

VOL. VI of VI

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2013-CP-40-00233

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SC SUPREME COURT

Melinda Richmond, #331874,

Petitioner,

v.

State of South Carolina,

Respondent.

APPELLATE CASE NO. 2015-001289

APPENDIX

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated November 10-14 2008).....	1
COURT'S EXHIBIT NO. 5.....	1193
COURT'S EXHIBIT NO. 6.....	1194
NOTICE OF MOTION AND MOTION FOR NEW TRIAL.....	1195
AFFIDAVIT OF TRACEY E. PINNOCLE.....	1201
AFFIDAVIT OF RYAN HARRIS SIGAL.....	1204
AFFIDAVIT OF CLARKE NEWTON.....	1205
AFFIDAVIT OF ELIZABETH FIELDING PRINGLE.....	1206
AFFIDAVIT OF BRIDGET BROWN.....	1207
AFFIDAVIT OF KRIS HINES.....	1208
AFFIDAVIT OF LUKE SHEALEY.....	1209
RESPONSE TO DEFENDANT'S MOTION FOR NEW TRIAL.....	1210
SUPPLEMENTAL RESPONSE TO DEFENDANT'S MOTION FOR NEW TRIAL.....	1211
AFFIDAVIT OF ELLEN REYNOLDS.....	1212
AFFIDAVIT OF DOUGLAS MOORE.....	1214
AFFIDAVIT OF ROBERT MARTIN.....	1216
AFFIDAVIT OF LINDA R. HAUGH.....	1217
AFFIDAVIT OF BECKY M. ROBERSON.....	1218
ORDER.....	1219
APPLICATION FOR POST-CONVICTION RELIEF.....	1220
RETURN.....	1227

AMENDMENT AND SUPPLEMENT TO APPLICATION FOR POST-CONVICTION RELIEF	1234
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated April 1, 2015).....	1239
PLAINTIFF'S EXHIBIT NO. 1.....	1337
PLAINTIFF'S EXHIBIT NO. 2 (Final <u>Anders</u> Brief of Appellant).....	1352
ORDER OF DISMISSAL.....	1366
INDICTMENT.....	1382

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 13

1 the -- that Wednesday, Thursday, and Friday.

2 Q So what'd you do initially to alert the Court of your
3 illness?

4 A The holiday I was -- when I woke up, I realized that I
5 had lost my voice. I called -- or perhaps texted -- I
6 can't recall. I got in contact with Deon O'Neil. We were
7 going to meet up anyway to go over things, along with Casey
8 Secor. We met at the office.

9 I notified the assistant public defender at the time,
10 Fielding Pringle. She advised that we needed to contact
11 the solicitors in the case and at the -- Shipley -- or
12 Vanessa Cooper -- I can't recall what her name was at the
13 time -- and then, Anna Good as well.

14 And we left voice mails, and we tried to get in touch
15 with them. We were unable to reach them. We attempted to
16 call them early that morning, that Wednesday morning. We
17 called over -- I know that we got in contact with Anne
18 Spears. She said that she would call us back.

19 It was not -- we were pushing the -- the court time.
20 So we finally just went to court. And they were already in
21 court, prepared to make objections. That's when we
22 addressed the Court.

23 Q Okay. And what relief ---

24 A We did not want to meet in chambers. They were --
25 they wanted to meet -- they wanted everything on the

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 14

1 record.

2 Q So what relief did you ask of the Court?

3 A I asked for a mistrial or, in the alternative, a
4 continuance to see if my voice would come back.

5 Q Okay. What was the Court's response?

6 A The Court denied both.

7 Q Did they give any reasoning as to why they denied the
8 -- the request?

9 A I believe that -- I -- I don't recall. I'm sure it's
10 in the record. And I -- I apologize. I haven't reviewed
11 the judge's findings on why. I -- I believe what he said
12 was they had out-of-state witnesses; the victim's relatives
13 came in from Virginia. They also had already sworn the
14 jury. We'd already taken one, maybe two witnesses.

15 They didn't want to declare a mistrial. We had two
16 other attorneys who did have a voice. And he said -- I
17 believe he said that I could simply pass the case off to
18 them.

19 Q Okay. So how did you and your cocounsel decide to --
20 to proceed in trying the case, given your illness?

21 A Neither Deon or Casey felt prepared to handle the case
22 as lead counsel. They did not know the case nearly as well
23 as I did of -- although they had read discovery. I had
24 prepared the bulk of the witnesses. I had prepared the --
25 you know, I think, all of the investigators who had

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 15

1 significant reports or information to give on the case.

2 I also was prepared to give all the -- you know, the
3 codefendant -- there were codefendants in the case. So I
4 -- they were not prepared to go forward.

5 Q All right. Have you ever endured this type of illness
6 during a trial before?

7 A No.

8 Q And so how -- how important is it for you to be able
9 to have the full range of your voice in -- in -- in trying
10 case?

11 A I would say it's extremely important. There's not
12 much you can do to represent your client if you don't have
13 a voice in trial. The witnesses spoke over me. The -- I
14 had no control of the witnesses. Cross-examination was
15 very ineffective, oftentimes interrupted by either the
16 court reporter or the witness themselves, asking me to, you
17 know, repeat or speak up or simply answer questions that
18 preferred the answer rather than the questions I was
19 directing to them.

20 Q Okay.

21 A I think that there is a technique that goes along with
22 cross-examination and being a -- an effective advocate for
23 your client that I wasn't able to -- to give because I had
24 no voice.

25 Q Okay. So how -- how did you feel that day, as the day

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 16

1 progressed? Did you feel any better?

2 A No. It felt worse.

3 Q Okay. Did -- did the pain get worse? How did it get
4 worse?

5 A Well, my voice continued to diminish. I had to clear
6 my throat constantly. And -- and -- the more it
7 progressed, the more raw my throat became.

8 Q Okay. So when did your illness really begin to impact
9 your ability to -- to try Ms. Richmond's case?

10 A The day I lost my voice.

11 Q Okay. So at what point did you feel the need to see a
12 doctor?

13 A I believe it was Wednesday that I -- I called my
14 doctor to see if there was anything I could do to make this
15 -- hasten the recovery or to have at least a diagnosis, if
16 nothing else, for the record. So I -- I made an
17 appointment. I asked for a short recess from the Court so
18 that I could see the doctor. They were going to fit me in
19 that day. And the judge denied that continuance as well.

20 Q What was the judge's reasoning in denying that
21 request?

22 A I believe it was the same -- I believe that he -- his
23 rationale was I had two other counsel who could continue on
24 without me and that she would be represented, basically,
25 whether I was in court or not.

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 17

1 Q Okay. So what did you decide to do?

2 A I spoke to -- I -- I decided to go to the doctor.

3 Q Okay. So when -- when did you see the doctor?

4 A When did I see the doctor?

5 Q Yes.

6 A I believe it was Wednesday afternoon.

7 Q Okay. Did the trial proceed in your absence?

8 A Yes, it did.

9 Q Okay. How -- how much of the trial did you miss while
10 you were seeing the doctor?

11 A I -- I think it was about two hours.

12 Q Okay. Do you recall who the healthcare provider was?

13 A My doctor was Michelle Archer, but I believe I saw her
14 nurse-practitioner. I -- I believe it was the nurse-
15 practitioner in her practice, Irmo Family Practice.

16 Q What was the diagnosis of ---

17 A Or ---

18 Q --- your condition?

19 A Sinus infection, basically. Laryngitis as a result of
20 a sinus infection.

21 Q Okay. So what remedy did the doctor prescribe for
22 you?

23 A To not use my voice.

24 Q Okay. Were you prescribed any medication for
25 treatment?

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 18

1 A I believe I was prescribed steroids as an anti-
2 inflammatory and perhaps some antibiotics for the sinus
3 infection. I'd have to go back to my motion. I believe
4 that's the case.

5 Q Okay. So did the medication help you at all?

6 A Eventually.

7 Q Okay. How long ---

8 A That week I wouldn't have stopped using my voice.

9 Q Okay. Did -- did the doctor write any notes about the
10 use of your voice to present to the Court?

11 A Yes. And I filed that with the -- with the Court.

12 Q Okay. So what motions did you make upon returning
13 from the doctor's office?

14 A I believe I made a motion -- it -- I think at that
15 point it was clear that the judge was not going to grant me
16 any continuance or recess or new trial. So I -- and I
17 wanted to preserve a reporting of my voice for appellate --
18 for the -- for the purposes of appeal.

19 I had spoken to -- or I didn't speak to -- Fielding
20 Pringle had spoken to attorneys with the Office of
21 Appellate Defense, and they advised us to have a court
22 reporter on -- ready at standby -- to get permission from
23 the judge to have an independent court reporter. Because I
24 believe that the court reporter was having difficulty with
25 her equipment, saying that her reporting, she wasn't sure

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 19

1 was going to be picking up my voice.

2 We had -- so we had contacted and we had -- she may
3 have already been in the courtroom -- another court
4 reporter. The judge denied our motion to have another
5 court reporter duplicate the services of the trial court's
6 reporter.

7 Also, I believe I made a motion to have a video
8 recording, just a camera in the court, so that there could
9 be some record of what -- where I was located in the
10 courtroom. For example, I had to stand in front of the --
11 the clerk of court, facing the court reporter, so that she
12 could read my lips and so that I could be heard. The
13 microphone was on the clerk of court's desk.

14 So I stood literally in front of that microphone. And
15 I faced the court reporter. And anytime I tried to face a
16 witness or the jury, I -- I was instructed to turn back to
17 the court reporter because she either couldn't hear me and
18 needed to read my lips or I needed to be closer to the
19 microphone.

20 But the judge denied the motion for a video camera to
21 be -- to film or record the -- the proceedings.

22 Q Okay. Were there any technical difficulties in these
23 accommodations that the Court tried to make?

24 A Yeah. They had me stand literally in front of the
25 microphone. And then Judge Miller adjusted the microphone

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 20

1 up and down. It had terrible feedback throughout the
2 trial. If I got too close to it, then it would feed back
3 and there'd be this loud squeak in the courtroom, as I
4 recall.

5 Q Okay. Could -- could you describe what your voice
6 sounded like with the laryngitis?

7 A It had no tone; it was -- I -- I mean, it -- it
8 sounded like a whisper.

9 Q Okay.

10 A There was little to no inflection. And there was no
11 ability to project my voice.

12 Q And do you recall what witnesses you questioned during
13 the trial?

14 A Probably close to a dozen. I know that I -- I stuck
15 to all but, I think, one witness during the trial. I think
16 I -- I did every witness I had been -- I had prepared to
17 do. So I believe that was most of the officers that had
18 any investigative -- you know, anything that had a
19 connection with the client that -- herself, so the people
20 who -- who received her statement -- who took her
21 statement. I -- I believe the lead investigator -- I
22 believe -- I know that I cross -- cross-examined the -- the
23 codefendant who had already pled. So I -- I think it was
24 close to 11 or 12 witnesses.

25 Q Okay. Given your condition, how did you feel about

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 21

1 your ability to question the witnesses?

2 A How did I feel about my -- I think my questions were
3 good. I don't think my -- the effect was -- I -- I don't
4 think it was effective. I don't think that I had ---

5 Q And so ---

6 A --- I think it would have been a very different trial
7 had I had a voice.

8 Q So why didn't you have cocounsel try -- at least try
9 to question those witnesses?

10 A Because they were not prepared to try this case on
11 their own. They did not have the time or energy put into
12 this case. They were not prepared to go forward on the
13 bulk of it. They were there to assist me in trial.

14 Deon is an excellent attorney. He is very capable.
15 However, he had very specific tasks assigned. For example,
16 I -- I think he had a few motions that -- motions in limine
17 that I had requested he prepare for; the rest, I was
18 prepared to handle.

19 I asked him to prepare a few witnesses. I'm -- you
20 know, the rest, I -- I handled. So although he had read
21 the discovery, it's not that -- that he had prepared to
22 cross-examine any of those witnesses.

23 Casey Secor was a third chair. And in our office at
24 the time, we brought in new attorneys to -- attorneys who
25 were new to the office who had very little to no trial

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 22

1 experience. We would bring them into bigger cases as a
2 third chair, mostly for trial practice and to prepare, you
3 know, to see the procedure and how -- as a procedural
4 effect.

5 Casey Secor is, again, a very good attorney. But I
6 believe he may have been one year out of law school. I
7 don't know if he's ever had a trial at that point. And his
8 -- his ability to handle a murder trial was -- you know, he
9 just wasn't there yet.

10 Also, I think that his witnesses were limited to
11 probably chain-evidence-type questions.

12 Q Okay. So who gave the closing argument for the
13 defense?

14 A I did.

15 Q Okay. And -- and given your condition, how -- how'd
16 you feel about your presentation of the closing argument?

17 A I think it was about as ineffective as the rest of the
18 trial.

19 Q Okay. And so why didn't you allow one of your
20 cocounsel to handle the closing argument?

21 A I believe that the -- once again, it's because I was
22 prepared to handle this case. It was my case from the
23 beginning. I -- neither one of -- neither one of them had
24 prepared a closing argument for this case.

25 They -- it's not something I think trial counsel

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 23

1 should simply do on the fly. I don't think you can just
2 sum up a trial. I -- I think it's so important to get it
3 right.

4 Also, because we put on a defense in her case, the
5 last -- we lost last closing. And for that reason, I
6 wanted it to be -- I just didn't think that either Deon
7 O'Neil or Casey Secor knew the case well enough to give
8 that closing argument.

9 Q Okay. Did anyone in the courtroom say anything to you
10 about your tone of voice during the trial?

11 A Everybody said something to me about my tone of voice
12 during the trial.

13 Q Okay. Like who?

14 A It was -- it was the big topic of conversation in the
15 courthouse at the time.

16 Q Did ---

17 A Specifically, I remember the bailiffs -- Mr. Coward, I
18 believe was his name -- said that he -- he could ---

19 MR. MITCHELL: Objection: hearsay.

20 A --- hear me -- I'm sorry.

21 THE COURT: Sustained.

22 MR. SALTZMAN: There's an objection. Well, it's --
23 okay. It was sustained.

24 THE COURT: I'll sustain the -- I sustain the
25 objection.

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 24

1 Q Okay.

2 A Okay.

3 Q All right. Well, was there anyone else that mentioned
4 anything to you about your voice?

5 A Yes. Several people mentioned -- several people
6 discussed my voice.

7 Q And did the court reporter say anything to you?

8 MR. MITCHELL: Objection: calls for hearsay.

9 THE COURT: Sustained. .

10 MR. SALTZMAN: Okay.

11 Q Was there anyone else that -- that mentioned anything
12 to you about the tone of your voice?

13 A The -- there was an alternate juror who -- who I spoke
14 to -- or who came up to us. There was the bailiff, who was
15 sitting on the last row of the jury panel. The court
16 reporter spoke to me specifically; and then, other people
17 in the courthouse, who would stop in an observe.

18 Q Okay. During the course of the trial, what did you do
19 to preserve any issues on appeal, as -- as it pertained to
20 your poor health condition throughout the trial?

21 A I received a doctor's note. I -- I -- I got -- went
22 to the doctor; received a diagnosis; submitted that
23 diagnosis into the court record. I -- I took recordings --
24 there were recordings -- voice -- a tape recording and a
25 video recording of me in the office just before the closing

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 25

1 arguments were taken and, I believe, maybe once on
2 Wednesday as well -- Wednesday or Thursday -- Wednesday
3 evening or Thursday morning in the office. There was a --
4 a -- an audio recording, which was submitted to -- into the
5 clerk of court.

6 Q Now, what was the Court's ultimate decision on Ms.
7 Richmond's case?

8 A The jury found her guilty, and she was sentenced to 40
9 years.

10 Q Okay. Now, what blame do you put on -- on your health
11 during the trial as it pertained to the case's outcome?

12 A Well, I mean, I -- wow, that's -- what blame do I put
13 -- I -- I'm sorry. Can you repeat that question?

14 Q Yeah. What -- what blame do you put on your health or
15 your laryngitis throughout the trial as it pertained to the
16 case's outcome? Do you ---

17 A I -- I cannot speculate as to what the outcome
18 would've been. You know, I -- what I can say is that I --
19 I think I am a good trial attorney. I think that I am a
20 strong advocate for my clients. I think that without a
21 voice, I was neither effective nor a strong advocate for my
22 client.

23 Q Okay. Would you say it was significant disadvantage?

24 A Yes.

25 Q Okay. Did you file any posttrial motions for a new

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 26

1 trial?

2 A I did.

3 Q Okay.

4 MR. SALTZMAN: At this time I'd like to enter the
5 defendant's notice of motion and motion for new trial ---

6 MR. MITCHELL: That ---

7 MR. SALTZMAN: --- as an exhibit.

8 MR. MITCHELL: That's no objection. I think it's part
9 of the record ---

10 THE COURT: Okay.

11 MR. MITCHELL: --- already.

12 THE COURT: Well, that's admitted without objection.

13 MR. SALTZMAN: Okay.

14 Q So what did you argue in -- in the ---

15 THE COURT REPORTER: Sir?

16 MR. SALTZMAN: Oh, I'm sorry.

17 Q What did you argue ---

18 THE COURT REPORTER: No, sir. I can't mark that and
19 take it down at the same time, so you'll ---

20 MR. SALTZMAN: Oh.

21 THE COURT REPORTER: --- have to ---

22 MR. SALTZMAN: Sorry.

23 THE COURT REPORTER: --- wait.

24 MR. SALTZMAN: Okay.

25 THE COURT REPORTER: I'm sorry.

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 27

1 MR. SALTZMAN: Sorry about that.

2 (Whereupon, Plaintiff's Exhibit 1 was marked and
3 entered into evidence.)

4 Q Okay. So what did you argue in -- in that motion for
5 the new trial?

6 A I argued that without a voice, Ms. Richmond was
7 effectively denied her constitutional right to counsel, and
8 there were a number of constitutional violations that
9 occurred because I was not granted a recess or continuance
10 for this trial.

11 Q Okay. So to sum that up, did -- did you argue Fifth,
12 Sixth, and Fourteenth Amendment violations?

13 A Yes.

14 Q Okay. Now, was this motion granted by the Court?

15 A It was not.

16 Q Okay. Did you file a -- a notice of appeal?

17 A I did.

18 Q Okay. What communication did you have with the
19 appellate defense counsel regarding the preservation of
20 these issues for the appeal?

21 A My office had been in contact with the Office of
22 Appellate Defense as soon as it was clear there was an
23 issue that we thought would be appealed, which was my --
24 the lack of voice. So I -- I believe as early as
25 Wednesday, we were in -- in contact with the Office of

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 28

1 Appellate Defense. And they advised us on how to proceed
2 to make sure that we preserved the record.

3 I believe that we did our best to preserve all
4 objections and make every effort to preserve her issues for
5 appeal. I did not want her to not have a fair trial in the
6 first place. Or what my opinion is, is that she did not
7 receive a fair trial in the first place; and then, for
8 somehow that to -- for me to have waived that issue for
9 appeal.

10 Q Okay. So who represented Ms. Richmond on the appeal?

11 A I don't know.

12 Q All right. So when -- when you preserved these issues
13 for the appeal, did -- did you expect that appellate
14 counsel would subsequently raise those issues on the
15 appeal?

16 A Absolutely.

17 Q Okay. Do you recall if they did, in fact, raise those
18 issues on appeal?

19 A It's my understanding they did not.

20 Q Okay. Now, my final question here: Now, how -- how
21 did the outcome of this case and the totality affect you,
22 professionally or -- or personally?

23 A I stopped handling ---

24 MR. MITCHELL: Objection: relevance.

25 THE COURT: Yeah. Look, what is the relevance of how

CROSS-EXAMINATION BY MR. MITCHELL - CAROLYN SUTHERLAND 29

1 this affected her?

2 MR. SALTZMAN: Just to see exactly how significant and
3 how sort of a -- a deviation of -- from the Court that
4 happened and how this may have had an effect on her moving
5 forward after and -- and during such a case like this.

6 MR. MITCHELL: It's my position it's not relevant to
7 -- whether she was ineffective in this case, what happened
8 afterwards is not relevant to the proceedings.

9 THE COURT: And I -- I agree. I sustain the
10 objection.

11 MR. SALTZMAN: Okay. All right.

12 Q I have no further questions. All right. Please
13 answer any questions that Assistant Attorney General Clay
14 Mitchell has for you. Thank you.

15 CROSS-EXAMINATION

16 BY MR. MITCHELL:

17 Q Hi, Ms. Sutherland. Can you hear me?

18 A I can. How are you?

19 Q Good, good. We appreciate you doing this today.

20 A Yeah.

21 Q All right. Let's see.

22 A Not a problem.

23 Q To start off, I guess the case was called for trial on
24 a Monday; is that correct?

25 A Yes.

CROSS-EXAMINATION BY MR. MITCHELL - CAROLYN SUTHERLAND 30

1 Q And then, it would've been possibly a holiday on
2 Tuesday, and then the case would've picked back up on
3 Wednesday; is that right?

4 A Yes.

5 Q Okay. And you weren't feeling -- you were feeling
6 much worse Wednesday than you were Monday; is that correct?

7 A As I recall, yes.

8 Q Okay. How long was Mr. O'Neil on the case?

9 A I don't remember.

10 Q So he was second chair; he would've been on at least
11 for a few months; is that correct?

12 A At least, yes.

13 Q Okay. And he was familiar with the -- y'all's trial
14 strategies at that time?

15 A Yes.

16 Q Did y'all make tactical trial decisions together?

17 A We usually do. Yes.

18 Q Okay. So the solicitor wanted all of this on the
19 record, the -- your -- the motion for continuance or motion
20 for a mistrial; is that right?

21 A Yes.

22 Q And that would've been raised after a few witnesses
23 testified, so it would've ---

24 A Yes.

25 Q --- likely would've been a mistrial, so you would've

CROSS-EXAMINATION BY MR. MITCHELL - CAROLYN SUTHERLAND 31

1 had to retry the -- restart the case, essentially?

2 A Right. I believe the witnesses were his relatives who
3 flew in from Virginia and maybe one officer.

4 Q Okay.

5 A Most of Monday, as -- to my recollection, was motions
6 in limine.

7 Q Okay. Like the *Denno* hearing and all that?

8 A Right.

9 Q Okay. Now, when this motion was made, didn't the
10 Court advise the jury that if they couldn't hear you, to
11 raise their hand?

12 A Yes.

13 Q Okay. I believe it was -- I think you're right about
14 that, that it was Wednesday when you went to see the
15 doctor. So you were absent from the courtroom for, I
16 believe, one witness; is that right?

17 A That sounds right.

18 Q Okay. And then, the next witness to testify would've
19 been Ms. McClinton, who would've been the codefendant,
20 correct?

21 A That could be. I don't recall the order of witnesses.
22 But I did cross-examine Ms. McClinton.

23 Q Okay. And to be clear, your side made a motion to
24 have an outside court reporter present to take down the
25 proceedings; isn't that right?

CROSS-EXAMINATION BY MR. MITCHELL - CAROLYN SUTHERLAND 32

1 A Yes.

2 Q And ---

3 A And most specifically, for her recording devices.

4 Q So you would've had a record of your voice; is that
5 right?

6 A Yes.

7 Q Okay. And Judge Miller denied that?

8 A Yes. As I recall, I also requested that the trial-
9 court court reporter also preserve her tapes.

10 Q Okay. So you believe that these objections were all
11 preserved properly for appeal; is that right?

12 A I believe so.

13 Q All right, Ms. Sutherland. I have no further
14 questions. Thank you.

15 A All right. Is that all?

16 MR. SALTZMAN: Yeah. Nothing further from the
17 applicant.

18 THE COURT: Thank you for your testimony.

19 THE WITNESS: Thank you, Your Honor. You all have a
20 great day.

21 MR. MITCHELL: Thank you, Ms. Sutherland. Appreciate
22 it.

23 (Whereupon, the telephonic testimony of the witness
24 ended.)

25 THE COURT: You may call your next witness.

DIRECT EXAMINATION BY MR. SALTZMAN - CASEY SECOR 33

1 MR. SALTZMAN: Yeah. Your Honor, the applicant calls
2 Mr. Casey Secor.

3 THE COURT: Okay.

4 (Whereupon, the witness came forward.)

5 CASEY SECOR, having been first duly sworn,
6 testified as follows:

7 (Whereupon, the witness entered the witness stand.)

8 DIRECT EXAMINATION

9 BY MR. SALTZMAN:

10 Q Good afternoon.

11 A Good afternoon.

12 Q Okay. And could you please state your name for the
13 Court?

14 A Casey Secor, S-e-c-o-r.

15 Q All right. Mr. Secor, where'd you go to law school?

16 A The Florida Coastal School of Law in Jacksonville.

17 Q All right. And when'd you become licensed to practice
18 law in South Carolina?

19 A 2007, I think. I think the bar results came out in
20 October, and I believe I was sworn in, in November.

21 Q When did you begin working for the Richland County
22 Public Defender's Office?

23 A I started working there in the summer of 2007 as a law
24 clerk. And then when I passed the bar, I became an
25 assistant public defender.

1 Q And what types of cases did you handle?

2 A Initially, mostly magistrate-level charges, some less-
3 serious general-sessions charges.

4 Q How many cases did you try before working on Ms.
5 Richmond's case?

6 A I was trying to recall that as I was sitting here. I
7 know that I tried one DUI in magistrate court. But I
8 believe Ms. Richmond's case was the first general-sessions
9 trial that I had anything to do with.

10 Q And when did you begin working on her case?

11 A I don't recall. But it was not long before the trial.
12 I don't -- I'm not sure. But I'm pretty sure I had never
13 met Ms. Richmond in the jail, which means that the first
14 time I would've met her would've been the first day of her
15 trial.

16 Q And so what was your role in -- in representing Ms.
17 Richmond?

18 A I was what my office called "third chair," if there is
19 such a thing. As Ms. Gripp said, our office sometimes
20 brought in third-chair attorneys to allow newer -- newer
21 lawyers like myself the opportunity to get comfortable in
22 court. There was a large number of people who were hired
23 at the same time that I was hired. So there was a lot of
24 new lawyers in the office. And they were encouraged by the
25 chief circuit public defender and the chief public defender

1 to involve younger attorneys in trials to sort of get us
2 accustomed the difficult and adversarial nature of trying
3 general-sessions cases.

4 Q Okay. How many hours do you recall working in -- in
5 preparation of Ms. Richmond's case?

6 A I -- it would be very difficult for me to estimate the
7 number of hours. But would it not -- it would not have
8 been many. I mean, it was -- I mean, I -- it -- it was --
9 I was more than a spectator, but not a whole lot more than
10 a spectator.

11 I mean, I don't recall exactly which witnesses I
12 handled. But it -- they were not witnesses of any
13 particular substance. And I was not -- although I was
14 familiar with the discovery, having read the discovery,
15 which would've taken, you know, a few hours, and I -- I
16 know that I read it more than once. So I was familiar with
17 the discovery.

18 But I was not familiar with Ms. Richmond or her
19 background or her life story. And frankly, some of the
20 aspects of the case and the incident, I first learned about
21 during the trial while listening to testimony.

22 Q And so now, what was Ms. Sutherland's role in trying
23 Ms. Richmond's case?

24 A She was first chair, lead counsel. She was Ms.
25 Richmond's lawyer. She was her advocate. She was --

1 Carolyn was the only thing that stood between Ms. Richmond
2 and the Department of Corrections.

3 Q And -- and what was cocounsel Deon O'Neil's role in
4 trying Ms. Richmond's case?

5 A Deon was second chair. Deon was, at the time, one of
6 the best lawyers in the office. He was always one of the
7 best lawyers in the office.

8 And people frequently asked for his help on their
9 cases because he is -- he had a lot of experience. He has
10 a -- a beautiful and compelling courtroom style. And
11 people often sought his assistance on cases.

12 But again, Carolyn was Ms. Richmond's lawyer. And
13 Deon came in, I think -- I don't know -- I don't know
14 exactly when he began working on the case. But he
15 certainly didn't work on it nearly as long as Carolyn did.
16 And I don't remember exactly what his roles were at the
17 trial.

18 But Deon's more than competent. Deon's an excellent
19 lawyer. But Carolyn was the person who was assigned to Ms.
20 Richmond's case. It was her advocate.

21 Q So would you say that Ms. Sutherland was the most
22 prepared person to defend Ms. Richmond in this case?

23 A On the -- she was unequivocally the most prepared.
24 She was the only person fully prepared to try the case.
25 And she did everything that she could do and everything

DIRECT EXAMINATION BY MR. SALTZMAN - CASEY SECOR

37

1 that was expected of her, except she couldn't articulate it
2 in a way that anybody could hear. So, you know, she was
3 the most prepared, except she lacked the only thing that a
4 trial lawyer needs, which is a voice.

5 Q Okay. So when did you notice Ms. Sutherland's voice
6 and health in general decline during ---

7 A Before ---

8 Q --- the case?

9 A --- the trial even started. I mean, I knew that she'd
10 been sick and her voice had been progressively
11 disappearing. And on that Tuesday, when I talked to her on
12 the phone -- I think I talked to her on the phone, and I
13 think we met at the office. And I remember not being able
14 to -- to understand what she was saying to me over the
15 phone, which, I think, played a role in why we ended up
16 meeting at the office.

17 And then, as a professional courtesy to the
18 solicitor's office, we contacted them on the holiday to
19 tell them that we were going to move for a continuance
20 because we didn't want to spring it on them on Wednesday
21 morning. So as a professional courtesy, we reached out to
22 them. I believe I left a voice mail with Anna Good. I
23 don't remember whether it was me or somebody else who
24 contacted Ms. Shipley.

25 But we did it as a way to tell them ahead of time this

1 is what we need to do; this is a serious condition. And
2 they took our professional courtesy and tried to use it
3 against us by refusing to communicate with us until the
4 following day in court.

5 Q Okay. So how -- how would you describe Ms.
6 Sutherland's voice during the trial?

7 A I -- I guess, a whisper. But it would be a whisper
8 that, you know, if I was whispering to you, you know, you
9 might be able to tell that I was whispering, but you
10 wouldn't be able to tell what I was saying. It was a
11 hoarse whisper.

12 And I -- I think everybody knows what's it's like to
13 talk to somebody who has laryngitis. It's a -- it's not
14 the kind of -- you can't just whisper to somebody from a
15 couple of feet away. You have to -- you know, they have to
16 whisper in your ear for -- for them -- for you to know what
17 they're saying. It was bad -- very bad.

18 Q So now, where were you sitting in relation to where
19 Ms. Sutherland was giving her trial presentation?

20 A I was at counsel table, which, in that -- one of the
21 big courtrooms here in Richland County, from where she was
22 standing. She was standing up by the court reporter, which
23 is probably -- I don't know -- 20 -- 20 feet from the --
24 from counsel table, something like that.

25 Q Could you understand what she was saying?

DIRECT EXAMINATION BY MR. SALTZMAN - CASEY SECOR

39

1 A Frequently, I had absolutely no idea what she was
2 saying.

3 Q Okay. Could you at least hear what she was saying?

4 A I could hear that she was making noise. But I
5 couldn't hear what she was saying.

6 Q How far was she, let's say, in comparison to the jury?

7 A Probably 10 feet from the -- from the jury box and
8 probably, you know, 5 feet from the court reporter. A
9 number of times, the court reporter couldn't hear her. And
10 the court reporter was only 5 feet away. So if the court
11 reporter at 5 feet away couldn't hear her, something tells
12 me the jury at 10 feet couldn't hear her either.

13 Q Okay. Did anyone else make any indications that they
14 couldn't hear Ms. Sutherland?

15 A Everybody who had an opportunity to. The court
16 reporter several times said she couldn't hear. Witnesses
17 on the stand asked her to repeat or said, "I can't hear
18 you; I don't know what you asked me."

19 I remember seeing jurors leaning forward, trying to
20 hear. I think a couple of times -- I don't know whether a
21 juror actually ever raised their hand or vocalized anything
22 in court during the proceedings. But their body language
23 indicated to me exasperation that they couldn't understand
24 what was going on.

25 I -- I -- I don't know whether the judge actually

1 instructed them to do something, you know, raise their hand
2 if they couldn't hear. But in a courtroom -- in it -- in a
3 -- in a -- in a case of that severity, you know, it --
4 people are hesitant to constantly be indicating that they
5 can't hear anything.

6 Q Okay.

7 A You know, that's understandable. It's human nature.
8 You're a juror; you expect -- you think you're just
9 supposed to sit there, shut up, listen, and go make a
10 decision.

11 And I think that people are hesitant to say, you know
12 -- to -- to sort of point themselves out or identify
13 themselves as being somebody who can't hear. They don't
14 want to prolong things. They don't want to make it any
15 more difficult than it already is.

16 But I could tell from jurors' body language that they
17 were having a hard time understanding. At least that's how
18 I perceived their body language.

19 Q So at what point did the defense ask the Court for a
20 continuance or mistrial as a result of Ms. Sutherland's
21 health?

22 A I don't remember exactly. But I believe the first
23 time was -- would've been Wednesday morning, the day after
24 whatever holiday that was, was when we came and asked the
25 judge -- I believe it initially was for a continuance. But

DIRECT EXAMINATION BY MR. SALTZMAN - CASEY SECOR 41

1 Carolyn would remember better. I don't remember whether it
2 was a mistrial at that point or a continuance, or it may
3 have been a motion for both or one or the either.

4 But we arrived in court; attempted to talk with the
5 solicitors. They refused. And we asked them to speak with
6 the judge in chambers, and they refused. And based on
7 their demeanor and tone with which they were talking to us,
8 it was my impression that they believed that Carolyn was
9 either faking it or they smelled blood in the water and
10 thought that they could get an easy conviction by
11 prosecuting Ms. Richmond when her lawyer was at her
12 weakest.

13 Q So how did the Court rule on -- on the motion for the
14 continuance or mistrial?

15 A Denied.

16 Q Okay. Did the Court at least provide some
17 accommodation for Ms. Sutherland's voice?

18 A None that I'm aware of. I mean, there's microphones
19 in every courtroom. I wouldn't call that an accommodation.

20 Q Okay. Was any accommodations requested for Ms.
21 Sutherland's voice?

22 A Well, there was -- the -- the request to go see a
23 doctor without the trial proceeding in her absence was
24 made, and that was denied, which struck me as odd. And
25 then, there were requests for ways to properly preserve the

1 record by means of video and audio recording at no expense
2 to the Court or to the county, because the public
3 defender's office had a camera that could've been used.

4 And we asked the judge if we could set it up in the
5 courtroom. And that was denied, which struck me as
6 particularly odd because if there was nothing wrong with
7 the proceedings, why not video-record them. You know, the
8 only reason to not video-record them is if you don't want
9 anybody to know what was actually happening.

10 Q So were you prepared to take over for Ms. Sutherland
11 if -- in the event she was unable to proceed with the case?

12 A Absolutely not.

13 Q Okay. Now, how vital was Ms. Sutherland to the case?

14 A I don't think that you could put a percentage on her
15 -- whether her -- whether -- how -- how vital she was. She
16 was Ms. Richmond's lawyer. As I said, she was the only
17 thing standing between this courthouse and the Department
18 of Corrections for Ms. Richmond.

19 So to say she was vital, I mean, sure. She was vital.
20 She was crucial. She was everything to the case. She was
21 the first-chair attorney.

22 She was the embodiment of the adversarial system on
23 Ms. Richmond's behalf. And without her -- without Carolyn,
24 the adversarial system ceased to exist.

25 Q And how did she sound during closing arguments?

DIRECT EXAMINATION BY MR. SALTZMAN - CASEY SECOR

43

1 A I don't know. I couldn't hear it.

2 Q So why didn't you perform the closing argument?

3 A Well, partially, because I didn't know what I was
4 doing. I've been practicing law since 2007, and there's
5 still times that I feel like I don't know what I'm doing.
6 But I certainly didn't know what I was doing a year out of
7 law school.

8 I would've had no business giving a closing argument
9 in any murder case, even a murder case that I was prepared
10 to give a closing argument in. And I was by no means
11 prepared to give a closing argument in Ms. Richmond's case.

12 I mean, that -- a closing argument in a case like
13 this, I think, is particularly important because there was
14 a great deal of emotion and passion involved in this case.
15 It wasn't a case where we were debating the existence of --
16 or, you know, the -- the -- the identity of a person or
17 whether fingerprints were this person's or that person's
18 or, you know, those types of things weren't at issue.

19 What -- what was at issue was the emotion that existed
20 at the time that Mr. West, I believe his name was, was
21 killed. And in order for an accurate and reliable decision
22 to have been made by that jury, they needed to understand
23 what happened in that apartment and the relationships and
24 interaction between those people.

25 And Ms. Richmond was charged with murder. It's not my

1 job to -- to -- to charge people or indict people. But it
2 -- I think she should've been charged with voluntary
3 manslaughter to get -- at the get-go.

4 I mean, these are people fighting over a -- a rock of
5 crack cocaine. These are friends, fighting over a rock of
6 crack cocaine in a drug-fueled nightmare. And there was a
7 fight and somebody died. And that's not murder under any
8 definition.

9 And so it was important for the jury to feel and
10 understand the emotion and the passion in this case, to
11 understand that Ms. Richmond and Ms. -- Mr. West were
12 friends; that there wasn't -- there -- this wasn't a -- a
13 situation of malice. This is a situation where people on
14 -- are on drugs and things get out of control.

15 And you need to -- to instill in a jury that with
16 passion and with voice inflection and with the ability to
17 raise your voice. Only 30 percent of communication comes
18 from the words that you use. That means 70 percent of
19 communication comes from other areas, particularly voice
20 inflection. And when you lack that, it doesn't matter if
21 your lawyer is Clarence Darrow. If people can't hear you,
22 you might as well have nobody representing you.

23 Q Okay. Now, ultimately, Ms. Richmond was found guilty.
24 Was there any posttrial motions made to request a new
25 trial?

DIRECT EXAMINATION BY MR. SALTZMAN - CASEY SECOR 45

1 A Yeah. The -- you know, that's pretty standard. I
2 think I've made a motion for -- or made a -- a motion for a
3 new trial in every case that I've ever tried. But that
4 just is sort of standard procedure.

5 But in this case we had strong reasons for why Ms.
6 Richmond deserved another trial. It's because she never
7 had a first trial. And having a trial where there's ---

8 MR. MITCHELL: Objection, Your Honor. I think this is
9 getting outside the scope of the question. He's going off
10 on narrative on these certain questions here. I'd ask the
11 witness to contain his testimony to the facts and to the
12 specific questions answered -- asked. Excuse me.

13 MR. SALTZMAN: I believe the witness was going to go
14 into further depths of the issues that were going to be
15 raised on appeal.

16 THE COURT: Okay. I'll overrule the objection. Go
17 ahead.

18 Q All right. Continue, please.

19 A Ask me the question again, please.

20 Q Sure. What -- well, let's see. We'll get into what
21 -- what issues here in this case do you believe should've
22 been preserved for the appeal and the handle on the appeal?

23 MR. MITCHELL: Objection: calls for legal conclusion.
24 I mean, he's a fact witness. He's asking what issues
25 should have been raised on appeal. I think he's asking him

1 to give a legal opinion on what issues are more meritorious
2 than others. I think ---

3 THE COURT: I -- I ---

4 MR. MITCHELL: --- that goes ---

5 THE COURT: I'll ---

6 MR. MITCHELL: --- to the ---

7 THE COURT: --- I'll sustain the objection.

8 MR. MITCHELL: Thank you.

9 A I can just tell you the issues that were preserved.

10 Q Yeah.

11 A It -- the -- the -- the primary issue, in my view,
12 that was preserved -- and it was preserved ad nauseam --
13 was Carolyn's inability to speak and the continuance and
14 mistrial requested based on the fact that Carolyn could not
15 speak. That was preserved. There's a lot of case law
16 dealing with South Carolina's somewhat archaic preservation
17 issues. But it -- it was preserved to the point where I
18 sensed that Judge Miller was annoyed by me and my
19 persistence in preserving that issue.

20 And usually, the best way to know, from -- as -- as a
21 trial attorney, the best way to know whether you've
22 preserved an issue is whether the judge is annoyed. When
23 the judge is annoyed, you know the issue is preserved.

24 Q Okay. Were there any issues concerning the -- the
25 judge's decision to deny the continuance or the mistrial?

DIRECT EXAMINATION BY MR. SALTZMAN - CASEY SECOR

47

1 A His reasonings for denying the motions, to the best of
2 my recollection, were that he thought that because there
3 were other attorneys on the case, that -- that there was no
4 reason to grant a continuance or a mistrial, which lacks
5 logic, from my standpoint because to -- to -- to suggest
6 that you can just replace one lawyer with another lawyer is
7 -- is insane.

8 I mean, if -- if -- if that were the case, we would
9 all get paid the same thing, you know. But I'm sure that
10 somebody who has Jack Swerling wouldn't be happy if I just
11 jumped in Jack Swerling's place and did try to do his job
12 for him. I don't think they'd consider that fair.

13 Q So what expectation did you have that these issues
14 that were preserved concerning the judge's decision to deny
15 the continuance and mistrial, as well as the issues
16 surrounding Ms. Sutherland's voice -- what expectation did
17 you have that they would be brought up on appeal?

18 A I had -- there was absolutely no doubt in my mind that
19 they would be raised on appeal.

20 Q Do you know if they were actually raised on appeal?

21 A My understanding is that an *Anders* brief was filed on
22 Ms. Richmond's behalf. And I'm not all that familiar with
23 *Anders* briefs because I've never done appellate work. But
24 my understanding is that an *Anders* brief is one that does
25 not raise any issues.

1 Q Okay. All right. I have no further questions.
2 Please answer any questions that Mr. Mitchell may have.

3 A Yes, sir.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. MITCHELL:

7 Q All right. Afternoon, Mr. Secor.

8 A Good afternoon.

9 Q How are you doing?

10 A Living the dream.

11 Q All right. So you were -- the witnesses that you
12 handled were -- let's see. They were crime scene
13 investigators and one sergeant, I believe; is that correct?

14 A I -- yeah. I'll take your word for it. I can't
15 remember. If you say their names, I might remember better.

16 Q Okay. It was Ray Livingston, Patricia Reed-Enzor,
17 Stan Richards; is that correct?

18 A I believe so. Yeah.

19 Q One thing you did seem to handle were a lot of these
20 motions for mistrial and motions for continuance.

21 A Yes, sir.

22 Q And I believe you testified you thought Judge Miller
23 was getting a little aggravated because you were so
24 persistent in those objections; is that ---

25 A Yeah. Somebody ---

1 Q --- about correct?

2 A Somebody told me that -- that, during a break, he made
3 a comment about me being -- I can't remember the exact word
4 -- but something about being fearless or something like
5 that, which I kind of took as a compliment.

6 Q Okay. I'm counting nine different times during the
7 trial where you moved for a continuance or -- well,
8 mistrial/continuance towards the beginning. Does that seem
9 to mesh with your recollection of the trial?

10 A Yeah. I'll take your word for it. I -- I -- I -- I
11 don't know that I would've guessed it was that high, but
12 I'm certainly glad to hear it was that high.

13 Q Okay. So you -- it was your belief that the issue was
14 preserved; is that right?

15 A My issue-preservation skills then were certainly not
16 what they are now. I've learned my lesson in the interim
17 that to adequately preserve an issue is sometimes
18 impossible. If an appellate court decides that they don't
19 want to address your issue, they will find some way to say
20 that you failed to properly preserve it.

21 And I don't doubt for a second that I could've
22 articulated my objections or motions better. I think that
23 in retrospect, I would have tried to specifically say state
24 and federal constitutional principles more articulately. I
25 certainly would've tried to have case law on point. And I

1 would've raised other court rules, case law from other
2 states.

3 But at the time I was kind of shooting from the hip
4 because Carolyn's condition worsened sort of in the middle
5 of the trial. And I -- I don't doubt for a second that,
6 given more time, I would've preserved them better.

7 Q No further questions. Thank you.

8 THE COURT: Redirect?

9 MR. SALTZMAN: No redirect from the applicant, Your
10 Honor.

11 THE COURT: All right. You may step down.

12 THE WITNESS: Thank you, sir.

13 THE COURT: You may call your next witness.

14 (Whereupon, the witness exited the witness stand.)

15 MR. SALTZMAN: All right. The applicant now calls Mr.
16 Deon O'Neil.

17 (Whereupon, the witness came forward.)

18 DEON O'NEIL, having been first duly sworn,
19 testified as follows:

20 (Whereupon, the witness entered the witness stand.)

21 DIRECT EXAMINATION

22 BY MR. SALTZMAN:

23 Q Good afternoon.

24 A Good afternoon.

25 Q Would you please state your name for the Court?

DIRECT EXAMINATION BY MR. SALTZMAN - DEON O'NEIL

51

1 A Deon O'Neil.

2 Q All right. And where did you go to law school?

3 A University of South Carolina School of Law.

4 Q When'd you become licensed to practice law in South
5 Carolina?

6 A November of 2006.

7 Q All right. And when did you begin working for the
8 Richland County Public Defender's Office?

9 A I began working for the Richland County Public
10 Defender's Office as an intern; would've been the summer of
11 2004.

12 Q Okay. Okay. And what was your position at -- at the
13 public defender's office?

14 A Once I was licensed to -- to practice law in November
15 2006, I became an assistant public defender ---

16 Q Okay.

17 A --- until I left the public defender's office in July
18 2010.

19 Q What types of cases did you handle?

20 A It varied during my time there at the public
21 defender's office. It began, of course, with minor
22 misdemeanors and less-serious felonies, felonies that carry
23 less than 15 years. Kind of rose exponentially pretty
24 quickly after my first, I think, six months there because a
25 lot of the senior attorneys left office at that point. So

1 probably after my first year at the public defender's
2 office, which would've been after 2007, I started handling
3 more-serious felonies: murders, armed robberies, burglary-
4 first.

5 Q How many cases did you try before working on Ms.
6 Richmond's case?

7 A It would have been -- I probably would've been first
8 chair to about five felony cases at -- by that point and
9 probably been second chair to another five.

10 Q So when did you begin working on Ms. Richmond's case?

11 A At -- at that time the process was you didn't look for
12 a second seat until the case was actually scheduled for
13 trial. So it would've been shortly after Ms. Melinda's
14 case was set for trial.

15 Q All right. And so what was your role in representing
16 Ms. Richmond?

17 A As a second seat, I'm essentially the assistant to the
18 -- the first chair, Ms. Carolyn. I would -- my job would
19 normally -- traditionally would be to do the opening
20 statement and to do a -- the lesser-important witnesses
21 than the first chair. The first chair responsibility is to
22 handle all the critical witnesses. Second chair would --
23 would be do -- to handle the less-serious witnesses. And
24 in this case we had a third chair, Mr. Secor here, who
25 would -- who would handle even less-serious witnesses than

1 I would handle.

2 Q All right. So how many times did you meet with --
3 with Ms. Richmond prior to the trial?

4 A We might've met once prior to the trial because it's
5 -- it's the first chair's job to meet with the client, kind
6 of develop the trial strategy, and get that trial strategy
7 set up. By the time the second chair comes on, my job is
8 kind of really just to follow the trial strategy that's
9 kind of already been outlined by the first chair. So I
10 think we met once.

11 Q All right. So how many hours do you estimate that you
12 worked in preparing for Ms. Richmond's case?

13 A I would say before we went to trial, it's probably
14 somewhere close to 15 to 20 hours.

15 Q Okay. Okay. Now, who do you believe was the most
16 prepared person to defend Ms. Richmond's case?

17 A Carolyn would've been -- Carolyn Gripp at that time.
18 She's -- she's since been married, so Carolyn Sutherland.

19 Q And so when the trial began, did you notice Ms.
20 Sutherland's health declining?

21 A Yeah. I mean, I noticed there was an issue with her
22 voice before the trial started here. But as the trial
23 progressed, I -- I noticed her voice getting -- getting
24 worse.

25 Q All right. So what did you observe?

1 A I observed that essentially by time we came back that
2 Wednesday, that her voice was no -- no louder than a vague
3 whisper.

4 Q And, well, where were you sitting in comparison to
5 where Ms. Sutherland was standing during her presentation
6 of the trial?

7 A And I don't recall what courtroom we were in. There
8 are -- there's two styles of courtrooms, depending on
9 whether it's Courtroom A or Courtroom B. But as defense
10 counsel, you will -- you will always be at the -- the
11 counsel table opposite from the jury box. So we would've
12 been -- if we would've been in Courtroom -- the A
13 courtroom, we would've been in the right side of the
14 courtroom. If we would've been in Courtroom B, we'd have
15 been on the left side of the courtroom here.

16 But I would've been at the counsel table opposite of
17 the -- furthest away from the jury box at the -- at the
18 counsel table, is where I would've been sitting at. And --
19 and Ms. Gripp, when she would've been talking to witnesses,
20 she would've been in the middle of the courtroom, towards
21 the -- the witness box.

22 Q Okay. Could you understand what was Ms. Sutherland
23 was saying throughout the presentation of the trial?

24 A I could not. Because I would -- I would be kind of --
25 based on the court configuration, I would be -- Ms. Carolyn

DIRECT EXAMINATION BY MR. SALTZMAN - DEON O'NEIL

55

1 would've had her -- would've had her back towards me,
2 because she -- we -- we teach -- we teach -- at that time
3 we -- we taught attorneys, with cross-examination, to stand
4 in the middle of the courtroom, further away from the jury
5 box, so the jury could actually pay -- pay attention to you
6 and not the witness. So she would've been probably in a
7 straight line from the jury box, which would've put her
8 back towards me and -- and -- and probably her back toward
9 at least 60 percent of the jury at that point as well.

10 Q Okay. So how far do you believe she was standing from
11 the jury box?

12 A She would've been probably -- this courtroom is
13 smaller than the -- than the general-sessions courtroom.
14 But she would've been -- the well part of the courtroom is
15 smaller than the general-sessions courtroom.

16 But she probably would've been about 10 and 10, I
17 guess. She probably would've been 10 feet at least from
18 the jury box and about 10 feet from the witness stand.

19 Q Did anyone in the courtroom indicate that they could
20 not hear Ms. Sutherland?

21 A Yeah. I was -- I think the court reporter indicated
22 on a couple times and asked Ms. Gripp, at that time, to
23 repeat herself. And I think some witnesses also did the
24 same.

25 Q All right. So at what point did the defense ask the

1 Court for a continuance or mistrial due to Ms. Sutherland's
2 health condition?

3 A And I'll have to refer back to the transcript to be
4 specifically clear on this. But I'm -- my -- my
5 recollection at this point would've been that -- would've
6 been that Wednesday morning.

7 Q Okay. And how did the -- the Court rule on that?

8 A And the judge denied that continuance request.

9 Q Okay. Did the Court provide any accommodations for
10 Ms. Sutherland's voice?

11 A No. Because there -- there are microphones at the
12 counsel table. There's no -- Ms. Gripp, when she would've
13 been questioning a witness, it would've been standing at --
14 at a similar podium where you're standing at. And there's
15 no microphones at that particular podium. So the only
16 microphones that would've been available for her would've
17 been at the counsel table.

18 Q Okay. Now, was there any request made to the Court to
19 provide Ms. Sutherland with an accommodation for her voice?

20 A Not -- not for her voice, per se. There were -- there
21 were requests to -- to record the transactions and
22 proceedings of that day.

23 Q And now, were you prepared to take over for Ms.
24 Sutherland in the event that she was unable to proceed with
25 the case?

1 A I was not.

2 Q Now, how vital was Ms. Sutherland to -- to the
3 representation in this case?

4 A She was vital to Ms. Richmond, because she was the one
5 who lived the case from -- from her beginning of
6 representation. She's the one who meet -- her job is to
7 meet with the client. Ms. Carolyn's job at that point
8 would've been to -- to develop the strategy, develop the
9 theme of the case, develop the -- the theme of each
10 individual witness -- what -- what do you want brought out
11 through this witness -- what theme and what tone you want
12 to set through the whole presentation of the case. That
13 would've been her job.

14 Q And do you feel that she was able to get that across,
15 given her voice?

16 A I would say no, because I think there's certain --
17 certain things you need to do when you're cross-examining
18 the witness when it comes to tone and -- and inflection
19 that needs to come across to illustrate to the jury your --
20 your theme and your position when it comes to that
21 witness's credibility or that witness's importance to the
22 case.

23 Q So how did she sound in closing arguments?

24 A I -- from where I was sitting -- and it -- it would've
25 been a -- probably a good 10 to 15 feet behind her with her

1 back turned to me, I -- I could not hear what she was
2 saying in her closing arguments. It wasn't above a
3 whisper.

4 Q Okay. So do you believe that anyone could've filled
5 in for Ms. Sutherland in the event that she was unable to
6 proceed with the case?

7 A No. There was actually discussion -- Ms. Sutherland
8 asked me, I think, right before the closing to actually do
9 the closing for her. And I indicated to her that I was not
10 in a position to do the closing argument for her.

11 Q All right. Have you ever seen Ms. Sutherland try
12 cases before?

13 A We've -- me and Ms. Sutherland have tried cases
14 together, I think after that and -- before that and after
15 that. Yes.

16 Q So how did her condition compare in Ms. Richmond's
17 case versus those other cases that you observed?

18 A She was not -- she was not able to -- to adequately
19 impress upon the jury her -- she not -- she wasn't able to
20 use her voice to adequately project to the jury her theme
21 of what -- and her thoughts about the case, which I think
22 is vital for any sort of cross-examination or any sort of
23 closing arguments.

24 Q All right. So ultimately, Ms. Richmond was found
25 guilty. And you -- a motion for a new trial was filed.

DIRECT EXAMINATION BY MR. SALTZMAN - DEON O'NEIL

59

1 Now, what issues were preserved for appeal?

2 A I think there was -- there was an issue concerning --
3 one issue concerning the 911 tape that we -- we -- we -- I
4 think we preserved that issue. And then, there was, of
5 course, the issue for the new trial and the -- and the
6 continuances based off Carolyn's voice at that time.

7 Q Okay. Did you have some expectation that these issues
8 would then be brought up on appeal?

9 A That was my belief, yes, that they would be brought up
10 on appeal.

11 Q Okay. Do you know if they were brought up on appeal?

12 A My understanding they were -- that they were not.

13 Q All right. I have no further questions.

14 THE COURT: All right. Cross-examination?

15 Q Please ---

16 MR. MITCHELL: No questions for this witness. Thank
17 you.

18 THE COURT: All right, sir. Thank you. You may step
19 down.

20 (Whereupon, the witness exited the witness stand.)

21 THE COURT: You may call your next witness.

22 MR. SALTZMAN: All right. The applicant now calls Ms.
23 Wanda Carter.

24 (Whereupon, the witness came forward.)

25 THE COURT: There you go.

1 WANDA CARTER, having been first duly sworn,
2 testified as follows:

3 (Whereupon, the witness entered the witness stand.)

4 DIRECT EXAMINATION

5 BY MR. SALTZMAN:

6 Q Good afternoon. All right. Would you please state
7 your name for the Court?

8 A Wanda H. Carter.

9 Q All right. And where'd you go to law school?

10 A (Gestured.)

11 Q Where -- where'd you go to law school?

12 A The University of South Carolina.

13 Q And when did you become licensed to practice in South
14 Carolina?

15 A 1985.

16 Q And who's your employer?

17 A The South Carolina Office of Indigent Defense.

18 Q And how long have you worked for them?

19 A (Gestured.)

20 Q How long have you worked for them?

21 A Oh. Over 30 years.

22 Q Okay. Do you recall working on Ms. Richmond's appeal?

23 A (Gestured.)

24 Q Do you recall working on Ms. Richmond's appeal?

25 A Yes, I do.

DIRECT EXAMINATION BY MR. SALTZMAN - WANDA CARTER 61

1 Q All right. When did you begin working on that appeal?

2 A On -- I can't give you the year. But I remember Ms.
3 Richmond's case. And I did represent her on an appeal.

4 Q All right. Did you read the transcript of that case?

5 A Yes, I read the transcript of that case ---

6 Q And ---

7 A --- probably more than once, which is my normal
8 procedure.

9 Q Did you read the motion for a -- a new trial that was
10 presented after the case concluded?

11 A That case file has already been sent to archives. But
12 I did pull the transcript up. And I don't recall a new-
13 trial motion being made in her case. It may have been.
14 The transcript will speak for itself.

15 Q All right. At that time do you recall reviewing that
16 motion?

17 A I would have. I reviewed the entire transcript,
18 usually more than once -- always more than once, for the
19 most part. And I take notes with respect to the
20 objections, the motions -- excuse me -- throughout the
21 trial.

22 Q Okay. Do you recall which issues were preserved in
23 that motion for the new trial?

24 A Is the transcript available?

25 MR. SALTZMAN: I don't have a copy. Do you mind if we

1 borrow it for ---

2 MR. MITCHELL: Yeah.

3 MR. SALTZMAN: --- Ms. Carter?

4 MR. MITCHELL: That's fine. That's the record on
5 appeal, which is ---

6 MR. SALTZMAN: Perfect.

7 THE WITNESS: Thank you.

8 Q All right.

9 A So this trial occurred in 2008. I recall that it was
10 quite some time ago. I see where the jury verdict was
11 entered on page 1175. I do believe that the motions made
12 by defense counsel had been renewed. I see that at 1177 --
13 page 1177.

14 Q Okay.

15 A And I also see on that same page where there was a
16 motion for a mistrial based on trial counsel's voice.

17 Q Okay. Okay. So when you were preparing the appeal,
18 would you have reviewed that section?

19 A Yes.

20 Q Did you consult with the public defenders before
21 preparing the appeal?

22 A I don't recall that I did. I don't recall that I did.

23 Q Okay. So how much time did you work on Ms. Richmond's
24 appeal?

25 A This is a -- a -- a -- a very long transcript. It was

DIRECT EXAMINATION BY MR. SALTZMAN - WANDA CARTER 63

1 a big murder trial. I am sure that I put in adequate time
2 for review to prepare the final brief that I filed in the
3 case.

4 Q Okay. Okay.

5 MR. SALTZMAN: And at this time I'd like to include an
6 exhibit here.

7 Q That's your final *Anders* brief of appellant?

8 A Yes, it is.

9 Q Okay.

10 MR. SALTZMAN: I'd like to enter this as an exhibit.

11 THE COURT: It's without objection. I believe it's
12 already part of the record.

13 MR. MITCHELL: Yes, sir. It's part ---

14 THE COURT: Okay.

15 MR. MITCHELL: --- of the record.

16 (Whereupon, Plaintiff's Exhibit 2 was marked and
17 entered into evidence.)

18 Q All right. What issue did you raise in the *Anders*
19 brief?

20 A If I recall, the issue that I raised on appeal
21 concerned self-defense and the fact that Ms. Richmond did
22 not receive a self-defense jury instruction and that she
23 should have.

24 Q Okay. And why did you select that issue to appeal?

25 A Based on the evidence presented at trial, I believe

1 that was an issue, a colorable issue that I could raise in
2 the case, considering -- believe it or not, this happens
3 quite frequently. There are large trials, murder trials,
4 long transcripts where no real issues of merit appear.

5 Q So why did you decide to do the *Anders* brief?

6 A Well, pursuant to *Anders v. California*, which is our
7 standard, if there is an appeal where there are not any
8 meritorious issues to brief on appeal, we choose an issue,
9 arguably a colorable issue, that we can present to the
10 Court in the appeal. So in my opinion, that must have been
11 an issue that I thought was arguably an issue of some color
12 that I could present to the Court on appeal.

13 Q And how often do you file these *Anders* briefs?

14 A We all file them quite frequently. It depends on the
15 case. It depends on the issues raised at trial. It
16 depends on the transcript. It -- it depends on number of
17 factors.

18 Q All right. So were you aware of the issue of Ms.
19 Sutherland's laryngitis during the trial?

20 A I do remember that. I have looked at portions of the
21 transcript, and I recall that there was a motion made with
22 respect to trial counsel's laryngitis.

23 Q Okay. And do you recall any issues that were raised
24 for due process violations?

25 A I'm ---

DIRECT EXAMINATION BY MR. SALTZMAN - WANDA CARTER

65

1 Q Can ---

2 A --- sorry.

3 Q --- can -- were you -- were you aware of the issues of
4 constitutional due process violation in -- in Ms.
5 Richmond's case?

6 A At the time that I reviewed the transcript, I would
7 have made notes on any issues that violated my client's
8 right to due process at trial. And I -- I -- I do recall
9 this issue.

10 Q Recall any of the issues that were brought up in the
11 -- in defense -- or in the trial counsel's motion for
12 violation of failure to have a complete appellate record?

13 A I'm sorry?

14 Q Were you aware of the issues that were raised in the
15 motion for the new trial concerning the failure to have a
16 complete appellate record?

17 A I don't recall that issue. But if that issue was
18 raised in this trial transcript, I'm sure I would've noted
19 that, and I would probably have notes about that. I make
20 notes on every objection, every motion, every issue.

21 Q All right. So despite all of the issues that were
22 raised in -- in the motion for the -- a new trial and
23 despite all the preservation that was made, why didn't you
24 choose to brief those issues in your appellate brief?

25 A Well, again, this was a -- an *Anders* brief. And in an

1 *Anders* brief, as I said earlier, we look for an issue that
2 we can raise and present to the Court. And it could be a
3 number of issues in a case. And we select the issue. And
4 in this case I raised self-defense.

5 Q Okay. So are you saying that those issues that were
6 preserved and raised in the motion for the new trial lack
7 merit?

8 A Yes, that is what I'm saying. I understand this
9 laryngitis issue. And, of course, that is not the optimum
10 trial experience, of course. But I was of the opinion that
11 the issue with respect to laryngitis was not a reversible
12 issue on appeal. I believe that the appeal lacked merit.
13 So I found a brief -- an issue to brief on appeal.

14 Q Okay. I have no further questions.

15 THE COURT: Okay. Cross-examination.

16 CROSS-EXAMINATION

17 BY MR. MITCHELL:

18 Q Good afternoon, Ms. Carter.

19 A Good afternoon.

20 Q What is your normal procedure when deciding which
21 issues to raise on appeal? What's your ---

22 A Oh ---

23 Q --- standard practice, I guess?

24 A Well, I didn't really explain fully about *Anders*. But
25 *Anders v. California* gives us a roadmap for appellate

1 attorneys in cases where the appeal lacks merit and it's
2 basically frivolous. We still have to file a record with
3 the Court, and we have to file a brief with the Court. And
4 we have to file a petition to be relived as counsel, which
5 is the signal to the Court that it's an *Anders* appeal.

6 In such a situation, the Court will review the entire
7 record. It's an independent review conducted by the Court.
8 And if the Court is in agreement that there are no
9 meritorious issues in the case, then the Court will grant
10 our petition to be relieved, which is attached to the
11 *Anders* brief.

12 And in this case that is what happened. The appellate
13 court reviewed the case independently, granted my petition
14 to be relieved, and the case was affirmed on appeal.

15 Q So it's your understanding that the Court of Appeals
16 would have examined all preserved issues?

17 A Oh -- oh, definitely. Both of our appellate courts,
18 they read everything. And there have been instances where
19 *Anders* briefs and something has been overlooked. And the
20 Court will definitely let us know and send the case back to
21 us. So their independent review covers everything in the
22 trial.

23 Q It would also cover the pro se brief submitted by ---

24 A That's right. I ---

25 Q --- on appeal?

1 A --- forgot about *Anders*. In an *Anders* situation, the
2 Court contacts the client and makes it very clear that the
3 client can submit whatever issues that they would desire to
4 have reviewed on appeal. And I believe that Ms. Richmond
5 submitted a pro se brief. I could not find a copy of that.

6 I don't know if, in Ms. Richmond's pro se brief, she
7 raised the laryngitis issue. I'm not sure. But I believe
8 there was a -- a pro se brief issued. And that's another
9 aspect of the *Anders* appeal.

10 Q So you found the issue of the denial of the mistrial
11 and the multiple motions for mistrial, you found that
12 preserved or you believe that was preserved?

13 A I -- I -- I believe -- I believe so. I -- I believe
14 the issues were preserved.

15 Q Okay. Are you familiar with the standard of review in
16 the denial of a mistrial?

17 A As far as the trial level is concerned, I think the
18 judge is looking to the existence of the evidence with
19 respect to any directed-verdict motions. And on appeal the
20 appellate court is looking for any abuse of the trial
21 judge's discretion with respect to these motions or if any
22 abuse of discretion occurred.

23 Q No further questions. Thank you.

24 A Thank you.

25 THE COURT: Any redirect?

REDIRECT EXAMINATION BY MR. SALTZMAN - WANDA CARTER 69

1 MR. SALTZMAN: Yes. I have redirect, Your Honor.

2 THE COURT: Sure.

3 REDIRECT EXAMINATION

4 BY MR. SALTZMAN:

5 Q Ms. Carter, you just mentioned a trial judge's
6 potential abuse of discretion that could be raised on -- on
7 an appeal. In this case here, when the trial judge decided
8 to proceed with the case despite Ms. Sutherland's illness,
9 did you not find that to be a -- an abuse of the -- the
10 trial judge's discretion?

11 A I -- I -- I can only tell you that based on the
12 record. I can't speak for the trial judge. But I believe
13 there was some issue with respect to the fact that Ms.
14 Richmond had cocounsels and that the jurors were reminded
15 or told that they could indicate if they could not hear
16 lead counsel.

17 So with that type of circumstance, I did not think
18 that there was an abuse of discretion with respect to the
19 trial judge's ruling. But like I said earlier, the
20 appellate courts conduct the independent review in the
21 event that I'm incorrect, which I have been before.

22 So that was my reading of the trial transcript. And
23 that was apparently my -- my thinking at the time.

24 Q I have no further questions.

25 MR. MITCHELL: Nothing further.

DIRECT EXAMINATION BY MR. SALTZMAN - MELINDA RICHMOND 70

1 THE COURT: Thank you, ma'am. You may ---

2 THE WITNESS: Thank you.

3 THE COURT: --- step down.

4 (Whereupon, the witness exited the witness stand.)

5 THE COURT: Call your next witness.

6 MR. SALTZMAN: The applicant calls its final witness,
7 Ms. Melinda Richmond.

8 (Whereupon, the witness came forward.)

9 MELINDA RICHMOND, having been first duly sworn,
10 testified as follows:

11 (Whereupon, the witness entered the witness stand.)

12 DIRECT EXAMINATION

13 BY MR. SALTZMAN:

14 Q Would you please state your name for the Court?

15 A My name is Melinda Richmond.

16 Q Okay. And who represented you in your case?

17 A Carolyn Gripp.

18 Q Were there any other attorneys?

19 A Deon O'Neil, and I met Casey Secor. He was their -- I
20 met him the day of the trial. And I met Deon about a week
21 before the trial, and we spoke just briefly. And he told
22 me that he was mainly going to handle Bruce Thompson, which
23 was one of my codefendants. And we didn't really speak in
24 depth on anything.

25 You know, I -- I had met with Carolyn plenty of times.

DIRECT EXAMINATION BY MR. SALTZMAN - MELINDA RICHMOND 71

1 Carolyn was -- you know, she was my -- I guess my backbone
2 through this whole thing, you know, so ---

3 Q Do you recall when you first met Ms. Sutherland?

4 A She was there for my first -- my first trial of sorts.
5 I'm not sure exactly what all of them are referred to as.
6 But -- so I met her maybe a week or so after the case --
7 after I got arrested.

8 Q And how much time did you spent discussing your case
9 with Ms. Sutherland?

10 A We talked quite a few times and -- and, you know,
11 she'd come sometimes. We'd sit and talk for a good while
12 about things. We talked about everything, every aspect of
13 the case and the personal history behind it. And, you
14 know, so I'd spoke to her a lot.

15 Q All right. So of your -- the three attorneys handling
16 this case, who do you believe was the most knowledgeable
17 person in respect to your case?

18 A As far as I know, Carolyn was the only one until right
19 there at the end. And then, like I said, and Deon -- he
20 seemed to me like a wonderful lawyer, you know, and so did
21 Casey, when I met him. I -- I don't -- I'm not sitting
22 here questioning their abilities or anything.

23 I just -- I -- you know, I mean, Carolyn was what I
24 knew to be my lawyer. So she's the one I trusted and --
25 and -- yeah.

1 Q All right. So now, how did Ms. Sutherland sound when
2 the trial began?

3 A She didn't sound real bad on Monday. But you could
4 tell that she wasn't feeling good. Like they said, Tuesday
5 was a holiday. And then, by the time we came that
6 Wednesday morning, she just -- her voice was really bad,
7 really raw. It was -- she was barely above a whisper.

8 And it was so hoarse, and you could tell that it was
9 hurting her. You could tell that she was in quite a bit of
10 pain. And I think that's when they begun asking --
11 requesting time and time again could we please have, you
12 know, a -- a new trial or a -- a mistrial or either a
13 continuance so that we can do something.

14 She didn't want to leave me. She was really upset
15 about doing that that day too. And -- and I told her to go
16 ahead; do what she needed to do, you know. So she left me
17 there and went to the doctor because she's just -- she --
18 she wasn't feeling well. She wasn't doing very good.

19 Q Okay. Could you understand her during the trial when
20 she was speaking?

21 A No. Not toward the end of it. I'd say about
22 Wednesday is when she really started hurting. Tuesday I
23 could. But Wednesday -- I -- I was sitting at the table
24 with Casey and Deon, and I couldn't hear what she was
25 saying.

DIRECT EXAMINATION BY MR. SALTZMAN - MELINDA RICHMOND 73

1 I know that the court reporter had to continuously ask
2 her to repeat herself. The people she was questioning were
3 continuously asking her to repeat herself. You could see
4 how the jurors were doing, kind of like Ms. Carter was, to
5 where she had to keep reaching in and -- and asking you,
6 you know -- I mean, you -- the jurors were -- even the
7 judge had asked her a couple of times, "Could you speak
8 into the microphone?"

9 And if she would speak the wrong way in the
10 microphone, it would cause a -- a loud noise or, you know,
11 whatever you call that, that the microphone feeds back or
12 something. So yeah, it was ---

13 Q So -- so there was some technical difficulties?

14 A Yeah. Quite a bit.

15 Q Did you talk with Ms. Sutherland about her -- her
16 condition and her proceeding with the trial?

17 A She had -- she had -- no. They never really talked to
18 me much about all of that. No, I mean.

19 Q But you did not speak to Mr. O'Neil or Mr. Secor about
20 Ms. Sutherland's health condition?

21 A We all kind of -- they -- they briefed me on what was
22 going on. But we didn't get into any, you know, in -- in-
23 depth conversation over it. I was trusting them. I mean,
24 I'm -- I'm -- I'm not -- I don't know the law or what to
25 do. So like I said, I kind of put my trust and faith in

1 her as representing me so ---

2 Q Okay. So you did observe that Ms. Sutherland did
3 continue trying your case with the laryngitis?

4 A Yes, sir. I think that she honestly didn't want to --
5 she didn't want to leave me. She didn't want to leave me
6 like that. She -- you know, she knew that she was the one
7 that knew everything.

8 And -- and Deon and Casey both told me -- you know,
9 they both apologized and said that they -- they weren't --
10 they -- they weren't able to represent me but that they
11 were going to try their best. And I do believe that they
12 did. You know, but, I mean, given -- given all the
13 situations, the best ain't always good enough, you know,
14 not when -- not when it comes down to a person's like. And
15 that's what it came down to, was my life.

16 Q Did you have ---

17 A I'm sorry.

18 Q Did you have some concern that Ms. Sutherland was
19 proceeding with your case with the laryngitis?

20 A I did.

21 Q All right. Well, how -- could you elaborate on how
22 concerned you were?

23 A I was scared. I was scared. I didn't know what was
24 going to happen with it. I think -- I just having hope and
25 trusting. You know, I really didn't think that -- I mean,

DIRECT EXAMINATION BY MR. SALTZMAN - MELINDA RICHMOND 75

1 you -- you kind of learn to trust in the law and to trust
2 in the fact that they're there to protect you regardless,
3 you know.

4 And so I did. I trusted in the fact that somehow this
5 would work out and that they wouldn't allow things to go so
6 disarray as it did, you know, but ---

7 Q Did you feel disadvantaged by having Ms. Sutherland's
8 proceeding with your case with laryngitis?

9 A I did. And I felt -- I don't know. I felt almost --
10 I don't know. I mean, it -- it was almost an insult toward
11 the end. The trial judge and the solicitor and the
12 solicitors were very snotty about it. And then, the trial
13 judge and the solicitor at one time even joked and made a
14 joke about Carolyn's voice and said, "What do you need, a
15 Ricola or something?"

16 And at this point, you know, Carolyn can't speak. And
17 she's trying her best. And you could see at times she's
18 hurting so bad that she's almost in tears. And you're
19 going to talk about a Ricola? And, you know, I mean, it
20 just -- I just -- I couldn't -- I couldn't understand what
21 was going on in there. I really didn't.

22 Q Did you feel that the trial court was prejudicing you
23 in allowing this case to proceed?

24 A I did.

25 Q So now, after the case concluded, were you surprised

DIRECT EXAMINATION BY MR. SALTZMAN - MELINDA RICHMOND 76

1 that the appellate defense counsel did not raise the issues
2 that were preserved for appeal?

3 A I was. I had spoke to Ms. Carter on the phone a
4 couple of times. And I -- I kept mentioning it and
5 mentioning it. And it's like I told her that I had had the
6 -- the paperwork that Carolyn had sent me over the new --
7 the -- getting the new trial.

8 And in that there was several affidavits from
9 different people in the court who had witnessed this, one
10 being the bailiff that earlier they said was hearsay. But
11 he's spoken in an affidavit, stating that they could barely
12 make ends out of anything that Carolyn was saying; that
13 they could barely hear her; that between the -- the
14 distortion on the microphone and the people, you know,
15 asking her to repeat stuff and her repeating and -- I mean,
16 that -- that it was just -- it was -- yeah. It was not
17 good. It was not good.

18 Q So did you feel that it was prejudicial that the
19 appellate defense counsel did not raise those issues on
20 appeal?

21 A I -- I didn't understand it. I couldn't understand
22 it. Yeah.

23 Q Okay.

24 A But then, once again, I thought, you know, Well, maybe
25 she just has my best interests in mind. They know who --

DIRECT EXAMINATION BY MR. SALTZMAN - MELINDA RICHMOND 77

1 better than me, you know. I mean, a little knowledge can
2 be dangerous. And that -- I mean, I -- I'd go to the law
3 library and do everything that I could to do my part. But,
4 you know, in the end y'all are the one that study the law
5 and know the law and serve the law and protect the law.

6 So, you know, I'm just doing with that, so -- but
7 yeah. I did wonder why Ms. Carter didn't, you know -- why
8 she didn't focus on that and why they didn't look into
9 that. I didn't -- I couldn't understand why somebody
10 wouldn't feel like something was wrong with that. I mean,
11 if it was you, any of you in here, y'all would feel that
12 was wrong.

13 You know, I mean, I -- I understand that their family
14 was here -- or his family was here and that they had come
15 from out of town. But, you know, this affected my family
16 too. And you were there not only to serve and protect me,
17 but to protect them. And you didn't do that. You know,
18 you didn't do that.

19 You didn't protect me like I felt like you were
20 supposed to. And I think that's what you're supposed to
21 do. At least that's what I -- I -- I -- I thought, you
22 know.

23 Q Okay.

24 MR. SALTZMAN: I have no further questions.

25 THE COURT: Cross-examination.

1 MR. MITCHELL: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. MITCHELL:

4 Q Very briefly, Ms. Richmond, you were charged with
5 murder -- you were indicted with murder right away; is that
6 correct?

7 A Yes, sir.

8 Q And you gave a statement to law enforcement, I guess,
9 when you were arrested that morning; is that correct?

10 A Several. We -- they talked to -- several of them came
11 in and talked to us over and over again. There was a lot
12 of issues brought up about everything that happened there
13 too, a lot of motions and stuff as far as the way all of
14 that was handled.

15 Q So you -- you -- you never had any issue about whether
16 you were at Mr. West's apartment, did you?

17 A Oh, no, sir.

18 Q So you were there when he -- when he was murdered,
19 right?

20 A Yes, sir.

21 Q It was just your position that it was Ms. McClinton;
22 isn't that right? Or wasn't that kind of -- or -- or ---

23 MR. SALTZMAN: Objection, Your Honor. I -- I -- I
24 don't understand how this is relevant.

25 MR. MITCHELL: Well, I mean, I think, you know, what

CROSS-EXAMINATION BY MR. MITCHELL - MELINDA RICHMOND 79

1 -- what happened at the trial is very relevant. I think
2 the -- what -- what she told investigators is relevant and
3 what she told the investigators was that it was her
4 codefendant, who also pled guilty to murder, committed the
5 crime. So that was part of the strategy at trial. And
6 that's what she told investigators. So that's all going to
7 there.

8 THE COURT: Y'all refresh my memory, now. Is it -- I
9 believe when we first began talking about this, the state
10 believed that -- or the attorney general believed that
11 there was only one issue. But -- but you indicated you're
12 alleging also trial counsel committed error? Or appellate
13 ---

14 MR. SALTZMAN: Yeah.

15 THE COURT: --- or just appellate counsel?

16 MR. SALTZMAN: Both, Your Honor,

17 THE COURT: Okay.

18 MR. SALTZMAN: The trial counsel and appellate
19 counsel.

20 THE COURT: All right. Well, I'll overrule it. Go
21 ahead. I'm sorry.

22 MR. MITCHELL: Okay.

23 Q All right. So you have no -- you didn't -- you were
24 there when it happened, when the murder happened, right?

25 A Yes, sir.

1 Q And you just said that it was Ms. McClinton who did
2 the murder, right, who committed the murder, correct?

3 A Yeah. She's the one that ---

4 Q Her and Byrd, right?

5 A Huh? I had never seen -- I never seen Bruce. I -- I
6 seen the fighting, but I never seen Bruce have a knife in
7 his hands.

8 Q Okay.

9 A No.

10 Q And that was the statement that you gave initially,
11 right?

12 A As far as what ---

13 Q You ---

14 A --- Tenisha?

15 Q Right.

16 A Initially, I didn't really say anything. I was pretty
17 much told not to say a whole lot. So all I did was answer
18 questions.

19 Q Okay. Now, you were charged under "hand of one/hand
20 of all"? You remember hearing that?

21 A Yes, sir.

22 Q And that's how they charged you with murder?

23 A Yes, sir.

24 Q Okay. And -- and let's go -- move to the appeal
25 quickly. You filed a pro se brief, didn't you?

CROSS-EXAMINATION BY MR. MITCHELL - MELINDA RICHMOND 81

1 A I ---

2 Q You ---

3 A --- did.

4 Q You wrote your own brief?

5 A I -- I'm -- I'm -- yeah. I'm pretty sure that's what
6 it was.

7 Q And in that brief you raised the issue of Ms. Gripp's
8 health; isn't that right?

9 A I raised -- I raised as many issues as I could come up
10 with in that law library. I'm -- I mean, I'm not -- I just
11 -- anything that, when reading through my discovery and my
12 transcripts and anything that I could -- like I said, I
13 don't know the law.

14 Q Uh-huh.

15 A All I did is I spent several, several hours in that
16 law library, digging, looking through books. I don't know
17 even know if some of the things I wrote made sense, but I
18 tried my best. I'm not lawyer, so ---

19 Q Okay. And you testified at trial; isn't that correct?

20 A I did.

21 Q And your testimony at trial was consistent that it was
22 your codefendant, who already pled guilty to this murder,
23 she's the only who killed Mr. West; isn't that correct?

24 A Right.

25 Q And that was presented to the jury?

REDIRECT EXAMINATION BY MR. SALTZMAN - MELINDA RICHMOND 82

1 A Yes.

2 Q All right. No further questions. Thank you.

3 THE COURT: Anything else?

4 MR. SALTZMAN: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. SALTZMAN:

7 Q Ms. Richmond, when -- when you did prepare that pro se
8 brief, did you have any prior knowledge or understanding of
9 how to prepare such a brief?

10 A No. They -- they don't have anyone there to show us.
11 They just have the books available. Actually, I'm probably
12 one of the most knowledgeable people at Leath, as far as
13 since going through all of this. And people will come and
14 ask me questions.

15 And -- and the main thing that I can tell them is not
16 to skip any steps, to -- you know, but -- or what books or
17 how to go about finding this or -- you know, I mean, I -- I
18 can dig. I'm -- I'm -- you know, research, but other than
19 that, no, sir. I -- I don't.

20 Q Okay.

21 A Like I said, I just tried my best.

22 Q So was it your position that you had complete reliance
23 on appellate defense counsel to draft and -- and prepare a
24 -- a -- a viable appellate brief on your behalf?

25 A Yes, sir. Just like with Carolyn, I had to rely

DIRECT EXAMINATION BY MR. MITCHELL - ANNA GOOD

83

1 completely on her. And with you I've had to rely
2 completely on you. I can give you all the information, and
3 I did the same thing -- I sent you all the same stuff that
4 -- that Ms. Carter had. And I'm sure you had to make ands
5 and buts of it. And most of it, you -- I'm sure you were,
6 like, I don't know exactly -- but I tried. I tried.

7 Q Okay. I have no further questions.

8 MR. MITCHELL: Nothing further.

9 THE COURT: Thank you, ma'am. You may step down.

10 THE WITNESS: Thank you, sir.

11 (Whereupon, the witness exited the witness stand.)

12 THE COURT: Anything further from the applicant?

13 MR. SALTZMAN: Your Honor, the applicant rests.

14 THE COURT: Okay. Applicant rests. Mr. ---

15 MR. MITCHELL: Your Honor, the state calls Ms. Anna
16 Good.

17 THE COURT: Okay.

18 (Whereupon, the witness came forward.)

19 ANNA GOOD, having been first duly sworn,
20 testified as follows:

21 (Whereupon, the witness entered the witness stand.)

22 DIRECT EXAMINATION

23 BY MR. MITCHELL:

24 Q All right. Good afternoon, Ms. Good.

25 A Good afternoon.

1 Q How were you involved in this case?

2 A Back in 2008 I was an assistant solicitor with the
3 Fifth -- Fifth Circuit Solicitor's Office, and I was
4 assistant prosecutor on this case.

5 Q So what was your involvement? Were you ---

6 A I was a second seat.

7 Q Okay. Second seat. Who would've been the first seat?

8 A Vanessa Shipley. I don't ---

9 Q Okay.

10 A --- know if she was Shipley or Cooper at the time, but
11 it was Vanessa Shipley.

12 Q So you -- what happened Wednesday morning when the
13 trial was supposed to begin -- or to continue?

14 A I remember Ms. Gripp came in; she had laryngitis. She
15 could barely speak. The defense had asked for a
16 continuance. And I can't remember if we took a break or we
17 already knew it because she had e-mailed the night before.
18 Ms. Shipley had done some research on counsel being sick
19 and whether cases should be continued upon that.

20 And she presented that to the Court. And the defense
21 presented their arguments. And we had objected to the
22 continuance because we believed that there were two other
23 people on the defense that could step in and take over.

24 Q All right. And as far as your recollection goes, is
25 that how the judge ruled and found that cocounsel could

1 handle the witnesses properly?

2 A Yes. If I recall correctly, I believe we did pretrial
3 on Monday. And there was the -- one of the big issues was
4 the 911 phone call. And Deon O'Neil had actually handled
5 that argument. So the judge had determined that, you know,
6 he knew a lot about the case. In fact, he had done
7 pretrial motions, so he was capable of stepping in.

8 Q What was your opinion on -- could you hear Ms. Gripp
9 when she was talking?

10 A I could hear her. I will say it was very low. There
11 were -- there was a microphone set up in the middle of the
12 courtroom. There were times it was hard to hear, and
13 people would ask for her to speak up. I mean, I could hear
14 her. But, I mean, I can't say it was great, you know. It
15 wasn't much more than a whisper. But, I mean, it was
16 straight into the microphone.

17 Q So was the microphone usually set up that way?

18 A No.

19 Q So that microphone was set up that way to accommodate
20 Ms. Gripp's condition?

21 A Yes.

22 Q Okay. Do you recall whether the judge asked the
23 jurors to raise their hand if they could not hear
24 something?

25 A Yes. She did.

1 Q And that was also in response to the defense's request
2 for continuance or a mistrial; is ---

3 A Yes.

4 Q --- that right? No further questions. Thank you.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. SALTZMAN:

8 Q Good afternoon.

9 A Hi.

10 Q So why didn't the prosecution or the solicitor's
11 office here allow this continuance could happen so Ms.
12 Sutherland could have her voice get better?

13 A If I recall correctly, I know it wasn't -- it was more
14 Vanessa's decision, because she was the lead on the case.
15 If I recall, it's because the family had come in from
16 Virginia maybe. Ms. -- the victim's family wasn't from
17 around here. And I believe she was ready to go, and she
18 thought there was other people in defense counsel who could
19 step in. And I think she was just ready to try it.

20 Q Have you ever tried a case with laryngitis?

21 A No. Can't ---

22 Q What ---

23 A --- say I have.

24 Q What would you do if you have laryngitis and you were

25 ---

1 A I would've ---

2 Q --- trying a case?

3 A --- asked -- sorry. I would've asked for a
4 continuance.

5 Q Would you have hoped you would get the continuance
6 granted?

7 A Yes.

8 MR. MITCHELL: Objection. It's not relevant.

9 THE COURT: Overruled. Go ahead.

10 A Okay. Yes.

11 MR. SALTZMAN: All right. Nothing further, Your
12 Honor.

13 THE COURT: All right. Anything else for the witness?

14 MR. MITCHELL: No further questions.

15 THE COURT: Thank you, ma'am. You may step down.

16 (Whereupon, the witness exited the witness stand.)

17 THE COURT: You may call your next witness.

18 MR. MITCHELL: The state rests.

19 THE COURT: The state rests. Argument?

20 MR. SALTZMAN: May it please the Court, Your Honor?

21 This afternoon the Court heard the testimony about how Ms.

22 Sutherland represented Ms. Richmond while suffering from

23 laryngitis as a result of her acute sinusitis. This Court

24 heard today how the trial court refused to grant motions

25 for a mistrial or a continuance. The trial court would not

1 even grant a brief recess so Ms. Sutherland could have the
2 time to go see her doctor. On top of that, Ms. Sutherland
3 had to leave the court while the trial proceeded in -- in
4 her absence.

5 Nevertheless, Ms. Sutherland and her cocounsel decided
6 to allow Ms. Sutherland to -- to proceed with trying the
7 case, despite her whisper of a voice, the pain that she was
8 enduring, all the while medicated. And the reason why she
9 had to do that is because her cocounsel were not as
10 prepared as her to try the case.

11 So basically, Ms. Sutherland had the -- she had two
12 choices: either try the case with laryngitis or she could
13 leave it up to her cocounsel to handle the case, who were
14 not as prepared. It was extremely difficult decision that
15 no attorney would want to make.

16 Ms. Sutherland was left to -- she was left to question
17 key witnesses and provide closing argument while in poor
18 health, while she, all the while, was inable [sic] to
19 communicate effectively. The Court, jury, the court
20 reporter had difficulty hearing Ms. Sutherland. She could
21 only whisper when she was trying the case.

22 She was unable to effectively carry her voice, which
23 is a -- a -- vital in emphasizing key points of the case,
24 as well as trying to persuade a jury that there is some
25 reasonable doubt. Without Ms. Sutherland's voice,

1 essentially Ms. Richmond had no voice either in this case.

2 Unfortunately, Ms. Richmond was found guilty.

3 However, all the issues that were discussed today were
4 preserved on appeal. However, the appellate counsel, on
5 the other hand, they decided to file the *Anders* brief and
6 failed to raise those preserved issues for appeal and --
7 even though there was some reasonable probability that
8 those issues could prevail.

9 So Ms. Richmond should be granted relief here because
10 her trial counsel and appellate counsel were ineffective.
11 The -- the *Strickland* test is used to determine whether
12 trial counsel or appellate counsel are ineffective. In the
13 *Strickland* test, the Court must look to whether Ms.
14 Richmond's counsel's performance was deficient and if that
15 deficiency was prejudiced by the counsel's performance.

16 THE COURT: Okay.

17 MR. SALTZMAN: Here Ms. Sutherland was ineffective by
18 trying Ms. Richmond's case with the laryngitis and on
19 medication. She could not perform effectively and had
20 difficulty being heard. Such, Ms. Richmond was prejudiced.
21 On top of that, the -- by having the trial court deny the
22 requests for the continuance or mistrial, as well as deny
23 the motion for the new trial, Ms. Richmond was -- was left
24 in a prejudicial state.

25 The appellate counsel, Ms. Carter, was ineffective by

1 failing to raise these viable issues on the appeal, which
2 had some reasonable probability of achieving an outcome
3 that would've been different, just if those issues had been
4 brief.

5 So for these reasons, Your Honor, Ms. Richmond
6 respectfully requests this Court to grant her PCR
7 application and grant her a new trial or new appeal. Thank
8 you.

9 THE COURT: Before -- before I hear from the attorney
10 general, make sure I understand. You're saying that the
11 trial counsel is deficient as a result of getting
12 laryngitis?

13 MR. SALTZMAN: Of proceeding with the case with
14 laryngitis, Your Honor.

15 THE COURT: But they -- defense counsel tried not to
16 proceed, didn't they?

17 MR. SALTZMAN: Tried not to proceed, but she was left
18 with no choice. The -- the Court essentially compelled her
19 to do it.

20 THE COURT: Okay.

21 MR. SALTZMAN: It was kind of pick your poison, Your
22 Honor.

23 THE COURT: Okay.

24 MR. MITCHELL: Your Honor, you know, I think this is a
25 case of -- the allegation is ineffective assistance of

1 appellate counsel for failing to raise the issue that was
2 clearly preserved in the record. I think every witness
3 testified that this issue was preserved. Mr. Secor -- I
4 think he raised it -- him and Mr. O'Neil raised it, I --
5 I'm counting -- nearly a dozen times.

6 So I -- I think it was absolutely preserved. I think
7 everyone said that. Ms. Carter said it was preserved. She
8 went through her normal procedure of determining which
9 issues to raise. She found no meritorious issues, no
10 arguable issues, and decided to file an *Anders* brief.

11 The court of -- in the -- you know, in the *Anders*
12 procedure, the Court of Appeals examines every preserved
13 issue. So, I mean, to come out the other way in this case
14 would be to say that the Court of Appeals was wrong in not
15 only not finding a issue of merit, but in finding an issue
16 that would change the result of the trial.

17 So, I mean, to win on ineffective assistance of
18 appellate counsel, you have to show that the issue would
19 have resulted in a reversal of the conviction. So not only
20 -- you know, that's a pretty steep -- steep step there.
21 And I think what we're looking at here is that when courts
22 do something, they're presumed to have -- presumed to have
23 done things accordingly and supposed -- and in a proper
24 procedure.

25 And that's -- and there's nothing -- there's nothing

1 been presented today to show that the Court of Appeals did
2 anything differently in examining this Anders appeal. They
3 dismissed it; they relieved Ms. Carter. And -- and that's
4 how these things work.

5 So I -- I -- I don't think this is an allegation of
6 trial counsel. I think Ms. Gripp and Ms. -- Mr. O'Neil and
7 Mr. Secor made every possible objection at almost nearly
8 every break. They would just make an objection. Every
9 time she handled a witness, they would make an objection
10 for a mistrial or would move for a mistrial. Or -- and
11 near the beginning of the trial, they were moving for
12 continuances. Judge Miller was denied the all -- you know,
13 every single time, unequivocally.

14 You know, I -- and I understand they might not have
15 been able to hear her and they might not as well as if she
16 was well. But that's just -- you know, she was still
17 there. She still presented the arguments. It might not
18 have been as artful or as glitzy Ms. Richmond would've
19 liked.

20 But she still got her arguments out there. I mean,
21 they were even able to get a voluntary charge on that. So
22 all of this was presented to the jury.

23 It's our position that this is a case of overwhelming
24 evidence. Ms. Richmond's statements implicate herself
25 earlier on. She testified at trial that she was there when

1 the murder happened.

2 It was charged under "hand of one/hand of all." Her
3 codefendant directly implicated her. There was numerous
4 pieces of forensic evidence that were introduced
5 implicating her in the crime and that she had stabbed the
6 victim.

7 And it's -- in closing, I guess it's our position that
8 applicant has failed to meet their burden and that the
9 application should be denied. Thank you.

10 THE COURT: Any reply?

11 MR. SALTZMAN: Nothing further, Your Honor.

12 THE COURT: All right. And y'all help me out.
13 Everybody says that there was a request for a continuance
14 on Wednesday morning, was it? I -- I've heard that.

15 MR. MITCHELL: I -- I ---

16 THE COURT: Where is ---

17 MR. MITCHELL: --- believe ---

18 THE COURT: --- that ---

19 MR. MITCHELL: If you're looking for ---

20 THE COURT: Where is that on -- where is that in the
21 transcript? That's what ---

22 MR. MITCHELL: I think ---

23 THE COURT: --- I'm looking for.

24 MR. MITCHELL: Page 279, I believe, is the first time
25 they bring it up. And that's -- when they come back on

1 that morning, that's when defense counsel puts on the
2 record that Ms. Gripp cannot speak.

3 And then, I think it's -- this is -- yeah -- Mr.
4 O'Neil making this argument here. The state objects to
5 that a few pages later. But 279 is when it's first brought
6 to the Court's attention. And that's after a few witnesses
7 have testified at that point.

8 THE COURT: All right. Y'all excuse me. I've got to
9 -- okay. Where is the first request for a mistrial? Is it
10 at that time?

11 MR. MITCHELL: I believe -- 279, I believe.

12 THE COURT: Well, wasn't that for a -- was that for a
13 continuance? Well, I guess it was for a mistrial, saying
14 we need to start all over again, isn't it? Yeah.

15 The next request for a mistrial was where?

16 MR. MITCHELL: At 351.

17 THE COURT: 351?

18 MR. MITCHELL: (No audible response.)

19 THE COURT: And the section of the transcript where
20 the judge tells the jurors to raise their hands is where?

21 MR. MITCHELL: It's ---

22 THE COURT: I've heard everybody talk it, but I
23 haven't seen it. Well, that -- that -- that's okay. If
24 you can't find it ---

25 MR. MITCHELL: Yeah. I ---

1 THE COURT: --- I can go ---

2 MR. MITCHELL: --- can't find it right offhand.

3 THE COURT: Witnesses for both the -- the -- the state
4 and the applicant have testified separately that the judge
5 told jurors to raise their hands. I note that during the
6 defendant's motion for a continuance or mistrial, the Court
7 and the attorneys discussed at length the pros and cons of
8 -- of granting the motion and citations on the issue of
9 such motions where an attorney becomes ill. And the trial
10 judge went on to talk about while second and third chair
11 may not have been prepared to handle certain witnesses,
12 that it wasn't as though primary counsel was leaving and
13 not going to be there; that could -- they could -- could be
14 coached by her and had some days in which to review the
15 file to prepare it better to examine the witnesses or
16 cross-examine the witnesses.

17 And in -- on page 1177, that the Court will -- and
18 again, addressing the motions for mistrial and for a new
19 trial, I believe, the Court said, "Well, I'm going to deny
20 the motions. And I'm going to put -- I want -- I want to
21 say on the record that I've had to turn down the volume on
22 the microphones during her closing statement because her
23 voice was causing the microphones to feed back or
24 whatever."

25 So I appreciate that. But I don't think it rose to

1 that level. In other words, it sounds to me as though the
2 judge believed that -- and -- and -- I'm sorry. And in
3 another place in the transcript, I believe on that
4 Wednesday morning, he talks about the -- his -- his ability
5 to control the volume on the speakers; that he had learned
6 how to do it; and that he didn't think there was any
7 problem.

8 I realize that a couple of times, the court reporter
9 did say -- ask the attorney to speak up. But -- but I
10 don't find that to be that unusual that a court reporter
11 asks a witness or an attorney to speak up or to be more
12 clear. It -- we have it happen all the time. Either the
13 attorney doesn't speak clearly enough or doesn't speak just
14 distinctly enough, loudly enough.

15 And I suspect that those are the issues that Ms.
16 Carter was considering when she decided to file her *Anders*
17 brief.

18 At any rate, for all of those matters, I -- I mean,
19 those -- I agree with the state as to both issues: the
20 deficiency of trial attorneys -- and I don't think that
21 there was any real evidence that they were deficient and --
22 I can't find it -- the appellate counsel was deficient in
23 preparing their *Anders* brief. And I'll ask the attorney
24 general to prepare an order.

25 MR. MITCHELL: Thank you ---

1 THE COURT: Anything else ---

2 MR. MITCHELL: --- Your Honor.

3 THE COURT: --- we need to address on that -- on that
4 case that ---

5 MR. MITCHELL: No, sir.

6 THE COURT: --- that I haven't discussed?

7 (Whereupon, the proceeding was concluded at 4:03 p.m.)

8 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 1ST
DAY OF APRIL, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

AUGUST 19, 2015

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
 Indictment Number: 2007-GS40-04073

The State of South Carolina,)

vs.)

NOTICE OF MOTION
 AND MOTION FOR
 NEW TRIAL

Melinda Richmond,)

Defendant.)

C.C.C. & G.S.

2008 NOV 24 PM 4:30

TO: THE HONORABLE JUDGE EDWARD W. MILLER:

Cc: Elizabeth Levy, First Assistant Solicitor
 Vanessa Shipley, Assistant Solicitor

YOU WILL PLEASE TAKE NOTICE that counsel will move before this Court on Monday, December 1, 2008 at 9:30 a.m. or, as soon thereafter as this matter may be heard, for an order for a new trial for the above-named Defendant. The defendant, by and through her undersigned counsel, requests the Court to grant a New Trial on the above referenced indictment based upon the following:

The defendant was arrested on or about May 5, 2007 and charged with Murder. On November 10, 2008, the defendant was called to trial. On November 11 2008, Counsel developed severe laryngitis due to acute sinusitis. On this date, Counsel could do no more than whisper. She had no tone to her voice at all. Trial resumed on November 12, 2008, at which time Counsel requested a mistrial or in the alternative a brief continuance to allow Counsel to see a doctor and see if her voice would return. Defense counsel made no previous motions for a continuance. Assistant Solicitor, Vanessa Shipley objected to a continuance or a mistrial, citing that the trial had already begun, the victim's family was



from Virginia and the defendant had two other attorneys. No other witnesses were otherwise unavailable or out of state.

Counsel for the defense asserted that co-counsel was neither prepared nor able to effectively represent the defendant in this case. Prior to trial, lead counsel spent approximately forty (40) hours meeting with the defendant with fourteen (14) attorney-client meetings and numerous telephone conversations. Co-counsel, Deon O'Neil, had only met the defendant once the week before trial. Co-Counsel, Casey Secor, met the defendant for the first time on November 10, 2008. Lead Counsel had prepared the bulk of the witnesses and the closing arguments. Lead Counsel spent over fifty (50) hours meeting with experts and the private investigator in this case; including visits to the incident location, reviewing the discovery and photographs, speaking with witnesses and viewing the physical evidence prior to trial. Lead Counsel spent countless hours preparing this case for trial, including researching and preparing all pretrial matters as well as writing memorandums in this case. The Honorable Judge Edward W. Miller denied all motions for a mistrial or a continuance.

On November 12, 2008, Lead Counsel became more ill throughout the day and felt it necessary to see a doctor regarding her condition. Counsel for the defense requested a two hour recess to allow Lead Counsel to go to the doctor. The Honorable Judge Edward Miller denied this request and the trial continued for approximately two hours while Lead Counsel attended a doctor's appointment. Counsel was diagnosed with laryngitis due to acute sinusitis. Lead Counsel was prescribed antibiotics, steroids and two days voice rest. A note reflecting this diagnosis from Irmo Family Practice was entered into the record as a

Court's Exhibit. As a result of this diagnosis, Counsel for the Defense again moved for a mistrial or a continuance to allow her voice to recover. The Honorable Judge Edward Miller denied these motions.

The Court Reporter stated that she had difficulty hearing Counsel, despite the fact that Counsel was standing directly in front of the witness stand. When Counsel for the Defense asked if there was an audio recording of the trial, the Court Reporter stated that she was not sure that her recording equipment would pick up Counsel's voice. At this point, Defense Counsel moved to allow another Court Reporter with recording equipment to sit in the trial to make a proper audio recording of the proceedings. Defense counsel had already made arrangements with Ray Schwartz Court Reporting to immediately begin recording as soon as the Court would allow. In the alternative, Defense Counsel requested that a video recording of the trial be allowed to preserve the record. Counsel had video recording equipment in the courtroom and was ready to begin recording immediately. The Honorable Judge Edward W. Miller denied these requests. (Pinnock Aff.; *see also* Brown Aff.)

On November 12, 2008, Lead Counsel felt it necessary to preserve a fair and accurate representation of her voice. (Exhibit 1, Shealy Aff.) A video recording of Lead Counsel was made on November 14, 2008, after closing arguments. (Exhibit 2, Hines Aff.)

On November 14, 2008, Defendant was convicted of Murder. The Honorable Judge Edward W. Miller sentenced her to forty (40) years in prison. On November 13, 2008, Lead Counsel for the defense was told by Mr. Coward, the bailiff sitting in the jury box, that although he could hear lead counsel, he was unable to make out what was being said

due to the deficiencies in her voice. The Clerk of Court repeatedly requested that lead counsel move closer to the microphone in hopes that The Court may better hear what was said. Several witnesses were forced to ask Counsel to repeat questions during cross and direct examination. Throughout the trial and during sentencing, the Court Reporter asked Lead Counsel to repeat what was said.

The Court's denial of counsel's motions has infringed on Counsel's ability to demonstrate prejudice. The transcript of these proceedings cannot begin to tell the story of how deficient counsel's performance was as a result of the loss of her voice. The Court abused its discretion in refusing to grant a brief continuance in a case of such significance. The Court further abused its discretion in not permitting Counsel to make an adequate record of the proceedings. Counsel has attached affidavits attesting to the condition of Lead Counsel's voice at various points during the trial. No client should spend what will likely be the rest of her natural life in prison¹ where she was represented by a lawyer with no voice.

Defense counsel intends to enter the audio and video recordings as Exhibits One (1) and Two (2) at the hearing of this motion. If the Court should choose to rule on the basis of this motion without a hearing, defense counsel will enter these exhibits with the Richland County Clerk of Court. Defense counsel also requests that all Court Reporter's audio recordings of State v. Melinda Richmond be preserved.

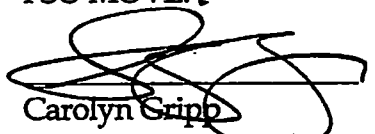
Furthermore, defense counsel renews all previous objections and specifically objects under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the U.S.

¹ This client was 38 years old and was sentenced to 40 years.

Constitution. Defense counsel asserts that the defendant was denied her right to counsel and confrontation under the Fifth, Sixth and Fourteenth Amendments. The defendant was denied Due Process based on her lack of access to the courts under the Fifth and Fourteenth Amendments. The defendant was denied her right to a complete appellate record (*Griffin v. Illinois*, 351 U.S. 12 (1956)). The defendant was denied her right to present a complete defense, and was denied equal protection under the Fifth, Sixth and Fourteenth Amendments.

Based on the facts set out above, counsel moves that the Court set aside the Defendant's conviction and sentence and grant her a new trial.

I SO MOVE: .



Carolyn Gripp
Assistant Public Defender
Date: November 24, 2008

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Indictment Number: 2007-GS40-04073

The State of South Carolina,)

VS.

**Melinda Jo Richmond,)
Defendant.)**

CERTIFICATE OF SERVICE

C.C.C. & G.S.

2008 NOV 24 PM 1:10

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I certify that on this date I served the Motion for a New Trial in this case on The State of South Carolina by delivering a copy of this motion to the State's attorney of record, Assistant Solicitor Vanessa Shipley, by delivering said copy to her office located at The Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, Third Floor, 1701 Main Street, Columbia, South Carolina 29201, and leaving it with her clerk or other person of authority at said office.

~~Tremele Mays
Paralegal~~

**Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592**

Columbia, South Carolina

This 24th day of November, 2008

State of South Carolina

County of Richland

Before the undersigned, an officer duly commissioned by
the laws of South Carolina on this 21 day of November
2006, personally appeared Troy E. Braddock
who having been first duly sworn, depose and say:

C.C.C. & G.S.

2006 NOV 21 PM 4:40

While observing the trial of State v. Richmond on November 13,
2006 thru November 14, 2006, there were many times during the trial
that Carolyn Gripp; attorney for the defendant's, voice could not be
heard in the court room. During the cross examination of Tanisha
McClinton, the court reporter asked Ms. Gripp to repeat herself 3
times. Also, during the direct examination testimony by this same
witness Ms. Gripp posed an objection that was barely audible and we
were seated less than 3 feet from her at the time. Tanisha McClinton
also requested that Ms. Gripp repeat herself 5 times during the cross
examination.

During the testimony of Heidi Scott, Ms. Scott requested Ms.
Gripp to repeat herself at least once during her cross examination.
During the direct of Ms. Scott, Ms. Gripp was attempting to pose an
objection to a witness statement, however, the judge could not hear the
objection and this is when Mr. Casey Secor stood and made the objection
again to stop the witness from answering before the judge made a
ruling. Also, the court reporter could not hear the basis for her
objection and this had to be repeated as well. Before the cross
examination of Ms. Scott, Ms. Gripp positioned herself in front of a
microphone approximately 5 feet from the court reporter. Before
starting the examination, Ms. Gripp asked the court reporter if she

could hear her. The reporter's response to the question was "we'll see."

During the testimony of Brian Gwen, Ms. Gripp attempted to object to the witness answering certain questions, however, at this point in the trial, her voice was extremely weak and she could barely provide a whisper. The court reporter also, during the cross examination of Mr. Gwen stopped Ms. Gripp during her line of questions and was asking for her to repeat what she just said. Again, Ms. Gripp was standing approximately 5 feet from the court reporter and she was having difficulties hearing her.

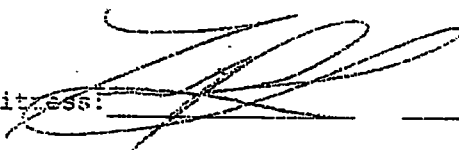
There were also times, during the trial that Ms. Gripp would attempt to speak in the direction of the jury. At these times the court reporter would stop her and request that she turn in the other direction because there was a need to see her lips moving when speaking.

An attempt was made, as mentioned before, to place Ms. Gripp in front of a microphone to ensure that everyone involved in the case could hear her voice adequately. However, the microphone, on many occasions, began to ring so loudly that the judge had to adjust the volume. This fixed the problem when it was addressed, but no one in the court room could hear what she was saying as the ringing occurred.

During closing arguments there was an attempt to set up microphones and podiums for Ms. Gripp to use during her closing. However, when this was being attempted, the court reporter informed Ms. Gripp and Mr. Secor that the position of the microphone and podium (facing the jury) would have to change and that Ms. Gripp could not face the jury during her closing. This was because she, the court reporter, would have to see Ms. Gripps lips in order to record what was said. Also, not even 30seconds into the closing by Ms. Gripp the court

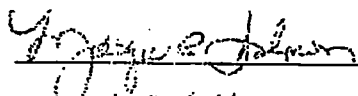
reporter interrupted her, stopping the argument, because she could not hear. Also, the microphone began to ring just as before, and even though the judge adjusted the volume to stop the problem, less than 30seconds after he fixed it the ringing started again.

For the 2 full days that I observed this trial, Ms. Gripp could barely be heard and I was sitting about 3-4 feet behind her at most moments. The members of the jury seemed as though they were straining to hear, if they could at all. And the judge and court reporter were also having a problem hearing Ms. Gripp because her voice was extremely weak.

Witness: 

Tracy E. Pinnale

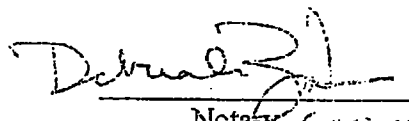
Sworn and subscribed before me
this 1st day of September, 2008.


4-24-16

Affidavit

I, Ryan Harris Sigal, work as a clerk in the Richland County Public Defenders Office. I observed almost the entirety of the State v. Melinda Richmond trial. During the majority of the trial the lead counsel for the defense, Ms. Carolyn Gripp, was only able to speak in a whisper. Ms. Gripp had to use a microphone to examine and cross-examine the witnesses, as well as any other time she addressed the court. During the course of the trial, Ms. Gripp was very difficult to hear and the court reporter and multiple witnesses asked Ms. Gripp to repeat herself multiple times. When Ms. Gripp had to whisper into the microphone it was very hard to understand and the jury was noticeably leaning in attempting to hear what Ms. Gripp was saying. Ms. Gripp's whispering made it difficult to follow what she was saying, which in turn made it difficult to understand the direction and point of her questioning.

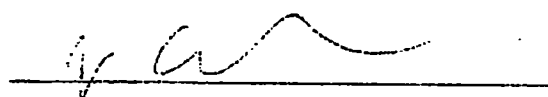

Ryan Harris Sigal, Affiant


Notary Expires: 12/3/2017

affidavit

Affidavit

I was present in the courtroom on Wednesday November 12, 2008 and Friday November 14, 2008 during the State v. Melinda Richmond trial. During the course of the time I spent in the courtroom, I observed that Carolyn Gripp was severely limited in her ability to speak. She spoke in a low whisper and had to clear her throat numerous times to just be able to speak in a low whisper. The direct and cross examinations I saw while in the courtroom had her standing right next to the witnesses and speaking into a microphone. If I had not been sitting directly behind the defendant's table I do not think I would have been able to hear her. Also, the witnesses had to repeatedly ask her to repeat what she said, even when she stood right next to them.


 Clarke Newton

J.


 Notary Expires: 12/03/17

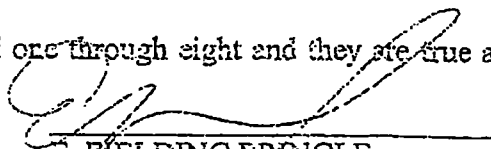
STATE OF SOUTH CAROLINA)
 RICHLAND COUNTY)

AFFIDAVIT OF ELIZABETH FIELDING PRINGLE

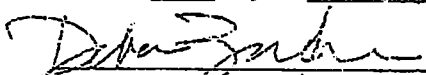
Elizabeth Fielding Pringle after being duly sworn, do depose and state:

1. My name is Elizabeth Fielding Pringle. I am more than eighteen years of age. I currently reside at 317 Crown Point Rd., Columbia, SC 29209.
2. I am the Deputy Public Defender for Richland County.
3. During the term of court for November 17, 2008, I witnessed portions of the trial of *State v. Melinda Richmond* and spoke with lead counsel Ms. Gripp throughout the trial.
4. On Tuesday, November 11, 2008, Ms. Gripp telephoned me to inform me that she had total laryngitis and to discuss how she would proceed with her trial. At that time, Ms. Gripp could only whisper. Although I could hear her on the phone, she had no tone to her voice at all. We spoke very briefly as she was trying to rest her voice.
5. On Wednesday November 12, 2008 I observed Ms. Gripp perform the cross examination of one of the responding officers. This officer testified at length on direct.
6. During Ms. Gripp's cross of this officer I was sitting on the bench directly behind the bar behind defense counsel's table. Ms. Gripp was standing at the microphone directly in front of defense counsel's table. I could not hear her questions and could not understand her. I could make out a few words every few sentences but otherwise couldn't hear her. The officer leaned forward throughout his cross and asked her to repeat herself several times. The court reporter also asked her to repeat questions throughout her cross. The officer dominated the cross examination due to his ability to speak with volume.
7. On Thursday evening after court recessed at 6:00 P.M., I spoke with Ms. Gripp. She had no voice at this point and was crying and in pain.

I have read the foregoing paragraphs numbered one through eight and they are true and correct to the best of my knowledge.


 E. FIELDING PRINGLE

Sworn to and subscribed before me
 this the 24th day of November, 2008.


 Notary Public for South Carolina

My commission expires December 3, 2017.

State of South Carolina

County of Richland

Affidavit

I, Bridget Brown, work as a law clerk for the Richland County Public Defender's Office. Throughout the week of November 10th, 2008, I observed the State v. Melinda Richmond trial. Ms. Carolyn Gripp served as lead counsel for the defense; however her ability to communicate effectively to the courtroom was hindered by an upper-respiratory illness which caused Ms. Gripp to lose her voice. Ms. Gripp's voice continued to deteriorate as the trial progressed, making it very difficult to hear Ms. Gripp when she spoke.

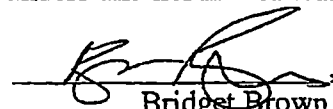
On Friday, November 14, 2008 Ms. Gripp presented her closing arguments to the courtroom. At this point in the trial Ms. Gripp's voice was so inaudible that the court reported requested that Ms. Gripp stand within the court reporter's line of vision so that she could read Ms. Gripp's lips.

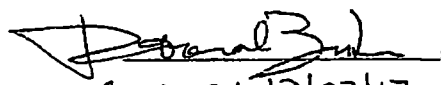
Furthermore, before Ms. Gripp could proceed with her closing statements the microphone had to be moved so that it stood alongside the podium in order for the courtroom to hear Ms. Gripp.

Ms. Gripp began her closing statements in a soft, raspy voice. A minute into her argument, the court reporter interrupted Ms. Gripp because she could not hear her.

I sat one row behind counsel for the defense and had difficulty hearing Ms. Gripp. She spoke in what I would describe as a forced whisper and her voice would trail off toward the end of her sentences such that the ends of her sentences were essentially inaudible. Additionally, Ms. Gripp had to pause to clear her throat several times throughout her closing statements.

Ms. Gripp's inability to speak in a normal tone and at an acceptable volume level made it difficult to hear what she was saying and, more importantly, to understand her line of reasoning.


Bridget Brown, Affiant


Notary
Expires: 12/03/17, Notary

STATE OF SOUTH CAROLINA)
SESSIONS)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL

Warrant Numbers: J557057

The State of South Carolina,)
)
)
)

vs.)
)
)
)

AFFIDAVIT

Melinda Richmond,)
Defendant.)

FILED
2008 NOV 24 PM 4:14
C.C.C. & G.S.

I, Kris Hines, am an assistant public defender in Richland County. I observed Carolyn Gripp's closing argument on Friday, November 14, 2008 in the Melinda Richmond trial. Ms. Gripp's closing argument was whispered to the jury and was barely audible in the courtroom. At times, it was impossible to understand what she was saying. The rest of time, I had to strain to hear what she was saying.

I have also viewed the video recording Ms. Gripp made on Friday, November 14, 2008 at 4:45 p.m. after the closing argument. Ms. Gripp's voice on the video fairly and accurately reflects the state of her voice during the closing argument earlier that day.

Kris Hines

Kris Hines

Columbia, SC

This 21 day of November, 2008.

SWORN TO AND SUBSCRIBED before me
this 21 day of November, 2008.

Margaret [Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES : 08-06-2017

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA)

Warrant# J557057

VS.)

AFFIDAVIT

Melinda Richmond)

I, Luke Shealey, observed Carolyn Gripp during the first day of trial on November 12th, 2008. She was extremely sick and her voice was not audible in court. Her voice as recorded on tape is exactly how her voice sounded in court that day.

Luke A. Shealey
 Luke A. Shealey
 Assistant Public Defender

Columbia, SC
 This 21st day of November, 2008.

SWORN TO AND SUBSCRIBED before me
 this 21 day of November, 2008.

Teresa Henson
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES : 6-08-09

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MELINDA RICHMOND,

APPELLANT.

FINAL ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

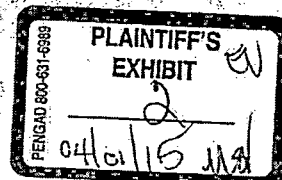


TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF THE CASE.....	4
ARGUMENT.....	5
CONCLUSION.....	10
PETITION TO BE RELIEVED AS COUNSEL.....	11

TABLE OF AUTHORITIES**Cases**

<u>State v. Fuller</u> , 297 S.C. 440, 377 S.E.2d 328 (1989)	8
<u>State v. Hill</u> , 315 S.C. 260, 433 S.E.2d 848 (1993).....	8, 9
<u>State v. Lee</u> , 298 S.C. 362, 380 S.E.2d 834 (1989).....	9
<u>State v. Muller</u> , 282 S.C. 10, 316 S.E.2d 409 (1984).....	9

Constitutional Provisions

U.S. Const. amend. XIV	9
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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's motion for a charge on the law of self defense in the case because the evidence showed that appellant reacted like she did after the deceased grabbed and threw her around and then lunged, clutched, and swung at her.

STATEMENT OF THE CASE

Appellant Melinda Richmond was convicted of murder per jury trial held during the November 2008 term of the Richland County General Sessions Court before the Honorable Edward W. Miller, Judge. Appellant was sentenced to imprisonment for a period of forty years.

Appellant appealed her conviction and sentence. This brief follows.

ARGUMENT

The trial judge erred in denying appellant's motion for a charge on the law of self defense in the case because the evidence showed that appellant reacted like she did after the deceased grabbed and threw her around and then lunged, clutched, and swung at her.

Appellant was indicted and tried for the murder of Frank West, who died from bleeding out after having received twenty four stab wounds on May 5, 2007. R. 874, l. 6 – p. 875, l. 12. Appellant testified in her defense at trial. Appellant testified that she and West were friends and that they had lived together at one point in the past. Appellant testified that on the night of May 5, 2007, she, and Bruce Thompson, Tenisha McClinton, and West were all inside West's apartment doing drugs (crack) together when at some point, Thompson declared that some of his crack was missing. In order to keep a peaceful environment, appellant stated that she asked West for money to give to Thompson to quiet him down. Appellant stated that when she reached for the money, West flew into a rage and grabbed her by the arm and then threw her into the dresser. Appellant stated that when she cried for help, Thompson and McClinton came to her defense. Thompson grabbed Frank and threw him down and McClinton started to beat West. Appellant stated that she saw a bottle flying and everybody was fighting everybody and she said at "one point [West] lung[ed] at [her]" so she grabbed a knife, but she could not do it, i.e. stab him. Thereafter, she and Thompson went downstairs while Tenisha stayed upstairs, and then when they decided to leave, they piled into West's car and drove off. R. 971, l. 21 – p. 981, l. 1. Appellant and McClinton were arrested at the Western Inn on Bush River Road and charged in the case.

States' witness Tenisha McClinton testified that she, appellant, Thompson, and West were all at West's apartment getting high on drugs (crack) on the night in question.

McClinton stated that West and appellant were upstairs and that she and Thompson were downstairs. McClinton stated that she and Thompson went upstairs when they heard appellant and West arguing loudly. West was telling appellant to give him his money because she (appellant) allegedly stole crack from him. McClinton testified that she responded by hitting West with a beer bottle, and then Thompson hit West, and then appellant said that they must kill him (West) because he (West) would call the police. Soon, according to McClinton, appellant grabbed the knife and stabbed West. McClinton stated that she (McClinton) stabbed West also. McClinton added that at some point, appellant said "let's go" and they all left West's apartment. McClinton recalled that while appellant stabbed West, West jumped up and started swinging.¹ R. 616, l. 1 – p. 660, l. 25; R. 681, l. 13 – 683, l. 8; R. 705, l. 5 – p. 706, l. 7. McClinton stated that when they were captured by police, appellant told police that Thompson stabbed West. R. 669, l. 1 – p. 671, l. 23.

Police Officer Michael Mazerolle was dispatched to the crime scene on May 5, 2007, and found West dead. Officer Mazerolle then began interviewing witnesses at the scene and then investigating into the case. Ultimately, Officer Mazerolle ended up at the Western Inn on Bush River Road where he found two women (appellant and McClinton) who fit the description of the perpetrators and detained them. The two women were driving West's Toyota Camry and Officer Mazerolle saw a bloody knife sticking out from under a blanket in the Camry. Officer Mazerolle was informed by appellant that she tried to stop Thompson from attacking West with the knife because he (Thompson) believed West stole crack from him. R. 372, l. 1 – p. 388, l. 9.

¹ R. 648, l. 24 – p. 649, l. 14; R. 706, l. 1-5; R. 718, l. 3-7.

Investigator Heidi Scott testified that she took a statement from appellant at the police detention center on the date in question. Investigator Scott stated that appellant stated that Thompson accused West of stealing his crack so she (appellant) took West's money to pay for the crack and at that point West attacked her by pushing her, grabbing her arms and holding her arms back to the dresser. Then appellant screamed for Thompson, who came up with McClinton in order to help, and thereafter all three of them held West down. Then, when West was trying to crawl away, she (appellant) took the knife and stabbed him. They all fled after West's throat was slit. R. 769, l. 22 – p. 774, l. 5.

Investigator Brien Gwyn testified that he questioned appellant and obtained a statement from her as well. On May 7, 2007 appellant stated that she, McClinton, Thompson and West were all smoking crack in West's apartment when they noticed that some crack was missing and that they believed West took the missing crack. Appellant stated that she told West that she was taking his (West's) money to compensate for the missing crack debt. Apparently, when appellant grabbed the money (presumably West's money), then West grabbed her and shoved her against the dresser. Appellant stated that after she screamed, Thompson and McClinton rushed to her aid. Appellant recalled that McClinton and Thompson started beating West. Appellant stated that she lay on top of West, but that West got up so McClinton and Thompson started beating him again. At some point, appellant stated she held West down, grabbed a knife and started to stab him. Then, McClinton slashed West's throat. After that was done, they all exited West's apartment. R. 783, l. 19 – p. 798, l. 17.

Investigator Robert Martin testified that he interrogated and obtained a statement from appellant around 8:00 a.m. on May 5, 2007. Appellant stated that she, McClinton,

Thompson, and West were smoking crack on the night in question when Thompson accused West of taking some of his crack. Appellant stated that apparently Thompson and West were fighting and that Thompson had a knife, but West kept fighting. Appellant stated she was caught in the melee, but ultimately she removed herself from the pandemonium. Appellant state that Thompson kept "striking" West with the knife. Appellant stated that West was "trying to clutch to [her]." Ultimately, all three left West in the apartment and drove off. R. 893, l. 16 – p. 909, l. 16.

At the close of the case, and during the requests to charge hearing, defense counsel argued that there was "evidence in the record for [self-defense]." R. 1066, l. 10 – p. 1067, l. 7. The court ruled that there was no evidence in the record in support of self defense. R. 1067, l. 8-9.

If there is any evidence of self-defense, the issue should be submitted to the jury. State v. Hill, 315 S.C. 260, 433 S.E.2d 848 (1993). The elements of self defense are as follows:

- a.) The defendant must be without fault in bringing on the difficulty;
- b.) The defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury or he actually was in such imminent danger;
- c.) A reasonable prudent man of ordinary firmness and courage would have entertained the same belief;
- d.) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989).

It was clear that there was free for all fighting going on between all of the parties on the night in question. In addition, there was ample evidence that West participated by fighting and swinging during the uproar. Appellant testified that on that night she was

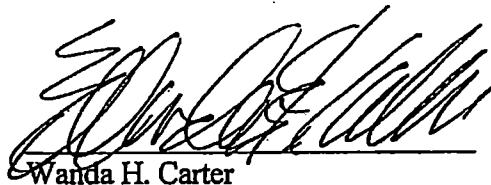
trying to make peace by compensating Thompson, but that West became violent by grabbing her arm and pushing her against the dresser. Also, note that during the fighting West lunged at appellant and tried to clutch her. Furthermore, West was swinging at her during the commotion. In other words, West was the aggressor and appellant was without fault in bringing on the difficulty. Also, appellant believed she was in danger of injury or losing her life just as any reasonable person in her position would have so believed. Finally, there was certainly no other way out for appellant or no other way for her to stop West's aggression toward her other than to defend herself.

The law to be charged is determined by the evidence presented at trial. State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989). A trial court commits reversible error if it fails to give a charge on an issue raised by the evidence. State v. Hill, supra, State v. Muller, 282 S.C. 10, 316 S.E.2d 409 (1984). The trial judge violated appellant's Fourteenth Amendment due process right in denying appellant's the request for a charge on the law of self defense in the case.

CONCLUSION

Based on the following argument, appellant's conviction and sentence should be reversed and her case remanded to the lower court for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of May, 2011.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland CountyEdward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MELINDA RICHMOND,

APPELLANT

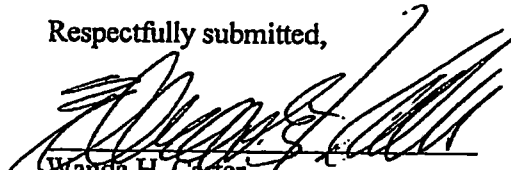
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Melinda Richmond states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Edward W. Miller, which was held on November 10-14, 2008, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Melinda Richmond.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

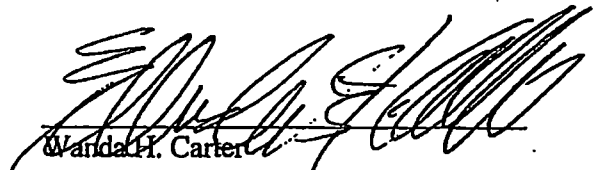
ATTORNEY FOR APPELLANT

This 31st day of May, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 31st, 2011



Wanda H. Carter
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

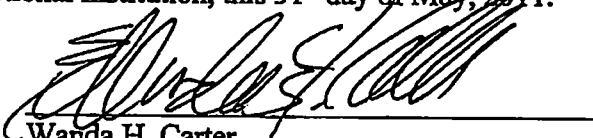
V.

MELINDA RICHMOND,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Final Anders of Appellant and a copy of the Record on Appeal have been served on Melinda Richmond, #331874 at Leath Correctional Institution, this 31st day of May, 2011.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of May, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Melinda Richmond, #331874

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2013-CP-40-00233

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2015 MAY 18 AM 9:45
CLERK OF COURT
J. CLAYTON MITCHELL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 11, 2013. Respondent made its Return on May 8, 2013, requesting an evidentiary hearing be convened. William M. Saltzman, Esquire was appointed by the Richland County Clerk of Court on January 29, 2013. Applicant filed an amended application on July 29, 2013. An evidentiary hearing was held on April 1, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Saltzman. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on her own behalf. In addition, Applicant's trial counsel testified: Carolyn R. (Gripp) Sutherland, Casey M. Secor, and E. Deon O'Neil, Esquires. Applicant's appellate counsel, Wanda H. Carter, Esquire, also testified in her case. The State called Anna R. Good on its behalf. The Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the trial transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during

the July 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-4073). Applicant was represented by: Carolyn R. (Gripp) Sutherland, Casey M. Secor, and E. Deon O'Neil, Esquires. On November 10, 2008, Applicant proceeded to a jury trial before the Honorable Edward W. Miller. On November 14, 2008, Applicant was convicted as indicted. Judge Miller sentenced Applicant to forty (40) years' imprisonment.

Applicant filed a notice of appeal and an appeal was perfected on her behalf. Following the submission of an Anders¹ Brief, the South Carolina Court of Appeals dismissed the appeal. State v. Richmond, Opinion No. 2012-UP-418 (S.C. Ct. App. filed July 11, 2012). The Remittitur was sent on July 27, 2012.

In this action, Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of appellate counsel in failing to brief the trial court's denial of defense counsel's requests for a mistrial or a continuance due to lead Counsel Sutherland's sickness.
2. Ineffective assistance of trial counsel in proceeding with the trial while sick.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Carolyn (Gripp) Sutherland's Testimony

Counsel Sutherland testified via telephone at the hearing as she currently resides and practices law in Memphis, Tennessee. She was sworn by this Court prior to her examinations. Counsel Sutherland testified she came to represent Applicant through her role as an Assistant Public Defender with the Fifth Circuit Public Defender's Office. She informed the Court that she was lead counsel throughout Applicant's proceedings beginning at her bond hearing in or around May 2007. Counsel Sutherland testified she spent many hours on Applicant's case, meeting with her over a dozen times. She believed the case was going to trial and was unlikely to be resolved

¹ 386 U.S. 738 (1967).

by a plea agreement. She testified she was the most prepared attorney to represent Applicant at trial.

Counsel Sutherland testified she had the flu the week before the trial started. She recalled that they picked a jury on Monday, Tuesday was a holiday, and that by Wednesday she had a severe sore throat and sinus infection and had nearly lost her voice. She described how she contacted the prosecuting solicitors the night before to apprise them of her condition but was unable to reach them. Counsel Sutherland recalled that Counsel O'Neil made a motion for a continuance and in the alternative a motion for a mistrial. This motion was strongly opposed by the prosecution as they had out of state witnesses and victims present. The prosecution also argued that the case had already started as the trial court had conducted a Jackson v. Denno hearing, both sides had presented opening statements, and a witness had already testified. Counsel Sutherland testified the trial court denied their motions for a continuance and mistrial and believed that co-counsel O'Neil and Secor were prepared to try the case if she was unable to go forward. Counsel Sutherland noted her disagreement with the trial court's ruling and assessment. Counsel Sutherland acknowledged that the trial court did instruct the jurors that if they had trouble hearing her to raise their hands as an attempt to remedy the situation.

Counsel Sutherland testified that due to her illness, she was unable to try Applicant's case to the best of her abilities. She testified she did not have an appropriate range of voice and that she lacked control of witnesses during cross examinations. Counsel Sutherland further recalled the defense's subsequent motions for a continuance to allow her to go to a doctor and that this was also denied. Her doctor diagnosed her with laryngitis, and she was prescribed antibiotics and other medications to help her deal with the illness.



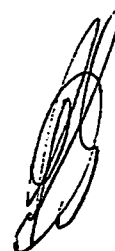
At that point, Counsel Sutherland testified, she knew the trial court was not going to grant a continuance or a mistrial, so she focused on how best to preserve the issue. She testified she wanted to preserve an audio copy of her voice for appellate purposes. She testified that another attorney with the public defender's office videotaped her speaking to show the tone and volume of her voice at the time of trial. Counsel Sutherland discussed this with her supervisor, Elizabeth Fielding Pringle, on how best to preserve the issues. Counsel O'Neil requested that the trial court allow a private court reporter to come in to ensure an accurate transcription and recording. (Trial Transcript p. 359-60). The trial court denied this request as well.

Counsel Sutherland testified she was initially going to handle all investigators and any witness who had contact with Applicant. She emphasized that co-counsels were not prepared to handle these witnesses since they had not been involved in the case for long enough to understand all of the facts. She testified that Counsel Secor was a young attorney that was sitting "third chair" as a training opportunity who was not expected to have significant responsibilities. Counsel Sutherland testified she presented closing arguments for the defense and that the jury likely had difficulty hearing her speak during her remarks.

Counsel Sutherland detailed the post-trial motions the defense filed including a motion for a new trial. She testified the defense team did all they could to preserve the issue for direct appeal.

Counsel Casey M. Secor's Testimony

Counsel Secor testified he came to represent Applicant through his role as an Assistant Public Defender. He testified that prior to this trial he had very little trial experience, mostly at the magistrate's court level. He stated that his role in representing Applicant was limited and that he may not have met Applicant until the first day of trial.



Counsel Secor testified that Counsel Sutherland's voice was difficult to hear and noted the court reported asked her to speak up multiple times. He explained that her voice was a hoarse whisper at times. Counsel Secor testified that the defense team made multiple motions for a continuance and for a mistrial due to Counsel Sutherland's illness. He testified he was not prepared to take over the case. Counsel Secor described the trial court's reaction to his numerous motions for a continuance and a mistrial as annoyed. He testified he believed the issues to be preserved and expected them to be raised on appeal.

Counsel E. Deon O'Neil's Testimony

Counsel O'Neil testified he "second chaired" Applicant's case. He testified that as the second chair attorney in a trial he would give the opening statement to the jury and handle less important witnesses, just as he did in this case. Counsel O'Neil testified the court reporter had to ask Counsel Sutherland to speak up and repeat herself during the trial. He testified that sometimes her voice was not above a whisper. He testified that he believed she could not take control of witnesses on cross examination. Counsel O'Neil testified he did not believe he was ready to try the case on his own and recalled that he declined to present the closing arguments as he was not as prepared as Counsel Sutherland. He recounted that the defense team made a motion for a mistrial and continuance and renewed those motions and objections numerous times. He noted that he believed the issues relating to Counsel Sutherland's illness were preserved for appeal and that they would be addressed then.

Counsel Wanda H. Carter's Testimony

Counsel Carter testified she represented Applicant through her role as an Assistant Appellate Defender at the South Carolina Office of Indigent Defense. She testified that it was her normal practice to review the entire transcript noting each objection and whether certain issues



were preserved and that she very likely followed that procedure in preparing Applicant's case. She testified she conducted a due process evaluation on this case. Counsel Carter testified she did not brief the issues of the trial court's failure to grant Applicant's motion for a continuance and mistrial because she did not believe they had any merit. Counsel Carter did believe the issues to be preserved. Counsel Carter emphasized that she filed a brief pursuant to Anders v. California and that if she missed any meritorious issues, that the Court of Appeals would not have granted her petition to be relieved and would have asked for briefs on those any meritorious issues. She testified she addressed the issue of whether the trial court erred in failing to charge the jury on self-defense because she believed that issue to be colorable. The issues relating to the motion for mistrial and continuance did not rise to that level. Counsel Carter testified she believed Applicant filed a *pro se* brief addressing these issues which would have clearly put the issues before the Court of Appeals when it made its determination to dismiss the appeal. Counsel Carter noted that the standard of review of a denial of a mistrial or continuance is an abuse of discretion and that she did not believe the issues had any merit under that standard. Counsel Carter also noted that the trial court instructed the jurors to raise their hand if at any time if they could not hear Counsel Sutherland.

Applicant's Testimony

Applicant testified she was charged and convicted of murder under a hand of one, hand of all theory of accomplice liability. She was represented by Counsel Sutherland throughout the entire case. She testified she met Counsel Secor the first day of trial and had met Counsel O'Neil some time prior to trial. Applicant recounted that Counsel Sutherland was her only attorney until the case was on track to go to trial. Applicant was reluctant to question her attorney's abilities as she believed they did all they could for her. Applicant stressed that Counsel Sutherland's voice



was barely above a whisper at times and that she was asked numerous times to speak into the microphone. Applicant testified she believed Counsel Sutherland did not want to leave her during the trial. Applicant testified she did extensive research into the matter and filed a *pro se* brief at the Court of Appeals attempting to address the trial court's failure to grant her motions for a continuance and a mistrial.

Anna R. Good's Testimony

Ms. Good testified that she was one of the prosecuting solicitors that tried Applicant's case. She testified that Counsel Sutherland was sick and was having troubling speaking. Good noted that she and her co-counsel, then Assistant Solicitor Vanessa Shipley, agreed to object to a continuance since a jury had been picked, opening statements had been delivered, a witness had testified, and there were a number of out of state witnesses and family members of the victim that were in attendance. She recalled the trial court ruling that Applicant had two other very capable attorneys who could try the case. Good testified that Counsel O'Neil handled a number of witnesses during the pretrial motions stage. Good testified Counsel Sutherland was asked to speak up or repeat herself, but that she could hear Counsel Sutherland for the most part. Good noted there was a microphone setup to accommodate her condition and to help with any problems the jurors may have had hearing her.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial



cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A defendant is entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004), citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. See Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836. See also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error).

"Although it is possible to bring a successful ineffective assistance of appellate counsel claim based on failure to raise a particular issue on direct appeal, the Supreme Court has reiterated that it is 'difficult to demonstrate that counsel was incompetent.'" United States v. Mason, No. 3:06-607-CMC, 2012 WL 5845807 at *1 (D. S.C. Nov. 19, 2012) (quoting Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000)). While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990), citing Jones v. Barnes, 463 U.S. 745 (1983). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." Jones, 463 U.S. at 754. Additionally, our Supreme Court has expressly rejected the notion that

appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). “Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.” Smith v. Robbins, 528 U.S. at 288, 120 S. Ct. at 765 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones, 463 U.S. at 753. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not deficient performance. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th Cir. 1985).

“To establish prejudice relating to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel's unreasonable failure to include a particular issue on appeal, he would have prevailed on his appeal.” United States v. Mason, 2012 WL 5845807 at *1 (citing Smith v. Robbins, 528 U.S. at 285-86, 120 S. Ct. at 764).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.



Ineffective Assistance of Appellate Counsel

Applicant argues Counsel Carter was ineffective in failing to brief the issue of whether the trial court erred in denying Applicant's motions for a new trial and motions for a continuance. Applicant argues Counsel Sutherland's performance at trial hindered the defense due to her illness and that this issue should have been raised on direct appeal. Applicant points specifically to the trial court's denial of the written post-trial motion filed on November 24, 2008.

Preservation

This Court notes that a detailed Motion for a New Trial was filed on November 24, 2008. The defense argued Applicant was prejudiced by the trial court's denial of the motions for a mistrial and a continuance. They argued the trial court abused its discretion in refusing to grant a continuance. The defense also argued the trial court erred in not allowing a private court reporter to record the proceedings. The defense submitted a video recording of Counsel Sutherland speaking and seven (7) affidavits of various employees of the public defender's office that all described Counsel Sutherland's voice and tone during the trial. The State filed a Response to Defendant's Motion for a New Trial on December 8, 2008, asking the trial court to deny the motion. The State argued that it only mattered if the jurors could hear her speak and noted that the trial court instructed the jurors to raise their hands if they had difficulty hearing Counsel Sutherland and that at no time did any jurors do so. The State attached an affidavit from two jurors that sat on the last row of the juror box that stated each were able to hear her during the trial. One juror attested that he had no difficulty following Counsel Sutherland during examinations or closing argument. The juror also noted that the court reporter and witness asked for clarification about five or six times when it was hard to hear her.



This Court finds the issue was adequately preserved for review on direct appeal. The defense made numerous motions for a mistrial and a continuance throughout the trial and at every appropriate stage. It is clear from the testimony and evidence presented at the hearing that the issues relating to the trial court's denial of the motions for mistrial and continuance were preserved for appellate review. All parties and witnesses agree with this conclusion.

Deficiency

Applicant alleges Counsel Carter was ineffective in failing to raise the contested issue on appeal. This Court finds this allegation without merit. This Court finds Applicant has failed to meet her burden in proving deficiency of appellate counsel and requisite prejudice. Counsel Carter testified that it is her standard practice to review the entire record for all preserved issues and that she did that in this case. She also testified she completed a due process analysis of the issues raised by trial counsel. Counsel Carter's persuasive testimony shows that she also believed the issues relating to the trial court's denial of motions for a mistrial and a continuance to be preserved but found them without any merit. She credibly testified she briefed the issue she found most colorable which was the trial court's failure to charge the jury on self-defense. She stressed that she did not believe any issues had merit and that was why she filed an Anders brief. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). This Court finds Counsel Carter made the reasonable strategic decision to brief the issue she considered strongest and in filing a brief pursuant to Anders.

To grant relief, the reviewing court would have to find that the trial court abused its discretion in failing to grant a mistrial. This Court finds the trial court properly denied the

defenses motions for a mistrial and a continuance. See State v. Hawkins, 310 S.C. 50, 54, 425 S.E.2d 50, 52 (1992) (holding that the trial court did not abuse its discretion in refusing to grant a continuance due to trial counsel becoming ill and that co-counsel was familiar with the facts and had participated in pretrial motions). This Court finds Applicant has failed to meet her burden in proving deficiency. Counsel Carter's testimony is credible and persuasive on all matters. Counsel Carter emphasized that even if she somehow missed an issue that had merit, the Court of Appeals would not have granted her request to be relieved and would have instructed her to brief that issue.

This Court also finds in its experience that it is not uncommon to have court reporters, or witnesses, or even the judge to ask an attorney to speak up or to speak more clearly. After a thorough review of the record, this Court finds Applicant's due process rights were not violated. The trial court accommodated Counsel Sutherland by having a microphone placed in the court room where she could address the jury to aid her hindered voice. The trial court also instructed the jurors to alert him or the bailiffs if they had any problems hearing her by raising their hand. There is nothing in the record to suggest any jurors had to resort to that.

Prejudice

This Court finds Applicant has failed to meet her burden in proving she was prejudiced by the brief submitted by Counsel Carter because she would not have been successful on appeal had she argued the trial court erred in denying the motions for mistrial and motions for a continuance. Tisdale, 357 S.C. at 476, 594 S.E.2d at 167 (no prejudice where there is no merit to arguments that were not briefed). The Court also finds that Applicant failed to meet her burden in proving the omitted issue was stronger than the issue of the trial court's failure to instruct the jury on self-defense.



Further, Applicant suffered no prejudice because the South Carolina Court of Appeals conducted an Anders review and ultimately dismissed the appeal. The Court of Appeals dismissal indicates it *also* found no reversible error in the trial court's rulings. In State v. McKennedy, 348 S.C. 270, 559 S.E.2d 850 (2002), this Court outlined the Anders procedure as follows:

[A]ccording to Anders, the reviewing court is obligated to make a full examination of the proceedings on its own. After such an examination, if the reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant 'the assistance of counsel to argue the appeal.' The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal.

McKennedy, 348 S.C. at 279, 559 S.E.2d at 855. A presumption of regularity attaches to judicial proceedings, and this presumption should extend to the Court of Appeal's review under the Anders procedure. See Pringle v. State, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986) (citations omitted). This Court finds the Court of Appeals reviewed this preserved issue before dismissing Applicant's direct appeal and found that it had no merit. See McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 46 (2013) ("Under the Anders procedure, an appellate court is required to review the entire record, including the complete trial transcript, for any preserved issues with potential merit." (citing State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991))). If the Court of Appeals believed the trial court's ruling was questionable, it would have directed counsel to file a merits brief.

Furthermore, the United States Supreme Court has indicated Applicants face a difficult burden to prove prejudice in cases where counsel has filed an Anders brief. Smith v. Robbins, 528 U.S. 259, 287 (2000) ("[I]n most cases in which a defendant's appeal has been found,

pursuant to a valid state procedure, to be frivolous, it will in fact be frivolous.”). The burden is high because “it is reasonable to presume that when the court affirms an Anders appeal it has fully considered and rejected all potential issues that were apparent on the face of the record.” Towbridge v. State, 45 So. 3d 484, 487 (Fla. Dist. Ct. App. 2010). The Anders procedure requires the court to independently examine the trial proceedings and consider “any errors apparent on the face of the record.” Id. at 486-87 (citations omitted); see also McHam, 404 S.C. at 475, 746 S.E.2d at 46 (appellate court reviews all preserved issues for merit). This Court notes that Applicant filed a *pro se* brief directly addressing the issue. Defense counsel moved for a mistrial or continuance no less than seven (7) separate times. This issue was clearly apparent on the face of the record and was reviewed by Counsel Carter and the Court of Appeals. Applicant failed to present any evidence the Court of Appeals overlooked this issue. Therefore, this Court must presume the Court of Appeals’ compliance with the Anders procedure included a review of the trial court’s denial of the motion for mistrial, and its dismissal indicated it found no fault with those rulings.

This Court also finds the State presented overwhelming evidence in support of its case at trial. Since this evidence overwhelmingly indicates Applicant’s guilt, she would not have been successful on appeal.

Accordingly, Applicant has failed to meet her burden in proving appellate counsel was ineffective. This allegation is denied and dismissed with prejudice.

Ineffective Assistance of Trial Counsel

To the extent that Applicant alleges Counsel Sutherland was ineffective due to her illness, this Court finds the allegation is without merit. Applicant must point to specific errors or omissions in the conduct of the trial that were the product of the illness. United States v. Eyman,



313 F.3d 741 (2nd Cir. 2002). Applicant failed to meet her burden in proving Counsel Sutherland was ineffective in any respect. Applicant also failed to show any resulting prejudice in this regard as she did not present any evidence that the result of the trial would have been different but for Counsel Sutherland's errors. The Court finds the affidavits submitted by the jurors on the case who indicated that they heard and could follow Counsel Sutherland throughout the trial to be persuasive on the issue.

All Other Allegations

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

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

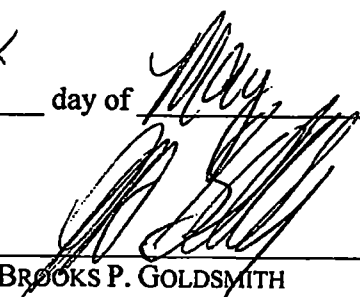
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek

appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of her sentence.

AND IT IS SO ORDERED this 8 day of May, 2015.



BROOKS P. GOLDSMITH
Presiding Judge

_____, South Carolina

WITNESSES

(S) Robert Martin - RCSD

ARREST WARRANT NUMBER

J557057

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *Jul 18 2007*

VERDICT

Guthy

Foreperson of Petit Jury

Date:

11/14/08

DOCKET NO. 2007-GS-40-4073

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JULY TERM 2007

91

THE STATE

vs.

MELINDA RICHMOND

Indictment for

MURDER

SC Code: 16-3-10

CDR Code:0116

Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jessie L. Williams
C.C.C. REG.S.
RICHLAND COUNTY
SOUTH CAROLINA.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

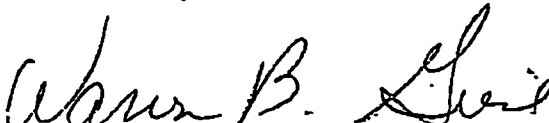
INDICTMENT

At a Court of General Sessions, convened on July 18, 2007, the Grand Jurors of Richland County present upon their oath:

MURDER

That Melinda Richmond did in Richland County on or about May 5, 2007, feloniously, willfully and with malice aforethought, kill one Frank West by means of multiple stab wounds and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

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


Warren B. Giese, SOLICITOR