

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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AUG 31 2016

Appeal from Charleston County

S.C. SUPREME COURT

Honorable Perry H. Gravely, Circuit Court Judge

SHANITA CUNNINGHAM

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000786

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

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

J. RUTLEDGE JOHNSON
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON 2010-GS-10-4127

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
 -vs-)
SHANITA CUNNINGHAM,) August 25, 2011
) Charleston, South Carolina
Defendant.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

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

Elizabeth Gordon, Assistant Solicitor
Attorney for the State

Cassandra Winslow, Deputy Public Defender
Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 (August 25, 2011.)

2 MS. WINSLOW: Your Honor, may we approach
3 briefly?

4 (Discussion held at sidebar.)

5 THE COURT: Are you Shanita Latrice
6 Cunningham?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Ms. Cunningham, you're here on a
9 charge of homicide by child abuse. You could get 20
10 years to life on that.

11 They tell me you want to plead guilty; is
12 that right.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You have the right to a jury
15 trial on this charge. If you want a trial, all you have
16 to do is let me know. We will arrange that for you. The
17 State then has to present enough evidence to convince 12
18 jurors that you're guilty beyond a reasonable doubt.

19 All 12 jurors have to agree you're guilty
20 before they find you guilty. If convicted, you have the
21 right to appeal. You can challenge the State's evidence,
22 put up evidence of your own, testify if you want, and, if
23 you don't testify, the judge will tell the jury not to
24 hold that against you while they're deliberating.

25 Do you understand those rights?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you want to give up those
3 rights and plead guilty today?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you pleading guilty because
6 you're guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: So this charge on indictment
9 2010-GS-10-4127 that says on November 3rd, 2009, you,
10 Shanita Latrice Cunningham, did cause the death of
11 victim , a child under the age of 11 at the
12 time of her death, while committing child abuse or
13 neglect and that this death occurred under circumstances
14 manifesting extreme indifference to human life.

15 You did that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: That's what you want to plead
18 guilty to?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. All right. Now, did
21 your lawyer talk with you about this being a strike
22 offense?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. So you know that
25 under our system of strike offenses, we have two strike

1 and three-strike offenses. This is of the two-strike
2 offense, so after today you'll have a strike against you.

3 THE ASSISTANT SOLICITOR: Your Honor, this is
4 a two strike.

5 THE COURT: I'm sorry. What did I say?

6 THE ASSISTANT SOLICITOR: You said this was a
7 one strike -- you said after today you will have a
8 strike.

9 THE COURT: I thought it said it right, but
10 if I said it wrong, I apologize. We have two-strike
11 offenses and three-strike offenses. This is of the two
12 strike variety. You'll have one strike against you after
13 today. If you ever get another strike offense against
14 you, you will go to jail for the rest of your life
15 without the possibility of parole.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You still want to plead guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. You understand the
21 consequence of this being a no parole offense?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: So you got to do at least 85
24 percent of whatever the judge gives you. Do you
25 understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: You still want to plead guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You're standing next to your
5 lawyer, Ms. Winslow. Have you had enough time to talk to
6 her about this?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you need any more time with
9 her?

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you satisfied with her
12 representation?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has anybody promised you anything
15 or threatened you to get you to enter into this plea
16 today?

17 THE DEFENDANT: No, sir.

18 THE COURT: How old are you?

19 THE DEFENDANT: Twenty-five.

20 THE COURT: How far did you get in school?

21 THE DEFENDANT: Some college.

22 THE COURT: Did you work before you got
23 arrested?

24 THE DEFENDANT: No.

25 THE COURT: Are you married?

1 THE DEFENDANT: No.

2 THE COURT: Children?

3 THE DEFENDANT: Yes.

4 THE COURT: How many?

5 THE DEFENDANT: One.

6 THE COURT: All right.

7 Does she understand what she's doing waiving
8 her right to a jury trial and entering a guilty plea
9 today?

10 MS. WINSLOW: Yes, Your Honor.

11 THE COURT: All right. I find her plea is
12 freely, voluntarily, and intelligently made.

13 What would the State like to tell me?

14 MS. GORDON: May it please the Court, Your
15 Honor: The child in this case, victim, was
16 three years old. She had come down to Charleston to
17 visit her godparents, this defendant, Shanita Cunningham,
18 and the codefendant, Erica Butts.

19 The child had been here since October the
20 22nd, and on November the 3rd of 2009, a 911 call was
21 made by codefendant Erica Butts's mother. EMS arrived.
22 The history was the child had fallen out of a chair.
23 When EMS arrived, they found the child to be cold and
24 rigor had already set in. The child's rectal body
25 temperature at that point was 82.9 degrees.

1 Upon a full examination of the child, the
2 child had bruises, constitutions, scrapes, swelling to
3 her entire body. The only parts of this child's body
4 that were spared were the soles of her feet and directly
5 under her armpits.

6 Your Honor, the cause of death from the
7 autopsy was the accumulation of two weeks' of blunt force
8 trauma about the whole body. This child had been dead
9 well before any 911 call was made to assist the child.

10 THE COURT: All right. Well, there certainly
11 is a substantial factual basis for the plea, so I'll
12 accept it.

13 I understand we're not going to sentence
14 today so that a representative from the victim's family
15 can be here, so I wrote on here plea accepted today by
16 me, and sentence can be imposed by any circuit judge. So
17 you know, if it's more convenient to do it in front of
18 somebody else -- I have no idea what my schedule is over
19 the fall as far as criminal goes, but the sentence may be
20 imposed by some other judge, or it may be me, but I've
21 accepted your plea today.

22 So we'll hear any mitigation and from the
23 victim's family at a later date. Good luck.

24 MS. WINSLOW: Thank you, Your Honor.

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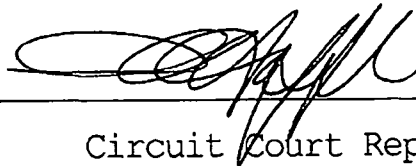
(Whereupon, the proceedings were concluded.)

- - -

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 25th of August 2011.

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

March 6, 2015

A handwritten signature in black ink, appearing to read 'Amanda K. Haffenden', is written over a horizontal line.

Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 SHANITA CUNNINGHAM AND ERICA)
8 BUTTS,) 2013-GS-10-4127
9 DEFENDANTS.)

10 November 3rd, 2011
11 Charleston, South Carolina

12 B E F O R E:

13 THE HONORABLE DEADRA L. JEFFERSON, Judge.

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

15 ELIZABETH GORDON
16 ASSISTANT SOLICITOR
17 Attorney for the State

18 CASSANDRA WOOSLEY
19 ESQ.
Attorney for the Defendant Cunningham

20 LISA GAY
21 ESQ.
Attorney for the Defendant Butts

22
23 HENRY YOUNG
24 Circuit Court Reporter

25 Transcribed by Pamela E. Green, Circuit Court Reporter

I N D E X O F W I T N E S S E S

(There were no exhibits marked during this hearing.)

P R O C E E D I N G S

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THE COURT: All right. Ready to proceed, Ms. Gordon, Ms. Woosley, and Ms. Gay?

SOLICITOR GORDON: Yes, Your Honor. They had to be maintained separately in the jail.

THE COURT: So, do you want me to do them separately?

SOLICITOR GORDON: I think the sentencing needs to be handled separately. I can do just one recitation of the facts.

THE COURT: Are they---

MS. GAY: It is up to you, Your Honor. My client has asked that she be allowed to be sentenced separately. But I don't know that the other---

THE COURT: What is the underlying reason for that rationale?

MS. GAY: My client is very meek and she may fall apart. She may not be able to get through the plea.

THE COURT: She's already pled guilty.

MS. GAY: I know. I understand that, but she asked if it could be done that way, and I do understand it may not be something that you want to do, but---

THE COURT: I just prefer to do it -- I have read some of -- I have read what Ms. Woosley submitted to the Court, her client's version of the event, and I would like to hear

1 it together because I need to make sure that the sentencing
2 is commensurate, and it works to a disadvantage to do it
3 separately.

4 MS. GAY: One thing I would say---

5 THE COURT: Now, if there are some safety concerns or
6 something, I think I have enough deputies to take care of
7 that.

8 MS. GAY: I don't think that's the issue. The only
9 thing is when Ms. Gordon told me there had been an
10 evaluation done of the co-defendant, I have not been given a
11 copy of that nor have I given the co-defendant's attorney a
12 copy of my evaluation. You had mentioned that the
13 psychological evaluation had something to do with the
14 rendition of the events.

15 THE COURT: I did not say that. You're
16 misunderstanding what I said. What I said was I have gotten
17 a package from Ms. Woosley that gives me a fairly broad
18 summary of the event as alleged acknowledging that is her
19 version.

20 MS. GAY: I don't know, I don't know what that is.

21 THE COURT: I don't think you're entitled to have it.
22 It is not exculpatory to your client.

23 MS. WOOSLEY: I think she provided a package to the
24 Court to review prior.

25 MS. GAY: I did this morning, Your Honor.

1 THE COURT: well, I'll read everything you submitted to
2 me, but I don't think she's entitled to get what you gave
3 me, and I don't think you're entitled to get what she gave
4 me, but I'm sure I'm going to hear it. I'm sure everybody
5 is going to tell me what happened.

6 MS. GAY: I understand. And I did not get the
7 evaluation from Doctor Webb until this morning.

8 THE COURT: That's fine. I'm going to take the time to
9 read it. I will read it myself. I will read it when I have
10 the opportunity to, but I would prefer to do it all at one
11 time.

12 MS. GAY: I understand, Your Honor.

13 THE COURT: We need Erica Mae Butts and Shanita
14 Cunningham.

15 (WHEREUPON, the defendants enter the courtroom at this
16 time.)

17 THE COURT: This is the State of South Carolina
18 versus Erica Mae Butts, 2010-GS-10-4123, and the State of
19 South Carolina versus Shanita Cunningham, 2010-GS-10-4127.
20 Both individuals pled guilty before Judge Young on August
21 25th of 2011 to the offense of homicide by child abuse. The
22 plea was qualified and accepted by Judge Young, but sentence
23 was deferred.

24 Ms. Gordon represents the State. Ms. Cassandra Woosley
25 represents Ms. Cunningham, and Ms. Lisa Gay represents Erica

1 Mae Butts.

2 Now, why was sentencing deferred?

3 SOLICITOR GORDON: Your Honor, Ms. Butts and Ms.
4 Cunningham were both scheduled for a trial docket in early
5 September. They indicated that they wanted to plead. The
6 family was in Michigan. So, as to---

7 THE COURT: The victim's family?

8 SOLICITOR GORDON: The victim's family was in Michigan.
9 We did have a plea and -- so the family would not have to
10 come for a trial, and because we had additional out-of-state
11 witnesses who were going to have to come for trial, we went
12 ahead and did the plea sort of right after they said they
13 would do it, within a couple days. That didn't give the
14 family time to get here.

15 THE COURT: Are you saying it was deferred so the
16 family could be present?

17 SOLICITOR GORDON: That's correct, Your Honor.

18 THE COURT: Okay. Since the plea has been qualified
19 and accepted, if the State would provide the court with a
20 summary of the facts, then I will be glad to hear from any
21 of those present that wish to be heard on behalf of the
22 family, and then, after that, I will hear mitigation for Ms.
23 Cunningham, which is Ms. Woosley, and then Ms. Butts from
24 Ms. Gay.

25 SOLICITOR GORDON: Thank you, Your Honor.

1 If it please the Court, Your Honor.

2 The defendant and the co-defendant had been basically
3 babysitting the victim, She was three
4 years old at the time. She had come down to Charleston on
5 October 22nd of 2009 with Shanita Cunningham from Detroit.

6 THE COURT: And what is -- tell me again the date they
7 came.

8 SOLICITOR GORDON: They arrived in Charleston on
9 19 -- October 22nd of 2009.

10 THE COURT: And Ms. Cunningham?

11 SOLICITOR GORDON: She came with Ms. Cunningham.

12 THE COURT: What was her relationship with Ms.
13 Cunningham?

14 SOLICITOR GORDON: The victim's mother and Erica
15 Butts had been lifelong friends. Erica and Shanita were a
16 couple and had been for several years. The victim was
17 coming for visitation, the victim, the three year old.

18 THE COURT: When you say visitation, what kind?

19 SOLICITOR GORDON: She was just coming for a visit
20 with her mother's friend and Erica and Shanita had a child,
21 Maury, which was actually Shanita's child. Victim kind of
22 considered Maury like a sister and so she looked forward to
23 seeing Maury, who she really loved. She came for a visit
24 and planned to stay for maybe a month or so.

25 On November the 3rd of 2009 there was a 9-1-1 call.

1 That call was placed by Erica Butts' mother.

2 When EMS arrived they found the child to have bruises,
3 marks, scars, cuts, contusions all over her body, some
4 fresh, some old. At the time of EMS' arrival the child had
5 a rectal temperature of 82.9 degrees. She had expired long
6 before 9-1-1 was ever called.

7 As the investigation continued it was learned that both
8 Shanita and Erica had been spanking the child, since she
9 arrived, for numerous occasions of peeing on the floor.

10 Your Honor, I passed up a CD from the autopsy. The
11 autopsy indicates that this child was beaten. She was
12 beaten to death. There was not a place on her body that was
13 spared, absent the soles of her feet. She had a gash to the
14 back of her leg to which Ms. Cunningham admits to
15 inflicting, but saying she didn't even realize she had done
16 it.

17 The State contended if you are beating a child to the
18 point you don't even realize you caused that, that there is
19 no telling what else you could have been doing to that
20 child.

21 Your Honor, they did a search warrant of the home.
22 There was blood that matched Victim on the walls and on
23 the couch. There were numerous broken hangers found in the
24 bathroom and in the closets, and if you have read even
25 Shanita's statement, and according to Erica, these two

1 basically watched while the three year old girl died.

2 She was unresponsive. Her eyes were closed. They
3 could not awaken her, and instead of calling for help or
4 seeking medical attention for her, they tried to protect
5 themselves and did nothing. It wasn't until Erica was
6 apparently freaking out and she called her mother, and when
7 her mother came over, her mother said they had to call
8 9-1-1.

9 Your Honor, based on that, we would ask for the maximum
10 sentence.

11 The victim's family is here and I think they would like
12 to speak, and they have provided me with just some
13 photographs of the child from just -- just to show what a
14 beautiful child she was.

15 Your Honor, I failed to mention one thing.
16 When EMS arrived Ms. Cunningham was gone. She had fled.
17 She had stated to police, when the police were calling her
18 and telling her to come back, she had stated she was leaving
19 with Maury. She was on her way to Michigan. As it turns
20 out she had never left. So, she was just not complying with
21 the police requests and commands to come back. Telephone
22 records indicated she had never left Charleston. She was in
23 a hotel in Ladson. She has since admitted to that. She was
24 not out-of-state, but she did lie to police and say she was
25 already halfway to Michigan, and she was in Ohio.

1 Your Honor, if I may also submit, the pathologist
2 indicated these injuries did not occur at one time. This
3 was a culmination of a continual beating. The estimation
4 was about two weeks, which just happened to coincide with
5 the exact amount of time this child had been in Shanita and
6 Erica's care.

7 THE COURT: I will be glad to hear anything further
8 from the State.

9 SOLICITOR GORDON: Your Honor, the family has come from
10 Michigan. I think there are three family members who would
11 like to speak on behalf of Victim

12 THE COURT: Certainly. I would be glad to hear from
13 them, and if they would tell us their names for the record
14 and spell their last names for the benefit of the court
15 reporter.

16 TOYI LESTER: My name is Toyi, T-O-Y-I, last name
17 Lester.

18 In 2007 I was diagnosed with uterine carcinoma and
19 everybody that knows me knows that I love children, and it
20 was my dream to start a family. Victim would share her
21 most precious questions -- we were shopping buddies, did our
22 nails together. She loved to get her hair done. She loved
23 to look good. We were just -- she was so special and we
24 were amazed at how smart she was.

25 I could teach her something and she could remember it

1 the next time I seen her, and I would be doing my homework
2 at my laptop. She would pick up my book and pick up a
3 pencil and paper and say "I'm doing my homework, too."

4 A therapist taught me to write a letter to help me deal
5 with my grief. So, I share this with you today.

6 Victim I told you that you were special and that
7 some day everyone would know your name. Never in a million
8 years would I have thought it would be for something like
9 this.

10 I enrolled you in Detroit Winthrop Academy because of
11 your love for music. There you were with your leotards and
12 tights looking so pretty. You got into class and looked
13 around and immediately made friends. Everybody was always
14 drawn to you.

15 Once the instructor started teaching and the music
16 started you started to dance on your own. It was such a
17 funny sight. We did not expect you to take over the class
18 and the only thing your mom could do was laugh. She was
19 always over the top.

20 So, what I want to say to the Court today is that I was
21 cheated, her mom was cheated, her dad was cheated, everybody
22 was cheated, the whole world was cheated of an extraordinary
23 individual and I would like the maximum sentence imposed.

24 THE COURT: Thank you, ma'am.

25 LANITA NICHOLSON: My name is Lanita Nicholson. I'm

1 Toyi's mother.

2 THE COURT: Yes, ma'am.

3 LANITA NICHOLSON: When we first met Victim she was
4 in a diaper, and we immediately fell in love with her. She
5 got into our hearts. She would walk by our house, pull out
6 her little pistol from the diaper and go pow, pow. I knew
7 from that day forward she was somebody to be reckoned with.

8 We took Victim and Ieshia and Toyi home. They were
9 there for over a year and we were so close.

10 Victim became my special precious little girl. We
11 cooked together. We ate together. When I did my homework
12 she would say do it Nana, then we can play afterward.
13 Homework, Nana, do your homework.

14 It was always something with her. We shared a love for
15 cookies and the night before she left that was our little
16 special treat. When I arrived home she was already getting
17 her hair braided for her trip here to South Carolina and
18 this was not her first visit here. She came to visit
19 Shanita and Erica twice before.

20 The year before she had been, and she stayed for about
21 a week, she had a good time with Maury. Earlier in the
22 year, 2009, about March, she was there visiting with them
23 for about two weeks. I talked to Victim on the phone
24 every other day.

25 When she visited this time it was different and I could

1 feel something wasn't right. I used to think everyday,
2 saying how come someone won't let me talk to Victim I
3 called the number. No one would answer. I would leave a
4 message. No one would return my call. I used to think
5 every day somebody needs to let me speak to Victim I
6 haven't spoken to her. In the past I spoke to Victim
7 every day, and sometimes more than once a day, and I
8 couldn't understand why I couldn't speak with her this time.

9 It was a great loss to us. Victim and Ieshia, on
10 several occasions, had established mommy and daughter day.
11 They would go out, just the two of them. They would go
12 sometimes where there was a playground where she would play
13 and ride and they would talk.

14 Victim was such a special and unique person that
15 wherever she went she got people's attention. The former
16 mayor of Detroit, on one occasion when they were having mom
17 and daughter day at a restaurant, was so infatuated with
18 her, her conversation she was having with her mom that she
19 ended up taking a picture sitting on his lap and it was like
20 that everywhere she went.

21 My neighbors, sometimes she would be outside in the
22 summer playing in the pool and they would play Marco Polo.
23 My neighbor would say whose voice is that. She would play
24 with my other neighbors up the street, their children, with
25 adults. She wasn't afraid of anything, and I want to

1 mention that too she had a dog, her own, cat. The girl got
2 the cat for Victim when she was -- a cat named Dash.
3 Everywhere she went -- before she got Dash, there was Sky.
4 Sky was a Terrier. No Fear Sky was about eight weeks old
5 when she came.

6 Victim was instrumental in helping us train her.
7 Sometimes, when they would come downstairs for breakfast, I
8 would say Victim stop kissing that dog. She would be at
9 the kennel, once again, kissing Sky. When I would turn my
10 back she would let Sky out. She would then sit on Sky and
11 feed her.

12 Today I can tell you Sky is the mildest tempered dog
13 ever, a Bull Terrier. They have a bad reputation. She was
14 very instrumental in Sky being as gentle as she is, and she
15 loves children and, and she is such a great loss. Sky had
16 puppies and Victim wasn't there.

17 My daughter-in-law was pregnant and she had the baby.
18 Victim didn't get to see her because she delivered two
19 months early. She was in ICU. She knew she was coming, but
20 she never got to see her because she didn't get to come
21 home.

22 Victim was ours. Christopher came. She didn't get
23 to see Christopher. He was in ICU. He was born in August
24 and he stayed there. Victim had come here. So she never
25 got to meet him. She knew these babies were coming, and she

1 would tell me a baby is coming. I can't wait to meet the
2 baby. But she never got to see them.

3 My daughter's wedding was derailed. Victim was a
4 participant. My daughter's wedding didn't take place. It
5 was rescheduled, but Victim was buried in the dress that
6 she was going to walk down the aisle in my daughter's
7 wedding, and we went to the funeral home. I held her hand
8 as my niece braided her hair on her lifeless body.

9 when she left us she was fine, so full of life, so
10 happy, just enjoyed living, just loved people. No matter
11 where she went she never met a stranger. Everybody loved
12 her and I know she touched so many people.

13 My neighbors, all they want to know -- they had a
14 candle light vigil on the side of the house. My neighbor's
15 children, grandchildren were so touched. They took their
16 piggy bank and they brought it over and said can we help

17 Victim .

18 I want you to do something for Victim now, impose the
19 maximum sentence, and may I mention, Your Honor, that

20 Victim loved Erica. Ieshia loved Erica. She trusted her
21 implicitly with Victim . I said, "Ieshia, Victim doesn't
22 want to go visit this time." She said she'll be okay, but
23 that's not what we got, and I want you to know when Victim
24 left us she was sound in mind and in body. When she first
25 came to our home she had a severe case, psoriasis. I worked

1 with her and worked with her. Her skin was beautiful.
2 Everywhere we went she was beautiful. We went to auto shows
3 and she had on my hat. You couldn't even see her hair. She
4 had on a big jacket. I had on a hat and a jacket, but some
5 lady that was a model said who is that little girl. Her
6 face, she said she could be in pictures. She could be a
7 model. Look at her face. It's perfect in shape and form.

8 I informed Ieshia later what she said. I gave her the
9 woman's card. Nothing came of it because Victim did come
10 and visit and we didn't get her back. We sent her alive and
11 well and she returned to us in a box.

12 I would please ask you impose the maximum.

13 Thank you for hearing me.

14 THE COURT: Anyone else?

15 SOLICITOR GORDON: We have one more.

16 Ieshia.

17 IESHIA RICHARDSON: My name is Ieshia Richardson. I
18 was Victim mother.

19 Victim had such caring---

20 MS. GAY: Your Honor, could she sit down?

21 IESHIA RICHARDSON: I know in life terrible things
22 happen, but Victim didn't deserve anything she got.
23 Nobody deserves what she received.

24 I can't believe that the situation finally happened
25 this way. I'm sorry for Victim. I'm sorry I have to deal

1 with this. I'm sorry for their parents who have to deal
2 with it. Everybody involved. Not just me.

3 I loved Victim with all my heart. I will never
4 forget her, and all I have left of her is clothing, shoes,
5 toys, and a lock of her hair. I wake up every day hoping
6 this is just a nightmare, that I'm going in the next room
7 and my daughter is going to be in there playing or on the
8 phone, anything. Just not this. I wouldn't wish this pain
9 on anyone.

10 But Victim deserves for justice to be served. She
11 was killed at the hands of two people who I trusted, who she
12 trusted, who she loved very much, and she didn't return.

13 All I ask is that justice be served on her today, that
14 she finally can seriously rest in peace, and there may be --
15 just maybe I can breathe a breath of fresh air without
16 crying.

17 I wake up in tears. I go to sleep in tears because the
18 best part of me is not here. All I have left is the hollow
19 shell. I'm past being sad about this. I am angry. I am
20 very, very angry. I'm consumed with anger and all types of
21 emotions that I can't express nor understand. I just seek
22 peace of mind. I need peace of mind and Victim gave me
23 that, if only for three years.

24 Your Honor, please, please, please, I agree that the
25 maximum sentence should be imposed and I'm sorry that that

1 is the way I feel, and I know this is going to be hard on
2 me. It is going to be hard on everybody.

3 SOLICITOR GORDON: Your Honor, I think that is all the
4 family that is going to speak. I would like to add, you
5 know, sometimes we get homicide by child abuse cases where
6 the child usually has a head injury when someone has lost
7 their temper one time and the child got struck or hit and it
8 turns out to be a fatal blow.

9 This case is different. This wasn't lose their temper
10 one afternoon. This was repeated conduct over two weeks. I
11 mean they literally beat the child to death and then sat
12 around and did nothing. So, every day that they beat that
13 child was another conscience decision to choose their life
14 over ^{victim}, and we would ask you to take that into
15 consideration.

16 THE COURT: Is there any indication as to why, what
17 precipitated these beatings?

18 SOLICITOR GORDON: The only information we have is just
19 from the defendants themselves saying that she peed on the
20 floor and she was getting beaten for having an accident.
21 She was three. She was potty trained, Your Honor, which I
22 have spoken to the pathologist. The child at the end, I
23 don't know when this injury occurred because they could not
24 date it specifically, but she had such an injury and you
25 could see it in one of the autopsy photographs, right above

1 her pelvis, that it's possible that she had lost control of
2 her bladder because of the beating, and so their own
3 beatings precipitated additional beatings.

4 THE COURT: Is there any indication the other child in
5 the home had any problems?

6 SOLICITOR GORDON: The other child in the home gave a
7 forensic interview of what she heard happen in the house.

8 THE COURT: How old was she?

9 SOLICITOR GORDON: That child, I believe, was seven at
10 the time.

11 MS. WOOSLEY: She was eight, Your Honor.

12 SOLICITOR GORDON: I apologize. She did not have
13 physical injuries, Your Honor. Victim was, for whatever
14 reason, the target.

15 THE COURT: She indicated she had observed or heard
16 some of what was going on?

17 SOLICITOR GORDON: Yes, Your Honor.

18 THE COURT: Was she able to repeat that?

19 SOLICITOR GORDON: She was able to repeat that, and she
20 was there, her mother left with her, but she was there as
21 Victim died. She talked about Victim not opening her
22 eyes. She was able to view them try to awaken her. So that
23 child actually had to watch as her best friend, who she
24 thought of as a sister, died.

25 THE COURT: Were there other family members who didn't

1 wish to address the Court?

2 SOLICITOR GORDON: That's correct. We have other
3 family members here.

4 THE COURT: Does the State have a position on
5 sentencing?

6 SOLICITOR GORDON: Your Honor, the State would ask for
7 the maximum sentence to be imposed. I'm sorry. We have
8 other family members who want to speak.

9 THE COURT: Yes, sir.

10 MICHAEL TEE: My name is Michael Tee.

11 THE COURT: Spell your last name.

12 MICHAEL TEE: T-E-E.

13 THE COURT: Thank you, Mr. Tee.

14 MICHAEL TEE: I am Victim uncle, and I never got a
15 chance to meet her until the funeral.

16 I got a call from my mother and father in Miami, and we
17 were at our business that night. We closed, closed early
18 because it was just unbelievable. The Richardson family and
19 Tee family, we ask for the maximum. That is what we ask.

20 SOLICITOR GORDON: Your Honor, Detective Williams, who
21 was the lead detective, may also want to speak.

22 THE COURT: Certainly. Oh, I'm sorry,
23 Ma'am, I apologize.

24 CASSANDRA WILLIAMS: Good morning, Your Honor.

25 Two years ago today a three year old was seen lifeless

1 in the hospital bed. Her body wasn't soiled, but it was
2 covered in scars. Each scar tells a story of how she was
3 beaten, whipped without love, without compassion in every
4 disregard.

5 with that being said, those pictures, those reports you
6 may read, they don't compare to what we saw. I hope that
7 you give the maximum that the Court will allow to these two
8 people.

9 THE COURT: Ma'am, tell us your full name.

10 CASSANDRA WILLIAMS: Cassandra Williams.

11 THE COURT: Thank you.

12 SOLICITOR GORDON: Just so the record will reflect,
13 Detective Tiffany Snapp, who also worked on the case, is
14 present in the courtroom today.

15 Summerville Police Department worked very hard on this
16 case and they have been involved throughout the process.

17 THE COURT: Anything further?

18 SOLICITOR GORDON: That's all, Your Honor.

19 THE COURT: If you all will give me one moment to read
20 what has been submitted by Ms. Gay, and then I will hear
21 from both, from Ms. Woosley and then I will hear from Ms.
22 Gay.

23 Any objection from the State?

24 SOLICITOR GORDON: No objection.

25 MS. GAY: No.

1 MS. WOOSLEY: No, Your Honor.

2 THE COURT: This is going to take me maybe about ten
3 minutes.

4 Okay?

5 (Pause.)

6 THE COURT: All right. Ms. Gay, Ms. Woosley, I will be
7 glad to hear from you.

8 MS. WOOSLEY: Thank you, Your Honor.

9 May it please the Court.

10 Shanita Cunningham has told me she is very sorry for
11 what happened to Victim in this case. I just want to go
12 through some housekeeping matters to put on the record.

13 THE COURT: Sure.

14 MS. WOOSLEY: Ms. Cunningham asked me about an Alford
15 plea in this case. I told her an Alford plea, there is some
16 benefit. There was some benefit to pleading straight up to
17 the charge of child abuse. I told her I did not think an
18 Alford plea was appropriate in this case with all the facts
19 in the case.

20 THE COURT: Did you also explain to her the Court still
21 treats it as a guilty plea?

22 The question still would require her to admit her
23 guilt?

24 MS. WOOSLEY: Also I told her the minimum sentence
25 cannot be suspended. I just wanted to put that on the

1 record. I had explained that to Ms. Cunningham.

2 THE COURT: That has always been the Court's posture.

3 MS. WOOSLEY: Correct. I just wanted Ms. Cunningham to
4 hear me tell the judge that as well.

5 Judge, Ms. Cunningham was 23 at the time of this when
6 Victim came to visit with her. During the course of
7 preparing for a trial in this case we had decided that we
8 wanted to plead guilty and Shanita does admit to some of her
9 guilt in this case.

10 we also signed an agreement with the State saying that
11 Shanita would testify against her co-defendant, Erica Butts,
12 at trial, and she would be very valuable to the State.
13 Although Shanita does admit her involvement in Victim
14 death, we believe she is less culpable. When she was
15 arrested she was arrested under the aiding and abetting part
16 of the statute and subsequently was indicted for the
17 principal part of the statute as well.

18 Shanita Cunningham would have been very valuable in
19 that Erica Butts' DNA was found on duct tape. Ms.
20 Cunningham would have been prepared to testify about Erica
21 putting tape about her face.

22 Additionally, when I spoke with the pathologist, she
23 told me she could not determine how long the wounds had been
24 on the body. The State said two weeks. It could have been
25 anywhere.

1 THE COURT: well, I think, from the Court's experience,
2 having seen the autopsy photos, the child came to South
3 Carolina with no bruises.

4 MS. WOOSLEY: certainly there were many old bruises and
5 there were many fresh bruises. We agree with that. We just
6 do not know exactly the day they arrived, that two week
7 period that Victim had been in Charleston.

8 THE COURT: I'm sorry. Repeat that. I didn't
9 understand the last thing.

10 MS. WOOSLEY: Victim had been in Charleston for
11 exactly two weeks, and we're not agreeing that the beating
12 started the very first day that Victim came to Charleston.
13 We do admit, throughout the course of Victim being in
14 Charleston, that both Erica and Shanita would hit her for
15 urinating on the floor. Shanita never knew that the
16 injuries were life threatening. There were multiple
17 injuries in this case, and she does understand that -- she
18 understands that the lack of healthcare is under the statute
19 as well. She is admitting her guilt.

20 Shanita Cunningham, as a child, she was physically and
21 sexually abused. She was beaten by her stepfather with a
22 belt and switch, dog leashes from the age, age of four to
23 ten. When she got between eleven and twelve she would still
24 get beat with a switch. She also got hit with the hands
25 more.

1 At twelve years old, because of all the physical
2 violence in her life, she had to go into placement because
3 she kept trying to run away from home because she wanted to
4 run away from the violence. She was in placement, and while
5 she was in placement, her mom and her step-dad separated.
6 So once she got out of placement, her and her mom began to
7 have a good relationship with one another.

8 As you can see in the report, the doctor who evaluated
9 Ms. Cunningham said her experiences as a young adult
10 affected her growing up. It is not, in my culture or many
11 cultures -- excuse me. Let me rephrase that.

12 In her culture, she was hit and nothing severely
13 happened to her. You had to follow what you were born with
14 and one hitting, corporal punishment, is allowed to a
15 certain point and it got out of hand in this case and we
16 admit that.

17 Shanita never knew that the injuries were life
18 threatening in this case. When ^{Victim} was sleeping and
19 she did not wake up, Shanita did try to do CPR to ^{Victim}
20 to get her to wake up. They did not know that she was
21 passing away.

22 In addition to that, she has her young daughter, Maury,
23 who is now ten years old. Maury has never been -- DSS has
24 never been involved in Maury's upbringing. Maury would
25 really like to see her mother home with her.

1 She was at the home when this happened. She does say
2 that she knows that her mom never meant to injure Victim
3 Maury also says that she sometimes -- she never experienced
4 any physical violence herself, and if she did get hit on the
5 hand, it never hurt. It never left markings.

6 Shanita has been around children her entire life. She
7 has always been a babysitter. She has always been loving
8 and caring.

9 I have submitted Dr. Holcovich's report, her statement,
10 Erica's statement, and the letters from Maury and her
11 mother, and I won't go into them because you have already
12 read them.

13 Your Honor, Shanita is 25 years old. She has
14 a daughter that doesn't have a father in her life. Her
15 daughter is living with her mother right now in Michigan.
16 Her mom tried to be here today, but her brother couldn't get
17 off work. So they could not make the trip down from
18 Michigan.

19 We would ask the Court to impose a mandatory minimum
20 sentence of twenty years in this case. Shanita Cunningham
21 did not realize what -- that the injuries were causing
22 Victim to pass away. Shanita was cooperative with the
23 State and would have been cooperative at a trial against
24 Erica Butts. She is very sorry for what she has done, and
25 I'm not sure if she would like to address the Court or not,

1 but she has written a letter. She would like to read it for
2 the Court.

3 THE COURT: Certainly. You may proceed.

4 SHANITA CUNNINGHAM: I would like to first express that
5 I -- how sorry I am any of this ever happened. She trusted
6 me and I failed.

7 There is not a day that goes by I don't wish I could go
8 back and change everything. I understand I'm here before
9 this Court for a decision. I take full responsibility. You
10 need to know none of this was intentional. I want to
11 apologize to my mother as well as my daughter completely for
12 you-all's anguish and heartache. This has affected many
13 lives and to all those people I want to apologize.

14 Your Honor, I beg for your mercy. I will never
15 purposely or maliciously hurt anyone. I have always tried
16 to be a great mother and help all kids. I have been taking
17 care of children since I was twelve and have always been one
18 who kids come to to have a fun, safe time.

19 I want to somehow remedy this as soon as I may. One
20 day soon I'm praying I'm able to obtain a degree and, once
21 again, be someone who is helping and contributing to my
22 family. Again, I sincerely apologize to each and
23 every individual affected by this.

24 MS. WOOSLEY: And lastly, Your Honor, just to get an
25 idea, Shanita did get pregnant with Maury in the ninth grade

1 and she continued to graduate from high school with her
2 daughter. she also went to school for cosmetology, for
3 massage therapy.

4 Excuse me, Your Honor.

5 She has been productive and she's gone through some
6 struggles. A lot of people, a lot of my clients, if they
7 are pregnant, in the ninth grade, it is very hard to finish
8 school. She did have the determination and will to finish
9 high school and continue her education.

10 Again, we would ask the Court for the minimum
11 sentence of twenty years.

12 THE COURT: Ms. Gay.

13 MS. GAY: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 MS. GAY: This is just such an unfortunate day. There
16 is just no way -- we took a ten minute break and people
17 would come up to me, it is just so hard to be here, it is
18 hard to be in this spot, hard to be in any of this process.

19 Erica is here with her family. Her mother, who is the
20 one who left the courtroom earlier and came back, she would
21 like to address the Court at some point. Your Honor, she
22 has other family with her here.

23 Erica is a really mild person. Meek may be the best
24 way to describe her. She is -- the family are astonished
25 that she's here today in this situation. Never would

1 anybody have thought that she would ever have done anything
2 to a child, allowed anything to happen to a child that would
3 lead to the child's death. It was beyond anything that
4 anybody who knew her could imagine.

5 she loves the victim's mother. She loves the
6 victim. She's best friends. She was given the job of
7 taking care of the child and felt that, you know, the child
8 would be safe in her home. She was actually the guardian of
9 Maury during the period of time that her co-defendant could
10 not be with the child. So, she was the primary caregiver of
11 that little child and there is just nothing that would have
12 prepared anybody for this situation.

13 One thing I have handed up this morning which I know
14 you read, two things, was the report from MUSC, which
15 obviously we discussed when she entered her plea, because
16 when you see a client like this, you just -- you
17 immediately, from my twenty years of doing it, go is there
18 some organic problem, is it a mental health problem, you
19 know, what can be going on?

20 So I had her evaluated by MUSC where they found she was
21 not only competent, but also criminally responsible and that
22 report is provided to the Court. And then I just wasn't
23 comfortable with -- I felt like, from talking to her mother
24 and from talking to several of her friends and getting
25 e-mails and statements that I have provided to Doctor Wade,

1 Your Honor, about the history of this couple, this defendant
2 and co-defendant, my client and the co-defendant, I just
3 wasn't comfortable that I had done everything I'm supposed
4 to do because, as a defense attorney, we're supposed to find
5 defenses. We're supposed to help a client find some kind of
6 way to justify, might be the right word, something that had
7 happened like this.

8 So everything that I was told was that her family does
9 not like their relationship together, and that her family
10 had tried for years to have her, I guess, break up with Ms.
11 Cunningham and break that relationship. I think part of the
12 problem is the entire time that they were involved Maury has
13 always been involved and she has grown very, very attached
14 to Ms. Cunningham's daughter, Maury, and sees her as her own
15 child, and she, over the years, they have had violence
16 between the two of them, as Doctor Wade's report said.

17 He reported an abusive dysfunctional relationship with
18 Shanita Cunningham, who is controlling and aggressive, and
19 he also said her reports of numerous individuals, which he
20 cites in the reports, Ms. Cunningham often was physically
21 aggressive in her behaviors toward Ms. Butts, who
22 remained fearful.

23 Now, in my practice I tried very hard to expand on that
24 to see if my client would open up to me about some stuff
25 that maybe I could provide to the psychologist to help her

1 create maybe a Battered Woman Syndrome defense. Erica would
2 never do that. She would never tell me anything bad about
3 Ms. Cunningham. She loves her and has loved her for years,
4 and what happened in that house that day, whether they both
5 just -- I think what the worst part is there is no specific
6 incident that led to death. I mean, as the coroner
7 reported, it was a history of, you know, bad beatings that
8 resulted in a little tiny child being, her immune system
9 being diminished as she was being beat, but there is no
10 specific incident that you can say Erica, can you tell me
11 what happened two hours before, three hours before that
12 would have led to this child dying.

13 There was the situation where she fell in the bathtub
14 or something. There was blood in the bathtub, but it is
15 very possible that there was this big bruise on the back of
16 her head and Erica described it as a fall in the bathtub,
17 and then there was an area on the back of her leg, which I
18 know you have seen pictures, which was horrible looking and
19 Ms. Cunningham has admitted, at some point, she administered
20 a beating that led to some bad injury, and I believe that,
21 after that point, they both say that they treated it with
22 alcohol, which I think made the skin just, you know,
23 degenerate or something because---

24 THE COURT: I can't imagine you would use
25 alcohol. It must have been excruciating.

1 MS. GAY: They tell me -- I think what ended up
2 ultimately happening, it may very well be that situation
3 really diminished the child's immune system. I'm not making
4 any excuses for what went on in that household in the eleven
5 days. She has never denied that she was there, that she
6 participated, but the problem is that she can't give me, as
7 her defense attorney, a specific beating that would have led
8 to something that looks like what is in the pictures, and
9 that is the truth, and I have sent her to two different
10 psychiatrists and psychologists trying to see if there is
11 something that I'm missing, some kind of version of the
12 facts that I'm missing, and she has admitted her
13 responsibility.

14 She's pled guilty. She's here today to beg for mercy,
15 but she's so mild and so meek and normally not this type
16 person at all that it is just really difficult, it is
17 difficult for me and her family, but she's here not saying
18 anything. She never turned on anybody else. She never said
19 she did this, this, and this, it is really her fault. She
20 never said that and she never did that. She's here to
21 accept responsibility for her own life and her own acts and
22 I'm sure she would like to address the Court and I know her
23 family would.

24 THE COURT: Absolutely.

25 MS. GAY: But I would just ask you to please know that

1 nothing in her life -- I think Ms. Cunningham has had some
2 violent situations that have occurred in her life before,
3 but nothing in Erica's life would indicate that anything
4 like this would have ever been -- I mean the victim's mother
5 would have believed that Erica would have taken care of her
6 child, and it is just so unfortunate, Your Honor, and such a
7 hard day, and we just ask you please to consider the minimum
8 sentence.

9 She's only 25 years old, and that is a very, very long
10 prison sentence and she knows that and she knows where she's
11 going and she knows why and we would just ask you to please
12 consider the possibility of being merciful in this
13 situation.

14 I know her mother was one of the witnesses, I guess you
15 could say, in this case. Her mother is the one who actually
16 called 9-1-1, and her mother has spoken directly to Ms.
17 Gordon at the solicitor's office because she was interviewed
18 as a part of this case, and she told me, during the break,
19 that she was very concerned because Ms. Gordon was talking
20 to her obviously because she's a State's witness and my
21 client's mother, whose name is LaDonna Butts, openly told
22 her as much as she could tell her about the situation, and
23 she said that Ms. Gordon told her that she would ask for
24 twenty years.

25 Now, whether she did or didn't or whether she's

1 changing that or not, but that was something today in the
2 courtroom that her mother was very upset about.

3 I think that the only thing I would say, in conclusion,
4 Your Honor, is that whatever happened in the house after the
5 child began to get sick and ultimately died, neither of
6 these two people were prepared to deal with. They did not
7 have the skills, they did not have the maturity to know what
8 they were supposed to do, and then they called her mother
9 and, you know, she came and said okay, this is what we need
10 to do, and as the solicitor stated, my client has
11 consistently been very remorseful, very upset. I think she
12 referred to it as completely freaking out about the
13 situation, unable to -- unsure what to do because Ms.
14 Cunningham was on probation from another state, and so that
15 was, I think, one of the problems with the EMS, with calling
16 9-1-1, and, ultimately, not to put blame in any other place,
17 but she did leave and take her child and left because she
18 didn't want to interact with the police, and so I think that
19 was one of the issues that was presented when the child was
20 sick because she has some kind of problem with that and was
21 not supposed to be in this state.

22 And so I would ask---

23 THE COURT: You didn't tell me if either of them had
24 any prior record. That is a valid point she raises.

25 SOLICITOR GORDON: Your Honor, Ms. Butts does not

1 have a prior record.

2 Shanita Cunningham did have a prior forgery.

3 THE COURT: Okay.

4 SOLICITOR GORDON: An adult record.

5 THE COURT: From what state?

6 SOLICITOR GORDON: The probation was in Michigan at
7 some point, but I feel like it was from Indiana.

8 MS. WOOSLEY: Indiana, and if I may address the Court
9 after Ms. Gay, one more time.

10 THE COURT: All right. Ms. Gay, I apologize.

11 MS. GAY: I was just saying I think that was one of the
12 factors that was going through all their heads when they
13 were deciding whether they should call 9-1-1 or not call
14 9-1-1. Then, as I said, they called her mother who said all
15 right, 9-1-1 is going to be called and Shanita left.

16 Ms. Butts does want to address the Court.

17 THE COURT: Yes, ma'am.

18 LADONNA BUTTS: I'm LaDonna Butts, I'm Erica's mother.

19 THE COURT: Yes.

20 LADONNA BUTTS: I just want to say, first of all, I
21 know what the family is going through and I'm sorry that you
22 all have to deal with this.

23 MS. GAY: And one thing I would like to say, she had
24 two daughters killed in a car accident in 2001 I believe it
25 was?

1 LADONNA BUTTS: Yes.

2 MS. GAY: They were small children and they were
3 siblings of Ms. Butts. So when she says I know what you're
4 going through in terms of losing a child, she had lost two
5 children of her own and I just had forgotten to mention
6 that, Your Honor.

7 THE COURT: Yes, ma'am.

8 LADONNA BUTTS: And I honestly know how she feels, and
9 I just want to say that I feel that my daughter was in a
10 messed up relationship. Before this incident I had talked
11 to Erica for six months, until the day she called me,
12 because I knew me talking to her and dealing with her made
13 her relationship bad and the consequences to her would be
14 bad.

15 So I tried to stay away so she wouldn't have to deal
16 with the consequences from Shanita and Ieshia and her having
17 been friends since they were kids and they grew up in the
18 same neighborhood and Erica was there when Victim was
19 born. Erica has been in Victim life for three years,
20 constantly, not one month out of a year, but whenever she --
21 she had just moved to here for a year and whenever she was
22 in Detroit she kept Victim and I know in my heart that
23 Erica would not do anything to hurt Victim and I just ask
24 you please don't send my child to jail for the rest of her
25 life and I know she didn't mean for this to happen.

1 THE COURT: Anyone else?

2 JESSICA BELL: Erica, no matter what anybody think
3 about you, we love you and you know that. You sent her down
4 here for Erica to take care of her, but everybody -- the
5 evidence is showing something, but nobody really knows what
6 happened. Like they paint the picture that she's a monster,
7 she is not. This is my sister.

8 When my mom was gone, my sister was there. She dropped
9 out of school. She raised us and not one of them years when
10 she was getting up, putting us to school, she never put
11 hands on us. She would never hurt a child. She know how we
12 feel. She wouldn't do that to Victim . She know how it
13 feel to lose a child, lose kids. She wouldn't even hurt a
14 child.

15 So I'm asking, Your Honor, please don't take my sister
16 away for the rest of her life because I already lost two and
17 I just beg that you please give her any type sentence or
18 anything. We're so sorry. That's all I can say for you
19 all.

20 Thank you.

21 THE COURT: Yes, ma'am.

22 Tell us your name for the record.

23 JESSICA BELL: Jessica Bell, B-E-L-L.

24 THE COURT: Anyone else?

25 MS. GAY: No, Your Honor.

1 THE COURT: Yes, ma'am.

2 MS. WOOSLEY: Your Honor, just briefly.

3 The reason why Shanita left that day, she told me Ms.
4 Butts told her to take Maury from the home so DSS wouldn't
5 take Maury right away. She wanted to get Maury to her
6 grandmother, to her mom. That is why she left the home that
7 day.

8 She wasn't trying to avoid the police. She was just
9 looking after the safety of Maury, and Abigail walsh told
10 her, she contacted Abigail walsh in the beginning and she
11 told her not to turn herself in until a warrant was issued
12 for her arrest. When the warrant was issued she went to the
13 police station and turned herself in.

14 SOLICITOR GORDON: Your Honor, in addition to Ms.
15 Cunningham's forgery, she also, in '06, had a misdemeanor
16 assault out of Michigan, Detroit, Michigan.

17 MS. WOOSLEY: That was dismissed.

18 SOLICITOR GORDON: It is not indicated here, but I
19 don't have a certified conviction for it.

20 Your Honor, regarding the plea agreement that Ms.
21 Cunningham signed right before as we were getting ready for
22 trial, both defense attorneys said I think my girl will
23 turn, I think my girl will turn. In the end, I sent them
24 both the same, if they wanted to enter that kind of plea
25 agreement, to testify, but they both pled guilty the same

1 day.

2 So the State never actually entered into an agreement
3 with them and Ms. Cunningham didn't provide any cooperation
4 with the State. The statement she gave to her defense
5 attorney was turned over to us when it was turned over to
6 you.

7 THE COURT: So you're saying that any representation
8 that somehow this, in any way, affected the State's decision
9 on prosecution, there wasn't anything you perceived would be
10 beneficial to you?

11 SOLICITOR GORDON: Your Honor, she never, she never did
12 cooperate. So I don't know what she might have said. But
13 she never did cooperate with us. At some point I was
14 contacted from both attorneys saying I think my client will
15 cooperate. We were prepared to go forward with neither of
16 them. We didn't require either of them to go forward and
17 there were no offers on the table.

18 THE COURT: And are you saying they both pled guilty?

19 So it is really -- you don't know if anything
20 appreciable would have resulted because both of them pled
21 guilty on the same day?

22 SOLICITOR GORDON: Correct.

23 THE COURT: And they both were willing to testify
24 against each other?

25 So you---

1 SOLICITOR GORDON: Exactly.

2 MS. WOOSLEY: And it is my understanding, Your Honor,
3 just to be clear, that Ms. Gordon had been talking to Ms.
4 Butts about it because she's a witness in the case, and I
5 told her that Shanita, that day, was going to enter into an
6 agreement to testify against Erica Butts at trial. After
7 that, then through phone calls, conversations recorded at
8 the jail, after that is when I believe Erica Butts decided
9 to plead guilty to the charge, after she realized that
10 Shanita Cunningham was willing to testify, and Ms. Butts
11 contacted Shanita's mom in Detroit and had phone call
12 conversations.

13 So I'm not sure if that enticed Erica Butts to plead
14 guilty to the charge. I know that Shanita Cunningham pled
15 prior to Erica Butts and we thought there was going to be a
16 trial.

17 THE COURT: They pled on the same day, didn't they?

18 MS. WOOSLEY: Yes, one before the other. We were
19 prepared to bring Shanita Cunningham that Monday to the
20 Solicitor's Office to discuss this case, and I had spoken
21 about that with Ms. Gordon, and I'm not sure if Ms. Butts
22 would have pled guilty but for Shanita Cunningham.

23 MS. GAY: Your Honor, of course, that requires me to
24 say something else. My client has been in the county jail
25 with Ms. Cunningham two years.

1 THE COURT: That was my other question.

2 MS. GAY: They are segregated, but during the course of
3 the two years there has been, you know, various types of
4 communication between the two of them. Right before what
5 her attorney is discussing, my client and I have documented
6 this from other witnesses and people at the jail, my client
7 started feeling very intimidated by her co-defendant, and
8 she contacted me and her mother and said all this is going
9 on, and, of course, it was all because of the fact that the
10 case was coming up and we needed a resolution.

11 My client was feeling as if she was being informed,
12 hey, I'm going to go after you, this type thing. My client
13 has never done that. That has not been her approach in this
14 situation at all. She then said to me what do I do, how do
15 I handle this.

16 I notified some people at the jail. We did some things
17 and I had also been talking to Ms. Gordon about a proffer or
18 sitting down and talking to them, but that just didn't
19 happen, and it didn't need to happen in this case. She
20 eventually informed us she didn't offer anything different
21 if any of us talked to them anyway. So we made the
22 decision---

23 THE COURT: In other words, she didn't need them to
24 prove her case. So if they did it they did it at their own
25 peril.

1 MS. GAY: And the case became ready to be resolved and
2 decisions were made, but there is not, you know, as I said,
3 I have offered my client several opportunities just, you
4 know, spill out all these bad things about Ms. Cunningham,
5 mainly just because she could, under the circumstances of
6 providing people for her to talk to, and she has never
7 chosen to do that. She has chosen to say specifically, you
8 know, we both disciplined her, yes we argued, but we argued
9 because we both have reasons to be upset, but yet,
10 personality wise, I think it is objective, I have a meek
11 personality client, and the co-defendant is much more
12 aggressive, objectively from things that have happened in
13 her life and her history, and I think that has played out in
14 other statements that have been given to me by their family
15 members and friends.

16 THE COURT: Anything -- I saw you talk---

17 MS. WOOSLEY: Your Honor, I think Ms. Cunningham wants
18 me to make sure that you know, on the day of ^{Victim}
19 passing, Erica Butts admitted to the police officers that
20 she whipped ^{Victim} on two separate occasions, each time
21 with a belt. During this time Shanita was not present. She
22 was at Wal-Mart picking up Neosporin, gauze, and I think I
23 have receipts of that.

24 But Ms. Cunningham wanted me to tell you that. I told
25 her it was provided in the report, the statements I gave,

1 but she wanted me to put that on the record.

2 MS. GAY: The only thing I would like to say, Ms. Butts
3 has not had an opportunity to address the Court.

4 THE COURT: Absolutely.

5 MS. GAY: I have done all the talking.

6 THE COURT: If she would like to speak she most
7 certainly can.

8 Yes ma'am.

9 MS. GAY: You have to speak up loud.

10 ERICA BUTTS: It's been a hard two years for me for the
11 fact I have known Ieshia so long and her being my best
12 friend, not only my best friend, but Victim was her only
13 child and to go through something like this, to lose her
14 only child -- I really didn't know that she was hurt. If I
15 had I would have done something, and this is hard to deal
16 with because me and Ieshia grew up together.

17 We have talked about certain things that I never told
18 my mother about. Ieshia was the first person I told I got
19 raped when I was small. I never told anybody. Not even my
20 mama. She was the person I confided in.

21 Ieshia use to come to my house when she was having
22 problems with her mother and stay with me. She was
23 basically taking care of her at the age of fourteen,
24 fifteen.

25 Not only that, I was at the hospital when Victim was

1 born. I was with her. I sat there and watched her go into
2 labor. I watched her go down to two centimeters. I watched
3 her go back up to three centimeters. I was there when she
4 had Victim .

5 To lose her, it was like losing my little sisters all
6 over again, and it is hard for me to get over a lot of
7 things. I just feel like I let her down. I feel like I let
8 my mama down, even though I hadn't talked to her in so long.
9 I let my sister down and my little brother. That is all the
10 family I have right now, and to go to prison for the rest of
11 my life, I don't know how I can handle that.

12 On that day I was responsible, but I didn't mean to
13 kill her. Never. That is not me. I just think about this.
14 I think about her situation every day for the last two years
15 and if there's any way I could go back and change that and
16 bring her back, change some things or know something was
17 wrong sooner, I would have done that. I can't and I have to
18 live with that for the rest of my life.

19 It is on my conscience. I let my best friend down is
20 on my conscience. It was her only child. It was like
21 losing my child. I just ask you to please just be as
22 lenient so I still would have some time to rebuild a
23 relationship with my best friend, rebuild the relationship
24 with my mother.

25 I'm sorry. I will always love you, no matter what. I

1 just want to tell you I'm so sorry.

2 THE COURT: Anything further from the State?

3 SOLICITOR GORDON: Nothing from the State, Your Honor.

4 THE COURT: Anything further from the defense?

5 MS. WOOSLEY: No, Your Honor.

6 THE COURT: Anything further, Ms. Gay?

7 MS. GAY: No, Your Honor.

8 THE COURT: I have listened very intently to the
9 argument of the State as well as the mitigation presented by
10 both Ms. Gay and Ms. Woosley, the statements of the people
11 present, that being the victim's family, as well as Ms.
12 Cunningham's family is not here, but Miss Butts' family, and
13 I have had the ability to review all the documents that were
14 presented to the Court, that being the sentencing memoranda
15 that Ms. Woosley provided as well as the attachments, that
16 being the police reports, and also the other statements.

17 without belaboring it, you know, all the attachments
18 you have submitted and those, of course, will, you have
19 already filed it with the file, be made a part of the
20 Court's record, and also, Ms. Gay, the items that were
21 submitted by Ms. Gay, those being the evaluation for
22 criminal responsibility and the report provided by Doctor
23 Wade, and I assume you're going to file those and make those
24 a part of the record as well.

25 MS. GAY: Yes, ma'am.

1 THE COURT: I have also had the ability to review the
2 funeral program of the minor deceased in a bookmark, a
3 collage of pictures that the family provided for the Court's
4 benefit so that I could see what she looked like prior to
5 her dying. I was going to say expiration, her passing, but
6 about the reality is her death, and I have to be transparent
7 for a moment.

8 I have never had anything affect me as profoundly as
9 the pictures I viewed of this child, and as my mentor would
10 often say, things have to fit together, that the thing about
11 doing what we do for a living, we're the only objective
12 person listening to it. So we listen to all parts of it and
13 it all has to fit, and, of course, it is the defense
14 attorney's job to present things in the best light for their
15 client, mitigation and otherwise.

16 What I'm hearing simply doesn't fit. What doesn't fit
17 is what I saw in those pictures. That child was
18 systematically beaten to death. There is no flowery way for
19 me to say that.

20 I have tried capital cases. I have seen the most
21 graphic of photographs in my life, and I have never seen any
22 more graphic than that. She literally was beat to death,
23 and it did not happen one day. It did not happen two days.
24 It happened systematically over a course of time, and Ms.
25 Gordon did not mislead the Court when she said there was not

1 one part of that child's body that was not touched except
2 the soles of her feet, and while I knew, prior to hearing
3 what you all presented to me, I think there was one dominant
4 member of this relationship. I knew there was a dominant
5 component to the relationship, and I knew there was a, for
6 lack of a better word, a subservient member in the
7 relationship, but, nonetheless, both are equally culpable.

8 One had to commit it and one had to watch it and not
9 stop it and everyday there was an opportunity to stop it.
10 Everyday there was an opportunity to save this child's life,
11 and normally, where there are young defendants in a case and
12 there is a death that occurred, I generally look at the life
13 expectancy of the child or the person whose life has passed
14 and take into consideration any mitigation that is
15 appropriate, and, in this instance, her life expectancy
16 outlives the life expectancy of the individuals who are
17 culpable for her death.

18 So, when you look at that type of analysis, the bottom
19 line becomes in this case that a child's life was taken
20 needlessly and over what?

21 I'm convinced, after looking at the autopsy photos, she
22 no longer had control of her bladder and I don't know what
23 precipitated a child going from being potty trained
24 to doing that behavior she was involved in. It was
25 something that happened in the environment that causes a

1 child to go from one behavior it learns to another behavior.

2 She just started wetting the floor. There is something
3 in that dynamic that happened that is disconcerting, and I
4 have no doubt that -- I have no reason to believe that Ms.
5 Cunningham's child, Maury, was physically abused in any way.
6 But certainly what she was exposed to during the course of
7 that two weeks or during the course of even this
8 relationship, it was dysfunctional at best and harmful to
9 her and contrary to her best interest.

10 Based on what has been presented to the Court, the
11 profoundness of what I have had to review in terms of the
12 egregious nature of what was perpetrated upon this child's
13 young life, it is appropriate that they both -- and, again,
14 the Court notes, for the record, irregardless of who struck
15 the last blow, irregardless of what ultimately caused her
16 death, what has become profoundly clear to this Court, their
17 best interest rose above that of that child and that they
18 were equally culpable irregardless of who actually threw the
19 last blow.

20 It is clear from what has been presented to the
21 Court it was a culmination of a course of acts. It wasn't
22 just one instance, but just the severity of the bruising in
23 her body tells me the significance of the blows that were
24 leveled to her on what was a continual basis, and what is
25 most striking is that you could, and, again, I'm used to

1 advocates embellishing, but, in this instance, Ms. Gordon
2 did not, the severity of the blows to that child's legs, and
3 to say you did not recognize what had been done, to ignore
4 what must have been excruciating sounds that came from that
5 child on a daily basis is more than just disconcerting to
6 this Court, and, as such, the Court finds it appropriate
7 that each be sentenced to the State Department of
8 Corrections for a period of life.

9 You will get credit for any of the time you served.

10

11

12 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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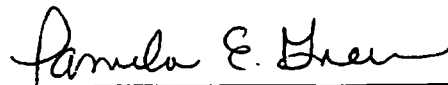
25

C E R T I F I C A T E

1
2
3 I, Pamela E. Green, Official Court Reporter for the
4 Seventh Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete Transcript of Record of the proceedings had and
7 evidence introduced in the trial of the captioned case,
8 relative to appeal, in the Court of General Sessions for
9 Charleston County, South Carolina, on the 3rd day of
10 November, 2011, as reported by Henry Young and transcribed
11 by myself to the best of my ability.,

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

14
15
16
17 January 27th, 2015
18
19

20 
21 _____

22 PAMELA E. GREEN, Court Reporter
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

County of)

Charleston)

2013-CP-10-D107
IN THE COURT OF COMMON PLEAS**FILED**

JAN - 8 2013

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

APPLICATION FOR

POST-CONVICTION RELIEF

Shanita Cunningham 348485

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Leath Correctional Institute
2809 Airport Rd Greenwood, SC 29649
2. Name and location of Court which imposed sentence Charleston County
3. Name(s) of co-defendant(s) (if any) Erica Butts (348484)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) _____

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Nov. 3, 2011 Life
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) was under the impression my lawyer filed an appeal but she didn't

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) was arrested for one thing but sentenced under another
- (b) Ineffective Counsel
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Arrested for aiding and abetting but was sentenced as a principle
- (b) lack of time spent, ill advisement, not qualified for type of case
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) attorney was suppose to but didn't
- (b) lack of knowledge on my part
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Cassandra Woosley
101 Meeting St Charleston, SC 29401
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. arraignment, plea & sentencing
- ii. _____
- iii. _____

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

Re-Trial or Sentence reduction

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

no

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenwood)

VERIFICATION

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

Shanita Cunningham

SWORN to and subscribed before me this 2
day of January 2013.

Sandra S. Dodson (L.S.)
Notary Public

My Commission Expires: 10-30-2019

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

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

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

Shanita Cunningham
Shanita Cunningham
Applicant

SWORN or affirmed to and subscribed before me this
2 day of January 2013.

Sandra S. Dodson
Notary Public

My Commission Expires: 10-30-2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	
	)	2013-CP-10-0107
Shanita Cunningham, # 348485	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed January 8, 2013, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the June 2010 term of the Charleston County Grand Jury for Homicide by Child Abuse (2010-GS-10-04127). Cassandra Woosley, Esquire, represented the Applicant. On August 25, 2011, the Applicant pled guilty before the Honorable Roger M. Young, Sr. On November 3, 2011, the Honorable Deidra L. Jefferson sentenced the Applicant to confinement for life.

The Applicant filed a timely Notice of Appeal. The Applicant was represented by Robert Dudek, Esquire, of the South Carolina Office of Appellate Defense. By Order dated June 11, 2013, the Applicant's appeal was dismissed for failure to file a Rule 203(d)(1)(B)(iv) response. The Remittitur was issued June 27, 2013.

II.

In this application for post-conviction relief the Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Lack of time spent, ill advisement, not qualified for type of case."
2. "Was arrested for one thing but sentenced under another."
 - a. "Arrested for aiding and abetting but was sentenced as a principle."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records for Charleston County and the South Carolina Department of Corrections' records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was

deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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

IV

The Applicant also alleges she was arrested and sentenced for the wrong charge. The Respondent submits this allegation is without merit because the applicant has failed to specifically set forth the grounds upon which this allegation is based in accordance with S.C. Code Ann. '17-27-50. The Respondent moves for summary dismissal pursuant to South Carolina Code Ann. '17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel and that the remaining allegation be summarily dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

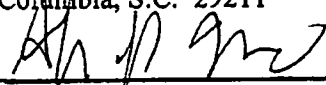
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

Columbia, South Carolina
Oct. 17, 2013

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SHANITA CUNNINGHAM, #348485

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

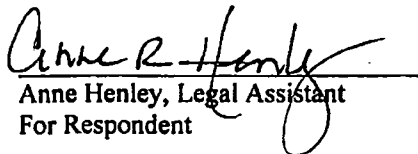
2013-CP-10-0107

AFFIDAVIT OF SERVICE BY MAIL

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

Shanita Cunningham, #348485
 Leath Correctional Institution
 2809 Airport Rd
 Greenwood, SC 29648

DATED this 17th day of October, 2013


 Anne Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Shanita Cunningham,	)	
	)	
Applicant,	)	
v.	)	Case No. 13-CP-10-0107
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Post-Conviction Relief Hearing in the above-captioned matter was held on January 19th, 2016, before The Honorable Perry H. Gravely in Courtroom 3E of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Christopher Murphy, Esq.
 123 Meeting Street
 Charleston, South Carolina 29401
 Appearing for Applicant

Rutledge Johnson, Esq.
 OFFICE OF ATTORNEY GENERAL
 P O Box 11549
 Columbia, South Carolina 29222
 Appearing for the State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
 P O Box 27145
 Greenville, South Carolina 29616-7145
dgarrison@sccourts.org

Shanita Cunningham v. State of South Carolina
Case No. 13-CP-10-0107
Hearing of January 19, 2016
Before The Honorable Perry H. Gravely

2

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INDEX OF EXHIBITS

- None Entered -

Shanita Cunningham v. State of South Carolina
Case No. 13-CP-10-0107
Hearing of January 19, 2016
Before The Honorable Perry H. Gravely

3

1
2 THE COURT: All right. Shanita
3 Cunningham.

4 MR. JOHNSON: Yes, sir, Your Honor.
5 This Shanita Cunningham versus the State of
6 South Carolina. It is Case Number 13-CP-10-
7 0107.

8 Ms. Cunningham was indicted at the June
9 2010 term of the Charleston County Grand Jury
10 for homicide by child abuse.

11 On August 25th, 2011, she pled guilty
12 before the Honorable Roger M. Young.

13 On November 3rd, 2011, The Honorable
14 Deadre L. Jefferson sentenced her to life
15 without parole, life confinement.

16 She filed notice of appeal and the appeal
17 was perfected by Order dated June 11, 2013.
18 Her appeal was dismissed for failure to file
19 a Rule 203(b)(1)(b)(4) response. Remittitur
20 was issued June 27th, 2013.

21 She filed a timely PCR application on
22 January 8th, 2013, and the State filed its
23 return on October 17th, 2013.

24 She is represented here today by Mr.
25 Chris Murphy.

Shanita Cunningham v. State of South Carolina

4

Case No. 13-CP-10-0107

Hearing of January 19, 2016

Before The Honorable Perry H. Gravely

1 THE COURT: All right, I will be
2 glad to hear from you.

3 MR. MURPHY: Thank you, Your Honor.
4 We have two grounds for her application.
5 First we are going to rest solely on the
6 record that she was not sworn in for her
7 -- when she took the plea before Judge
8 Roger Young. There is nothing in the
9 transcript or record that indicates so,
10 and I believe that there is some
11 testimony that they don't recall her
12 being sworn in at all.

13 The second ground goes to
14 ineffective assistance of counsel, which
15 in regards -- she was indicted under the
16 child neglect statute, which has two
17 parts. The first part, subsection (a)(1)
18 subjects a defendant to twenty years to
19 life sentence. The second part is a ten
20 to twenty-year sentence and that's what
21 we are going to be focusing on for this
22 PCR.

23 Our first witness would be Ms.
24 Cunningham.

25 THE COURT: All right.

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1 (WITNESS TAKES STAND)

2 SHANITA CUNNINGHAM, having been sworn to
3 tell the truth, and nothing but the truth,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MURPHY:

7 Q. Ms. Cunningham, you were charged in
8 Charleston County with child neglect; is that
9 correct?

10 A. Yes, sir.

11 Q. Do you recall pleading guilty before
12 Judge Young?

13 A. Yes.

14 Q. Specifically, do you recall whether
15 or not you were sworn in just as you were a
16 second ago, raising your right hand?

17 A. I honestly don't. I don't remember.

18 Q. I imagine that it was kind of a
19 whirlwind for you that day?

20 A. Uh-huh, (affirmative nod).

21 Q. You're going to have to give "yes"
22 or "no" answers, speak up?

23 A. Yes, sir.

24 Q. With regard to the charge, you were
25 represented by Miss Woosley, is that correct?

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1 A. Yes, sir.

2 Q. And the statute that you were
3 charged with had two parts to it or two
4 possible sentences?

5 A. Yes, sir.

6 Q. Tell the court what your under-
7 standing was of those parts of the statute?

8 A. My understanding was that I was
9 charged with the (b) part of the statute
10 until after -- when I found I wasn't was
11 after the sentencing, when I was asking Ms.
12 Woosley how was I able to get that sentence.

13 Q. You've got to be specific. I know
14 that you've lived this sentence ---

15 A. (Affirmative nod).

16 Q. --- but the court hasn't been here
17 for this. The (b) part of the statute,
18 you're talking about the aiding-and-abetting
19 part of the statute?

20 A. Yes, sir.

21 Q. What is the sentence, your under-
22 standing of the sentence under the aiding-
23 and-abetting portion of the statute?

24 A. Ten to twenty.

25 Q. Ten to twenty years?

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1 A. Yes, sir.

2 Q. All right. There is also the second
3 portion of the statute, which is the actual
4 infliction of harm, and what is your under-
5 standing of that sentence?

6 A. What do you mean? Like the time?

7 Q. What is the possible sentence that
8 you could get?

9 A. Twenty to life.

10 Q. Twenty to life?

11 A. (Affirmative nod).

12 Q. Now, did you talk about these two
13 sentences with your attorney, Ms. Woosley, at
14 all?

15 A. Afterwards, (affirmative nod).

16 Q. When you say afterwards, what are
17 you talking about? Are you talking about
18 after sentencing?

19 A. After sentencing, yes.

20 Q. That would have been the sentencing
21 in front of Judge Jefferson?

22 A. Yes, sir.

23 Q. Prior to the sentencing before Judge
24 Jefferson, did you have any conversations
25 with your attorney about the different

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1 aspects of the sentence?

2 A. No, sir.

3 Q. Prior to your pleading guilty, did
4 you cooperate, agree to cooperate with the
5 Solicitor's Office?

6 A. Yes, sir.

7 Q. And what did that cooperation mean?
8 What did you do as part of that cooperation?

9 A. I was supposed to go and do
10 something called a proffer.

11 Q. Okay. Did you sign what is called a
12 proffer agreement or statement?

13 A. I believe so. Yes, sir.

14 Q. Did you ever actually do this
15 proffer agreement?

16 A. No, sir.

17 Q. And the reason was because the co-
18 defendant pled guilty?

19 A. Yes, sir.

20 Q. So you offered to help but you never
21 got a chance to, is that a fair statement?

22 A. Yes, sir.

23 Q. Did you ever want to go to trial in
24 this case?

25 A. Yes, sir.

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1 Q. Tell the court about why you wanted
2 to go to trial?

3 A. How do I put this? Well, basically
4 I was told that it would be insensitive to
5 the people involved to put them through a
6 lengthy trial. Being that at the time, it
7 was still fresh and I didn't want to put
8 Ieshia through that. Also being that my
9 daughter was eight years old at the time, I
10 didn't know how it worked or what was going
11 to take place, so I didn't want to have to
12 subject her to that.

13 Q. All right, let's talk about these
14 people. The first one would have been the
15 victim's mother?

16 A. Yes, sir.

17 Q. All right. That would have been the
18 child's mother that you didn't want to put
19 through a trial?

20 A. Yes, sir.

21 Q. And then the second person that you
22 talked about was your daughter. Correct?

23 A. Yes, sir.

24 Q. And your daughter would have been a
25 witness?

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1 A. I am not sure.

2 Q. And you said that you were told that
3 it would be insensitive.

4 A. (Affirmative nod).

5 Q. Who told you that?

6 A. Ms. Woosley.

7 Q. And that was your attorney?

8 A. Yes, sir.

9 Q. Did you discuss the elements of the
10 two parts of the crime?

11 A. I don't understand what you mean.

12 Q. Did you understand that you were
13 actually arrested for the aiding-and-abetting
14 part of the statute?

15 A. Yes, sir.

16 Q. Did you ever -- were you ever shown
17 the indictment that shows that you were
18 indicted under the actor or primary aggressor
19 part of the statute?

20 A. No, sir.

21 Q. You said that you knew that you were
22 -- let me ask you this, when you were
23 pleading guilty before Judge Young, did you
24 understand -- what was your understanding
25 about the portion of the statute you were

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1 pleading to?

2 A. I thought I was pleading to the
3 aiding-and-abetting.

4 Q. That would have been the ten to
5 twenty years?

6 A. Yes, sir.

7 Q. And what was your understanding of
8 what type of sentence that you could get?

9 A. I thought that it was no more than
10 twenty years.

11 Q. Then when you went for sentencing
12 before Judge Jefferson you received a life
13 sentence. Correct?

14 A. Yes, sir.

15 Q. Did that shock you?

16 A. Yes, sir.

17 Q. Why did that shock you?

18 A. Because I did not know that I could
19 even be facing that amount of time.

20 Q. And did you talk to your attorney,
21 Ms. Woosley, after you received that life
22 sentence?

23 A. Yes, sir.

24 Q. What did you ask?

25 A. I asked her how was I able to

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1 receive that time and she said that -- sorry.

2 Q. Go on.

3 A. And she said that the solicitor
4 didn't do what she was supposed to do and
5 that she didn't say that the things that she
6 said she was going to say.

7 Q. Did you expect some type of deal
8 from the solicitor?

9 A. Yes, sir.

10 Q. Did you ever discuss the details of
11 this deal with your attorney?

12 A. No, sir, we never had a chance.

13 Q. Did you have any understanding about
14 going to trial for one portion of the statute
15 as opposed to the other portion of the
16 statute?

17 A. No, sir, because I thought that I
18 was only being charged with one part of the
19 statute.

20 Q. And that was the aiding and
21 abetting?

22 A. Yes, sir.

23 Q. Do you recall -- did you ever -- did
24 you maintain your innocence with Ms. Woosley
25 this entire time?

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1 A. Yes, sir, I did.

2 Q. When you pled guilty, was it your
3 understanding that you were pleading under
4 the aiding-and-abetting?

5 A. Yes, sir.

6 Q. Did you ask Ms. Woosley to -- do you
7 know if she filed a Motion to reconsider the
8 sentence?

9 A. Is that after I got ---

10 Q. Right.

11 A. Yes, sir, she told me that she did.

12 Q. All right. Do you know about an
13 appeal?

14 A. Are you talking about the one that
15 they're saying was dismissed?

16 Q. Right. I'm asking you did she ever
17 file an appeal on your behalf?

18 A. To my knowledge, (affirmative nod).
19 I thought she did until I received the
20 paperwork saying that it was dismissed
21 because the paperwork wasn't filed.

22 Q. Knowing that you could have received
23 a life sentence, would you have pled guilty?

24 A. No.

25 MR. MURPHY: That's all that I

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1 have, Your Honor.

2 CROSS EXAMINATION

3 BY MR. JOHNSON:

4 Q. Ms. Cunningham, your testimony is
5 that you maintained your innocence throughout
6 the whole process. Correct?

7 A. Yes, sir.

8 Q. But at the guilty plea, you told the
9 judge that you were pleading guilty because
10 you were guilty. Correct?

11 A. I ---

12 Q. Did you not ---

13 A. Can I answer or do I have to just
14 say yes or no.

15 Q. Yes or no.

16 A. Yes.

17 MR. MURPHY: Your Honor, I would
18 ask if she could explain her answer as well.

19 THE COURT: Yes, sir.

20 APPLICANT: (No verbal response).

21 CROSS EXAMINATION CONTINUED

22 BY MR. JOHNSON:

23 Q. And you also told the judge that you
24 wanted to give up your right to a trial in
25 this case and accept a guilty plea; correct?

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1 A. Yes, sir.

2 Q. Now your testimony, here today, is
3 that you thought you were pleading under the
4 aiding-and-abetting part of the statute;
5 correct?

6 A. Yes, sir.

7 Q. But you never told the judge that,
8 did you?

9 A. I didn't know that it was -- that
10 was the only thing that I thought that I was
11 charged with.

12 Q. But you're charged with a very
13 serious charge ---

14 A. (Affirmative nod).

15 Q. --- and you never stopped and had
16 the judge clarify what you were pleading
17 guilty to?

18 A. Right.

19 Q. Is that your testimony?

20 A. Yes, sir.

21 Q. And you stated that you were
22 satisfied with Ms. Woosley's representation
23 of you; correct?

24 A. At the time, (affirmative nod).

25 Q. At the time. But now you're not

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1 satisfied. Right?

2 A. I don't understand.

3 Q. You filed a PCR application saying
4 that she was ineffective. Correct?

5 A. Um-humm, (affirmative nod).

6 Q. Correct?

7 A. Um-humm, (affirmative nod).

8 COURT REPORTER: Is that a "yes"?

9 APPLICANT: Yes, ma'am.

10 CROSS EXAMINATION CONTINUED

11 BY MR. JOHNSON:

12 Q. But you at the time said that you
13 were satisfied with her representation.
14 Correct?

15 A. Before I reviewed the facts and the
16 paperwork, (affirmative nod).

17 Q. But nobody promised you anything to
18 get you to plead guilty?

19 A. No, sir. I just thought that I was
20 doing it under the pretenses of the proffer
21 agreement.

22 Q. But you gave up your right to a jury
23 trial in order to accept a guilty plea;
24 right?

25 A. Yes, sir.

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1 MR. JOHNSON: No further questions,
2 Your Honor.

3 MR. MURPHY: That's all we have,
4 Your Honor. Nothing further.

5 THE COURT: All right, you may
6 step down.

7 (WITNESS STEPS DOWN)

8 MR. MURPHY: We call Cassandra
9 Woosley to the stand.

10 (WITNESS TAKES STAND)

11 CASSANDRA WINSLOW WOOSLEY, having
12 been sworn to tell the truth, and nothing but
13 the truth, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. MURPHY:

16 Q. Ms. Woosley, do you remember
17 representing Ms. Cunningham?

18 A. I do.

19 Q. Do you remember going before Judge
20 Jefferson for sentencing?

21 A. I do.

22 Q. Tell me, what was your reaction to
23 the sentence of life imprisonment.

24 A. I was very shocked by the sentence.

25 Q. Why were you so shocked?

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1 Q. The charge itself carried anywhere
2 from twenty to life, what Shanita pled to.
3 We had spoken with the State and it was my
4 understanding in the case that Elizabeth
5 Gordon was going to tell the judge to give
6 some leniency to Ms. Cunningham because she
7 was going to help testify against Erica
8 Butts. However, Erica decided to plead
9 guilty prior to trial and they didn't need
10 her.

11 Q. For the court, Erica Butts was the
12 codefendant in this case?

13 A. Right.

14 Q. So there were two people charged,
15 Ms. Cunningham and Ms. Butts?

16 A. Yes.

17 Q And if I understand your testimony,
18 Ms. Cunningham was cooperating with the
19 State; correct?

20 A. She was cooperating with the State
21 but -- in the end, they didn't need her.

22 Q. And the reason they didn't need her
23 was because of the plea of the codefendant?

24 A. Correct.

25 Q. Now, in terms of some cooperation or

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1 some leniency, did you get anything in
2 writing from Ms. Gordon?

3 A. We had spoken on the telephone. If
4 I can refer to my Motion to reconsider the
5 sentence?

6 Q. Sure.

7 A. (Upon review), I have in here that
8 the State also told defense counsel that the
9 State would let the Judge know Ms. Cunningham
10 was prepared to be a valuable witness and
11 that Ms. Cunningham's intention was to spare

12 Victim family from going through a trial.
13 The State indicated that it would inform the
14 court that these factors should be taken into
15 consideration.

16 Q. And Victim was the child? The
17 victim? Correct?

18 A. Correct.

19 Q. And before we go any further, I just
20 want to ask you, do you remember whether or
21 not Ms. Cunningham was sworn in prior to her
22 plea before Judge Young?

23 A. I don't recall.

24 Q. All right. Now, going back to the
25 cooperation of Ms. Cunningham, she was

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1 originally charged with the aiding-and-
2 abetting language under the statute, correct?

3 A. Correct.

4 Q. Did you talk to her about the
5 sentence or the possible sentence under the
6 aiding-and-abetting portion or the statute?

7 A. I talked to her about the sentence
8 of both the aiding-and-abetting portion and
9 the principal.

10 Q. Okay. Did you talk to her about the
11 elements, about what the State would need to
12 prove?

13 A. Yes.

14 Q. Did you discuss going to trial with
15 her on either portion of the statute?

16 A. The trial would have been for the
17 principal, for the twenty to life.

18 Q. Right.

19 A. And that's what -- we were prepared
20 to go to trial on that charge.

21 Q. And there were some statements given
22 by the codefendant. Correct?

23 A. Correct.

24 Q. And did Ms. Cunningham give any
25 statements prior to her -- when arrested?

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1 A. Not to the police officers. Ms.
2 Cunningham gave a statement to our office,
3 that we then provided to the State to show
4 what we would have been telling them for the
5 cooperation part.

6 Q. And did you have any statements or
7 indication that Ms. Cunningham was the
8 principal actor in this crime?

9 A. No.

10 Q. So all of your evidence would led to
11 her aiding-and-abetting. Correct?

12 A. Not exactly.

13 Q. I just need to know -- and maybe I
14 am being picky. My understanding is that
15 Erica Butts was the primary aggressor or the
16 primary perpetrator. Correct?

17 A. Correct.

18 Q. And the evidence, as I understand
19 it, would have been that Ms. Cunningham aided
20 and abetted in this crime; correct?

21 A. You could say that.

22 Q. Well, I want you to say it.

23 A. I -- she was -- when we went to --
24 we were going to go to trial that Shanita was
25 the principal. If there's two people -- I

1 think that Erica was more culpable but
2 Shanita was also culpable and she admitted
3 her culpability. At trial, I think that she
4 would have lost after trial from her
5 involvement in this case. I discussed that
6 with her. At trial, I told her that the
7 likely outcome would be life after a trial.
8 I never thought that would be the likely
9 outcome of a plea.

10 Q. And when you say the likely outcome
11 would be life after a trial, that would be
12 obviously because she would have been
13 convicted under the primary aggressor part of
14 the statute?

15 A. Correct.

16 Q. And did you discuss with her her
17 chances of being convicted under the aiding-
18 and-abetting portion of the statute?

19 A. I can't recall doing that. I mean
20 -- I have no idea.

21 MR. MURPHY: That's all that I
22 have. Thank you, Your Honor.

23 MR. JOHNSON: Just briefly, Your
24 Honor.

25 CROSS EXAMINATION

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1 BY MR. JOHNSON:

2 Q. Ms. Woosley, you did in fact explain
3 the twenty to life portion of the statute to
4 Ms. Cunningham; correct?

5 A. I did.

6 Q. Did she seem to understand it?

7 A. She did. In front of Judge
8 Jefferson, too, from the transcript, I think
9 the very first thing that I said to the Judge
10 was 'just as a housekeeping matter, the
11 charge carries twenty to life that we're
12 looking at.'

13 Q. Then you said that you were shocked
14 by the life sentence.

15 A. (Affirmative nod).

16 Q. And then ---

17 A. Yes, I was.

18 Q. --- you filed a Motion to reconsider
19 in this case?

20 A. I did.

21 Q. Which was ultimately denied?

22 A. Correct.

23 Q. Then you also testified that you
24 don't recall whether or not she was sworn in?

25 A. I don't recall.

1 Q. Have you ever been before Judge
2 Young before?

3 A. Yes, I have.

4 Q. Approximately how many times on
5 guilty pleas?

6 A. A ton.

7 Q. Too many to count?

8 A. (Affirmative nod), too many to
9 count.

10 Q. And is it normally his practice, if
11 you will, as a Judge, to swear in defendants?

12 A. It is. I have not done GS work for
13 the past couple of years, so I've not been in
14 front of him in a long -- for over two years.

15 Q. But when you were in front of him,
16 that would have been his practice?

17 A. Yes.

18 MR. JOHNSON: No further questions,
19 Your Honor.

20 THE COURT: All right. Redirect?

21 MR. MURPHY: Nothing, Your Honor.

22 (WITNESS STEPS DOWN)

23 THE COURT: All right, anything
24 further?

25 MR. MURPHY: That would be all in

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1 terms of presentation, Your Honor.

2 THE COURT: All right.

3 MR. JOHNSON: Nothing from the
4 State. Just a brief argument, Your Honor.

5 THE COURT: All right. Well, the
6 only two issues are whether she was sworn in
7 and that she thought that she was going under
8 a different sentencing range. I mean, I will
9 be happy to hear your arguments, but ---

10 MR. JOHNSON: That's it.

11 THE COURT: The portion -- the
12 transcript of record from Judge Young taking
13 the plea, clearly says, (reading): "*You know*
14 *that you are charged with homicide by child*
15 *abuse. You can get twenty years to life on*
16 *that.*"

17 I mean, that's very clear.

18 (Reading):

19 "Q. *They tell me that you want*
20 *to plead guilty, is that right?*

21 A. *Yes, sir.*"

22 I think that is pretty clear, very
23 clear language.

24 I don't want to cut you off on your
25 argument. What I'd like to know -- well,

1 first, this transcript doesn't start with
2 where Ms. Cunningham steps up to the bar.
3 It starts with the attorneys saying 'may
4 we approach' and they have a sidebar.
5 Then it starts, "Are you Shanita
6 Cunningham?"

7 I know that a lot of times when
8 a person comes up, they're sworn in by
9 the clerk. That's the normal procedure.
10 In looking at the record, the record does
11 not show that she was sworn in but I
12 don't know that the record goes all the
13 way back to when she first approached for
14 the plea. She said that she didn't know,
15 and the attorney said she didn't know.

16 Another question, is there a
17 requirement that that person be sworn in?
18 I don't know that. I know that recently
19 they overturned a jury verdict because
20 the jury wasn't sworn in. I think that's
21 a little different because the jury is
22 swearing that they will do their duty and
23 I think that's an important part.

24 But again, unless you have some
25 case law, I don't know that swearing in a

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1 defendant -- although we do it every
2 time, I don't know how defective that is.

3 MR. MURPHY: This goes back to
4 my law clerking days, about twenty years
5 ago. There was a case where a PCR (sic)
6 was overturned because of failure to
7 swear in the defendant. Now, whether or
8 not that's been reversed or not, I cannot
9 say.

10 I know that we are limited to
11 the record. It might not be Judge
12 Young's ordinary practice ---

13 THE COURT: I don't know that
14 that's ---

15 MR. MURPHY: Right.

16 THE COURT: We all make
17 mistakes and may not do what we normally
18 do.

19 MR. MURPHY: Right. I'm just
20 saying that if it were confined to the
21 record, that would be one issue. That
22 was what we wanted to preserve for the
23 record, Your Honor.

24 THE COURT: Quite frankly,
25 when you say 'the judge' it's this lady

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1 here and that guy (indicating deputy
2 clerk) right there and we're funneled
3 papers and, you know, -- it's unfortunate
4 but mistakes happen. Do you know whether
5 or not the defendant has to be sworn in?

6 MR. JOHNSON: The only argument,
7 actually a quote from that case that
8 you're speaking of, ---

9 THE COURT: What was the name
10 of that case?

11 MR. JOHNSON: I don't know the
12 name of it. I know that it was a
13 Greenville County case. I spoke with Ms.
14 Ratigan about that and that was a big
15 issue that we all discussed.

16 But the case that I have is
17 *State v. Bultron*, 318 SC 323, the quote,
18 at 329, (reading): "*Proceedings in a*
19 *court of general jurisdiction will be*
20 *presumed regular absent evidence to the*
21 *contrary.*"

22 Also, "*Presumption is always*
23 *that a public officer has faithfully and*
24 *correctly performed his official duties.*"
25 That is *State v. Hollman*, 232 SC 489 at

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1 501.

2 You know, Ms. Cunningham
3 testified that she didn't remember
4 whether or not she was sworn in.

5 Counsel stated the same thing,
6 that they don't remember.

7 Obviously the transcript there
8 is no affirmative, uh, swearing in of the
9 defendant. However, even if that -- I
10 just don't think that is fatal to this
11 guilty plea. Clearly she did not want a
12 trial. Her testimony was that -- you
13 know, at the guilty plea she testified
14 that she did not want a trial and that
15 she wanted to forego trial in order to
16 accept the guilty plea offered by the
17 State. This Court, the State's argument
18 is, has to presume that regularity --
19 that no evidence to the contrary, that
20 absent any evidence presented that this
21 guilty plea was any different than any
22 other guilty plea that Judge Young has
23 ever had. So, Your Honor, we would ask
24 that you deny this and hold that the lack
25 of swearing in is not a fatal mistake by

1 Judge Young.

2 THE COURT: Again, is there a
3 requirement that a defendant has to be
4 sworn in?

5 MR. JOHNSON: Not to my know-
6 ledge, Your Honor.

7 THE COURT: I think even if
8 she wasn't sworn in, even if that's true,
9 and that's iffy, you know, -- the only
10 reason to swear you in is to make sure
11 that you're telling the truth and you're
12 doing your duty. I mean, is that -- is
13 that relevant in a plea? I don't know.

14 I was trying to find that case.
15 The PCR on the jury -- that's when the
16 jury wasn't sworn.

17 I'd like to look at that case.
18 Let me look at that case. Unless that
19 sways me otherwise -- I mean, this is one
20 that -- the Supreme Court or the Court of
21 Appeals may decide otherwise, but I
22 believe that this is one that they would
23 need to make that decision on.

24 Before I make a final decision,
25 I want to look at that case. It was just

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Case No. 13-CP-10-0107

Hearing of January 19, 2016 - Arguments by Counsel
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1 last year.

2 MR. JOHNSON: I'm asking my boss
3 what the case name is.

4 THE COURT: Okay.

5 MR. JOHNSON: Also, just as an
6 ancillary argument, Your Honor, we would
7 argue that this is a direct appeal issue.
8 This is something that the plea judge did
9 or did not do, and therefore Ms.
10 Cunningham must have raised that under
11 *Ashley v. State* and *Simmons v. State*.

12 MR. MURPHY: Judge, I would
13 disagree. I think that it is a PCR issue
14 and the attorney making sure that the
15 defendant is sworn in.

16 THE COURT: Is that the
17 attorney's job?

18 MR. MURPHY: I believe that it
19 is, Your Honor. I don't think it's an
20 error of law.

21 THE COURT: I mean, would you
22 want as an attorney for your client never
23 to be sworn in, then you could always
24 come back and do this? If you're
25 successful in your argument, would you

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1 ever remind the court? No, because you'd
2 always have that little out.

3 MR. MURPHY: I understand.

4 THE COURT: So, therefore,
5 you would be ineffective if you do remind
6 the court.

7 MR. MURPHY: There certainly is
8 a strategic rationale there, which I can
9 understand.

10 THE COURT: Let me look at
11 that case before I make a final decision.

12 MR. MURPHY: Your Honor,
13 briefly, with the second allegations,
14 this is kind of -- I'm looking at this
15 and while it's a complex statute, it's
16 really pretty simple. They have two
17 prongs, the primary aggressor has twenty
18 to life and the secondary, the aiding-
19 and-abetting, has a ten to twenty-year
20 range.

21 She was charged, arrested for
22 the aiding-and-abetting portion of the
23 statute. She was indicted under the
24 primary actor part. Had she gone to
25 trial, I think the testimony would be

Shanita Cunningham v. State of South Carolina

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Case No. 13-CP-10-0107

Hearing of January 19, 2016 - Arguments by Counsel
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1 that she most likely -- she wasn't the
2 primary aggressor, all the evidence is
3 that she aided and abetted was the case.

4 She testified that the plea was
5 a whirlwind, which I certainly could
6 understand that. Ms. Woosley said that
7 she doesn't remember talking to her about
8 the elements or the possibility of being
9 convicted under the aiding and abetting
10 portion.

11 Looking at this case, from
12 everything that I have seen, she should
13 have gone to trial and most likely would
14 have been convicted under the aiding-and-
15 abetting portion, which is what she was
16 originally charged with. There were some
17 statements from the codefendant that she
18 was the primary aggressor. That would
19 be the basis for our allegation of
20 ineffective assistance of counsel, having
21 her plead to the primary aggressor charge
22 and not making it clear -- pleading to
23 the primary aggressor charge rather than
24 going to trial on the aiding and abetting
25 portion.

1 MR. JOHNSON: If I may just
2 respond briefly, Your Honor. I know that
3 we are going back and forth. I actually
4 have in my notes, and I have a star
5 beside it, that counsel testified she
6 spoke with applicant about both parts of
7 the statute and the elements. So I take
8 issue with that statement.

9 Further, if you will look at the
10 sentencing sheet, she pled under
11 1603(a)(5)(a), that is the principal of
12 the homicide by child abuse. Our
13 position is that she knew exactly what
14 she was pleading to. Now it's a case of
15 buyer's remorse, getting up there and
16 saying 'hey, I thought I was only
17 pleading to aiding and abetting.' She
18 never stopped the plea judge to ask 'what
19 am I pleading to' when he clearly states
20 twenty to life. Your Honor, I think she
21 is not credible in that respect and I
22 think counsel is credible.

23 THE COURT: I think the judge
24 goes through what she is pleading to. I
25 realize that all pleas, especially these

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1 types of pleas, are very stressful
2 situations. But this -- you know, there
3 was a lot of statements, a -- a huge
4 transcript for a plea. You know, at no
5 time did she ever ask for a
6 clarification.

7 Like I said, let me review that
8 one issue there. But unless you can
9 convince me otherwise, I -- I'll let you
10 know. Thank you.

11 (HEARING CONCLUDED)
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STATE OF SOUTH CAROLINA)
) CERTIFICATE.
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 13th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on January 19th, 2016, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Severin Garrison

Deborah Garrison

Greenville, South Carolina

March 3, 2016

Respondent.

ORDER OF DISMISSAL

2016 MAR 30 PM 4:02

12/12

(2010-GS-10-4127). Cassandra Woosley, Esquire, represented the Applicant.

On August 25, 2011, the Applicant pled guilty before the Honorable Roger M. Young, Sr. On November 3, 2011, the Honorable Deidra L. Jefferson sentenced the Applicant to confinement for life.

The Applicant filed a timely Notice of Appeal. The Applicant was represented by Robert Dudek, Esquire, of the South Carolina Office of Appellate Defense. By Order dated June 11, 2013, the Applicant's appeal was dismissed for failure to file a Rule 203(d)(1)(B)(iv) response. The Remittitur was issued June 27, 2013.

In this application for post-conviction relief, the Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Lack of time spent, ill advisement, not qualified for type of case."
2. "Was arrested for one thing but sentenced under another."
 - a. "Arrested for aiding and abetting but was sentenced as a principle."

At the hearing, the Applicant proceeded on her claim of ineffective assistance of plea counsel and that she alleges she was not sworn prior to entering into the guilty plea before Judge Roger Young.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe each witness presented at the hearing, closely pass upon their credibility and weigh their testimony

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

Ineffective Assistance of Counsel

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

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

A.

Applicant stated that she did not discuss with plea counsel the two possible sentence ranges for the statute under which she pled guilty until after sentencing. Applicant stated she had no conversations with plea counsel concerning the different aspects of these sentences until after sentencing. Applicant states that prior to her guilty plea, she had agreed to cooperate with the Solicitor's Office and to give a proffer. Applicant states that she believes that she signed a Proffer Agreement, but never completed the proffer because her co-defendant pled guilty prior to trial. Applicant states that she wanted to go to trial in this case, but was told by her plea counsel that a lengthy trial would be insensitive to the victim's mother. Applicant states she did not want to subject the victim's mother to this. Applicant also states that she was worried about the effect a trial would have on her daughter who was eight years old at the time. Applicant states that it was her understanding that she was arrested under the "aiding and abetting" subsection of the Homicide by Child Abuse statute. Applicant states she was never shown the indictment where she was charged under the "actor or primary aggressor" part of the statute. Applicant states that she thought she was pleading guilty under the aiding and abetting subsection of the statute when she pled guilty in front of Judge Young. Applicant states she thought that she could get no more than twenty years and was shocked when she was sentenced to life by Judge Jefferson because she thought she was only facing twenty years.

On cross examination, Applicant admits that she told Judge Young that she was pleading guilty because she was guilty. Applicant also admits that she acknowledged that she was waving her right to trial. Further, Applicant admits that she never stopped Judge Young or told him she



did not understand the charge she was pleading to.

Plea counsel testified that she was shocked that Applicant received a life sentence. Plea counsel testified that the solicitor had agreed to ask the judge for some leniency for the Applicant since she had agreed to testify against the co-defendant. However, Applicant's testimony was not needed since the co-defendant pled guilty prior to trial. Plea counsel testified that she reviewed the possible sentences for both the aiding and abetting and principal sections of the statute. Plea counsel also testified that she reviewed the elements and what the State would have to prove under both sections of the statute. Plea counsel testified that a trial would have been under the principal subsection of the statute and that she was prepared to go to trial. Plea counsel stated that Applicant admitted her culpability in the case. Plea counsel testified that she discussed trial, the likely outcome, and likely sentence after trial. Plea counsel stated that she did not believe the sentence would be the same after a plea.

On cross examination, plea counsel stated that she explained the portion of the statute that carried twenty years to life to Applicant and that Applicant seemed to understand. Plea counsel also stated that Judge Jefferson also noted that the charge carried twenty years to life prior to issuing her sentence.

Initially, this Court notes Applicant admitted to the plea judge that she was guilty. Applicant also told the plea judge that she understood the trial rights she was waiving in pleading guilty and was satisfied with counsel. The plea judge also reviewed the charge and sentencing range for which Applicant was pleading guilty to at the beginning of the plea. This Court finds there is no evidence in the guilty plea transcript to support Applicant's assertion that she was unaware of the charge she was

PM

pleading guilty to and the possible sentence range; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds Applicant failed to meet her burden of proving plea counsel either misadvised her about the charge she was pleading to or the sentence she would receive. Plea counsel testified she explained the charge and possible sentence to Applicant. This Court finds plea counsel's testimony is credible. Further, the plea transcript refutes much of the Applicant's argument. If the Applicant believed she was pleading guilty to a charge that only carried ten to twenty years, she should have told the plea judge when he stated the sentence range was twenty years to life – but she did not do so.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that she was prejudiced by plea counsel's performance.

B.



Applicant states that she does not remember if she was sworn in at the beginning of her guilty plea before Judge Roger Young.

Plea counsel testified that she does not recall if Applicant was sworn in prior to the start of the guilty plea. Plea counsel also stated that during the many times that she was before Judge Young with a defendant to enter a guilty plea, it was the practice in Judge Young's courtroom that the defendant be sworn prior to entering a guilty plea.

This Court finds that Applicant has failed to meet her burden in proving that her plea was unconstitutionally accepted. This Court notes that the plea transcript does not start when Applicant approaches the bar, but when counsel asked to approach. Applicant and plea counsel both testified they could not recall if Applicant was sworn prior to entering her guilty plea. However, plea counsel testified it was Judge Young's normal practice to swear defendants before their guilty pleas. Additionally, "[i]n the absence of evidence to the contrary, the regularity of the proceedings of a court of general jurisdiction will be assumed." Pringle v. State, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986). While the guilty plea transcript apparently does not have a notation in it concerning this issue, Applicant provided no credible evidence that her guilty plea was unconstitutionally accepted. Applicant admitted that she, at no time, stopped the plea judge to state she did not understand the proceedings. Further, this Court finds Applicant's guilty plea to be in compliance with Boykin v. Alabama, 395 U.S. 238 (1969).

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional

norms. Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in her representation of Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that she was prejudiced by Counsel's performance. This Court concludes Applicant has not met her burden of proving plea counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

ALL OTHER ALLEGATIONS

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

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

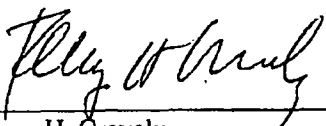
1. That the Application for Post-Conviction Relief must be denied and



dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Perry H. Gravely
Presiding Circuit Court Judge
Ninth Judicial Circuit

March 14, 2016
Charleston, South Carolina

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

SHANITA CUNNINGHAM, #348485,

Applicant,

v.

STATE OF SOUTH CAROLINA,

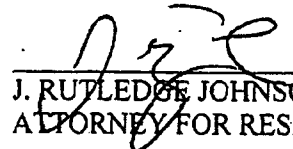
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

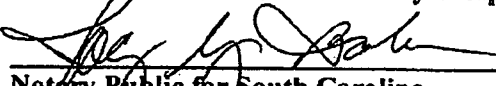
Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
PO Box 2008
Mt. Pleasant, SC 29465

This 4th day of April, 2016.



J. RUTLEDGE JOHNSON
ATTORNEY FOR RESPONDENT

SWORN to before me this 4th day of April, 2016.



Notary Public for South Carolina.

My Commission Expires: 12/16/2024

ESG20091106558

WITNESSES

C.E. Williams

Summerville Police Department

AGENCY CASE NUMBER

0988658

ARREST WARRANT NUMBER

J093891

DATE OF ARREST

November 6, 2009

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUN 08 2010

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010GS1004127

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2010

THE STATE

vs.

SHANITA LATRICE CUNNINGHAM

DOB:

B/F

Indictment for

Homicide by Child Abuse

FILED

7/1/2010 3:21:07 PM

JULIE J. ARMSTRONG

CLERK OF COURT

09-680461

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

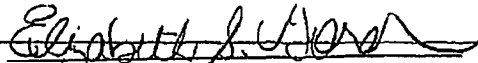
INDICTMENT

At a Court of General Sessions, convened on June 7, 2010 the Grand Jurors of Charleston County present upon their oath:

Homicide-by-Child-Abuse

That in Charleston County, South Carolina, on or about November 3, 2009, the Defendant, SHANITA LATRICE CUNNINGHAM, did cause the death of victim , a child who was under the age of eleven years at the time of her death, and that the defendant did cause the death of said child, in Charleston County, while committing child abuse or neglect, and the death of said child occurred under circumstances manifesting an extreme indifference to human life; in violation of Section 16-3-85, South Carolina Code of Laws (1976, as amended).

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


ELIZABETH GORDON
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA *plea accepted 8/25/11 By Judge Roger Young*
 COUNTY OF *Charleston* *imposed By judge* IN THE COURT OF GENERAL SESSIONS
 STATE VS. *Ron Young*

SHANITA LATRICE CUNNINGHAM
 AKA:
 Race: BLACK Sex: F Age: 25
 DOB: SS#:
 Address:
 City, State, Zip: SUMMERVILLE, SC 294830000
 DL#: SID#:
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Homicide by Child Abuse

INDICTMENT/CASE#: 2010GS1004127
 A/W#: J093891
 Date of Offense: 11/3/2009
 S.C. Code § : 16-03-0085(A)(1)(B)(1)
 CDR Code #: 2356

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0085(A) of the S.C. Code of Laws, bearing CDR Code # 2356
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: *Elizabeth Gordon* 16952 *Shanita Cunningham* *Cassandra Winslow* 76644
 Gordon, Elizabeth SC Bar# Defendant Attorney for Defendant SC Bar#
C. WINSLOW

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

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐
☐ Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: \$ _____ Substance Abuse Counseling ☐

§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.70

TOTAL \$ 133.90

Presiding Judge *A. L. Jones*

Judge Code: 2128

Sentence Date: 11/3/11

Clerk of Court/ Deputy Clerk *Whitney Hanks*

Court Reporter: *Henry Spang*

SCCA/217 (03/2011)