

RECEIVED
JUL - 6 2015
S.C. Supreme Court

VOLUME THREE OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

TERRELL CHANDLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO, 2014-002307

A P P E N D I X

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT	1
INDICTMENTS AND SENTENCING SHEETS.....	1049
APPLICATION FOR POST-CONVICTION RELIEF	1055
RETURN	1063
AMENDED RETURN.....	1068
POST-CONVICTION RELIEF HEARING TRANSCRIPT	1073
ORDER OF DISMISSAL	1133

1 weapon for the twins. He then offers that explanation.

2 The part I love is he said, Oh, I was getting
3 ready to go to work the next day, and ding ding, in my
4 closet, when I was looking through some shoes, I saw this
5 weapon. I have never seen it before. Baloney.

6 I think he says exactly, I looked and saw a
7 black with silver stripe automatic on the ground.
8 Really, Terrell? Come on. He tells Detective Osborne at
9 one point, the first time he saw the rifle was Friday
10 morning when Che showed it to him. His whole theory is
11 Che and Storme are blaming him. He's blaming Che and
12 Storme.

13 Now, the other one I just kind of have to
14 love is who was in your apartment at the time of the
15 shooting? Just me and my dog. Just me and my dog. The
16 letters that Terrell sent Steven Brown, you talk about a
17 manipulator. I'm not going to read all back through them
18 with you. He still thinks he can call the shots. It is
19 clear if there was one man in that place, it was Terrell
20 Chandler. He lost his charm.

21 His efforts to sway Steven Brown did not
22 work. And you can tell with every increasing letter,
23 he's getting more and more frustrated, more and more
24 frustrated.

25 Listen to me carefully: When them crackers

1 come see you, all you got to tell them is Terrell wasn't
2 there. I don't know where Terrell was the night of the
3 murder. I wasn't at his house the night of the murder.

4 What does he tell Steven? The only and Ns
5 that are calling our name, only ones, Che, Storme, Trice,
6 Megan, Pookie. And all you got to tell them Che and
7 Storme tried to rob the dude and shoot him. Terrell
8 ain't had nothing to do with it. He ain't even been
9 there, and, if you tell them you been outside when the
10 bullshit began, they're going to ask you, why didn't you
11 come to my apartment?

12 Just tell them you ain't known that they dude
13 had been -- excuse me -- and you had been scared so you
14 called a cab or some shit.

15 He's trying to tell Steven what Steven should
16 tell the police. And you went back home. If they ask
17 you why were you around there, that area, tell them you
18 came to see me but the twin and them, Storme and Che, was
19 outside. Tell them you didn't think nobody was in the
20 house with me. Tell them the only people who went to my
21 house was Che and Storme. He's trying to cover every
22 angle.

23 Just tell them Terrell wasn't outside at all.
24 Terrell didn't know about the murder at all. You walk
25 away free. I walk away free. Talk about theory.

1 He tells Steven Brown, I tell you that they
2 got you is to see if you're going to go sour on me. Are
3 you going to go sour on me. All you got to tell them is
4 Rell ain't been outside at all, being that you done put
5 yourself out there. Tell them that we, you, Che, Storme,
6 been out front to smoke weed and they been like hold on,
7 one of them wants to go back, Che, she's telling him,
8 Che, and you heard them talking and then the gunshots.

9 You jump in the car and smash out. Tell them
10 you have been about to holler at Rell but you said F it
11 and dip. If they ask you if Trice, Megan, and Pookie
12 been there at my house tell them no. You ain't see that
13 car outside.

14 He's trying to cover his bases. When they
15 roll on me to ask me when was the last time you saw your
16 cuz Troop, I tell them I see him about two weeks ago.
17 He's trying to tell Steven Brown I'm covering for you. I
18 told them I hadn't seen you for a couple weeks.

19 The way I see it is, like I told you, that I
20 tell the police ain't nobody been in my house the night
21 of the murder. I heard the shots. Then a few minutes
22 later Che and Storme case to my house, he's trying to
23 tell him what he's told the police, and they chilled for
24 a while. I got the gun back and smashed.

25 See, when the time comes around, all you got

1 to tell them people that is the night of the murder you
2 was coming to holler at me because you been in West
3 Ashley and you been stuck so you know I might have been
4 home so you didn't have a cell phone to call me and you
5 were just going to pop up, hoping I, Rell, was going to
6 be home, and when you got in Ashleyville you saw Che and
7 Storme with the chopper. Tell the police that, please,
8 Steven.

9 Take a look at the letters. He gives them
10 all the details that he wants to set up this alternate
11 story. He's hoping his cuz comes through for him. As
12 Detective Osborne testified, all four of these guys were
13 in on it. All four of these guys will go to court.
14 Terrell's just the first one. He's the only one you have
15 to worry about.

16 You will find in those letters a passage, or
17 a saying, or a line, that Terrell tells Steven
18 repeatedly, I ain't no bitch. I ain't no snitch, Terrell
19 Chandler's words to describe himself. The blood of
20 Calvin Gibbs is on the hands of Che Carr, Storme Carr,
21 Steven Brown, and Terrell Chandler. You can't wash that
22 blood off, Terrell. You can't wash it off.

23 THE COURT: All right. Ms. Shealy, could I
24 get to you move that podium back? Thank you so much.

25 Okay. Folks, it is now my duty to charge you

1 on the law as it applies to the facts as you find them,
2 and I will explain to you, as I did at the beginning of
3 the trial, you are the finders of the facts. Under our
4 constitution and our laws, only the jury can make
5 findings of fact in a case, and I'm not permitted to
6 indicate to you how I might feel about the facts of this
7 case, and if I've said anything or done anything in this
8 case which would indicate to you I have an opinion
9 concerning the facts of this case, please disregard that.
10 You, the jury, must independently weigh the evidence
11 presented in the trial and render a verdict based solely
12 on that evidence.

13 Now, the same constitution and laws which
14 designate and make you the finders of the facts also make
15 me the instructor of the law, so if you have some idea of
16 what the law is or what you think it ought to be and it
17 does not agree with what I now tell you the law is, you
18 are obligated under the oath which you have taken to
19 abandon this preconception on your part and to accept and
20 apply the law precisely as I now state it to you.

21 Now, there are two separate indictments in
22 this case, indictment 2008-GS-10-3861 is for murder, and
23 indictment 2008-GS-10-8359, the charge is possession of a
24 firearm during the commission of a violent crime. Each
25 of these indictments charge a separate and a distinct

1 offense, and you must decide each indictment separately
2 on the evidence and the law applicable to it.
3 Uninfluenced by your decision as to any other indictment,
4 the defendant may be convicted or acquitted or any or all
5 of the charges. You will be asked to write a separate
6 verdict of guilty or not guilty on each of the
7 indictments.

8 Now, I remind you that the fact that the
9 defendant was arrested, charged, and indicted in this
10 case is not evidence in this case and cannot be
11 considered by you as evidence of guilt in this case, nor
12 does it create any presumption or inference of guilt.
13 This document, as I explained to you at the beginning of
14 the trial, is simply the formal written instrument which
15 contains the charges made against the defendant. It is
16 the formal document by which this case is brought into
17 this court.

18 Now, the defendant has pleaded not guilty to
19 each of these indictments and that plea therefore casts
20 the burden on the state to prove the defendant guilty
21 beyond a reasonable doubt. A person committed -- a
22 person charged with committing a criminal offense in
23 South Carolina is never required to prove himself
24 innocent. This is an important rule of law in this
25 country that the defendant in a criminal trial will

1 always be presumed to be innocent of the crime for which
2 he is indicted unless and until his guilt has been proven
3 by evidence satisfying you of that guilt beyond a
4 reasonable doubt.

5 The presumption of innocence is not a mere
6 legal theory. It's not just a legal phrase. This is a
7 substantial constitutional right to which every defendant
8 is entitled to. This presumption of innocence
9 accompanies the defendant from the time he is charged
10 throughout the trial until you reach a verdict of guilt
11 based upon the evidence satisfying you of that guilt
12 beyond a reasonable doubt.

13 Now, ladies and gentlemen: I instruct you
14 and I emphasize to you that the fact that the defendant
15 did not testify in this trial must not be considered by
16 you in any way in your deliberations. A defendant has a
17 constitutional right to remain silent, and the exercise
18 of that constitutional right cannot and must not be held
19 against the defendant. Under your oath as jurors, you
20 are to draw no inference and no conclusion whatsoever
21 from the fact that the defendant did not testify.

22 Do not even discuss this fact in the jury
23 room. The defendant is not required to prove anything.
24 The burden of proof remains upon this state to prove the
25 defendant is guilty beyond a reasonable doubt. Now, some

1 of you may have served as jurors in a civil trial where
2 you were told that it is only necessary to prove that a
3 fact is more likely true than not true, such as by the
4 greater weight or by the preponderance of the evidence.
5 In a criminal case, the state's proof must be more
6 powerful than that. It must be beyond a reasonable
7 doubt. Proof beyond a reasonable doubt is proof that
8 leaves you firmly convinced of the defendant's guilt.

9 Now, there are very few things in this world
10 that we know with absolute certainty, and in criminal
11 cases the law does not require proof that overcomes every
12 possible doubt. If based on your consideration of the
13 evidence you are firmly convinced that the defendant is
14 guilty of the crime charged, you must find the defendant
15 guilty. If, on the other hand, you think there is a real
16 possibility that the defendant is not guilty, you must
17 give the defendant the benefit of the doubt and find the
18 defendant not guilty.

19 Now, I told you during the trial that
20 ordinarily people are not allowed to testify about their
21 opinion in court, but we do make an exception for expert
22 witnesses, so I need to go over that with you briefly
23 again. People are experts because of education,
24 specialized training in some field. They may give their
25 opinion and they may state their reasons for their

1 opinion.

2 You can give an expert's opinion as much or
3 as little weight as you think it deserves and if you
4 don't think it's based on sufficient education or
5 experience or you conclude that an expert's opinion is
6 not sound or that it is outweighed by other evidence, you
7 may disregard that opinion entirely. You are not
8 compelled to blindly accept an expert's opinion. Even if
9 it is uncontradicted, expert medical testimony may be
10 rejected if you find that it is inconsistent with the
11 facts or otherwise unreasonable.

12 You have the right to consider the testimony
13 in light of all of the circumstances and give it such
14 weight, if any, that you think it is entitled to. Now,
15 as jurors, you must necessarily determine the credibility
16 of witnesses who have testified in this trial.
17 Credibility simply means believability, and it is your
18 job as jurors to analyze and evaluate the evidence and
19 determine which evidence convinces you of its truth.

20 In determining the believability of witnesses
21 who have testified in this trial, you may believe one
22 witness over several witnesses or several witnesses over
23 one witness. You may believe part of the testimony of a
24 witness and reject the remaining part of the testimony of
25 that very same witness.

1 You may believe the testimony of a witness in
2 its entirety or you can reject it in its entirety. You
3 may consider whether any witnesses exhibited to you any
4 interest, bias, prejudice, or other motive in this case,
5 and you may also consider the appearance and manner of a
6 witness while on the witness stand.

7 Now, there has been evidence presented to you
8 that witnesses may have made prior statements which are
9 not consistent with the witness's present testimony in
10 court. You may use this evidence to decide whether to
11 believe that witness. You may also use evidence of
12 earlier contradictory statements to determine the truth
13 of those statements. It is up to you to decide whether
14 to believe the earlier statements or the testimony given
15 at trial.

16 If a witness is shown to have knowingly
17 testified untruthfully concerning any material matter,
18 you may consider this in determining whether to trust the
19 witness's testimony as to other matters. You may reject
20 all testimony of that witness or give all or part of the
21 testimony the weight you think it deserves.

22 Now, there was a statement introduced at
23 trial that was alleged to have been made by the
24 defendant. That was admitted into evidence in this
25 trial. While the Court has determined that the statement

1 was admissible, I instructed you then and I instruct you
2 now that you make the ultimate decision of whether or not
3 the defendant made that statement. If the defendant did
4 make that statement, you must determine whether that
5 statement was made freely and voluntarily and of his own
6 free will. This means that the statement was not caused
7 by pressure, force, fear, threats, coercion,
8 intimidation, or by hope or promise of leniency or any
9 reward of any kind. In determining whether the statement
10 was voluntary, you should consider both the
11 characteristics of the defendant and the details of the
12 question.

13 Some of the factors that you may consider are
14 the age of the defendant, the defendant's education, or
15 lack of education, the defendant's mental ability or
16 capacity, the defendant's IQ or intelligence, the
17 defendant's background and environment, the length and
18 place of the detention, the nature of the questioning,
19 and the advice or lack thereof to the defendant of his
20 constitutional rights, including but not limited to the
21 right to remain silent, that any statement could be used
22 against him in a court of law, the right to have a lawyer
23 present, that if he could not afford a lawyer a lawyer
24 would be appointed to represent him without any cost, and
25 that he could stop making a statement at any time.

1 You must carefully consider all of the
2 surrounding circumstances before you give any weight to
3 the alleged statement. The state has the burden of
4 proving beyond a reasonable doubt that the alleged
5 statement was voluntarily. If you determine that it was,
6 you may give the statement any further consideration that
7 you deem proper. You must decide what weight, if any,
8 should be given to the alleged statement, and if you
9 determine that the alleged statement was not the free and
10 voluntary statement of the defendant, you should not
11 consider the statement at all.

12 Now, I told you that one of the indictments
13 charges the defendant with murder in violation of 16-3-10
14 of the South Carolina code of laws. The state must
15 therefore prove beyond a reasonable doubt that the
16 defendant killed another person with malice aforethought.
17 Malice is hatred, ill will, or hostility towards another
18 person. It is the intentional doing of a wrongful act
19 without just cause or excuse and with an intent to
20 inflict an interest or under circumstances that the law
21 will infer an evil intent.

22 Malice aforethought does not require that
23 malice exists for any particular time before the act is
24 committed, but malice must exist in the mind of the
25 defendant just before and at the time the act is

1 committed. Therefore, there must be a combination of the
2 previous evil intent and the act. Malice aforethought
3 may be expressed or inferred. These terms, expressed or
4 inferred, do not mean different types of malice but
5 merely the manner in which the malice may be shown to
6 exist, that is, either by direct or by inference from the
7 facts and circumstances which are proved.

8 Express malice is shown when a person speaks
9 words which express hatred or ill will for another or
10 when a person prepared beforehand to do the act which was
11 later accomplished; for example, lying in wait for a
12 person or other acts of preparation going to show that
13 the deed was within the defendant's mind would be
14 expressed malice.

15 Malice may also be inferred from conduct
16 showing a total disregard for human life. If one
17 intentionally kills another during the commission of a
18 felony, the inference of malice may arise. If the facts
19 are proven beyond a reasonable doubt sufficient to raise
20 an inference of malice to your satisfaction, this
21 inference would simply be an evidentiary fact to be taken
22 into consideration along with you with other evidence in
23 the case and you may give it the weight you think it is
24 entitled to receive.

25 I charge you that mere presentation at a

1 scene is not sufficient to prove somebody is guilty of a
2 crime. A defendant's presence where a crime is being
3 committed or mere association with the person who commits
4 a crime does not make the defendant an accomplice or an
5 aider or abetter of the person committing the crime.

6 The burden is on the state to prove every
7 element of the crime charged. If you find after
8 reviewing all of the evidence that the state has proved
9 that the defendant was only present at the scene of the
10 crime and they have not proved beyond a reasonable doubt
11 any other participation in the crime, then you must find
12 the defendant not guilty. The law is that proof of at
13 the scene of the crime is not sufficient to find someone
14 guilty.

15 I have also charged you that if a crime is
16 committed by two or more people who are acting together
17 in committing a crime the act of one is the act of all.
18 A person who joins with another to commit an unlawful act
19 is criminally responsible for everything done by the
20 other person which happens as a probable and natural
21 consequence of the acts done in carrying out the common
22 plan or purpose.

23 For example, two people can be guilty of
24 killing another person when only one of the two had a
25 gun, when there was only one bullet, and when only one of

1 the two fired the shot that caused the death. If two or
2 more people are acting together assisting either in the
3 offense -- in the committing of the offense, the act of
4 one is the act of all, or it is sometimes said to be the
5 hand of one is the hand of all.

6 Prior knowledge that a crime is going to be
7 committed without more is not sufficient to make a person
8 guilty of that crime. Mere knowledge that another person
9 is going to commit a crime, even if the defendant is
10 present when the crime is committed is not sufficient to
11 prove the defendant -- or to convict the defendant as a
12 principle. Guilt as a principle is shown by actual or
13 constructive presence at the scene as a result of a prior
14 arrangement.

15 Therefore, a finding of a prior arranged plan
16 or common scheme is necessary for a finding of guilt as a
17 principal. The state must prove beyond a reasonable
18 doubt by competent evidence the theory of the hand of one
19 is the hand of all. A principal of a crime is one who
20 either actually commits the crime or who is present,
21 aiding, abetting, and assisting in committing the crime.
22 When a person does an act in the presence of and with the
23 assistance of another, the act is done by both.

24 Where two or more acting with a common plan
25 or intent are present at the commission of a crime it

1 does not matter who actually commits the crime. All are
2 guilty. The hand of one is the hand of all.

3 Present at the commission of the crime means
4 to be sufficiently near to aid and abet and assist in the
5 commission of the crime; however, mere presence at the
6 scene of the crime again is not sufficient to convict one
7 as principal on theory of aiding and abetting. Intent is
8 also a necessary element, for there must have been a
9 common design or intent to commit the crime and the crime
10 must have been committed pursuant thereto the person
11 aiding and abetting by some overt act. Intent means
12 intending the result which actually occurs, not
13 accidentally or involuntarily.

14 Intent may be shown by acts and conduct of
15 the defendant or other circumstances from which you may
16 naturally and reasonably infer intent. The state, again,
17 must prove these elements beyond a reasonable doubt.

18 The other indictment charges the defendant
19 with possession of a weapon during the commission of or
20 an attempt to commit a crime, a violent crime. Again,
21 that is a violation of code section 16-23-490. The
22 defendant -- the state must therefore prove beyond a
23 reasonable doubt that the defendant was in possession of
24 a firearm or visibly displaced what appeared to be a
25 firearm during the commission of a violent crime.

1 A firearm means any machine gun, automatic
2 rifle, revolver, pistol, or any weapon which is designed
3 to or may be readily converted to expel a projectile. A
4 knife means an instrument or a tool with a sharp cutting
5 blade whether or not fastened to a handle which can be
6 used to inflict a cut, slash, or wound.

7 In order to convict the defendant of -- in
8 order to find the defendant guilty of possession of a
9 weapon during the commission of a violent crime, you must
10 first find the defendant guilty of either committing the
11 violent crime or attempting to commit a violent crime,
12 and I charge you that murder is a violent crime.

13 Now, there has also been an issue in this
14 case as to the identification of the person who committed
15 the crime charges. Again, the state has the burden of
16 proving identity beyond a reasonable doubt. You must be
17 satisfied beyond a reasonable doubt of the accuracy of
18 the identification of the defendant before you may
19 convict the defendant.

20 Identification testimony is an expressed
21 belief or impression by a witness. You must determine
22 the accuracy of the identification of the witness. You
23 must consider the believability of each identification
24 witness in the same manner as any other witness. You may
25 consider whether the witness had an adequate opportunity

1 to observe the offender at the time of the offense.

2 This will be affected by things like how long
3 or how short a time was available, how far or how close
4 the witness was, lighting conditions, and whether the
5 witness had a chance to know the person in the past.
6 Once again, I instruct you the burden of proof is on the
7 state, and that extends to every element of the crime
8 charged and that includes beyond a reasonable doubt the
9 identity of the defendant as the person who committed
10 crime. If after examining the testimony you have a
11 reasonable doubt as to the accuracy of the
12 identification, you must find the defendant not guilty.

13 Now, I charge you that in determining guilt
14 or innocence, you cannot consider any possible penalty
15 for any particular crime. The punishment for the crime
16 is a matter for me to determine. It should never be
17 considered by you in any way whatsoever at arriving at a
18 fair and impartial verdict as to the guilt or innocence
19 of the defendant.

20 Now, ladies and gentlemen: There are four
21 possible verdicts in this case, guilty of murder, not
22 guilty of murder, guilty of possession of a firearm
23 during the commission of a violent crime, and not guilty
24 of possession of a firearm during the commission of a
25 violent crime. I charge you that you may not convict the

1 defendant of possession of a firearm during a violent
2 crime unless you also find the defendant guilty of
3 murder.

4 Now, there is no significance whatsoever to
5 the order in which I went over those possible verdicts
6 with you. I simply have to say something first, and I
7 will tell you, ladies and gentlemen, that your verdict
8 must be a unanimous verdict. That means all 12 of you
9 must agree with you.

10 Now, Mr. Foreman, I'm going to send these
11 indictments back to the jury room with you. Again, these
12 are not evidence. These are simply the charging
13 instruments. Most importantly, the reason why I'm
14 sending them back is because on the back of the form
15 you'll see there is a place written that says the word
16 verdict. Once the jury reaches a unanimous verdict as to
17 the charge, you will write that verdict, guilty or not
18 guilty, sign it, and date it.

19 As to each of these indictments, same thing,
20 guilty or not guilty, sign it, and date it. Once you
21 have reached a unanimous verdict as to both of these
22 charges, you let the bailiffs know you have reached a
23 verdict and we will come back to receive a the verdict.

24 I'm going send you back to the jury room.
25 Don't begin your deliberations yet because we have a

1 couple formalities that we have to do. First I have to
2 give the lawyers the opportunity to say, Judge, you
3 misspoke about something and you didn't correctly charge
4 the law. We have to do that.

5 We also just get the evidence together to
6 make sure that everything goes back that is supposed to
7 go back. I will tell you, again, weapons make people
8 nervous, and so what we're going to do is leave the
9 weapons in this room here. If you decide that you want
10 to see the weapons, you just let the bailiff know that
11 you want to see the weapon and we will bring them back
12 separate from the ammunition, all right? So that way
13 there is no possibility -- sealed off, there is no
14 possibility that anyone can misfire at this point because
15 there is no ammo, and you saw the little plastic in
16 there, but just to be on the safe side, if the gun is
17 back there, the ammo is in here.

18 If you need to see the ammo, we'll send the
19 ammo out there and bring the gun back. That way
20 everybody has a comfort level on that because I know guns
21 make people nervous. So when I send the evidence back
22 with the indictments, the bailiff tells you, The judge
23 says it's okay to begin deliberations, you can begin
24 deliberations.

25 It is now almost 6:00. You can deliberate as

1 long as you want. We are here at your pleasure. We will
2 stay as late as you want. We'll come back. If you don't
3 reach a verdict tonight, we'll come back tomorrow, we'll
4 come back Monday, whatever your pleasure is. Earlier,
5 you had indicated you wanted to come back Monday when we
6 thought we might run into another day's worth of
7 testimony, but it all came together and we finished
8 today, but the bottom line is, we'll stay as late as you
9 want or we'll come back if you want to break.

10 My suggestion is you go back, begin your
11 deliberations, see where everybody is, and go from there.
12 Like I say, it's 6:00, and at some point if you want to
13 deliberate for a while longer and you want us to order
14 dinner, our choices at this point in the evening is
15 limited usually to pizza. But we will order it for you,
16 and it will take, roughly, an hour to get here.

17 So keep that in mind, and if you want us to
18 order you dinner, let the bailiffs know, and we'll order
19 you dinner and you keep deliberating. If anybody needs
20 to make a phone call or anything, you can do that just to
21 tell them, Hey, we're deliberating. It's going to be a
22 little bit late.

23 Again, don't talk to anybody about this case
24 until we're done with it, and don't begin your
25 deliberations until I send word back with the bailiff to

1 begin deliberations. All right? Thank you.

2 (6:04 p.m., jury retires to deliberate.)

3 THE COURT: Okay. Anything from the state?

4 MS. SHEALY: Judge, the one thing I'm
5 entertaining is under punishment, I know this got
6 addressed during voir dire, but I wonder if we should
7 tell them this is not a death penalty case.

8 THE COURT: Well, I told them that one time.
9 Anything beyond that I'm not going to -- they heard that.
10 I don't want to them to focus on the penalty.

11 MS. SHEALY: Okay. I have no other requests.

12 THE COURT: Okay.

13 MR. SLADE: We have no objection to the
14 charge, Your Honor.

15 THE COURT: All right. Y'all want to make
16 sure we got the evidence in?

17 MS. SHEALY: Yes, Judge.

18 MR. SLADE: Before we go that far, Your
19 Honor, I wanted to put my motion -- I wanted to renew my
20 motion for a directed verdict.

21 THE COURT: All right. Noted and denied.

22 MS. SHEALY: Your Honor, there are two --
23 there is a page from the defendant's statement that we
24 have redacted and that we will have a substitute for, and
25 there is a page from the letters to Steven Brown from

1 Terrell Chandler that we also had to redact about
2 YOA language, so I'm going to need to substitute that.

3 (Unredacted letter and unredacted page of
4 defendant's statement marked for identification as
5 Court's Exhibit Nos. 7 and 8.)

6 THE COURT: All right. Does anybody have an
7 objection to me sending the jury charges back?

8 MR. HOWE: Is that your usual way?

9 THE COURT: I prefer it. I never have them
10 ask me to be recharged. It cuts down on that. All right
11 we'll send this.

12 MR. SLADE: We have no objection, Your Honor.

13 (Recess taken.)

14 (At 7:59 p.m., the jury reached a verdict.)

15 THE COURT: Okay. Let the record reflect the
16 defendant is in the courtroom. Bring them in.

17 (In open court, jury present.)

18 THE COURT: All right. Did you bring the two
19 alternates in? Okay. Mr. Foreman, has the jury reached
20 a verdict?

21 THE FOREPERSON: Yes, sir.

22 THE COURT: Is it unanimous as to both
23 indictments?

24 THE FOREPERSON: Yes, sir.

25 THE COURT: Would you hand it to the bailiff,

1 please. All right. Stand up.

2 As to the charge of murder, 2008 GS-10-8361,
3 the jury has found you guilty of that charge,
4 Mr. Chandler. Indictment 2008 GS-10-8365 charged
5 possession of firearm during the commission of a violent
6 crime, your verdict is guilty, Mr. Chandler. All right.
7 You may be seated.

8 All right, ladies and gentlemen of the jury,
9 do you wish to have the jury polled?

10 MR. SLADE: If you would, Your Honor.

11 THE COURT: We're going to have you polled
12 right now. It's a formality that we go through. The
13 clerk will just call out your number and ask you if it
14 is, in fact your verdict.

15 (Whereupon, the jury was polled and all
16 jurors indicated their agreement with the verdicts.)

17 THE CLERK: Your Honor, the juror has been
18 polled and the verdicts stand.

19 THE COURT: All right. Well, I want to thank
20 you for your service this week. You know, most of the
21 time when people get that little notice that they are
22 picked for jury duty, they think, Oh, my goodness, I
23 would love to do it, but it's just not a good time and
24 how can I get out of this.

25 But it's been my experience that once people

1 come, show up, and then they get picked for a jury in
2 particular, they are glad they did it. They learn about
3 our system. They find out how it works. It is an
4 interesting experience, and this -- sometimes we have
5 little wreck cases and sometimes we have murder cases and
6 we have everything in between..

7 This has been an interesting week with an
8 interesting set of facts. The one really nice thing
9 about it is you got to see some good lawyering this week,
10 I'll tell you that. A difficult case like this gets very
11 hard to try when you have lawyers that aren't very good
12 and/or don't get along with each other, and you got this
13 week to see lawyers of the highest caliber act in the
14 most professional manner, and it does our profession a
15 great deal of credit when you have lawyers that do such a
16 good job. They're not flashy like they are on TV all the
17 time, but they are the utmost professionals, and to our
18 professional credit, I want to thank all of you for an
19 excellent job this week.

20 I want to thank you, because you sat and
21 listened. You did exactly what we asked you to do. We
22 asked you to come in, pay attention. It helped that this
23 was an interesting case, and there were times that I
24 really began to doubt we were going to finish this case
25 today, but, you know, the reason why we were able to do

1 is because the lawyers did best to streamline it to
2 accommodate y'all, to get it done this week, to agree on
3 evidence that we didn't need to drag things out on, and
4 the things that were contested, we fought hard.

5 We have an advocacy system here where each
6 side does their best to bring out the facts, and where
7 they're contested, you get to hear both sides of it.
8 Ultimately, you decide how to resolve those conflicted
9 facts, and it's a hard job that you have but you
10 listened. I never saw people wandering or falling asleep
11 or anything. There is a lot going on in a trial, and
12 I've got to pay attention to the testimony, but I also
13 watch you guys watch what is going on out in the
14 audience, and I noticed that you guys were attentive the
15 entire time and it helped. It was an interesting case.
16 So that is always good, but good lawyers, interesting
17 facts. It was a good week to be a juror, you know?

18 Now, a lot of times people do look at jury
19 service as a burden, but it is, in fact, a privilege, I
20 think, to serve on a jury. People all over the world
21 wish they had the opportunity that Mr. Chandler had, and
22 that is, accused of a crime by the state, he gets 12
23 people that don't know him, don't know anything about the
24 facts, don't know anything about the case, and they
25 listen. They listen attentively and they went back and

1 without pressure or coercion from outside influences
2 decide what the fate of the case will be, and that is
3 something people all over this world wish they had, and
4 very, very few countries in this world actually do have
5 that right. There is less than six countries around the
6 world that would actually give you a right to a jury
7 trial by citizens like you in this world in a case like
8 this. Most of the time it would be, at best, a trial by
9 a judge only.

10 But our founding fathers thought it was such
11 an important thing that they put it in the federal
12 constitution three separate times the right to a jury
13 trial, and it's also in our state constitution. So it's
14 a responsibility of citizenship, but it's also a great
15 privilege to serve on a jury, and I hope that now that
16 your week is done you will look back on it and go, You
17 know, I enjoyed that. I learned a lot. It was a good
18 experience so that we depend on that. We depend on
19 people like you going back out now and talking to people
20 and saying, you know, I served on a jury, and it was a
21 good experience, because we need people to show up and do
22 it.

23 So I hope that is something you'll be able to
24 do. Now, all week long I've been telling you you can't
25 talk about the case. You can talk about the case to your

1 heart's content now to anyone you want to. Sometimes you
2 will have the lawyers or the prosecutors, somebody from
3 their office may contact you to discuss the case with you
4 because it helps them do their job better the next time,
5 and it is perfectly okay for anybody to contact you about
6 the case, but probably the most likely people that you
7 would hear from would be somebody from the lawyers or
8 their office.

9 If you want to talk to them, you're free to.
10 If you don't want to, just tell them you don't want to
11 talk and they'll respect that. They won't have any
12 problem with that. If do you have a problem with
13 somebody harassing you that is not involved in the case,
14 you let us know. We'll take care of that right away, but
15 you're free now to go home, to talk to anyone you want to
16 about the case, and we sincerely appreciate what you have
17 done this week.

18 I'll be hearing some motions here in a minute
19 and will be imposing sentence in a little bit, but I'll
20 hear from the sides and any of the victim's family
21 members if they want to. You're welcome to stay; you're
22 free to go. They'll escort you out back over to where
23 your cars are, if you want to do that, but we'll probably
24 be another 15, 20 minutes here. Totally up to you, so if
25 anybody wants to leave, you can leave now, if you want to

1 stay, feel free to stay.

2 Thank you for your service, though.

3 (Jury dismissed.)

4 THE COURT: Okay. Is there anything from the
5 state that you would like to say or do you want to make
6 any motions that you need to make at this time? I'm
7 sorry. Go ahead.

8 MR. SLADE: Your Honor, I move for a new
9 trial based on the grounds we argued in the directed
10 verdict motion at the end of the state's case as well as
11 when we renewed that motion at the end of our case. So I
12 move for a new trial.

13 THE COURT: All right. Well, that motion is
14 denied. I think the evidence in the case certainly
15 supports the jury's verdict. There was an abundance of
16 evidence that would support both charges, and so for the
17 record, I deny your motion.

18 All right? Anything else?

19 MR. SLADE: No, sir.

20 THE COURT: All right. So I'll hear from the
21 state and any of the victim's family members if they wish
22 to say something, and then I'll hear from the defense.

23 MS. SHEALY: Would you like a copy of the
24 sentencing sheets?

25 THE COURT: Yes, ma'am. Thank you.

1 MS. SHEALY: Judge, standing in the courtroom
2 is Calvin Gibbs's mother, Delores, and his father,
3 Calvin. Also seated in the courtroom are his uncle, his
4 grandmother, the mother of his children, his sister, and
5 a family friend.

6 Your Honor, his mother brought with her some
7 photographs of Calvin's children. He was the father of
8 three children; Calvin the third, Tyrell, and Ca'Vashia,
9 and I believe his mother or either his sister would like
10 to address you. Would you like to tell him the story
11 about the telephone? Delores?

12 THE COURT: Okay. For the record, if you
13 would, state your name.

14 THE DEFENDANT: Delores Gibbs.

15 THE COURT: What would you like to tell me?

16 THE WITNESS: I'm the mother of Calvin Gibbs.
17 Those children frequently have problems where the school
18 would call, and you would have to go and pick them up,
19 that is Ca'Vashia or either Calvin the third. There was
20 one night that stands out that the older one called, and
21 she was calm, and all she said was, Granny, C.J. wants to
22 talk to you.

23 C.J., which is Calvin the third, got on the
24 phone and told me to make his sister call heaven. And,
25 of course, I had to ask, you know, that again, you know,

1 do what? And, you know, he said again, Make her call
2 heaven.

3 So I tried to explain to C.J. that heaven
4 doesn't have a phone. Heaven is a happy place where you
5 don't need a phone or anything but just as -- I tried to
6 explain to him. At that time he was four, now he's five,
7 but he's having difficulty understanding that. Even
8 sometimes with Ca'Vashia, she would go through her little
9 clique at school where counselors would have to call and
10 me or her mama would have to go and pick her up.

11 And there is really nothing we can say to
12 them. We just hug them and we cry with them and for them
13 because they are hurt. They are used to seeing their
14 father every day. Calvin was the type of father that
15 took care of his kids. Actually, when he had the first
16 one, I used to be number one, but after he had the first
17 one, I got put back, and, of course, after the second one
18 and the third one, you know, but he always did take care
19 of those children, and just to have the breakdowns -- and
20 even with myself with the May 31st, you know, at the
21 hospital, you know, we got there at about 1:20, and, you
22 know, you're being told that you can't touch him.

23 We had to view him from behind a Plexiglass,
24 you know, tubes in his nose and his mouth was still open.
25 You have to view your child, and you have to ID him.

1 That was really heartbreaking for us, and I'm standing
2 here today so that other family's children --
3 financially, you know, we had to pay for the funeral out
4 of pocket because we had some insurance issues but also
5 so that no other family or children would have to go
6 through this and have to seek counselling that you would
7 give the maximum.

8 THE COURT: All right. Anyone else? Okay.

9 MS. SHEALY: Your Honor, I do not lightly ask
10 for this, but I think this is an appropriate case for a
11 life sentence. The weapon that was used was so
12 excessively dangerous, so many other people would have
13 been harmed if that gun had not jammed or if those
14 bullets had found someone instead of just -- as far as we
15 know, stopping somewhere off of 61. This defendant's
16 conduct and his fascination with weapons, his use of
17 drugs, his selling drugs, his getting other people
18 involved in his activities, certainly I think in this
19 case could demand a life sentence.

20 I think one thing that Ms. Gibbs said that is
21 pretty telling is we need to send some type of signal out
22 on the streets of Charleston that this kind of conduct
23 cannot be accepted because we have too many families like
24 the Gibbsses and we would just ask Your Honor that you
25 consider a life sentence in this case.

1 You've heard all the evidence. You've had
2 the benefit of hearing all of that, but this defendant
3 had no fear and no concern for the consequences, no
4 concern for anyone except those few people he warned
5 prior to shooting that AK47 out in West Ashley, and we
6 would ask, Your Honor, that you consider a life sentence.

7 I would like to thank David Osborne, and the
8 city police department has really done a nice job in this
9 case and been very cooperative. As you can tell, there
10 is a lot of evidence in this case, and everyone has
11 worked very hard and I appreciate their efforts and I
12 appreciate the service of the jury.

13 Thank you, Judge.

14 THE COURT: Thank you. All right. From the
15 defense?

16 MR. SLADE: Thank you, Your Honor.

17 MS. SHEALY: I'm sorry. I didn't tell you
18 his prior record. I completely forgot that. He has four
19 prior burglary seconds and a use of a vehicle without
20 permission.

21 THE COURT: Okay. Thank you. Mr. Slade?

22 MR. SLADE: Thank you, Your Honor. Your
23 Honor, Terrell's family is here as well. They've been
24 here all week through court. I apologize. I know his
25 brother Kevin who has brought his clothes each day. I

1 don't know the other members of his family, although I
2 know his grandmother is here.

3 Your Honor, he's 23 years old. You really
4 can't argue with the things that Ms. Shealy has said,
5 because these kind of situations are truly and deeply
6 tragic. There is no question of that, and I don't think
7 at this point anybody can really appreciate the kind of
8 suffering that the victims have or that they're looking
9 forward to.

10 But it's just when you have to consider the
11 gravity of sentencing someone to life, and I think it's
12 hard to remember, or hard to think about in a situation
13 like we find ourselves in now where emotions are so high,
14 and justifiably so, not arguing that point, it's easy
15 when someone has been -- I say easy, but it's easier when
16 somebody has been as reckless and careless as some of the
17 evidence shows that Terrell has been in this case. I'm
18 not trying to argue with anybody's verdict here.

19 And when people are Terrell's age, they
20 aren't -- they don't take the kind of care that more
21 mature people take with other people's lives. I think to
22 some degree, as I said, I can't argue with some of the
23 things Jennifer said about the level of carelessness or
24 recklessness, and to some degree the kind of macho
25 attitude people who are young males have. There is no

1 question of that, and so I guess the point I'm trying to
2 make is when you're 19 or 20 or 21 and you are a young
3 male, it's easy to look for dangerous things to do.

4 I think to some extent a lot of young males
5 look for dangerous things to do. Sometimes it's trying
6 to see how fast your car can go. Sometimes it's taking
7 drugs. There is all kinds of dangerous activity you can
8 get involved in, and clearly having an AK47, having a gun
9 like a 380 in your house, hanging around with folks like
10 that -- and this isn't a hanging around with a bad crowd
11 argument. You don't let folks like that hang around your
12 house unless you let them.

13 But, Your Honor, a whole lot of people who
14 have done exactly these kind of stupid things, reckless
15 things, and, to all outward appearances, hard-hearted
16 things, after you get a little older and mature and can
17 appreciate the hurt that this kind of recklessness
18 imposes on people's lives, you know, when she was talking
19 about -- excuse me. When one of the witnesses was
20 talking about Terrell and you saw the picture of Steven
21 Brown posing with these guns, when you see folks doing
22 that kind of thing, they're just not thinking about --
23 they're trying to be somebody or do those kind of things
24 and they're not thinking about the kind of harm and the
25 kind of lifelong hurt that they impose on people.

1 And my point in arguing this is that as time
2 goes by, Judge, people who have that level of -- I don't
3 want to say immaturity, because it's more than that --
4 who take efforts to seek out this kind of danger become
5 and are able to even out, are able to mature, and are
6 able to understand that you can't -- the course of
7 engaging in this kind of thing.

8 And so what I'm asking the Court to consider
9 is a 30-year sentence because Terrell is 23 years old.
10 And in this state, we don't have probation for this kind
11 of sentence. You know that; I know that. Of course the
12 public at large doesn't know that, so at least -- I can't
13 do the math in my head, but at best he can -- he's going
14 to do about 28 years.

15 THE COURT: Day for day on murder.

16 MR. SLADE: Your Honor, I'm sorry. So
17 he'll -- and I think you have to run the weapons thing
18 consecutive, right?

19 THE COURT: But if I give him anything less
20 than life the five years gets tacked on.

21 MR. SLADE: That is what I was thinking, and
22 my point is that, you know, you want to do something
23 about this kind of tragedy and you need to, and I'm not
24 disagreeing with Miss Shealy that you have to send a
25 message, but at the same time it's all of these kids,

1 young people, who were involved in this thing in any way,
2 were people who were doing -- who were involved with
3 drugs.

4 And, Your Honor, but for this act, a lot of
5 them would have grown up, would have evened out, would
6 have gotten jobs, or some of these people like Megan
7 White, in my judgment a terrible witness who was hanging
8 around with these people, she's going to school. She's
9 trying to do things. I'm sure Mr. Gibbs at some point
10 would have put the drug dealing behind him, and my point
11 is that 30 years is a long time, and he's going to be in
12 a -- I won't say a concrete box, but he's going to be in
13 a very, very tough environment, and everybody -- I mean,
14 even the hardest heads, even the hardest hearts -- that
15 is a long time. Even the hardest heads and the hardest
16 hearts can be moved toward recognition of the harm that
17 they caused.

18 And I just think that given the fact that it
19 will be 30 years before he gets a chance to do anything
20 that normal people do -- and I'm not arguing that a price
21 needs to be paid, but over a period of 30 years, a lot of
22 us will be dead then, and surely that is enough time to
23 impose that kind of pain on somebody. Surely there is
24 that chance that 30 years of that kind of pain is going
25 to teach the lesson that justice is supposed to teach.

1 That's all.

2 THE COURT: All right. Thank you.

3 Mr. Chandler, do you wish to say anything?

4 THE WITNESS: Yes, sir.

5 MR. SLADE: That's his brother.

6 THE COURT: Oh, all right. What is your
7 name, sir?

8 THE WITNESS: My name is Kevin Chandler. I'm
9 Terrell's older brother. First of all, I just want to
10 definitely give my condolences to the family, because
11 like I told my brother and like I told everybody, I want
12 to see justice on both sides. Our family doesn't condone
13 the foolishness and the things that led up to this
14 situation. We raised Terrell totally different than
15 that, and the reason I want to make a statement is
16 because, I mean, that night that he left my house, the
17 night he left my house, and even before that, we got to
18 remember that only five people know what really happened,
19 God bless his soul, Calvin, and the four that were
20 involved.

21 Me personally, I got a daughter. She's 11
22 years old, and Lord knows, if somebody hurt my daughter,
23 I probably would be sitting right behind where he's at
24 right now because I would tell you right now, I would
25 kill them. I would call the police and say come get me

1 right now. I done killed somebody for killing my
2 daughter, or trying to do something to my daughter, but
3 my thing is that he has an eight-year-old son.

4 Justice needs to be served. We have to lie
5 every day when he ask where his dada at. He's working
6 out of town. That is hard to do with an eight-year-old,
7 continuously, continuously, continuously, where my dad
8 is? You see what I'm saying?

9 And I say I can't fathom what y'all feel. I
10 can't fathom y'all hurt. I can't fathom what y'all been
11 through over the last couple years leading up to this
12 trial, but at the same time, only five people know what
13 the real deal is. Who is to say true justice been served
14 today? Who is to say? Heaven knows, and the five of
15 them know. You still got three people out there. You
16 still got three people.

17 He has some involvement, I won't deny that.
18 I won't deny that. I saw him with Che at my house. I
19 ask who that clown is. Don't be bringing him around my
20 house. I had a bad vibe from the first time I saw Che,
21 and I told him that myself, because in the same night
22 that he left my house and he called me the next day, he
23 said, Kev, I woke up to gunshots.

24 I thought nothing of it. It's a common
25 thing. We been outside with my grill, eating some crabs

1 and everything. I say, Rell -- I always give him a pep
2 talk -- I say, Listen. Stay out of trouble and do the
3 right thing, and he can't never deny that.

4 God gave me a second chance eight years ago.
5 I was in a car accident and the vehicle got hit by a hit
6 and run driver on I- 95, got ejected 25 feet out of a
7 moving vehicle, broke neck, bam, arms, ribs, everything,
8 went through 18 hour of surgery and still here. Second
9 chances.

10 Now, I ain't pleading with you not to
11 disregard the fact of the situation, but, like I say, we
12 all got hurt in this whole thing, both sides. I want
13 justice on both sides, but life? That's deep. That's
14 deep.

15 THE COURT: All right. Terrell, you want to
16 say anything?

17 THE DEFENDANT: The only thing I can say, I
18 mean, my heart go out to the family who lost their child.
19 I repeat this day, two years later, you got the wrong
20 man. I had some involvement out there, but I promise you
21 I ain't pull that trigger. I ain't never had to shoot a
22 man, never. You got witnesses on the stand saying I
23 walk -- I don't play with no gun.

24 THE COURT: Mr. Chandler, address me.

25 THE DEFENDANT: I don't play with no gun,

1 Your Honor. I grew up on a rough side of town where you
2 need a gun. The people in court, they ain't never grew
3 up where I grew up at. Grow up seeing people shoot? No,
4 I had to go out and get everything I had to get. I never
5 robbed nobody. I never did none of that. Ask my
6 brother. My mama raised a working man.

7 My child about be to eight years old,
8 understand? Their son leave behind an eight-year-old. I
9 leave behind an eight-year-old child, come on. I still
10 ain't pull that trigger. It may have been my gun, yeah,
11 but my protection, and I'm just an outgoing person. If
12 you hang with me, I got your back as well as you got my
13 back. But I ain't kill that dude, never. I never killed
14 a man. Come on. Life? On something I ain't done? Your
15 Honor, that's crazy. That's crazy.

16 I accept punishment for me having a gun. I
17 accept that, but for me something I ain't done? That's
18 all I got to say.

19 THE COURT: All right. You know, this is
20 always the hardest part of my job, it really is. I
21 remember a number of years ago when I first started, I
22 had a friend that had been on the bench a while, and I
23 said, What is the hardest part of the job?

24 He didn't even hesitate. He said, Sentencing
25 young people to jail, and you know what, he was

1 absolutely right. It never gets easier, especially when
2 they got a long time ahead of them. I got a daughter
3 that is your age and I got a son that was your age when
4 you committed this crime. I hear what you're saying
5 about you say you didn't do it, but let me tell you what:
6 There is a lot of evidence that said you did do it.
7 There is a lot of evidence that says even if you weren't
8 the trigger man, the law is very clear, that was your
9 gun.

10 You were there. You know what was going on.
11 We got a bunch of people up there saying that you warned
12 people about shots going down. You knew exactly what was
13 going on that night and everybody in that place knew what
14 was going on in there that night. Y'all were going to
15 rob that guy over nothing but drugs, and it wasn't even a
16 large amount of drugs.

17 It didn't even sound like y'all knew him
18 before he got over there. But as your gun, you got --
19 you might need a gun. I understand the streets. I got
20 people in here all the time with guns involved in their
21 lives on the streets, but it's one thing to carry around
22 a pistol. It's a whole other thing to have an AK47
23 around. You can have one of those things, but let me
24 tell you what, you got no business owning one of those.

25 You end up using them when you get one, and

1 that's where we're at. The evidence of premeditation in
2 this case was about as clear as anything I've ever seen.
3 Y'all were warning people there were shots going down.
4 Everybody knew what was going down, and it was over just
5 the silliest amount of drugs I've ever heard.

6 And what is so frustrating about this --
7 because I agree with your lawyer, 100 percent. Your
8 lawyers did a magnificent job. I know right now you
9 don't appreciate it, but they sweated and bled, for you
10 and it's obviously taking an emotional toll on them, but
11 I agree with your lawyer. Young people don't think, you
12 know, and that is what always worries me as a father,
13 sitting there going, Oh, Lord, give them the wisdom to
14 think beyond the next ten minutes.

15 You guys lured somebody to the back of your
16 apartment and shot him 20 feet from your apartment.
17 Y'all thought you were going to get away with that by
18 running in the apartment and turning the lights out?
19 That is the dumbest thing I've ever heard of in my whole
20 life. The only chance you had of getting away with this
21 is the fact you didn't kill him on the scene and he drove
22 off.

23 If you would have killed him 20 feet from
24 your apartment, do you honestly think you wouldn't have
25 gotten caught by bunking in and turning the lights off in

1 your apartment and the police wouldn't catch you? I
2 can't believe how stupid your thinking is, but that is
3 the trouble with young people. They don't think beyond
4 the next five minutes, and it's very clear that you guys
5 knew what you were doing.

6 This jury verdict is amply supported by the
7 evidence in the record. The only question is what is an
8 appropriate sentence for you and for society, and that is
9 what we try to figure out when we're doing justice.

10 Murder is 30 years to life, and it's day for
11 day. There is no parole. However way you look at it,
12 you're going away for a long time. You know, life is
13 warranted in this case. The only question is whether or
14 not I extend to you any mercy on it. I have to factor in
15 certainly the victim's family. They've lost their son,
16 their father; their child is never coming back. The
17 community that we have is sorrowfully inundated with
18 young people who just seem to not understand that you
19 cannot go around robbing and shooting people to get what
20 you want, and so we need to send a signal to the
21 community.

22 The whole problem with that deterrence theory
23 is people like you ain't getting deterred because you're
24 not thinking out the consequences of your actions to the
25 point that you lure a guy to back behind your apartment

1 and shoot him. That's not thinking it through.
2 Deterrence, it's not even entering into your mind that
3 you might ever go to prison for something like that
4 because you think you can hide out in your apartment and
5 get away with it, and that just -- you know, I still
6 struggle with that.

7 Having said that, I look at this, and you're
8 a 23-year-old man. Crime statistics show 17- to
9 25-year-olds, that's when they commit the crimes. After
10 25, it drops out probably from about 35, 40 years old.
11 We rarely get people committing violent crimes beyond the
12 age of 35, 40. Most of the ones we have at that age are
13 drug crimes. They're just addicts and that's why they're
14 committing their crimes.

15 You know, I look at this and I'm going, for
16 all practical purposes, sir, you have wasted your life.
17 You've got an eight-year-old son who you are not going to
18 have the joy of seeing grow up, no matter what sentence I
19 give you. He'll be visiting his daddy in prison for the
20 time that you should be out there taking care of him,
21 playing ball, teaching him to ride a bicycle, and no
22 matter what I give you, you miss that. The only thing
23 that I can give you is a little bit of hope. Life
24 without parole means the only way you leave is in a pine
25 box. Thirty years, the facts of this case warrant more

1 than thirty years, I assure you that. I've struggled
2 with it.

3 My sentence is going to be 45 years on the
4 murder. We tack on five. By the time you get out, 50
5 years from now, you will be an old man. You will over
6 whatever impulses drive you today, but you owe the state
7 a long time, and I'm not giving you life. I'm giving you
8 a little bit of hope. I hope you will take advantage of
9 that and figure out a way, sir, to earn redemption for
10 your soul, because you are going to be a long time where
11 you're going, and I hope you'll figure out a way to
12 actually make something of your life, because you'll have
13 that opportunity, believe it or not, because you will
14 have the opportunity to figure out how you will get
15 through 50 years, but you can actually lead a productive
16 life. Hopefully, it will come in the form of once you
17 get your head around why you're where you're at, you'll
18 mentor young men to not do what you have done and make
19 those mistakes. If nothing else comes out of that, I
20 hope that comes out of that.

21 So that is the sentence of the Court. Good
22 luck to you. So it's 45 plus five. All right.

23 I want to again extend my thanks to both
24 attorneys, both sets of attorneys. Tremendous
25 professionalism. I know this case has taken a lot out of

1 you, both sides. The highest level of professionalism
2 was exhibited this week, and I thank you for that. You
3 do yourselves credit. You do our profession credit. It
4 makes me happy to do what I do. All of you are welcome
5 in my court any time. All right? Thank you.

6 MR. HOWE: Thank you, Your Honor.

7 MS. SHEALY: Thank you, Judge.

8 - - -

9 (Whereupon, the proceedings were concluded.)

10 - - -

11

12

13

14

15

16

17

18

19

20

21

22

23

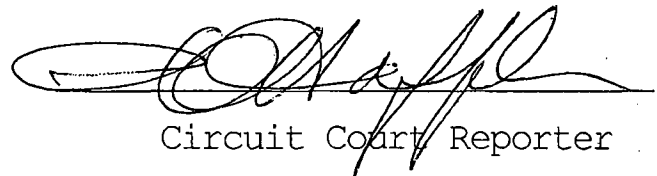
24

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth 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 of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the June 7-11, 2010.

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

August 19, 2010



Circuit Court Reporter

NSW20080603488

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

0801737

ARREST WARRANT NUMBER

F969950

DATE OF ARREST

June 4, 2008

ACTION OF GRAND JURY

Forfeiture of Grand Jury NOV 03 2008

VERDICT

Guilty

Forfeiture of Petit Jury

INDICT

Date:

6-11-10

DOCKET NO. 2008GS1008361

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2008

THE STATE

vs.

TERRELL CHANDLER

DOB: [REDACTED]

B/M

Indictment for

Murder

FILED

2008 NOV -6 PM 12:27

JULIE J. ARMSTRONG
CLERK OF COURT

BY

08-3604-1

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on November 3, 2008 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about May 30, 2008, with malice aforethought, TERRELL CHANDLER, alone or while acting with another or others, did kill and murder Calvin Gibbs by means of shooting him, and that Calvin Gibbs did die in Charleston County as a proximate result thereof on May 30, 2008; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended. *Py*

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

Nathan Williams
NATHAN WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
TERRELL CHANDLER

AKA:

Race: B Sex: M Age: 23DOB: 11/10/86 SS#: 7

Address:

City, State, Zip: CHARLESTON, SC 294070000DL#: SC01495855*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS1008361A/W#: F969950Date of Offense: 5/30/2008S.C. Code §: 16-03-0010, 0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kneese Shealy, Jenniferngia
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

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

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fines:

§ 14-1-206 (Assessments 107.5 %)

~~§ 14-1-211(A)(1) (Conv. Surcharge)~~

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 21Sentence Date: 6/11/10

NSW20080603488

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

0810737

ARREST WARRANT NUMBER

F969949

DATE OF ARREST

June 4, 2008

ACTION OF GRAND JURY

Foreperson of Grand Jury NOV 05 2008

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GSI008359

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2008

THE STATE

vs.

TERRELL CHANDLER

DOB: [REDACTED]

B/M

Indictment for

Possession of a Firearm During the
Commission of a Violent Crime

FILED

2008 NOV -6 PM 12:27

JULIE J. ARMSIRONG
CLERK OF COURT

BY

08-3604-2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on November 3, 2008 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about May 30, 2008, the Defendant, TERRELL CHANDLER, did possess or visibly display what appeared to be a firearm during the commission, or attempted commission, of Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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


NATHAN WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
TERRELL CHANDLER

AKA:

Race: B Sex: M Age: 23DOB: SS#: 2

Address:

City, State, Zip: CHARLESTON, SC 294070000DL#: SID#: SC01495855*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession of a Firearm During Commission of a Violent Crime

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS1008359A/W#: F969949Date of Offense: 5/30/2008S.C. Code §: 16-23-0490CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kneese Shealy, JenniferSC Bar# 7919

Defendant

Attorney for Defendant

SC Bar#

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

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: mynder☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:
☐ Appointed PD or appointed other counsel
 § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 218Sentence Date: 6/11/08

10559

2012-CP-10-5037

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Terrell Chandler #300838
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

FILED
2012 AUG - 1
JULIE J. BARNES
CLERK OF COURT
PH 5:00

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Litch Correctional Institution
2. Name and location of Court which imposed sentence Charleston County General Session
3. Name(s) of co-defendant(s) (if any) Steven Brown, Che Carl, Sterling Carl
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 08-65-10-8359, Possession of a firearm during Comm. of Violent Crime
 - (b) 08-65-10-8361, Murder
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 11, 2010 sentence 45 years, Murder
 - (b) June 11, 2011 sentence 5 year PFCV

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. The Appeal was dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. May 23, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Berghuis v. Thompkins, State v. Wilson
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See page 3 (a)
- (b) _____
- (c) _____

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

- (a) See page 3 (a)
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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

- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. N/A
- ii. _____
- iii. _____

Page 3 (u)

Applicant set forth this Cause of action Pursuant to the Jurisdiction set forth in Chapter 17 Sec. 17-27-20(1)(b) et. seq. for Collateral attack upon any grounds of alleged error heretofore available under this written Post Conviction Relief Application that are being submitted or omitted.

Applicant asserts ineffective assistance of trial Counsel, but due to the lack of records and the assistance of Counsel Pursuant to the S.C. Civ. P. Rule 71.1(e) et. seq., states that the burden of proof is on the applicant to show his entitlement for relief by a preponderance of the evidence and for the appointment of Counsel to insure that all available grounds for relief are included in the application.

It would be Chronologically impossible for the Applicant to carry such a burden without the aid of the whole Lower Court records and the Appointment of Counsel to establish his Constitutional Claims.

The Applicant request that this Court forward the above mention records and to appoint Counsel. Applicant, moves this Honorable Court Pursuant to S.C. Code of Laws Title 17 sec. 17-27-90 to grant leave to file supplemental Pleading in this Cause of action due to the lack of records thereof. Applicant seeks this Court approval of this application so that Applicant's right to a PCR won't be deemed abandon due to the fact the Applicant has only one (1) year to file this application from the date of a Final Judgment or from the remittitur to the Low Court which ever comes first.

Respectfully Submitted,

Terrill Chandler #300938
Terrill Chandler #300938

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) this is Applicant's first PCR
- (c) _____
17. Were you represented by an attorney at any time during the course of:

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

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

- (a) the name and address of each attorney who represented you:
 - i. Sam Mitchell Slade, Jr., Trial
 - ii. Waring Simons Howe Jr., Trial
 - iii. Tristan M. Shaffer, Direct Appeal
- (b) the proceedings at which each such attorney represented you:
 - i. Mr. Slade, Jr. and Mr. Howe, Jr., Trial Attorney
 - ii. Tristan M. Shaffer, was Direct Attorney
 - iii. _____

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

New Trial

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

NO

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

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

Tennelle Chandler

SWORN to and subscribed before me this 23RD
day of July, 2012

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

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

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

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

Terrille Chandler
Applicant

SWORN or affirmed to and subscribed before me this
23RD day of July, 2012

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2012-CP-10-5037
	)	
Terrell Chandler, # 300938,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 10, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the November 2008 term of the Charleston County Grand Jury for murder (2008-GS-10-8361) and possession of a firearm during the commission of a violent crime (2008-GS-10-8359). The Applicant was represented by Sam Mitchell Slade, Jr., Esquire and Waring Simons Howe, Jr., Esquire. On November 15, 2005, the Applicant proceeded to trial and was convicted of all charges. He was sentenced by the Honorable Roger M. Young, Sr. to confinement for consecutive periods of five (5) years for possession of a firearm during the commission of a violent crime and forty-five (45) years for murder.

A timely notice of appeal was filed with the South Carolina Court of Appeals. Tristan M. Shaffer, Esquire perfected the appeal. The South Carolina Court of Appeals affirmed

Applicant's convictions and sentences. State v. Chandler, Terrell, 2012-UP-313 (S.C. Ct. App. May 23, 2012).

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate documents. Any of the above not so attached will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668 (1984). The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 26, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TERRELL CHANDLER, #300938

Applicant,

Vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

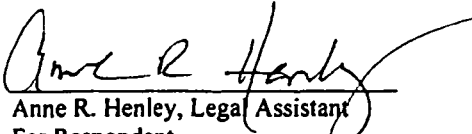
2012-CP-10-5037

AFFIDAVIT OF SERVICE BY MAIL

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

Mr. Robert Michael Ethridge
 Carlock Copeland & Stair, LLP
 40 Calhoun St., Ste. 400
 Charleston, SC 29401

DATED this 28th day of June, 2013


 Anne R. Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2012-CP-10-5037

Terrell Chandler, # 300938,

Applicant,

v.

AMENDED RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 1, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the November 2008 term of the Charleston County Grand Jury for murder (2008-GS-10-8361) and possession of a firearm during the commission of a violent crime (2008-GS-10-8359). The Applicant was represented by Sam Mitchell Slade, Jr., Esquire and Waring Simons Howe, Jr., Esquire. On July 11, 2010, the Applicant proceeded to trial and was convicted of all charges. He was sentenced by the Honorable Roger M. Young, Sr. to confinement for consecutive periods of five (5) years for possession of a firearm during the commission of a violent crime and forty-five (45) years for murder.

A timely notice of appeal was filed with the South Carolina Court of Appeals. Tristan M.

Shaffer, Esquire perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Chandler, Terrell, 2012-UP-313 (S.C. Ct. App. May 23, 2012).

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate documents. Any of the above not so attached will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668 (1984). The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

11/25, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2012-CP-10-5037

TERRELL CHANDLER, #300938

Applicant,

vs

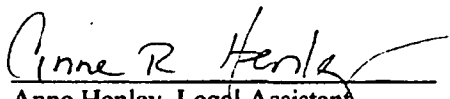
AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,
Respondent.

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

Charles T. Brooks, III, Esquire
309 Broad Street
Sumter, SC 29150

DATED this 25th day of November, 2013


Anne Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

TERRELL CHANDLER,)
) APPLICANT,)
) 2012-CP-10-5037
)
) V.)
STATE OF SOUTH CAROLINA,)
)
) RESPONDENT.)

NOVEMBER 18, 2013

CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE STEPHANIE P. MCDONALD, PRESIDING JUDGE

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

CHARLES BROOKS, ESQUIRE

ATTORNEY FOR THE APPLICANT

ASHLEIGH WILSON, ASSISTANT ATTORNEY GENERAL

ATTORNEY FOR THE STATE

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

	PAGE
POST-CONVICTION RELIEF HEARING	---3

WITNESSESTERRELL CHANDLER:

DIRECT EXAMINATION BY MR. BROOKS	---5
CROSS-EXAMINATION BY MS. WILSON	--16

SAM MITCHELL SLADE, JR.:

DIRECT EXAMINATION BY MS. WILSON	--20
CROSS-EXAMINATION BY MR. BROOKS	--36
REDIRECT EXAMINATION BY MS. WILSON	--41

WARING S. HOWE:

DIRECT EXAMINATION BY MS. WILSON	--42
CROSS-EXAMINATION BY MR. BROOKS	--54

CERTIFICATE OF REPORTER	--60
-------------------------	------

NO EXHIBITS WERE INTRODUCED

1 Monday, November 18, 2013

2 MS. WILSON: May it please the Court, Your Honor.
3 This is Terrell Chandler vs. The State of South Carolina,
4 CP number 2012-CP-10-5037. Today Mr. Chandler is
5 represented by Charles Brooks.

6 He was indicted in November of 2008 for murder and
7 possession of a weapon during the commission of a violent
8 crime. He proceeded to trial, and on June 11, 2010, he
9 was found guilty and he was sentenced to 45 years for
10 murder and five years for possession of a firearm during
11 the commission of a violent crime, for a total 50 years.
12 They were consecutive. He went to trial before Judge
13 Young. He filed a timely notice of appeal. His appeal
14 was dismissed on May 23rd, 2012.

15 And today the State would just like to note for the
16 record that the State will amend its return to change --
17 it's just like a scrivener's error, it was a scrivener's
18 error in the State's return.

19 THE COURT: Okay.

20 MS. WILSON: I have a copy for the Court and I will
21 file a copy downstairs.

22 THE COURT: Sure. Thank you. Come on up. And you
23 gave a copy to Mr. Brooks?

24 MS. WILSON: Yes, and I think what was changed -- I
25 honestly can't remember but it was something in the

1 procedural history. It wasn't anything substantive.

2 THE COURT: Thank you.

3 MS. WILSON: And the State is ready to proceed.

4 We'll hand it over to Mr. Brooks.

5 THE COURT: All right. Yes, sir.

6 MR. BROOKS: We would call Mr. Chandler to the
7 stand.

8 THE COURT: All right. Mr. Chandler, if you'll
9 come on up and we'll swear you in.

10 TERRELL CHANDLER, after having been duly
11 sworn, testified as follows:

12 THE CLERK: State your full name, please, and spell
13 your last.

14 THE WITNESS: Terrell Chandler, C-h-a-n-d-l-e-r.

15 THE COURT: Okay. Thank you.

16 Mr. Brooks, before we get started. I did not see
17 an amended application in the file. Was there an amended
18 application for PCR?

19 MR. BROOKS: Not to my knowledge, Judge.

20 THE COURT: All right. Well, briefly, what are the
21 grounds that the applicant or you, after consulting with
22 the applicant, contend support the application?

23 MR. BROOKS: Judge, briefly, one of the issues that
24 my client has found and raising is one of the jury
25 members was related to one of the State's witnesses.

1 That's a jury issue, a jury selection issue that he plans
2 to testify about.

3 In addition to that, he indicated to me that it's
4 failure to get -- well, he felt like his lawyer failed to
5 get the true account of eyewitnesses's story, failed to
6 put up his defense, which he's clarified to me is the
7 true part of the story. In this particular situation he
8 was fingered by some eyewitnesses, identified by some
9 eyewitnesses, and he also had a co-defendant testify
10 against him.

11 THE COURT: Okay. All right. Thank you, sir.

12 DIRECT EXAMINATION

13 BY MR. BROOKS:

14 Q. Mr. Chandler?

15 A. Yes, sir.

16 Q. How are you today?

17 A. So far so good.

18 Q. All right. How old are you?

19 A. Twenty-seven.

20 Q. Now, you understand why you are here today?

21 A. Yes, I do.

22 Q. You brought an application for post-conviction
23 relief; is that correct?

24 A. Correct.

25 Q. And you are asking this Court to give you a new

1 trial?

2 A. Yes, sir.

3 Q. And who was your lawyer in this case?

4 A. Waring Howe and Mr. Sam Mitchell, or something like
5 that.

6 Q. Okay. Were they retained or court appointed?

7 A. Court appointed.

8 Q. Do you recall how long they had been on your case?

9 A. Waring Howe been on my case since 2008. The second
10 lawyer, he came on the case approximately about a month
11 before my trial, so sometime in May of 2010.

12 Q. Okay. So you had the benefit of two lawyers seated
13 at the table with you; is that correct?

14 A. Correct.

15 Q. Now, you raised this PCR, as they call it for
16 short, in regards to ineffective assistance of counsel;
17 is that correct?

18 A. Correct.

19 Q. Okay. And you talked about some things that -- or
20 you plan on discussing some things of why your lawyers
21 were ineffective in representing you; is that correct?

22 A. Correct.

23 Q. Now, one of those issues that you and I talked
24 about was a jury selection issue.

25 A. Correct.

1 Q. Can you explain that to the Court, what happened.

2 A. I remember I think it was the second day at trial,
3 that Tuesday, I can't think of her name -- oh, Desa
4 Brown, she came in the courtroom. She had left the Judge
5 a note stating that she might be related to one of the
6 witnesses. So she explained what happened.

7 She said she went home that day -- or that Monday
8 evening and her cousin been calling her asking her where
9 she at. She like, I been in court all day.

10 So she be like, Well, my daughter been in court,
11 too.

12 So they kept going back and forth, and come to find
13 out her daughter -- her cousin daughter been in court for
14 the same trial, come to testify against me, that she been
15 on the trial being a juror.

16 Q. Okay. And you think your lawyer should have done
17 something about that?

18 A. Yeah. The Judge asked what they wanted to do, and
19 he be like, Well, it's a close call but we will let her
20 stay. I looked at him and he looked at me and he
21 wouldn't let me discuss it.

22 Q. Now, in hindsight what you are saying is your
23 lawyer should have had her taken off; is that correct?

24 A. Correct, I mean, because she could have gone home
25 and talked to the witness that been for the State to

1 testify against me, Well, we're going to find him guilty
2 or whatever. But I don't know what they talked about, if
3 they talked. They could have.

4 Q. So you think that this juror staying on the jury in
5 your case harmed you and harmed your case?

6 A. Correct.

7 Q. Okay. And what your lawyer should have done is
8 made sure that juror did not sit; is that correct?

9 A. Correct.

10 Q. Okay. Now, one of the issues you talked about was
11 an eyewitness side of story, failure to have eyewitness
12 finger you. Can you explain that or what you mean by
13 that in relationship to your lawyer. Can you explain
14 that.

15 A. Well, you had in the car the dude got killed.
16 There was, I think his girlfriend been in the car with
17 him, and she gave a whole bunch of descriptions. She
18 gave probably like three or four different statements.
19 And my lawyer at trial, he keep saying, Well, do you
20 remember what you wrote in this statement right here on
21 this date?

22 Every question he asked her she kept saying, I
23 don't know. I don't know. I can't remember. I can't
24 remember.

25 Well, the logical thing to do is say, Well, right

1 now what happened from your recollection? You know, but
2 he ain't never one time said that. He could have asked
3 her, Do you see the shooter in the courtroom now? Not
4 once said that.

5 I mean, the State trying to prove what they prove,
6 trying to prove that I been the shooter in that case
7 right there. So all they had to say is, Do you see the
8 shooter in the courtroom?

9 She couldn't say that because all here descriptions
10 she gave, period, not one of them fit me at all.

11 Q. Okay. All right. Now, basically when we talk
12 about that issue, Terrell, you're basically saying your
13 lawyer should have done a much more effective job, what
14 we call impeaching that witness; is that correct?

15 A. Correct.

16 Q. That was one of the State's critical witnesses in
17 your case?

18 A. As far as identification, yeah.

19 Q. Okay. Is that the only non co-defendant witness
20 that put you there?

21 A. You had two other females who been in my house that
22 night but they just been saying, Well, we seen him with
23 the gun.

24 Q. She was the one that said you'd done something,
25 this particular witness that we're talking about?

1 A. The one that was on the stand --

2 Q. Right.

3 A. She didn't really say anything --

4 Q. But that was the one that the State used to try to
5 say --

6 A. Yeah.

7 Q. -- that you had done something?

8 A. Yeah.

9 Q. Okay. And that's what I mean, Terrell. And you're
10 saying your lawyer should have done a more effective job
11 impeaching that witness, correct?

12 MS. WILSON: Objection, Your Honor. He's leading
13 the witness.

14 THE COURT: Sustained. Don't lead the witness.

15 BY MR. BROOKS:

16 Q. Now, you didn't testify in your case; is that
17 correct?

18 A. Correct.

19 Q. Okay. We talked about -- we talked about the true
20 side of the story.

21 A. Correct.

22 Q. Now, you're here today, you're on the stand, you're
23 under oath. What do you mean by that as it relates to
24 your lawyer being ineffective?

25 A. I mean, from the beginning he asked me did I want

1 to testify. I told him, I mean, if it can help me, yeah.

2 He's like, I don't think you should testify.

3 So I said, All right.

4 And at the end of the trial, coming toward the end,
5 he asked me if I wanted to testify and I tell him what I
6 told the Judge, that, yeah, I was going to testify. And
7 my family, the lawyer looked at me like what? You want
8 to testify?

9 I'm like, Yeah.

10 Then we had a little five-minute talk. And he's
11 like, I don't think it's good for you to testify. I
12 don't think it's good. So I end up changing my mind
13 again, like, I ain't going to testify, I mean, because
14 he's saying different.

15 Q. Okay. All right. Now, if you had it to do all
16 over again what do you think should happen?

17 A. I would get on the stand and talk for myself.

18 Q. Okay. And what would you have said?

19 A. I would have told the story from the beginning what
20 happened. I mean, you want me to tell what happened?

21 Q. This is your day trying to get a new trial, so yes.

22 A. After I got off work that day, I probably got off
23 about 2:30, 3:00, went to the mall, got some clothes,
24 gone home. As I'm home --

25 MS. WILSON: Objection, Your Honor. I'm not sure

1 of the relevance of this line of testimony.

2 THE COURT: It's sustained. What's the relevance?

3 MR. BROOKS: Judge, he's talking about he says his
4 lawyer failed to get his true side of the story out.

5 Obviously, that goes to what my client asserts is the
6 truth. So I would ask the Court for a little latitude --

7 THE COURT: Okay.

8 MR. BROOKS: -- to let him tell what he's told his
9 lawyer.

10 THE COURT: All right. I will overrule the
11 objection at this point but let's get to the point and
12 make sure we keep it relevant. Okay?

13 MR. BROOKS: Yes, ma'am.

14 A. Straight to the point. After I came back from
15 doing what I had to do that evening, had two females at
16 my house when I came to my back door.

17 THE COURT: Two females what? I'm sorry.

18 A. I had two females at my house when I came to the
19 back door.

20 Three of my three co-defendants, they were trying
21 to find some reefer. So they asked me about it. So I
22 tell them where I had to go at. I wasn't going to drive
23 to get no reefer that distance. So it came about one of
24 the co-defendants, he came across a guy, the victim in
25 the case, who was apparently going to sell him some weed.

1 So we in my room. They call me in my room. We
2 chilling or whatever. At the time the AC in my house
3 ain't working so everybody decided to go outside. Now, I
4 grabbed a gun, which is an AK-47. The only reason I
5 grabbed the gun to take it outside is because a prior
6 incident that happened about a year ago in that
7 neighborhood.

8 So I'm outside on the phone, really, talking to
9 another female who trying to come to my house. I got one
10 female already at my house and I ain't trying to have
11 heads collide.

12 THE COURT: Can you just slow down just a little
13 bit. I think the last sentence was I ain't trying to
14 have hair fly, right?

15 A. No. Heads collide.

16 THE COURT: Heads collide. All right.

17 A. Yes, ma'am. But like I said, I wasn't trying to
18 have those two heads collide.

19 So we outside talking. I'm smoking a cigarette,
20 and I got my head down. I hear silence. So now when I
21 look up all three of them gone. I put my head back down
22 not paying attention, really. I look back up again, the
23 gun gone. So not thinking nothing of it I got up, head
24 toward the breezeway.

25 As I busted left in the breezeway, shit, I hear a

1 gunshot. Look up, my little cousin -- we close enough
2 that I call him my cousin, the one that got on the stand
3 and testify, he standing. The next thing, I said, Bro,
4 what happened?

5 He said, I don't know. I don't know.

6 So I see the gun on the ground, which was my gun,
7 and I picked the gun off the ground --

8 THE COURT: Slow down a little bit.

9 A. I can't help it.

10 Q. Slow down.

11 THE COURT: That's the story you wanted to get up
12 on the stand and tell?

13 A. I mean, I can't really -- I'm making it small
14 because what you said, get direct.

15 THE COURT: Ask another question, I guess.

16 BY MR. BROOKS:

17 Q. All right. Terrell, just slow it down. The lady
18 who is seated here is the court reporter and she's got to
19 take down everything that you say. You understand?

20 A. (Nodded).

21 Q. Okay. Now, you said something about you came
22 outside after some gunshots and you found your gun on the
23 ground. Is that what you said?

24 THE COURT: That's not what he said.

25 MR. BROOKS: Oh, I'm sorry.

1 THE COURT: As I recollect, what I could
2 understand, he picked up the AK-47 to take it outside,
3 got on the phone with one female. There was another
4 female already there. Obviously, he didn't want them
5 both there together. At some point the gun disappeared
6 and then he heard shots. That's what I heard.

7 Was that your testimony, sir?

8 A. Correct.

9 Q. Okay. After the shots what happened next?

10 A. Like I said, all us go on back in the house. At
11 that point, I mean, I up front. I don't know what going
12 on in the back. So I can't see who shot who, who did
13 what. But then when everything came together they
14 pointing their fingers at me saying I shoot the dude.

15 Q. Okay. All right. Did you tell this to your
16 attorney?

17 A. Yeah. I told him that but he said he ain't want me
18 on the stand.

19 Q. Okay. And basically what you are saying now is
20 that you wish you had told your story, gotten on the
21 stand; is that correct?

22 A. Everything, yeah, but I can't say but so much right
23 now so...

24 Q. Now, Terrell, I believe we've covered all these
25 issues that we had talked about. Is there anything else

1 you want to tell this Court?

2 A. I mean, you got identification as far as somebody
3 identifying.

4 Q. Identifying of you?

5 A. Uh-huh.

6 Q. Is that a yes?

7 A. Correct.

8 Q. Okay. Now, we already talked about the girl who
9 the lawyer, you said, that asked her questions about not
10 being sure; is that correct?

11 A. Correct.

12 Q. Is there anything else?

13 A. Other than that, no.

14 Q. Okay. Answer any questions the attorney general
15 has.

16 THE COURT: Yes, ma'am. Cross-examination.

17 MS. WILSON: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. WILSON:

20 Q. Good morning, Mr. Chandler. How you doing?

21 A. All right.

22 Q. Good. About how many times did you meet with your
23 attorneys before you went to trial?

24 A. About two or three times.

25 Q. Two or three times, and that's throughout the whole

1 time they represented you?

2 A. Correct.

3 Q. Okay. Do you recall going over discovery and the
4 evidence that the State had against you with your
5 attorneys?

6 A. No.

7 Q. Did you go over any statements that your
8 co-defendants had made against you or any of the other
9 eyewitnesses?

10 A. No.

11 Q. Do you recall talking to them about possible
12 defenses and what their strategy was going to be at
13 trial?

14 A. No.

15 Q. Did you give them any witnesses or leads to
16 investigate to look into your case?

17 A. They didn't ask for it.

18 Q. And you didn't offer up any?

19 A. No.

20 Q. Today you testified that there was -- first there
21 was an issue with a juror?

22 A. Correct.

23 Q. Okay. And do you recall what happened?

24 A. I mean, she stayed.

25 Q. And did the Court ask her any questions about if

1 she could be impartial before they allowed her to stay as
2 a juror?

3 A. I think the Judge asked her would that affect her
4 from coming up with a verdict, and she said no. Other
5 than that...

6 Q. And you also gave some testimony about a witness
7 that you thought your attorneys didn't properly
8 cross-examine; is that correct?

9 A. Correct.

10 Q. And what did you say that witness's name was?

11 A. Sherrell Anderson, I think.

12 Q. But they did cross-examine her and question her
13 while she was on the stand; is that correct?

14 A. Yeah.

15 Q. And you also say today that you wanted to take the
16 stand and today if you could do it over again you would
17 take the stand at your trial and testify; is that
18 correct?

19 A. Correct.

20 Q. And so you said that initially you told the Court
21 that you didn't want to testify. Is that still correct?

22 A. Correct.

23 Q. And then after that you told the Court you wanted
24 to take the stand, the second time, right? And then do
25 you recall the Court giving you additional time to speak

1 to your attorney and you talked to your attorney for a
2 couple minutes?

3 A. Uh-huh.

4 Q. Okay.

5 THE COURT: Is that a yes?

6 A. Yes. That's correct.

7 Q. And after that you told the Court that you didn't
8 want to testify, right?

9 A. Right.

10 Q. And do you recall the Court telling you that it was
11 your decision whether or not you took the stand?

12 A. Correct.

13 Q. So it's your testimony today that you told your
14 attorneys your version of the facts of what you would
15 testify to at the stand, right?

16 A. Correct.

17 Q. And a part of that is that you had the AK-47; is
18 that correct?

19 A. I owned it.

20 Q. And that you took the gun outside?

21 A. Correct.

22 MS. WILSON: Nothing further from the State, Your
23 Honor.

24 THE COURT: Thank you.

25 Any redirect?

1 MR. BROOKS: No, ma'am.

2 THE COURT: Thank you. Sir, you may step back to
3 the table.

4 MR. BROOKS: May it please the Court?

5 THE COURT: Certainly.

6 (PAUSE.)

7 MR. BROOKS: That's the applicant's case.

8 THE COURT: That's the applicant's case?

9 MR. BROOKS: Yes, ma'am.

10 THE COURT: Okay.

11 MS. WILSON: May it please the Court, Your Honor.
12 The State would call Mitch Slade.

13 THE COURT: All right. Mr. Slade, if you'll come
14 on up and we'll swear you in.

15 SAM MITCHELL SLADE, JR., after having been
16 duly sworn, testified as follows:

17 THE CLERK: State your full name and spell your
18 last.

19 THE WITNESS: My name is Sam Mitchell Slade, Jr.
20 My last name is spelled S-l-a-d-e.

21 DIRECT EXAMINATION

22 BY MS. WILSON:

23 Q. Good morning, Mr. Slade.

24 A. Morning.

25 Q. Can you tell us how long you've been practicing law

1 and about -- just a little history of your legal career.

2 A. Yes, ma'am. I finished law school in 1982. For
3 the first year or so after I finished law school I worked
4 for a man who was running for lieutenant governor back
5 then. After he was elected I worked in -- essentially in
6 the campaign to pay off the debt.

7 In August of 1983, I went to work in the
8 Solicitor's Office in Spartanburg. I worked there until
9 the fall of 1990, and I went into private practice and
10 I've been in private practice ever since.

11 Q. Thank you. And do you recall if you were appointed
12 or retained to represent Mr. Chandler?

13 A. Neither one.

14 Q. How did you come to represent him?

15 A. Mr. Howe and I were roommates in law school, and in
16 the course of, I guess our careers, he does, as I'm sure
17 you probably know, a lot of personal injury work. And on
18 occasions when I would get personal injury cases I'd call
19 him and he'd help me, and because when I was in the
20 solicitor's office and for the first 10 or so years after
21 I went in private practice I just did criminal defense
22 work -- well, except for some family court work, he would
23 call me on cases where he had criminal work. And we
24 began talking about this case after he was appointed and
25 I told him I would come down here and help him try it.

1 Q. Okay.

2 A. So I was just --

3 Q. Just brought in by Mr. Howe to help out?

4 A. Just to help, yes, ma'am.

5 Q. Okay. And did you get many opportunities to meet
6 with Mr. Chandler before you all went to trial?

7 A. I didn't meet with the Mr. Chandler any times, I
8 don't think, before trial. Mr. Howe talked with him by
9 phone very often. I can recall Mr. Howe telling me he
10 went out to the jail some.

11 Mr. Chandler had a brother whose first name I can't
12 recall right this minute but he was constantly calling
13 Mr. Howe, and he and Terrell and Terrell's brother talked
14 about the case by phone --

15 MR. BROOKS: Objection, Your Honor, hearsay.

16 A. -- very frequently.

17 THE COURT: Sustained as to the hearsay.

18 BY MS. WILSON:

19 Q. Mr. Slade, did you have any hands in the filing of
20 any pretrial motions or anything on behalf of
21 Mr. Chandler?

22 A. Yes, ma'am. We filed several pretrial motions. I
23 can't remember off the top of my head which they were but
24 if you can give me some suggestions I can tell you what
25 we discussed in regard to it but we had -- my

1 recollection is we had a number of motions. I don't know
2 if all of them were pretrial motions but there were a
3 number of admissibility issues, and there were several
4 other issues we dealt with throughout the case..

5 There was some letters that were from Terrell to
6 other people in the case, and there were motions in
7 regard to the admissibility of those letters. I can't
8 think of the other motions. I apologize.

9 Q. Well, let me help to take one step back. Can you
10 kind of summarize for the Court the State's evidence
11 against Mr. Chandler?

12 A. Yes, ma'am.

13 Q. Give us a little background of the facts.

14 A. On the night of, I believe it was May the 30th,
15 2008, a man was called over to an apartment complex, and
16 his name was Gibbs. He went over there with his
17 girlfriend whose name was Sherrell Anderson.

18 When Mr. Gibbs got to the apartment what
19 Ms. Anderson said happened was that someone came up to
20 the car window to the driver's side. There had been a
21 previous phone call to her boyfriend that she described
22 in her testimony as well as in her statement asking
23 Mr. Gibbs to come over to sell some dope at this
24 apartment. When he got there somebody comes up to the
25 window, makes some reference to needing some more money

1 and walks away.

2 It's dark. It's close to midnight, I don't
3 remember exactly what time it was, and they sit there a
4 minute or two, a very brief period of time. And she
5 describes somebody running up to the car who was
6 five-five or five-six with twists, with a type of hairdo
7 called twists, and described the clothes he had on, and
8 said something to the effect, I got you two now, and shot
9 into the car and shot Mr. Gibbs.

10 The car is moving. Mr. Gibbs had a moment or two
11 to appreciate the situation and started into reverse.
12 This is right off of Ashley Highway where the apartment
13 is. The car backs up, is in reverse, backs up and
14 there's more shots fired by other people who were out
15 there in the backyard. Detective -- Mr. Gibbs died
16 shortly thereafter.

17 And Ms. Anderson was the witness, I believe Terrell
18 was describing. I was the person who cross-examined
19 Ms. Anderson. And Ms. Anderson gave a statement early
20 that evening and gave another statement, I believe on May
21 the 31st, which would have been the first full day
22 afterward, and I believe she gave a third statement.

23 The theory that we had of the case -- oh, I'm
24 sorry. You asked me -- I've gotten lost now. You were
25 telling me -- asking me about the evidence that the State

1 had. Well, there were three women who were in the
2 apartment that evening. What they described was coming
3 over to the apartment and when they got there Terrell had
4 told them something is going down.

5 They described Terrell being at the apartment, two
6 guys who were brothers, they were twins. Their names
7 were Storme and Che. And the co-defendant who testified
8 against us was Terrell's cousin, whose name was Steven
9 Brown. And the women inside the apartment complex
10 described the lights being turned -- well, that was after
11 they came back, that Terrell told them that something is
12 going down. They were supposed to be quiet.

13 Terrell took the AK-47. They all went outside.
14 They heard gunshots. The four guys who I've just
15 identified for you came back in. Two of the witnesses,
16 two of these females who were in the apartment
17 themselves, described Terrell coming back in with the
18 gun. They went to Terrell's room, cut out the lights.
19 While all this activity is going on inside they are in
20 the apartment being very quiet. It's Terrell's apartment
21 and a guy named White, if I remember correctly, who's not
22 really involved in this case.

23 The next piece of evidence that they had was a day
24 or two later when police are continuing the activity
25 around this apartment building Terrell -- a woman

1 testified that she knew Terrell. Terrell called her.
2 She went over to this apartment and Terrell brought the
3 gun out in a concealed way. I'm talking about the AK-47,
4 brought the gun out and I've forgotten now how she
5 described him concealing it but I think holding it down.
6 It was a fairly long weapon, holding it down by his side
7 and putting it in her car, and she drove off with that
8 weapon in her car.

9 The third set of -- or piece of evidence was that
10 there were several young girls, if my recollection serves
11 me right in their mid teen's, who were sitting on some
12 recycling bins, you know, the big green things, and that
13 afternoon before the shooting in the early -- or the mid.
14 afternoon before the shooting and Terrell came up to
15 them, according to these young women, again, 14, 15, I
16 think was their age, that were just sitting around
17 talking, and Terrell takes one of the bins and moves it
18 around to the back of the apartment and she said he told
19 them not to come around there that night.

20 Now, one of the two of these young women, I think
21 of them as the recycling bin witnesses, said that they
22 saw Terrell take the AK-47, and they're not describing it
23 as the AK-47, but a long gun, we all were looking at it
24 as the AK-47, and hid it somehow using that bin, that
25 recycling bin, and again told them not come around there

1 that evening that -- I don't remember what he said in
2 regard to it but told them not to come around.

3 There was a man who lived upstairs. This apartment
4 complex was one long building, had apartments on the
5 upper floor and apartments on the lower floor and it
6 opened -- the back of the place -- the front of the place
7 faced Sycamore Avenue and the back of the place faced the
8 rest of that neighborhood, and there was a big grassy
9 area and a road behind.

10 This witness that I'm fixing to describe lived
11 upstairs, I believe, and he said that that evening or
12 that afternoon, or the early part of the evening he had
13 been sitting out in front of the apartment building and
14 heard Terrell say to someone, I don't recall him ever
15 saying who it was, that you're going to hear shots fired
16 tonight, or there are going to be shots fired tonight.

17 He didn't claim that Terrell had said that to him.
18 He just said that he overheard that. He also claimed he
19 told the police that that evening of the shooting, that
20 he told some detective that.

21 As the case went on for the longest time we
22 couldn't find Steven Brown. Waring -- excuse me,
23 Mr. Howe knew that Steven Brown was a relative, a cousin
24 of Terrell's, from the conversations that he had with
25 Terrell and Terrell's brother, and even though the police

1 had known of Steven Brown's being out there, presence out
2 there, he either hadn't been arrested or they couldn't
3 find him, and my recollection is we were trying to find
4 him, they were trying to find him. I mean, the police
5 were trying to find him.

6 He showed up or was arrested, and I can't remember
7 which that was, not long before the trial started. His
8 testimony at trial was that he had seen Terrell firing
9 into the car as it was backing up, I believe. I'm not
10 sure if he said it was backing up but he saw Terrell
11 firing into the car, identified him as the shooter. At
12 some point one of the other co-defendants, Chetty -- Che--
13 Carr had identified Terrell as the shooter.

14 There was some DNA evidence on the weapon itself
15 that was Terrell's but there was other DNA evidence on
16 the weapon, and I don't mean that that was evidence
17 against us in the sense that we've always acknowledged to
18 owning the gun. We couldn't get away from that.

19 Another piece of evidence -- or pieces of evidence
20 that came in were letters that Terrell had written to
21 other witnesses. Some were letters to one of the
22 witnesses who was in the house, the apartment there,
23 inside, the apartment girls, women, discussing the case,
24 and there were letters to co-defendants.

25 There were letters to Steven Brown and references

1 to how he should approach what he said -- I mean, what
2 Mr. Brown should say in response or what Mr. Brown should
3 do, rather, in response to being approached by Detective
4 Osborne if he tried to get him to testify or give a
5 statement against Terrell. I can't think of -- there was
6 a lot of evidence. I may be leaving something out. I
7 apologize.

8 Q. Okay. Thank you. And all this evidence I assume
9 you all received through discovery from the State; is
10 that correct?

11 A. Yes, ma'am. Some -- go ahead.

12 Q. I was going to ask, did you discuss this with
13 Mr. Chandler?

14 A. Waring discussed all of it with Mr. Chandler.

15 What I was going to say a moment ago is Waring,
16 Mr. Howe, was in the case a long time before I got in,
17 before I started working on it, rather, than giving him
18 any -- helping him or giving him advice, I guess, and I
19 started sometime in late winter or early spring and he
20 had already developed a longstanding relationship with
21 Mr. Chandler's brother and Mr. Chandler, and so he did
22 all the talking to Mr. Chandler.

23 But Mr. Howe and I discussed all of these issues
24 and he would occasionally tell me things that the
25 client's response to this evidence was. And some of it

1 had to be discussed with him because we were hunting
2 Steven Brown, and there were other things that we were
3 trying to find out for -- you know, for our side to get a
4 picture of what -- you know, how to frame the defense.

5 Q. Ultimately, what was your trial strategy? What
6 defense did you present for Mr. Chandler?

7 A. Well, what we tried to do -- well, in this case
8 the victim's girlfriend gave a statement. The first two
9 or three statements that she gave -- or the two or three
10 statements she gave consistently identified the shooter
11 as being five-five, five-six wearing a white T-shirt,
12 having a particular type of hairdo that was identified
13 as twist.

14 She also identified another person, a taller person
15 being out there having a different type of hairdo called
16 a low fade hairdo. So when Detective Osborne, the
17 supervising detective, first began working on this
18 case -- I mean, he was there that night a couple hours
19 after the shooting and he worked on it all the way
20 through, and he testified in this case.

21 He first swore out a warrant either May the 31st or
22 June the 1st on Che Carr. Che Carr was picked out of a
23 lineup on May the 31st by Sherrell Anderson, the
24 girlfriend, who was seeing what was happening to her
25 boyfriend through the window, and she identified him very

1 quickly. He was five-five or five-six, just as she said
2 when she first gave her statement, and he had the type of
3 hairdo that she identified.

4 So then one of the facts in the case that you need
5 to know about, this is once Che and his brother, twin
6 brother, Storme, realized that Detective Carr [sic] was
7 either arresting them or -- arresting Che or fixing to
8 arrest him they call Crime Stoppers and told Crime
9 Stoppers that Terrell was the shooter.

10 So basically what we tried to show in this defense
11 was that in the beginning Ms. Anderson, the victim's
12 girlfriend, had correctly identified the two people who
13 were standing closest to the car, and the shooter, and
14 neither one of them fit the description of our client.

15 Now, as the case went on Megan White, who was Che
16 Carr's girlfriend, talked to Detective Osborne, and in
17 the beginning she told a story that Che had told that was
18 a complete bogus story. Something about him -- Che Carr
19 being the victim in the shooting, he had to run down the
20 street naked, a bunch of guys named Mikey and Chopper or
21 something were chasing him.

22 So when Detective Osborne goes to talk to her she
23 starts telling this story that she's been informed by her
24 boyfriend to tell and Detective Osborne said, Wait a
25 minute. You know, I can bring charges against you for

1 telling this kind of story. And so she changes and she
2 tells a story that implicates our client. And we had
3 proof that Detective Osborne had done that because he
4 wrote it in his statement, that he told her that she
5 could be facing charges.

6 So basically given that and given the fact that we
7 found out that Detective Osborne, apparently, and I say
8 it with some guardedness, but he admitted to it on the
9 stand, he had at some point changed a SLED report to
10 reflect something that was not in the SLED report and
11 confronted either the defendant or a witness with an
12 altered document in order to extract some kind of
13 statement from that witness or defendant in another case.
14 We just uncovered that.

15 And so our theory was that in the beginning
16 Ms. Anderson had correctly identified the people who were
17 responsible for the death of -- for the killing -- for
18 the murder of her boyfriend and none of those fit our
19 client, and then as Detective Osborne saw more and more
20 opportunity or wanted to include -- I'm not saying he
21 intentionally did this. We weren't trying to say he was
22 framing anybody but he just got focussed on Terrell
23 Chandler, and in the instance like of Megan White he
24 perhaps unconsciously or just because he was driving to
25 the point that he wanted to make sort of coached her into

1 saying something that implicated Terrell as opposed to
2 sticking with what she first said.

3 And there were -- what we tried to do was in a
4 number of these witnesses's statements there were
5 inconsistencies, and what we tried to do was kind of
6 timeline those inconsistencies to show that they had said
7 something in the beginning that was not quite so
8 incriminating towards our client, then Detective Osborne
9 focussed entirely on Terrell Chandler because it's his
10 apartment, his gun, etcetera, this woman is saying he got
11 her to come over there and hide the gun. He got focussed
12 in the direction that Che and Storme meant for him to get
13 focussed, and so when he went back and started talking to
14 these people their stories, not in any 180 degree turn
15 sense, but began shifting toward incriminating and
16 including our defendant, and that was basically what our
17 defense was, that he cherry picked the facts to put
18 Terrell in the case.

19 Q. Thank you. And in explanation you talked about
20 questioning Sherrell Anderson at trial. You said you
21 were the person that cross-examined her at trial?

22 A. Yes, ma'am.

23 Q. Okay. And prior to trial had you reviewed her
24 multiple statements?

25 A. Yes, ma'am.

1 Q. Okay. And were you able to question her in person?

2 A. Mr. Howe went to her apartment and -- or wherever
3 she lived, met her somewhere. I apologize. I don't know
4 where he went, but he had a face-to-face interview with
5 her.

6 Q. And when she was on the stand during your
7 cross-examination of her did you feel like you adequately
8 brought out the inconsistencies in her testimony?

9 A. Yeah. I mean, we brought them out. I mean, there
10 was -- I mean, we wanted her to stick to or the jury to
11 see that she had given very definite statements on more
12 than one occasion, several times right after it happened,
13 and we brought that out in her cross-examination.

14 Q. Okay. And did you feel like you had enough time to
15 prepare for trial?

16 A. Yes, ma'am.

17 Q. Also, Mr. Chandler says that he recalls an issue
18 with a juror being related to one of the State's
19 witnesses; do you recall that?

20 A. As he was testifying I remember that coming up. I
21 believe Judge Young questioned the juror about that, and
22 my recollection is we did have a discussion about it.
23 You know, generally in looking at those situations you
24 also got to look at who your alternate is.

25 I don't recall how that decision came out but I do

1 recall a discussion about it. I remember, you know,
2 obviously a discussion with the defense counsel and the
3 prosecutor and the Judge when it first came up. Then
4 Judge Young questioned the juror and then we had some
5 discussion about what to do. But I don't recall the
6 specifics of those discussions. I apologize.

7 Q. Was Mr. Chandler a part of those discussions?

8 A. Yes, ma'am.

9 Q. Okay. And is it your general practice when there
10 is an issue about a juror to bring it to the Court's
11 attention and to have him or her be questioned about
12 their impartiality?

13 A. Yes, ma'am.

14 Q. Also, Mr. Chandler today says that he wanted to
15 take the stand. Can you tell the Court about your
16 discussions with him about his right to testify.

17 A. Well, most of the discussions about it were
18 discussions that Mr. Howe had with him.

19 Q. Okay.

20 A. But when Judge Young began we were not planning for
21 Terrell to testify, and when Judge Young began the
22 colloquy that you do to establish on the record that the
23 defendant has been informed of his rights he said that he
24 wanted to testify, and we had another discussion with him
25 about that and he changed his mind.

1 Q. Do you think ultimately it was Mr. Chandler's
2 decision not to testify?

3 A. Yes, ma'am.

4 MS. WILSON: Beg the Court's indulgence.

5 THE COURT: Certainly.

6 (PAUSE.)

7 BY MS. WILSON:

8 Q. Mr. Slade, based on the testimony that you heard
9 today from Mr. Mr. Chandler would you all want to put
10 Mr. Chandler up on the stand based on that testimony?

11 A. No, ma'am.

12 MS. WILSON: Thank you.

13 THE COURT: Thank you. Cross-examination.

14 CROSS-EXAMINATION

15 BY MR. BROOKS:

16 Q. Mr. Slade?

17 A. Yes, sir.

18 Q. How are you today?

19 A. I'm good, thanks.

20 Q. You earlier indicated that you felt you had enough
21 time to prepare this case?

22 A. Yes, sir.

23 Q. When did you start working on this case? Wasn't it
24 about a month before he went to trial?

25 A. No.

1 Q. Okay.

2 A. When I was reviewing my notes I didn't get a chance
3 to look through the second box of documents that I
4 accumulated in preparing the case but I did look at some
5 notes that I made on April the 7th.

6 One of the things I looked at was a summary. I
7 tried to put together a summary of what the government's
8 witnesses against us were going to say. I don't know if
9 it's a complete list but I looked at it Saturday and it
10 was dated April the 7th of 2010. So I was working on it
11 at least in April. And I think in order to have -- I'm
12 not saying it was a full summary of what these people
13 were going to say, some of them changed their statements
14 a little bit, but in order to have that kind of summary
15 you got to have looked at their statements pretty
16 comprehensively. So I'm thinking I was probably working
17 on it a good bit into March.

18 Q. Okay. Now, you talked about some interaction
19 between Mr. Chandler and Mr. Howe.

20 A. Yes, sir.

21 Q. You would not have any direct knowledge of that
22 interaction prior to your involvement in this case; is
23 that correct?

24 A. No. That's correct. I wouldn't have known any
25 interaction between them before I got involved in the

1 case. That's correct.

2 Q. So when you came in you were picking up information
3 that Mr. Howe had already obtained; is that correct?

4 A. Well, I mean, if you pick a point in time when I
5 came in the case then Mr. Howe had told me about
6 conversations he had had with his client.

7 As we began -- and we talked a good bit. I came
8 down here one day before I came down to try the case
9 beginning in -- I think on the Wednesday or Thursday
10 before we started the trial I came down here, I think in
11 January or early February, to spend some time looking at
12 the evidence. We went over to, I guess the law
13 enforcement center, and looked at the evidence.

14 And I came down here once on another occasion for
15 something else. I don't remember if it's to take
16 pictures or what, but as we went on through the case
17 Mr. Howe would tell me other things about conversations
18 that he had had with Terrell and his brother.

19 And if I'm not -- I believe I'm remembering
20 correctly, there was a time when Mr. Howe and I were
21 sitting in his office talking about the case or working
22 on the case and he got a phone call from Terrell. I
23 mean, he took phone calls from the jail.

24 So I'm not disputing the point that, yeah, he told
25 me stuff that had gone on before when I got into the case

1 but as we worked further on the case through March and
2 April and May he would describe for me other things that
3 he had discussions with.

4 The ones I particularly remember about several
5 discussions about trying to find Steven Brown, and I
6 think there was somebody, the co-defendant, who was his
7 cousin, and because I don't think at that point -- I may
8 be wrong. I don't think at that point Steven Brown
9 rolled over on him. So there were discussions about
10 that. And I think there was somebody else that might
11 have been giving us some assistance with that. So I hope
12 that answers your question.

13 Q. It does. When you said you were trying to find
14 Steven Brown, did you guys use an investigator?

15 A. No, we didn't. Mr. Howe spent a good bit of money
16 on that case. I think he spent about -- oh, I don't
17 know, 4, \$5,000 on a handwriting expert, Mickey Dawson.

18 Q. That was in regards to the letters you had
19 testified to earlier?

20 A. Well, one of co-defendants, Che Carr, had sent a
21 letter to Terrell at some point saying he was going to --
22 I can't remember precisely the language, but he was going
23 to man up and take the load for the case, or something to
24 that effect. So obviously we wanted to introduce that
25 letter, put that letter in front of the jury.

1 And there was some issues, some evidentiary issues
2 about that but we also had to make sure that we could
3 identify that as Che's handwriting. And so my
4 recollection is that was really the reason that we hired
5 -- or Mr. Howe hired Mr. Dawson.

6 And we did some blow-ups of that apartment complex.
7 I think he spent -- I don't know, 6 or \$800 on those.
8 And there was some other expenses that he had, but we
9 didn't hire an investigator. We tried to do most of that
10 ourselves. He spent some time. He interviewed some of
11 the other witnesses as well.

12 Q. Did Mr. Chandler tell you his version of what had
13 happened and his role on the night --

14 A. He had made a statement and he had told Mr. Howe
15 some other things about it, yes.

16 Q. And you advised him not testify?

17 A. Yes, sir. Well, I know Mr. Howe did. That was my
18 thinking. I didn't think that there was any good to be
19 gained, and when we had the discussion after Judge
20 Young's colloquy, I participated in that discussion and I
21 advised him that I didn't think it was helpful at all to
22 testify.

23 MR. BROOKS: Beg the Court's indulgence, Your
24 Honor.

25 THE COURT: Certainly.

1 (PAUSE.)

2 MR. BROOKS: No other questions, Judge.

3 THE COURT: Okay. Any redirect?

4 MS. WILSON: Just one question, Your Honor.

5 THE COURT: All right.

6 REDIRECT EXAMINATION

7 BY MS. WILSON:

8 Q. Mr. Slade, you testified just a second ago that
9 Mr. Chandler told you his version of the facts, he gave a
10 version of the facts prior to trial. Did you want to
11 present his pretrial version of the facts to a jury?

12 A. No, ma'am.

13 MS. WILSON: Thank you.

14 THE COURT: Thank you, sir. You may step down.

15 Yes, ma'am.

16 MS. WILSON: The State would call Mr. Waring Howe.

17 THE COURT: All right. Mr. Howe, come up and we'll
18 swear you in.

19 WARING S. HOWE, after having been duly
20 sworn, testified as follows:

21 THE CLERK: State your full name and spell your
22 last.

23 THE WITNESS: Waring, W-a-r-i-n-g, middle initial
24 S, last name Howe, H-o-w-e, Jr.

25 DIRECT EXAMINATION

1 BY MS. WILSON:

2 Q. Good morning, Mr. Howe. I think it's still morning
3 time. How are you?

4 A. I'm fine.

5 Q. Can you tell us how long you have been practicing
6 law?

7 A. About three weeks ago it was 29 years.

8 Q. And do you recall how you got involved in this
9 case? Were you appointed or retained?

10 A. I was ordered by the Court to represent
11 Mr. Chandler due to there being a conflict within the
12 public defender's office. I have a copy of the order. I
13 got my letter from the case management person at the
14 public defender's office June 18, 2008.

15 Q. Thank you. And do you recall how many times you
16 met or spoke with Mr. Chandler before you proceeded to
17 trial?

18 A. Well, I will first address meeting with him. I
19 represented him over the course of about two years, and
20 my visits to the jail, in my best estimate, 12 to 15,
21 including a trip I made to his prison where he was
22 serving time in Turbeville. I drove up to Turbeville and
23 drove back.

24 Q. Did you have any phone conversations or letter
25 correspondence?

1 A. He called my office collect and I received the
2 calls, accepted the calls, usually twice a week over the
3 course of that time. So the phone calls, I received them
4 on my phone bill month by month. It's hard to estimate
5 but it could be 80 plus times.

6 We also had his brother who was very involved in
7 the case. Fortunately, he had someone involved in his
8 life like his brother, and his brother, I received calls
9 from him almost as frequently.

10 Q. And did you file Brady or Rule 5 motions on
11 Mr. Chandler's behalf?

12 A. Yes.

13 Q. And did you go over the materials that you received
14 from the State with Mr. Chandler?

15 A. Yes, and those that were significant, but the
16 benign immaterial stuff, no. But those which had some
17 meaning and potential use, strategic or otherwise, yes.

18 And also with some of the witnesses to try to find
19 out, since I don't know a lot of them, you know, tell me
20 about this witness, perhaps where could they be found,
21 how long did you know him, what kind of person was it,
22 did they have a prior criminal record, those things which
23 you don't always get it from kind of a bare written
24 statement that you receive in your Rule 5 request, to get
25 a little background and add something to just what the

1 limits of the contents of the statement would be by
2 itself.

3 Q. So when you say significant things I'm sure that
4 includes all the statements of the State's witnesses?

5 A. Correct.

6 Q. Okay. And prior to trial did you discuss with him
7 the elements of the charges he was facing and what the
8 State was required to prove?

9 A. Yes.

10 Q. Did you discuss with him the potential sentences he
11 could be facing?

12 A. Yes.

13 Q. And was there ever a time when the State made any
14 plea offers to Mr. Chandler?

15 A. Yes.

16 Q. And did Mr. Chandler ever indicate he wanted to
17 accept any of those offers?

18 A. He never indicated that he wanted to accept any of
19 the offers.

20 Q. And today we heard one of Mr. Chandler's version of
21 the facts. Did Mr. Chandler tell you his version of the
22 facts prior to trial?

23 A. Yes.

24 Q. And was that something that you felt was
25 advantageous to present to the jury?

1 A. It's not just that his version wouldn't have been
2 necessarily helpful it's that there were a couple of
3 other statements that were kind of at odds with each
4 other such that a rather easy case of inconsistent
5 statements was created, and realizing how that can be
6 dealt with on impeachment of witnesses that became a
7 consideration. And then as well as his version matched
8 against a whole lot of other versions, from that
9 strategic standpoint it did not seem like a good decision
10 to have that version offered.

11 And if you want to take it further as to his
12 testifying on his own behalf at trial there were a couple
13 of other strategic decisions surrounding what was the
14 best decision in that particular regard.

15 Q. Did you discuss possible defenses with Mr. Chandler
16 prior to trial?

17 A. Yes.

18 Q. And other than the defenses you presented at trial
19 were there any other possible defenses?

20 A. No.

21 Q. And did Mr. Chandler give you any potential
22 witnesses or leads to investigate in this case?

23 A. What he would have to have offered we learned from
24 other sources that certain individuals, other things
25 could be sources of some form of information, however

1 helpful, would vary on the particular person or items of
2 information.

3 Q. And Mr. Slade testified that you all didn't hire an
4 investigator, you did a lot of investigation yourself.
5 Can you tell the Court about your process of
6 investigating Mr. Chandler's case.

7 A. Well, I went and spoke to a number of witnesses,
8 those who would speak to me. Some of them, like the
9 co-defendants, would have legal counsel and really
10 wouldn't allow it, or some either could not be located or
11 would choose not to speak to me.

12 I remember speaking to, I believe she's one of the
13 girls we came to refer to as the inside apartment girls,
14 happened to have been the daughter of a guy I went to
15 high school with. So she did speak to me. And I got
16 from her -- I don't recall exactly, but she testified,
17 and she may have even been one of our witnesses. So we
18 thought there was a chance that there was some advantage
19 to putting her up as a witness.

20 I also tried like anything to track down his
21 roommate, Troy White, at the time. Went to what I
22 learned to be his new location as to his residence. I
23 found out where he was employed. I tried to get him on
24 the phone through his employer, he worked for the City of
25 Charleston, some department, and went to his apartment a

1 few times, thought I may catch him by surprise there. I
2 would go like a Sunday afternoon or something thinking he
3 wouldn't be at work and I'd catch him there, and didn't.

4 I thought he might be helpful in terms of since he
5 lived there, but I believe he only got to the apartment
6 after the shots were fired late that the night. So I
7 still wanted to speak to him as far as anything that he
8 might have that would be helpful to our client.

9 I also went to the scene several times, and I kind
10 of know the area. And one time, or a time or two, found
11 a group of men who I think on a daily basis hang out in
12 this vacant lot next to the apartments, one of whom
13 happened to have been a current client of mine in a
14 personal injury case, and others, and I asked him about
15 the neighborhood in general and if they were familiar
16 with the shooting incident, and if they knew the Carr
17 twins, and I was informed about where they lived. They
18 lived with an elderly uncle about 120 yards away from the
19 apartments.

20 I asked about if there were anybody else in the
21 neighborhood who might have any kind of information about
22 the event, that I could speak to the person across the
23 street or person on the other side of the apartment
24 building, just anyone, and asked them about if -- the
25 investigation probably took place several months after

1 the incident, but if there's anything about the immediate
2 area that changed, whether it had been new construction
3 or anything demolished or, you know, vegetation growth,
4 how it was as compared to that night, any other sort of
5 significant features of the neighborhood to get a true
6 lay of the land, and looked around.

7 Once we got the evidence presented to us from
8 logistics, for instance where certain bullet casings were
9 located from either a pistol or AK-47, we knew exactly
10 where they were found, we'd look around that area and
11 size it up in proximity to behind the apartment house
12 where the shooting occurred, the direction the vehicle
13 went once the shooting occurred, the breezeway that was
14 sort of like a midpoint, and the strip of apartments,
15 exactly the back door of Terrell's apartment to mainly
16 like any other kind of case, car wreck or otherwise,
17 where you want to go ahead and look at the scene where
18 you don't have to depend on someone's description but you
19 have it firmly affixed in your own mind that you can use
20 as a framework, use as a reference.

21 I took some pictures, good photographs. I had some
22 assistance from a new lawyer who was renting space in my
23 office and blew them up for use at trial.

24 Meeting with Mr. Chandler was something I did to
25 accommodate him and it had some uses mainly from a kind

1 of psychological comforting sense, but once I got his
2 version, I saw his statements, he's where he was and I
3 have, to put it mildly, more freedom so I could do more
4 than he could do, and what he could do to assist me
5 reached the point of diminishing returns.

6 I heard what he had to say and I knew who the
7 witnesses were, and I would hunt down who I could and I
8 was partially successful in being able to speak to some
9 of those witnesses.

10 We were given the names of everybody who had any
11 kind of statement or involvement or possible involvement
12 in the case. And I have to admit that the detective, the
13 police officers who investigated, and the solicitor, the
14 other lawyers in the solicitor's office who worked on the
15 case, their investigators were very forthcoming about the
16 evidence. So in terms of my doing investigation was
17 assisted by what all they gave me that I could then
18 follow up on to see if it lent to anything advantageous
19 to the defendant or not.

20 Q. Mr. Slade testified that you kind of retained him
21 to assist shortly before trial. Did you have enough time
22 to consult with Mr. Slade prior to trial and bring him up
23 on the evidence and that type of thing?

24 A. Yeah. Mr. Slade probably doesn't remember that he
25 pretty much got involved in the case about -- I recollect

1 about October of 2009 or maybe September because the case
2 was originally scheduled to go to trial, if I recollect,
3 the end of October 2009, and November. So I started
4 speaking to him a great deal about the evidence in the
5 case and some ideas about strategy and the usual
6 decisions and strategy that you try to lay out. Again, I
7 probably started talking to him October of 2009.

8 The case got continued and therefore I was allowed
9 to have him more and more involved in the case, and
10 eventually after we talked about it for several hours he
11 very, very nicely, you know, realized the extent of the
12 work that would be involved in putting up a defense, the
13 amount of paperwork, number of witnesses, the facts, what
14 all the work the solicitor's office, the police and
15 investigators had already done and in order to in any way
16 try to reach a somewhat closer to level playing field he
17 offered to assist. And then I said, Oh, my gosh. I
18 don't think anyone has made this nice of an offer as that
19 to me ever.

20 He was deputy solicitor in Spartanburg County --
21 assistant solicitor there, practiced criminal defense
22 extensively. I don't know if he said, but he was my
23 roommate in law school. I've known him closely since,
24 oh, gosh, 1976, and realized his skills and his
25 experience and when he offered to help me I said, Well,

1 that's wonderful.

2 When you're court appointed your resources are more
3 limited than let's say the other side, and when he could
4 be added then as an additional resource and with the
5 caliber of human resource that he was I gladly took him
6 up on his offer.

7 Q. Thank you. Do you recall Mr. Chandler gave some
8 testimony today about an issue with a juror being related
9 to one of the State's witnesses? Do you recall that?

10 A. Yeah, somewhat. It's a little vague but I
11 understand that it came out -- and I think it had to do
12 with maybe a juror's indirect relationship with a
13 witness, and I don't recall if that was one of the, you
14 might say, more significant or damaging witnesses to the
15 defendant, but it came up and I thought Judge Young did a
16 good job in questioning the juror about her ability to be
17 partial, and the extent of her relationship with the
18 witness, if she knew the witness sort of more so through
19 somebody else than knowing her directly or having had a
20 lot of association with that witness herself.

21 Q. Do you recall Mr. Howe -- not Mr. Howe, I'm sorry,
22 Mr. Slade's cross-examination of a Sherrell Anderson?

23 A. I do.

24 Q. And did you review Ms. Anderson's statement with
25 Mr. Howe with the defendant prior to going to trial?

1 A. Oh, yeah, for certain. That was something where we
2 laid a fair amount of hope as to what she said in her
3 statements, and again, much, much closer in time to the
4 event's occurrence than what trial testimony would have
5 been. And when I went to go see her in an apartment in
6 North Charleston not much off Rivers Avenue, I went there
7 on a Sunday afternoon and she very nicely received me,
8 she had a couple of young children who I think were
9 napping at the time, and what she told me then was very
10 much align with what she had stated to the police
11 officers in early statements, and I think were within
12 two, three days of the event's occurrence.

13 But then when she testified in court and she was
14 called as a State's witness there seemed to be more
15 included in her court testimony that was more
16 disadvantageous to the defendant than what the earlier
17 statement said and what she had told me. So there was
18 cross-examination to do with the, you might say, deviated
19 path that she took.

20 Q. And did you feel like going to trial you and
21 Mr. Howe were adequately prepared to address the
22 inconsistencies in her statement, her written statements?

23 A. Me and Mr. Slade?

24 Q. I'm sorry. Yes, you and Mr. Slade.

25 A. Yes.

1 Q. Did you talk to Mr. Chandler about his right to
2 testify at trial prior to trial?

3 A. Yes.

4 Q. And can you explain to the Court what type of
5 discussions you had with him?

6 A. Well, all along, all along Mr. Chandler and I
7 established a good relationship with all the time we
8 spent together. Either in person or on the phone there
9 was I am certain some amount of trust that was developed
10 between he and I and it was always his ready concurrence
11 that it would be in his best interest that he not testify
12 on his own behalf at trial.

13 Anybody who handles criminal cases, and there are a
14 lot of people in this room who have, or followed trials,
15 that if you have an extensive criminal record perhaps you
16 don't make as good a witness as somebody who doesn't have
17 one, and if you have a history of some statements that
18 aren't all consistent in that case then perhaps you're
19 not as good of a witness as someone who has offered
20 information in a consistent way, and Mr. Chandler
21 certainly did not have those two considerations on his
22 behalf.

23 Q. And was it your advice to him not to take the
24 stand?

25 A. Yes.

1 Q. And it appears from the record that there was some
2 waiver in his decision on whether or not he was going to
3 testify. Your testimony today is that he had already
4 decided he was not going to testify but when questioned
5 by the Court he said that he was going to testify, and
6 the record also reflects there was a discussion about it.
7 Do you think ultimately it was Mr. Chandler's decision
8 not to take the stand?

9 A. Yes. We had a meeting that the Judge allowed us to
10 have shortly after the surprise announcement that he
11 wanted to actually take the stand and testify on his own
12 behalf, and we had a discussion to perhaps shown the
13 spotlight on certain features of that decision and he
14 made up his own mind that he agreed with us that it was
15 best that he not take the stand..

16 MS. WILSON: Thank you, Mr. Howe.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. BROOKS:

20 Q. Mr. Howe, you said you had been representing
21 Mr. Chandler for over two years prior to trial?

22 A. I did.

23 Q. And you indicated through Ms. Wilson's questions
24 that there was a plea offer.

25 A. Yes.

1 Q. Did you adequately discuss that plea offer with
2 Mr. Chandler?

3 A. Adequately, thoroughly, vehemently.

4 Q. But if I may ask, what was the plea offer?

5 A. Thirty years.

6 Q. Okay.

7 A. And by the way, Mr. Brooks. It was with some
8 direction from a great source of authority that made the
9 defense lawyers feel that the offer of 30 years was a
10 bona fide offer and would be the best there would be, and
11 that was after a couple of days of testimony when one
12 could sense that the case was a tumbling down.

13 Q. Okay. So let me make sure I understand what you
14 are saying. That offer was conveyed, like, midway
15 through the trial?

16 A. I think after a couple days of testimony and
17 possibly having put up their case. I think their case
18 entailed four days. Ours was like a day and a half.
19 Seems like we got the jury verdict late Friday night.

20 That bailiff was here throughout the whole case.

21 Q. And I don't know if I heard you say this. Did you
22 ever track down the a roommate, Mr. White?

23 A. No. I don't think I did. I don't think I did. I
24 know he was -- I knew a lot of people who knew him. I
25 knew his coworkers. There was -- every stone I knew

1 about I turned it over.

2 Q. And you indicated that you met with Mr. Chandler, I
3 think you said 12 to 15 times?

4 A. Understand that's an estimate and that's some years
5 ago. So I'm giving it my best estimate, and certainly I
6 could be off some.

7 Q. All right. And some of these meetings would have
8 taken place at Turbeville Correctional Institution?

9 A. There was one time.

10 Q. And then the rest would occur down in the jail here
11 in Charleston?

12 A. Right. And the way I looked at it, too, Brooks, is
13 that I could accomplish as much on the phone with him and
14 go over the contents of statements with him, and I
15 readily received his calls. And sometimes like it is
16 with any call a lawyer gets from a client there is a
17 concrete headway that you can make in a conversation.

18 Now, a lot of times you just have to say it's the
19 same as when you called last time. There's really
20 nothing else to be covered. And sometimes I say, Well, I
21 will repeat for you what I said last time, if that will
22 make you feel better.

23 MR. BROOKS: Beg the Court's indulgence.

24 THE COURT: Certainly.

25 (PAUSE.)

1 MR. BROOKS: No other questions, Judge.

2 THE COURT: Okay. Any redirect?

3 MS. WILSON: Nothing from the State, Your Honor.

4 THE COURT: All right. Thank you.

5 Sir, you may step down.

6 Any further witnesses?

7 MS. WILSON: Nothing further from the State. The

8 State rests.

9 THE COURT: Any reply?

10 MR. BROOKS: No, ma'am.

11 THE COURT: Okay. Thank you, sir.

12 MS. WILSON: Nothing further from the State, Your

13 Honor.

14 THE COURT: All right. Well, I certainly don't

15 find that it was ineffective assistance of counsel for

16 Mr. Slade and Mr. Howe to repeatedly discuss with the

17 defendant his right to testify and whether he wanted to

18 testify or not, particularly in light of the fact that

19 Judge Young very specifically explained to him about his

20 right to testify and even allowed a break for

21 Mr. Chandler to meet with his attorneys again to discuss

22 his right to testify.

23 I particularly find that it wasn't ineffective

24 assistance of counsel for them to prevent him from

25 getting up on the stand and telling the story that he

1 told here this morning. In fact, it would have been
2 flagrant malpractice for them to have allowed
3 Mr. Chandler to tell the story to a jury that he told me
4 today about his side of the story, about taking the gun
5 outside and, oh, my goodness, while I'm on the phone with
6 girlfriend number two it disappeared and shots were
7 fired. So I do not see that as an issue going forward.
8 I think the case was adequately investigated.

9 I do want to read the transcript again and find out
10 more about the colloquy regarding the juror and the
11 relationship to a State's witness. So I am going to keep
12 the case under advisement to look at that again.

13 I've been looking at some law while this was going
14 on while I was taking notes about the testimony and some
15 of it's pretty case specific, but again, the Court did
16 discuss with the juror her ability to be fair and
17 impartial. She indicated that she could. So I doubt
18 that that's going to be a basis for granting
19 post-conviction relief but I want to read that part of
20 the transcript again and I want to look at the case law
21 more specifically. If you all want the send me any law
22 I'm happy for you to but I am looking at it as well.

23 Okay. Any other direction I need to give on this
24 or anything you all want to argue before we recess for a
25 quick break?

1 MS. WILSON: Your Honor, I just would like to put
2 on the record a request from the State's witness that
3 Mr. Brooks make some concessions for their time here
4 today to having to wait.

5 THE COURT: Oh, certainly. I mean, he's going to
6 need to pay their fees for sitting here while they
7 waited. You all can work that out, what that is. If you
8 need help from me doing it I'm happy to sign an order to
9 that effect. Okay?

10 MR. BROOKS: Yes, ma'am.

11 (WHEREUPON, the hearing was concluded.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 C E R T I F I C A T E

2

3 I, Sharon L. Vizer, Official Court Reporter for the
4 Ninth Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete transcript of record of all the proceedings had
7 and the evidence introduced in the hearing of the
8 captioned case in Circuit Court on the 18th day of
9 November 2013.

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

12

13 February 4, 2015

14 *s/Sharon L. Vizer*

15 SHARON L. VIZER

16 CIRCUIT COURT REPORTER

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Terrell Chandler, #300938,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-10-5037

ORDER OF DISMISSAL

Presiding Judge:
 Applicant's Attorney:
 Respondent's Attorney:
 Trial Counsel:

The Honorable Stephanie P. McDonald
 Charles T. Brooks, III
 Ashleigh R. Wilson, Esquire
 Waring S. Howe, Jr.
 Sam M. Slade, Jr.
 November 18, 2013
 Sharon L. Vizer

Date of Hearing:
 Court Reporter:

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 1, 2012. The Respondent made its Return on June 26, 2013. An evidentiary hearing on the matter was convened on November 18, 2013, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III. Ashleigh R. Wilson, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

Also present testifying were Waring S. Howe, Jr., Esquire, and Sam (Mitch) Slade Jr., Esquire. The Court had before it the trial transcript, the Charleston County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's Return, and Applicant's appellate records.

QPM

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. The Applicant was indicted at the November 2008 term of the Charleston County Grand Jury for murder (2008-GS-10-8361) and possession of a weapon during the commission of a violent crime (2008-GS-10-8359). He was represented by Sam (Mitch) Slade, Jr., and Waring Howe, Jr.

The Applicant proceeded to trial and was found guilty as indicted. On June 11, 2010, the Applicant was sentenced by the Honorable Roger M. Young to confinement for 45 years for murder and 5 years for possession of a weapon during the commission of a violent crime. The sentences are to be served consecutively.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Tristan Shaffer, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Chandler, Op. No. 2012-UP-313 (S.C. Ct. App. May 23, 2012). The Remittitur was issued on September 25, 2012.

ALLEGATIONS

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

1. Ineffective assistance of counsel.

At the hearing, Applicant proceeded solely on the following claims:

1. Ineffective assistance of counsel.
 - a. Failure to have removed from the jury a juror who was related to one of the State's witness.
 - b. Failure to investigate.
 - c. Failure to properly advise the Applicant regarding his right to testify at trial.

AM
2

This Court finds that the Applicant failed to present any testimony or evidence in support of any claims other than the allegations addressed in this Order. This Court finds that any other allegations raised in his application and not addressed in this Order are deemed abandoned by the Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

Summary of the Testimony

The Applicant was present and testified he was represented at trial by Waring Howe. He testified he met with counsel two or three times and did not review discovery or discuss possible defenses with counsel. He testified counsel never asked him for any leads or potential witnesses to investigate.

The Applicant testified that on the second day of trial, Juror Odessa Brown wrote a note to the Court stating that she just realized she was related to one of the State's witnesses. The Applicant testified that the Court asked Juror Brown if her relationship to the witness would affect her verdict. He testified that Juror Brown being on the jury harmed his case and argues that counsel should have had her removed from the jury.

The Applicant also testified that his co-defendant gave many statements prior to trial. He testified his lawyer should have better impeached his co-defendant on cross-examination. The

DPM
3

Applicant testified that he did not take the stand to testify at his trial, but that he told trial counsel he wanted to testify if it would be helpful. The Applicant testified he told counsel his version of the facts and counsel advised him not to testify. The Applicant testified that he told the Court during his trial that he would testify, but changed his mind. He testified he was given additional time to think about the decision during trial and ultimately told the Court that he did not want to testify. Applicant now believes that he should have testified.

Waring Howe, Esquire, was present and testified that he was appointed to represent the Applicant in June 2008. Howe has been practicing law for twenty-nine years and represented the Applicant for at least two years prior to his trial. Counsel testified that he visited the Applicant in the jail at least twelve to fifteen times. He testified that Applicant called his office at least twice a week and that he often spoke with the Applicant's brother about the case by phone. Counsel testified he readily received the Applicant's phone calls from the jail and could accomplish many things with the Applicant by phone.

Counsel testified that he filed Brady and Rule 5 motions on the Applicant's behalf. He testified he reviewed all the significant discovery materials he received with the Applicant, including witness statements. Counsel testified he discussed with the Applicant the elements of the charges he was facing and what the State was required to prove. He testified that they also discussed potential sentences.

Counsel's investigation of the case involved going to speak to witnesses who were willing to talk, trying to track down the Applicant's roommate, going to the scene several times to see if any changes were made to the neighborhood, talking to men in the area, and photographing the scene. Counsel testified that the State was also very forthcoming about the evidence and its investigation of the case.

QPM
H

Prior to trial, counsel and the Applicant discussed Applicant's version of facts. Counsel testified that Applicant's version of facts was at odds with prior statements made by the Applicant. Counsel testified that he and Applicant discussed Applicant's right to testify at trial and that Applicant always concurred with his advice not to testify at trial. Counsel testified that it was a strategic decision to not have Applicant testify at trial and that Applicant agreed it was not in his best interest to testify.

Counsel testified that in September or October of 2009, he brought in Sam Slade, Esquire, to assist with Applicant's trial. He testified he spoke with Slade about evidence and trial strategy. Counsel testified he vaguely recalls an issue with a juror during Applicant's trial and he recalled that the court questioned the juror about her ability to be impartial. Counsel testified that Applicant was offered a plea of thirty years mid-way through his trial. Applicant rejected the plea offer.

Counsel testified that prior to trial he reviewed the statements of and went to speak to Cherelle Anderson, the victim's girlfriend. He testified that he felt adequately prepared to cross-examine her on her prior statements at trial and that he thought her testimony at trial was a little more disadvantageous to Applicant than her prior statements had been.

Sam (Mitch) Slade, Esquire, was present and testified that he was brought in by Waring Howe to assist with Applicant's case. Slade has been practicing law since 1982. Slade testified that he never met with Applicant prior to trial, but that Howe spoke with Applicant frequently by phone.

Counsel testified that Applicant was accused of shooting the victim in a car in front of an apartment building during a drug deal. He further testified that the evidence against Applicant included letters written by Applicant to one of the witnesses; testimony from a witness that

AM
5

Applicant called her and gave her a gun to hide in her car; testimony from several girls who were in the breezeway of the apartment that Applicant told them not to come around the area on the night of the shooting; testimony from a man sitting outside of the apartments who heard Applicant say shots would be fired the night of the murder; testimony from Stephen Green who testified that he saw the Applicant firing into the victim's car; and testimony from Applicant's co-defendant identifying Applicant as the shooter.

Counsel testified that the defense filed several pre-trial motions at the start of Applicant's trial. The strategy going into trial was to show that the initial identification of Applicant's co-defendant as the shooter was correct. He testified that the defense wanted to point out to the jury that the victim's girlfriend initially identified Applicant's co-defendant in a photo line-up and only later identified the Applicant as the shooter after Applicant's co-defendant was arrested. Counsel testified that they also argued to the jury that the victim's girlfriend's statement changed to implicate the Applicant after she was coached by law enforcement.

Counsel testified that he recalls questioning Cherelle Anderson, the victim's girlfriend, on cross-examination. He reviewed Anderson's statements prior to trial and attempted to bring out every inconsistency in her statements on cross-examination. He testified he wanted Anderson to stick to her multiple statements.

Counsel testified that he recalls the issue with the juror being related to one of the State's witnesses. He testified he recalls the Court questioning the juror. He testified that he discussed the issue with Howe and Applicant and that they decided to proceed with the juror. Counsel testified that it is his general practice to bring to the Court's attention any questions regarding a juror's impartiality.

AM
6

Counsel testified that Applicant told Howe his version of the facts and that it was Applicant's decision not to testify at trial. Counsel testified that at the start of the trial, the defense did not plan for the Applicant to testify. He testified that he did not think anything could be gained from the Applicant's testimony and they did not want to present the Applicant's pre-trial version of the facts to the jury. Counsel testified that based on the Applicant's testimony at an evidentiary hearing, he would not have wanted the Applicant to take the stand.

Ineffective Assistance of Counsel

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

For the Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

OPM
7

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

As an initial matter, this Court that finds the Applicant's testimony was not credible. This Court further finds that the testimony provided by Applicant's trial counsel was credible. Both attorneys representing the Applicant at trial have extensive experience in the practice of criminal law and both have been practicing law for over twenty years. Attorney Howe met with Applicant numerous times prior to trial and fully investigated the Applicant's case. Counsel filed Brady and Rule 5 motions on Applicant's behalf and reviewed the received discovery with the Applicant. This Court finds that counsel discussed with the Applicant the elements of the charges against him and what the State was required to prove. Counsel also discussed Applicant's version of the facts and possible defenses with the Applicant.

The Applicant alleges that counsel was ineffective in failing to have removed from the jury a juror who was related to one of the State's witnesses. The Court finds that Applicant has failed to carry his burden of proving that counsel provided ineffective assistance of counsel in this regard. The record reflects that on the second day of trial, Odessa Brown, juror number 304, wrote a note to the Court indicating that she thought she knew the State's witness Patrice Smalls. (T.112:9-15). Juror Brown told the Court that when she went home the day prior she received a phone call from her cousin. Juror Brown told the Court that she learned from her cousin that her cousin's daughter was also in court the same week. Juror Brown told the Court that she asked her cousin what her daughter's real name was and learned that it was Patrice or Latrice. (T. 113:11-21). Juror Brown told the Court that she did not have any other discussions with her cousin about the case (T. 113:22-25) and that her knowing Smalls would not affect her ability to be a fair and

impartial juror for or against the State or for or against the defense. (T.114:1-5). Juror Brown also told the Court that she did not mention knowing one of the State's witnesses to any of her fellow jurors. (T. 114:16-19). The record reflects that after the Court questioned Juror Brown, the defense was given time to discuss the juror issue, and ultimately the defense told the Court that it had no objection to Juror Brown remaining on the jury. (T. 114:24-115:6).

A defendant has a constitutional right to be tried by competent jurors, which implies a tribunal both impartial and mentally competent to afford a hearing. State v. Bell, 374 S.C. 136, 646 S.E.2d 888 (Ct. App. 2007). There is no rule of the common law, nor statute, per se disqualifying a juror on account of his relationship to a witness, either by affinity or consanguinity, within any degree. State v. Hilton, 87 S.C. 434, 69 S.E. 1077, 1078 (1911). The Court finds that counsel was not ineffective for failing to object to Juror Brown remaining on the jury after disclosing her relationship to one of the State's witnesses. The Court finds that counsel provided credible testimony that he discussed the removal of the juror with the Applicant during trial. (T. 114:24-115:6). Counsel's decision to not request that the juror be removed does not constitute deficient performance.

This Court also finds that Applicant has failed to show that any prejudice resulted from Juror Brown remaining on the jury. The record reflects that Judge Young properly questioned the juror about her ability to be fair and impartial despite her familial relationship to the State's witness. The record further reflects that Juror Brown told the Court that she could be fair and impartial despite having what appeared to be a distant relationship with the State's witness Latrice Smalls. (T. 114:1-5). Juror Brown also told the Court that she had not discussed her relationship to Smalls with any of the other jurors. (T. 114:16-19). This Court finds that counsel's performance was not ineffective based on the Court's thorough inquiry of the juror

Q114
9

regarding her ability to be fair and impartial. Applicant has presented no evidence to show bias or lack of impartiality by Juror Brown. Thus, this allegation is without merit.

The Applicant alleges that counsel was ineffective for failing to investigate his case. This Court finds that Applicant has failed to carry his burden of proving counsel was ineffective for failing to investigate. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

This Court finds that counsel thoroughly investigated all facts and circumstances surrounding the Applicant's case. Counsel provided credible testimony that his investigation of Applicant's case involved going to speak to witnesses who were willing to talk, trying to track down Applicant's roommate, going to the scene several times to see if any changes were made to the neighborhood, talking to men in the area, and photographing the scene. This Court finds that Applicant has failed to specify exactly what counsel failed to investigate. This Court finds further that Applicant has failed to show what any additional investigation by counsel might have yielded. Counsel's performance was not deficient in this regard and no prejudice resulted from counsel's performance. Thus, this allegation is without merit.

QPM
10

The Applicant alleges that counsel provided improper advice regarding his right to testify at trial. The Court finds that Applicant has failed to carry his burden of proving that counsel improperly advised him regarding his right to testify at trial. Under the United States and South Carolina Constitutions, a criminal defendant has a right to remain silent and to not testify during his trial. State v. Weaver, 361 S.C. 73, 88, 602 S.E.2d 786, 794 (Ct. App. 2004) aff'd as modified, 374 S.C. 313, 649 S.E.2d 479 (2007).

Here, counsel properly advised the Applicant regarding his right to testify at trial. This Court finds that counsel provided credible testimony that he discussed with the Applicant his right to testify. The Court also finds credible counsel's testimony that since the Applicant's version of facts was at odds with the Applicant's previous statement, the Applicant agreed with the defense strategy to not have him testify at trial. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court finds further that Applicant was well advised of his right to testify by the Court during his trial proceeding. The record reflects that Applicant was advised by the Court of the following prior to waiving his right to testify: the State had the burden of proving his guilt beyond a reasonable doubt; he did not have to testify; it was ultimately his decision whether or not to testify; he had a constitutional right to testify or to not testify; the Court would instruct the jury not to hold it against him in any way if he chose not to testify; the State would have the opportunity to cross-examine him if he decided to testify; and if Applicant had prior convictions the Court would determine if they could be used to impeach his character if he took the stand to testify. (T. 948:6-949:14). Applicant told the Court that he understood his rights and had spoken

APM
11

with counsel about whether or not he wanted to testify. (T. 949:17-950:4). Applicant told the Court that when he changed his mind and decided that he would testify at trial, he was given the opportunity to speak further with counsel about his decision to testify at trial. (T. 950:13-951:5). The record reflects the Applicant returned from a brief recess and told the court that it was his decision not to testify. (T. 951:5-14). The Court finds that Applicant freely and voluntarily waived his right to testify at trial. Counsel's advice to the Applicant regarding his right to testify was an appropriate strategic decision and in no way resulted in ineffective assistance of counsel. Thus, this allegation is without merit.

Accordingly, the Court finds that Applicant failed to prove the first prong of the Strickland test- that trial counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in their representation of the Applicant. The Court also finds that Applicant has failed to prove the second prong of Strickland - that he was prejudiced by trial counsel's performance. The Court concludes that Applicant has not met his burden of proving that counsel failed to render reasonably effective assistance.

All Other Allegations

As to any and all allegations that were raised in the application in this matter and not specifically addressed in this Order, the Court finds that Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds that Applicant has abandoned any such allegations. Therefore they are hereby dismissed.



CONCLUSION

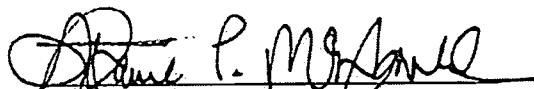
Based on the forgoing, this Court finds and concludes that Applicant has not established that any constitutional violation or deprivation occurred before or during his trial and sentencing proceedings. Counsel was not deficient and Applicant was not prejudiced by counsel's representation. Therefore,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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 27th day of October, 2014


The Honorable Stephanie P. McDonald
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina.



CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 27th day of October, 20 14


The Honorable Stephanie P. McDonald
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina.