

LAW OFFICE OF



**TARA DAWN SHURLING, PA**

Attorney and Counselor at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

(803) 738-8622

(Fax) (803) 738-1600

E-Mail: [tdslaw@shurlinglaw.com](mailto:tdslaw@shurlinglaw.com)

September 3, 2015

**RECEIVED**

SEP 08 2015

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

**S.C. SUPREME COURT**

RE: Richard Kevin Patterson, 270085 v. State of South Carolina.  
Appellate Case No. 2014-002623.

Dear Mr. Shearouse:

Enclosed for filing please find the original and six copies of the Reply to State's Return to Petition for Writ of Certiorari and my Certificate of Service in the above-captioned case. I would appreciate your clocking and returning the extra two (2) copies of the Reply in the envelope provided. Thank you for your assistance in this matter. I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is fluid and cursive, with the first letter of each word being significantly larger and more decorative than the others.

Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg  
Enclosures

cc: David A. Spencer, Senior Assistant Attorney General (w/enclosures)  
Richard Kevin Patterson, #270085 (w/enclosures)  
Billy and Barbara Patterson (w/enclosures)

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

**RECEIVED**

SEP 08 2015

APPEAL FROM Anderson COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

---

Appellate Case No. 2014-002623

---

RICHARD KEVIN PATTERSON,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

---

**REPLY TO STATE'S RETURN TO PETITION FOR WRIT OF CERTIORARI**

---

**TARA DAWN SHURLING**  
Attorney and Counselor at Law  
SC Bar No. 5099

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

**ATTORNEY FOR PETITIONER.**

INDEX

INDEX.....	2
ARGUMENT.....	3
II and III.....	3
VII.....	7
CONCLUSION.....	6

Petitioner, acting through PCR Counsel, would offer the following in Reply to certain points made by Respondent in the State's Return. With regard to all other issues, Petitioner relies on the arguments and authorities presented in his Petition for Writ of Certiorari previously filed with this Honorable Court.

## **ARGUMENT**

### **II and III**

With regard to the State's argument concerning issues two and three, Petitioner would note that these date for service in ignoring the true nature of his argument. As noted in the Petition for Writ of Certiorari previously filed with this Honorable Court, Petitioner's trial attorney acknowledged in his PCR testimony that Petitioner's testimony at trial was completely consistent with the version of facts the Petitioner had given him from the time he was hired very shortly after this tragic incident. Clearly petitioner has asserted that his girlfriend was attempting to commit suicide when he intervened and fraud to take a handgun away from her. It was his testimony that the weapon discharged while he was struggling with the victim for control over the pistol. As such, it was Petitioner's testimony that the weapon accidentally discharged during their struggle for control over the weapon. Petitioner would also note that Trial Counsel's position that he could not have asserted that this shooting was accidental, without admitting that the Petitioner pulled the trigger, is simply not consistent with the law.

With regard to Petitioner's allegation concerning Trial Counsel's failure to request a jury instruction on involuntary manslaughter, Petitioner would note that his primary argument is that Trial Counsel should have requested a jury instruction on accident. Once again trial counsel asserted, without citation to authority to support his position, that he could not have pursued either a defense of accident or the lesser included offense of involuntary manslaughter or because both options would have required "he has to pull the trigger... accident and involuntary

manslaughter just didn't apply to that because our theory was that Mr. Patterson did not pull the trigger." App.p. 983,l. 30 - p. 984, l. 14.

As Petitioner noted in the Petition for Writ of Certiorari previously filed, "Given the fact that the deceased was not alleged to have expressly stated that she was about to kill herself, the jury in this case could have concluded that Petitioner while acting lawfully, nevertheless acted with 'reckless disregard for the safety of others' when he attempted to take control of the weapon from her. Thus, he was entitled to a charge on involuntary manslaughter. *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996); Cert. Pet. p. 31.

Petitioner would further note that his early statements to law enforcement indicating that his girlfriend committed suicide, were not wholly inconsistent with the facts. The events described by Petitioner in his trial testimony indicate that the Victim was in the process of attempting suicide when Petitioner did his best to stop her. The fact that he was unable to gain control over the weapon, and the Victim ultimately was shot and killed, would not be entirely inconsistent with someone in his hysterical state of mind describing the event as a suicide. The fact remains, however, that the trajectory of the bullet, and the ballistic evidence that existed as a result, would have been entirely different had this been an unfettered suicide. Counsel's failure to make the clear distinction between the Victim simply shooting herself and being shot while she was fighting with Petitioner for control over the weapon, was devastating to Petitioner's defense where one version on the facts was consistent with the forensic evidence in this case and the other was not. Trial Counsel's failure to clearly argue Petitioner's position concerning how the shooting happened and how that scenario was factually consistent with the forensic evidence in this case was damning to the defense. His articulated reasons for not seeking jury instructions on either accident, or involuntary manslaughter, reflect an inaccurate understanding of the law on these two crucial points.

## VII

Respondent's argument on this allegation conveniently neglect to acknowledge crucial portions of Dr. Martin's deposition as submitted to the Court. Specifically, Petitioner would ask this Court to note

Q. Okay. Well, in most cases of shock and the aftermath of a violent traumatic event, would it be unusual for someone to be in shock for, say, a full 24 hours after an event?

A. Absolutely. In my experience, usually around the time of the event is the worst time. Right. App. p. 1109, ll. 16-21.

...

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

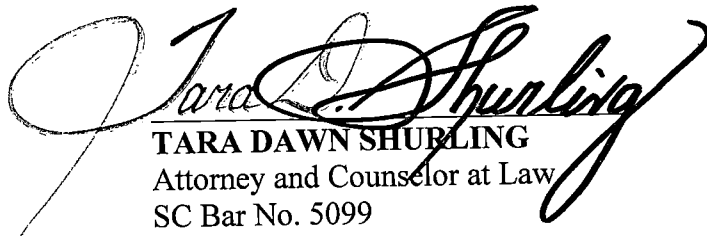
A. Oh, absolutely. And it is fair to say that an extensive psychological evaluation would be not likely to be beneficial to a defense attorney some ten years later? The further remote the incident of any kind the less accurate it becomes, the data that you'd receive. App. p. 1111, l. 17- p. 1112, l. 6.

Thus, while Dr. Martin's testimony did not say that he was positive he could not have found any residual evidence of PTSD nine years after this incident, his testimony clearly indicated that the effect of shock on Petitioner would usually have been at it worst immediately after this shooting. Further, his testimony establishes that the more remote the incident is the less accurate he would expect data arising from an evaluation to be. For this reason, Petitioner's decision not to be evaluated for PTSD nine years after this incident can and should be construed as a reasonable choice. The testimony of Dr. Martin, presented through his deposition, clearly demonstrates how expert witness testimony on this important topic could have been crucial to the defense. Even if such testimony had not resulted in the suppression of Petitioner's statement to law enforcement, such testimony certainly could have impacted the weight given to any such statement by the jury.

**CONCLUSION**

Based upon the reasons and authorities set forth in his Petition for Writ of Certiorari, as well as those presented herein, the Petitioner asks that the Writ be issued and that the Petitioner be afforded the opportunity to submit a full appellate briefing on the issues summarized in the Petition and Reply filed in this PCR appeal. Alternatively, he would ask that this Honorable Court dispense with further briefing and grant him a new trial.

Respectfully submitted,

  
**TARA DAWN SHURLING**  
Attorney and Counselor at Law  
SC Bar No. 5099

3614 Landmark Drive, Suite A  
Columbia, South Carolina 29204  
(803)738-8622  
(803)738-1600 Fax  
E-mail: [tdslaw@shurlinglaw.com](mailto:tdslaw@shurlinglaw.com)

ATTORNEY FOR PETITIONER

This 3<sup>rd</sup> day of September, 2015.

STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

APPEAL FROM COUNTY  
Court of Common Pleas

SEP 08 2015

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

**S.C. SUPREME COURT**

Appellate Case No. 2014-002623

RICHARD KEVIN PATTERSON,

PETITIONER,

v.

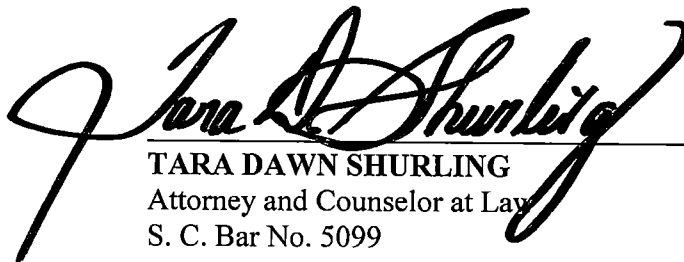
THE STATE,

RESPONDENT.

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a copy of the Reply to State's Return to Petition for Writ of Certiorari in the above-entitled case has been served upon opposing counsel, David A. Spencer, Senior Assistant Attorney General, this 3rd day of September, 2015, by mailing one (1) copy in a stamped envelope properly addressed to:

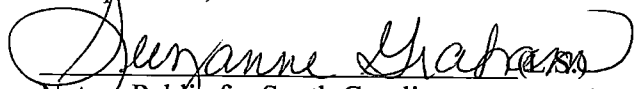
David Spencer, Senior Assistant Attorney General  
Office of the Attorney General  
P. O. Box 11549  
Columbia, SC 29211



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

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 3rd day  
of September, 2015.



Notary Public for South Carolina

My Commission Expires: 2/28/24