

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

GREGORY QUINN GATHERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000993

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

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

ATTORNEYS FOR RESPONDENT

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1 they pull a knife on you, a knife that size.

2 The solicitor is going to argue to you that
3 Renee Nevarez never took Gregory's money. And it makes
4 sense that she did. She needed his money for the
5 drugs, the drugs they smoked that night, and he bought
6 them for her.

7 We also heard from Sargent Reynolds that she had
8 people's names and banking information in her house. I
9 say this to you not to bash Ms. Nevarez, but simply to
10 show you that Gregory is telling you the truth. The
11 reason that the money isn't found is that the
12 detectives, they do a thorough search, they told you
13 they did a thorough search, of the bedroom, the kitchen
14 and the living room. Detective Riedel told you that
15 he, in fact, did a thorough search of the bedroom and
16 the living room. But you didn't hear anything about
17 the bathroom or the spare bedroom which was used for
18 storage. The spare bedroom had piles of clothes and
19 Tupperware containers full of stuff.

20 Gregory Gathers had smoked crack three times in
21 his life and it really messed him up. And he told you
22 he blacked out. We don't know where Ms. Nevarez put
23 his money. He kept the money buttoned in his back
24 pocket and he had other money in his front pocket. But
25 he had put the money back there so he wouldn't spend

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1 it. And that's why it was separate from his other
2 money.

3 Yo also heard from Dr. Batalis. And he told us
4 that cocaine is a stimulate. It causes excitement and
5 aggression. Gregory and Renee both did a lot of crack.
6 And we know that from the test done on her blood and
7 from what he told us. These drugs could have easily
8 caused him to anger easily, but they could have also
9 caused Ms. Nevarez to act aggressively and to pull this
10 knife on Greg.

11 When Greg wakes up and realizes his money is
12 gone, he slaps her and her nose is bleeding. She's
13 bleeding in the hall. And he pulls her down the hall.
14 She suffered bruising from her skull on this. And when
15 they are in the den, her nose is still bleeding and the
16 fighting stops. He thinks he's getting his money back.
17 She's looking in the cushions saying to him, you're
18 going to get your money back, I'm going to give it back
19 to you. But it's not there.

20 She acts like she's going to give it to him by
21 going in the kitchen. He's standing there thinking
22 that he's finally going to get his money back. He
23 turns around and there's a large knife in his face.
24 What else was he supposed to do? Her hands are cut
25 because of the struggle over the knife. He grabbed her

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1 wrist and the bottom of the knife handle and during the
2 struggle the handle pops off and she's holding the
3 blade.

4 You're going to hear a lot about her eyes were
5 cut. We don't know how her eyes got cut. She's
6 holding the knife, jerking back, trying to keep it,
7 trying to keep him from getting it. I don't know how
8 it happened, Gregory doesn't know how it happened. The
9 struggle was very bad.

10 We know that Greg is telling you the truth about
11 the struggle over the knife. We heard about DNA
12 evidence and that Ms. Nevarez' DNA is all over the
13 knife handle. We don't know about the blade part
14 because it was never sent for analysis. Agent Hefney,
15 from SLED, told you that Ms. Nevarez was the major
16 contributor and that she had to do an additional test
17 to determine if Greg's DNA was on there. And it was.
18 We're not disputing that. It should have been. He
19 took the handle from her, he carried it away, and he
20 threw it on the railroad tracks.

21 Why did he take that handle with him? Why did
22 he throw it on the railroad tracks? He panicked. He
23 panicked.

24 The solicitor went through all these charts and
25 numbers with Agent Hefney. We don't disagree with any

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1 of that. Gregory had blood on his hands. Of course he
2 did. We know Ms. Nevarez was bleeding. He was cut,
3 too. And we know that her DNA, whether it was blood
4 or any other bodily fluids, were on his hands. They
5 had been together sexually, she was bleeding, and they
6 fought over the knife.

7 I want to go back to the living room. The sofa
8 cushions were turned up and the rest of the room was
9 orderly. It is apparent, from the pictures of the
10 apartment, that the fighting occurred in the bedroom
11 and down the hall -- and you'll have those pictures
12 back there with you -- down the hall until Greg thinks
13 that he's finally going to get his money back, the very
14 reason the fight started.

15 When Gregory is trying to get the knife from Ms.
16 Nevarez, the handle is popped off and she still has the
17 blade. He pulls and pulls more of her hair. She does
18 fall to the ground. She falls to the ground hard and
19 hits her head on the kitchen counter. And, yes, at
20 this point he should have called the police. He should
21 have helped her. He freaked out and he ran, taking the
22 handle and the phone. If he was trying to hide
23 evidence, wouldn't he take the blade with him, too?

24 Gregory is not a murderer. He is not proud of
25 his behavior that night or that morning. He did not

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1 act with hatred or ill will towards Ms. Nevarez. In
2 the bedroom he acted with anger, anger that she had
3 taken his money. He did fight with her. But when
4 Renee Nevarez pulled that knife on Gregory Gathers, he
5 had to react, react to get the knife away from her and
6 to keep himself from getting stabbed. If he had not,
7 he may be dead. These same families could be on
8 opposite sides of this courtroom. These same
9 prosecutors could be prosecuting Ms. Nevarez. What
10 else is a person to do, a knife that big coming at you,
11 no matter what your size.

12 It's that simple and that is why you must find
13 Gregory Gathers not guilty of murder.

14 THE COURT: Solicitor?

15 MR. KIDD: Thank you, Your Honor. May it please
16 the Court.

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19
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CLOSING ARGUMENT

1
2 MR. KIDD: Ms. Runey was correct when she told
3 you that it's not a complicated case and it's not a
4 whodunit case.

5 You don't have to piece together the evidence to
6 figure out whether Mr. Gathers killed Ms. Nevarez. He
7 told you he did. He told you that yesterday and he
8 told you that in his statement. You know that. You
9 know that those hands right there pressed against his
10 face, balled into a fist, and pounded the life out of
11 Renee Nevarez. Not one punch, but punch after punch
12 after punch. A six-foot man -- a six-foot-tall man,
13 230-some-odd pounds, outweighs her by a hundred pounds,
14 a foot taller, pounded the life out of her.

15 Now, I'm going to spend a little bit of time
16 talking about his testimony yesterday, but before I do,
17 I want you to know this. I want you to know that if
18 you believe every single word that came out of his
19 mouth, it doesn't matter, even if you believe his
20 entire story -- and I contend you shouldn't. It was
21 full of lies, and I'll explain those to you. But even
22 if you do, he's still guilty of murder. He's still
23 guilty of murder. He beat a woman, in her own home, to
24 where she had to act in self-defense and try to protect
25 herself and fight for her life. And she died as a

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1 result of it. And that's murder.

2 You can't kill someone -- even if she did steal
3 his money, it doesn't matter whether she did or not,
4 it's not an excuse. You can't kill someone because
5 they stole a couple hundred dollars from you. Petty
6 larceny is not adequate provocation to reduce murder to
7 manslaughter.

8 Well, let's talk about his lies. Let's talk
9 about all those things that he told you yesterday.
10 It's full of half truths, omissions. He's shielding
11 himself from what he really did.

12 I think Benjamin Franklin said it best. He
13 said, a half truth is often a great lie. And that's
14 what we have here. We have Gregory Gathers trying to
15 pull a great lie over the eyes of this court and off on
16 you.

17 So let's talk about the different lies he told
18 you yesterday. I want to start at the beginning. Do
19 you remember when I was talking to him about his
20 brother and about how he told his brother to get rid of
21 that body? Did you see his facial expression? Did you
22 see how he acted? He wasn't going to win an Emmy or
23 anything for it. Kind of wide-eyed, no, no, no. You
24 can't believe that. You know why his brother is not
25 here. That's the first lie.

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1 The second lie he told you: he struck her with
2 a closed fist one time. That's what he told you.
3 That's what he wants you to believe, that he struck her
4 with a closed fist one time.

5 Ms. Runey is right. You're going to have all
6 this evidence, all these things that we showed you,
7 back there in your jury deliberation room. You're
8 going to have his statement. And I want you to read
9 it. And I want you to read where he says he struck her
10 with a closed fist three to four times in the bedroom
11 and another four or five times in the living
12 room/kitchen area. That's seven to nine strikes with a
13 closed fist. And that's what he tells you the day it
14 happened. And then he's going to come in here and he's
15 going to try to tell you that he hit her one time with
16 a closed fist and that's what he wants you to believe?
17 No, ma'am. No, sir.

18 And you heard Dr. Batalis. He said that she was
19 struck a minimum of five times. A minimum. Someone
20 who's an expert in his field, someone who they don't
21 even argue is an expert, they agree he's an expert, he
22 said she was struck a minimum of five times. It could
23 have been twenty. But a minimum of five times. He
24 said the bruising and contusions on her face were so
25 many that they melted together and you couldn't even

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1 tell them apart from one another. And that's just on
2 the front of her face. He also told you about the
3 bruises on the side of her head, on the back of her
4 head, so hard that the muscle of her ear is bruised.
5 One punch? I don't think so. That's the second lie he
6 told you.

7 The third lie he told you: he told you he never
8 had the knife. He said they were fighting over it, he
9 got the handle, the blade broke off. And then you see
10 -- saw when I asked him, well, how come the knife blade
11 is on the couch across the room from the victim's body?
12 And what did he do? Uh, uh, uh, I just don't know. He
13 doesn't know because it doesn't fit his lies. He can't
14 explain it because he's lying and it doesn't fit.
15 That's his third lie that he told you.

16 Let's talk about his fourth lie: that he hit
17 her head on the counter -- she fell and hit her head on
18 the counter. Look at the pictures. Look at the way
19 her body was found. It's not even near a counter. Her
20 whole lower half of her body is still in the living
21 room. It's not possible. It's another lie.

22 The fifth lie he told you: he told you he
23 didn't cut her. Once again, you heard from Dr.
24 Batalis. Incise wounds. And I even made a mistake
25 talking to him. I started calling them lacerations,

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1 because I don't hardly know the difference. But he
2 called them incise wounds because they're caused by a
3 sharp instrument, knife wounds, incise wounds.
4 Lacerations are from the blunt-force impact where the
5 skin tears apart from an impact and it's different than
6 an incise wound from a sharp object. He told you he
7 even talked with his colleagues, never seen anything
8 like this before.

9 Yet he can't explain to you why he cut her, and
10 it makes him look bad, so he's just going to lie about
11 it. He wants to tell you that he's owning up to
12 everything he did. No, he is not. He's giving you
13 half truths, and those half truths are great lies.

14 And those are just five of the lies that he told
15 you that I can prove are wrong in a forty-five minute
16 conversation we had with him on the stand. Everything
17 else he told you wasn't true, either, but it doesn't
18 matter. All of it really doesn't matter. If you
19 believe him, that's fine. He's still guilty of murder.

20 And as I told him yesterday, the devil is in
21 those details. And that's so true in this case because
22 that sick and that brutal behavior that he acted out
23 on, that came from a place within him, a dark place
24 within who he is as a person. And he's embarrassed and
25 ashamed of that, of a light being shined on that

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1 darkness that's within him. And he's ashamed. He's
2 ashamed to admit it to you, he's ashamed that his
3 family is seeing that. And that's why he lies. That's
4 why he put his hand on that Bible up there and he lied
5 to you and he lied to this Court.

6 Ladies and gentlemen, the entire case that was
7 presented to you from defense counsel was all designed
8 for you to feel sorry for him, for you to have sympathy
9 for Gregory Gathers. Ladies and gentlemen, save your
10 sympathies. Save your sympathies for Tiffany Nevarez,
11 for a daughter who no longer has a mother, for her
12 grandchildren who no longer have a grandmother. Save
13 your sympathies for a woman whose life was cut
14 tragically short, who was beaten, dragged around by her
15 hair in her own home. Save your sympathies for those
16 people.

17 And, ladies and gentlemen, make no mistake about
18 it. Renee Nevarez, she was no angel. She was not a
19 perfect person. She had her faults, she had her
20 weaknesses. She wasn't going to win mother of the
21 year. She probably wasn't on the PTA. She wasn't
22 perfect. But nobody, nobody, deserves to have their
23 life taken away from them in the manner that she had
24 her life taken away. Nobody deserves that. In your
25 own home, to be drug around by your hair, punched in

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1 your face so many times, so many times.

2 And you'll see those pictures. And I hate
3 showing them to you, but a picture says a thousand
4 words. And to be cut on the way she was, and tortured?
5 And for what reason? To get some money back. Is that
6 what it was? Maybe.

7 Was he holding her down by her neck? And you
8 heard Dr. Batalis. Her neck was swollen. Maybe he had
9 her pinned down by the neck telling her, give me my
10 money or I'm going to cut your eyes out. Maybe. Maybe
11 he just didn't want her looking at him as he was
12 beating on her and torturing her. Maybe he just
13 couldn't stand to look in her eyes. But there was
14 something there.

15 Now, I want to talk to you a little bit more
16 about some of the law that we addressed just a few
17 minutes earlier about the murder and malice and about
18 those different ways that you can imply malice.

19 And I think the most simple definition is that,
20 you know, implied malice is like a wicked or malicious
21 -- a malicious intent. It's more commonsensible than
22 we make it a lot of times. What is malice? Well,
23 ladies and gentlemen, what I think best explains what
24 malice is is when you look at the before photo of what
25 Renee Nevarez looked like and you look at how her

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1 facial structure really looks when she was alive, and
2 then you see how swollen and mangled it was when he was
3 finished with her. And it's hard to look at, and it's
4 not easy. But if there is anything that can show
5 maliciousness, it's those photos. And that's not even
6 considering the fact that even without those, you can
7 imply malice just from him using his fist like a deadly
8 weapon. You can imply malice from him cutting on her
9 with that knife. You can imply malice just from him
10 acting so recklessly and not understanding that his
11 actions could easily cause someone to lose their life.
12 Any of these things you can imply malice for.

13 It's so present. It's the elephant in the room.
14 You know, they can try to act like she was behaving in
15 self-defense and pulled -- or she was attacking him
16 with a knife and he was just acting in self-defense.
17 Who do you think was acting in self-defense in this
18 scenario? You know the fight started in the bedroom.
19 You see the hair all over the bedroom, hair down --
20 being dragged down the hall, hair in the living room,
21 hair in the kitchen. You see the blood, and the knife
22 block knocked over. You know exactly what happened.
23 He was beating her in the bedroom, he was dragging her
24 down the hall, he was beating her in the kitchen, and
25 she was fighting for her life and she lost that fight.

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1 Ladies and gentlemen, your role as jurors is to
2 determine the facts, determine what happened. And in
3 doing so, your biggest asset is your common sense. So
4 don't turn your back on that. See his lies for what
5 they are. But please remember, in the end it does not
6 matter whether you believe his lies or not. If you
7 just go off of his testimony alone, he is still guilty
8 of murder.

9 There's a famous French philosopher, Voltaire,
10 who once said: to the living we owe respect; to the
11 dead we owe only the truth. And I think that rings
12 especially true. Pay respect to Tiffany Nevarez and to
13 this Court, and your community, and deliver a verdict
14 which brings the truth for Renee Nevarez. And in so,
15 deliver a verdict which truth and justice demands and
16 return a verdict that finds this man right here guilty
17 of murder, because that's what it is. Thank you.

18 MS. RUNEY: Judge, can we approach?

19 THE COURT: Pardon?

20 MS. RUNEY: Can we approach?

21 THE COURT: Yes, ma'am.

22 [Whereupon, an off-the-record bench conference
23 is held]

24 - - -

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CHARGE OF THE COURT

1
2 THE COURT: All right. Ladies and gentlemen of
3 the jury, and Madame Forelady, I'll give you a copy of
4 these instructions in written form and during your
5 deliberations you may refer to the instructions to guide
6 your decision-making. You must consider the instructions
7 as a whole and not follow some and ignore others.

8 Please return the instructions to the Court,
9 Madam Forelady, after you have reached a verdict.

10 Now, as to these indictments, the defendant has
11 entered a plea of not guilty, which places upon the State
12 the burden of proving the defendant guilty. A person
13 charged with committing a criminal offense in South
14 Carolina is never required to prove himself innocent. I
15 charge you it's a vital important rule of law of evidence
16 that the defendant in a criminal trial, no matter how
17 great or serious may be the defense with which he is
18 charged, must always be presumed innocent until his guilt
19 has been proven beyond a reasonable doubt, as presumption
20 of innocence remains with the defendant at all times from
21 the moment of his appearance in this court, throughout the
22 trial and until you, the jury, have upon the testimony and
23 evidence presented reached a verdict of guilty beyond a
24 reasonable doubt, for it's the solemn duty of the jury if
25 not firmly convinced of his guilt beyond a reasonable

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1 doubt, to acquit the defendant. So the burden of proof is
2 upon the State to establish by evidence, to your
3 satisfaction, the guilt beyond a reasonable doubt of this
4 defendant.

5 Now, what is reasonable doubt? A reasonable
6 doubt is the kind of doubt that would cause a reasonable
7 person to hesitate to act. If you have such a doubt as to
8 the guilt of the defendant, you enter a verdict of not
9 guilty. Reasonable doubt may arise from evidence which is
10 in the case or from the absence or a lack of evidence in
11 the case. You alone must make the determination of
12 whether or not reasonable doubt exists as to the guilt of
13 the defendant. The term reasonable doubt should be given
14 its everyday plain and ordinary meaning. Proof beyond a
15 reasonable doubt is proof that leaves you firmly convinced
16 of the defendant's guilt. There are very few things in
17 this world that we know with absolutely certainty and in
18 criminal cases the law does not require proof that
19 overcomes every possible doubt. If based on your
20 consideration of the evidence you are firmly convinced
21 that the defendant is guilty of the crime charged, you
22 must find him guilty. On the other hand, if you think
23 there's a real possibility he's not guilty, you must give
24 him the benefit of the doubt and find him not guilty.

25 The evidence from which you would decide what

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1 the facts consists of the sworn testimony of witnesses
2 both on direct and cross-examination, regardless of who
3 called the witness, the exhibits that have been received
4 into evidence, and any facts which the lawyers have agreed
5 or stipulated. What is not evidence? Certain things are
6 not evidence. You may not consider them in deciding what
7 the facts are. I will list them for you. Arguments and
8 statements by lawyers are not evidence. The lawyers are
9 not witnesses. What they have said in opening statement,
10 closing arguments, and other times is intended to help you
11 interpret the evidence but it is not evidence. If the
12 facts as you remember them differ from the way the lawyers
13 have stated them, your memory controls. Questions and
14 objections by lawyers are not evidence. Attorneys have a
15 duty to their clients to object when they believe a
16 question is improper under the rules of evidence. You
17 should not be influenced by the objection or by the
18 Court's ruling on the objection. Testimony that's been
19 excluded or stricken, or that you have been instructed to
20 disregard, is not evidence and must not be considered.
21 Anything you may have seen on television, read in the
22 paper, or heard from others while the Court's not in
23 session is not evidence. You'll decide the case solely on
24 the evidence received at trial.

25 Under the constitution and code of laws only

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1 you, the jury, can make the findings of facts in this
2 case. I am not permitted to indicate to you how I may
3 feel about the testimony, evidence which has been
4 presented, and throughout this trial it's been my
5 intention to be fair and impartial towards each of the
6 parties involved. To determine the facts in this case,
7 you will have to evaluate the credibility, which means the
8 believability, of each witness. Some of the things you
9 may consider as you decide whether or not to believe a
10 witness' testimony about a particular matter include what
11 was the manner and appearance of the witness who
12 testified, was he or she straightforward or hesitant in
13 their answer, was the testimony of the witness consistent
14 or inconsistent, how did the witness come to know the
15 facts that he or she testified to, was the person present
16 during the incident or did he happen on the scene after it
17 occurred, is there some reason a witness would want to
18 give testimony which would help or hurt one side or the
19 other -- in other words, was the witness biased or
20 prejudiced -- was the testimony of the witness
21 strengthened or weakened by other testimony and evidence,
22 the duration and length of time between the alleged acts
23 and when they were reported -- you may consider this,
24 whether this would weaken or strengthen their memory --
25 all prior statements made as to whether they're consistent

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1 or inconsistent. You can believe as much or as little of
2 each witnesses' testimony as you think proper. You may
3 believe the testimony of a single witness against that of
4 many, or just the opposite. You do not determine the
5 truth by merely counting the number of witnesses presented
6 by each side. Throughout this process you have but one
7 object, to seek the truth regardless of its source.

8 The same constitution and laws which designate
9 and make you the finders of fact, as I just explained,
10 also make me the sole instructor of the law. You should
11 accept statements of the law as I give them to you. The
12 attorneys are not the instructors of the law. Please base
13 your decision-making on what the law is and not what you
14 think the law should be.

15 There are two types of evidence which are
16 generally presented during the trial: direct evidence and
17 circumstantial evidence. Direct evidence is the testimony
18 of a person who asserts or claims to have actual knowledge
19 of a fact, such as an eyewitness. Circumstantial evidence
20 is proof of a chain of facts and circumstances indicating
21 the existence of a fact. The law makes absolutely no
22 distinction between the weight or value to be given to
23 either direct or circumstantial evidence, nor is a greater
24 degree of certainty required of circumstantial evidence
25 than of direct evidence. You should weigh all the

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1 evidence in the case on a contested factual issue and have
2 some direct and some circumstantial evidence.

3 To determine the facts in this case, you will
4 have to evaluate the credibility, which means the
5 believability, of each witness.

6 The rules of evidence ordinarily do not permit a
7 witness to testify to opinions or to conclusions. An
8 exception to this rule exists for witnesses we call expert
9 witnesses. A witness who by education and experience has
10 become expert in some art, science or profession may give
11 an opinion as to the subject the witness claims to be an
12 expert in and also may give the reasons for the opinion.
13 You should consider any expert opinion given by a witness
14 and, like any other evidence, give it the weight you think
15 it deserves. If you decide that an expert witness'
16 opinion is not based on sufficient education and
17 experience, or if you decide that the reasons given in
18 support of the opinion are not sound or that the opinion
19 is outweighed by other evidence, you may disregard the
20 opinion entirely.

21 Voluntary intoxication is not an excuse for, or
22 a defense to, a crime. The rule extends to the voluntary
23 ingestion of drugs. A person who voluntarily becomes
24 intoxicated is just as responsible for the acts committed
25 while intoxicated as if the acts had been committed while

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1 sober. Voluntary intoxication does not relieve the
2 intoxicated person of responsibility and cannot be
3 considered as causing a sudden heat of passion.

4 The defendant is charged with murder. The State
5 must prove beyond a reasonable doubt that the defendant
6 killed another person with malice aforethought. Malice is
7 hatred, ill will, or hostility towards another person. It
8 is the intentional doing of a wrongful act without just
9 cause or excuse and with the intent to inflict an injury
10 under the circumstances of law that will infer an evil
11 intent. Malice aforethought does not require that malice
12 exist at any particular time before the act is committed,
13 but malice must exist in the mind of the defendant just
14 before and at the time the act is committed; therefore,
15 there must be a combination of previous evil intent and
16 the act. Malice aforethought may be express or inferred.
17 These terms express and inferred do not mean different
18 types of malice, but merely the manner in which malice may
19 be shown to exist, that is, either by direct evidence or
20 by circumstances which are proved. Express malice is
21 shown when a person speaks words which express hatred or
22 ill will for another or when the person prepared
23 beforehand to do the act which was later accomplished.
24 For example, lying in wait, or any other act of
25 preparation going to show that the deed within the

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1 defendant's mind would be expressed. Malice may be
2 inferred from conduct showing total disregard for human
3 life. In other words, if such conduct results directly in
4 the death of another and if such conduct was so culpable
5 and inexcusable, so aggravated and grossly recklessness to
6 show an act of intentional disregard of the consequences
7 of human life, thus denoting a malignant spirit, a heart
8 devoid of social duty, a fatal event, or mischief, an
9 implication of malice may arise. Inferred malice may also
10 arise when the deed is done with a deadly weapon.

11 A deadly weapon is any article, instrument or
12 substance which is likely to cause death or great bodily
13 harm. Whether an instrument has been used as a deadly
14 weapon depends upon the facts and circumstances of each
15 case. However, the use of a deadly weapon does not
16 require you to infer malice. The following examples of
17 instruments which may be deadly weapons: a pistol,
18 shotgun, a rifle, a dirk, a dagger, a knife, a slingshot,
19 metal knuckles, a razor, gasoline, a firebomb, a Molotov
20 cocktail and lighter fluid. A gun may be a deadly weapon,
21 even if it's not operating.

22 A hand or a fist is not normally considered a
23 deadly weapon; however, under some circumstances,
24 depending upon the matter and means of its use, the wounds
25 inflicted, and other relevant acts, a hand or fist may be

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1 considered a deadly weapon. It is for you to decide in
2 this case, beyond a reasonable doubt, whether or not a
3 hand or a fist is a deadly weapon.

4 Voluntary manslaughter: if you find the
5 defendant [sic] has failed to prove beyond a reasonable
6 doubt the defendant committed murder, you may consider
7 whether the State has proven beyond a reasonable doubt
8 that the defendant committed voluntary manslaughter.
9 Included within the offense of murder is the lesser
10 offense of voluntary manslaughter. To prove voluntary
11 manslaughter, the State must prove beyond a reasonable
12 doubt that the defendant took the life of another in the
13 sudden heat of passion, based upon sufficient legal
14 provocation of heat of passion, and sufficient legal
15 provocation must be present at the time of the killing to
16 constitute voluntary manslaughter. There's numerous legal
17 provocations of factual basis within the determination of
18 voluntary manslaughter. It's just not one, there's
19 numerous and the courts have stated that it will be
20 determined on a case-by-case basis whether legal
21 provocation is sufficient for voluntary manslaughter.
22 There's not just one, there are several.

23 Sudden heat of passion may, for a time, affect a
24 person's self-control and temporarily disturb a person's
25 reason. The sudden heat of passion must be the type that

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1 would make an ordinary person unable to coolly reflect on
2 his actions and will produce an uncontrollable impulse to
3 do violence. Sufficient legal provocation must be the
4 type that would make a person of ordinary reason and
5 caution become enraged and to lose control temporarily.
6 The provocation needed for voluntary manslaughter must
7 come from some act of or related to the victim. Words
8 alone, however vulgar or insulting, are not enough to be
9 legal provocation. And if the heat of passion had cooled
10 or if there was enough time between the provocation if any
11 and the killing for the passion of a person reasonable to
12 cool, the killing would not be voluntary manslaughter. In
13 deciding whether a reasonable person would have had enough
14 time to cool off, you should consider all the
15 circumstances surrounding the killing. You may consider
16 the nature of the provocation, if any, the defendant's
17 mental and physical state, and the circumstances and
18 relationships between the parties.

19 A statement alleged to have been made by the
20 defendant has been admitted into evidence in this case.
21 While the Court has determined that the statement is
22 admissible, I instruct you that you make the ultimate
23 decision of whether or not the defendant made the
24 statement. If the defendant did make the statement, you
25 must determine whether the statement was made by the

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1 defendant voluntarily and of his own free will. This
2 means that the statement was not caused by pressure,
3 force, fear, threats, coercion, or intimidation, or by
4 hope or a promise of leniency or reward of any kind. In
5 determining whether the statement was voluntarily given,
6 you should consider both the characteristics of the
7 defendant and the details of the question. Some of the
8 factors which you may consider are the age of the
9 defendant, the defendant's education or lack of education,
10 the defendant's mental ability or capacity, the
11 defendant's IQ or intelligence, the defendant's background
12 and environment, the place and lengths of detention, the
13 nature of the question and the advice or lack thereof of
14 the defendant to his constitutional rights including, but
15 not limited to, the right to remain silent, that the
16 statement could be used against him in a court of law, the
17 right to have a lawyer present, if he or she cannot afford
18 an attorney a lawyer will be appointed to represent him
19 without cost and that he could stop making his statement
20 at any time. You must carefully consider all of the
21 surrounding circumstances before you give any weight to an
22 alleged statement. The State has a burden of proving
23 beyond a reasonable doubt that the alleged statement was
24 voluntarily given. If you determine it was, you must give
25 the statement any further consideration deemed proper.

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1 You must decide what weight, if any, should be given to
2 the alleged statement. If you determine -- excuse me. If
3 you determine the alleged statement was not the free and
4 voluntary statement of the defendant, you should not
5 consider the statement at all.

6 Now, you've been selected as fair and impartial
7 jurors sworn to impartially try and determine the facts in
8 this case and when you comply with your oath to do so, no
9 one will have the right to criticize your verdict. You
10 have fully discharged your duties as jurors. You'll
11 determine this case according to the testimony you've
12 heard from the sworn witnesses, along with the other
13 evidence introduced.

14 I charge you as jurors you must decide the
15 issues in this proceeding without bias, without prejudice
16 to any party. You cannot allow yourself to be governed by
17 sympathy, by prejudice, by passion, by public opinion, or
18 any other arbitrary factor. Both the State and the
19 defendant have the right to expect that each of you will
20 carefully and impartially consider all of the evidence in
21 the case, that you will follow the law as I have explained
22 it to you.

23 Nothing that I may have said or done during the
24 course of this trial has been in any way intended to
25 express or suggest a view of the case or opinion as to the

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1 facts, the weight of the evidence, or the credibility of
2 the witnesses. If any of my actions or words have seemed
3 to so indicate, you will disregard such and form your own
4 opinion as to these matters.

5 Madam Forelady and ladies and gentlemen of the
6 jury, I have prepared a verdict form and in the verdict
7 form it has the name of the case, The State of South
8 Carolina vs. Gregory Quinn Gathers, and it has the
9 indictment number. As to indictment number, it has the
10 number of the case. It says, we, the jury, by unanimous
11 consent, find the defendant guilty of murder, as to the
12 lesser-included offense of voluntary manslaughter, or not
13 guilty.

14 So you can make -- you can make a determination
15 whether he's guilty of murder. If you say he's not, then
16 you go to the lesser-included charge of voluntary
17 manslaughter and make a decision whether he's guilty or
18 not guilty of that. If you can't find him guilty of
19 murder, and voluntary manslaughter, you have to do one of
20 the two -- or find him not guilty as to both charges. A
21 place for the foreperson to sign and date it, November
22 17th.

23 Your verdict has to be unanimous. I will tell
24 you that it's a collective bargaining -- excuse me -- a
25 collective reasoning process on all twelve of you. I

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1 would ask you to consider each other's opinions. If it's
2 necessary, reevaluate your opinion. But listen to each
3 other's opinions, evaluate the facts, look at the
4 evidence, and make a just and fair decision.

5 Madam Forelady, I'm going to ask you to go to
6 the jury room, but I don't want you to begin your
7 deliberations until I have had an opportunity to take up
8 my charge with the jury [sic]. I may have to bring you
9 back and correct something I've said or add something that
10 I've said. So I don't want you to do that until I have
11 had an opportunity to review my charge with the jury
12 [sic].

13 And as I told you when we started this trial, no
14 computers, no phones, no contact outside the jury room, in
15 reaching your deliberations.

16 And Madam Forelady, if you and the jurors could
17 go to the jury room.

18 Mr. Allenspach, the alternate, if you'll just
19 keep your seat, please, sir.

20 [Off the record momentarily]

21 [Whereupon, the jury exits the courtroom at
22 11:24 a.m.]

23 THE COURT: Any exceptions to the charge? From
24 the State?

25 MR. KIDD: Your Honor, our only exception is the

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1 inclusion of the voluntary manslaughter as we've
2 previously discussed.

3 And if I could just briefly state my position
4 for the record, Your Honor?

5 THE COURT: Yes, sir. Please do.

6 MR. KIDD: The State relies on -- all out of the
7 state -- cases State v. Ligon, of North Carolina, State
8 v. Hardisty, of Kansas, and Schmidt v. State, of
9 Oklahoma, all which support the proposition that a
10 property crime or a simple larceny is insufficient
11 legal provocation to reduce murder to manslaughter.
12 And then we would also rely on the Supreme Court
13 of South Carolina case, State v. Starns, and the case
14 of -- and with regard to the lack of evidence of heat
15 of passion and in regards to the charge of voluntary
16 manslaughter.

17 But I understand your ruling and I just wanted
18 to state my position for the record.

19 THE COURT: Anything else you want to put on the
20 record?

21 MR. KIDD: No, sir. That's all.

22 THE COURT: All right. Ms. Runey, I'll be glad
23 to hear you.

24 MS. RUNEY: Thank you, Your Honor.

25 THE COURT: Anything you want to put on the

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1 record as to why we -- why I charged involuntary
2 manslaughter?

3 MS. RUNEY: Not as to manslaughter.

4 MR. SMITH: Not as to manslaughter.

5 THE COURT: Be glad to hear you.

6 MR. SMITH: Judge, we --

7 THE COURT: Excuse me. Voluntary manslaughter.

8 MR. SMITH: Voluntary manslaughter.

9 THE COURT: Glad to hear you, Mr. Smith.

10 MR. SMITH: Judge, we had specifically requested
11 this morning that you consider a charge of self-defense
12 in this case.

13 THE COURT: Well, first of all I want to hear
14 why you think I should charge voluntary manslaughter,
15 then we'll take up the self-defense issue. Okay?

16 MR. SMITH: I'm sorry, Your Honor. I apologize
17 for that.

18 Judge, in this situation we believe that the
19 testimony that Mr. Gathers gave yesterday certainly
20 puts us in a position where we should be entitled to
21 the charge of voluntary manslaughter. His testimony,
22 specifically, yesterday was that there was a fight that
23 occurred but that fight and the actions that had
24 occurred in the hallway and in the bedroom had ended,
25 that at that point he believed that he was going to get

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1 his money back, and things had cooled off. At that
2 point he believed that the victim in the case was going
3 to get that money and, instead, she came back at him
4 with a large kitchen knife.

5 We believe kind of under the reasoning of the
6 cases that the solicitor mentioned, specifically
7 Hardisty, that it's -- the present case is certainly
8 distinguishable from that. In Hardisty, there was the
9 dispute over some construction crossings and someone
10 during an argument ends up -- one of the workers gets
11 shot and killed. The Court specifically in that case
12 says: nowhere in this opinion does the Court take into
13 consideration the quarrel which occurred between the
14 parties at the time of the killing, and they didn't
15 have any information about the heat of passion or
16 provocation. In that case the defendant said in his
17 statement, I shot -- I shot and killed in that
18 particular situation. He had a period overnight where
19 he thought about the situation and then he came back
20 out and killed him with a gun the next day.

21 It was not the same factual scenario we're
22 dealing with here where in this instance the use of the
23 knife occurred immediately after the argument which had
24 cooled off and believed -- Mr. Gathers believed he was
25 getting his money back. In this situation, the knife

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1 came out directly then; therefore, in this situation he
2 acted in the heat of passion with provocation, the
3 provocation in the situation being the victim in this
4 case coming at him in an overhand fashion with the
5 knife. And so we think that Hardisty specifically is
6 distinguishable in this scenario.

7 We also would rely on State v. Gardner. And in
8 that case it's a situation between a husband and a
9 wife. And the question there was that the -- the
10 defendant's testimony in that case was that the wife
11 jumped on him and, me and her got into it. And the
12 court there looked at those discretions and decided
13 that those discretions actually could have been
14 determined either as only words or as actual actions.
15 And what they say specifically is that where there's
16 some doubt about it, we think that that is a proper
17 question for the jury to hear.

18 And for those reasons, we believe we're entitled
19 to the instruction on that.

20 THE COURT: Okay. The Court would also put on
21 the record State v. Penland. It's 273 SE2d 765 (1981).
22 In that case there was a shooting, and after the
23 shooting there was a pointing of a gun and a struggle
24 ensued, and the court allowed voluntary manslaughter.
25 In this case the same scenario could have occurred, in

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1 that there was a fight and there was a pointing of the
2 knife and the question of heat and passion for the jury
3 to determine.

4 Any other exceptions from the State?

5 MR. KIDD: Other than voluntary manslaughter,
6 no, sir.

7 THE COURT: Okay. Any exceptions from the
8 defendant?

9 MR. SMITH: Judge, the only exception we have is
10 we had -- as I indicated before, we had requested a
11 charge of self-defense based on Mr. Gathers --

12 THE COURT: Do you have a charge that you would
13 submit to the Court?

14 MR. SMITH: Judge, we have asked -- we had a
15 charge over here that had to be redone and I've asked
16 my paralegal to bring that over.

17 THE COURT: All right. Well, as soon as she
18 redo -- excuse me -- as soon as she re-does the self-
19 defense charge, I'll mark it as Court's Exhibit Number
20 what?

21 THE COURT REPORTER: Number 5.

22 THE COURT: Number 5 as a request from the
23 defendant, which the Court denied.

24 MR. SMITH: Thank you, Judge.

25 THE COURT: As soon as you get it, let me know

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1 and I'll mark it as a Court's exhibit.

2 MR. SMITH: Thank you, Your Honor.

3 THE COURT: All right. Any other exceptions
4 from the defendant?

5 MR. SMITH: No, Your Honor.

6 THE COURT: All right. Ms. Runey, at the bench
7 you had -- you wanted the Court to make a curative
8 charge concerning the issue where the solicitor stated
9 that the -- the husband catching the wife in bed was
10 sufficient legal provocation, that was the beginning of
11 voluntary manslaughter.

12 MS. RUNEY: Yes, sir.

13 THE COURT: I did not give a curative charge but
14 I did put in the charge that there were other reasons,
15 and numerous reasons, that could be determined. The
16 Supreme Court has said they would deal with that on a
17 case-by-case basis.

18 Was that sufficient for your request for --

19 MS. RUNEY: Yes, sir.

20 THE COURT: -- a curative charge?

21 MS. RUNEY: Yes, sir.

22 THE COURT: Anything else you would like to do
23 on the curative issue with the jury --

24 MS. RUNEY: No, sir.

25 THE COURT: -- other than what I've already told

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1 them?

2 MS. RUNEY: No, sir.

3 THE COURT: All right. Anything else from the
4 State?

5 MR. KIDD: No, Your Honor.

6 THE COURT: All right. Would the lawyers come
7 up and count the exhibits, make sure they're all here.
8 We'll get the bailiffs to take the exhibits, the charge
9 book, and the verdict form back to the jury and tell
10 them to begin their deliberations.

11 MS. RUNEY: Judge, before we do that, I just
12 wanted to renew my directed verdict motions.

13 THE COURT: I'm sorry. Excuse me. Should have
14 done -- you should have said that to me a long time
15 ago. We should have done that before we did closing
16 arguments. I'm sorry. But go ahead.

17 MS. RUNEY: Thank you.

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1 RENEWED MOTION FOR A DIRECTED VERDICT

2 At this time the defense would submit to the
3 Court that the State has failed to produce competent
4 evidence tending to prove the charge of murder.

5 After Mr. Gathers testified he said that he woke
6 up, he fought with Ms. Nevarez in the bedroom, they
7 fought in the hallway, and then when he thought that
8 she was going to give his money back that he did stop
9 hitting her and that's when Ms. Nevarez went into the
10 kitchen and grabbed the large knife and that's when the
11 fatal blows were struck. We submit to the Court that
12 this is not murder and ask you to direct a verdict on
13 the charge of murder.

14 THE COURT: All right. The Court will find that
15 the motion was made timely.

16 The Court, taking the evidence most favorable to
17 the nonmoving party, denies that motion.

18 MS. RUNEY: Thank you, Your Honor.

19 THE COURT: Solicitor, is there anything you
20 want to put on the record about the self-defense
21 request? For the record.

22 MR. KIDD: If you would like to hear me, I would
23 be glad to. It's just that --

24 THE COURT: I mean, whatever you want to put on
25 the record. I did not --

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1 MR. KIDD: Your Honor, I think that --

2 THE COURT: -- give you that opportunity. I
3 will give you that opportunity.

4 MR. KIDD: I appreciate it, Your Honor.

5 I think it's uncontroverted that the defendant
6 is responsible for binging on this situation. He's the
7 one that began the violence. And that is not a fact at
8 issue. And that fact alone should preclude the charge
9 of self-defense, being that if he is partly responsible
10 for bringing on the violence, he would not be entitled
11 to a self-defense charge.

12 Furthermore, I think the Castle doctrine would
13 apply to the victim in this scenario and I think when
14 the Castle doctrine applies --

15 THE COURT: Was it in existence when this
16 occurred?

17 MR. KIDD: Sir?

18 THE COURT: Was that statute in existence? The
19 new --

20 MR. KIDD: The new --

21 THE COURT: -- the new statute? The new
22 statute.

23 MR. KIDD: The new case law on it?

24 THE COURT: Yeah.

25 MR. KIDD: No, sir, Not the new case law that's

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1 come out recently, as in the past few months, which --

2 I'm assuming you're talking about the case law
3 that refers to the fact that the judge can direct a
4 verdict as soon as he finds -- you determine that the
5 Castle doctrine applies?

6 THE COURT: Right.

7 MR. KIDD: And I don't think that is -- that
8 case law doesn't exist as of the time of this crime.

9 But the Castle doctrine was sure in existence.
10 And with that, she is entitled to defend herself in her
11 own home when someone is beating on her. And that
12 being the case, she's entitled to pull a knife in her
13 defense of herself in her own home. And he can't claim
14 self-defense for her -- from her exercising a legal
15 right.

16 And I think based on that, he would not be
17 entitled to a self-defense charge.

18 THE COURT: Okay. Mr. Smith, anything you
19 want to put on the record pursuant to your request for
20 self-defense?

21 MR. SMITH: Judge --

22 THE COURT: I've already ruled. I'm just giving
23 y'all an opportunity to put on the record whatever you
24 feel comfortable, if you want to do that.

25 MR. SMITH: Sure, Your Honor.

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1 We would just indicate to the Court that our
2 position was that whatever argument had taken place had
3 resolved itself to the point there was a cooling off
4 period and then she comes at him with a knife, in
5 essence, two separate instances as opposed to one
6 continuing --

7 THE COURT: Well, my only reaction to that is
8 that I'm not sure dragging her down the hallway by the
9 hair is cooling off periods or termination of first
10 incident.

11 But your motion -- your request to charge -- not
12 charge voluntary manslaughter is denied and the request
13 for the charge of self-defense is denied.

14 MR. SMITH: Thank you, Your Honor.

15 THE COURT: Anything else?

16 MR. KIDD: No, Your Honor.

17 THE COURT: All right. Would y'all come forward
18 and mark on the record -- put on the record all the
19 exhibits are present and we can let the jury begin
20 their deliberations.

21 MR. KIDD: Your Honor, I'm not sure if we really
22 agreed or not, But as my recollection goes, the actual
23 documents were never actually entered into evidence,
24 the ones with the bank information.

25 THE COURT: The ones with what, now?

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1 MR. KIDD: The bank information, which you
2 originally ruled --

3 THE COURT: I thought they were. I thought I
4 later came back and said they were.

5 MR. KIDD: And this is my recollection of it,
6 Judge. It was the witness was on the stand --

7 THE COURT: It may have been done at the bench.

8 MR. KIDD: It was done at the bench, yes.

9 THE COURT: Then I need to put on the record
10 that I did admit them into evidence, although we did it
11 at a bench conference.

12 MR. KIDD: Right.

13 THE COURT: But that's never been placed on the
14 record.

15 MR. KIDD: Right.

16 And it was never admitted into evidence in front
17 of the jury.

18 THE COURT: All right. Well, I'm going to admit
19 them into evidence. Okay? I don't know what number
20 they would be. Whatever the next number would be.
21 Okay? Sometimes it gets -- you forget what's done up
22 here and what's -- that's why I don't really like to do
23 bench conferences. I had rather do what -- you forget
24 what you've done up here and what you did in open
25 court.

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1 Do you want me to bring the jury back and admit
2 that?

3 MR. KIDD: No, sir, not if that's the way you
4 would handle it.

5 My position would be that it shouldn't be
6 admitted at this point because --

7 THE COURT: I know. That's the position you
8 took at the bench conference, which I told you I
9 disagreed with.

10 MR. KIDD: Right.

11 THE COURT: Now, I don't remember whether we did
12 in open court or not.

13 Do you remember, Ms. Runey?

14 MS. RUNEY: I don't remember.

15 MR. KIDD: And it wasn't done -- and my
16 recollection is it wasn't done in open court.

17 THE COURT: Well, this lady knows. Has it been
18 admitted?

19 THE COURT REPORTER: It was admitted. The jury
20 was not in the room. It's on the record --

21 THE COURT: Okay. It's on the record.

22 THE COURT REPORTER: -- but the jury was out.

23 THE COURT: Okay. All right. Anything else?

24 MR. KIDD: No, sir.

25 THE COURT: Anything else y'all can dream up or

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1 come up with?

2 MR. KIDD: I apologize. I didn't see --

3 [Whereupon, attorneys and court reporter confer]

4 THE COURT: Sir, would you step out in the hall?

5 Let me know when y'all are ready.

6 MR. KIDD: Okay.

7 [Whereupon, the alternate juror exits the
8 courtroom at 11:45 a.m.]

9 [Whereupon, evidence goes to the jury at
10 11:55 a.m.]

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VERDICT

1
2 THE COURT: All right. Anything from the State
3 before we bring the jury?

4 MR. KIDD: No, sir.

5 THE COURT: Anything from the defendant?

6 MS. RUNEY: No, sir.

7 THE COURT: All right. As soon as we get a
8 bailiff.

9 [Whereupon, the jury enters the courtroom at
10 1:04 p.m.]

11 THE BAILIFF: All are seated, Your Honor.

12 THE COURT: Thank you very much.

13 I understand, Madam Forelady, you've reached a
14 verdict. If you'll give the verdict form to the
15 bailiff, please, ma'am.

16 [Whereupon, the bailiff proffers documents to
17 the Court]

18 [Whereupon, the Court reviews documents]

19 [Whereupon, the Court proffers documents to the
20 clerk of court]

21 THE COURT: Publish the verdict for us.

22 THE CLERK OF COURT: Thank you, sir.

23 The State of South Carolina vs. Gregory Quinn
24 Gathers, as to indictment number 2010-GS-10-6287, we,
25 the jury, by unanimous consent, find the defendant

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1 guilty of murder. Signed, foreperson, November 17th,
2 2011.

3 Ms. Foreperson, ladies and gentlemen of the
4 jury, if this is your verdict, please raise your right
5 hand.

6 [Whereupon, jurors comply]

7 THE CLERK OF COURT: Let the record reflect that
8 all jurors raised their hand.

9 THE COURT: Okay. Thank you very much.

10 Madam Forelady, I have written on this
11 indictment form guilty and dated 11/17/11. I'm going
12 to ask you if you will please sign where it says
13 foreperson.

14 [Whereupon, the clerk of court proffers
15 documents to the foreperson]

16 [Whereupon, the foreperson complies]

17 [Whereupon, the clerk of court proffers
18 documents to the Court]

19 THE COURT: Thank you, ma'am.

20 All right. Any motions from the State as to the
21 jury?

22 MR. KIDD: No, Your Honor.

23 THE COURT: Any from the defendant?

24 MS. RUNEY: Judge we would ask you to poll the
25 jury, please.

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POLLING OF THE JURY

1
2 THE COURT: Mr. Clerk, if you would poll the
3 jury, please.

4 THE CLERK OF COURT: Ladies and gentlemen, I'm
5 going to ask you each two questions: is this your
6 verdict; and is this still your verdict. Please answer
7 each question appropriately, and also stand whenever I
8 call your name, please. We'll begin with the
9 foreperson.

10 Juror number 25, Marie Bedard. Is this your
11 verdict?

12 MS. BEDARD: It is.

13 THE CLERK OF COURT: Is this still your verdict?

14 MS. BEDARD: Yes, it is.

15 THE CLERK OF COURT: Thank you, ma'am. You may
16 take your seat.

17 Juror number 215, Sandra Reiser. Is this your
18 verdict?

19 MS. REISER: Yes.

20 THE CLERK OF COURT: Is this still your verdict?

21 MS. REISER: Yes.

22 THE CLERK OF COURT: You may take your seat.

23 Juror 126, Timothy Hoats. Is this your verdict?

24 MR. HOATS: Yes.

25 THE CLERK OF COURT: Is this still your verdict?

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1 MR. HOATS: Yes.
2 THE CLERK OF COURT: Thank you, sir.
3 Juror 128, Anne Hood. Is this your verdict?
4 MS. HOOD: Yes, sir.
5 THE CLERK OF COURT: Is this still your verdict?
6 MS. HOOD: Yes, sir.
7 THE CLERK OF COURT: Thank you, ma'am.
8 Juror 85, Alexandra Fisher. Is this your
9 verdict?
10 MS. FISHER: Yes, sir.
11 THE CLERK OF COURT: Is it still your verdict?
12 MS. FISHER: Yes, sir.
13 THE CLERK OF COURT: Thank you, ma'am.
14 Juror 136, Michael Jefferson. Is this your
15 verdict?
16 MR. JEFFERSON: Yes.
17 THE CLERK OF COURT: Is this still your verdict?
18 MR. JEFFERSON: Yes.
19 THE CLERK OF COURT: Thank you, sir.
20 Juror 180, Rogina Morgan. Ma'am, is this your
21 verdict?
22 MS. MORGAN: Yes.
23 THE CLERK OF COURT: Is this still your verdict?
24 MS. MORGAN: Yes.
25 THE CLERK OF COURT: Thank you, ma'am.

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1 Juror 290, Matthew Willis. Sir, is this your
2 verdict?

3 MR. WILLIS: Yes.

4 THE CLERK OF COURT: Is this still your verdict?

5 MR. WILLIS: Yes.

6 THE CLERK OF COURT: Thank you, sir.

7 Juror 262, Taylor-Parsons, is this your verdict?

8 MS. TAYLOR-PARSONS: Yes.

9 THE CLERK OF COURT: Is this still your verdict?

10 MS. TAYLOR-PARSONS: Yes.

11 THE CLERK OF COURT: Thank you, ma'am. You may
12 take your seat.

13 Juror 202, Rosetta Polite. Ma'am, is this your
14 verdict?

15 MS. POLITE: Yes.

16 THE CLERK OF COURT: Is this still your verdict?

17 MS. POLITE: Yes.

18 THE CLERK OF COURT: Thank you very much, ma'am.

19 Juror 94, Nathan Gabriel. Sir, is this your
20 verdict?

21 MR. GABRIEL: Yes.

22 THE CLERK OF COURT: Is this still your verdict?

23 MR. GABRIEL: Yes.

24 THE CLERK OF COURT: Thank you, sir.

25 Juror 237, Calvin Simmons. Sir, is this your

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1 verdict?

2 MR. SIMMONS: Yes.

3 THE CLERK OF COURT: Is it still your verdict?

4 MR. SIMMONS: Yes.

5 THE CLERK OF COURT: Thank you, sir.

6 Your Honor, the jury has been polled and the
7 verdict stands.

8 THE COURT: Okay. Thank you very much.

9 [Off the record momentarily]

10 THE COURT: All right. Ladies and gentlemen of
11 the jury, you're welcome to stay in the courtroom, or
12 you're welcome to go to the jury room and collect your
13 items, or you're welcome to stay in the jury room. And
14 I believe a pizza was just delivered to the jury room
15 prior to bringing you into court. You're welcome to
16 stay in the jury room and eat the pizza, you're welcome
17 to take it with you, whatever you would like to do. It
18 doesn't make any difference to the Court. You're
19 welcome to stay or you can go to the jury room. Your
20 choice. Whatever y'all want to do. What does the jury
21 want to do? Do you want to go? Some of you want to
22 stay and some of you want to go? It doesn't matter.
23 Some of you can stay, some of you can go.

24 [Whereupon, jurors exits the courtroom at
25 1:09 p.m.]

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SENTENCING

1
2 THE COURT: Be glad to hear you on sentencing.
3 From the State first, please.

4 MR. KIDD: Thank you, Your Honor.

5 I think I don't need to rehash the facts of the
6 case for you. I know you've paid attention throughout
7 the trial. I also know that you had the privilege of
8 seeing some pictures that the jury didn't get to see
9 and I think the brutal and gruesome nature of the
10 offense was even more clearly depicted in some of those
11 other photographs, how bloody and gruesome it actually
12 was.

13 I know the victim's daughter would like to
14 address you.

15 But as far as a prior record of the defendant,
16 it is a 1986 simple assault. He has a 1988 assault and
17 battery of a high and aggravated nature, in which he
18 received a ten-year sentence suspended on eighteen
19 months active and a five-year probation. He has a
20 petty larceny in '91. And out of Georgia, in 2002 he
21 has a cruelty to children charge, a simple battery,
22 which is their CDV or family violence charge, and a
23 criminal trespass.

24 And I believe Tiffany Nevarez would like to
25 address the Court.

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1 THE COURT: I'll be glad to hear you, Tiffany.

2 MS. TIFFANY NEVAREZ: My name is Tiffany
3 Nevarez, Your Honor, and I want to thank you for my
4 addressing the Court today.

5 First of all, I know my mother had some bad
6 habits, but she was a very good person to her family,
7 strangers, and people that she just came in contact
8 with she loved -- people that she came in contact with,
9 people that she loved.

10 I didn't have the chance to grow up with my
11 mother, due to her bad habits, but she was trying to
12 make that up to us. She came back into my life when I
13 was eighteen years old. I did live a part of life
14 without her. But I did make it with the help of the
15 Good Lord and his lessons. I could not have seen it
16 through without Him.

17 Every day when I was a little girl, I prayed for
18 my mother to get help. I prayed for him to make her a
19 better person. And one day he did.

20 She came back in my life when I was eighteen and
21 I had one child already. And every day since then that
22 she was able to come back in my life, I thank him. I
23 thank him for making her a better person and helping
24 her with her problems, for bringing her back for me and
25 my kids' sakes.

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1 She moved to Charleston to help me and my sister
2 out with our kids. She also had kids. By that time
3 she moved to Charleston, I already had two sons and my
4 sister had two children. And they needed their
5 grandmother. She loved our sons. She loved her
6 grandchildren to death. She loved all babies. She
7 babysat all the time. She helped anybody she could
8 help. And my kids loved grandma, whether grandma was
9 spanking them on the hands on just giving them love and
10 hugs. Everyone that knew her knew she loved her
11 grandkids. And being that she wasn't there for me and
12 my sister, she was making her time up with her kids.
13 She spent every waking moment with her grandkids. She
14 raised them, she helped us, she babysit. When we were
15 at work, she took care of them. She helped us a lot.

16 A few years after that, I did had another baby.
17 She became a grandmother at that time for the fourth
18 time. Like I said, she had children and I had
19 children. Shortly after I had that baby, that baby
20 died when he was three and a half months old with
21 lymphoma cancer. She was with me when that baby be
22 born and she was with me when that baby die. He died
23 in my arms and my mother was there for me the whole
24 time. But that's what took a toll on my mother. She
25 turned around and she went back to the streets and she

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1 became like she was when I was a little girl.

2 She always told me and my sister that she was
3 very proud of us because we turned out to be two strong
4 young ladies, the lady that she couldn't be, the mother
5 to her -- the mother to our kids that she couldn't be
6 to us. Me and my sister now are both single parents.
7 And my grandmother [phonetic] knows she wasn't the
8 father of our kids but she was -- my mother wasn't the
9 father of our kids, but she was there for us and her
10 presence made it a whole lot easier for us. She helped
11 us out, like I said, with everything.

12 I just recently had another son and I had my son
13 three days before her one-year anniversary, so three
14 days before his grandmother died last year. He was
15 born on 6/4 of 2011 and because of this selfish act, he
16 will never get to know his grandmother. He will never
17 get to -- he will never get the love that a grandmother
18 could give to him, that a grandmother should give to
19 her kids.

20 Your Honor, I said all of that to say that I
21 just ask you to serve justice for my mom and for my
22 kids, my nieces and my nephews. Not so much for me,
23 because I did cherish the little bit of time that I did
24 have with her -- it was only a few years, but I did
25 cherish those years and I remember the good times that

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1 we had -- but for my sons and my two nieces and my two
2 nephews, I just ask that justice be served.

3 I'm not asking you to take Mr. Gathers' life,
4 because if it were I wouldn't be the person that I am.
5 But I do feel that a life for a life is what he should
6 get. I wouldn't see fit for him to live -- live on the
7 streets when my mom is not able to take care of her
8 grandkids no more. And if he comes home, if he's able
9 to live the sentence out, if he's able to come home
10 from prison, he would still see his grandkids. He
11 would be able to see his dad and his sisters and his
12 twenty-nine family members.

13 It's only me and my sister. I don't have any
14 brothers, I don't have any other sisters. My aunts and
15 my uncles are all over the world so it's just me and
16 the grandchildren. And it was my mom, and now it's us
17 and our eight kids.

18 MR. KIDD: And, Your Honor, I think Ms. Nevarez
19 would like for me to show you a few pictures.

20 THE COURT: Ms. Nevarez, I'm awfully sorry for
21 your loss, but thank you so very much.

22 Do you want to show me some pictures?

23 MR. KIDD: I just want to briefly -- she asked
24 that I briefly show you some pictures of their family.
25 I think that is the Nevarez family. And then there's

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1 one including Ms. Renee Nevarez in that photograph
2 there.

3 [Whereupon, the Court reviews documents]

4 THE COURT: This is -- here?

5 MR. KIDD: That is.

6 THE COURT: You wouldn't recognize her from
7 those pictures.

8 MR. KIDD: Sure wouldn't.

9 THE COURT: Okay. Thank you very much.

10 Fine looking family. You need to take care of
11 your children.

12 MS. TIFFANY NEVAREZ: And I've got one more
13 thing to say.

14 THE COURT: Yes, ma'am.

15 MS. TIFFANY NEVAREZ: These people -- how my
16 mother looked, we couldn't even allow any of the kids,
17 any of her grandkids, to come to her funeral or her
18 wake. I didn't want that image to be left in their
19 heads that I have to see and I have to think about
20 every time I close my eyes now. I have to remember the
21 pictures and the damage that he has done to my mom.
22 And I don't want him to do that to anybody else ever
23 again. It was not right.

24 MR. KIDD: And, Your Honor, based on a lot of
25 that that Ms. Nevarez has just said, the State would

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1 think that a life sentence would be appropriate in this
2 case.

3 Thank you.

4 THE COURT: Okay. Thank you very much.

5 Be glad to hear you.

6 MS. RUNEY: Thank you, Your Honor.

7 Mr. Gathers is here today supported by his
8 family -- if y'all will stand up -- and they've been
9 here throughout the trial.

10 As you heard from him on the stand, he has a
11 very large family. I believe that his father has left.
12 It was hard for him and he decided to leave. But he
13 has been here throughout the trial. His father is
14 eighty years old. His father has twenty-nine children,
15 so Greg has twenty-nine brothers and sisters.

16 He's been in Charleston most of his life. He
17 did move to Atlanta for a while in the military. He
18 spent three and a half years in the army and then he
19 came back to Charleston.

20 He has done mostly moving, labor work, in his
21 life. But I have been in contact with a former
22 employer. That is Mr. Zeb Eberhardt of Zeb's Quality
23 Cleaning. And Gregory worked for him for twenty years.
24 He says he was dependable and he could always look to
25 him for work when he couldn't from other -- some of the

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1 others that he employed, and was very complimentary of
2 his work.

3 Greg has one sister that is a Colleton County
4 sheriff detective. His family was in touch with her
5 when this happened and she said, all you can do is turn
6 yourself in.

7 THE COURT: Is the sister here?

8 MS. RUNEY: She is.

9 THE COURT: Okay.

10 MS. RUNEY: I would like for you to hear from
11 her, I would like for you to hear from his other family
12 members, about Greg.

13 My experience with Greg is that he has been nice
14 to deal with, polite, mild-mannered. I've asked him
15 not to say anything today in this sentencing hearing,
16 as much as I know that he would like to. I know that
17 you were able to hear from him during his testimony.
18 But I think that his family is a good testament to --

19 THE COURT: I understand he was on cocaine and
20 probably marijuana and alcohol and was extremely
21 intoxicated. But the brutality of this killing. I
22 mean, he bashed this woman senseless, bashed her until
23 he killed her. I mean, you can look at her pictures
24 and you can't even recognize the woman in the pictures,
25 especially the ones at the scene that I didn't even

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1 allow into evidence. I mean, it's an extremely brutal
2 killing. He just beat her to death. That's my
3 concern. And I guess your -- my concern is it
4 happening to someone else.

5 MS. RUNEY: Your Honor, I would ask for you
6 to hear from the family. I would ask you to consider
7 that a thirty-year sentence is a life sentence for
8 Mr. Gathers.

9 THE COURT: Pardon?

10 MS. RUNEY: I would ask you to consider --

11 THE COURT: Well, a thirty-year sentence would
12 be -- he would be seventy-eight before he got out.

13 MS. RUNEY: Yes, sir.

14 THE COURT: How long has he been in jail now?

15 MS. RUNEY: He's been in jail for a little over
16 a year. Since his arrest on June 7th.

17 THE COURT: So he would be seventy-seven --

18 MS. RUNEY: Yes, sir.

19 THE COURT: -- because he's got to serve day-
20 for-day, doesn't get any credit --

21 MS. RUNEY: Yes, sir.

22 THE COURT: -- with a thirty-year sentence.

23 MS. RUNEY: Yes, sir.

24 THE COURT: Ma'am, I'll be glad -- what's your
25 name?

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1 MS. DORETHA GATHERS: I'm Doretha Gathers,
2 Detective Doretha Gathers, Colleton County Sheriff's
3 Department.

4 THE COURT: Ms. Gathers, I'll be glad to hear
5 you, anything you would like to tell me.

6 MS. DORETHA GATHERS: Yes, sir. I am the sister
7 of --

8 THE COURT: And I'm awfully sorry about your
9 brother and what happened but --

10 MS. DORETHA GATHERS: Yes, sir.

11 THE COURT: -- and it's a real tragedy on both
12 families.

13 MS. DORETHA GATHERS: Yes, it is.

14 THE COURT: But at the same time -- I don't know
15 if you've seen these pictures, but it was -- from this
16 Court's perspective, it was extremely brutal.

17 MS. DORETHA GATHERS: Yes, sir. I do
18 understand.

19 THE COURT: And the lady was five feet six,
20 weighed 130 pounds. He was -- he's over six feet, 230
21 pounds. And he just beat her unmercifully.

22 MS. DORETHA GATHERS: Yes, sir.

23 THE COURT: And I just don't see any
24 justification for it.

25 MS. DORETHA GATHERS: Yes, sir.

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1 THE COURT: But I'll be glad to hear you.

2 MS. DORETHA GATHERS: I am the sister that they
3 did call when my dad spoke and he asked me what to do.
4 I said, dad, just call the police department, y'all
5 stay where you at, tell everything what happened.

6 I'm not going to try to justify anything today.
7 It was a sad situation. It's something that shouldn't
8 have happened. And I do apologize.

9 Good afternoon. Giving honor to God, who is the
10 head of my life, thank you, Your Honor, for allowing me
11 to speak today. On behalf of the Gathers family, we
12 offer up our sincerest apology and lifelong prayers for
13 the peace and harmony to the Nevarez family.

14 My brother has been battling with drugs for
15 years and that battle has ultimately affected his
16 sanity. Do I believe he's insane? No. But I do
17 believe that his judgment was altered due to results of
18 extended usage. Never would I present this as an
19 excuse for the crime committed, but submit this as one
20 of the many reasons why we're here today.

21 Our mother reared all seven kids, three boys and
22 four girls -- my dad got twenty-nine, and my mom got
23 seven from him -- as a single parent and did her very
24 best, did her very best. But I felt my brother always
25 missed our dad and that male bonding. He struggled to

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1 find or fit into place -- find a fitting place in this
2 world for himself. To the people on the outside he may
3 seem rough and rugged, but to us he's our baby brother
4 with a quick smile and a funny sense of humor. Please
5 have mercy on him.

6 In closing, the Gathers family will never forget
7 the void this crime has left in the lives of the
8 Nevarez' relatives and we will forever pray serenity
9 and forgiveness. May God bless us all.

10 Thank you, Your Honor.

11 THE COURT: Okay. Thank you so very much.
12 Appreciate --

13 MS. DORETHA GATHERS: Yes, sir.

14 THE COURT: -- your being here.

15 MS. BROWN: I'm his sister. My name is --

16 THE COURT: I'm sorry. What's your name?

17 Mr. Gathers, move over just a little bit so I
18 can see -- is it your sister?

19 MS. RUNEY: It is, yes. It's Carnell [phonetic]
20 Brown.

21 MS. GATHERS-BROWN: This is -- Gathers-Brown. I
22 want to say I'm sorry. But I'm very sorry to your
23 family. Very sorry. And just have mercy on him. But
24 I am very sorry.

25 MS. RUNEY: His fiancé, Mary Greenland, is here

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1 but she would not like to address the Court.

2 THE COURT: Okay. Anybody else you would like
3 for me to hear from?

4 MS. RUNEY: No, sir. Thank you.

5 THE COURT: Mr. Smith, anything you would like
6 to add?

7 MR. SMITH: No, Your Honor.

8 THE COURT: All right. Mr. Gathers, I'll be
9 happy to hear anything you would like to tell me. It's
10 up to you.

11 MR. GATHERS: I would like to say I'm sorry. I
12 didn't mean to do that to your mother. I wish I could
13 take it back. I'm sorry. I ask for your forgiveness.
14 I'm sorry. I'm sorry to my family. I'm sorry. I am
15 sorry.

16 THE COURT: Ms. Runey, anything else you would
17 like to tell me or anything else you've got to say?

18 MS. RUNEY: No, sir.

19 THE COURT: Okay. All right. Mr. Gathers,
20 indictment number 6287, sentenced to the State
21 Department of -- sentenced to the State Department of
22 Corrections for a period of life.

23 Thank you very much.

24 The jurors are welcome to leave.

25 Anything? Do you need ten days, or do you want

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1 to make your motions today?

2 MS. RUNEY: No. I can do them today.

3 THE COURT: You want to do them today or do you
4 want ten days?

5 MS. RUNEY: We'll do it within ten days.

6 THE COURT: Okay. All right.

7 [JURY TRIAL ADJOURNS AT 1:26 P.M.]

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Ad \$63

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Gregory Quinn Gathers
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2014-0-10-2046

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2014 MAR 27
JULY CLERK OF COURTS
PH 4-40

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 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 Perry Correctional Institution
2. Name and location of Court which imposed sentence Charleston county
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010 GS.1006287 / Murder
(b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) November 18, 2012 / Life w/o parole
(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?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. December 18, 2013
- 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) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Inneffective assistance of counsel
 (b) Ineffective assistance of Counsel
 (c) Ineffective assistance of Counsel

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

- (a) Counsel failed to obtain an expert for applicants defense
 (b) Counsel failed to object to State's "golden rule" argument
 (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. N/A
 ii. N/A
 iii. N/A
 iv. N/A
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. N/A
 iii. N/A
 iv. _____
 (c) the disposition thereof:
 i. N/A
 ii. N/A
 iii. N/A

- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- 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) _____
- (b) _____
- (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? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
- i. Martha Runey / Charleston county public defenders office / trial
- ii. Bergamin Tripp / South Carolina Appellate defence
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL
- ii. Appeal
- iii. _____

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

Conviction vacated, reversed and a new trial given

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

No

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , 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.

Major Jim Latta

SWORN to and subscribed before me this 13th
day of March, 2014.

Nancy C. Merchant (L.S.)
Notary Public

My Commission Expires: 1-23-2023

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

I, , 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.


Applicant

SWORN or affirmed to and subscribed before me this
13th day of March, 2014.


Notary Public

My Commission Expires: 1-23-2023

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-2046
	)	
Gregory Quinn Gathers #161583,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed March 27, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the September 2010 term of the Charleston County Grand Jury for murder (2010-GS-10-6287). The Applicant was represented by Martha Runey, Esquire.

On November 14-17, 2011, the Applicant proceeded to trial and was found guilty as indicted. The Applicant was sentenced by the Honorable J.C. Nicholson to confinement for a period of life without parole.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Benjamin Tripp, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Gathers, No. 13-UP-462 (S.C. Ct. App. December 18, 2013). The Remittitur was issued on January 3, 2014.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to obtain an expert for Applicant's defense.
 - b. Counsel failed to object to the State's "golden rule" arguments.

III.

The Applicant alleges he 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

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

[Signature on the following page.]

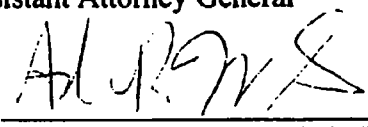
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

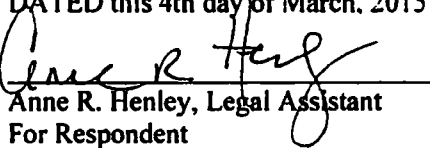
March 4, 2015.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-2046
	)	
GREGORY QUINN GATHERS, #161583	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Christopher L. Murphy
 PO Box 2008
 Mt. Pleasant, SC 29465

DATED this 4th day of March, 2015


 Anne R. Henley, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO. 2014-CP-10-2046

3 GREGORY QUINN GATHERS,)
4 Plaintiff,) Transcript of Record
5 vs.)
6 STATE OF SOUTH) Date: December 14, 2015
7 CAROLINA,)
8 Defendant.)

9 * * * * *

10

11 B E F O R E:

12 THE HONORABLE DEADRA JEFFERSON

13

14

15

16 * * * * *

17

18 Denise J. Lauder, RPR

19 Ninth Judicial Circuit

20

21

22

23

24

25

1 A P P E A R A N C E S

2

3 REPRESENTING THE PLAINTIFF:

4

5 CHRISTOPHER L. MURPHY, ESQUIRE

6 Post Office Box 2008

7 Mt. Pleasant, SC 29465

8

9

10 REPRESENTING THE DEFENDANT:

11

12 J. RUTLEDGE JOHNSON, ESQUIRE

13 Rembert Dennis Building

14 1000 Assembly Street, Room 519

15 Columbia, SC 29201

16

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18

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25

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9	(No exhibits were offered or	
10	marked for identification.)	
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1 (The following proceedings were held
2 December 14, 2015, Charleston County Circuit Court,
3 at 4:09 p.m.)

4 THE COURT: This is Gregory Quinn
5 Gathers v. The State of South Carolina,
6 2014-CP-10-2046. This is before the Court on an
7 Application for Postconviction Relief, which was
8 filed on March 27th of 2014. He was indicted at
9 the September 2010 term of the grand jury on the
10 offence of murder, 2010-GS-10-6287. He was
11 represented by Ms. Martha Kent Runey.

12 On November 14th through 17th, 2011,
13 the matter went to trial, the defendant was found
14 -- the applicant was found guilty, he was sentenced
15 by Judge Nicholson to a period of confinement of
16 life without parole.

17 The matter was appealed and were
18 affirmed by the Court of Appeals in the State
19 versus Gathers in an unpublished opinion
20 2013-UP-462, and the matter was remitted on
21 January 3, 2014. He is alleging ineffective
22 assistance; counsel failed to obtain an expert for
23 applicant's defense and failed to object to the
24 State's Golden Rule argument.

25 Okay. Those are the only two issues on

1 the PCR, Mr. Murphy?

2 MR. MURPHY: There's actually four
3 issues, Your Honor.

4 THE COURT: Okay. Tell me which ones
5 I left out.

6 MR. MURPHY: Number one is, his
7 attorney did not ask for an involuntary
8 manslaughter jury charge.

9 THE COURT: Did you amend his
10 application or --

11 MR. MURPHY: I've had conversations
12 with Mr. Johnson.

13 THE COURT: Okay. So you're amending
14 it without objection?

15 MR. MURPHY: Correct.

16 THE COURT: Failure to request
17 involuntary jury charge, and what else?

18 MR. MURPHY: There was no -- his
19 counsel did ask for a self-defense charge, but that
20 charge was denied, and we raised the issue of
21 failing to object to that denial and preserve the
22 record.

23 THE COURT: I'm sorry, repeat that.

24 MR. MURPHY: His counsel asked for a
25 self-defense charge, which was denied, but she did

1 not preserve that objection for the record. And
2 we've raised that as the second issue.

3 The third issue is that there is an
4 improper charge with regard to malice being
5 inferred.

6 THE COURT: Uh-huh.

7 MR. MURPHY: And then the fourth
8 charge --

9 THE COURT: Was there a self-defense
10 argument?

11 MR. MURPHY: There was not --

12 THE COURT: The only time malice is
13 inappropriate is when there's a self-defense
14 argument; otherwise, you can still instruct malice.

15 MR. MURPHY: Yes, Your Honor, I'm just
16 trying to preserve this for the record.

17 And then finally, Your Honor, with
18 regard to the Golden Rule, there is a -- not a
19 direct addressing of the jury, but indirectly
20 addressing the jury that we would also like to
21 preserve on page 513 of the record, paragraph 6 to
22 16.

23 THE COURT: Does the State have any
24 exception?

25 MR. JOHNSON: Your Honor, we didn't

1 discuss this but had to be right before this
2 hearing. It's the first time I've heard of this,
3 so...

4 THE COURT: Okay. What do you want to
5 do?

6 MR. JOHNSON: I would move to dismiss
7 that claim. There may be an indirect -- there is
8 no put-yourself-in-her-shoes or that type of
9 argument made by the State at --

10 THE COURT: What's the page number?

11 MR. MURPHY: It's page 513, 6 to 16.
12 And I would say, Your Honor, we are resting on the
13 record for this PCR Application, and if Mr. Johnson
14 wants to supplement with any argument or case law
15 to oppose what we're saying, we don't have any
16 problem with that.

17 THE COURT: You said 513?

18 MR. MURPHY: 513, yes.

19 THE COURT: The record only goes to
20 430.

21 MR. JOHNSON: There should be four
22 volumes.

23 THE COURT: I only see three of four.
24 Where is the rest of them? Which volume is it in?

25 MR. JOHNSON: Four of four.

1 THE COURT: What's the page again?

2 MR. MURPHY: Page 513, sentences -- I'm
3 sorry, lines 6 to 16. And, again, it's not a
4 direct addressing the jury, but I think it's
5 indirect.

6 THE COURT: What were the lines?

7 MR. MURPHY: Six to 16.

8 MR. JOHNSON: And, Your Honor, I have
9 no objection to that now after reading that
10 specific line. I can add argument if you would
11 like.

12 THE COURT: Well, no, if he wants to
13 amend his application, I just need to know if you
14 have any objection to it.

15 MR. JOHNSON: No, Your Honor.

16 THE COURT: Okay. Ready to proceed,
17 Mr. Murphy?

18 MR. MURPHY: Yes, Your Honor. We would
19 rest on the record.

20 THE COURT: Okay.

21 MR. MURPHY: I would just say if it
22 helps, Judge, skeleton facts, this was -- the
23 allegations of this case was where the defendant
24 and the victim were exchanging drugs for sex. The
25 evidence is that the defendant had been paid and

1 believes that the victim actually stole his money.

2 He confronted her and she pulled out a
3 knife, there was an altercation and she ultimately
4 ended up getting killed. That is a skeleton
5 argument of what happened, but, again, Your Honor,
6 we're just resting solely on the record that the
7 transcript --

8 THE COURT: Tell me the grounds again,
9 the ones that you amended.

10 MR. MURPHY: Yes.

11 THE COURT: Wait one second for me so I
12 can make sure I have exact clarity on this. Okay.
13 Failure to -- what type of evidence did he --

14 MR. MURPHY: That's not a ground, Your
15 Honor. We're not alleging that. The issue -- the
16 grounds are failure to ask for an involuntary
17 manslaughter charge. She asked for voluntary and
18 received that, but there is nothing on the record
19 to indicate that she asked for involuntary
20 manslaughter.

21 THE COURT: How would you --

22 MR. MURPHY: Well, I think the elements
23 -- the state of mind is the only difference between
24 the --

25 THE COURT: No, there's a big

1 difference between involuntary and voluntary.
2 Involuntary you have to be -- it's basically
3 negligent and that -- that's like when you are
4 doing something legal that results in somebody's
5 death, or you're doing something illegal that
6 naturally would not tend to lead to death. That's
7 not these facts. And it is not traditionally a
8 lesser included of any of these. I would have to
9 look at my chart.

10 But normally when you have involuntary,
11 that's what somebody is charged with to begin with
12 and it's -- usually the charges stand on its own.
13 I'm not certain whether assault -- well, no, this
14 would be a death. So I don't think there's
15 anything that's a lesser included of involuntary --
16 I mean, of involuntary manslaughter, but give me
17 one second. I need to look at something.

18 According to our case law, involuntary
19 manslaughter is not a lesser included of murder.
20 So he wouldn't have been entitled to that, unless
21 the facts -- it could conceivably be a lesser
22 included of voluntary manslaughter, but not murder.

23 To prove involuntary manslaughter, you
24 have to prove that the defendant unintentionally
25 killed someone without malice, but while engaged in

1 an unlawful activity not naturally tending to cause
2 death or great bodily harm, or that the defendant
3 unintentionally killed the victim without malice
4 while engaged in a lawful activity with reckless
5 disregard for the safety of others.

6 The best thought I could give to that
7 would be like when silly children are riding in
8 cars and somebody gets thrown off the hood and gets
9 killed. So that's unlawful activity where somebody
10 is unintentionally killed without malice, but
11 that's reckless disregard.

12 The other is when somebody
13 unintentionally killed somebody without malice but
14 while engaged in an unlawful activity, the key
15 word, not naturally tending to prove -- not
16 naturally tending to cause death or great bodily
17 harm.

18 And that's where you get the hang-up
19 and that's why it's not a lesser included in
20 murder. You have to intend to kill somebody for
21 murder. Involuntary you don't necessarily have to
22 have intent, but you do have to have sudden heat of
23 passion without a cooling off period. I have never
24 charged voluntary as a lesser included of murder.

25 MR. MURPHY: Thank you, Your Honor. I

1 would just note an exception to your ruling for the
2 record.

3 THE COURT: I haven't ruled, I made an
4 observation. I think the law is very clear. I'm
5 not aware of any case law that says it's a lesser
6 included of murder because the facts are so
7 inapposite. When you look at the lesser included
8 -- when you look at the elements, it could never
9 meet the elements test, because the elements test
10 is, simply put, murder has five elements.

11 The lesser included would have to have
12 four elements and just miss one of the elements
13 that's included in the greater offence. You can't
14 have totally different elements and say it's a
15 lesser included. It just doesn't work that way.

16 The only difference with voluntary and
17 involuntary is the -- I think it's a malice
18 requirement, but I would have to look it up. But,
19 clearly, involuntary is a lesser included of
20 murder.

21 Okay. Now, tell me what the other
22 grounds are.

23 MR. MURPHY: Thank you, Your Honor.
24 The other ground was that there was a request for a
25 self-defense charge made that was denied; however,

1 there wasn't an exception to that ruling which,
2 therefore, it was not preserved for appeal. And we
3 believe that that entitled Mr. Gathers to that
4 self-defense charge.

5 THE COURT: Was it raised in the
6 record? Did the judge rule on it?

7 MR. MURPHY: The judge -- in the trial
8 transcript the judge simply said, I understand your
9 request and it's denied.

10 THE COURT: I think that's enough to
11 preserve it. That's enough to preserve it for an
12 appeal.

13 MR. MURPHY: All right. Thank you,
14 Your Honor.

15 THE COURT: Appellate counsel must have
16 not thought there was any merit in it.

17 MR. MURPHY: That would have been the
18 case, Your Honor.

19 THE COURT: Yeah. Once you say -- once
20 the judge says, I understand you're asking for that
21 and I'm denying it, it means that it's been raised
22 and contemporaneously ruled on. I would have to
23 look at the transcript again, but I'm not certain
24 the facts -- based on what they've presented would
25 have supported a self defense.

1 MR. MURPHY: Yes, Your Honor.

2 THE COURT: Because you have to be
3 without fault in bringing on the difficulty, and
4 there could be a strong argument because there is
5 no defense such as voluntary intoxication, that in
6 some regard he brought it on himself. I just don't
7 think the facts may have supported it.

8 MR. MURPHY: The third issue we would
9 like to raise is that there was an improper charge
10 regarding malice, and we would allege that this
11 improperly shifted the burden of proof to inferred
12 malice upon the applicant here.

13 THE COURT: Yeah. The only time
14 Belcher would apply, which is the standard we're
15 talking about, is if self defense were appropriate.
16 You only don't charge malice when self defense is
17 being instructed, but you still charge malice if
18 there is no self-defense instruction. And it looks
19 to me like it was a standard malice -- standard
20 murder instruction.

21 MR. MURPHY: Yes, Your Honor. And
22 then, finally, the final argument would be the
23 argument regarding the Golden Rule issue with the
24 closing arguments that we've previously addressed.

25 THE COURT: Which is page?

1 MR. MURPHY: Page 513, lines 6 through
2 16.

3 And I will just conclude, Judge, and
4 there's really no need for me to argue any further,
5 is that we believe when you read the facts that
6 were presented to the Court, he was entitled to a
7 voluntary manslaughter, he would have been entitled
8 to a self --

9 THE COURT: Tell me how he would have
10 been entitled to a voluntary manslaughter charge.
11 What legal activity did he --

12 MR. MURPHY: Involuntary manslaughter,
13 I'm sorry, Your Honor.

14 MR. JOHNSON: He was actually given a
15 voluntary manslaughter instruction, but not an
16 involuntary. Sorry, Your Honor.

17 MR. MURPHY: That's correct. Thank
18 you.

19 THE COURT: Give me one second. Bare
20 with me one second. Yeah. What evidence do you
21 have of voluntary -- he got an involuntary.

22 MR. MURPHY: He did.

23 THE COURT: Didn't. He got a voluntary
24 and didn't get an involuntary.

25 MR. MURPHY: Correct, Your Honor.

1 THE COURT: I'm sorry, I misunderstood.

2 MR. MURPHY: Yes.

3 THE COURT: But the charge conference
4 is in the record, as I recall.

5 MR. MURPHY: It is in the record, Your
6 Honor.

7 THE COURT: And it was requested,
8 correct?

9 MR. MURPHY: I do not believe it was
10 requested. There is nothing in the record that
11 shows it was requested that I can see.

12 THE COURT: And so those are all
13 basically legal arguments that your client would
14 not have any testimony to --

15 MR. MURPHY: That's correct. There's
16 no need for him to testify at all.

17 THE COURT: Do you plan to call Ms.
18 Runey or does the State plan to call Ms. Runey?

19 MR. MURPHY: I'm not going to call her
20 at all. We rest on the record, Your Honor.

21 THE COURT: Thank you.

22 MR. JOHNSON: Your Honor, I don't
23 believe I need to call Ms. Runey. I think this is
24 all legal arguments and I can address each one --

25 THE COURT: Well, I think that she

1 would have some information on why she requested
2 what she requested and why she didn't object. I
3 think that would be -- I don't think we should
4 leave that to speculation.

5 MR. JOHNSON: But as far as that is
6 concerned --

7 THE COURT: The self defense I think is
8 a record issue.

9 MR. JOHNSON: Right, and that's what I
10 was going to argue, Your Honor, is that to prove
11 that self defense would have been successful, he's
12 got to prove that appellate counsel did not brief
13 that issue and that it would be successful in the
14 Court of Appeals; however, he's not alleged
15 ineffective assistance of appellate counsel and,
16 thus, I don't think he can prevail on that issue.

17 THE COURT: But it was raised in the
18 record --

19 MR. JOHNSON: Yes, ma'am.

20 THE COURT: -- and it was ruled on.
21 And the malice, that was raised, correct?

22 MR. JOHNSON: Correct.

23 THE COURT: And it was ruled on.

24 MR. JOHNSON: I'm not -- I'm not sure
25 that was actually --

1 THE COURT: I don't know that there
2 would have been any basis just for her to have
3 raised it because there's no self defense.

4 MR. JOHNSON: Correct.

5 THE COURT: So the charge would have
6 been appropriate.

7 MR. JOHNSON: I believe that's a
8 nonissue, Your Honor.

9 THE COURT: Okay. So what we're
10 dealing with is what she requested and why there
11 was no objection. And I think that's limited and
12 we can dispose of that and then we can have clarity
13 and we don't have to guess or speculate.

14 MR. JOHNSON: The State would call
15 Martha Runey to the stand.

16 THE COURT: Thank you.

17 MARTHA RUNEY,
18 being first duly sworn, testified as follows:

19 THE CLERK: Please state your first and
20 last name and spell your last name.

21 THE WITNESS: Martha Kent Runey,
22 R-U-N-E-Y.

23 MR. JOHNSON: Good afternoon, Ms.
24 Runey. May it please the Court?

25 THE COURT: Yes, sir; you may proceed.

MARTHA RUNEY - DIRECT EXAMINATION BY MR. JOHNSON

1 DIRECT EXAMINATION

2 BY MR. JOHNSON:

3 Q. Good afternoon, Ms. Runey. Thank you
4 for your patience.

5 A. Good afternoon.

6 Q. Do you remember being involved in this
7 case?

8 A. I do.

9 Q. And how long did you represent Mr.
10 Gathers? Generally speaking? From the beginning
11 when he got arrested to trial?

12 A. I did. I was appointed to his case on
13 June 9th of 2010. I was on maternity leave from
14 January of 2011 to approximately June of 2011.
15 During that time, another attorney in our office
16 took control of the case, and then I took the case
17 back when I returned in June of 2011. And then I
18 represented Mr. Gathers until his trial in November
19 of 2011.

20 Q. Okay. And have you had a chance to
21 read the transcript?

22 A. I have.

23 Q. So you are quite familiar with what was
24 requested and what wasn't?

25 A. I am.

MARTHA RUNEY - DIRECT EXAMINATION BY MR. JOHNSON

1 Q. Okay. And one of the allegations is
2 failure to request an involuntary manslaughter
3 charge. Would you have any reason why or why you
4 wouldn't have requested that instruction?

5 A. I don't see in my notes or in the
6 transcript that I requested it. I didn't feel like
7 the facts of the case warranted an involuntary
8 charge, and I didn't feel like there was a basis
9 for it or that the trial court would grant that
10 charge.

11 Q. Because this was a heated exchange
12 between the applicant and victim. They had been
13 smoking drugs and performing sexual intercourse and
14 staying up all night; is that correct, in this
15 case?

16 A. That's correct.

17 Q. And so you asked for -- the voluntary
18 manslaughter was instructed to the jury, correct?

19 A. That's correct.

20 Q. So basically the jury had murder and a
21 voluntary manslaughter to decide, correct?

22 A. That's right.

23 Q. Ultimately, they decided murder in this
24 case?

25 A. That's right.

MARTHA RUNEY - DIRECT EXAMINATION BY MR. JOHNSON

1 THE COURT: I think you confused it
2 again. So he got the voluntary manslaughter
3 charge.

4 MR. JOHNSON: Yes, ma'am.

5 THE COURT: But you did not request
6 involuntary.

7 THE WITNESS: I did not.

8 THE COURT: You didn't feel the facts
9 warranted it.

10 THE WITNESS: That's correct.

11 THE COURT: I just wanted to make sure
12 that I was clear.

13 BY MR. JOHNSON:

14 Q. And did you request self defense in
15 this case?

16 A. I did.

17 Q. And did the judge instruct on self
18 defense?

19 A. He did not.

20 Q. But that was in the record, correct?

21 A. It is.

22 Q. And why would you have requested that
23 instruction?

24 A. I believed from Mr. Gathers' testimony
25 that we were entitled to a self-defense charge, and

MARTHA RUNEY - DIRECT EXAMINATION BY MR. JOHNSON

1 that was part of our argument as well.

2 Q. Okay. And did you see anything wrong
3 with the jury charge of inferred malice in this
4 case?

5 A. I don't remember anything and I didn't
6 object to it.

7 Q. If you saw something improper, would
8 you have objected to it?

9 A. I hope I would. Yes, I would have. If
10 I -- if I remember this correctly, it was the
11 standard malice charge that's always charged with
12 murder.

13 Q. Are you familiar with the concept of
14 the Golden Rule argument?

15 A. Yes.

16 Q. What does that pertain to?

17 A. Basically, that the State would have
18 been asking you to walk in that person's shoes and
19 it would be improper.

20 Q. Did you find that to be the case in
21 this case?

22 A. I did not.

23 Q. If you would have heard those words or
24 that type of argument, would you have objected?

25 A. I would.

MARTHA RUNEY - CROSS EXAMINATION BY MR. MURPHY

1 MR. JOHNSON: Okay. No further
2 questions.

3 THE COURT: Mr. Murphy.

4 MR. MURPHY: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 CROSS-EXAMINATION

7 BY MR. MURPHY:

8 Q. Ms. Runey, you testified that you
9 didn't think the facts warranted the involuntary
10 manslaughter charge, correct?

11 A. That's correct.

12 Q. Did you discuss whether or not you
13 would ask the Court for that charge with Mr.
14 Gathers?

15 A. I saw in my notes that I did discuss
16 with him, during a visit to the jail, involuntary
17 manslaughter. It just simply says that we
18 discussed it.

19 Q. And that would have been prior to going
20 to trial?

21 A. That's correct.

22 Q. And that would have carried a lesser
23 sentence than voluntary manslaughter, correct?

24 A. That's correct.

25 Q. Okay. And was there any strategic

MARTHA RUNEY - REDIRECT EXAMINATION BY MR. JOHNSON

1 reason why you didn't ask for it, that charge?

2 A. No.

3 Q. And you talked about -- you asked for a
4 self-defense charge, correct?

5 A. That's correct.

6 Q. And did you ever -- after the
7 conviction, did you ever have any contact with the
8 appellate counsel at all?

9 A. No.

10 MR. MURPHY: That's all I have, Your
11 Honor.

12 THE COURT: Any redirect?

13 MR. JOHNSON: Yes, ma'am.

14 REDIRECT EXAMINATION

15 BY MR. JOHNSON:

16 Q. Ms. Runey, did I hear you correctly
17 when you said there was no strategic reason to ask
18 for the involuntary manslaughter charge?

19 A. I didn't ask for it because I didn't
20 think the facts warranted it.

21 MR. JOHNSON: Okay. I just wanted to
22 clarify that. Thank you, Your Honor.

23 Thank you, Ms. Runey.

24 THE COURT: Any objection to Ms. Runey
25 being excused?

1 MR. JOHNSON: No, Your Honor.

2 MR. MURPHY: None, Your Honor.

3 THE COURT: Thank you, ma'am. We
4 appreciate you being so patient with us today.

5 Anything further from the applicant?

6 MR. MURPHY: Your Honor, I would just
7 state for the record, the appellate brief deals
8 with photographs that were admitted. It did not
9 address the self-defense charge at all or the
10 voluntary manslaughter charge, I think that's
11 important. And that would be all, Your Honor.

12 THE COURT: Anything from the State?

13 MR. JOHNSON: No, Your Honor.

14 Is this argument?

15 THE COURT: Uh-huh.

16 MR. JOHNSON: Well, then, I do believe
17 that Ms. Runey's failure to request involuntary
18 manslaughter, that we should deny that allegation.
19 She stated she did not find the facts to fit that
20 charge, and upon your review of the record you will
21 find that is not applicable to this case. It's a
22 murder versus voluntary manslaughter case, which
23 the jury had before them, and they decided murder.
24 That is within the purview of the jury and I don't
25 think it's appropriate for postconviction relief.

1 As far as the failure to preserve self
2 defense, she asked for it, the judge denied that
3 and, therefore, I believe it is preserved. The
4 applicant has failed to allege -- his appellate
5 counsel has failed to meet his burden of proof that
6 even had that issue been raised, the Court of
7 Appeals would have overturned this case.

8 As far as the improper jury charge on
9 malice, I believe Belcher is not applicable in this
10 case, as Your Honor has articulated, that that is
11 reserved for a self-defense case, and that once you
12 look upon page 513, you will not find a Golden Rule
13 argument in this case and, therefore, counsel did
14 not have the obligation to object to that argument,
15 Your Honor. And for those reasons we ask you to
16 deny this allegation.

17 THE COURT: Anything further from the
18 applicant?

19 MR. MURPHY: Yes, Your Honor, very
20 briefly. He has confined to the transcript, and we
21 would ask that upon reading that, that we think the
22 facts would entitle to him -- he did get the
23 voluntary manslaughter, and we think the facts
24 would entitle him to the voluntary manslaughter
25 charge. With regard --

1 THE COURT: What facts in the record
2 would support that? What legal activity was he --
3 what illegal activity was he involved in that would
4 not cause death?

5 MR. MURPHY: He was trying to get his
6 money back from --

7 THE COURT: Isn't death always possible
8 when you engage in physical combat with somebody?

9 MR. MURPHY: I believe that's probably
10 true, Your Honor, but I think with the way this was
11 presented, he was trying to get his money back and
12 the knife was pulled; therefore, it was self
13 defense. There is a case, Jackson v. State, that
14 says that trying to get your money back is not
15 considered a crime. So --

16 THE COURT: I don't think that's the
17 same facts as this case.

18 MR. MURPHY: It's different, Your
19 Honor, but it is --

20 THE COURT: Very different.

21 MR. MURPHY: -- somebody trying to get
22 their money back, but, in any event, we are
23 confined to these facts. I can't change them at
24 all.

25 THE COURT: Well, I just want to know

1 -- you can't make a blanket statement that he was
2 entitled to a jury charge. I need to know what's
3 in the record to support it.

4 MR. MURPHY: The facts -- from the very
5 beginning it talks about he was getting his money
6 back, he wanted to get his paycheck back, she
7 pulled a knife, there was a struggle and he ended
8 up -- she ended up getting stabbed. The blade did
9 break off in her.

10 THE COURT: The facts are a little
11 more complex than that.

12 MR. MURPHY: Like I said, this is a
13 skeleton version of the facts.

14 THE COURT: Anything further?

15 MR. MURPHY: Nothing, Your Honor.

16 THE COURT: I've read the record in
17 this case and I have read the instructions, and
18 there is no basis for the -- nor would -- even if
19 she had requested it, it's unlikely that the Court
20 would have given an involuntary instruction. He
21 did get a voluntary instruction, certainly had the
22 benefit of that. She made a request for self
23 defense. She certainly cannot be found to have
24 been -- to have failed below an objective standard
25 when she requested something, it was preserved for

1 the record, and it was contemporaneously denied.
2 She has no control over that. And appellate
3 counsel apparently went through the record and
4 didn't see as any basis for the appeal.

5 Most appellate counsel go through and
6 they see which issues are winnable, and pictures
7 are always inflammatory in nature, they're usually
8 winnable. If there is to be any ground on appeal
9 -- and I would assume that appellate counsel picked
10 the issue they thought was the most winnable to
11 pursue and didn't see any merit in the self-defense
12 argument as it was made and preserved.

13 The malice instruction was proper.
14 There was not a self-defense charge given and,
15 therefore, there could be no burden shifting.
16 Belcher only stands for the proposition that where
17 there is self defense, we are not to instruct on
18 malice, but where there is no self defense, it is
19 still proper to charge on malice.

20 And I have reviewed the argument at
21 page 513 and there is no Golden Rule argument. The
22 Solicitor simply says, save your sympathy for
23 somebody else, and they can say that. That's not
24 saying, put yourself in somebody else's shoes.
25 That's not appealing to the prejudices and biases

1 and emotions of the jury.

2 The Golden Rule argument is when a
3 Solicitor, or even in a civil case, when they say
4 put yourself in the shoes of the other person and
5 send a message. That's not the argument that was
6 made. The argument that was made was clearly
7 within the parameters of what a Solicitor is able
8 to argue under the facts of the case. And Ms.
9 Runey was not ineffective for not objecting.

10 MR. JOHNSON: Thank you, Your Honor.

11 THE COURT: You're welcome. The relief
12 is denied. Mr. Johnson can provide the Court with
13 a proposed Order within 20 days and he will provide
14 you with a copy in the event you want to add
15 something to it.

16 MR. JOHNSON: Thank you, Your Honor.

17 THE COURT: Thank you.

18 (These proceedings were concluded at
19 4:36 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 14th day of July, 2016 at
13 Charleston, Charleston County, South Carolina.

14

15

16

17 S/ Denise Lauder
18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
My Commission expires
August 2, 2017

21

22

23

24

25

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Gregory Quinn Gathers #161583,³⁸

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2014-CP-10-2046

ORDER OF DISMISSAL

BY

2016 APR 26 PM 3:55
JUDGE J. ARMSTRONG
CLERK OF COURT

FILED

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Christopher Murphy, Esquire
J. Rutledge Johnson, Esquire
Martha Kent Runey
December 14, 2015
Denise Lauder

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 27, 2014. The Respondent made its Return on March 4, 2015 and filed on March 9, 2015. An evidentiary hearing into the matter was convened on December 14, 2015, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Christopher Murphy, Esquire, and J. Rutledge Johnson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

At the hearing, Martha Kent Runey, Esquire testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the Applicant's PCR Application, the State's Return, the trial transcript and the appellate records.

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[Signature]

PROCEDURAL HISTORY

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 September 2010 term of the Charleston County Grand Jury for murder¹ (2010-GS-10-6287). The Applicant was represented by Martha Runey, Esquire.

On November 14-17, 2011, the Applicant proceeded to trial and was found guilty as indicted. The Applicant was sentenced by the Honorable J.C. Nicholson to confinement for a period of life without parole.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Benjamin Tripp, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Gathers, No. 13-UP-462 (S.C. Ct. App. December 18, 2013). The Remittitur was issued on January 3, 2014.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to obtain an expert for Applicant's defense.
 - b. Counsel failed to object to the State's "golden rule" arguments.

Applicant amended his Application and argued at the hearing that he is being held in custody unlawfully for the following reasons:

¹ Murder is a violent, most serious felony punishable by death, imprisonment for life, or by a mandatory minimum term of imprisonment for thirty (30) years. See S.C. CODE ANN. §§ 16-3-10, -20 (2003), 16-1-60 (2003), 17-25-45 (2003).

1. Failure to request a charge of involuntary manslaughter.
2. Failure to preserve a Self-Defense jury instruction.
3. Failure to object to an improper jury instruction.
4. Failure to object to a "Golden Rule" argument.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and hear their testimony. The Court has also read the trial transcript and the appellate records, all of which assists the Court in judging their credibility. The Court finds the testimony of trial counsel credible.

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

Ineffective Assistance of Counsel

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) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the

Life imprisonment means until death of the offender without the possibility of parole. See S.C. CODE ANN. §§ 16-3-20 (2003).

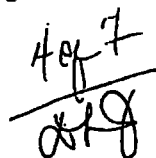
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exercise of reasonable professional judgment. See Id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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.

Failure to Request a Charge of Involuntary Manslaughter

Applicant first argues that Counsel was ineffective for failing to request a jury instruction of involuntary manslaughter. This Court finds this allegation without merit. "Involuntary manslaughter is defined as the unintentional killing of another without malice while engaged in (1) an unlawful activity not naturally tending to cause death or great bodily harm or (2) a lawful activity with reckless disregard for the safety of others." State v. Scott, 408 S.C. 21, 24, 757 S.E.2d 533, 535 (Ct. App. 2014), reh'g denied (May 2, 2014), cert. granted (Sept. 11, 2014), aff'd, 779 S.E.2d 529 (S.C. 2015), reh'g denied (Dec. 16, 2015). This Court has reviewed the entire trial transcript and finds no evidence whatsoever that Applicant was either engaged in unlawful activity not naturally tending to cause death or great bodily harm, as Applicant admitted he physically and brutally assaulted victim causing her death; or that he was engaged in a lawful activity with reckless disregard for the safety of others, as he was engaged in a physical altercation, an unlawful activity. Therefore, this Court finds no

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deficiency of Counsel for not asking for an involuntary manslaughter jury charge. Moreover, Applicant can prove no resulting prejudice under Strickland. Thus, this allegation is denied.

Failure to preserve a self-defense jury instruction

Applicant also alleges that Counsel was deficient in not preserving a self-defense jury instruction. This Court finds this allegation without merit. This Court has reviewed the entire transcript and finds that Counsel sufficiently preserved a self-defense request for appellate review. See Tr. 532: 10-25; 533-540, 541: 1-14 ("the request for the charge of self-defense is denied."). As there is clear evidence in the record that Counsel preserved this issue for appellate review, this allegation is also denied.

Failure to object to the malice jury instruction

Additionally, Applicant alleges Counsel was ineffective for failing to object to the jury instruction that malice can be inferred from the use of a deadly weapon. This Court finds this malice instruction proper in light of the testimony presented during the trial. Applicant claims that State v. Belcher, 385 S.C. 597 (2009), precludes the trial judge from charging the inference of malice from the use of a deadly weapon when a lesser included offense jury instruction was charged. This Court disagrees with this assertion and finds this malice charge was proper under the circumstances. The evidence presented in the Belcher case was based upon self-defense. See Belcher at 601 ("Because the evidence presented a jury question of self-defense, Belcher asserts it was error to charge the jury that it may infer malice from the use of deadly weapon. We agree.") In the case at bar, there was no claim of self-defense, as Applicant brought on the confrontation and was the aggressor in the assault which ultimately resulted in murder. No evidence of self-defense was presented, unlike the Belcher

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case. Therefore, Applicant's case is distinguishable from Belcher and this Court finds the malice instruction proper. Thus, Counsel was not ineffective for not objecting to this jury charge. Accordingly, this allegation is denied.

"Golden Rule" Argument

Further, Applicant alleged that counsel was ineffective for failing to object to an improper closing argument by the solicitor. This Court finds this allegation without merit. The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). Furthermore, the solicitor's closing argument must not appeal to the personal biases of the jurors. Id. To be entitled to a new trial for improper closing arguments, the test is whether "the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Hamilton, 344 S.C. 344, 362, 543 S.E.2d 586, 596 (2001). A Golden Rule argument is one in which the State asks the jurors to put themselves in the shoes of the victim. See Von Dohlen v. State, 360 S.C. 598, 608, 602 S.E.2d 738, 743 (2004) ("put yourself in Margaret's shoes, size six").

In this case, Applicant alleges that the Solicitor asked the jurors to put themselves in the victim's position, thus inflaming their personal biases. However, this Court has reviewed the Solicitor's entire closing argument and can find no such rhetoric. The Solicitor's closing argument was confined to the evidence in the record and the reasonable inferences therefrom. Therefore, this Court finds Counsel was not ineffective for not objecting to solicitor's closing argument. Thus, this allegation is denied.

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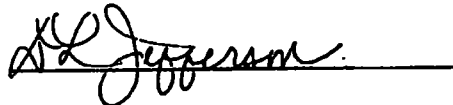
CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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!

Deadra L. Jefferson
Presiding Circuit Court Judge
Ninth Judicial Circuit

April 16, 2016
Charleston, South Carolina



CDD20100603092

DOCKET NO. 2010GS1006287

WITNESSES

North Charleston Police Department

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

2010024048

COURT OF GENERAL SESSIONS

September Term 2010

ARREST WARRANT NUMBER

K640056

DATE OF ARREST

June 7, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: SEP 08 2010

VERDICT

Guilty

Marie Pedraza

Foreperson of Petit Jury

11/17/10
Date

INDICT

THE STATE

vs.

GREGORY QUINN GATHERS

DOB: [REDACTED]
B/M

Indictment for

Murder

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF SUPERIOR COURT
DEPUTY CLERK
[Signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

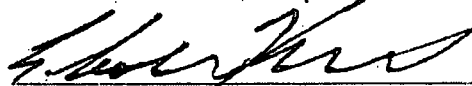
INDICTMENT

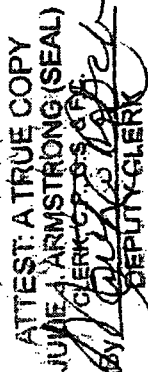
At a Court of General Sessions, convened on September 7, 2010 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about June 7, 2010, with malice aforethought, GREGORY QUINN GATHERS did kill and murder Renee Nevarez by means of hitting the victim about the head and face with a closed fist, and that Renee Nevarez did die in Charleston County as a proximate result thereof on June 7, 2010; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

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


CULVER KIDD
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JUNE 4, 2010
JULIE A. ARMSTRONG (SEAL)
CLERK OF DISTRICT COURT
BY  DEPUTY CLERK