, I don't know what to tell you. I've got
15 three deputies and two S.C.D.C. guards that have to go
16 home. So what do y'all want to do? Do it tomorrow?

17 MS. SHURLING: Your Honor, I believe I could
18 wrap mine up in as little as fifteen minutes.

19 THE COURT: And then will that be, will that
20 finish it?

21 MS. SHURLING: Yes, sir. I don't have any
22 other witnesses.

23 THE COURT: Okay. Let me make call and let's
24 take five minutes. And if anybody else -- we'll finish
25 it up.

1 MS. SHURLING: Thank you.

2 THE COURT: I'll be right back.

3 (WHEREUPON, court stood at recess for a short break
4 during which State's Exhibits Number 1 and 2 were
5 marked for identification only.)

6 THE COURT: Okay. Did y'all get that admitted?

7 MR. SPENCER: Yes. Yes, Your Honor. I marked
8 them -- well, the court reporter marked them Defendant's
9 1 and 2 because they're two different written statements.

10 THE COURT: Okay.

11 (WHEREUPON, State's Exhibits Number 1 and 2 were
12 admitted into evidence.)

13 THE COURT: Yes, ma'am?

14 MS. SHURLING: Thank you. And I believe we can
15 make this relatively brief.

16 REDIRECT EXAMINATION

17 BY MS. SHURLING:

18 Q. With regard to the assertion in closing arguments by
19 the solicitor that the gun was unloaded and arguing that
20 the act of loading it would have been indicative of
21 malice and premeditation, do you remember that issue?

22 A. Right. I do.

23 Q. The State asked you, wasn't it true that testimony
24 had come in to the effect that the gun was not loaded.

25 Remember that?

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1 A. I do, right.

2 Q. Can I get you to look at the trial transcript,
3 please, to -- let's see -- 423. This is the testimony of
4 the gentleman that lived with the niece, the boyfriend
5 slash husband of the niece.

6 A. Who?

7 Q. The gentleman who lived with ---

8 A. What's the name?

9 Q. --- Leann. I forget his name.

10 A. Is his name Jordan?

11 Q. I'm sorry. I'll have to go to the beginning of his
12 testimony.

13 A. Jordan. I think Jordan.

14 MR. SPENCER: You mean John Jordon?

15 THE WITNESS: That's it.

16 MS. SHURLING: Gordon?

17 MR. SPENCER: John Jordon, is that not it?

18 A. Jordan?

19 Q. Yes.

20 A. Okay.

21 Q. Okay. If you look at his testimony on page 423 ---

22 A. Okay.

23 Q. --- and he's talking about the gun that was kept in
24 his wife's dresser drawer.

25 A. Right.

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1 Q. And he refers to having seen it -- and I'm looking
2 at line 20 -- two weeks prior to the March 10th incident.

3 A. Okay.

4 Q. Okay. And going over to the next page ...

5 A. Right.

6 Q. ... he talks about loading the clip and then later
7 putting it back in the drawer. And the question is put
8 whether the clip was still in it? And he says, no, the
9 clip was never in the gun, that he never put the clip in
10 the gun?

11 A. Right.

12 Q. Okay. But that was referencing the fact that the
13 gun was not loaded two weeks before this incident,
14 correct?

15 A. Right.

16 Q. So that doesn't provide any evidence as to whether
17 or not the gun was loaded on March 10th when it was
18 retrieved from the drawer at the time of this killing?

19 A. Ms. Jordan, the wife, testified earlier. If you go
20 to page 55, I think, she was the one that said it wasn't
21 loaded.

22 Q. Okay. 385?

23 A. I think just 55.

24 Q. 355. Okay? Let's look at that. Because her
25 testimony is -- let's see. One moment.

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1 A. Page 55, line 15, because it didn't stay in the
2 holster. It stayed ---

3 Q. I'm sorry. Can you repeat that page?

4 A. Page 55, line 15. She says, it didn't stay in the
5 holster. It stayed in my top drawer unloaded at all
6 times.

7 Q. Okay. I understand.

8 A. And then she talks about the clip that he was
9 referring ---

10 Q. I understand. You anticipated what I was going to
11 go to next though.

12 A. Right.

13 Q. Because she's indicating how the weapon is stored;
14 correct?

15 A. Right.

16 Q. So that establishes whether or not the last time she
17 put it in the drawer it was loaded, whether it was stored
18 with ammunition in it?

19 A. She said it was unloaded.

20 Q. That's what I'm saying. She's saying that it was
21 stored with -- it was not loaded?

22 A. Right.

23 Q. That it was kept unloaded?

24 A. Right.

25 Q. My point being the fact that testimony was presented

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1 that the weapon was ordinarily stored unloaded ---

2 A. Right.

3 Q. --- does not establish whether or not it was loaded
4 at the time your client first saw it in the hands of
5 Leann on March 10th?

6 A. Right.

7 Q. There's nothing about either portions of the
8 testimony we've just referred to that in any way
9 establishes whether or not it was loaded at the time your
10 client first saw the gun on March 10th?

11 A. I might be wrong, but I think -- you're right. But
12 I think the testimony was, was that -- I can't remember
13 if it was her gun, if it was the dad's gun. I don't
14 remember whose gun it was. But it ended up in Ms.
15 Jordan's dresser, some kind of drawer.

16 Q. Okay.

17 A. And so there's a gun in there. There was an issue
18 about the holster. Apparently, the holster wasn't
19 attached to it for some reason. And then there was an
20 issue about the clip. The clip had bullets in it. But
21 my recollection was that Leann -- Leann knew about the
22 gun and knew about the clip because it was her gun or ---

23 Q. I understand. Real quickly. My point being whether
24 or not the gun was stored in that drawer in the ordinary
25 course of events in that house ---

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- 1 A. Right.
- 2 Q. --- with or without the clip in it ---
- 3 A. Uh-huh (affirmative).
- 4 Q. --- doesn't establish who put a clip in it and armed
- 5 it on March 10th?
- 6 A. Right. I agree.
- 7 Q. So the assertion that that weapon was unloaded,
- 8 therefore, your client loaded it and that showed malice
- 9 and premeditation was not based in facts in evidence?
- 10 A. Right.
- 11 Q. Okay. That's where I was going with that. Now, let
- 12 me quickly cover just a few more things. There's been
- 13 testimony -- and I don't want to beat a dead horse about
- 14 whether we're going to call it an accident or not. But
- 15 they're talking about trigger pull and eight and three-
- 16 quarter pounds and nine pounds. If I have a gun in my
- 17 hand and my finger's on the trigger and a man has my
- 18 hands enveloped, my hand is enveloped by a man's larger
- 19 hands, and that man is trying to change the direction of
- 20 the weapon in my hand, which is what the testimony was,
- 21 my question is, why didn't you develop the theory that in
- 22 the process of trying to alter what she was doing with
- 23 the gun, that that pressure on her hand might ultimately
- 24 have been what accidentally caused the trigger to be
- 25 pulled?

1 A. The question is did I or why didn't I? Did I
2 develop the theory, or why didn't I develop the theory?

3 Q. Well, did you even consider that theory?

4 A. I considered it. I considered it. Again, I thought
5 about, you know, accident, involuntary manslaughter. But
6 the -- again, the theory of our case was she's the one
7 that pulled the trigger.

8 Q. I understand. Let's go to your client's testimony.
9 They asked you about your client going to the convenience
10 store.

11 A. Right. What page are you on?

12 Q. I am -- well, let's start looking -- and your copy
13 may be out of order like mine was. Page 516 ---

14 A. Okay.

15 Q. --- is actually located in my copy after page 513.
16 I don't know about yours.

17 A. I have 513, 514 -- yeah, I'm a little out of whack
18 too. Okay. Does it say, her right arm, at the
19 beginning?

20 Q. If you can see -- did you find 516?

21 A. Well, I have 515, 517, but I've got -- I counted --
22 well, hang on.

23 Q. I believe you'll find 516 after 513.

24 MR. SPENCER: If you go on up ---

25 A. I got it. I got it.

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1 Q. Okay.

2 THE COURT: Pardon?

3 A. Where was the blood coming?

4 Q. Okay.

5 A. Okay.

6 Q. You were asked, wasn't it true that your client
7 admitted that he, you know, had gotten up and gone to the
8 store and gotten the cigarettes and the drinks and
9 everything after the shooting. Remember that a few
10 moments ago?

11 A. Right.

12 Q. Isn't it true that your client testified that he saw
13 the video the day before the trial, but that -- so it's
14 obviously I went, line 17.

15 A. Right.

16 Q. He testified that he didn't remember getting in his
17 truck and he didn't remember getting the drinks and the
18 packs of cigarettes; isn't that true?

19 A. Yes.

20 Q. Okay. And with regard to the surveillance video, is
21 it fair to say that the quality of that surveillance
22 video is about typical of the surveillance videos we see
23 from convenience stores?

24 A. Well, you could tell it was Mr. Patterson. It was
25 clear enough for that. But, yeah, it wasn't H.D. quality

1 by any means.

2 Q. I understand. Well, we're not talking about a high
3 quality, close-up video from which you can glean nuances
4 of expression and so forth, are we?

5 A. Right. No.

6 Q. Okay. Now, with regard to the photographs that were
7 shown in the courtroom -- and I thank you for your candor
8 about the circumstances when those photographs were
9 shown.

10 MS. SHURLING: Your Honor, for the record, once
11 again, incorporating the exhibits, the video surveillance
12 video is State's Exhibit 35 that was introduced at trial.

13 Q. You said you had never personally seen Druanne White
14 flash crime scene photos up on the big screen like this
15 before?

16 A. I had never personally seen that happen ever.

17 Q. Ever? Druanne White or anybody?

18 A. Whether it was just -- not just Ms. White; it was
19 anybody.

20 Q. Okay. But is it fair to say that you weren't just
21 sitting here in the courtroom, and all of a sudden these
22 horrible pictures start showing up on the screen. It
23 didn't happen that way, did it?

24 A. No, no, no, no.

25 Q. So you may not have known in advance that she was

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1 going to do it, but immediately before she did it, it
2 became apparent that she was getting ready to put these
3 photographs up in an enlarged version in this courtroom
4 on the large demonstrative screen?

5 A. Right. I mean, I knew what the TV was for, and I
6 know about the projector. I knew about that. That
7 didn't catch me off guard. What caught me off guard was
8 the impact that -- you know, up to that point, the way
9 that it had always been done is the pictures come into
10 evidence and then the prosecutor upon, you know,
11 completing their case, when it's time for the defense
12 attorney ---

13 Q. Sure.

14 A. --- to ask questions, hands them to the jury so they
15 can go through them while the questions are happening.
16 So there's no impact on the family, on the victim's
17 family.

18 Q. Exactly.

19 A. They don't see the pictures. Up until that point,
20 I'd never dealt with that issue. When that picture hit
21 that screen, it was right then and there for the whole --
22 you know, the whole family.

23 Q. I understand.

24 A. It was very traumatic for them and ---

25 Q. I understand. My question was before the picture

1 physically appeared on the screen, did you know from the
2 preparations that were going on that they were -- was
3 there any announcement or any indication that they were
4 getting ready to show crime scene photos, or was the
5 first warning you had that that's what they were doing
6 was when the picture appeared on the screen?

7 A. I can't recall if -- I don't know that it took me
8 that much -- you know, again, I saw the projector that
9 would have been somewhere where you are, I think. And I
10 saw the TV. So I -- you know, it didn't catch me
11 completely off guard, but the impact did.

12 Q. Sure. Now, we referred to testimony quickly -- or
13 rather argument from Ms. White that there were only two
14 people that really knew what happened basically, you know
15 ---

16 A. Right.

17 Q. --- Patterson, our client, and the lady who's
18 deceased and can't talk basically is what they're saying?

19 A. Right. Right.

20 Q. But basically your client says that the deceased
21 goes to raise the gun, he grabs her hands and tries to
22 stop her, and it goes off?

23 A. Right.

24 Q. Okay. So there's no one testifying that the
25 deceased deliberately -- that they witnessed her

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1 deliberately pulling the trigger, simply that the gun
2 went off?

3 A. Right.

4 Q. Okay. And there was some characterization by Ms.
5 White about, oh, now he's talking about a struggle. When
6 did he -- when did you ever say there was a struggle
7 before? And when did you ever tell anybody about a
8 struggle? And what evidence at the scene was there that
9 a struggle had taken place? Do you recall all of that?

10 A. I do.

11 Q. All right. In fact, your client said that it all
12 happened very quickly, correct?

13 A. Right.

14 Q. That when she went to raise the gun and he grabbed
15 it, that it was within seconds that the shot fired?

16 A. Right.

17 Q. So your client wasn't claiming that there was some
18 physical struggle, if you will, where they were flailing
19 about the couch and knocking over lamps or moving
20 furniture or anything. He was just saying that within a
21 matter of seconds, he grabs her hand, he's trying to stop
22 her, and the gun goes off?

23 A. Right.

24 Q. So in that sense was the only sense in which the
25 word struggle was being used?

1 A. Right.

2 Q. A contest for control over the weapon maybe would be
3 a more technical way to put it. Is it fair to say, as my
4 granddaddy would put it, that Druanne White was talking
5 out of both sides of her mouth about the gunshot residue
6 issue?

7 A. You could say that.

8 Q. Okay. Well, didn't she question your client about
9 the fact that he didn't give this version that he gave in
10 court until he heard all about the evidence and heard
11 about the gunshot residue and all of that?

12 A. Right.

13 Q. That he didn't come forward with this story, okay?

14 A. Right.

15 Q. And implied vigorously that he didn't give it at
16 that time because he didn't know about gunshot residue
17 and stuff at the time, right?

18 A. Right.

19 Q. But in her closing argument, we've already pointed
20 out that over a course of three pages of her closing
21 argument, she's arguing that he wiped the gun clean, that
22 he picked the kitchen to go to because he was going to
23 wipe the gun clean. And that the reason there was no
24 residue on Leann's hands is because he's wiped the gun
25 clean. Would wiping -- having any reason to wipe the gun

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1 clean be consistent with not knowing anything about

2 G.S.R. and -- that doesn't make it any sense, does it?

3 A. No, it doesn't.

4 Q. Okay. Why were you afraid of the jury knowing about

5 your client having military training? Just that it meant

6 he had training in using a gun?

7 A. No, I think that Ms. White actually brought it up,

8 if memory serves me correctly, or whatever. I was -- it

9 wasn't that I was concerned about so much the -- that was

10 just an example of the thought process about not wanting

11 to use the expert in that particular context. Along with

12 the ---

13 Q. Okay. Well, I just -- since you brought that up,

14 I've got to get into it because with regard to this case,

15 this wasn't some thirty-five-yard sniper shoot or

16 something that would have taken some specialized

17 training, was it?

18 A. No, ma'am.

19 Q. Okay. And it wasn't -- this wasn't some fancy gun

20 with laser sites or ---

21 MR. SPENCER: Your Honor, I mean, at some

22 point we need to -- she's testifying.

23 THE COURT: I get it, yeah. Sustained.

24 Q. Okay. Well, was there anything about the way this

25 shooting occurred that would require any specialized

1 ballistics training?

2 A. No.

3 Q. No? Okay. And you mentioned that Druanne White
4 threatened you with stuff that she had that showed your
5 client was such a bad person. You still haven't told us
6 what it was. And I think given the fact that you've used
7 that ---

8 MR. SPENCER: Your Honor, it's argumentative.

9 MS. SHURLING: Well, he said in his ---

10 Q. You testified earlier you knew exactly what it was?

11 A. I didn't say I knew ---

12 THE COURT: Wait a minute. Wait a minute. Let
13 me rule on that. I'll allow you to -- overruled. I'll
14 allow you to ask the question.

15 Q. In your earlier testimony, I understood you to say
16 you knew what it was that you didn't want to come out?

17 A. Right. There were items that -- by that I meant
18 there were -- there was evidence that could hurt my
19 client. That was -- the specifics of it, I knew about --
20 I think the State made mention in the report, the
21 investigation that Tom Selfredge did. There were several
22 ---

23 Q. While you're glancing, the two that I recall were
24 the military training with regard to ballistics and the
25 fact that the wife had said nasty things about him during

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1 ---

2 A. Well, there's like a burglary first allegation.

3 There were allegations -- threats against people. There
4 were threats against animals. There was something having
5 to do with fire. There was stalking and harassment type

6 ---

7 Q. Okay. Let's cover that.

8 A. Okay.

9 Q. The record indicates that the same reports you're
10 talking about indicate that when the wife said these
11 things about him, they ran a check on him and saw that he
12 had a clean record. There wasn't anything. That there
13 was no record of any complaints against him or charges or
14 anything, right?

15 A. I ---

16 MS. SHURLING: A moment's indulgence, Your
17 Honor.

18 A. I mean, I know when he testified he wasn't ---

19 Q. Pardon?

20 A. When he testified, I know that Ms. White wasn't able
21 to bring up anything, so -- any of those charges.

22 Q. Okay. You mentioned that there was a burglary. Do
23 you recall that?

24 A. Sure. Yeah, I've got the report for that.

25 Q. Okay. And the second page, I'll show you -- you've

1 got the incident report?

2 A. I do.

3 Q. The officer says, I obtained Patterson's info and
4 advised him to stay away from Pearson. This incident was
5 not a burglary because his name was on Pearson's lease,
6 correct?

7 A. Right.

8 Q. So there was no real danger of them knowing about
9 this allegation of a burglary, was there?

10 A. Again, that's just part of it. There were -- again,
11 I can't really remember the specifics of it. I remember
12 looking at ...

13 MS. SHURLING: A moment's indulgence.

14 A. It came up again when I was talking with Ms. White
15 about ---

16 MR. SPENCER: If he could ---

17 A. When I was talking to Ms. White about trying to
18 resolve the case, she said, look, this is what your
19 client ---

20 Q. I understand. But what I'm trying to get to was
21 what, among the things that Solicitor White threatened
22 you with, did you think she could meet the standard for
23 getting admitted? If it's a prior bad act not the
24 subject of conviction, then there's a heightened degree
25 of scrutiny for introducing the evidence. And I'm asking

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1 what of the stuff that Solicitor White was threatening
2 you with did you think there was any possibility of her
3 being able to introduce as a consequence of your calling
4 an expert?

5 A. What did I think the possibility of them -- what was
6 the possibility that they could get that in?

7 Q. Uh-huh (affirmative).

8 A. I looked at it in terms of, again, talking about the
9 financial resources and whether or not that person could
10 help us. In doing that analysis, yeah, sure, they pay
11 for an expert. The expert isn't going to hurt us up
12 front. But in cross-examination we ran the risk of stuff
13 opening the door and stuff coming in that I didn't want
14 coming in.

15 Q. Okay.

16 A. So that's ---

17 Q. You ---

18 A. Go ahead.

19 Q. You mentioned something about animals. That's
20 always a hot button for people. Isn't it true that all
21 they had was an accusation by a disgruntled wife that her
22 dog had disappeared and she'd always suspected your
23 client had something to do with it?

24 A. Again, I can't remember the specifics other than me
25 and Ms. White having a conversation about how that stuff

1 wasn't going to come in. You know, I would object to all
2 of that.

3 Q. I understand. But my point being among the evidence
4 that you were shown by Ms. White and threatened with,
5 there was nothing that indicated that there was any
6 direct evidence of your client having harmed an animal or
7 killed her dog or anything, was there?

8 A. He's in the military. You have Ms. White showing me
9 stuff and we have -- my client's giving me people to talk
10 to, and I'm talking to these people. And some of the
11 stuff isn't so great. So you know, again, that all
12 factored into my decision not to go down that road.

13 Q. Okay. So there was nothing specifically that you
14 can recall that you can tell us specifically you think
15 Solicitor White would have an argument for introducing as
16 an exception to the character evidence rule?

17 A. Hang on a second. Give me one second. I kind of
18 thought there might be something specific in there, but,
19 no.

20 Q. Okay. And if you've already said this, I'm sorry.
21 I'm tired, and I might not be recalling correctly. But
22 did you tell me -- did you tell us, rather, tell His
23 Honor, what you thought the rationale would be for your
24 having opened the door to prior bad act evidence by
25 introducing a psychiatric expert? If you did, I didn't

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1 understand it.

2 A. My thought process at the time was, you know, I knew
3 that if I called an expert and the theory being that you
4 want to explain Mr. Patterson going to the convenience
5 store under -- that he's under -- he's in shock, I guess,
6 came out in the thing. That's the theory. The expert's
7 going to testify that because he observed this traumatic
8 event, he was in shock. And in my analysis of it, if
9 there was anything that Mr. Patterson could have observed
10 that would have been traumatic before that, that would
11 have potentially been brought out. And I didn't want
12 that to be brought out.

13 Q. Okay. I'll move on. One last thing. I'd better
14 not say one last thing. It never turns out to be. Just
15 one second. And we've already got your testimony about
16 what -- you know, the upshot of what you thought the
17 defense was. But the reality is in the second statement,
18 written statement, attributed to your client ---

19 A. Uh-huh (affirmative).

20 Q. --- it says that your client was having it written
21 by Investigator Mack Smith, correct?

22 A. Right.

23 Q. But then again, to be fair, there are various places
24 where there were initials where your client initialed
25 changes that were made while the statement was being

- 1 written, correct?
- 2 A. It seems like that was an issue.
- 3 Q. My point being ---
- 4 A. I think he gave the statement ---
- 5 Q. --- while the statement is not in your client's
- 6 hand, there are numerous places that indicate initials
- 7 that appear to be R.P.?
- 8 A. Right. I know that was an issue. I think that came
- 9 out. I think that was -- I'll have to go back and look
- 10 at the ---
- 11 Q. I'm not getting at what you think I am anyway. Let
- 12 me -- I'll explain.
- 13 A. Okay.
- 14 Q. So this is your client's second statement?
- 15 A. Right.
- 16 Q. And it's the one after he had signed a *Miranda*
- 17 warning?
- 18 A. Right.
- 19 Q. Okay. And although up to a point, it's consistent
- 20 with your client's testimony, and even after a certain
- 21 point it seems to be somewhat consistent with some of the
- 22 evidence, there is a place where it specifically says, I
- 23 grabbed her hands and took the gun away from her. Which
- 24 the grabbing her hands and taking the gun or, you know,
- 25 at trial it was attempting, were consistent with your

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1 client up to that point. But then in two lines in the
2 middle of a three-page statement, it says, as I was
3 standing up, I started walking back towards the bedroom.
4 I turned back and shot Leann in the back of the head.
5 Just in the middle of the statement, okay? Would you
6 agree with me that unless you found some way to convince
7 this jury in this trial that that statement was not
8 inherently reliable for some reason, that it was not
9 voluntarily and intelligently entered certainly, but that
10 it was susceptible to the argument that it wasn't
11 reliable because of the condition he was in, if you
12 didn't get rid of this statement, what were the chances
13 ---

14 MR. SPENCER: Your Honor, I've lost track of
15 what the question is.

16 MS. SHURLING: Okay.

17 THE COURT: Yeah, just ask the question, if you
18 will.

19 Q. If you couldn't get rid of this statement in the
20 jury's mind -- I'm not talking about suppressing it.

21 A. Right.

22 Q. But if you could not discount it in the jury's mind,
23 your client was virtually without hope, wasn't he?

24 A. Yeah, it was tough.

25 MS. SHURLING: A moment's indulgence, Your

1 Honor.

2 THE COURT: Okay.

3 Q. Just to make the picture clear -- was this case
4 tried in this courtroom?

5 A. I believe so.

6 Q. You referred in your testimony to the impact when
7 the photographs were shown, and you said there was a
8 whole section that reacted. Was the victim's family
9 seated in this section?

10 A. Right there.

11 Q. Behind the table occupied by the Respondent?

12 A. The best view of -- besides the jury, the best view
13 of the ---

14 Q. And I was going to say because a black and white
15 record is not always clear. In your estimation from the
16 vantage point where the victim's family was sitting, did
17 they have a clear unobstructed view of that very large
18 video screen?

19 A. Oh, yeah. They weren't there. They were over
20 there.

21 Q. They were seated -- as you say -- other than the
22 jury box, they were in the best place in the courtroom to
23 see those pictures?

24 A. Oh, yeah.

25 Q. Thank you.

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1 MS. SHURLING: No further questions.

2 THE COURT: Anything?

3 MR. SPENCER: The Court's indulgence for a
4 moment. I'm just trying to think something over. Just
5 briefly, Your Honor.

6 RECROSS-EXAMINATION

7 BY MR. SPENCER:

8 Q. Other than Mr. Patterson, was there anyone present
9 at the crime scene when, one way or other, the victim was
10 shot?

11 A. Not that I'm aware of.

12 Q. And do you recall ballistics testimony that based on
13 the lack of stippling or powder on the victim, that the
14 ballistics expert opined that the shot was from two feet
15 away or further?

16 A. Say that again.

17 Q. Do you recall that based on -- that the expert
18 concluded based on the lack of powder or residue found on
19 the victim that the gunshot came from two feet away or
20 further?

21 A. Yes.

22 Q. And I think it's undisputed at this point that the
23 evidence, the physical evidence, in the record was not
24 consistent with someone merely putting a gun up to their
25 head -- excuse me -- the victim putting the gun up to her

1 head and pulling the trigger; is that correct?

2 A. Say that again.

3 Q. Would you agree that the physical evidence is
4 inconsistent with the victim merely putting the gun to
5 her head and pulling the trigger? There's no contact
6 wound or stippling?

7 A. I know there's no contact wound. That was never an
8 issue. Again, the hair that was brought up before, there
9 was an issue with the hair. And when I first contacted
10 Dr. Ward -- Dr. Ward, that was the one -- when he looked
11 over the report, he wanted the hair. He said, that's the
12 most important piece of evidence that I could have. I
13 need to look at the hair. And then we had a hearing.
14 And Judge Macaulay, I believe it was, said give them the
15 hair. And I never got any hair. And then lo and behold,
16 there's hair. And they -- so you know, I know there's
17 not a -- it's not a contact wound issue. Mr. Patterson's
18 testimony wasn't ever that she pointed the gun to her
19 head and pulled the trigger.

20 Q. Right.

21 A. It was that the gun was always back here, more than
22 six inches away. The part about the evidence -- expert
23 talking about it being more than two feet away, again,
24 you have to look at the -- that couldn't have happened.
25 It had to be somewhere between six inches and that two

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1 feet. Somewhere in there is where that shot took place
2 because once you get -- just because of the dynamic of
3 the trailer, you start going down the hall, there's a
4 wall there. It's just physically impossible for it to be
5 any more than two feet away. And we know it wasn't less
6 than six inches. So it's somewhere between that area.

7 Q. I understand. And you know, that wasn't really the
8 area I was going to. I certainly wasn't going to cut you
9 off. But -- and again, perhaps a better example is the
10 downward trajectory of the shot. But there was at least
11 some evidence in the record that she was shot and didn't
12 know it was coming?

13 A. I mean, that might have been what Ms. White was
14 arguing, but she ---

15 Q. And that's based on evidence in the record?

16 A. --- she went and got that gun, and she went and
17 loaded that gun, and she introduced that to the scene.
18 That wasn't something that was contested by the -- I
19 mean, surely Ms. White brought it up and argued, you
20 know, that my client did that. But there was no evidence
21 that my client knew where that gun was, knew where the
22 ammunition was, had gone and gotten that gun. The
23 evidence that came out in trial was that she was the one
24 that introduced that gun. That was consistent with what
25 Mr. Patterson said.

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1 Q. Right. But Mr. Patterson would be the only person
2 at the crime scene that would know how -- that was left
3 alive that would know where the gun came from, who got
4 the gun and who pulled the trigger and where they were?

5 A. And then you have the history. You have her
6 suicidal history. And she's on medicine for it.

7 Q. Thank you.

8 A. Okay.

9 THE COURT: Anything else? Last chance.

10 MS. SHURLING: I'm trying to determine, Your
11 Honor, if you look at the index to the exhibits from this
12 trial, it indicates that the hair sample that
13 mysteriously reappeared at trial was identified on page
14 251 and admitted on page 252. But in the transcript I
15 have, I don't see that to be the case.

16 RE-REDIRECT EXAMINATION

17 BY MS. SHURLING:

18 Q. Did they introduce the hair sample?

19 A. I believe they did, but I can't say for certain. My
20 copy doesn't indicate on that page that it was submitted
21 into evidence.

22 Q. Okay. One second. Okay. Go over to -- the index
23 is incorrect. On page 255, you talk about the hair ---

24 MR. SPENCER: It's in evidence on 256.

25 A. Oh, there it is.

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1 Q. Okay.

2 A. Because I have it highlighted.

3 Q. And with regard to the hair sample, you testified
4 earlier that you, in the first proceeding, that you
5 should have moved for a mistrial when the hair suddenly
6 appeared?

7 A. Yes.

8 Q. Did you alternatively consider asking that the
9 proceeding be recessed long enough for your expert to
10 examine the hair?

11 MR. SPENCER: I think that's beyond the scope
12 of my recross.

13 THE COURT: Well, it's beyond redirect now. So
14 that's why I allowed her this one. We're beyond a lot of
15 scopes. Go ahead.

16 A. Yes, that was considered. That was something that
17 was discussed at the -- with the Judge ---

18 Q. At sidebar?

19 A. --- off the record.

20 Q. At a sidebar?

21 A. Yes, ma'am.

22 Q. And did you consider putting that objection on the
23 record so it could be ---

24 A. Obviously, I did not.

25 Q. Okay. Thank you. And on page 258 the doctor is

1 asked if he has any information about the results of the
2 examination of the hair. And he says that he doesn't
3 have any of that information. Whatever the SLED results
4 were, he has no information. Do you see that?

5 A. Right.

6 Q. Were you ever given a SLED report concerning any
7 testing done on the hair?

8 A. I believe I was. But still our -- Dr. Ward still
9 wanted to look at that hair. He thought he could do a
10 better job of looking at it and he could -- one second.
11 Let me just ...

12 MR. SPENCER: I think we're -- again, I'm
13 going to reassert a scope objection, Your Honor. I think
14 we're still -- I think we've gone another step further.

15 THE COURT: Okay. Overruled. Go ahead.

16 A. Help me. Who was the SLED agent?

17 Q. Pardon?

18 A. The SLED agent that did the ---

19 Q. This was during the testimony of their forensic
20 expert.

21 A. If you have the -- I have it by name in my trial
22 notebook.

23 THE COURT: Well, what's the quest -- I mean,
24 what's the issue?

25 MS. SHURLING: Okay. What I was saying is,

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1 Your Honor, on page 258 of the trial record, the doctor
2 says he doesn't know the results of examining the hair
3 was. That that would be SLED. That he's never been
4 given any results of a test.

5 A. Again, I think that SLED did do it. I wanted to be
6 sure because I wanted ---

7 Q. Okay.

8 A. I was trying to find out if you had the name of the
9 SLED agent.

10 Q. Oh, oh, the SLED agent?

11 MR. SPENCER: Your Honor?

12 THE COURT: Yes, sir.

13 MR. SPENCER: Your Honor, just to speed things
14 up, I mean, actually the SLED agent never -- SLED said
15 they no longer tested hair, and that's in the trial
16 record.

17 A. Okay. That was my ---

18 MR. SPENCER: I think Mr. Brehm just has had
19 trouble recalling that.

20 THE COURT: Okay.

21 A. Yeah, I just know that Dr. Ward said, look, the
22 hair's going to, you know, help us or hurt us one way or
23 another, and I need the hair.

24 Q. Okay. And as Mr. Spencer has recalled, the SLED
25 tech agent, in fact, testified that they didn't test hair

1 anymore?

2 A. Okay.

3 Q. Okay. By then it had been from March 2000 to
4 October 2000 that, to your knowledge, they've been
5 telling you they couldn't locate the hair at some point
6 in there. How long had you been asking for the hair, for
7 access to the hair?

8 A. The matter was scheduled for trial at some point. I
9 want to say in August or September. And I wrote Ms.
10 White and said, hey, I don't have all the discovery yet.
11 In fact, I've been asking you and I need -- asking for
12 and I still need the hair.

13 We had a continuance motion in front of Judge
14 Macaulay. But Judge Macaulay said, how many witnesses do
15 you have. She said she had two hundred and some
16 witnesses. He goes, oh, good Lord, we're not going to be
17 able to try that. I'm going to continue the case.

18 And I said, Judge, I have an issue, I need the hair.
19 And he said, you know, give them the hair. I said, I
20 have an expert, Dr. Ward, that wants to look at the hair.
21 It might kind of make or break the defense. And he
22 ordered it to be turned over.

23 The next letter or correspondence I got from Ms.
24 White was, there is no hair. And then at trial, people
25 started talking about hair. And you know, again, it

Richard Patterson v. State of South Carolina
James F. Brehm - Re-redirect Examination by Ms. Shurling

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1 obviously got all out of whack. And the family was there
2 and Mr. Patterson was there, look, what. What? I went
3 up and discussed it with the Judge. And I was so upset
4 about it, I never put anything on the record.

5 Q. I understand. Did you consider developing testimony
6 at trial to ascertain where that hair had been during the
7 time period when you were told by the prosecutor that
8 there was none?

9 MR. SPENCER: Your Honor, that's a completely
10 new issue.

11 THE COURT: Yeah, it actually is. I mean, I
12 understand that there's an issue. He said that it was
13 off the record and he didn't object. So sustained.

14 MS. SHURLING: No further questions, Your
15 Honor.

16 THE COURT: Okay.

17 MR. SPENCER: Thank you, Your Honor. That's
18 all from the State.

19 THE COURT: Okay. You can step down.

20 THE WITNESS: Thank you, Judge.

21 MS. SHURLING: Your Honor, I would like the
22 record to reflect that I have discussed with my client
23 the fact that he's certainly -- just as at a jury trial,
24 in this post-conviction relief setting, he certainly has
25 every right to present testimony in support of his

1 collateral claims. I have explained to him that in my
2 best professional judgment that the issues we have
3 presented have been fully developed through the
4 questioning of trial counsel, both on direct and, of
5 course, on redirect following cross by the Respondent,
6 and that I know of no particular purpose to be served in
7 light of the nature of the allegations for calling him as
8 a witness at this proceeding. However, given the fact
9 that, you know, we're talking about a life sentence for
10 murder and the fact that he has a right to testify, I
11 would ask that Your Honor have him stand and put on the
12 record the fact that I have advised him of his right to
13 testify, that we have discussed it thoroughly and that he
14 has made a deliberate decision not to present testimony
15 here today.

16 THE COURT: Okay. Mr. Patterson, if you would,
17 stand up. If you remember at your trial -- and I haven't
18 looked at the whole transcript -- there is an issue in
19 the trial setting whether or not you would exercise your
20 Fifth Amendment right to testify or not testify. This is
21 not the same thing. This is a civil hearing. But your
22 attorney tells me that she's developed everything she
23 needs to develop with other testimony and that you're not
24 going to testify. You understand you do have a right to
25 sit up here and tell me anything you want to tell me?

Richard Patterson v. State of South Carolina
Closing Statement by Ms. Shurling

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1 MR. PATTERSON: I understand, Your Honor.

2 THE COURT: And you feel comfortable with not
3 testifying?

4 MR. PATTERSON: Yes, Your Honor.

5 THE COURT: Okay. Do you have any questions
6 for me?

7 MR. PATTERSON: No, sir.

8 THE COURT: Okay. Thank you.

9 CLOSING STATEMENT

10 BY MS. SHURLING:

11 Thank you. Your Honor, at this time, I would simply
12 reassert that my client has met his burden of proof with
13 regard to his allegation that his Sixth Amendment right
14 to effective assistance of counsel was violated prior to
15 and during his jury trial. We have presented testimony
16 both at the June 2009 proceeding and here today that
17 supports the allegations contained both in his original
18 application and, of course, in the more detailed amended
19 application. And it is my understanding that we will
20 forego detailed closing arguments at this time, but the
21 Court has ordered the transcript of today's proceeding
22 from Madam Court Reporter. And that after ---

23 THE COURT: That's an issue. Let me tell you.
24 I'm told that ...

25 Who is that told you they wouldn't pay last time?

1 MADAM COURT REPORTER: Well, generally,
2 Appellate Defense does not pay for expedited.

3 THE COURT: Appellate defense who would pay for
4 this, will not pay for expedited transcripts.

5 MS. SHURLING: Your Honor, that's what I was
6 going to bring up with you.

7 Did they -- they paid you for the last one, didn't
8 they?

9 MADAM COURT REPORTER: Yes.

10 MS. SHURLING: What happens is, last time I got
11 Your Honor to do an order finding -- you took testimony
12 on the record and found him to be indigent and gave me an
13 order directing S.C.C.I.D. to pay for it.

14 THE COURT: Right. I'll do the same this time.

15 MS. SHURLING: I'll provide Your Honor an order
16 first thing.

17 THE COURT: I just think she has difficulty
18 getting ---

19 MS. SHURLING: I was going to bring that to the
20 Court's attention because I certainly don't want her to
21 not get paid.

22 THE COURT: Okay.

23 MS. SHURLING: Thank you.

24 THE COURT: All right. Thank y'all.

25 MS. SHURLING: And Your Honor, thirty days from

Richard Patterson v. State of South Carolina
Closing Statement by Ms. Shurling

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1 the date we get the transcript acceptable?

2 THE COURT: Yeah.

3 MS. SHURLING: Thank you.

4 THE COURT: Thank y'all. Be safe.

5 MR. SPENCER: Thank you.

6 (WHEREUPON, the hearing ended at approximately 6:15

7 p.m.)

8 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

CERTIFICATE OF REPORTER

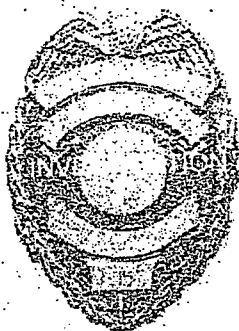
I, the undersigned Renee H. Tollison, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 26th day of February 2013.

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

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

March 14, 2013

Circuit Court Reporter



UNITED INVESTIGATIONS

"KNOW THE FACTS"

Thomas C. Selfridge, LPI, SCCI, CFI

A TRUE COPY

MAR 27 2013

Richard M. Hite
CLERK OF COURT

INVESTIGATIVE REPORT

File #: 200328C
Client: Patterson, Richard Kevin
Investigator: Thomas Selfridge

COMMON PLEAS AND
GENERAL SESSIONS

MAR 27 11

ED-CLERK'S OFFICE
ANDERSON SC

On March 28, 2000, this investigator met with the client and his father, Bill Patterson, in the office of their attorney, James Brehm. This investigator was briefed on the situation and Mr. Bill Patterson signed a contract for investigative services.

March 29, 2000, this investigator met with the client, Richard "Kevin" Patterson, at his parent's residence located at 9 Brendle Drive in Simpsonville, SC. Kevin told this investigator what happened on March 10, 2000. He stated that he was living with his girlfriend, Lean Pearson, at Lean's Nieces residence, which is located at 623 Carol Road in Belton, SC. Lean's niece is Shannon Jordan and her husband is Keith Jordan. Kevin stated that he and Lean were in the living room and was having a minor argument over a photograph of Lean. Kevin said that Lean left the living room and when she came back she had a handgun. She sat on the sofa with her legs crossed under her and she placed the gun between her legs. Kevin said he knelt next to the sofa to speak with Lean and during their conversation, Lean raised the gun from her lap with her right hand. Kevin said that she did not point it at him but he grabbed her hand and the gun and was trying to take the gun from her. Kevin said the next thing he remembered was the gun fired and he was standing next to the couch with the gun in his hand. Kevin said he paced for a few moments not knowing what to do. He said we was thinking that no one would believe it was an accident, so he placed the gun in Lean's right hand, went to the store and bought two soft drinks and two packs of cigarettes. He then returned to the residence and called 911 telling them that he Lean shot herself while he was gone. Kevin also furnished names, phone numbers and addresses of friends, co-worker, supervisors and relatives of his and Leans.

March 29, 2000, this investigator went to Mauldin Police Department to determine if officers had responded to Lisa Patterson's residence at 345 Cranberryhill Circle, on February 21, 2000, where allegedly Ms. Patterson had called the police on Kevin Patterson. Mauldin Police Records Division could not find a report or determine if any officers were dispatched to that address on or near that date.

March 31, 2000, this investigator attended the preliminary hearing at the Anderson County Court House and also delivered a court order for electronic monitoring of Kevin Patterson, to the Mike Welch of the Greenville County Detention Center.

This investigator called Attorney Linda Hayes to set up a meeting with Lisa Patterson, who is her client. Ms. Hayes was in court. A message was left asking Ms. Hayes to call this investigator.

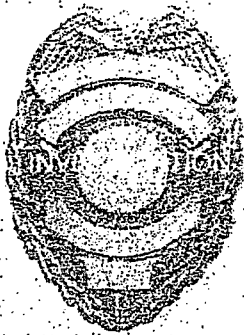
March 31, 2000, this investigator responded to Hitachi and spoke with the head of security, Mr. Tom Smith, who stated he would get messages to Kevin and Lean's supervisors to contact this investigator.

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March 31, 2000, 10:50 PM, Mr. Phil Ellis, a supervisor at Hitachi, called this investigator. Mr. Ellis stated he was Lean and Kevin's supervisor from January 1997 until January 2000, about three years. Mr. Ellis stated that Kevin was a skirt chaser and when he was first interested in Lean, she hated him and wanted nothing to do with him. Mr. Ellis said that he did not know exactly when they started seeing each other. Ellis said that for the first couple of years, their relationship was shaky, meaning that they would see each other for awhile and would break up for awhile. Mr. Ellis stated that allegations of sexual harassment have been made against Kevin but there have never been enough findings to take action. These incidents are documented in his personnel records, which Ellis said have been subpoenaed by the police. Ellis said that he did not know of any drug or alcohol problems with Kevin or Lean but could only speak for them while they were at work. Ellis said that he has never seen Kevin lose his temper and always seemed to be in control whereas Lean would come in his office where he has witnessed her rant and rave about various things. Ellis said that about a year ago, Kevin came into his office and stated that Lean had him arrested, in the parking lot of Hitachi, for burglary and theft of her apartment. But the police released him after Kevin showed the police the lease where the apartment he entered was his.

April 3, 2000, 3:30 PM, this investigator received a return phone call from Attorney Linda Hayes, Attorney Hayes said that if Lisa Patterson were willing to talk with me, she would have her call.

April 4, 2000, 5:04 PM, this investigator spoke with Jennifer Martinez, Kevin Patterson's first wife, who said that she and Kevin divorced 10 1/2 years ago. She stated that they were friends in high school. Kevin went into the military after school and when he got out, they started dating. Martinez said that their marriage was a mistake. She said that they were just not compatible. Martinez said that Kevin has never mistreated or harmed her or their daughter, Vicki, in any way and that Vicki has said that she always has a good time with her father and has never said anything bad about him.

April 4, 2000, 5:20 PM, this investigator spoke with Avis Williams, who is a mutual friend of both Kevin and Lean. Williams said that she was a co-worker of Lean and Kevin's. Williams said that she has not spoken to Kevin in about four (4) months and Lean in about seven (7) months. Williams said that their relationship was shaky by their on again off again relationship. Williams said that Kevin really cared about Lean and she tried to tell Kevin not to go back to Lean because every time they got back together, Kevin's spirit would be brought down.

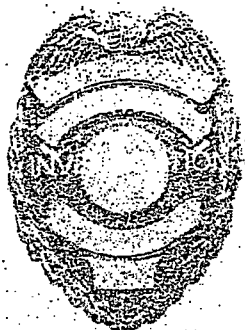
April 4, 2000, 5:30 PM, this investigator spoke with Elizabeth Graham, Lean's mother, who said that Lean could not go anywhere or do anything without Kevin being right there. Lean had no personal or private life because of Kevin. Graham said her daughter, Denise, was close to Lean.

April 4, 2000, 6:10 PM, this investigator spoke with Denise Watkin, Lean's sister, who said that Lean did confided in her. She said that Lean had been asking Kevin to leave since around Christmas. Watkin said that Lean wanted to get back together with her husband. Watkin said that Kevin was obsessed with Lean and he stalked and smothered her. Watkin said that Lean could not go anywhere without Kevin being there or getting mad because Lean would go some where without him. Watkin said this really got bad about the last three weeks before Lean's death. Watkin said that Lean told her that Kevin had been stealing things from her purse like photographs of Lean and her husband and a cassette tape Lean's husband made for her. Watkin said Lean had a locksmith unlock Kevin's truck the Wednesday before she was killed and Lean found her property in the truck.

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Watkin said that Kevin was hateful toward Lean and that they argued and verbally fought all the time. Watkin said that Kevin was the type person that would not take no for an answer. Watkin said Lean was planning to move in with her father to take care of him. Their father is dying from cancer. Watkin was going to lend Lean a bed to use at their father's residence. Watkin said she spoke with Lean the day before her death and that Lean said that she and Kevin had been arguing and she was going to tell Kevin to leave. Lean also told Watkin, If anything happens to me, you know who did it. Make sure he pays.

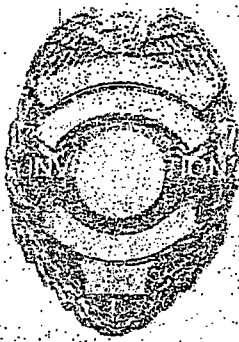
April 4, 2000, 6:43 PM, this investigator spoke with Tammi Alewine, Lean's best friend, who stated that she and Lean talked a lot about Lean and Kevin's relationship. Alewine said that Lean was wanting to break up with Kevin because she could not do anything without Kevin being there and that Kevin had been stealing thing from her purse. Alewine said that Lean was planning to move in with her father, who is dying from cancer, and that she was going to make Kevin leave when she did that. Alewine said that Lean had been planning that for about a month. Alewine said that when Kevin found out Lean was planning to move to her father's that Kevin called her (Alewine) and was complaining about it saying Lean cared more for her father that she did him. Alewine said that she had lunch with Lean the Friday prior to her death and at that time Lean talked about leaving Kevin. Alewine said that Lean did not want to go home to Kevin. Alewine offered to let Lean stay there for the night. About an hour later, Kevin showed up. He would not leave Lean alone. Lean went outside to smoke a cigarette, since Alewine did not allow smoking inside, Kevin went into the kitchen and sat down where he could watch Lean.

April 4, 2000, 8:24 PM, this investigator spoke with Shannon Jordan, Lean's niece and the person home where Lean and Kevin were living. Jordan said that she let Lean move into her home in August of 1999 and let Kevin move into her home in January 2000. Jordan said that Kevin was real possessive of Lean and was also stealing from her purse and her car. Jordan said that Kevin would stalk Lean and could not keep his nose out of her butt. Jordan said that whenever Kevin found out Lean had gone somewhere without him, that Kevin would start pacing the floor and making phone calls trying to track her down. And when Lean would come home, Kevin would be real hateful to her and would say to her, where the hell have you been. Jordan said that Lean told her Kevin had been stealing form her purse and that it had been going on for about a month but had gotten real bad about the last week or so before her death. Jordan said that she has never seen any physical violence between Lean and Kevin but has heard them arguing while they were in their bedroom. Jordan said that Lean did tell her that Kevin had once grabbed her arms and held her down. Jordan said that Lean had been planning to move in with her father and was going to have Kevin move out. Lean was in the process of getting furniture together to move in with him. Jordan said that she noticed Kevin had been acting real strange for about a week before the shooting. Jordan said that the gun used in the shooting was kept in her top drawer of her chest of drawers in her bedroom. Jordan said that the gun was Lean's fathers and that her father wanted Lean to give it to her son. Jordan said that the gun was stored unloaded but the bullets were in the drawer next to the gun. Jordan said that Lean knew where the gun was but did not know if Kevin knew.

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April 5, 2000, 11:20 AM, this investigator spoke with Attorney Hugh Welborn, Lean's attorney, who said that he rarely saw Lean. Attorney Welborn said that he was aware of Lean's marital problems but she never retained him for that purpose. Attorney Welborn said that he does not recall Lean speaking to him about a divorce and that he could not confirm or deny having a conversation with Lean about that subject.

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF ANDERSON) C/A #: 04-CP-04-2245

Richard Kevin Patterson,
270085,

Defendant/Appellant,

v.

State of South Carolina,
Respondent.

ORIGINAL

MAR 27 2013

FILED-CLERK'S OFFICE
ANDERSON SC
FEB 27 P 4:11
COMMON PLEAS AND
GENERAL SESSIONS

DEPOSITION OF
THOMAS V. MARTIN, M.D.

Thursday, August 5, 2010
12:40 p.m. - 12:55 p.m.

The deposition of THOMAS V. MARTIN, M.D., was taken on behalf of the Appellant at the offices of Martin Psychiatric Services, 1330 Richland Street, Columbia, South Carolina, on the 5th day of August, 2010 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES:**A. West Lee, Esquire**

South Carolina Attorney General's Office
 Post Office Box 11549
 Columbia, South Carolina 29211
 Attorney for the State of South Carolina

Tara D. Shurling, Esquire

Law Offices of Tara Dawn Shurling, P.A.
 3614 Landmark Drive, Suite D
 Columbia, South Carolina 29204
 Attorney for the Appellant

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Certificate		17

EXHIBITS

Plaintiff's Exhibit Number One	16
(Curriculum vitae)	

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.

THOMAS V. MARTIN, M.D.

3

1 THOMAS V. MARTIN, M.D., having been duly sworn,
2 deposes and testifies as follows:

3 DR. MARTIN - EXAMINATION BY MS. SHURLING:

4 Q: State your full name for the record, please.

5 A: Thomas Victor Martin, M-A-R-T-I-N.

6 Q: Dr. Martin, would you review for us briefly
7 your academic background.

8 A: Certainly. I received a Bachelor of science in
9 psychology at the University of Maryland in
10 1979 and a Master of science in biomedical
11 science from Hood College in Maryland in 1984.
12 I received my medical degree from the Uniformed
13 Services University, School of Medicine, in
14 Bethesda, Maryland, in 1988 and I completed a
15 residency in psychiatry in San Antonio, Texas,
16 in 1992. And I completed a fellowship in
17 forensic psychiatry at the University of South
18 Carolina in 2000. I'm board certified in
19 general psychiatry, as well as forensic
20 psychiatry and I belong to a number of
21 professional organizations to include the
22 American Psychiatric Association, as well as
23 the American Academy of Psychiatry and the Law.
24 MS. SHURLING: Rather than having you go into any
25 more detail, Doctor, I'm familiar with your

THOMAS V. MARTIN, M.D.

4

1 extensive curriculum vitae and I would ask if
2 Respondent would have any objection to
3 appending a copy of his vitae to the
4 deposition.

5 MR. LEE: No objection.

6 MS. SHURLING: Thank you. We will hand one to Madam
7 Court Reporter at the end of this proceeding.

8 Q: Doctor, at my request, have you read over the
9 police incident reports, the statements of
10 Mr. Patterson and his trial testimony?

11 A: Yes, sir -- or yes, ma'am, I have.

12 Q: And just to make the record very clear, you've
13 never met Mr. Patterson, have you?

14 A: That's correct. I was never asked to.

15 Q: I did not ask you to meet with him and conduct
16 an actual psychiatric evaluation of my client.

17 A: That's correct.

18 Q: Okay. I did ask you to give me a consult on
19 the question of shock and it's relevance to
20 human behavior in the immediate aftermath of a
21 violent traumatic event. Is that an accurate
22 way to describe the subject matter of our
23 consultation?

24 A: That's accurate.

25 Q: Okay. Now, you are aware of the basic facts

THOMAS V. MARTIN, M.D.

5

1 and circumstances surrounding the homicide
2 charge involved in this case.

3 A: Yes, ma'am.

4 Q: And you're aware of the interpersonal
5 relationship between the parties, between the
6 deceased and my client.

7 A: Yes, ma'am, I am.

8 Q: Okay. Is it unusual in the field of psychiatry
9 to see individuals go into what I guess in
10 common lingo would be referred to as "shock"
11 following witnessing a violent traumatic event?

12 A: It's not unusual, no.

13 Q: And does what we loosely call "shock" have both
14 emotional and psychiatric components?

15 A: And physical, yes, ma'am.

16 Q: And physical. That was a bit redundant, wasn't
17 it. My apologies. Let's start with the
18 emotional. The emotional component of shock
19 would be what?

20 A: There are various examples: denial,
21 misunderstanding, confusion. Depends on what
22 kind of shock it is and it depends on the
23 person who's exposed to this trauma.
24 Typically, it's a horrific trauma,
25 life-threatening usually, and that this trauma

THOMAS V. MARTIN, M.D.

6

1 would not be something expected in this
2 person's everyday living activities, so it
3 would be a nuance, as well.

4 The responses to such horrific trauma are
5 varied. Some people have no significant
6 response; others may respond in mood changes,
7 memory changes, even thought disorder changes.
8 It depends on the person and the kind of
9 trauma.

10 Q: Okay. And the physical aspect of shock
11 includes what types of symptoms?

12 A: There could be adrenaline rush. We are
13 familiar with a "fight or flight" syndrome
14 where one may retaliate, sometimes
15 inappropriately. One may flee, sometimes
16 inappropriately, to escape dangers real or
17 perceived.

18 Q: And in terms of the neurological events
19 surrounding that kind of shock, is it unusual
20 for you to see patients experience memory loss
21 associated with the time period when they were
22 in shock following such an event?

23 A: There could be memory loss if it was
24 unacceptable to one's psyche. It may be memory
25 loss in that the individual is in some form of

THOMAS V. MARTIN, M.D.

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1 psychic denial. I don't mean volitional
2 denial, but psychic denial to where they may
3 not be able to tolerate the actual accurate
4 events that have happened and they may repress
5 it.

6 Q: So sometimes if facing the true nature of what
7 you have witnessed is psychologically
8 unbearable, you will choose to black it out?

9 A: That may --

10 Q: Is that --

11 A: That may happen. That is well-known and
12 described in literature with abuse victims to
13 where the memories are essentially repressed.

14 Q: And is it also described in cases where
15 individuals who were not abused but have
16 witnessed horrific events?

17 A: Yes, it's a form of psychic denial.

18 Q: Okay. Now, when we went over the psychological
19 components of shock, you mentioned denial. In
20 some cases, would extreme guilt or maybe even
21 sometimes unfounded guilt be an emotional
22 component of shock?

23 A: It's possible. The person would need to be
24 evaluated to ascertain whether that applies in
25 their case. People who experience trauma

THOMAS V. MARTIN, M.D.

8

1 sometimes take on unrealistic responsibility
2 for the traumatic events. That's well-known in
3 accidents, it's well-known in fights, it's
4 well-known in abuse and it's well-known in
5 suicide.

6 Q: Okay. So in, for example, the case of suicide
7 or an attempted suicide or an accident, it
8 would not be unheard of for a loved one to take
9 on an unfounded sense of responsibility?

10 A: That's certainly possible, yes.

11 Q: Okay. Now, when an individual experiences
12 blackouts or memory losses, is it always
13 necessarily a total loss of memory or is there
14 sometimes an effect where they remember bits
15 and pieces and don't remember other things?

16 A: It could be all of those things.

17 Q: Okay.

18 A: There's no cookbook answer for that. It
19 depends on what the mind's able to tolerate at
20 times. If it's a true amnesic episode,
21 meaning they're not just not telling the truth,
22 then it could be just segmented. It could be
23 filled in by other what the individual believes
24 should be the actual case and that would be
25 considered confabulation, when actually it is a

THOMAS V. MARTIN, M.D.

9

1 nondeceptive form of filling in the blanks --

2 Q: Okay.

3 A: -- to make it right within their own mind --

4 Q: Okay.

5 A: -- to help sort it out. That's seen in various
6 forms of mental illness.

7 Q: Okay. I want to break that one up a little
8 bit. So if an individual is in shock and
9 they've experienced some memory loss associated
10 with the event, there is a phenomena in
11 psychiatry that is not unusual, if I understand
12 you correctly, where the individual might
13 attempt to fill in the blanks of what they
14 don't actually remember?

15 A: Yes, and that does not necessarily mean that
16 they are lying to self-protect. Always should
17 be considered in a crime, obviously, but it
18 also as in -- for example, an easy one would be
19 substance abuse disorders. There are amnesic
20 periods often in those and people will
21 unknowingly -- and that's the important part --
22 unknowingly at the time fill in what they think
23 might need to be the answer in order to make it
24 straight in their own mind or to make sense or
25 try to make sense of what has happened. And

1 actually it's not a deliberate, volitional
2 attempt to lie or deceive. It's called
3 "confabulation."

4 Q: And it's an attempt by the mind to compensate
5 for the fact that there are blank spots.

6 A: Yes.

7 Q: Is that a fair layman's way to put it?

8 A: Yes, ma'am.

9 Q: And we discussed earlier the fact that shock --
10 a psychological component of shock can, in
11 certain circumstances, be guilt, even unfounded
12 guilt?

13 A: It could be that, yes, ma'am.

14 Q: And if that were present in a particular case
15 and the individual had memory loss, would it be
16 predictable that any confabulation they were
17 engaging in might be colored by that guilt?

18 A: I think that whoever would be examining the
19 person professionally should take that into
20 consideration, yes, ma'am.

21 Q: But in terms of your experiences as a
22 psychiatrist, is it your belief that someone
23 who is engaging in nonvolitional confabulation
24 that that confabulation might reflect guilt?

25 A: Unfounded guilt.

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- 1 Q: Unfounded guilt.
- 2 A: That could be, yes, ma'am.
- 3 Q: Okay. Now, how long does shock last?
- 4 A: It really varies.
- 5 Q: Okay.
- 6 A: In some cases, it's worst -- the effects of the
- 7 shock, I should say, the psychiatric trauma, if
- 8 you will, it could be immediate, around the
- 9 time following the event. It could be
- 10 repressed and actually manifest in a crisis
- 11 later or it could eke out through other types
- 12 of symptoms that are less clearly defined or
- 13 related to the event throughout a long period
- 14 of time. And I have worked and treated with
- 15 all three of those forms of the expression.
- 16 Q: Okay. Well, in most cases of shock and the
- 17 aftermath of a violent traumatic event, would
- 18 it be unusual for someone to be in shock for,
- 19 say, a full 24 hours after an event?
- 20 A: Absolutely. In my experience, usually around
- 21 the time of the event is the worst time.
- 22 Q: Right.
- 23 A: I have had folks in wartime where they were
- 24 able to repress it immediately after a war
- 25 theater event and then manifest later. But

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1 most of the folks that I've dealt with
2 life-threatening trauma events, the worst time
3 has been the time immediately following the
4 event.

5 Q: And what I'm trying to get a little more
6 clearly defined is that we're not talking about
7 something that lasts for five minutes after you
8 watch a shooting. You know, if I observed
9 someone being shot and I went into shock, would
10 it be unusual for me to be experiencing the
11 consequences of that state for a period of
12 hours or even a full day after the event?

13 A: Oh, absolutely.

14 Q: And it can last much longer?

15 A: Yes. There's no defined limit to it. The
16 longer it lasts, the more I really want to
17 examine what the trauma was and how it really
18 was affecting the individual, but it being just
19 fleeting, like for a few moments, for a very
20 horrific trauma, I would really question how
21 serious the trauma was.

22 Q: Okay. So, obviously, this crime, this death
23 occurred a very long time ago; ten years ago.

24 A: Yes, ma'am.

25 Q: You were hired approximately a year ago in this

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1 case.

2 A: That's correct.

3 Q: At that time, you wouldn't expect to see any
4 ongoing symptoms in a patient, would you, after
5 nine years?

6 A: I actually go in pretty open-minded. I look to
7 see if there is anything and would evaluate it.
8 I know a little bit about the case. It did
9 seem like a horrific trauma between two loved
10 ones that ended in a fatality. But ten years
11 out, I would want to know what transpired
12 during that ten years, as well.

13 Q: Okay.

14 A: I wouldn't really go in with any expectations
15 except that the person be as truthful as
16 possible.

17 Q: Well, let me be a little more articulate.
18 Would you have had a better chance of
19 evaluating in a meaningful way the degree to
20 which shock came into play in this case if you
21 had been brought in to evaluate the Defendant
22 contemporaneous with his original arrest back
23 in 2000?

24 A: Oh, absolutely.

25 Q: And is it fair to say that an extensive

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1 psychological evaluation would be not likely to
2 be beneficial to a defense attorney some ten
3 years later?

4 A: The further remote the incident of any kind the
5 less accurate it becomes, the data that you'd
6 receive.

7 MS. SHURLING: Thank you. I have no further
8 questions.

9 MR. LEE: Just one second.

10 (Off the Record)

11 DR. MARTIN - EXAMINATION BY MR. LEE:

12 Q: Okay. So, basically, if I'm hearing you
13 correctly, Doctor, would it be sort of
14 impossible to say with any certainty how the
15 presence or absence of a presence of shock
16 would have affected the applicant in this case?
17 Would it be difficult for you to form any sort
18 of scientific opinion about the presence of
19 lack of presence of that so far removed from
20 the incident?

21 A: You mean in time?

22 Q: Yes.

23 A: I wouldn't give up on it. I will admit that
24 typically whenever I've had offenses that I am
25 asked to evaluate the response to, it's usually

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1 within a year of the offense. And I think you
2 could say that with any credibility that the
3 closer to the time of the event the more
4 accurate and more likely you're going to see
5 the response to it. I wouldn't give up on an
6 individual simply because a trauma occurred ten
7 years ago.

8 Like I was telling Ms. Shurling, some of my
9 folks -- I've dealt with war veterans where
10 they've actually been apart of Vietnam and it
11 wasn't until 20 years later that actually the
12 manifestations have actually been more clearly
13 understood and have been bothering them the
14 entire time and we were able to determine that
15 it was due to that incident 20 years prior. So
16 as a psychiatrist and a therapist in these kind
17 of cases, I would need to see the person
18 individually. I'm just saying that in general
19 human behavior, you know, if you tell a story
20 now, then years from now your story might be a
21 little bit different because nobody can
22 remember as if it were yesterday.

23 Q: Certainly.

24 A: But I would not write off a case simply because
25 the person is now ten years out.

1 Q: And, in fact, you even said, I believe, that
2 you would go into it with an open mind;
3 correct?

4 A: I go into all cases with an open mind.

5 Q: So would it have been helpful in this
6 particular case to have met with the applicant?

7 A: Well, it depends on what the question is. If
8 somebody was going to ask me to actually render
9 an opinion about the applicant for this case,
10 yes, but I'm not being asked that.

11 Q: Okay. So, would it be fair to say that your
12 testimony here today is essentially speculation
13 about the potential effects of a traumatic event
14 inducing shock upon a person?

15 A: It is more of a description of what some of the
16 likely events or responses might be to a
17 traumatic event, yes, not to render an opinion
18 about Mr. Patterson in particular.

19 MR. LEE: Okay. Just one second, please.

20 No further questions.

21 MS. SHURLING: Thank you.

22 (There being no further questions, the deposition
23 concluded at 12:55 p.m.)

24 (Plaintiff's Exhibit Number One was marked for
25 identification purposes after the deposition.)

CERTIFICATE

This is to certify that the deposition of **THOMAS V. MARTIN, M.D.**, consisting of Sixteen (16) pages, is a true and correct transcript of the testimony given by said deponent after being duly sworn; said deposition was reported by the method of Stenowriter with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on August 16, 2010.

Cassandra E Vance
Cassandra E. Vance
Court Reporter

Notary Public for South Carolina
My Commission Expires: February 26, 2018

THOMAS V. MARTIN, M.D.
MARTIN PSYCHIATRIC SERVICES, PC
 Curriculum Vitae
 March 1, 2009

1330 Richland Street
 Columbia, SC 29201
 (803) 771-7521/Fax (803) 771-7525

P.O. Box 290789
 Columbia, SC 29229-0789
 (803) 960-3597/Fax (803) 696-1081

CREDENTIALS

- American Board of Psychiatry and Neurology, Diplomate, Forensic Psychiatry, Board Certified.
- Clinical Examiner, Association for the Treatment of Sexual Abusers (ATSA).
- National Board of Addiction Examiners, Doctoral Addictions Counselor.
- American Board of Forensic Medicine, Diplomate, Board Certified.
- American Board of Forensic Examiners, Diplomate, Psychiatry, Board Certified, Fellow of the College.
- American Board of Psychiatry and Neurology, Diplomate, General Psychiatry, Board Certified.
- Medical Licensure: South Carolina, Georgia, Texas, and Maryland.

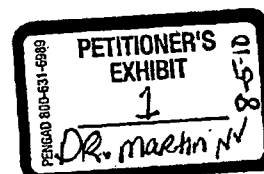
EDUCATION

- Fellowship: Forensic Psychiatry, Palmetto Health Alliance, and the University of South Carolina School of Medicine, Columbia, SC, 1999-2000.
- Residency: Psychiatry, Wilford Hall Medical Center, San Antonio, TX, 1988-92.
- Medical School: Uniformed Services University of the Health Sciences School of Medicine, Bethesda, MD; 1984-88; Doctor of Medicine.
- Graduate: Hood College, Frederick, MD; 1980-84; Masters of Science, Biomedicine.
- Undergraduate: University of Maryland, College Park, MD; 1974-79; Bachelor of Science, Clinical Psychology.

PROFESSIONAL EXPERIENCE

- Martin Psychiatric Services, PC, Columbia, SC, private practice, individual and group psychotherapy, medication management, independent medical evaluations in the General and Forensic (criminal and civil) Psychiatric assessment and treatment of juveniles and adults, sexual and criminal offenders, and child custody evaluations, 2000-present.
- Courtesy Staff Psychiatrist, Palmetto Health Baptist/Richland Hospitals, Columbia, SC, 2002-present.
- New Hope Carolinas Treatment Centers, Rock Hill, SC, Medical and Psychiatric Director, Clinical Nursing Supervisor, and Professional Staff Instructor, for a total of 135 beds in a multidisciplinary treatment High Maintenance Residential Treatment Facility for adolescent males and females with serious mental illnesses, developmental delays, sex offending and other violent behaviors, 2001-2006.
- Forensic Psychiatrist, SC Department of Juvenile Justice, Columbia, SC, psychiatric assessment, medication management and Court Ordered evaluations, University of South Carolina School of Medicine, 2000-2001.
- Medical Director, Southbridge Center, Columbia, SC, assessment, diagnosis, and treatment of forensic and sexually violent juvenile patients in a residential facility, 2000-2001.
- Senior Psychiatrist, Behavioral Disorders Treatment Program, SC Department of Mental Health, Columbia, SC, Clinician and Case Manager Supervisor in charge of assessment, diagnosis, and treatment of Sexually Violent Predators, forensic evaluations and consultations, 1999-2001.

Thomas V. Martin, M.D.
 Curriculum Vitae



MARTIN PSYCHIATRIC SERVICES, PC

- Senior Psychiatrist, Columbia Area Mental Health Center, Columbia, SC, outpatient diagnostic and medication practice for indigent psychiatric patients, supervised a multi-disciplinary treatment team, 2000-2001.
- Clinical Instructor, Department of Neuropsychiatry, University of South Carolina School of Medicine, Columbia, SC, 1999-2000.
- Psychiatric Consultant, The Ethos Foundation, College Park, MD, providing initial psychiatric evaluation, medication assessment and maintenance and therapeutic treatment recommendations to federal offenders, 1998-1999.
- Clinical Director, Tri-Service Addiction Recovery Center, Inpatient, Partial hospitalization and Outpatient Services, Malcolm Grow Medical Center, Camp Springs, MD, fifteen-twenty five patient capacity, supervising psychiatric consultation, treatment team management, intense outpatient group facilitation and medication management and professional staff, psychiatric resident, physician assistant and medical student instruction, 1996-1999.
- Chief, Tri-SARC Consultation-Liaison Service, Malcolm Grow Medical Center, Camp Springs, MD, 200-inpatient medical, surgical, and intensive care service, supervising psychiatric/family practice residents, physician-assistant and medical students, 1996-98.
- Medical Services Security Clearance Officer, Malcolm Grow Medical Center, Camp Springs, MD, 1996-1999.
- Forensic Psychiatrist, Malcolm Grow Medical Center, Camp Springs, MD, Consultant to the Legal Services Agency, 1992-1999.
- Staff Attending Psychiatrist, Malcolm Grow Medical Center, Camp Springs, MD, responsible for the evaluation, treatment, and management of psychiatric inpatients on a 25-bed ward; in addition to psychiatric resident, medical student and psychology intern teaching and supervision, 1992-96.
- Chief Resident in Psychiatry, Wilford Hall Medical Center, San Antonio, TX, 1992.
- Psychiatric Technician with administrative, teaching and research responsibilities, Research Assistant, Chestnut Lodge Hospital, Rockville, MD, 1977-80.
- Health Lodge Director, Boy Scouts of America, National Capital Area Council, 1976-79.

COMMITTEE ACTIVITIES

- Medical Services Team Chairman, New Hope Treatment Centers, Rock Hill, SC, 2005-2006.
- Performance Improvement Committee, New Hope Treatment Centers, Rock Hill, SC, 2005-2006.
- Physician's Advisory Committee, New Hope Treatment Centers, Charleston, SC, 2002-2006.
- Program Implementation Team, Justice Resource Institute, Southbridge Center, Columbia, SC, 2001.
- Senior Staff Committee, Behavioral Disorders Treatment Program, South Carolina Department of Mental Health, Columbia, SC, 2000-2001.
- Environment of Care Committee, Behavioral Disorders Treatment Program, South Carolina Department of Mental Health, Columbia, SC, 2000-2001.
- Credentials Committee, Psychiatry Representative, Malcolm Grow Medical Center, Camp Springs, MD, 1997-1999.
- Medical Ethics Committee, Psychiatry Representative, Malcolm Grow Medical Center, Camp Springs, MD, 1995-1999.
- Drug Usage Evaluation Committee, Chairman, Psychiatry Representative, Malcolm Grow Medical Center, Camp Springs, MD, 1993-1999.
- Pharmacy and Therapeutics Committee, Psychiatry Representative, Malcolm Grow Medical Center, Camp Springs, MD, 1993-1999.
- Health Records Review Committee, Psychiatry Representative, Malcolm Grow Medical Center, Camp Springs, MD, 1993-1999.
- Pharmaceutical Representative Coordinator, Malcolm Grow Medical Center, Camp Springs, MD, 1993-1999.
- Test Utilization Committee, Psychiatry Representative, Malcolm Grow Medical Center, Camp Springs, MD, 1998.
- TRI-SARC Partial Hospitalization Service Integration Task Force, Malcolm Grow Medical Center, Camp Springs, MD, 1996-1997.

MARTIN PSYCHIATRIC SERVICES, PC

- Psychiatry Grand Rounds/Continuing Medical Education Coordinator, Department of Psychiatry, Malcolm Grow Medical Center, Camp Springs, MD, 1993-1997.
- Multi-Disciplinary Psychiatric Treatment Team Working Group, Chairman, Department of Psychiatry, Malcolm Grow Medical Center, Camp Springs, MD, 1995.
- American Medical Association, Medical Student Branch, District of Columbia, 1984-1987.

PROFESSIONAL ORGANIZATIONS

- Association for the Treatment of Sexual Abusers, Clinical Member, 2000-present.
- American Academy of Psychiatry and the Law, 1995-present.
- American College of Forensic Psychiatry, 1995-present.
- American Board of Forensic Examiners, 1995-2007.
- American Psychiatric Association, 1988-present.
- American Medical Association, 1984-2008.
- Society of Uniformed Services Psychiatrists, American Psychiatric Association, 1994-1999.
- National Board of Addiction Examiners, 1997-1999.
- American Academy of Psychoanalysis, 1992-1998.
- Washington Psychiatric Society, American Psychiatric Association, 1992-1994.
- Texas Society for Psychiatric Physicians, 1988-1992.
- Bexar County, Texas Psychiatric Society, 1988-1992.

PUBLICATIONS/PRESENTATIONS

- Martin, Thomas V., McKee, Geoffrey, and Holland, Lori A., Juvenile Sex Offenses: Predicting Multiple Victims, American Academy of Psychiatry and the Law meeting (2001), Boston presentation.
- Martin, Thomas V. and Terris, James, Methods for long-term metabolism studies, chronic blood collection, and blood pressure measurements in conscious swine. Swine in Biomedical Research; June 1985, p. 52.
- Terris, James and Martin, Thomas V., Plasma and aortic renin activity in the DOCA hypertensive pig. Presented at the American Physiological Society fall meeting, 1985.
- Martin, Thomas V., The development of a vascular renin extraction procedure and method of radioimmunoassay to measure changes in vascular renin-like activity following DOCA administration in the pig, Masters' Thesis, 1984.

RESEARCH COLLABORATION

- Chestnut Lodge Follow-Up Study, Clinical Research Assistant, Thomas H. McGlashan, Clinical Director, Chestnut Lodge Hospital, Rockville, MD, 1997-1980.
- McGlashan, Thomas H., Schizotypal personality disorder, Chestnut Lodge Follow-Up Study: VII, Long-term follow-up perspectives; Archives of General Psychiatry, 43: 329-34, 1986.
- McGlashan, Thomas H., The prediction of outcome in borderline personality disorder, Part V; The Borderline: Current Empirical Research, APA Press, p.63.
- McGlashan, Thomas H., The prediction of outcome in chronic schizophrenia: Part IV, The Chestnut Lodge Follow-Up Study, Archives of General Psychiatry, 43: 167-76, 1986.
- McGlashan, Thomas H., The Chestnut Lodge Follow-Up Study, III: Long-term outcome of borderline personalities, Archives of General Psychiatry, 43: 20-30, 1986.
- McGlashan, Thomas H., The Chestnut Lodge Follow-Up Study, II: Long-term outcome of schizophrenia and affective disorders, Archives of General Psychiatry, 41: 586-601, 1984.
- McGlashan, Thomas H., The Chestnut Lodge Follow-Up Study, I: Follow-up methodology and study sample, Archives of General Psychiatry, 41: 573-85, 1984.
- McGlashan, Thomas H., The borderline syndrome, I: testing three diagnostic systems, Archives of General Psychiatry, 40: 1311, 1983.

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10 MARCH 2000

Date

Richard Kevin Patterson w/m
623 Carabel Rd
6/12/67
Beaufort, SC 29927 (H) 338-5394 (W) 963-4111

STATEMENT OF:

I AM LEAVING IN MY MATHS SMITH OF THE ANDERSON COUNTY SHERIFFS OFFICE WIFE MY

STATEMENT FOR ME IN MY OWN WORDS. LEAN HAD TO WRITE UP THIS MORNING TO CALL

THE INSURANCE COMPANY ABOUT A CAR THAT THE PHYSICIAN WAS DRIVING. WE BOTH WORK

THIRD SHIFT AND WE BOTH GOT OFF LAST NIGHT AND WE WENT TO MY (LEAN) PARENTS HOUSE

AND BUT TO EAT. LEAN SAID SHE WAS GOING TO READ A BOOK TO GET SLEEPY AGAIN AND

GO BACK TO SLEEP. LEAN'S NEICE AND NEEPH (SHANNON & KEVIN JORDAN) WHO WE LIVE WITH,

LEFT US BOTH SITTING ON THE COUCH AND LEAN ASKED ME IF I WOULD GO TO THE

STORE TO GET HER A BEER AND SOME CIGARETTES. I GOT DRESSED AND ASKED HER IF

SHE WANTED ANYTHING ELSE AND SHE SAID "NO." I SAID "I'LL BE BACK IN A FEW MINUTES"

LEAN SAID "I LOVE YOU." I SAID "I LOVE YOU TOO, I'LL BE BACK IN A MINUTE." I WAS

GONE ABOUT FIFTEEN OR TWENTY MINUTES. I WENT TO THE NEW TEXACO AT HWY 252 AND

HWY 413. I BOUGHT A MOUNTAIN DEW AND A PACK OF CIGARETTES FOR ME AND A DIET

MOUNTAIN DEW AND A PACK OF CIGARETTES FOR HER. I CAME HOME AND WALKED INSIDE THE

HOUSE THROUGH THE FRONT DOOR. I SAW LEAN SITTING ON THE COUCH WITH BLOOD ON HER

AND A GUN IN HER RIGHT HAND. THE GUN IS REAL. I THINK HER DAD GAVE IT TO

HER. I CALLED 911 AND THE LADY ON 911 ASKED ME TO TOUCH HER NECK TO TRY TO

GET A PULSE. I TOUCHED HER ON THE LEFT SIDE OF THE NECK AND I DIDN'T FEEL A

PULSE. THE LADY ON 911 TOLD ME TO GO OUTSIDE. EMS GOT THERE FIRST. I STAYED ON THE

PHONE UNTIL POLICE GOT THERE AND I HUNG UP TO TALK TO THEM. LEAN HAS SAID IN THE

PAST THAT EVERYBODY'S PROBLEMS WERE HER FAULT AND IT WOULD BE BETTER OFF IF SHE

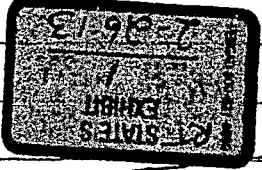
WASN'T HERE. LEAN'S DAD HAS CANCER AND SHE HAS BEEN HAVING A HARD TIME DEALING

WITH THAT. LEAN HAS TALKED ABOUT OVERDOSING ON PILL REPORTS, BUT THAT'S IT. QED

XXXXX END OF STATEMENT XXXXX

A TRUE COPY

MAR 27 2013



VOLUNTARY STATEMENT

DATE 10 MARCH 2000 PLACE ACSO/LEL TIME STARTED 1:55 P.M.I, the undersigned, RICHARD KEVIN PATTERSON, am 33 years of age, having been born on 01/12/67, at GREENVILLE HOSPITALI now live at 623 CAROL RD BELTON, SC 29627I have been duly warned and advised by INV. MATT SMITH & INV. JEFF BLACK, a person or persons, DEPUTY SHERIFFS, ANDERSON COUNTY

that I do not have to make any statement at all, nor answer any questions, and that any statement I make, can and will be used against me on the trial or trials for the offense or offenses concerning which the following statement is herein made. I was also warned and advised of my right to the advice and presence of a lawyer of my own choice before or at any time during my questioning or statement I make, and if I am not able to hire a lawyer I may request and have a lawyer appointed for me, by the proper authority, without cost or charge to me.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to the advice and presence of a lawyer and during any questioning or at any time before or while I voluntarily make the following statement to the aforesaid person, knowing that anything I say can and will be used against me in a court or courts of law.

I declare that the following voluntary statement is made to the aforesaid person of my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

PR I AM HAVING INV. MATT SMITH OF THE ANDERSON COUNTY SHERIFF'S OFFICE WRITE MY STATEMENT FOR ME IN MY OWN WORDS. I MET LEAN APPROXIMATELY FOUR YEARS AGO WHEN SHE CAME TO WORK AT HITACHI WHERE I WORKED. WE STARTED HAVING AN AFFAIR IN MARCH OF 1998. WE MOVED IN TOGETHER IN FEBRUARY 1999 AND LIVED IN EASLEY. WE LIVED IN EASLEY TOGETHER FOR ABOUT FIVE WEEKS AND SHE MOVED BACK IN WITH HER HUSBAND IN DARGUSVILLE. WE CONTINUED TO TALK AND SHE SAID THAT HER HUSBAND FOUND OUT SHE WAS SEEING ME AND SHE WAS THREATENED BY HER HUSBAND THAT IF SHE DID NOT COME HOME HE WOULD HARM HER AND ME. IN MAY 1999, SHE MOVED BACK IN WITH ME FOR PR THREE WEEKS IN AN APARTMENT ON EAST NORTH ST IN GREENVILLE. LEAN LEFT AGAIN AND MOVED BACK IN WITH HER HUSBAND IN DARGUSVILLE. I TOLD HER THAT IT WAS OVER AND WE DID NOT SPEAK. IN AUGUST 1999, LEAN MOVED IN WITH HER NEICE ON CAROL RD. LEAN TOLD ME THAT SHE WAS GOING TO GO THROUGH WITH HER DIVORCE AND I DECIDED TO GIVE HER ANOTHER CHANCE. SOMETIMES WE WOULD ARGUE ABOUT HER HIDING THINGS FROM ME AND SHE WOULD GET VERY DEFENSIVE. LEAN AND I PICKED HER SON UP FROM SCHOOL YESTERDAY. WE CAME HOME TO CAROL RD AND DROPPED HIM OFF. LEAN AND I LEFT AT ABOUT 4:30 PM. AND WENT TO MY GRANDPARENTS' HOUSE. WE GOT TO MY GRANDPARENT'S HOUSE AT ABOUT 5:00 PM. OFF PR OF FERRIS RD IN GREENVILLE. WE LEFT MY GRANDPARENTS' HOUSE AT ABOUT 6:10 PM AND WENT TO SHELL CRACKERS TO EAT. WE LEFT SHELL CRACKERS AT ABOUT 8:00 OR 8:30 PM AND WENT TO SEE LEAN'S DAUGHTER AT JOE'S PR CRAB SHACK ON PELHAM RD. WE WENT TO PR CONTINUED

I have read this statement consisting of THREE page(s), and I certify that the facts contained therein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 3:28 P.M. on the 10 day of MARCH, 2000

WITNESS:

M.D. Smith / V-29

Richard K. Patterson
Signature of person giving voluntary statement

STATEMENT OF: RICHARD KEVIN PATTERSONDate 10 MARCH 2000Page No. TWO

^{2nd} FURMAN UNIVERSITY AND GOT THERE ABOUT 8:45 PM. LEAN AND I WALKED AROUND THE LAKE AND SAT AT A PICNIC TABLE AND LEFT AT ABOUT 9:30 PM. LEAN AND I THEN WENT HOME. WE GOT THERE AROUND 10:00 PM. LEAN AND I WENT BACK TO OUR BEDROOM AND PLAYED RUMMY UNTIL ABOUT 11:15 PM. WE WENT BACK INTO THE LIVING ROOM AND FINISHED WATCHING "WHO WANTS TO BE A MILLIONAIRE." LEAN AND I WATCHED 2 of 26 FOR ABOUT TWENTY MINUTES AND THEN WENT TO BED AT ABOUT 12:20 PM. WE STARTED MAKING LOVE AND WENT TO SLEEP BETWEEN 3:00 AM AND 3:30 AM. LEAN GOT UP THIS MORNING AT AROUND 9:00 AM AND I WOKE UP TOO. I PUT ON SHORTS AND A T-SHIRT AND GOT SOMETHING TO DRINK AND SAT ON THE COUCH AND ^{LOV} ~~LOV~~ SMOKED A CIGARETTE. LEAN WAS ON THE PHONE ON HOLD WITH THE INSURANCE COMPANY. I GOT UP AND WENT TO THE BATHROOM AND CAME OUT AND LEAN TOLD SHANNON SHE WAS GOING BACK TO BED. I WAS SITTING ON THE COUCH AND LEAN WAS ON THE LOVESEAT. SHANNON AND KEITH LEFT. LEAN GOT UP AND SAT BESIDE ME ON THE COUCH. SHE GOT UP AND I ASKED HER IF SHE WAS GOING TO BED AND LEAN SAID "YES." I TOLD LEAN THAT "I WOULD BE THERE IN A MINUTE." LEAN CAME BACK AND SAT DOWN WITH A BOOK. I LOOKED AT LEAN AND ASKED "WHAT WAS WRONG?" AND SHE ASKED ME WHY I TOOK SOME PICTURES OUT OF HER PURSE? I TOLD HER THAT I PUT THE PICTURES IN A NIGHTSTAND AND TOLD HER THAT NO-ONE WOULD BE ABLE TO SEE THEM THERE. LEAN DID NOT LIKE THE WAY SHE LOOKED IN THESE PICTURES. ^{LOV} ~~LOV~~ LEAN TOLD ME THAT SHE HAD GOTTEN THE PICTURES BACK NOW. I TOLD HER THAT I DID NOT ^{LOV} ~~LOV~~ UNDERSTAND WHY SHE WAS SO UPSET. I TOLD LEAN THAT I LOVED HER AND TRIED TO KISS HER AND SHE KEPT PUSHING ME AWAY. THIS HAPPENED THREE OR FOUR TIMES. I STOOD UP AND TOLD HER THAT "THIS IS WHY I DON'T UNDERSTAND YOU. SOMETIMES I DON'T EVEN NO WHO YOU ARE ANYMORE." I WENT INTO THE BEDROOM AND PUT MY CLOTHES ON. WHEN I CAME BACK OUT, SHE WAS WALKING OUT OF KEITH AND SHANNON'S BEDROOM WITH A SILVER GUN, AN AUTOMATIC, I THINK IT WAS A .380. THE GUN WAS AT LEAN'S SIDE AND SHE SAT DOWN ON THE COUCH AND PUT THE GUN BETWEEN HER LEGS. IT HURT MY FEELINGS THAT SHE

x Richard K. PattersonTHOUGHT SHE ^{LOV} ~~LOV~~ CONTINUED →

STATEMENT OF:

RICHARD KEVIN PATTERSON

Date 10 MARCH 2000

Page No. THREE

NEEDED A GUN. I KNEELED DOWN BESIDE HER, ON HER RIGHT SIDE, BESIDE THE COUCH. I ASKED HER "WHAT WAS WRONG WITH YOU?" I ASKED HER "WHAT HAS HAPPENED TO YOU?" I LEANED OVER AND TRIED TO HUG HER AGAIN. LEAN SAID "MAYBE THINGS WOULD BE BETTER IF WE WOULD GO BACK TO THE WAY THINGS WERE BEFORE WE MET." I TRIED TO HUG HER AND KISS HER AGAIN. SHE TOLD ME TO "LEAVE HER ALONE." LEAN REACHED DOWN BETWEEN HER LEGS AND PULLED THE GUN UP. I GRABBED HER HANDS AND TOOK THE GUN AWAY FROM HER. AS I WAS STANDING UP, I STARTED WALKING BACK TOWARDS THE BEDROOM. I TURNED BACK AND SHOT LEAN IN THE BACK OF THE HEAD. I STOOD THERE FOR A FEW SECONDS AND LEAN'S HEAD JUST LEANED BACK. I JUST HEARD ONE BREATH. I WALKED TO THE KITCHEN WITH THE GUN IN MY RIGHT HAND. I WALKED BACK OVER TO LEAN AND PUT THE GUN IN LEAN'S RIGHT HAND. SHE WAS NOT MOVING WHEN I PUT THE GUN IN HER HAND. I WALKED BACK TO THE BEDROOM AND GOT A CIGARETTE AND WALKED OUTSIDE. ON THE WAY TO THE STORE I WAS THINKING ABOUT GETTING TWO DRINKS AND MY BRAND OF CIGARETTES AND HER BRAND OF CIGARETTES. I GOT A JACKET BEFORE I LEFT THE HOUSE. I DROVE UP TO THE STORE AND BOUGHT THE DRINKS AND CIGARETTES AND DROVE HOME. I SMOKE A DORAL CIGARETTE ON THE WAY HOME. I CAME BACK HOME AND WALKED INSIDE AND SAW LEAN AND SHE HAD BLED ALL OVER HER SHIRT. I PUT THE DRINKS AND CIGARETTES ON THE FLOOR. I WAS SCARED AND I COULDN'T BELIEVE I HAD SHOT HER. I CALLED 911 AND TOLD THE LADY ON 911 THAT I HAD GONE TO THE STORE AND RETURNED HOME AND FOUND LEAN HAD SHOT HERSELF. THE LADY ON 911 TOLD ME TO CHECK HER PULSE AND I DID AND COULD NOT FIND ONE. I WENT OUTSIDE ON THE COLORED PHONE AND WAITED ON EMS. EMS GOT THERE FIRST AND I STAYED ON THE PHONE UNTIL THE DEPUTIES ARRIVED. RKP XXXX END OF STATEMENT XXXX

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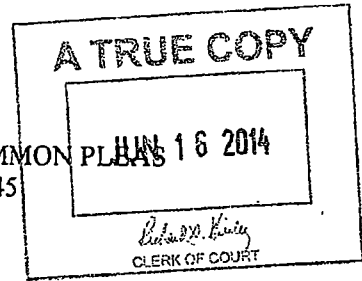
Lillian K. Bailey
CLERK OF COURT

M. B. Smith V. 11

X Richard K. Patterson

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
Richard K. Patterson)
S.C.D.C. No. 270085,)
Applicant.)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2004-CP-04-2245



ORDER OF DISMISSAL

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COMMON PLEAS AND
GENERAL SESSIONS

This matter is before this Court by way of an application for post-conviction relief (PCR) filed July 26, 2004. The State made its return on October 5, 2004. An evidentiary hearing was held on June 18, 2009 before this Court. Applicant was present and represented by Tara Dawn Shurling, Esquire. The State was represented by A. West Lee of the Office of the South Carolina Attorney General. The matter was recessed during direct examination of trial counsel, James Brehm, Esquire. The matter was reconvened on February 26, 2013 before this Court at the Anderson County Courthouse. Applicant was again present and represented by Ms. Shurling. Representing the State was David Spencer of the Office of the South Carolina Attorney General. Mr. Brehm, the sole witness for the hearing, completed his testimony at this hearing.

In addition to Mr. Brehm's testimony, this Court had before it the pleadings of both parties, the trial transcript, the Clerk of Court's records regarding the subject convictions, and Applicant's records from the Department of Corrections.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Anderson County Clerk of Court's orders of commitment. The Anderson County Grand Jury indicted Applicant for Murder (2000-GS-04-1043) and Possession of a Firearm During the

Commission of a Violent Crime (2000-GS-04-1042). Applicant was represented by James Brehm, Esquire. On October 9 - 13, 2000, Applicant was tried by jury and found guilty as indicted. The Honorable J. C. Nicholson, Jr., sentenced Applicant to life imprisonment for murder and a concurrent five year sentence for the weapons conviction.

Applicant appealed the sentence and was represented on appeal by Ms. Shurling. The Court of Appeals affirmed the Applicant's conviction and sentence in an unpublished opinion. State v. Patterson, Op. No. 2003-UP-143 (S.C. Ct. App. filed February 19, 2003). The Supreme Court denied the petition for a writ of certiorari by written Order dated May 13, 2004.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony presented at the post-conviction relief hearing. This Court has further had the opportunity to observe the witness presented at the hearing, closely pass upon his credibility and weigh his testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable

probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

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

Closing argument – Officer's got it right.

Applicant complains that Mr. Brehm (counsel) should have objected to the solicitor's closing argument where the solicitor commented that the officers who took Applicant's inculpatory statement "got it right". Applicant makes this argument by taking the comment out of context. The relevant portion of this argument is as follows:

Now how do we know this confession, this valid part about, I shot her in the head, and from the angle. Well, we know because of gunshot residue, we know because of the angle, we know because of the gun in her lap, right there at the scene. Why did he confess? He didn't have all these lab reports, he didn't know gunshot residue will wipe off, he didn't know any of these things. He was told by detectives, right after the killing, still caught up in things, they did an excellent job, classic text book interview, they say, you know, he's been told gunshot residue on his hands, he doesn't know it can wash off. How's he going to explain that, they did the test. They say, you know, that angle isn't quite right, and the gun, it wouldn't be in her lap, if the entrance wound is back here and we do this rod to show she's facing forward, he didn't know what I was doing, yet comes up here and describes the room, gives you details that I did this at 6:10, I did this at 5:30. He knew exactly what he was doing, the officers didn't know any of these things, how on earth would they know any of that, most of this is just he and Leanne, she was dead, they sure didn't talk to her. He gives a very detailed statement, and the statement is correct. *Isn't it interesting, now he claims all this is incorrect? Isn't it interesting, now he claims all this is incorrect, and I'm sure a lot of it is when it comes to the shooting part as to what actually happened. But isn't it interesting that the police officers get it right, for the first page and a half, because, get it*

all wrong in the shooting, then we pick up and we get it all right down here. Everything else is accurate, according to the Defendant. What does he do, after he shoots her, now this is somebody who is too befuddled to give a statement. . . .

Trial transcript (Tr.) p. 649, line 18 – p. 650, line 22 (emphasis added).

Applicant sophistically references a small portion of this argument, out of context, to suggest that the solicitor vouched for the law enforcement witnesses. However, this argument fails when the statement is put into context. The solicitor was referring to Applicant's trial testimony where he asserted that parts of the written confession were false. During cross-examination, however, Applicant admitted that a number of details in the statement were correct. The solicitor was merely referring to this testimony to argue that the inculpatory statement was not manufactured by law enforcement but represented Applicant's version of events he voluntarily provided law enforcement.

At the PCR hearing, once put in its proper context, PCR counsel agreed that the statement was not objectionable. This Court agrees with this assessment and finds that counsel articulated reasonable professional judgment and his performance was not deficient. Additionally, this Court finds that the argument was not objectionable and therefore, Applicant was not prejudiced by the alleged deficiency.

Closing argument: wipe the gun clean

Applicant further complains that counsel should have objected to the solicitor's closing argument where she theorized that Applicant wiped the gun clean after the shooting. In Applicant's second written statement to law enforcement, he told law enforcement he went into the kitchen. From this, the solicitor theorized it was to wipe the gun clean. This Court finds that based on the record, this argument was not objectionable. This Court finds that it is a reasonable

theory based on the evidence. The solicitor's closing argument is permissible where it stays within the record and reasonable inferences to it. Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002). This Court finds counsel's performance was not deficient for failing to object, nor was the Applicant was prejudiced by the failure to object. This allegation is denied.

Closing argument: how to fire the weapon

Applicant alleges counsel was ineffective for failing to object to the solicitor's instructions on how to fire the weapon. However, again, this argument was an appropriate argument based on evidence before the jury. Testimony was elicited that the gun was being stored unloaded in a drawer. The clip was not loaded in the gun. Tr. p. 427. Further, the State's firearm expert provided testimony about how to fire the weapon. Tr. pp. 309-312; see PCR hearing transcript from February 26, 2013 (PCR 2013 Tr.) pp. 76-78 (counsel agreeing argument was based on firearms expert's testimony). This argument was proper and not objectionable. Further, it was not prejudicial. Applicant fails to meet either prong of Strickland, therefore the allegation is denied.

Mistrial motion for emotional outburst

Applicant alleges counsel was ineffective for not fully developing the record in regards to an emotional outburst by members of the victim's family when autopsy photographs were presented on a projector screen in the courtroom. The following is transcribed as to what occurred at trial:

Q [by solicitor]: I'm showing you State's Exhibit 21[autopsy photo] ---

(Interruption from audience.)

Court: Bailiff, would you ask her to please leave and if anyone else

would like to leave please take advantage of it at this time to leave.
Okay, Solicitor, please proceed.

[Solicitor]: Yes, Your Honor.

Tr. p. 120, lines 17-22.

Counsel then argued for a mistrial as follows:

Your Honor, I'm renewing my objection, the reason I'm objecting is I'm asking for a mistrial. And my reason is Judge I made the objection based on the grounds that these photos are prejudicial. The solicitor placed these on camera, showed them in front of the jury, showed them in front of the victim's family, the victim's family as you know, it's on the record, I'm not sure exactly who it was but there were several friends and family members that blurted out, stared crying, screaming and created a disturbance ---

* * *

There was an outburst from family and friends and had to be escorted out, and again I would ask for a mistrial, that that was highly prejudicial, that impacted the jurors, and was extremely prejudicial to show in front of the family members. Under duress, I don't think it had any purpose and I think it did prejudice the jury.

Tr. p. 125, lines 2 - 21. Note that counsel objected to Exhibit 21 initially before it was presented to the jury. Tr. p. 120.

The Solicitor disagreed with counsel's recollection of events, arguing there was no screaming, although some started crying and left the courtroom. Tr. pp. 125-126.

The trial court agreed with the solicitor's recollection, stating the following:

I think some young lady started crying when she saw the picture and I asked them to escort her out, and he escorted her out, and I'll deny your motion.

I will give the jury a curative charge as to not take any sympathy or passion as to what happens from the audience when they come back from lunch.

Tr. p. 126, lines 3-8. Then the trial court gave the following curative instruction:

Mr. Foreman and ladies and gentlemen of the jury, prior to lunch there was a crying spell from someone in the audience, and I'd just like to instruct you, your job, as jurors, is not to find anyone innocent or guilty based upon your prejudice, compassion or sympathy. Your job is to find the facts as you see them from the witness stand, and not to base that on any compassion, prejudice, or sympathy, and I would so instruct you to ignore any outbreaks from the audience and I'll try to keep it to a minimum.

Tr. p. 126, line 23 – p. 127, line 6.

Counsel testified at the PCR hearing that he felt he should have put more on the record. However, the transcript reveals counsel explicitly stated what he perceived to occur in the court room. The trial court simply did not agree with counsel's recollection of events and found the outburst was more limited than what counsel proposed. Counsel's performance was not deficient in making his objection simply because the trial court viewed the extent of the outburst differently.

It also appears that counsel never objected to the sufficiency of the curative instruction. In this regard, counsel's performance is deficient. However, Applicant was not prejudiced as a curative instruction is held to generally cure error and the decision whether or not to grant a mistrial is in the sound discretion of the trial court.

The Court of Appeals addressed this issue as follows in its unpublished opinion:

Issue II: State v. Rosemond, 335 S.C. 593, 596-597, 518 S.E.2d 588, 589-90 (1999) ("The relevance, materiality and admissibility of photographs are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion. . . . If the photograph serves to corroborate testimony, it is not an abuse of discretion to admit it."); State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000) ("A mistrial should only be granted when absolutely necessary. In order to

receive a mistrial, the defendant must show error and resulting prejudice.") (internal citation omitted); State v. Kelsey, 502 S.E.2d 63, 69, 331 S.C. 50, 73 (1998) ("The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion."); State v. Mitchell, 330 S.C. 189, 498 S.E.2d 642 (1998) (stating a defendant cannot acquiesce in an issue at trial and then complain about it on appeal).

So it appears that the Court of Appeals found that the trial court did not abuse its discretion in denying the motion for mistrial. An appropriate curative instruction is generally considered to cure any error. State v. Dawkins, 297 S.C. 386, 377 S.E.2d 298 (1989). On appeal, a denial of a motion for mistrial will not be reversed absent a showing that the trial court abused its discretion. Id.

"A mistrial should not be granted except in cases of manifest necessity and ought to be granted with the greatest caution for very plain and obvious reasons." State v. Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989) *cited in* State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999) (noting trial judge should exhaust other methods to cure possible prejudice before aborting a trial). This Court find that counsel was not ineffective in his motion for mistrial as the trial court simply took a different view of what occurred in the courtroom and further, the trial court did not abuse its discretion in denying the motion for mistrial. This Court also believes that the curative instruction cured any prejudice. Applicant did not meet his burden of proving prejudice.

As to Applicant's allegation that the photographs should have been kept out of evidence, counsel did object to State's exhibits #21 and #22, and as indicated by the Court of Appeals' opinion, the trial court did not err in allowing the photographs into evidence. State v. Rosemond, 335 S.C. 593, 596-597, 518 S.E.2d 588, 589-90 (1999) ("The relevance, materiality and admissibility of photographs are matters within the sound discretion of the trial court and a ruling

will be disturbed only upon a showing of an abuse of discretion. . . . If the photograph serves to corroborate testimony, it is not an abuse of discretion to admit it."'). Accordingly, trial counsel was not ineffective in regards to the admission of the photographs.

Expert on Post-traumatic Stress Disorder

Applicant alleges counsel should have used an expert on post-traumatic stress disorder to explain his behavior during and after the shooting. Counsel testified that he felt his resources were better utilized with the expert pathologist that testified at trial. He was concerned that such behavioral evidence would open the door for acts concerning Applicant's conduct with his wife and his military service. Counsel admittedly had difficulty recalling and articulating his precise trial strategy, although he testified credibly that he had a strategic reason for not retaining this kind of expert.

This Court finds that Applicant has not met his burden of proving counsel's performance deficient. Counsel considered and rejected hiring such an expert and determined that he was better served in hiring the pathologist, Dr. Ward. The potential for opening the door when presenting evidence of a defendant's behavior, when a defendant has had such bad behavior, is understandable. Further, there was some difficult to explain self-protective actions, like the fact that Applicant put the weapon in the deceased's hands and that he bought two bottles of soda and two packs of cigarettes to make it look like he was away at the store when victim shot herself. Counsel was concerned that a psychiatric expert could backfire. See PCR 2013 Tr. pp. 83-88. This Court cannot say his reservations were unreasonable and therefore finds that counsel exercised reasonable trial strategy.

Further, Applicant has not met his burden of proving prejudice. Applicant submitted

deposition testimony from Dr. Thomas Martin. Dr. Martin never met with Applicant and only provided general testimony about post-traumatic stress disorder. Dr. Martin was unable to give any opinion about whether Applicant suffered from the disorder. While determining whether an applicant suffered from such a disorder at the time of the homicide may be difficult ten years after the fact, this Court notes that Dr. Martin testified that he "wouldn't give up on it" had he been asked to evaluate Applicant. Deposition transcript (Depo Tr.) p. 14, line 23- p. 15, line 22. Dr. Martin further stated: "But I would not write off a case simply because the person is now ten years out." Depo Tr. p. 15, lines 24-25. Regardless, Applicant failed to present expert testimony that Applicant was actually suffering from post-traumatic syndrome at the time of the offense. Accordingly, this Court finds any benefit from retaining an expert at trial speculative. This Court finds that Applicant has failed to meet his burden of proving prejudice. Accordingly, this allegation is denied.

Involuntary manslaughter charge

Applicant alleges counsel should have requested a charge on involuntary manslaughter. Counsel at one point requested the charge, but later withdrew it. Counsel testified at the PCR hearing that he did not request the charge because it was not consistent with Applicant's defense that the victim committed suicide and he was unsuccessful in preventing it from occurring. This Court finds counsel exercised reasonable professional judgment and agrees that an instruction was not warranted based on the evidence.

Involuntary manslaughter is defined as follows:

- (1) The unintentional killing of another without malice, but while engages in an unlawful activity not naturally tending to cause death or great bodily harm or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless

disregard for the safety of others. To constitute involuntary manslaughter, there must be a finding of criminal negligence, statutorily defined as a reckless disregard of the safety of others. Recklessness is a state of mind in which the actor is aware of his or her conduct, yet consciously disregards a risk which his or her conduct is creating. . . . The negligent handling of a loaded gun will support a charge of involuntary manslaughter.

State v. Gibson, 390 S.C. 347, 356, 701 S.E.2d 766, 771 (Ct. App. 2010) (citation omitted).

In the instant case, there was no evidence at trial that Applicant was engaging in an unlawful activity when he allegedly tried to prevent the victim from committing suicide. Further, there was no evidence that Applicant acted in a reckless disregard or otherwise acted with criminal negligence in his alleged attempt to prevent the victim from killing herself. Accordingly, this Court finds that an instruction was not warranted on involuntary manslaughter. This Court finds Applicant failed to prove either prong of Strickland.

Accident

Applicant further alleges counsel was ineffective for failing to request a charge on accident. Counsel testified that he did not think evidence supported a charge of accident. The trial court did provide a charge on suicide. Counsel testified that his theory of the case is that the victim intended to commit suicide and succeeded. This Court finds that no evidence of accident was provided to the jury. At the PCR hearing, Applicant suggested that perhaps the victim abandoned her intention to commit suicide. But this Court finds such a contention speculative and unsupported by the record. Instead, under most of Applicant's version of events (he provided several to law enforcement), the victim attempted and succeeded to commit suicide.

Further, this Court finds that overwhelming evidence supports the verdict and this defense would simply not be reasonably likely to succeed. The projectile's point of entry was

behind and above the ear and the exit wound was through the jaw. Based on the trajectory and the evidence that the gun was fired from more than 24" from the victim, in addition to Applicant's inculpatory statement admitting he shot the victim intentionally and his obviously self-protective behaviour, this Court finds evidence of guilt overwhelming. This Court finds that Applicant did not meet his burden of proving either prong of Strickland.

Motion to suppress written statement as fruit of the poisonous tree

Applicant alleges counsel should have moved to suppress a written statement he made to law enforcement because prior to the statement, Applicant gave an un-Mirandized statement. Under the case law in effect at the time of trial, the fruit of the poisonous tree doctrine would not apply to where a defendant gives a confession after Miranda warnings are given, even though there was a previous un-Mirandized custodial statement. Oregon v. Elstad, 470 U.S. 298 (1985).¹ Accordingly, trial counsel was not ineffective as counsel is not required to be clairvoyant and anticipate changes in the law.

Further, the record reflects that Applicant was not a suspect and was free to leave until he admitted shooting the victim, at which point he was given Miranda warnings. Accordingly, the written statement was admissible.

Therefore, Counsel's performance was not ineffective and this allegation is denied.

Rule 5 issue as to hair

Applicant complains counsel's performance was deficient for failing to move for a mistrial because of the State's late discovery of the victim's hair, which had been sent to SLED.

¹ In Missouri v. Seibert, 542 U.S. 600 (2004), the United States Supreme Court found that Miranda warnings given mid-interrogation after a confession was given were ineffective and therefore, the post-Miranda statement should be suppressed as well.

and was later misplaced or otherwise missing until shortly before trial. Counsel testified he wanted his expert to test the hair for gun powder residue and approached the bench when the hair reappeared. Counsel admitted he failed to put his motion for continuance on the record. Counsel's performance in this regard was deficient. However, Applicant has not proven prejudice. Applicant has not sought to test the hair and there is no evidence in the record that had the defense expert tested the hair, he would have found gun powder residue on the hair.

Instead, the trial testimony suggests it was unlikely that had the hair been tested by the defense expert, gun powder residue would have been detected, which would be evidence that the gun was fired from a closer range. At trial, the State's pathologist testified he viewed the hair with magnifying lenses and did not see any gun powder residue in the victim's hair. Tr. pp. 210-211. This Court cannot speculate on the results of a test that never occurred and therefore finds Applicant has failed to meet his burden of proving prejudice. Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (finding one could only speculate whether counsel could have done a better cross-examination of a doctor, therefore, applicant did not meet his burden of proving prejudice). Accordingly, this allegation is denied.

Failure to subpoena victim's husband

Applicant alleged that counsel was ineffective for failing to subpoena victim's husband, but then withdrew this allegation. Accordingly, this allegation is waived.

CONCLUSION

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

dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied with prejudice;
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13 day of June, 2015. *[Signature]*

[Signature]
J. Cordell Maddox, Jr.
Presiding Judge
10th Judicial Circuit

[Signature], South Carolina

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COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

RICHARD KEVIN PATTERSON,)
)
 Applicant,)
)
 v.)
)
 THE STATE OF SOUTH CAROLINA,)
 Respondent.)
 _____)

04-CP-04-2245

APPLICANT'S MEMORANDUM IN
 SUPPORT OF PCR APPLICATION
 IN THE FORM OF A PROPOSED ORDER

THIS MATTER comes before the Court by way of an Application for Post-Conviction Relief filed on July 26, 2004 and an Amended Application filed on June 18, 2009. The State filed its Return on May 21, 2007. An evidentiary hearing was convened on June 18, 2009¹ and was completed on February 26, 2013². The Applicant was present at both proceedings and was represented at both hearings by Tara Dawn Shurling, Esquire. The State was represented by Assistant Attorney General, A. West Lee at the first hearing and Assistant Attorney General David Spencer at the second hearing.

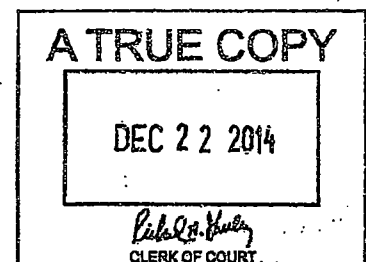
PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Anderson County Clerk of Court's orders of commitment. The Anderson County Grand Jury indicted the Applicant for Murder (2000-GS-04-1043) and Possession of a Firearm During the Commission of a Violent Crime (2000-GS-04-1042). The Applicant was represented on the charges by James Brehm, Esquire³. On October 9-13, 2000, the Applicant

¹ References to the record of this proceeding will be cited as PCR I.

² References to the record of this proceeding will be cited as PCR II.

³ Hereafter, Trial Counsel.



went to trial by jury and was found guilty as indicted. The Honorable J. C. Nicholson, Jr. sentenced the Applicant to confinement for a term of life for murder and for a concurrent term of five (5) years on the weapons conviction.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Tara Dawn Shurling, Esquire. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. *State v. Patterson, Opinion No. 2003-UP-143 (S.C.Ct.App. filed February 19, 2003)*. The South Carolina Supreme Court denied the Applicant's Petition for a Writ of Certiorari by written Order dated May 13, 2004. Post-Conviction Relief Counsel, Tara Dawn Shurling, represented the Applicant in the perfection of his direct appeal. At the outset of the evidentiary hearing held in this case, the Applicant was sworn by the Court and affirmatively waived his right to raise any claims of ineffective assistance of appellate counsel. The record reveals that the Applicant was thoroughly advised of his right to raise claims of ineffective assistance of counsel against appellate counsel and entered a knowing and voluntary waiver of that right. PCR I Tr. p. 4, l. 12- p. 7, l. 16.

ALLEGATIONS RAISED

The Applicant has alleged generally that he received ineffective assistance of counsel prior to and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as, Article I, Section 14, of the South Carolina Constitution. In support of that claim he has raised the following specific allegations:

1. Trial Counsel failed to adequately investigate the case prior to trial.
2. Trial Counsel failed to adequately prepare and present witnesses at trial.
3. Trial Counsel failed to recognize and present objections to errors which occurred during trial.

4. Trial Counsel failed to develop and present viable defenses to the charges against the Applicant prior to and during his trial.
5. Trial Counsel was ineffective for failing to object to arguments by the Solicitor in which she attempted to bolster the credibility of State's police witnesses by impermissibly vouching for their credibility by stating, "*but, isn't it interesting the police officers get it right.*"
6. Trial Counsel was ineffective for failing to renew his Motion for a Mistrial following the curative charge given by the trial court in response to an emotional outburst in the courtroom prompted by the State's introduction of gruesome crime scene photographs which had a prejudicial impact on the Applicant's ability to receive a fair trial.
7. Trial Counsel was ineffective for failing to ask to review any photographs the prosecution intended to introduce in advance, and for failing make an appropriate motion *in limine* to suppress those photographs, whose probative value was far outweighed by their potential for appealing to the passions and prejudices of the jury.
8. Trial counsel was ineffective for failing to ask that friends and family be given warning in advance of the display of gruesome crime scene photographs and for failing to ask that those present in the courtroom be told that if anyone anticipated having difficulty remaining composed during the display of crime scene photographs of the victim, they should either position themselves so that they were insulated from viewing them or remove themselves from the proceeding while the photographs were being displayed.
9. Trial counsel was ineffective for failing to adequately challenge the admissibility and reliability of the statements allegedly made by the Applicant to the police following the death of the victim and for failing to sufficiently highlight factors which supported his claim that the statements in question were taken when he was not competent to know what he was saying and when he was not competent to proof statements written by a third party for accuracy.
10. Trial counsel was ineffective for failing to introduce expert testimony concerning shock and post-traumatic stress and their possible impact on the likelihood that the Applicant might make inconsistent statements and/or false admissions in response to police interrogation.
11. Trial counsel was ineffective for failing to introduce expert testimony concerning shock and post-traumatic stress and what effect witnessing a violent suicide by a

loved one might have on his ability to adequately proofread and adopt by incorporation a statement written by a third party.

12. Trial counsel was ineffective for failing to make an adequate proffer for the record to demonstrate the degree of the emotional response from the gallery following the display of enlarged gruesome crime scene photographs by projector during the Applicant's trial.
13. Trial counsel was ineffective for neglecting to object to a portion of the State's closing argument wherein the solicitor argued matters not in evidence, and, in effect, gave expert ballistics testimony by asserting that the only explanation for the victim not having gunshot residue on her hands was for the Applicant to have wiped off the gun before he put the weapon in her hand after the shooting, where she was not a witness in this case and had not been qualified as an expert in the field of ballistics.
14. Trial counsel was ineffective for neglecting to object to a portion of the State's closing argument wherein the solicitor argued matters not in evidence, and, in effect, gave expert ballistics testimony by making assertions concerning the operation of the weapon used in this case and by giving a demonstration as to the proper operating procedure for the weapon in question, where she was not a witness in this case and had not been qualified as an expert in the field of ballistics.
15. Trial counsel was ineffective for neglecting to object to a portion of the State's closing argument wherein the solicitor argued a critical matter not in evidence by asserting as a known fact that the weapon which killed the deceased *was not loaded* until the Applicant loaded it with malice aforethought and by improperly stating that the Defendant took the safety off this weapon before the victim was shot.
16. Trial Counsel was ineffective for withdrawing his request for a jury instruction on the charge of involuntary manslaughter where under at least one possible interpretation of the Applicant's testimony the jury may have believed that he struggled with the deceased for the weapon under circumstances which showed wanton and willful disregard for the victim's safety.
17. Trial Counsel was ineffective for failing to point out to the jury that although the prosecution had introduced testimony and evidence designed to demonstrate that the physical evidence in this case was inconsistent with suicide, that same evidence was not inconsistent with the Applicant's testimony that the gun went off while he was struggling with the victim for the weapon in an effort *to keep her from* shooting herself.
18. Trial Counsel was ineffective for failing to adequately cross-examine witnesses concerning whether the testimony and evidence introduced by the prosecution to

demonstrate that the physical evidence in this case was inconsistent with suicide was in fact not inconsistent with the shooting having taken place when the gun went off while the Applicant was struggling with the victim for the weapon in an effort to *keep her from shooting herself*.

19. Trial Counsel was ineffective for failing to request a jury instruction on the defense of accident when the facts as set forth in the Applicant's testimony clearly asserted that he gun went off while he was struggling with the victim in an attempt to stop her from committing suicide.
20. Trial Counsel was ineffective for failing to clearly argue to the jury that the Applicant's position was that the victim was shot when the weapon he was attempting to take away from her discharged during their struggle for control over the weapon.
21. Trial Counsel was ineffective for consistently failing to clearly argue the distinction between the victim committing suicide and the Applicant's actual testimony which was that she was shot while he was struggling with her for control over a weapon which he believed she was about to use to commit suicide. Counsel's error in this regard being highly prejudicial to the defense where both the awkward angle of the gun shot and absence of gun powder residue around the wound were more consistent with a discharge during a struggle for a weapon than with an unimpeded suicide by handgun.
22. Trial Counsel was ineffective for characterizing the victim's death as a suicide to the jury when the facts of the shooting as conveyed in the Applicant's trial testimony were consistent with the accidental discharge of the weapon during a struggle for the gun while the Applicant was trying to stop the victim from killing herself.
23. Trial Counsel was ineffective for failing to object to arguments by the State concerning the inconsistency of the physical evidence in this case from that normally found in suicide shootings where the actual testimony of the Applicant was that the gun discharged while he and the deceased were struggling over the weapon; a scenario far more consistent with the physical evidence in this case.
24. Trial Counsel was ineffective for neglecting to subpoena as a witness for the defense the deceased's former husband, Steve Pearson, to testify to a previous incident where he had to take a gun away from the victim in order to prevent her from committing suicide in a sudden and unexpected manner.

During the evidentiary hearings held in this PCR matter the Applicant also developed testimony which addressed the following failures of Trial Counsel.

25. Trial Counsel was ineffective for neglecting to make arrangements for the Applicant to make another statement to law enforcement after the initial shock of this traumatic event.
26. Trial Counsel was ineffective for neglecting to make an appropriate objection when evidence the Applicant had previously been told was missing and unavailable, a hair sample from around the fatal wound, suddenly appeared in the courtroom and was introduced into evidence at trial as State's Exhibit No. 37.
27. Trial Counsel was ineffective for neglecting to make Motion for a Mistrial when evidence the Applicant had previously been told was missing and unavailable, a hair sample from around the fatal wound, suddenly appeared in the courtroom and was introduced into evidence at trial as State's Exhibit No. 37.
28. Trial Counsel was ineffective for failing to, at minimum; make a request for a recess to enable the Applicant's expert, Dr. Ward, to examine the hair sample that suddenly appeared at trial after the defense had been denied access to this evidence for review by their independent expert.

EVIDENCE BEFORE THE COURT

In deciding this collateral action this Court has before it a copy of the trial record, all the exhibits introduced during the Applicant's trial, a transcript of the initial PCR hearing held in this matter on June 18, 2009, a transcript of the second evidentiary hearing held in this case on February 26, 2013, all exhibits introduced during those proceedings, a transcript of the deposition of Dr. Thomas V. Martin, M.D. taken on August 5, 2010, as well as Dr. Martin's Curriculum Vitae introduced as an exhibit at that deposition, the Applicant's records from the South Carolina Department of Corrections and the records of the Beaufort County Clerk of Court regarding the subject convictions and sentences. What follows below are this Court's findings of fact and rulings of law as required by S.C. Ann. §17-27-80.⁴

⁴ For purposes of supporting this Order on appeal, the findings of fact and rulings of law contained herein may be viewed as interchangeable as may be necessary to affirm the ruling of this Court on any appeal which may follow.

STANDARD OF REVIEW

This Application for Post-Conviction Relief generally raises numerous specific allegations of ineffective assistance of counsel. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U. S. Const. Amend. VI; Lomax v. State, 379 S.C. 93, 665 S.E.2d 164(2008). The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. Suber v. State, 371 S.C. 554, 558, 640 S.E. 2d 884, 886 (2007); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rule 71.1(e), SCRCP. In evaluating an Application for Post-Conviction Relief, the moving party must demonstrate that Trial Counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. Strickland v. Washington, 466 U.S. 668 (1984); Speaks v. State, 377 S.C. 396, 399, 600 S.E.2d 512, 514 (2008). In other words, the Applicant must show that, but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. Id.; Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011); Ard v. Catoe, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007); Rhodes v. State, 349 S.C. 25, 31, 561 S.E.2d 606, 609 (2002).

On the one hand, where Trial Counsel articulates a valid reason for employing certain trial strategies, such conduct should not be deemed ineffective assistance of trial counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995); Stokes v. State, 308 S.C. 546,

419 S.E.2d 778 (1992). In order to satisfy the first prong of the Strickland standard, a PCR applicant must show that counsel's performance fell below an objective standard of reasonableness. Franklin v. Catoe, 346, S.C. 563, 570-571, 582 S.E.2d 718, 722 (2001). On the other hand, counsel may not explain away errors and omissions which acted to prejudice his client's ability to receive a fair trial simply by labeling them matters of trial strategy or tactics. In the case of Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002), the Supreme Court of South Carolina found that

Counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness. Where counsel articulates a strategy, it is measured against an objective standard of reasonableness.

DISCUSSION

The Applicant has alleged in numerous allegations that he received ineffective assistance of counsel prior to and during his jury trial. For all the reasons set forth below, this Court is constrained to agree.

I.

Allegations 1, 2, 9, 10, 11 and 25.

Trial Counsel failed to adequately challenge the admissibility of statements attributed to the Applicant, failed to introduce expert testimony which would have supported the suppression of the statements in question and failed to make appropriate arrangements for the Applicant to make another statement to law enforcement once he was no longer in shock following the shooting death of his girlfriend.

In his PCR action, the Applicant specifically alleges that Trial Counsel was ineffective for failing to adequately challenge the admissibility and reliability of the statements allegedly made by the Applicant to the police following the death of the victim and for failing to sufficiently highlight factors which supported his claim that the statements in question were

taken when he was not competent to know what he was saying and when he was not competent to proof statements written by a third party for accuracy. Trial counsel was ineffective for failing to introduce expert testimony concerning shock and post-traumatic stress and their possible impact on the likelihood that the Applicant might make inconsistent statements and/or false admissions in response to police interrogation. Trial counsel was ineffective for failing to introduce expert testimony concerning shock and post-traumatic stress and what effect witnessing a violent suicide by a loved one might have on his ability to adequately proofread and adopt by incorporation a statement written by a third party. Trial Counsel was ineffective for neglecting to make arrangements for the Applicant to make another statement to law enforcement after the initial shock of this traumatic event.

According to his PCR testimony, Trial Counsel, James Brehm, was hired by the Applicant's family on March 20, 2000. The victim was shot and killed on March 10, 2000. After Trial Counsel was hired, the Applicant was released on bond under the terms of which he was on house arrest at his parent's home. PCR I Tr. p. 20, l.13 – p. 21 l. 3. PCR I Tr. p. 20, ll. 1-11. PCR I Tr. p. 21 l. 10-13.

In his PCR testimony, Trial Counsel acknowledged that the Applicant had made at least four statements to law enforcement before he was hired. The first statement was made in the context of the 911 call the Applicant placed in this case. The second statement attributed to the Applicant was made to an officer in the front yard of the home he shared with the victim. The Applicant then gave two written statements with additional oral remarks between the two written statements. PCR I Tr. p. 21, l. 18- p. 22, l. 13. The Applicant was initially interviewed by the police when they responded to a 911 call reporting the victim's suicide. At that time he reiterated that the victim had shot herself. That statement was reduced to writing. The Applicant

was thereafter taken to the law enforcement center in a police car after members of the victim's family became hostile towards the Applicant. The Applicant was questioned at length and was challenged on his version of the facts leading to the victim's death before he supposedly made a spontaneous admission of guilt. The Applicant was not given *Miranda* warnings until after he had allegedly made the oral statement admitting deliberately shooting the victim. Trial Counsel initially challenged the admissibility of all the inculpatory statements attributed to the Applicant. The Solicitor subsequently announced that the State would not attempt to introduce the oral statements attributed to the Applicant. In response to that announcement, Trial Counsel abandoned all challenges to the legality of the circumstances under which this oral statement was made. PCR I Tr. p. 31, l. 13- p. 35, l. 22. Trial Counsel acknowledged that as soon as the Solicitor agreed not to go into the oral confession, Jackson Trial Tr. p. 65, ll. 11-15, the focus of his motion to suppress became the written statement given by the Applicant *after* the oral statement. Trial Counsel admitted that if the Solicitor had not announced that she wouldn't try to introduce the oral confession, he would have gone forward with his argument that the oral admissions were inadmissible inasmuch as they were the product of a custodial interrogation held in the absence of *Miranda* warnings. He hesitantly admitted that if the oral inculpatory statement was taken in violation of the Applicant's rights then he should have argued that the subsequent written statement that memorialized that oral statement was the fruit of the original constitutional violation. PCR I Tr. p. 38, l. 3- p. 39, l. 25. He ultimately admitted that on the facts of this case, the Applicant needed to argue the illegality of the information extracted from the Applicant *before* he was mirandized in order to effectively argue the admissibility of the written statement issued after a *Miranda* waiver. PCR I Tr. p. 40, ll. 1-8.

Trial Counsel admitted that once the trial judge ruled that the Applicant inculpatory written statement was admissible, he fully expected the prosecution to harp on it. PCR I Tr., p. 43, l. 10- p. 44, l. 5. He further acknowledged that once they knew the so-called written confession was coming in, the only hope for the Applicant was to demonstrate that the statement was not reliable. PCR I Tr., p. 44, ll. 8-24. When asked why he did not hire an expert in the field of psychiatry to testify to the known effects of shock in the aftermath of extreme trauma, Trial Counsel said he was trying to prioritize and allocate available resources. He testified that he concluded it was more important to hire a Dr. Ward, a forensic pathologist and an investigator. Trial Counsel acknowledged that the Applicant was not a minor, and that he had no financial resources. Trial Counsel testified that he was aware he could petition the Court to authorize funding from the Office of Indigent Defense to pay for a psychiatric expert, but stated that he never followed through with such a request. PCR I Tr. p. 44, l. 25- p. 51, l. 16. The Applicant initially told the police that the victim committed suicide. After being hammered by the police about the fact that the evidence didn't fit a suicide, he supposedly admits he shot her. PCR I Tr. p. 51, l. 19- p. 52, l. 11. At trial The Applicant testified that the victim was talking about suicide when he saw her begin to raise the gun. According to his trial testimony he grabbed the gun to try and get it away from her. As he tried to take the gun from her, it went off, and she was killed. Trial Counsel acknowledged that although the Applicant's testimony was not consistent with the statements made by him in the immediate aftermath of this tragedy, it was entirely consistent with what he had told Trial Counsel from the outset of his representation in this case. PCR I Tr. p. 52, l. 16- p. 53, l. 20. Trial Counsel admitted that he never even considered taking his client to the police and asking to make another clarifying statement once he was no longer under the immediate effects of this horrible incident. His failure to do so resulted

in the State being able to argue at trial that the Applicant's trial testimony was the first time he had ever asserted that the gun went off while he was struggling with the victim for the weapon. PCR I Tr. p. 53, l. 21- p. 54, l. 15. Trial Counsel testified that, "*if they would have allowed me to do that*" it would have been beneficial for him to have taken the Applicant in to make another statement when Trial Counsel was hired approximately ten (10) days after the shooting.⁵

A confession is inadmissible for all purposes, including impeachment, where it is involuntarily made. *State v. White*, 311 S.C. 289, 294, 428 S.E.2d 740, 743 (Ct. App. 1993). An involuntary, incriminating statement is inadmissible for any purpose including impeachment. *State v. Victor*, 300 S.C. 220, 221, 387 S.E.2d 248, 249 (S.Ct. 1989); *State v. Hook*, 348 S.C. 401, 416-417, 559 S.E.2d 856, 864 (S.Ct. 2001). It is a well established principal in South Carolina that the admissibility of repudiated confessions is a question to be first determined by the trial judge and then finally decided by the jury. *State v. Harris*, 212 S.C. 124, 46 S.E.2d 682, 689 (1948); *State v. Miller*, 211 S.C. 306, 45 S.E.2d 23, 26 (1947). In ruling on the admissibility of a confession the trial judge is required to apply a preponderance of the evidence standard. *State v. Smith*, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977); *State v. Neeley*, 271 S.C. 33, 40, 244 S.E.2d 522, 526 (1978). See also, *Colorado v. Connelly*, 479 U.S. 515 (1986); *Lego v. Twomey*, 404 U.S. 477 (1972). The jury however, must be instructed to apply a beyond a reasonable doubt standard in determining whether a confession was voluntarily made. *State v. Washington*, 296 S.C. 54, 370 S.E.2d 611, 612 (1988). *State v. Peake*, 291 S.C. 138, 352 S.E.2d 487 (1987); *State v. Drayton*, 287 S.C. 226, 337 S.E.2d 216 (1985); *State v. Adams*, 277 S.C. 115, 283 S.E.2d 582 (1981). "Where the voluntariness of a statement is in dispute, the jury must be instructed to determine whether, beyond

⁵ Trial Counsel did not explain why he believed the police might refuse the Applicant's request to make another statement. Likewise he apparently did not consider that the fact of such a refusal would itself have evidentiary value had it occurred.

a reasonable doubt, the statement was voluntarily given under the totality of the circumstances." *Drayton*, 337 S.E.2d at 217 (1985). The Applicant argues that Trial Counsel should have challenged the admissibility of his oral inculpatory statement on the ground that it was secured in violation of the Applicant's rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). This Court agrees. It is clear from the record below that Trial Counsel intended to challenge that statement on the ground that the statement was secured under circumstances which amounted to custodial interrogation and the Applicant had not been properly advised of his rights pursuant to *Miranda*. Counsel admittedly totally abandoned that challenge once the prosecution indicated that they would not attempt to introduce the Applicant's oral statements. This decision by Trial Counsel totally overlooked the argument that the Applicant's subsequent inculpatory written statement was the fruit of the poisonous tree. Counsel admitted that he did not consider this argument when abandoning his challenge to oral inculpatory statement made by the Applicant.

During the direct examination of Trial Counsel at the February, 2013 PCR hearing, the Applicant introduced, without objection, the deposition taken from Dr. Thomas V. Martin, M.D., taken on August 5, 2010. This deposition, marked as Applicant's Exhibit No. 2, was proffered as the type of expert testimony that would have been beneficial to the defense in this case. PCR II Tr. p. 60, l. 25 – p. 62, l. 10. In his deposition, Dr. Martin, an expert in the field of forensic psychiatry, addressed the many physical and mental effects of shock in the aftermath of a traumatic event. He explained, for example, the role emotional guilt might have on the reliability of a statement made by an individual suffering from shock and post traumatic stress. His deposition reveals the fact that many of the actions of the Applicant immediately after this shooting may have been explained by shock. Further, he provided that often people in shock after a very traumatic event will experience blanks in their memory which they may attempt to

compensate for through what is known in his field as confabulation. He further explained that someone who is experiencing guilt over the circumstances of an event might engage in non-volitional confabulation which reflected unfounded guilt. While he expressed the fact that the term of shock will vary from case to case, in his professional experience you can expect it to be at its worst within 24 hours after an event. Dr. Martin opined that he would have been in a far better position to evaluate the degree to which shock may have impacted the Applicant's ability to give reliable statements concerning this event if he had been hired contemporaneously with the Applicant's arrest back in 2000. At the second PCR hearing held in this case, Trial Counsel added to the explanation he gave at the first proceeding for not hiring a psychiatric expert to address the impact of shock on the Applicant's ability to give a reliable statement in the immediate aftermath of the victim's death. At the June, 2009 hearing, Trial Counsel testified that the decision not to hire such an expert was purely a matter of resource allocation. He claimed he was aware that he could have asked to have the Applicant declared indigent and could have requested funding from the Office of Indigent Defense for such an expert, but he simply didn't follow through with that. PCR I Tr. p. 45, l. 14 – p. 49, l. 1. By the time of the February 26, 2013 proceeding, Trial Counsel claimed that his decision not to hire such expert *testimony "could have opened the door to some more damaging evidence on testimony coming in."* PCR II Tr. p. 53, ll. 4-17. Trial Counsel was initially unable to give specific examples of what evidence he was concerned about opening the door to. PCR II Tr. p. 54, ll. 4-22. He subsequently indicated that the prosecutor had a file she would not let him see which she referenced as supporting her desire to put the Applicant *"in jail for the rest of his life."* He also indicated that accusations came out of the bond hearing that caused him to "[say] whoa, this ... there's a lot more to this than I knew at the time." PCR II Tr. p. 56, ll. 6-9. While Trial Counsel

went on to allude to matters he didn't want to open the door to, he initially cited to nothing except a vague reference to the Applicant's military service and his *assertion "that there were things that I didn't want her to be able to get into in that regard."* PCR II Tr. p. 56, ll. 21-25; PCR II Tr. p. 57, ll. 1-8. On cross-examination, Trial Counsel clarified that he wasn't afraid of any testimony that might come in about the Applicant's military service. He testified that his pre-trial conversations with the prosecutor indicated that she was prepared to use the fact that the Applicant had firearms training against him, and Trial Counsel indicated that he didn't want to introduce expert psychiatric testimony for fear of *"going down that path."* PCR II Tr. p. 87, l. 23- p. 88, l. 18. He subsequently admitted however, that there was nothing about the shooting in this case which required special firearms training. PCR II Tr. p. 117, l. 4 – p. 118, l. 2. During the second PCR proceeding in this case, the Respondent asked Trial Counsel to verify that the investigator he used in the case had gotten some information that the Applicant's wife was afraid of him. Trial Counsel testified that was "right", but went on to note that the wife who was supposedly afraid of him took him back multiple times. PCR II Tr. p. 85, l. 10- p. 86, l. 16.

Trial Counsel agreed that the Solicitor in this case was a fairly enthusiastic prosecutor in all her cases. He admitted however, that regardless of her pre-trial threats, this zealous prosecutor made no attempt whatsoever to introduce any prior bad act evidence under either Rule 404, SCRE, or standard *Lyle*⁶ analysis. PCR II Tr. p. 57, l. 13- p. 58, l. 10. He did continue to assert that he didn't want evidence about the Applicant's military service to come in, and noted that the State might respond to expert psychiatric testimony concerning shock with evidence of a history that would enable the prosecutor *"to argue that it's going to be less traumatic on someone that's done stuff like that in the past on numerous occasions...."* PCR

⁶ State v. Lyle, , 125 S.C. 406, 118 S.E.803 (1923).

II Tr. p. 58, l. 19- p. 59, l. 22. Although Trial Counsel claimed that he didn't want to open the door to such testimony, he himself asked the Applicant a direct question that could not have been designed to do a better job of opening the door to such testimony. During his direct-examination of the Applicant at trial, Trial Counsel asked, *"Can you equate the time period that you left, with anything, is there anything you can compare it to, have you ever been in that situation before?"* Trial Tr. p. 517, ll. 7-9.

Nor does it appear that Trial Counsel entertained introducing expert testimony designed to demonstrate that the Applicant was not competent to waive his right to silence or the right to counsel at the time both his oral and written inculpatory statements were made. Having reviewed the deposition of Dr. Martin in this matter, this Court is convinced that the testimony of Dr. Martin, or a similar expert, would have contributed substantially to the Applicant's argument that his written inculpatory statement was not the product of a voluntary and intelligent waiver of his right to silence or the right to counsel. Likewise, testimony like that proffered by way of Dr. Martin's deposition would have gone a long way toward convincing the court that the Applicant was neither competent to waive his rights or to give a reliable statement at the time of his interrogation by the police even after Miranda warnings were given.

Even if the lower court had admitted the written "confession" after hearing such expert testimony, the jury still had to decide, beyond a reasonable doubt, that the Applicant was competent at the time his *Miranda* waiver was executed based on the totality of the circumstances. The testimony of a psychiatrist concerning the effects of shock may very well have carried the day with a jury charged with deciding whether the Applicant knew what he was doing when he waived his right, or indeed whether he was competent to give a reliable statement period. For these reasons, the Court finds that Trial Counsel proved the Applicant ineffective assistance of counsel in the manner

in which he handled the Applicant's challenge to the admission of his statements to law enforcement.

Likewise, this Court finds that Trial Counsel was ineffective for failing to advise his client concerning the wisdom of making another statement to law enforcement once he was hired. Trial Counsel was hired ten (10) days after this shooting. He has admitted that from the beginning the Applicant's story, as conveyed to him, about the events surrounding his girlfriend's death had been consistent. He further testified that the version of the facts relayed to him by the Applicant from the beginning was totally consistent with his eventual testimony at trial. When asked why he did not request that law enforcement take another statement from his client after the immediate shock from this traumatic event had passed, Trial Counsel appeared to believe that the police would not have allowed his client to make another statement. His testimony suggests that he would not have believed it was even possible to have the police take another statement from his client. He recognized however, that the Applicant's recollections of the events of the fateful evening were totally inconsistent with the statements that the prosecution would not doubt attribute to the Applicant as "confessions" at trial. He also recognized that absent such a statement to law enforcement, the State would doubtless hammer the Applicant for coming up with his story for the first time in his trial testimony. Trial Counsel's testimony clearly admits that a statement setting forth the Applicant's recollections from the evening in question, made around the time Counsel was hired ten (10) days after the shooting, would have been very helpful. He maintained his skepticism concerning whether "*they would have allowed*" such a statement to be made. Counsel's logic on this point simply does not withstand scrutiny. Obviously, if the Applicant had come forward and offered another statement to law enforcement, the police would have been hard pressed not to allow him to make one. In the unlikely event that law enforcement had declined to take

another statement from the Applicant, in the presence of his counsel, they would have opened the door for the Applicant to demonstrate their refusal to hear him out at trial. Once again, this Court finds that Trial Counsel failed client in this regard as well. Given the circumstances of the Applicant's case, the failure of Trial Counsel to make arrangements for the Applicant to make another statement opened the door for the State to argue that the Applicant's testimony represented a recent fabrication. Perhaps even more damaging, this argument left room for the jury to infer that the Applicant's version of the facts was one which he did not "come up with" until after he had the assistance of counsel to help him design a defense. We know from the testimony of Trial Counsel during these PCR proceedings that this simply is not true. Trial Counsel's testimony established that, from his first contact with the Applicant, his story had been consistent with the version of the events he eventually testified to at trial.

II.

Allegations 1,4,17,18,19,20,21,22,23

Trial Counsel was ineffective for failing to investigate and present the defense of accident, and for failing to request a charge on that defense, where the Applicant's testimony was consistent with that defense and where Trial Counsel's insistence on characterizing the death of the deceased as a suicide enabled the prosecution to argue that the physical evidence in this case was not consistent with death by a self-inflicted pistol wound. Further, Trial Counsel was ineffective for repeatedly failing to point out that the prosecution's theory the physical evidence refuted a claim of suicide was misleading and inaccurate where the Applicant's position was that he was trying to stop the deceased from committing the act of suicide at the second the shot was fired.

During his PCR hearing, the Applicant specifically alleged that Trial Counsel failed to develop and present viable defenses to the charges against the Applicant prior to and during his trial. He demonstrated that Trial Counsel was ineffective for failing to point out to the jury that, although the prosecution had introduced testimony and evidence designed to demonstrate that the

physical evidence in this case was inconsistent with suicide, *that same evidence* was not inconsistent with the Applicant's testimony that the gun went off while he was trying take control of the weapon away from the victim in an effort *to keep her from* shooting herself. Likewise, he has shown that Trial Counsel was ineffective for failing to adequately cross-examine witnesses concerning whether the same evidence and testimony was actually consistent with the gun having gone off while the Applicant was struggling with the victim for the weapon in an effort *to keep her from* shooting herself. Although Trial Counsel steadfastly refused to recognize the applicability of the law of accident to the facts of the Applicant's case, he has shown that counsel was ineffective for failing to request a jury instruction on that defense where the facts as set forth in the Applicant's testimony, as well as the forensic evidence presented by the prosecution, supported that defense. In addition, the Applicant has shown that Trial Counsel was ineffective for failing to clearly argue to the jury that the Applicant's position was that the victim was shot when the weapon he was attempting to take away from her discharged during their struggle for control over the weapon. The record below illustrates that Trial Counsel was ineffective for consistently failing to clearly argue the distinction between the victim committing suicide and the Applicant's actual testimony which was that she was shot while he was struggling with her for control over the weapon. The Applicant's testimony leaves no doubt that he indeed believed the deceased was about to take her own life. His testimony however, was not that she simply shot herself. He testified that he grabbed the gun as she was about to use it to commit suicide. Trial Counsel's argument that the victim shot herself not only represented a gross over simplification of the facts as set forth in the Applicant's testimony, but it handed the prosecution the opportunity to point out, over and over again, that the physical evidence did not fit that claim. Trial Counsel's error in this regard was highly prejudicial to the defense where the State's experts testified that both the awkward angle of the gun shot, and absence of gun

powder residue around the wound, were not consistent with the norm in a suicide scenario. Trial Counsel's refusal to recognize and argue that although these forensic factors may not have been consistent with an unimpeded suicide by handgun, they were consistent with the discharge during a struggle for a weapon described by the Applicant in his testimony. The Applicant argues that Trial Counsel was ineffective for repeatedly characterizing the victim's death as a suicide to the jury when the facts of the shooting as conveyed in the Applicant's trial testimony were consistent with the accidental discharge of the weapon. The fact that the Applicant had initially characterized the death as a suicide could easily have been explained by the Applicant's belief that the deceased was in the process of attempting suicide when he attempted to stop her. Trial Counsel was ineffective for failing to object to arguments by the State concerning the inconsistency of the physical evidence in this case from that normally found in suicide shootings. There was no testimony that the deceased committed an unimpeded suicide. If the State's theory of the case were believed, the Applicant committed a homicide. If the Applicant's testimony were believed, he tried to stop a suicidal girlfriend from shooting herself. Where the Applicant's actual testimony was that the gun discharged while he was trying to gain control over the weapon and stop a suicide, the prosecution's arguments that the evidence in this case was inconsistent with a suicide mischaracterized the Applicant's testimony and mislead the jury.

At trial the State presented extensive evidence designed to demonstrate that the forensic evidence in this case was not typical of a suicide, particularly a female suicide. Trial Counsel has conceded that his strategy throughout the Applicant's trial was to argue that this was a suicide death not a homicide. PCR I Tr. p. 55, l. 18- p. 57, l. 8; p. 55, ll. 18-25; p. 59, ll. 5-13.

During the PCR hearing, Trial Counsel summarized his client's trial testimony as follows:

The testimony, if I can be permitted, was that she got the gun. She's sitting there on the couch. She was

upset about her father dying. Her child or children were out of the house. She was crying. Kevin couldn't calm her down. She started to raise the gun up to her head to commit suicide, and he tried to grab it and the gun went off.

PCR I Tr. p. 57, ll. 19-24. He admitted that the Applicant had in fact testified that he *"grabbed her hands and was struggling with her for the weapon when it went off and killed her."* PCR I Tr. p. 57, l. 25- p. 58, l. 4. When asked why he didn't cross-examine the State's experts concerning whether the forensic evidence was consistent with the victim being shot during a struggle for the gun versus an unimpeded suicide, Trial Counsel responded, *"I see what you're getting at. And I agree with you."* PCR I, Tr. p. 59, l. 17- p. 60, l. 13. Trial Counsel went on to explain at length that he had done everything he could to demonstrate that the victim was suicidal. PCR I Tr. p. 81, l. 15-p. 62, l. 20. It is apparent that Trial Counsel focused his attention on arguing that the victim had successfully committed suicide despite efforts by the Applicant to stop her from doing so. His own view of his client's position included his belief that the Applicant's testimony demonstrated that the victim pulled the trigger. When challenged on this critical assumption, which did not match the Applicant's actual testimony, Trial Counsel responded, "Correct. But that she pulled the trigger ... Well, he didn't say he pulled the trigger." PCR I Tr. p. 58, l. 20-p. 59, l. 2. Thus, it is obvious that Trial Counsel operated solely on the theory that either the victim or the Applicant had to have deliberately pulled the trigger. Trial Counsel never considered the argument that, consistent with the Applicant's testimony, the gun went off while they were thrashing about for control over the weapon. When asked why he didn't ask the Applicant's own expert, pathologist, Dr. Ward, whether the forensic evidence was consistent with the gun having been discharged during a struggle for the weapon, Trial Counsel reiterated his view that the purpose of presenting testimony from Dr. Ward was to show a

deliberate suicide was plausible in this case despite the unusual trajectory of the bullet. He failed to offer any tactical explanation for failing to question this expert as to whether the evidence fit a scenario where the weapon discharged accidentally during a struggle for the gun. PCR I Tr. p. 62, l. 23- p. 64, l. 7.⁷ And later he stated, “[i]t’s accident, you ... would infer that the one that pulls the trigger.” PCR II Tr. p. 30, ll. 6-9. Despite the Applicant’s clear testimony that his hands were around the victim’s hands trying to keep her from shooting herself when the gun went off and the victim was killed, Trial Counsel steadfastly refused to acknowledge that under one reasonable interpretation of that testimony, the victim’s shooting could be viewed as accidental. PCR II Tr. p. 28, l. 5- p. 31, l. 17. Ultimately, Trial Counsel admitted that he never considered the fact that the evidence was susceptible to the interpretation that, in the process of trying to stop the victim from committing suicide, the Applicant’s efforts to affect what she did with the gun may have caused it to accidentally fire. PCR II Tr. p. 32, ll. 5-16.

When questioned concerning his failure to assert accident as a defense in this case, Trial Counsel was specifically asked about the jury charge the jury received concerning the fact that the Applicant had interposed his plea that the deceased committed suicide. That charge advised the jury *“that means he did not participate in the decedent’s death, but instead took her own life by her own acts.”* This charge went on to instruct the jury that *“suicide, like accidental death, is not an affirmative defense. And as I told you, there’s no burden on the defendant on this issue.”* Trial Tr. p. 669, ll. 10-20. (Emphasis added) Trial Counsel admitted that he never considered the fact, based on the suicide charge given and the Applicant’s own testimony, the jury could easily conclude the victim’s death was not a suicide because they could not find that *“he did not participate in the decedent’s death.”* PCR II Tr. p. 34, l. 3-p. 36, l. 5. Trial

⁷ The Applicant did not present any of the witnesses at issue during the PCR hearings however, this Court recognizes that the factors the State’s witnesses claimed were inconsistent with a deliberate, unimpeded suicide would not be applicable where the gun discharged in the manner described by the Applicant’s testimony.

Counsel testified that he was not concerned about confusion which might arise from the Court's mention of accidental death as part of the jury charge on suicide once again asserting, "No, that wasn't a theory." PCR II Tr. p. 36, ll. 6-13. He expressly testified that he wasn't concerned about the jury being confused with regard to the concept of accident versus suicide at the time of this trial, and he still saw no cause for concern at the time of the PCR hearing. PCR II Tr. p. 36, l. 20, p. 37, l. 7.

Not only did Trial Counsel neglect to argue that to the extent the Applicant's actions trying to take the gun away from the victim may have contributed to the weapon being fired, he actually argued against his client's position by asking the Applicant on re-direct whether there was any evidence of a struggle. Trial Tr. p. 579, ll. 3-4. He in fact highlighted on re-direct that the first time the Applicant *"heard there was a struggle with the gun was from the Solicitor."* Trial Tr. p. 579, ll. 22-24. Trial Counsel went so far as to ask the Applicant, *"Did you mention anything about a struggle at any point talking to anybody prior to coming to court?"* The Applicant responded "No." Trial Tr. p. 580, ll. 11-13. At the Applicant's PCR hearing, the Respondent highlighted this testimony and asked if it was fair to say that this position was completely consistent with his theory of the defense, that the victim committed suicide. Trial Counsel responded that, *"Yeah. We didn't know anything about a struggle until [the prosecutor] brought it up."* PCR II Tr., p. 94, l. 17- p. 95, l. 15. Ironically, almost immediately thereafter, Trial Counsel next goes on to recognize that it was the Applicant's testimony that when he saw the victim raise the pistol toward her head he grabbed the weapon with both hands and tried to stop her from killing herself. PCR II Tr. p. 97, l. 2- p. 98, l. 9.

The Applicant's testimony firmly asserts that his hands were on the victim's right hand attempting *"to get the gun away"* when the weapon fired. Trial Tr. p. 512, l. 2-p. 514, l. 16;

Trial Tr. p. 555, ll. 1-11; Trial Tr. p. 563, ll. 1-22. Near the end of his PCR testimony, Trial Counsel acknowledged that the Applicant never claimed that he had any sort of extended physical altercation with the deceased. He admitted that the only sense in which the Applicant's interaction with the victim was a struggle that within a matter of seconds he grabbed her hand, tries to stop her and the gun goes off. PCR II Tr. p. 115, l. 4- p. 116, l. 3. Repeatedly throughout his PCR testimony Trial Counsel claimed that he considered the defense of accident, but that *"the theory of our case was she's the one that pulled the trigger."* He made this assertion despite the fact that the Applicant did not testify that the victim *"pulled the trigger."* He said that as he was trying to get control over the weapon, with his hands wrapped around the hand the victim was holding the gun in, when the weapon *"goes off."* Trial Tr. p. 514, l. 14 – p. 515, l. 4. As previously noted, Trial Counsel was hired approximately ten (10) days after this incident. He testified that from the beginning of his representation of the Applicant he had consistently told him that the gun went off as he was attempting to stop the victim from committing suicide. Thus regardless of whether the Applicant ever characterized his interaction with the victim in the seconds before the gun discharged as "a struggle", the record establishes that he had consistently told his lawyer his hands were on the victim's hand, and that he was trying to stop her from shooting herself with the gun when it discharged killing the victim. Trial Counsel agreed in his PCR testimony that no one testified that the deceased deliberately pulled the trigger, but rather that the gun simply went off. PCR II Tr. p. 114, l. 24 – p. 115, l. 3.

This Court has reviewed the trial testimony of the Applicant very carefully and has concluded that the Applicant never claimed that the deceased pulled the trigger on the weapon when it fired and killed her. His unambiguous testimony was that he thought the victim was about to shoot herself and tried to stop her. According to his version of the facts, with his hands

on the hand in which the deceased was holding the weapon, he was in the process of trying to divert the gun away from her when it discharged. On those facts, the Applicant would have been entitled to a charge on the law concerning the defense of accident. Further, Trial Counsel's insistence upon arguing that this was a suicide, without recognition of the Applicant's involvement in the shooting, was contrary to the evidence and prejudicial to his client. Where the forensic evidence was consistent with the Applicant's actual testimony, Trial Counsel was ineffective for arguing a theory of defense that not only didn't fit the forensic evidence, but wasn't what his client testified to. Given the fact that the Applicant's testimony did not claim that the deceased simply shot herself, Trial Counsel was likewise ineffective for failing to challenge the repeated claims of the prosecution that the forensic evidence did not support a suicide.

III.

Allegation 16

Trial Counsel was ineffective for withdrawing his request for a jury instruction on the charge of involuntary manslaughter where under at least one possible interpretation of the Applicant's testimony the jury may have believed that he struggled with the deceased for the weapon under circumstances which showed wanton and willful disregard for the victim's safety.

During the Applicant's trial, Trial Counsel requested a jury charge on the lesser included offense of involuntary manslaughter. He subsequently withdrew that request. Trial Tr. p. 612, l. 11- p. 620, l. 25.⁸ Trial Counsel asserted that he originally asked for the involuntary manslaughter charge after a Reply witness called by the State "really hurt" the Applicant. He

⁸ This PCR hearing transcript reflects that PCR Counsel stated that this request to charge was withdrawn "prior to the jury being sworn." That reference is obviously a typographical error or a misstatement by PCR Counsel. This charge request was in fact withdrawn before the jury was charged not before they were sworn.

stated that he subsequently withdrew the request because "it didn't tie in with our theory of the case. ... The State's theory of the case was Mr. Patterson pulled the trigger. *My theory* of the case was she pulled the trigger." PCR II Tr. p. 21, ll. 6-15. Trial Counsel's PCR testimony went on to reveal his belief that in order for involuntary manslaughter to apply the Applicant would be "*pulling the trigger.*" PCR II Tr. p. 22, l. 21- p. 23, l. 8. Still later Trial Counsel testified that *both* involuntary manslaughter and a defense of accident would require that "*he has to pull the trigger...accident and involuntary manslaughter just didn't apply to that because our theory was that Mr. Patterson did not pull the trigger.*" PCR II Tr. p. 29, l. 20-p. 30, l 4.

The Applicant recalled statements by the deceased at the time of this shooting, coupled with the deceased's history of suicidal behavior, as his reason for believing she was about to shoot herself. Given the fact that the deceased was not alleged to have expressly stated that she was about to kill herself, the jury in this case may have concluded that the Applicant acted with criminal negligence, demonstrating wanton and willful disregard for the safety of the deceased, when he attempted to take control of the weapon from her. Trial Counsel's concern that a request for this charge, or a charge on accident, would not fit because they did not claim he pulled the trigger was misplaced and inaccurate. This Court finds that Trial Counsel should not have withdrawn his request for a jury instruction on this lesser-included offense.

IV.

Allegations 6, 7, 8 and 12

Trial Counsel was ineffective for failing to renew his Motion for a Mistrial following the curative charge given by the trial court in response to an emotional outburst in the courtroom prompted by the State's introduction of gruesome crime scene photographs. Trial Counsel was ineffective for neglecting to make an adequate objection to the admission of the photographs in question on the record. Likewise, Trial counsel was ineffective

for failing to ask that friends and family be given warning in advance of the display of gruesome crime scene photographs and for failing to ask that those present in the courtroom be told that if anyone anticipated having difficulty remaining composed during the display of crime scene photographs of the victim, they should either position themselves so that they were insulated from viewing them or remove themselves from the proceeding while the photographs were being displayed. Trial Counsel was ineffective for failing to place a full and accurate description of the outburst which occurred in this case on the record after the ruling of the Court minimized the incident on the record.

Multiple photographs of the deceased were introduced during the Applicant's trial. Trial Counsel did not make a motion *in limine* concerning the introduction of these photographs however, he did expressly object to two particularly gruesome photographs which were ultimately introduced as State's Exhibits No. 21 and 22. In his PCR testimony, Trial Counsel acknowledged that his entire argument for the exclusion of these highly inflammatory photographs was simply, "*prejudice to both.*" PCR I Tr. p. 73, l. 4- p. 75, l. 5; Trial Tr. p. 120, l. 4. Trial Counsel explained that the content of his objection was due to the fact that there had already been discussions with the trial judge concerning these photographs and the judge had been informed of his intent to object to these two coming into evidence. He asserted that when he made his objection on the record, the trial judge cut him off. PCR I Tr., p. 75, l. 17-p. 76, l. 11. He admitted however, that the Applicant's ability to make a viable argument on appeal was dependant on him making his legal arguments for the suppression of this evidence on the record. PCR I Tr. p. 76, l. 12- p. 77, l. 9.

Trial Counsel initially testified that he had no warning that the State intended to publish the gruesome photographs of the victim on a large screen in the courtroom. He ultimately admitted however, that once it became apparent the State was about to display these images on that screen, he should have objected to it based on the fact that the publication of the photographs

in that manner would exacerbate the potential for prejudice. PCR I Tr. p. 77, ll. 10-25. Trial Counsel admitted that he was not caught completely off guard by the prosecutor publishing the crime scene photographs on the projection television. He acknowledged that the equipment was in place in the courtroom. PCR II Tr. p. 112, l. 6- p. 114, l. 11.

Trial Counsel noted that he made an objection once the photographic display began on the screen and there was an outburst among the victim's family and friends. Trial Counsel noted on the record that there had been an outburst from the victim's family and friends and they had to be escorted out. Despite efforts by the prosecution to minimize the degree of the reaction from the gallery, Trial Counsel put a limited description of the event on the record. Trial Tr. p. 125, ll. 2 - 21; PCR I Tr. p. 78, l. 1-p. 79, l. 23. Trial Counsel did review his objection to the photographs in question and made a motion for a mistrial. After the motion was denied, a curative charge was given. Trial Counsel admitted that it did not occur to him to review his mistrial motion following the curative charge. He further admitted that he had no strategic or tactical reason for not arguing that the curative charge was not sufficient to remove the taint caused by this emotional outburst. PCR I Tr. p. 80, l. 1- p. 81, l. 18. The Court of Appeals found that Counsel's failure to renew his Motion for a Mistrial following the curative charge given, procedurally barred a decision on the merits of the Applicant's challenge to the trial court's failure to grant a mistrial on appeal. The Applicant's subsequent Petition for Writ of Certiorari on this issue was denied on May 13, 2004.

Trial Counsel further acknowledged that he never considered taking precautionary measures to insure that this trial wasn't disrupted by the publication of these inflammatory photographs by asking that those present during the trial be given notice when such photographs were about to be displayed. PCR I Tr. p. 81, l. 19- p. 82, l. 6. In his testimony on cross-

examination by the State, Trial Counsel testified that the emotional outburst that occurred in the courtroom when the prosecution displayed crime scene photographs was more substantial than it was described by the trial judge when he denied the Applicant's Motion for Mistrial. Trial Counsel testified the Court's factual basis for that ruling was incorrect and acknowledged that he should have pointed that out for the record. PCR II Tr. p. 71, l. 20- p. 72, l. 17.

Although Trial Counsel testified that he had never seen a prosecutor display photographs on a projection screen in the courtroom, he admitted that he could have anticipated what she was doing. He testified that he has dealt with that situation differently since that experience. PCR II Tr. p. 72, l. 22- p. 73, l. 24. In recalling the impact of the outburst in the courtroom, Trial Counsel stated, *"You do this for long enough, you can tell when something impacts the jury as much as that."* PCR II Tr. p. 72, ll. 11-13.

This Court finds that Trial Counsel was ineffective for failing to make an adequate objection to the introduction of the photographs in question at trial. Additionally, Trial Counsel was ineffective for failing to preserve the issue of whether the Applicant's Motion for a Mistrial should have been granted by renewing that motion after the curative charge issued by the trial judge. It is apparent that the outburst in the courtroom which followed the publication of these photographs on a large projection television, may have been avoided had Trial Counsel taken appropriate steps to be certain that the photographs, if admitted, were published in a manner that did not enhance their potential for prejudicing the jury and that they were displayed in a manner that did not provoke a prejudicial outburst from the gallery.

V.

Allegations 26, 27 and 28

Trial Counsel was ineffective for neglecting to make an appropriate objection when evidence the Applicant had

previously been told was missing and unavailable, a hair sample from around the fatal wound, suddenly appeared in the courtroom and was introduced into evidence at trial as State's Exhibit No. 37. Where the Applicant had previously demanded access to the evidence in question and been told it could not be found, Trial Counsel was ineffective for neglecting to make Motion for a Mistrial. Trial Counsel was ineffective for failing, at minimum, to make a request for a recess to enable the Applicant's expert, Dr. Ward, to examine the hair sample that suddenly appeared at trial after the defense had been denied access to this evidence for review by their independent expert.

The State's pathologist testified to the absence of spot or stippling at the wound site and therefore, that the shot was "probably" fired from a distance of more than three to six inches from the deceased's head. Trial Tr. p. 210, l. 24 – p. 211, l. 3. The evidence custodian for the Sheriff's Department testified that hair taken from the victim was sent to SLED⁹ for testing only to subsequently be informed that SLED was no longer testing hair samples. Trial Tr. p. 296, ll. 17-19. During the PCR hearing, Trial Counsel testified that his defense expert, Dr. Ward, asked to examine the hair sample from the victim. Trial Counsel requested access to the sample and was told it was not available. Trial Counsel recalled that he had raised his demand for access to the hair sample during a hearing on a continuance motion made before an earlier trial date. Then, when the case actually went to trial, the hair sample suddenly was there and being introduced as State's Exhibit No. 37. PCR I Tr. p. 71, l. 1- p. 72, l. 6. Trial Counsel testified that he did not consider making a Motion for a Mistrial based upon this issue. He admitted that he wished he had and affirmatively acknowledged that he had no tactical or strategic reason for not doing so. PCR I Tr. p. 72, l. 7- p. 73, l. 3. The record actually reflects that he did not even object to the introduction of this evidence. Trial Tr. 256, ll. 7 – 15. Dr. Ward did testify that if

⁹ South Carolina Law Enforcement Division

he had performed the autopsy he would have sent the hair to SLED for analysis for the presence of gunpowder. Trial Tr. p. 359, ll.18 - 23.

Trial Counsel admitted that he should have made a Motion for a Mistrial when the missing hair sample was brought up during the Applicant's trial and introduced into evidence. When asked if he considered at least making a request for a recess long enough to permit Dr. Ward to examine the hair sample, Trial Counsel said that possibility was discussed at sidebar. He did not however, preserve that objection on the record. PCR II Tr. p. 130, l. 18- p. 131, l. 24.

Trial Counsel was ineffective for failing to make an appropriate objection to the introduction of the hair sample in question, and to any testimony concerning the fact that there was no gunpowder residue on the hair sample, once it became apparent that this sample which the defense had specifically requested access to was in fact available. Trial Counsel should have asked that a mistrial be declared once the existence of this sample became known inasmuch as the State had already introduced evidence concerning the examination of the hair sample before it became apparent that the defense had been misled concerning the availability of this evidence. Although Trial Counsel could have, and should have, asked for that testimony to be stricken, it would have been very difficult for the jury to ignore testimony they had already heard. At the very least, Trial Counsel should have asked for a recess to afford his own expert the opportunity to examine this evidence. He was clearly ineffective for failing to do so.

VI.

Allegations 13, 15 and 23

Trial Counsel was ineffective for failing to object to portions of the State's closing arguments which either misstated the evidence adduced at trial or commented on matters not in evidence.

Trial Counsel was additionally asked why he didn't object to portions of the State's closing argument wherein the Solicitor argued that the *only* reason the victim didn't have gunshot residue on her hands was because the Applicant had taken the gun to the kitchen and cleaned it off. Trial Counsel claimed that he didn't object because there was, as he recalled during his PCR testimony, some testimony that the Applicant could have wiped residue off the gun. PCR II Tr. p. 11, l. 10-p. 14, l. 1; Trial Tr. p. 656, ll. 12-13, Trial Tr. p. 658, ll. 19-23; Trial Tr. p. 659, ll. 2-5. Kimberly Black, the SLED agent who tested the gunshot residue kit taken from the victim, actually admitted on cross-examination that if the deceased's hand was completely covered by someone else's hands at the time the gun was fired, she wouldn't expect to find any gunshot residue on her hands. Trial Tr. 348, ll. 17 - 18. This witness further acknowledged that the movement of the victim's hands by EMS responders may have affected the presence of gunshot residue on the deceased's hands. Trial Tr. p. 349, l. 1. Given the presence of this testimony, Trial Counsel should have objected to the State's erroneous assertion that the only explanation for the lack of gunshot residue on the deceased's hands was that the Applicant had taken the gun to the kitchen and cleaned it off.

During the closing argument to the jury, the prosecutor stated, "... *if you are looking at malice aforethought, this gun was unloaded.*" Trial Tr. p. 657, ll. 16-17. Trial Counsel offered no valid reason for failing to object to this argument as making assertions not supported by the evidence adduced at trial. On cross-examination, the Respondent asked Trial Counsel if there had been testimony that the gun was in a dresser drawer and that it was not loaded. Trial Counsel responded, "*Right.*" PCR II Tr. p. 76, ll. 11-16. Ultimately, however Trial Counsel admitted that, at most, the testimony in question established that the gun was ordinarily stored unloaded. He acknowledged that contrary to the Solicitor's claims, the testimony at trial did not

establish that the weapon was unloaded. PCR II Tr. p. 104, l. 18- p. 109, l. 10. This Court finds that Trial Counsel should have objected to this closing argument in which the prosecution asked the jury to find malice based upon an inaccurate claim concerning what the evidence at trial proved.

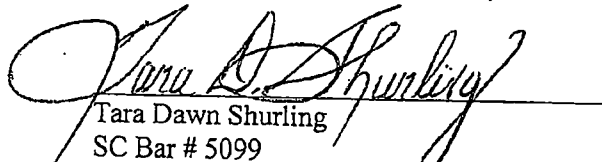
In addition, as mentioned above, the prosecution argued at length that the evidence adduced at trial was not consistent with the Applicant's claim that the deceased died as a result of a suicide. The Applicant asserts that Trial Counsel should have objected to those portions of the State's closing argument where the Applicant's testimony did not claim that the deceased committed an unimpeded act of suicide. This Court finds that these arguments made by the State would not have been objectionable in light of Trial Counsel's own characterization of the shooting in this case as a suicide. If anything, this Court finds that Trial Counsel's unqualified description of the events surrounding this event as a suicide opened the door for the argument in question.

CONCLUSION

For all the foregoing reasons, this Court now finds that the Applicant has met his burden of proof with regard to his claim that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, was violated prior to and during his jury trial. Accordingly, the Applicant's judgments and sentences are hereby reversed and his case is remanded to the Anderson County Court of General Sessions for a new trial.

IT IS SO ORDERED.

Document above submitted as a Memorandum in Support of the PCR Application, addressed herein, was previously submitted to the Court, and served on opposing counsel, on June 30, 2014 in the form of a Proposed Order.


Tara Dawn Shurling
SC Bar # 5099
ATTORNEY FOR APPLICANT

This 17th day of December, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

RICHARD KEVIN PATTERSON,)
)
 Applicant,)

04-CP-04-2245

v.)

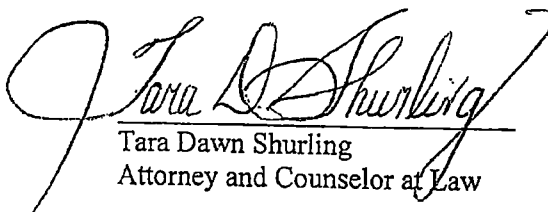
CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
)
 Respondent.)

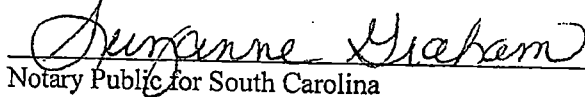
The undersigned attorney hereby certifies that a true copy of the Applicant's Memorandum in Support of PCR Application in the Form of a Proposed Order in the above matter has been served on The Honorable J. Cordell Maddox, Jr., presiding Judge, this 17TH day of December, 2014, by mailing one (1) copy in a stamped envelope properly addressed to:

The Honorable J. Cordell Maddox, Jr.
 Presiding Judge
 Tenth Judicial Circuit Court
 P.O. Box 8002
 100 South Main Street
 Anderson, SC 29622

The original having been sent to the Anderson County Clerk of Court for filing.

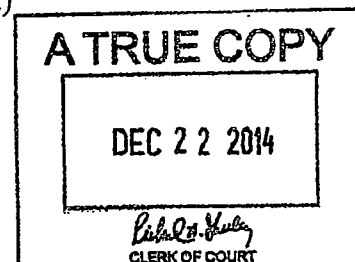

 Tara Dawn Shurling
 Attorney and Counselor at Law

SWORN TO BEFORE ME this 17th day of
 December, 2014.


 Notary Public for South Carolina

(L.S.)

My Commission Expires: 2/28/24



STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

RICHARD KEVIN PATTERSON,)
)
 Applicant,)

04-CP-04-2245

v.)

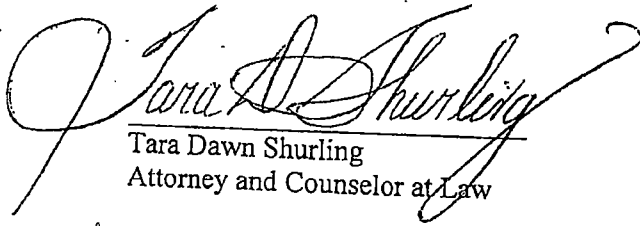
CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
)
 Respondent.)

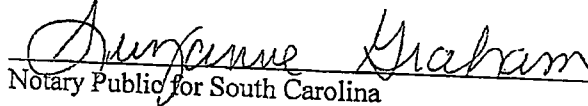
The undersigned attorney hereby certifies that a true copy of the Applicant's Memorandum in Support of PCR Application in the Form of a Proposed Order in the above matter has been served on opposing counsel, David Spencer, Assistant Attorney General, this 17TH day of December, 2014, by mailing one (1) copy in a stamped envelope properly addressed to:

David Spencer
 Assistant Deputy Attorney General
 Office of the Attorney General
 P. O. Box 11549
 Columbia, SC 29211

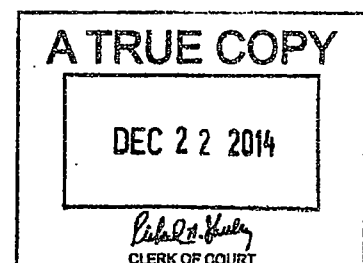
The original having been sent to the Anderson County Clerk of Court for filing.


 Tara Dawn Shurling
 Attorney and Counselor at Law

SWORN TO BEFORE ME this 17th day of
 December, 2014.


 Notary Public for South Carolina (L.S.)

My Commission Expires: 2/28/24



STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

RICHARD KEVIN PATTERSON,)
Applicant,)

04-CP-04-2245

RULE 59(e) SCRPC, MOTION
TO ALTER OR AMEND

v.)

THE STATE OF SOUTH CAROLINA,)
Respondent.)

TRUE COPY

JUN 30 2014

Richard K. Patterson
CLERK OF COURT

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving this Court pursuant to Rule 59(e), SCRPC, to alter or amend its Order of Dismissal filed June 16, 2014. The Application for Post-Conviction Relief in this matter was filed on July 26, 2004 and an Amended Application was filed on June 18, 2009. The State filed its Return on October 5, 2004. An evidentiary hearing was convened on June 18, 2009, in which the State was represented by Assistant Attorney General, A. West Lee and the Applicant was represented by Tara Dawn Shurling, Esquire. This matter was recessed during direct examination of trial counsel, James Brehm, Esquire. This hearing was reconvened on February 26, 2013 before this Court at the Anderson County Courthouse. Applicant was present and was once again represented by Tara Dawn Shurling. Representing the State was David Spencer of the Office of the South Carolina Attorney General. In support of this motion, the Applicant would show unto this Honorable Court the following:

1. The Order of Dismissal filed in this matter neglects to reference Applicant's Amended Application for Post-Conviction Relief served on opposing counsel on June 16, 2009, and filed with the Anderson County Clerk of Court's Office on June 18, 2009.
2. The Order filed in this matter does not reference the fact that the Applicant waived any claims of ineffective assistance of appellate counsel on the record during his Post-Conviction Relief hearings.
3. In the portion of the Order of Dismissal captioned "Mistrial Motion for Emotional Outburst" this order neglects to address Applicant's allegation

No. 4, as found in his Amended Application. Specifically, the Order of Dismissal does not make findings of fact and rulings of law concerning Applicant's allegation that Trial Counsel was ineffective for failing to request that friends and family be given advanced warning of the display of gruesome crime scene photographs, and for neglecting to ask that those present in the courtroom be told that they should either position themselves so they were insulated from viewing the photographs or, alternatively, remove themselves from the proceeding while the photographs were being displayed.

4. In the portion of the Order of Dismissal captioned "Expert on Post-Traumatic Stress Disorder" this Court finds that relief is not appropriate where Applicant failed to present expert testimony that he was actually suffering from post-traumatic syndrome at the time of the offense. Applicant respectfully submits that this factual finding overlooks the fact that Trial Counsel had the opportunity, and indeed the duty, to obtain such an expert at a time more contemporaneous with the event. Applicant is not to blame for the fact that Trial Counsel failed to do so at the appropriate time. As a result of Trial Counsel's failure to have him evaluated right after the shooting, the best Applicant could do was prove how post-traumatic stress disorder might have affected his behavior and his ability to make a reliable statement.
5. With the regard to the Applicant's allegations concerning Counsel's failure to obtain an expert on post-traumatic stress disorder, allegations No. 6 and 7 from the Amended Application, the analysis of this Court focuses on Trial Counsel's PCR testimony that he thought the Applicant "was better served by hiring the pathologist, Dr. Ward". Order of Dismissal filed June 16, 2014, page 9. The order however does not address Counsel's admission that he never considered having his client declared an indigent, and requesting state funding for a psychiatric expert in addition to the pathologist. Further, the Order of Dismissal fails to address the degree to which the testimony of Dr. Thomas Martin explained how many of the behavioral facts referenced by the Court in this section of it's order could be explained by the general known effects of shock and post-traumatic stress. In addition, the order fails to address the testimony of Dr. Thomas Martin, presented in the form of a deposition, concerning the ways in which shock and post-traumatic stress may have impacted the Applicant's statements to the police in the immediate aftermath of witnessing the violent death of a loved one.
6. The Order of Dismissal in the section captioned "Accident" found that there was no evident of accident introduced at trial. Applicant respectfully asks this Honorable Court to reconsider that factual finding, and to grant him an amended order finding Trial Counsel ineffective for failing to request a jury charge on accident. The testimony adduced at

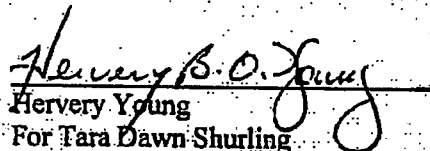
trial indicated that Applicant was struggling with the Victim for control over the weapon while she was attempting to commit suicide. Applicant's testimony and the physical evidence were consistent with the accidental discharge of the weapon while Applicant was attempting to prevent the Victim from using the pistol to kill herself. Therefore, Applicant respectfully submits he is entitled to relief on this ground; Amended Application for Post-Conviction Relief, Allegation No. 15.

7. Applicant respectfully submits the Order of Dismissal issued in this matter neglects to make findings of fact and rulings of law pertaining to Applicant's Allegations 16- 18 from his Amended Application for Post-Conviction Relief filed June 18, 2009. As established by the Applicant during the PCR hearings held in this matter, Defense Counsel failed to clearly and consistently argue Applicant's position that the Victim was shot when the weapon he was attempting to take away from her discharged. In addition, the record reflects that Defense Counsel repeatedly characterized the Victim's death as a suicide without clarifying the Applicant's actual position which was that the Victim was shot while Applicant was struggling for control of the gun which he believed the Victim was about to use to commit suicide. Counsel's reference to the shooting as a suicide, and his failure to clarify the circumstances under which the weapon discharged in his arguments to the jury, was highly prejudicial to Applicant where the physical evidence in this case was not consistent with a suicide, but was arguably consistent with the discharge of the pistol during a struggle for the weapon.
8. Lastly, Applicant respectfully submits that the Order of Dismissal entered in this matter does not make findings of fact and rulings of law concerning Applicant's Allegation No. 19, Amended Application for Post-Conviction Relief in which he alleged that Defense Counsel was ineffective for failing to object to arguments by the State concerning the inconsistency of the physical evidence in this case from that normally found in suicide shootings. In his PCR action Applicant argued that his actual testimony was that the gun discharged while he was trying to stop the deceased from using the weapon to kill herself; a scenario far more consistent with the physical evidence in this case. Throughout Applicant's trial the State, and Defense Counsel, referenced Applicant's position as being that the Victim committed suicide. This position was factually inaccurate and it irreparably prejudiced Applicant where the physical evidence was not consistent with a gun shot suicide unless one factored in the effect Applicant's attempt to seize the weapon would logically have had on the trajectory of the fatal shot.

For all the above reasons, the Applicant now prays that this Court might amend its Order pursuant to Rule 59(e), SCRCP, grant relief and remand the Applicant's case to the Anderson County Court of General Sessions for a new trial. In the alternative the Applicant would respectfully request that the Court issue an Amended Order of Dismissal including the omitted allegations and arguments presented above. The Applicant would assert that his request for an Amended Order is necessary in order to preserve these claims for appellate review.

Respectfully submitted,

By:


Herverly Young
For Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 (fax)
tdslaw@shurlinglaw.com

Attorney for the Applicant

This 30th day of June, 2014.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

RICHARD KEVIN PATTERSON,)

04-CP-04-2245

Applicant,)

CERTIFICATE OF SERVICE

v.)

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

The undersigned hereby certifies that a true copy of the Rule 59(e) Motion to Alter or Amend in the above matter has been served on the Honorable J. Cordell Maddox, Jr., presiding judge, this 30th day of June, 2014, by mailing one (1) copy in a stamped envelope properly addressed to:

The Honorable J. Cordell Maddox, Jr.
 Circuit Court Judge for the Tenth Circuit
 P. O. Box 8002
 Anderson, SC 29622

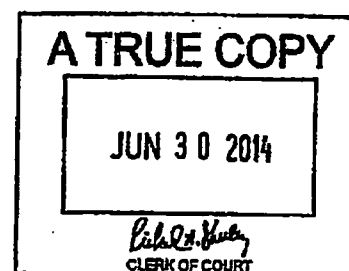
The original having been hand-delivered to the Anderson County Clerk of Court for filing.

Hervy B. O. Young
 Hervy Young
 On Behalf of Tara Dawn Shurling

SWORN TO BEFORE ME this 30 day of
 June, 2012.

Blake McHenry (L.S.)
 Notary Public for South Carolina

My Commission Expires: 2/26/2018



STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

RICHARD KEVIN PATTERSON,)

04-CP-04-2245

Applicant,)

CERTIFICATE OF SERVICE

v.)

THE STATE OF SOUTH CAROLINA,)
Respondent.)

The undersigned hereby certifies that a true copy of the Rule 59(e) Motion to Alter or Amend in the above matter has been served on opposing counsel, David Spencer, Assistant Attorney General, this 30th day of June, 2014, by mailing one (1) copy in a stamped envelope properly addressed to:

David Spencer
Assistant Deputy Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

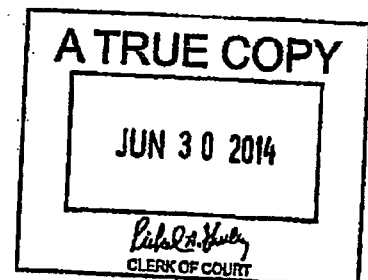
The original having been hand-delivered to the Anderson County Clerk of Court for filing.

Hervey B. O. Young
Hervey Young
On Behalf of Tara Dawn Shurling

SWORN TO BEFORE ME this 30 day of
June, 2012.

Bleke McLaughlin (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/26/2018



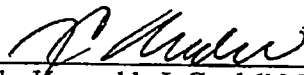
STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
Richard Kevin Patterson)
Applicant,)
v.)
The State of South Carolina)
Respondent.)

IN THE COURT OF COMMON PLEAS

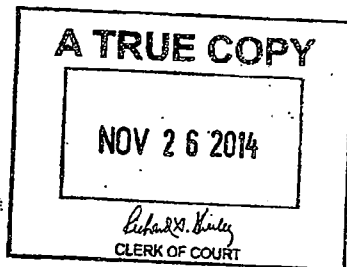
CASE NO.: 2004-CP-04-2245

**ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND**

This matter comes before the Court on Applicant's Motion to Alter or Amend under South Carolina Rule of Civil Procedure 59(e). This Court entered an Order of Dismissal June 13, 2014. Applicant's Motion to Alter or Amend this Court's Order of Dismissal is hereby denied.


The Honorable J. Cordell Maddox, Jr.
South Carolina Circuit Court Judge

This 18th day of November 2014



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GENERAL SESSIONS

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
J. Cordell Maddox, Jr., Presiding Judge

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S.C. Supreme Court

04-CP-04-2245

RICHARD KEVIN PATTERSON, 270085

Applicant,

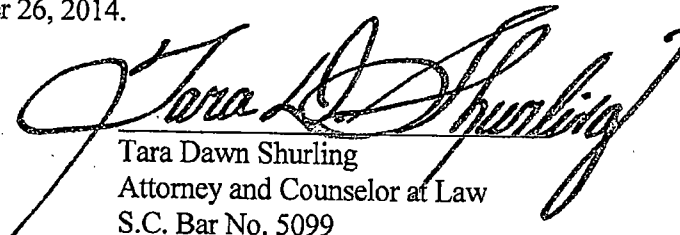
v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his appeal from the Order of Dismissal denying his Post-Conviction Relief filed June 16, 2014, and the Order Denying the Applicant's Motion to Alter or Amend pursuant to Rule 59(e) SCRCP which was filed with the Anderson County Clerk of Court on November 26, 2014.


Tara Dawn Shurling
Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 3rd day of December, 2014.

Other Counsel of Record:
David Spencer, Senior Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
J. Cordell Maddox, Jr., Presiding Judge

04-CP-04-2245

RICHARD KEVIN PATTERSON, 270085

Applicant,

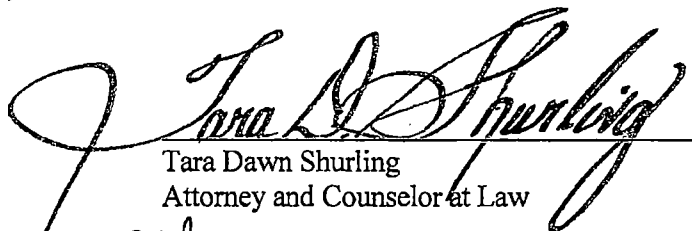
v.

THE STATE OF SOUTH CAROLINA,

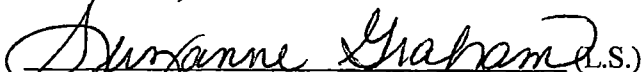
Respondent.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, David Spencer, Senior Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 3rd day of December, 2014.


Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE me this 3rd day
of December, 2014.


Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24