

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Perry H. Gravely, Circuit Court Judge

RASHAWN MURPHY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001415

APPENDIX

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S.C. SUPREME COURT

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1 things beyond my ability to comprehend. But he
2 did let us know that he reviewed all the
3 injuries. There were abrasions, bruises,
4 fingernail punctures, scratches, fracture to the
5 leg. He gave an exhaustive description of the
6 brain.

7 And he said where the brain was hit, what the
8 trauma was and how the child died. Probably
9 could have stopped there. But he wanted to go on
10 and tell you that the injury -- let's see if I
11 can get it straight. He said that, uh, her head
12 was probably moving when this injury occurred.
13 He went on and told you he's talked to the
14 Solicitor's office. He already got photos. His
15 testimony fit exactly to what their theory was,
16 that this child's head was ran into a wall.

17 Again, Mikey, the 10-year-old child has
18 quashed that theory. That's gone. He stated my
19 client hit the wall with his fist. He looked at
20 the picture. Yeah, that's where he hit. That's
21 the hole. Not from **Minor** head, from my
22 client's fist.

23 And then Dr. Wren went on to share his
24 knowledge on the drywall. Yeah, somebody could
25 get it and break it. But I'd like to see their

1 hands. He's verified.

2 Then, after Dr. Wren, it was my turn to put
3 up evidence. This is an unusual case. Normally,
4 in all the times I been in trial, the State is
5 going to call people that were there that night
6 of the crime. That was up to me to do that.

7 I called Ms. Hill. We went over two
8 statements she gave. I questioned her on her
9 statements that she wrote. One for Dr. Lully and
10 one for Officer Williams. And I asked her
11 various questions about them. And one time, I
12 think that I shared them with the jury. The
13 State objected. Judge Verdin didn't allow. She
14 said you had heard enough. So I went over that.
15 I'm going to go over exactly what she said.

16 **MR. LEIBERT:** Your Honor, may we approach?

17 **THE COURT:** Yes.

18 **MR. THOMPSON:** I'm not reading the
19 statement.

20 **MR. LEIBERT:** May we approach?

21 **THE COURT:** Well, your objection, I'm
22 sustaining. We don't need to approach on that.
23 You can't go into a statement that's not in
24 evidence. But to the extent she testified to it,
25 you can go over that.

1 **MR. LEIBERT:** Thank you, Your Honor.

2 **MR. THOMPSON:** So I questioned her on those.

3 I asked if she checked on the kids at eight
4 o'clock. She said yes. How were they? Fine.
5 Checked on the kids at 2:00 a.m. Yes, they were
6 fine. That's exactly what she said. She also,
7 in her testimony, admitted that the stereo had
8 been moved. The stereo was large. She verified
9 that. She testified the first time she looked
10 in, she even turned on the light and looked in on
11 those children. The second time at 2:00 a.m.,
12 she looked in and they were fine.

13 Then she -- questioned her, did you give
14 another statement. Yes, I did. She testified at
15 2:00 a.m., everybody was okay. She testified
16 that the alarm went off at 5:45. That's when
17 Mikey came downstairs. That's when they went
18 upstairs and found **Minor**

19 She said that she was out with her sister.
20 Returned about 10:00. **Minor** was in bed. Said
21 that, uh, Mr. Murphy -- that she sent the kids to
22 bed. She differed a little bit. That's just
23 minor details. But she sent the kids to bed. If
24 you remember correctly, Mikey testified he was in
25 the bed when she got there. He said he was

1 downstairs. Then he said he was going up the
2 stairs. That's a minor detail.

3 She said she did go back and she checked on
4 the kids and they were okay. Then she said she
5 went back at 2:00 a.m. The alarm went off at
6 8:45. Mikey came down between 8:00 and 9:00.
7 They went upstairs. Checked on Parris. Called
8 the police. She stated that my client took the
9 phone, hit the wall. She says he hit one time.
10 She tells you that she went into the room between
11 8:00 and 9:00 in the morning. One bed here, one
12 bed here where Minor is and she doesn't notice
13 if there's a hole in the wall or not.

14 She turns on the light at 10:00. She doesn't
15 notice if there's a hole in the wall. You know
16 why? Because there wasn't a hole in the wall.
17 There wasn't a hole in the wall until Mr. Murphy
18 lost his temper on the phone trying to save this
19 child. And he hit it with his fist just like
20 Mikey said. She wants you to believe he hit the
21 wall only one time. Mikey rebutted that.

22 Then Mikey came up. I don't know if it
23 showed, but it was probably one of my
24 emotionalist times as an attorney when I had to
25 talk to a kid. Great kid. Just, to me, he did a

1 great job. He told you he heard noises. He went
2 to check it out. My client opened the door.

3 **Minor** is sitting on the wall crying.

4 I asked Mikey, before **Minor** went to bed, did
5 she have injuries? No. She had bruises? No.
6 He didn't hesitate. He told you no. She was
7 fine. And this time, especially after he
8 testified my client hit the wall several times,
9 verified the hole in the wall, the State changes
10 gears. Now, it's going to be the master bedroom
11 that they are going to focus on. They abandoned
12 one theory and jump on another. That's
13 reasonable doubt. The judge will instruct you on
14 what reasonable doubt is.

15 Anyway, Mikey admitted that the speaker was
16 moved. He admitted it was a big speaker. In
17 fact, it was a big entertainment center. He
18 admitted that Mr. Murphy brought the child
19 downstairs. Mikey made her a bottle. According
20 to Mikey, they were sent to bed. Like I said,
21 Mikey, I think he was confused. At one point, he
22 said all three went to bed at the same time in
23 the same bed. His mom said that. He said he
24 went to his bed. Anyway, he got a little
25 confused. Anyway, **Minor** went to bed. Then he

1 said Mijay was in the bed with Minor and
2 tickling her. She was laughing. He said that.

3 Then, as I stated, I said, Mikey, did she
4 have scratches? No. Did she have bruises? No.
5 No hesitation. He verified what his mom said.
6 The next morning, Mikey does something pretty
7 unusual. He gets up. Remember what he said?
8 Something just wasn't right. Something just
9 wasn't right. He goes immediately over and
10 checks on his sister. He told you, Mijay was a
11 lively sleeper. Mijay is still asleep. He leans
12 over on top of Mijay. He listened for air and he
13 listened for a heartbeat. The kid knew something
14 was wrong. Something happened.

15 My question is how does Mijay's noises not
16 cover Minor Why does he go straight to her and
17 check her out? I'm asking you to ask that. He
18 didn't remember anybody coming to check on her.
19 My client didn't come in the room after he put
20 the children to bed.

21 Mikey was there all night. He saw more. He
22 heard more. He participated more that night than
23 anybody else. He's the capstone. He's the part
24 the State threw out. They didn't want Mikey to
25 testify. He's what holds my client's innocence

1 all together. Then I brought grandmother up
2 here. And grandmother verified the age of this
3 blanket. It's been around for many years.

4 I'm going to talk about the main things
5 you've been presented with this week. I told you
6 the hole in the wall was a theory pursued by the
7 State. Officer Bryant, you remember oh, well,
8 he's suspicious. He couldn't remember that. He
9 started off trying to portray my client as a
10 liar. Then Mr. Hogsed gets up. Look at this
11 picture, this head, this plaster.

12 Then Dr. Wren gets up. Well, the child's
13 head was moving. You have to be consistent.
14 Remember his testimony about the stairs. Tony
15 asked him could that be caused by falling down
16 the stairs? Oh, yes. Then he had to back that
17 up and try to make his testimony fit the wall
18 theory. Then the hole in the wall. No DNA.
19 Conveniently crumbled when they took it out.
20 Well, that's a nice looking cut in that photo.
21 No DNA from that. No hair. No blood. No sweat.

22 And then Ms. Hill tells you that he hit the
23 wall once. Mikey tells you no, he hit it a bunch
24 of times. That's it. That's that hole right
25 there. Mikey saw more. He heard more. He

1 participated more than anyone else in this whole
2 case. He was there longer than Ms. Hill was.
3 He was there when the police officer Bryant came
4 to the conclusion.

5 I'm going to move to the DNA. Two samples
6 taken, my client and Minor My client lived in
7 the home. Minor lived in the home. It's
8 reasonable to believe that DNA is going to be
9 found of those two individuals in the home. The
10 things I showed you are very old. All of them
11 are old. You can look at them again to verify
12 that. The age of the DNA can't be determined.
13 We don't know if that's Mr. Murphy's blood from
14 1999 or 2009. We don't know if it's Minor
15 blood from one day old or one week old or a month
16 old. None of that's in evidence.

17 Then we'll go to the big thing. The letter.
18 Look at that letter. Read that letter. Remember
19 when my client wrote that letter, he's been shown
20 one photograph of that child. Okay. He's not
21 privy to the injuries the child had. He's not
22 privy to fingernail marks on the child's chin.
23 Sharp fingernails on the child's chin. He's not
24 privy to the bruises under the chin. He's not
25 privy to these others. I don't want to show you

1 any of these, the puncture wound from a nail or
2 something. He's not privy to the puncture wounds
3 on the back. He's not privy to the broken leg.
4 All he's seeing is one photograph of the child
5 who is deceased.

6 He writes that letter. He doesn't know what
7 happened. All he can think of is, hey, I do
8 remember she was down the stairs. I don't know
9 if she fell. Read the letter. I don't know if
10 she fell or what. I found her on the stairs. I
11 took her in, took her, put her to bed. The boys
12 tried to -- he got the boys to stay with her to
13 keep her awake for a little while.

14 It's 8:00, 9:00 o'clock at night. The
15 children go to sleep. What did Mikey say? Did
16 she have bruises, Mikey? No, she didn't have
17 them. Did she have scratches? No. Mikey saw
18 the child. He made her bottle. Took the bottle
19 to her. Was in the room. Mikey saw her, heard
20 her, participated more than anybody else.

21 Also, that letter, read that letter. That's
22 a guide. Here's a guy in love with a woman. In
23 love with her kids. Actually trying to make
24 amends with her and get back in her good graces.
25 I read it and I think he actually has a chance to

1 reconcile their relationship. The State is going
2 to take that letter and they are going to ask you
3 to consider this and consider that, consider
4 this, consider that. They are going to try to do
5 what Officer Bryant was doing, make my client out
6 to be a liar.

7 I don't read the letter as that. I read the
8 letter as saying I've been shown one picture of
9 this child. I don't know what happened. I do
10 remember this stair thing. The stair thing is
11 not brand new. He brought that up to Officer
12 Bryant. It's in his narrative on the record that
13 he brought up the thing with the stairs. Okay.
14 It's not a brand new set of facts or a set of
15 circumstances that he's trying to put forth to
16 you.

17 The letter was written also, in my opinion,
18 as an attempt to reconcile a relationship. He's
19 trying to figure out what happened. As I said,
20 he's not privy to all these injuries. He didn't
21 know all that was happening with the child. He
22 went to the hospital around 10 o'clock. He was
23 at the police department at about 5:00. He never
24 went back to that house. He never got an autopsy
25 report. He never got photographs.

1 Deputy Taylor held up one picture. That's
2 all he had to go by. Officer Bryant wants to
3 say, well, he said the mama didn't do it, the
4 little boy didn't do it. He didn't know. I
5 don't know. I got theory, but I'm not going to
6 share that with the jury. He didn't know.

7 Look at the letter. He provided for the
8 children. Let them watch TV. Probably, uh,
9 trying to fulfill the role of a father figure.
10 Look at the letter. He obviously cared for them.
11 He told Ms. Hill that several times in the
12 letter. He cared for her.

13 The letter, like I said, the State's going to
14 use that letter. I don't see it as my client
15 trying to make an excuse. I see him as trying to
16 just figure out what happened with this child. I
17 don't think the letter would have been written if
18 he had been privy to all the information.

19 The stairs. The State is going to make a big
20 deal about the stairs. Dr. Wren says you've got
21 to fall six feet to establish a head injury.
22 They are going to say Dr. Wren says it's not
23 possible. We're going to show you all these
24 photos. There's no way this is going to happen
25 by falling down the stairs. I don't think it

1 happened falling down the stairs either.

2 Go back to the person who saw the most, who
3 heard the most, who participated the most, Mikey.
4 Where did he find the child? He found that child
5 with her head between that iron post on that bed
6 and that wall. That's where her head was.
7 That's where those bruises come from, that iron
8 post. That's where that head injury come from
9 that's on the wall. The arm pulled backwards,
10 laying across the bed on her stomach. In between
11 the walls on the bed, an iron post bed. That's
12 my theory. I'm not asking you to believe it or
13 not believe it.

14 That's where the child was. That's where she
15 was found on that bed that swivels back and forth
16 because it folds out like a couch, goes up and
17 down and moves. That's where the child was found
18 and that's where the child died.

19 Ms. Hill testified my client slept
20 downstairs all night. Ms. Hill testified that
21 the child was fine when she checked on the child.
22 Ms. Hill turned the light on and the children
23 were fine. Mikey, was your sister bruised? No.
24 Was she scratched up? No.

25 Go back to the arches and the capstone.

1 Mikey had to be called by me. The State didn't
2 want Mikey's testimony. Didn't want Ms. Hill's
3 testimony. I had to get it. Why is that?
4 Because it didn't fit in their case. Imagine the
5 arch. Mr. Murphy took care of the kids. They
6 went to bed. I went back downstairs. She came
7 home. They laid down on the bed. Mikey's
8 testimony puts all that together and holds that
9 arch together. The State's responsibility in the
10 case, block by block, it slowly starts leaning
11 and leaning. Eventually, when Mikey testifies,
12 it falls down.

13 So they switch gears. You go to the bedroom.
14 The person that saw the most, heard the most,
15 participated the most, he opened the door.
16 Minor was sitting there crying. I can tell you
17 a crying baby, no scratches, no bruises. This is
18 serious stuff. This is probably some of the most
19 serious things you do your whole life, to
20 determine guilt or innocence in this case.

21 I told you when you started, I don't have to
22 prove innocence. They just have to prove guilt.
23 They are going to talk to you. He's a fine
24 lawyer. I'm going to tell you, I've got an arch
25 right here. They've got a Leaning Tower of Pisa.

1 It fell down one time with Mikey. It fell apart
2 again when they switched over to the master
3 bedroom as being the probable crime scene. Mikey
4 killed that too. She was fine. Was she bruised?
5 No. Was she scratched? No.

6 Also said something about the burden.
7 Imagine what burden it is on you, I mean, on my
8 client to all these police officers. They've got
9 SLED. They've got this incredible machine that I
10 haven't figured out how to work yet. They've got
11 mass resources at their disposal. All he's got
12 is me. He's helping me trying to help him.

13 Now, it's your turn. It's your turn. Take
14 this case as it was presented to you. Come up
15 with a verdict. Like I said, Mikey's testimony,
16 switching gears like the State did, that's
17 reasonable doubt. The case is gone. I'm
18 limited. I can't go any further on my theory.
19 You can. I ask you to do that.

20 I ask you to take this seriously. Take it
21 very seriously. Weigh everything. Question
22 everything. Read that letter again. Look at
23 this evidence. Think about the testimony of Ms.
24 Hill. Think about the testimony of that 11-year-
25 old kid and how it absolutely destroyed the

1 State's case. Think about the capstone. Think
2 about the capstone, how they threw him away.
3 They are building their case. This doesn't fit
4 our case. Throw it out of here.

5 Well, I built a case too. It's with the
6 stone, that kid. Consider that. Consider
7 everything you see and hear in this courtroom.
8 Think about who saw the most, who heard the most,
9 who participated the most in the events that
10 transpired that night with Mikey. Take his
11 testimony. Believe it and you will come back not
12 guilty. Thank you so much for your time.

13 **THE COURT:** Thank you, Mr. Thompson.
14 Mr. Leibert.

15 **MR. LEIBERT:** May it please the Court.

16 Somebody snatched that baby and slammed it --
17 (demonstrating) -- on a surface. My theory has
18 never changed that that man killed that baby in
19 that house. My granddaughter sleeps funny in her
20 bed sometimes. There was a mattress on that bed.
21 What did it do? Fold up and knock her chin and
22 beat the back of her head in to the point that it
23 caused her head to bleed and she died?

24 And why was Mikey concerned? He was
25 concerned because the night before, he heard that

1 bumping. What's he doing with my sister? He
2 wanted to know what that man was doing with this
3 child, with his baby sister. What was she doing
4 when he got up there? Well, first, he found out
5 that the door was locked. He leaves a two-year-
6 old and eight-year-old downstairs and locks the
7 door with the baby in there, with loud thumping
8 music. And then he hears the thumping on the
9 floor, a flat surface. My theory has never
10 changed.

11 Dr. Wren said that is consistent.
12 (Demonstrating.) Snapped that leg. It fits my
13 theory. I had to prove that it happened in his
14 care in Spartanburg County. That's all I've got
15 to prove. The hallmark of a false history is the
16 constant changing of that history. What does
17 that mean? That means the way you tell
18 somebody's lying is they change their story and
19 they change their story and they change their
20 story.

21 Homicide by child abuse. He wasn't privy to
22 all the injuries. He knew she was dead. He knew
23 she was dead. They want to call -- they want to
24 call the step a small issue? Oh, he forgot. You
25 forgot something maybe like I had the light on or

1 I put four ounces of milk instead of two.

2 Part of your job, as Her Honor will tell you,
3 you can take notes, you weren't allowed to look
4 up the law, you not allowed to go to the internet
5 or watch TV. You know, we've got lots of news
6 here. You not allowed to watch TV. You are
7 allowed to use your common sense. When we apply
8 common sense, it fits. This man been there less
9 than three months and that baby is dead. Bruises
10 all over her body.

11 Solicitor, can you turn that big fancy
12 machine on for me? I don't know how to use it
13 either.

14 You're going to have all this. I'm going use
15 his letter and I'm going to use his first
16 statement and his second statement and his third
17 statement. The hallmark of a false history is
18 the constant change. He just kept changing.
19 Changing and changing and changing.

20 The mother said she heard him hit the wall.
21 Well, he did a lot of hitting. He also hit the
22 floor in the master bedroom. He was punching it
23 because it hurt his foot. He was punching the
24 wall in there. It just so happens to be that
25 this horrible big injury on the left side of her

1 head is consistent with a flat surface. That's
2 not all.

3 Exhibit 19. Look at the bruises. Exhibit
4 21, we've got bruising here. Exhibit 22, look at
5 that one under her mouth. Did the bed do that?
6 But it swivels. Okay. 23, look at the injury
7 after injury after injury. Look at her back. He
8 grabbed her and he took a hold of her and he
9 slammed her and he slammed her. That was after
10 he snatched her up. And he turned the music up
11 loud. And these ridiculous stories. I was
12 dancing and I fell and I hurt my foot. So I
13 punched the wall and I punched the floor.

14 Yeah, he punched the wall in there. I don't
15 know if he slammed the baby on that one or
16 another. He slammed her though because he killed
17 her. It took enormous force to kill a baby. Dr.
18 Wren said you can twist that skull, you can turn
19 it inside out. Enormous force.

20 Mikey was 11 when he got here. He was eight
21 years and eleven months old when this happened.
22 You will see in the defendant's story and his
23 letter that he was surprised that the baby hadn't
24 started crying for her bottle. He was surprised
25 she wasn't up either. Why is she not up? Why is

1 she not up? He was good or he thought he was.
2 Where did he take her? To the little boys' room
3 and put her in the bed with the boys on the side
4 of the wall. He knew what he did. He knew what
5 he did. That baby was leaning. She was seen
6 leaning against the wall crying loudly.

7 That poor lady, her son comes down. She's
8 supposed to see a hole in the wall? I don't know
9 what Her Honor's doing right now because I'm
10 talking to you. Okay. Y'all could have waved at
11 me or snickered at me or something when I slammed
12 the baby. She was going to see her baby. Minor
13 [REDACTED] my god. She's purple. You
14 really think she's going to be looking at the
15 wall? She heard one hit on the wall. Then he
16 destroyed the phone. That's a man that knows
17 what he's done.

18 That's a lot of punches. He admits he's
19 punching in the other room. I don't know what
20 room he killed her. He hit her a lot. He hit
21 her all over. Under here, here, here, here. You
22 will have all of these. This is important. This
23 is an 11-month-old baby. She didn't get to see
24 her first birthday. Her first birthday.

25 A person who's guilty of homicide by child

1 abuse is they caused the death of a child under
2 the age of 11 while committing child abuse. A
3 death occurs under circumstances manifesting an
4 extreme indifference to human life. He put a
5 terribly injured baby in the bed with her brother
6 after he knew the injuries he put upon her.
7 Probably hoped that she didn't die. But you see,
8 when you beat a child and you slam them and you
9 do an injury to the back of her head, she died
10 within two hours. The bruises are within
11 minutes.

12 Let's review what Dr. Wren said. She died of
13 an acute subdural hemorrhage secondary to blunt
14 force trauma to the head. He called it a major
15 blow to the back of her head. Two hours of her
16 leg being broken. At the most, at the most, she
17 lived two hours. It was a fresh break. A spiral
18 fracture, takes a lot of force to do that. One
19 fall would not cause all these injuries. This is
20 abuse. My theory's never changed. An 11-month-
21 old baby's death in his care, in his house, in
22 Spartanburg County. Mommy, she will kick herself
23 for the rest of her life.

24 Blunt force trauma to the head, consistent
25 with hitting on a flat surface. Flat surface, as

1 opposed to steps. You heard what Dr. Wren said
2 about the steps. No evidence she ever tried to
3 go down the steps. He said he found her there.
4 They don't believe it. They abandoned that
5 theory.

6 You will have all the photographs. You will
7 have his statement. I want to go over that a
8 little more. The Solicitor, your Solicitor asked
9 Samantha did he call you and say we found her on
10 the step? She was dazed. That's his word. A
11 little shaken. Really? No, he didn't call. I
12 left my phone with him. I had my sister's phone.
13 He didn't call me. Did he tell you when he got
14 home? She's up in the bed. Boys, y'all get up
15 there now. He tried to keep her awake. He said
16 that's something his grandma told him.

17 He wasn't punching floors and the walls all
18 night listening to loud music. He tried to
19 change it to moving furniture. You know what
20 Mikey said? Mikey said I didn't see him move
21 anything, that's what he told me. What he told
22 me. The police took some pictures. The heaviest
23 item up there is the bed. Try to see if there's
24 any indentation. Y'all will have that. Speaker.

25 Now, we are at the trauma bay, outside the

1 morgue. They put them in different rooms. This
2 is what he said. He wrote all these in his own
3 hand. They gave him blank sheets of paper. You
4 get to write whatever you want. 11:35 a.m.,
5 January 3rd, around 8:00 p.m., after Minor
6 finished playing with her two-year-old brother, I
7 gave her a pacy because she didn't care for her
8 bottle. I laid her down to go to sleep. An hour
9 or so later, I put her two brothers to bed and
10 checked on her as I always do. She seemed fine.
11 I heard her breathing this morning. Oh, this
12 morning, her eight-year-old brother came down
13 crying telling us that Minor wasn't moving. He
14 ran downstairs. You will have all of that.

15 Then he meets with the investigators. Again,
16 he wrote his own statement. Put her to sleep at
17 6:00 or a little later. She woke up around 7:00.
18 She played with her brothers for a little while.
19 I told her she was about to go to sleep. So I
20 had them watching her. I went to get her bottle.
21 I came back with the bottle. She wasn't drinking
22 so I gave her her pacy. Common sense. She
23 wouldn't take her bottle. Then this morning, her
24 oldest brother came down.

25 And then, you heard David Taylor testify. I

1 put his statement in. The attorney read from it.
2 Under certain rules that we're all bound by in
3 evidence, some things we're not allowed to put
4 in. Some things we are. That's why we have a
5 judge. I didn't read it to you then because I
6 highlighted it. You will have that as well.
7 This is what he said. You can read it back
8 there.

9 As I walked by the door, Murphy asked could
10 he have a photo that was lying on the table
11 outside the door. I held the photo and he looked
12 at it. He then asked if I would sit and talk to
13 him for a minute. I stated yes and sat down in
14 the interview with him. He said he really did
15 not know what happened and appeared to start
16 crying. I got him some tissue.

17 I asked him to tell me what happened. After
18 a couple of minutes, he stated that he put the
19 baby in the bed upstairs, left the door cracked
20 around 7:00. The two other kids were downstairs.
21 At some point, he went to walk upstairs and
22 noticed her near the bottom step of the stairs. I
23 picked her up and she appeared to be dazed. He
24 said he took the baby back upstairs.

25 Didn't call the mother. Didn't tell the

1 mother. Didn't call the ER. Didn't tell her
2 that night. Didn't tell her while she was giving
3 a massage. Didn't tell her while they were
4 watching TV. Didn't tell her when they found her
5 baby lifeless. Didn't tell her on the way to the
6 hospital. Didn't tell her at the hospital. He
7 was trying to cover up a crime.

8 Here's what he told Investigator Bryant when
9 Investigator Bryant came in. He didn't do it.
10 No one broke in. Samantha was gone. **Minor** was
11 not in the room with him when Mikey went
12 upstairs. You can't believe an eight-year-old.
13 That's what he says in his letter. You can't
14 believe him. He wasn't in there with me when he
15 heard that thumping. He wasn't in there. But he
16 changed that too. He remembered that too. They
17 got to telling about he found her dead. He keeps
18 adding and changing. You see? I'm going to
19 wiggle out of this. He was dancing. He told
20 Mikey he was moving things around. You can't
21 believe an eight-year-old.

22 He asked for a Sprite. They got him Sprite.
23 Not a Mountain Dew, not a Coca-Cola, Sprite.
24 That's what he asked for. They give him blank
25 sheets of paper and he gives the third statement.

1 You will have that.

2 And then, and then his letter. I agree with
3 Mr. Thompson. Please look at that letter very
4 closely. I know you will. Y'all have been a
5 great jury. Thank you for that. In the letter,
6 he remembers mama, as he called her, **Minor** was
7 in the room. Then he remembered that he had the
8 door locked. Mikey remembers that his baby
9 sister is crying and leaning up against the wall.
10 He says he was drunk. He says he had a temper.
11 I know I messed up by not telling you that night.
12 There's been some time. Maybe she'll forget
13 about it. Mamas don't forget. He lived there
14 less than three months.

15 He was so stuck in front of the TV. He
16 didn't even see me go downstairs with Samantha.
17 That's what he said, not Mikey. This is what
18 Mikey heard while he was watching TV. It must
19 have been awful loud for that little boy that's
20 stuck to that TV. My granddaughter is yabba-
21 dabba-do something. It's not Flintstones. It's
22 yabba-yabba-dabba-do or something. You can set
23 her down and she will watch it.

24 I ended up putting too much weight on my foot
25 and it gave. I fell. Being that it was hurting

1 so bad, I started pressing and punching on the
2 wall and the floor. Then I laid there for a
3 while. The song went off. Then I turned it down
4 a little bit.

5 Samantha said she left around 7:30 and
6 returned around 10:00. You noticed that she
7 smelled alcohol when she returned? You saw the
8 Solicitor asked her all those steps in the
9 process. Didn't call ER. Didn't tell her at any
10 point. Didn't tell her the next morning. She
11 learned at the sheriff's department.

12 Common for her to sleep on the bunk bed.
13 That's the reason he took her in there. Showing
14 you those reasons today. Samantha said she
15 didn't have any bruises or lacerations or a
16 broken leg.

17 And who insisted on checking on the baby that
18 night? Kept her downstairs. I'll go check on
19 her. He wanted to check on her. He kept this
20 woman from upstairs. Mikey says he falls quick
21 -- falls asleep quick. Door locked. Heard her
22 that night. He looked. She was leaning on the
23 wall. He never saw where he moved any furniture
24 upstairs.

25 My job, Ladies and Gentlemen, is to seek and

1 to do justice. Two and a half hours after this
2 mother left him to take care of this baby, she
3 was gone for two and a half hours. The next
4 morning, the baby is dead. The man changes and
5 changes and changes. I don't want to forget
6 anything, so let me ask my paralegal and the
7 Solicitor if there's anything they want me to
8 add. (Pause.)

9 Horrible act. She goes out with her sister
10 on a Friday night and the next morning, she's in
11 the trauma bay with a dead baby. He's guilty.
12 (Inaudible). That's what he did. He's guilty.
13 So I'm asking you to do justice on behalf of the
14 Solicitor, on behalf of the family and behalf of
15 the State. To render a verdict means to do
16 justice and speak the truth. Please do justice
17 and speak the truth. Thank you.

18 **THE COURT:** Thank you, Mr. Leibert.

19 Mr. Foreperson, Ladies and Gentlemen of the
20 jury, we have now come to the portion of the
21 trial where I will charge you on the law. I ask
22 you to listen carefully to me. It would help if
23 I turn my microphone on. And if at any point in
24 time you can not hear me, if you would, raise
25 your hand. I want you to hear what I have to

1 say. All right. I will be happy to stop and
2 repeat. |

3 I remind you that during this trial, you and
4 I have certain duties to perform. As the trial
5 judge, it is my responsibility to preside over
6 the trial of this case. I also have the duty to
7 rule on the admissibility of the evidence offered
8 during this trial. You are to consider only the
9 competent evidence before you. If there was any
10 testimony ordered stricken from the record in
11 this case during this trial, you must disregard
12 that testimony. You are to consider only the
13 testimony which has been presented from this
14 witness stand and any exhibits which I have made
15 part of this record and any stipulations of the
16 counsel.

17 I have the additional duty to charge you the
18 law applicable to this case. As the presiding
19 judge, I am sole judge of the law in this case.
20 It is your duty as jurors to accept and apply the
21 law as I now state it to you. If you already
22 have any idea as to what the law is or what the
23 law ought to be and it does not agree with what I
24 tell you the law is, you must abandon your idea
25 because you are sworn to accept the law and apply

1 the law exactly as I state it to you.

2 In every case tried in this court before a
3 jury, the jury becomes the sole and exclusive
4 judges of the facts in the case. A trial judge
5 can not intimate, state, comment on or make any
6 statement to a trial jury about the facts in a
7 case. Since you, the jury, are the sole judge of
8 the facts in this case, you are not to infer from
9 what I have said during the progress of this
10 trial in ruling upon the admissibility of
11 evidence or otherwise or anything I say now
12 during the course of this instruction to you,
13 that I have any opinion about the facts in this
14 case. I do not. The law does not allow me to
15 have an opinion about the facts in this case.
16 This is a matter solely for you, the jury, to
17 determine based on testimony and evidence you've
18 heard and using your common sense and everyday
19 experiences as well. As jurors, it is your duty
20 to determine the effect, value, weight and truth
21 of the evidence presented during this trial.

22 At the beginning of this trial, I showed you
23 the indictment in this case. The indictment
24 charges the defendant with Homicide by Child
25 Abuse. I remind you that the fact the defendant

1 was arrested, charged and indicted in this case
2 is not evidence in this case and can not be
3 considered by you as evidence of guilt in this
4 case. Nor does it create any presumption or
5 inference of guilt. This document is simply the
6 formal written instrument which contains the
7 charges made against the defendant. It is the
8 formal document by which this case is brought
9 into this court.

10 The defendant has pled not guilty to this
11 indictment. That plea puts the burden on the
12 State to prove the defendant guilty. A person
13 charged with committing a criminal offense in
14 South Carolina is never required to prove himself
15 innocent. I charge you that it is an important
16 rule of law that a Defendant in a criminal trial,
17 no matter what the seriousness of the charge may
18 be, must always be presumed to be innocent of the
19 crime for which the indictment was issued unless
20 guilt has been proven by evidence satisfying you
21 of that guilt beyond a reasonable doubt.

22 This presumption of innocence does not end
23 when you begin your deliberations but it
24 accompanies the defendant throughout the trial
25 until you reach a verdict of guilt based on

1 evidence satisfying you of that guilt beyond a
2 reasonable doubt. The presumption of innocence
3 is like a robe of righteousness placed about the
4 shoulders of the defendant until it has been
5 stripped from the defendant by evidence
6 satisfying you of the defendant's guilt beyond a
7 reasonable doubt.

8 The presumption of innocence is not merely a
9 legal theory. It is not just a legal phrase. It
10 is a substantial right to which every Defendant
11 is entitled unless you, the jury, are satisfied
12 from the evidence of the defendant's guilt beyond
13 a reasonable doubt.

14 Let's talk about reasonable doubt. The State
15 has the burden of proving the defendant guilty
16 beyond a reasonable doubt. Some of you may have
17 served as jurors in civil cases at some point
18 where you were told that it's only necessary to
19 prove that a fact is more likely true than not,
20 such as by the greater weight or the
21 preponderance of the evidence. In criminal
22 cases, the State's proof must be more powerful
23 than that. It must be beyond a reasonable doubt.
24 Proof beyond a reasonable doubt is proof that
25 leaves you firmly convinced of the defendant's

1 guilt.

2 There are very few things in this world that
3 we know with absolute certainty. In criminal
4 cases, the law does not require proof that
5 overcomes every possible doubt. If, based on
6 your consideration of the evidence, you are
7 firmly convinced that the defendant is guilty of
8 the crime charged, you must find the defendant
9 guilty. If, on the other hand, you think there
10 is a real possibility that the defendant is not
11 guilty, you must give the defendant the benefit
12 of the doubt and find him not guilty.

13 Let's talk about evidence. There are two
14 types of evidence which are generally presented
15 during a trial, direct evidence and
16 circumstantial evidence. Direct evidence is
17 testimony of a person who claims to have actual
18 knowledge of a fact, such as an eyewitness. It
19 is evidence which immediately establishes the
20 main fact to be proved. Circumstantial evidence
21 is proof of a chain of facts and circumstances
22 indicating the existence of a fact. It is
23 evidence which immediately establishes collateral
24 facts from which the main fact may be inferred.
25 Circumstantial evidence is based on an inference

1 and not on personal knowledge or observation.

2 The law makes absolutely no distinction
3 between the weight or value to be given to either
4 direct or circumstantial evidence. Nor is a
5 greater degree of certainty required of
6 circumstantial evidence than of direct evidence.
7 You should weigh all of the evidence in this
8 case. After weighing all of the evidence, if you
9 are not convinced of the guilt of the defendant
10 beyond a reasonable doubt, you must find the
11 defendant not guilty.

12 Necessarily, you must determine the
13 credibility of witnesses who have testified in
14 this case. Credibility simply means
15 believability. It becomes your duty as jurors to
16 analyze and to evaluate the evidence and
17 determine which evidence convinces you of its
18 truth. In determining the believability of
19 witnesses who have testified in this case, you
20 may believe one witness over several witnesses or
21 several witnesses over one witness. You may
22 believe a part of the testimony of a witness and
23 reject the remaining part of the testimony of
24 that same witness. You may believe the testimony
25 of a witness in its entirety or you may reject

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

7 During this trial, you have heard the
8 testimony from a child. Where a witness is a
9 child, you must determine, as with any witness,
10 whether that testimony is believable. In
11 deciding believability, you may consider not only
12 matters that I have already discussed with you,
13 but you may also consider the age of the child,
14 the child's ability to observe and remember facts
15 and the child's ability to understand and answer
16 questions. Because young children may not fully
17 understand what is happening here, it is up to
18 you to decide whether the child understood the
19 seriousness of appearing as a witness at this
20 criminal trial, whether the child understood the
21 questions and whether the child has a good memory
22 and whether the child understands the difference
23 between lying and telling the truth. In
24 addition, young children may be influenced by the
25 way that questions are asked. It is up to you to

1 decide whether the child understood the questions
2 asked.

3 Expert witnesses, the rules of evidence
4 ordinarily do not permit witnesses to testify as
5 to opinion or conclusions. An exception to this
6 rule exists for witnesses we call expert
7 witnesses, a witness who by education and
8 experience has become an expert in some art,
9 science, profession or calling may state an
10 opinion as to relevant and material matter in
11 which the witness claims to be an expert and may
12 also state the reasons for the opinion.

13 You should consider any expert opinion
14 received into evidence in a case, in this case
15 and like any other evidence, give it the weight
16 you think it deserves. If you decide that the
17 opinion of an expert witness is not based on
18 sufficient education and experience or if you
19 conclude that the reasons given in support of the
20 opinion are not sound or that the opinion is
21 outweighed by other evidence, you may disregard
22 the opinion entirely. An expert witness'
23 testimony is to be given no greater weight than
24 that of other witnesses simply because the
25 witness is an expert. Further, you are not

1 required to except an expert's opinion, even
2 though it is not contradicted.

3 Statement of the defendant. A statement
4 alleged to have been made by the defendant has
5 been admitted into evidence in this case. While
6 the court has determined that the statement is
7 admissible, I instruct you that you make the
8 ultimate decision of whether or not the defendant
9 made the statement, if the defendant did make the
10 statement, you must determine whether the
11 statement was made by the defendant voluntarily
12 and of its own freewill. This means that the
13 statement was not caused by pressure, force,
14 fear, threats, coercion or intimidation or by
15 hope or promise of any leniency or reward of any
16 kind.

17 In determining whether the statement was
18 voluntary, you must consider both the
19 characteristics of the defendant and the details
20 of the questioning. Some of the factors you must
21 consider are, one, the age of the defendant, two,
22 the defendant's education or lack of education,
23 three, the defendant's mental ability or
24 capacity, four, the defendant's IQ or
25 intelligence, five, the defendant's background

Jury Charge

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1 and environment, six, the place and length of
2 detention, seven, the nature of the questioning
3 and, eight, the advice or lack thereof to the
4 defendant of his constitutional rights including,
5 but not limited to the right to remain silent,
6 that any statement could be used against him in a
7 court of law, the right to have a lawyer present,
8 that if he could not afford a lawyer, a lawyer
9 would be appointed to represent him without any
10 costs and that he could stop making a statement
11 at any time.

12 You must carefully consider all of the
13 surrounding circumstances before you give any
14 weight to an alleged statement. The State has
15 the burden of proving beyond a reasonable doubt
16 that the alleged statement was voluntary. If you
17 determine it was, you may give the statement any
18 further consideration that you deem proper. You
19 must decide what weight, if any, should be given
20 to the alleged statement. If you determine the
21 alleged statement was not the free and voluntary
22 statement of the defendant, you should not
23 consider the statement at all.

24 I instruct you and emphasize that the fact
25 the defendant did not testify is not a factor to

1 be considered by you in any way in your
2 deliberation and in your consideration of the
3 question of the guilt or innocence of the
4 defendant. It must not be considered by you in
5 any manner whatsoever.

6 A Defendant has a constitutional right to
7 remain silent. The assertion of this right must
8 not be considered by you in your deliberations.
9 I repeat, under your oath, you are to draw no
10 conclusion whatsoever from the fact that the
11 defendant in this case did not testify. The fact
12 that the defendant did not testify should not
13 even be discussed in the jury room. The burden
14 of proof as I have stated to you is on the State.
15 The defendant is not required to prove his
16 innocence. The burden of proof remains on the
17 State to prove guilt beyond a reasonable doubt.

18 In order to establish criminal liability,
19 criminal intent is required. For example, the
20 mental state required to be proven by the State
21 for a particular crime might be purpose, intent,
22 knowledge, recklessness or criminal negligence.
23 Criminal intent must be proven by the State
24 beyond a reasonable doubt. Criminal intent is
25 always a matter that must be determined by the

1 jury from the circumstances surrounding the
2 situation. There is no way to prove intent to a
3 mathematical certainty. There is no medical
4 science that can dissect a person's brain and
5 determine what the person had in his mind. So
6 the law says that criminal intent may be inferred
7 from circumstances shown to have existed. This
8 is how you make a determination of whether or not
9 the element requiring intent was present.

10 It is not necessary to establish intent by
11 direct and positive evidence. Intent may be
12 established by inference in the same way as any
13 other fact by taking into consideration the acts
14 of the parties and all the facts and
15 circumstances of the case. Criminal intent was a
16 mental state, a conscious wrongdoing. It is up
17 to you to determine what the defendant intended
18 to do based on the circumstances shown to have
19 existed. Criminal intent can arise from an action
20 or a failure to act. It may arise from
21 negligence, recklessness or an indifference to
22 duty or to consequences that is considered by the
23 law to be the equivalent of criminal intent.

24 The defendant is charged with Homicide by
25 Child Abuse. The State must prove beyond a

1 reasonable doubt that the defendant caused the
2 death of a child under the age of 11 while
3 committing child abuse or neglect. Child abuse
4 or neglect is an act or failure to act which
5 causes harm to the child's physical health or
6 welfare. Harm to the child's physical health or
7 welfare means that the defendant either, one,
8 inflicted or allowed to be inflicted on the child
9 physical injury, two, failed to supply the child
10 with adequate food, clothing, shelter or
11 healthcare and this failure caused a physical
12 injury or condition which caused death or, three,
13 abandoned the child, causing the child's death.

14 The State must also prove beyond a reasonable
15 doubt that the death occurred under circumstances
16 showing an extreme indifference to human life. I
17 charge you that extreme indifference is the
18 nature of culpable mental state and therefore is
19 akin to intent. In South Carolina, indifference
20 in the criminal context of statutes has been
21 compared to a conscious act of disregarding a
22 risk which a person's conduct has created or a
23 failure to exercise ordinary or due care.

24 Ladies and Gentlemen of the jury, your
25 verdict must be a unanimous one. We talked about

Jury Charge

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1 this before opening statements. Mr. Foreperson,
2 when the jury agrees on the verdict, you will
3 write the verdict on the back of the indictment
4 and sign your name as foreperson. Then I ask you
5 to knock on the jury door and inform the bailiff
6 that you have reached a verdict. At that time,
7 we will receive you back into the courtroom.

8 I ask that you now return to your jury room.
9 Please do not begin your deliberations until you
10 are told to do so by the clerk or the bailiff.
11 There are some matters that I must discuss, some
12 legal matters that I must take up very briefly
13 with the attorneys. You will know when you can
14 begin deliberating in this case when you have
15 received the indictment in this case. I will
16 send it back to you along with all the evidence
17 that has been entered that you can consider.

18 Now, Mr. Foreperson and members of the jury,
19 I know you all are smart folks, but I'm going to
20 just say it so you all will know it. You are to
21 write your verdict on the indictment on the
22 portion that says verdict. Mr. Foreperson, I say
23 again I will ask you to sign and date that
24 verdict. All right. It must be unanimous. All
25 right. At this point, I'm going to ask you to

1 retire into the jury room for deliberation.

2 Mr. Pickens, I'm going to ask you, uh, to --
3 I'm going to excuse you at this point. When the
4 jury begins deliberating, I'm going to excuse
5 you. I'm going to thank you for your service.
6 We, thankfully in this trial, did not have to use
7 you to fill in as a juror. You are welcome to
8 stay in the courtroom if you would like and be
9 seated in the gallery. You are welcome to leave
10 if you would like to do that as well. That is
11 simply up to you. But you are free to go and I
12 thank you for your service.

13 All right. The remaining jurors, I ask you
14 to retire.

15 (WHEREUPON, the jury exits at approximately
16 12:33 p.m.)

17 THE COURT: Are there any objections to my
18 charge?

19 MR. LEIBERT: Not from the State, Your
20 Honor.

21 THE COURT: All right. Any --

22 MR. THOMPSON: None from the defense, Your
23 Honor.

24 THE COURT: All right then. If you all will
25 take a moment and make sure that all the exhibits

Remarks

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1 are together and in order, we'll send those back
2 to the jury along with the indictment. If you
3 all want to take a look at the indictment, you
4 can do it. (Pause.)

5 All right. Uh, we'll be in recess pending
6 the jury's verdict in this case. All right. I
7 ask everyone to remember we are in a courthouse
8 and I ask you to act accordingly. All right.

9 (WHEREUPON, a recess is taken at approximately
10 12:35 p.m.)

11 (WHEREUPON, jury deliberation is held from
12 approximately 12:43 p.m. to 3:40 p.m.)

13 (WHEREUPON, the Court resumes at approximately
14 3:43 p.m.)

15 THE COURT: I understand that we've got a
16 verdict in this case. Y'all ready to bring the
17 jury in?

18 MR. LEIBERT: Your Honor --

19 THE COURT: Before we do, I might need to
20 take a moment -- Yes, sir.

21 MR. LEIBERT: My victims are on the way down
22 the steps, I believe. I think they were in the --

23 THE COURT: Okay. I'll wait until they get
24 in, of course, before we hear from the jury. I
25 also want them to hear what I have to say.

1 (Pause.)

2 MR. LEIBERT: Your Honor, they had stepped
3 outside so they have to go through security
4 again.

5 THE COURT: I understand. (Pause.)

6 All right. Before we bring the jury back in,
7 I just want to reiterate what I had said before,
8 that is, I want to be very clear. If y'all look
9 around in here, you'll notice there are a number
10 of Spartanburg County sheriff's deputies in here.
11 I don't know what this verdict is going to be.
12 We're all going to be surprised. But if you
13 can't hold your emotions, I'm going to ask you to
14 leave now. I'm not going to let anybody in or
15 out of this courtroom until we finish up our
16 business here.

17 If you feel like you can't hold your
18 emotions, and by that, I mean yelling out, doing
19 anything like that, certainly making any kind of
20 motions or doing anything along those lines, if
21 you can't hold your emotions, I want you to leave
22 now.

23 If these deputies have do so much as move
24 towards you, if these deputies have to do
25 anything to subdue anybody in this courtroom, I

Verdict

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1 will reiterate what I said before. I will
2 consider it to be contempt of court and I will
3 deal with it extremely harshly. My sentence on
4 contempt is one year. All right.

5 We can bring the jury back in.

6 (WHEREUPON, the jury enters at approximately
7 3:48 p.m.)

8 THE COURT: Mr. Foreperson, it's my
9 understanding that you all have reached a
10 unanimous verdict. Is that correct?

11 THE JUROR: Yes, Your Honor.

12 THE COURT: All right. I would please ask
13 you to hand the indictment to the bailiff.

14 (WHEREUPON, the indictment is passed to the
15 Court.)

16 THE COURT: All right. On indictment 2009-
17 GS-42-2210, the State of South Carolina versus
18 Rashawn Sha'Meik Murphy, the verdict is guilty.
19 It is signed by the foreperson and dated March
20 17th, 2011.

21 Ladies and Gentlemen, was this your verdict
22 and is it still your verdict now? If so, I ask
23 you to raise your hand.

24 (WHEREUPON, each juror responds.)

25 THE COURT: And all have raised their hand.

1 All right. Anything from -- any from -- anything
2 from the State?

3 MR. LEIBERT: No, Your Honor.

4 THE COURT: Anything from the defense?

5 MR. THOMPSON: None, Your Honor.

6 THE COURT: All right. Ladies and Gentlemen
7 of the jury, I'm going to excuse you now. I
8 thank you. I can not thank you enough for your
9 service. I know this was a difficult case but I
10 will say to you of all the juries that I have
11 seen, you were so attentive. I appreciate your
12 attention to this case and your hard work on this
13 case more than I am able to express to you.
14 Thank you so much. You are free to go. I hope
15 you have a good afternoon.

16 (WHEREUPON, the jury exits at approximately
17 3:50 p.m.)

18 THE COURT: Any motions from the State?

19 MR. LEIBERT: Your Honor, I was just going
20 to give you his record ---

21 THE COURT: Okay.

22 MR. LEIBERT: --- at the appropriate time.

23 THE COURT: All right. Any motions from the
24 defense?

25 MR. THOMPSON: I'd like to move for a

1 verdict notwithstanding the jury's verdict. I
2 think we showed that the State's, their theory
3 was all over the board. One room and then moved
4 to the next. I just don't think there was
5 sufficient evidence to support the verdict in
6 this matter. I don't know exactly what their
7 theory was. I don't think they've proven the
8 verdict on this thing. I'd ask you to issue a
9 verdict notwithstanding the jury's decision.

10 **THE COURT:** Mr. Thompson, I appreciate your
11 motion and I appreciate the vigorous defense that
12 you put on Mr. Murphy's behalf during this trial.
13 However, I respectfully deny your motion. We're
14 ready to move to the sentencing phase at this
15 point?

16 **MR. THOMPSON:** Your Honor, I am appointed on
17 this case. He's got two other charges. I would
18 ask that the Court could consider maybe
19 appointing someone else on those other charges.
20 Nothing against him.

21 **THE COURT:** I understand.

22 **MR. THOMPSON:** If the court could maybe
23 issue an order to that effect, if we could draw a
24 consent. They may possibly can do away with
25 those. I don't know. If the court would

1 consider that.

2 **THE COURT:** Mr. Leibert, it does appear that
3 Mr. Thompson has put in a great deal of work on
4 this. I don't know the emotions that went into
5 the case. If he's asking not to represent him on
6 the other charges, I just ask does the State have
7 any objection on that?

8 **MR. LEIBERT:** No, Your Honor. We do not.

9 **THE COURT:** All right. Then I will appoint
10 him other counsel on his other two -- is it two
11 charges, did you say?

12 **MR. THOMPSON:** Yes, Your Honor.

13 **MR. LEIBERT:** Yes, Your Honor.

14 **THE COURT:** All right then. So if we could
15 move to the sentencing phase and I will ask Mr.
16 Thompson and Mr. Murphy if you all will stand.

17 **MR. LEIBERT:** May I approach?

18 **THE COURT:** Yes, sir. (Pause.)

19 All right. Yes, sir.

20 **MR. LEIBERT:** Your Honor, his prior record
21 is as follows, October 2005, Resisting Arrest,
22 April of 2006, Unlawful Carrying a Weapon and
23 Burglary third degree first offense and Malicious
24 Injury to Real Property between 1000 and 5000;
25 August 2008, Simple Assault and Battery; May

1 2010, Possession of Marijuana.

2 Your Honor, you heard from Ms. Samantha
3 Hill, [Minor] mother. This is Mr. Joshua Rogers,
4 her father. They do not wish to address you.

5 **THE COURT:** They do not? All right. Well,
6 I just take this moment to say that I am terribly
7 sorry for your loss. I appreciate you attending
8 through the trial. All right.

9 Mr. Thompson?

10 Is there anything else from the State?

11 **MR. LEIBERT:** No, Your Honor. Thank you.

12 **THE COURT:** All right. Thank you.

13 **MR. THOMPSON:** Please the Court, Your Honor.

14 **THE COURT:** Yes, sir.

15 **MR. THOMPSON:** I really have gotten to know
16 Shawn during the past few months. I was
17 appointed. He's got some good in him. I'm glad
18 to know him. I'm not wanting off of his case for
19 anything that has transpired between us. I just
20 put a lot of time and effort into it. I'm sure
21 that anything done with those would be something
22 occurring anyway. If that could be done, I would
23 be appreciative.

24 I would like the court to consider he is
25 young. He's 24 years old. He's got a good heart

1 him in. There's a lot of good in Rashawn. He
2 has incredible family support, great network,
3 good people. I had the pleasure to get to know
4 them. I don't know what happened that night. I
5 still don't know. I probably don't want to know.
6 There was some rulings and my hands got tied a
7 little bit, but I appreciate the court -- I
8 respect the Court's decision and I respect the
9 jury's verdict, Your Honor. I just ask you to be
10 as lenient as possible as you feel you can be
11 with him and show as much mercy as you can.

12 **THE COURT:** All right. Mr. Thompson, I will
13 say I appreciate -- I appreciate both attorneys
14 and what all, well, all three attorneys, Mr.
15 Barnette as well, the vigorous case that all
16 parties put up. I just appreciate everyone's
17 professionalism throughout the trial. Would your
18 client like to address me with anything?

19 **MR. MURPHY:** No, ma'am.

20 **THE COURT:** All right. All right then.
21 There are a number of factors that go into
22 consideration that's to the Court's sentence in
23 this case. I will say one of the overriding
24 factors was the extreme brutality in which this,
25 uh, act was carried out and the many chances that

1 you had, Mr. Murphy, to either stop what you were
2 doing or to get help for this child. When given
3 the opportunity, when being in the situation in
4 which you could have put that child in bed, if
5 the child was still alive at that point, or
6 calling and gotten help for that child, you chose
7 to put that child in bed with her brother either
8 dead or dying, with her brother and in the same
9 room with her other brother knowing that those
10 two children would wake up in the morning to find
11 their sister dead.

12 As I said, the brutality in which this was
13 carried out, the injuries that this child
14 sustained were severe to say the very least and
15 prolonged. And there were points in time where
16 you could have chosen a different path. There,
17 uh, -- I guess there is nothing else to say in
18 that regard.

19 I'll just say on 2009-GS-42-2210, the State
20 versus Rashawn Sha'Meik Murphy on the charge of
21 Homicide by Child Abuse, the sentence of the
22 court is life in prison. Good luck.

23 **MR. LEIBERT:** Thank you, Your Honor.

24 **(WHEREUPON,** Defendant is escorted out of the
25 courtroom.)

1 **THE COURT:** Alrighty.

2 **MR. BARNETTE:** Thank you, Your Honor.

3 **THE COURT:** Court will be in recess.

4 **MR. THOMPSON:** Thank you, Your Honor.

5 **(WHEREUPON,** the proceeding concludes at
6 approximately 3:59 p.m.)

7

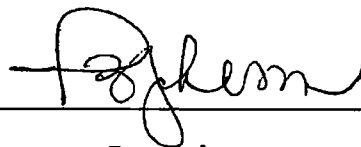
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CERTIFICATE

553

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of General
8 Sessions for Spartanburg, South Carolina, on this 28th
9 day of July, 2011.

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

12
13
14
15 

16 Teresa B. Johnson

17 Official Court Reporter
18
19
20
21
22
23
24

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Letitia H. Verdin, Family Court Judge

THE STATE,

RESPONDENT,

V.

RASHAWN MURPHY,

APPELLANT

APPELLATE CASE NO. 2011-188766

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant's motion to argue third party guilt in his closing argument when four people were in the home, including the child's mother, when the child was fatally injured and there were no eyewitnesses to the injuries?

STATEMENT OF THE CASE

On May 7, 2009, the Spartanburg County Grand Jury indicted Rashawn Sha-Meik Murphy on the charge of homicide by child abuse. On March 14 – 17, 2011, Murphy proceeded to trial before the Honorable Letitia H. Verdin and a jury. He was represented by Chris Thompson, and the state was represented by Barry Barnette and Tony Leibert. The jury returned a verdict of guilty as indicted. Judge Verdin sentenced Murphy to life in prison. Murphy's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in denying Appellant's motion to argue third party guilt in his closing argument when four people were in the home, including the child's mother, when the child was fatally injured and there were no eyewitnesses to the injuries.

Rashawn Murphy and Samantha Hill began living together in November 2008, two months before this incident. Also living with them were Samantha's three children: two boys ages eight and two, and a girl eleven months old. T. 281, ll. 19 – 25; R. 282, ll. 1-8; R. 15, ll. 10 – 20.

On January 2, 2009, Samantha went out with her sister and returned home around ten o'clock P.M. Murphy told her he put the girl to bed around eight, and she then sent the boys to bed. R. 258, ll. 17 – 25; R. 259, ll. 14 – 25; R. 278, ll. 3 – 25. She and Murphy slept downstairs that night on the couch. They went to bed around two o'clock A.M. Before going to bed she checked on the kids who were all sleeping on the bottom of the bunk bed. They appeared to be fine to her. R. 272, ll. 21 – 25; R. 273, ll. 1 -12; R. 274, ll. 1 – 8; R. 283, ll. 5 – 11; R. 260, ll. 1 – 25; R. 261, ll. 1 – 17.

The next morning, the eight year old boy came running down the stairs and told her that something was wrong with the baby. She ran upstairs and Murphy followed her. She found the baby on the bunk bed not breathing. She told Murphy to get the phone. She called 911 who were instructing her on administering CPR. She handed the phone to Murphy who threw her phone against the wall and broke it. He then punched the wall. R. 262, ll. 1 – 24; R. 275, ll. 1 – 25; R. 276, ll. 18 – 25; R. 277, ll. 1 – 20. She did not notice if there was a hole in the wall already when she entered the room. R. 257, ll. 11 – 24.

The eight year old boy testified that when his mother and Murphy found the baby not breathing, Murphy got mad because he did not know what to do, and he punched holes in the wall. R. 263, ll. 18 – 25; R. 309, ll. 13 – 25; R. 310, ll. 1 – 25; R. 311, ll. 1 – 10. The boy testified that earlier in the evening before his mother came home, he heard bumping upstairs when Murphy was in the boy's mother's room. The door was locked, and when he knocked on it, Murphy opened the door and told him he was moving furniture. The boy saw the baby girl in the room crying. Murphy later went downstairs with the baby. R. 312, ll. 1-25; R. 313, ll. 1 – 14. The boy said he did not sleep in the bunk bed that night but slept on the other bed in the room. R. 315, ll. 1 – 25; R. 316, ll. 1 – 17.

Dr. David Wren, the forensic pathologist, testified that the cause of death of the baby girl was acute subdural hemorrhage secondary to blunt force trauma to the head. R. 210, ll. 17 – 25; R. 211, ll. 1 – 25; R. 214, ll. 3 – 19; R. 229, ll. 2 – 25. He explained that the injuries could have occurred from falling down stairs but not likely. He testified it would take ninety pounds of force to cause significant injuries to the head of a child which would mean that a fifteen pound infant would have to fall six feet to get significant injuries. R. 230, ll. 11 – 25; R. 231, ll. 1 – 7.

Dr. Wren also testified that the baby had a spiral fracture of the lower portion of the right leg which occurred within two hours of her death at the most. R. 219, ll. 16 – 25; R. 220, ll. 1 – 21. The doctor did not pinpoint a time of death but said the coroner's report said death occurred between two o'clock A.M. and eight forty-five A.M. However, the leg fracture occurred within two hours of death and probably even less than that. R. 232, ll. 1 – 25; R. 233, ll. 1 – 7.

Murphy gave three statements; two to the police and one to the coroner. In his first statement to the coroner investigator, Steven Lully, he said he put the baby to bed around eight o'clock. He checked on her an hour or so later when he put her brothers to bed. Then they found her the next morning not breathing. R. 62, ll. 3 – 25; R. 64, ll. 1 – 25; R. 65, ll. 1 – 24.

The other two statements were given at the Sheriff's Office after he had been Mirandized. The first one at the Sheriff's Office but his second statement, was given at six o'clock P.M. and provided that he put her to bed and found her the next morning not breathing. R. 20, ll. 1 – 25; R. 21, ll. 1 – 25; R. 22, ll. 1 – 25; R. 26, ll. 1 – 25; R. 27, ll. 1 – 14. In the third statement given later that same evening, he said he put the baby to bed upstairs and left the door cracked so he could hear her. He found the baby at the bottom of the stairs dazed and shaken a little. He played with her for a while and then put her back to bed. R. 52, ll. 1 – 25; R. 53, ll. 1 – 25; R. 54, ll. 1 – 25.

David Hogsed, the crime scene investigator with the Sheriff's Office, went to the hospital and took pictures of the baby girl. He discovered a piece of drywall or paint chip in her hair. R. 72, ll. 17 – 25; R. 73, ll. 1 – 18.

He then went to the home of the baby, and took pictures of the crime scene. There was a hole in the wall in the children's room. R. 71, ll. 17 – 25; R. 81, ll. 2 – 25; R. 82, ll. 1 – 25; R. 83, ll. 1 – 25. The drywall from the hole in the wall seemed to be consistent with the piece of drywall found in her hair. R. 84, ll. 1 – 14.

In a pretrial motion, defense counsel asked to present evidence of third party guilt because he argued there were four people in the home, including Murphy, at the time the baby was killed. R. 10, ll. 1 – 25. Counsel argued that he wanted to show that there may

have been an abusive environment that the child was exposed to on a daily basis due to the coroner's report showing new and old injuries. The time of death according to the coroner's report was after two o'clock A.M. Counsel said the two year old had destroyed the crib so the baby could not sleep in it. The two year old had also scratched the baby on the back previously. Counsel cited Holmes v. South Carolina, 547 U.S. 319 (2006). The state argued that this was mere suspicion. R. 11, ll. 1 – 25; R. 12, ll. 1 – 25; R. 13, ll. 1 – 25. The judge ruled that he would visit this issue again after the autopsy testimony. Supp. R. 1, ll. 1 – 25; Supp. R. 2, ll. 1 – 25; Supp. R. 3, ll. 1 – 25; R. 14, ll. 1 – 19.

After the evidence and before closing argument, defense counsel asked the court to be allowed to argue third party guilt in his closing argument. R. 348, ll. 1 – 25. Counsel argued that enough evidence was offered by the mother that she was up at two o'clock in the morning and went in the children's room so that the jury could infer that she might be responsible for the baby's death. R. 349, ll. 1 – 25; R. 350, ll. 1 – 2. The judge ruled that counsel "could get into his differing theory of the case," but he could not cast third party guilt on a particular individual. R. 350, ll. 24-25; R. 351, ll. 1 – 15.

The state argued that Murphy killed the child by slamming her against a flat surface such as the wall. R. 380, ll. 1 – 25; R. 381, ll. 1 – 25.

In Miller v. State, 379 S.C. 108, 665 S.E.2d 596 (2008), the South Carolina Supreme Court found that trial counsel was ineffective for failing to establish Miller's defense of third party guilt. The Supreme Court determined that trial counsel was ineffective for failing to cross-examine a witness regarding similar robberies allegedly committed by a third party because Miller's sole defense was mistaken identity and third-party guilt. A specific third party was named.

In Holmes v. South Carolina, *supra*, the United States Supreme Court held that a criminal defendant's federal constitutional rights were violated by an evidence rule under which the defendant may not introduce evidence of third party guilt if the prosecution has introduced forensic evidence that, if believed, strongly supported a guilty verdict. The South Carolina Supreme Court had held in State v. Holmes, 361 S.C. 333, 605 S.E.2d 19 (2004), that where there was strong evidence of a defendant's guilt, especially strong forensic evidence, the proffered evidence of third party guilt did not raise a reasonable inference of appellant's own innocence.

The United States Supreme Court also wrote in Holmes v. S.C., *supra*, that the state had violated a criminal defendant's right to have a meaningful opportunity to present a complete defense. The Court in Holmes, *supra*, wrote that the rule in State v. Gregory, *supra*, was of the type that allowed judges to exclude evidence that was repetitive or marginally relevant. The Court stated that applying this rule to third party guilt cases, the evidence may be excluded where it did not sufficiently connect the other person to the crime. The Court wrote that the point was that by evaluating the strength of only one party's evidence, no logical conclusion could be reached regarding the strength of contrary evidence offered by the other to cast doubt.

In State v. Rice 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2008), the Court of Appeals wrote that the rule for admitting third party guilt in South Carolina was found in State v. Gregory, 198 S.C. 98, 16 S.E. 2d 532 (1941). The rule is:

Evidence offered by an accused as to the commission of a crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have no other effect than to cast a

conjectural inference as to the commission of the crime by another, is not admissible.

State v. Gregory, 198 S.C. at 104-105, 16 S.E.2d at 534-535.

The rule in Gregory did not require that a specific third person be named. The rule concerns “facts that are inconsistent with the defendant’s guilt.”

In State v. Mouzon, 326 S.C. 199, 485 S.E.2d 918 (1997), citing State v. Rodgers, 269 S.C. 22, 24-25, 235 S.E.2d 808, 809 (1977), the Supreme Court held that the right to open and close the argument to the jury has been described as “a substantial right, the denial of which is reversible error.” The Court went on to write that such an error was still subject to an harmless error analysis.

In In the Matter of Bazzle, 276 S.C. 426, 279 S.E.2d 370 (1981), the Supreme Court ruled that in the hearing to determine whether the juvenile was delinquent wherein the family court judge refused the defense counsel’s request to make a closing argument, although the trial judge could reasonably limit the length of arguments, he could not preclude them in their entirety, and therefore, the denial of defense counsel’s request for closing argument was reversible error.

The trial judge erred in limiting defense counsel’s closing argument by not allowing him to argue third party guilt. This was prejudicial to Murphy because there was no direct evidence of his guilt.

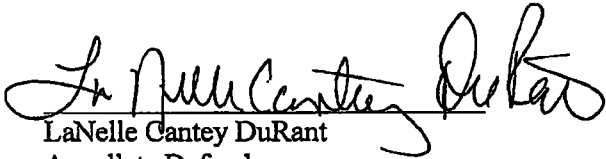
The facts inconsistent with Murphy’s guilt were that the hole in the wall was in the children’s bedroom. The thumping noise heard by the eight year old early in the evening was in the mother’s bedroom—not the children’s. The pathologist testified that the broken leg occurred no more than two hours before death occurred and probably in less time than

that. The thumping noise occurred before the mother returned home at ten o'clock. The mother was home at ten o'clock and so was there during the time of death as determined by the coroner and pathologist.

CONCLUSION

Based on the above, the conviction and sentence should be reversed, and the case remanded for a new trial.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

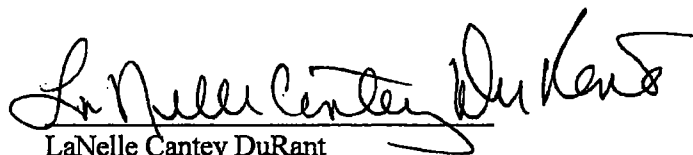
ATTORNEY FOR APPELLANT

This 29th day of August, 2012.

CERTIFICATE OF COUNSEL

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

August 29th, 2012


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Letitia H. Verdin, Family Court Judge

THE STATE,

RESPONDENT,

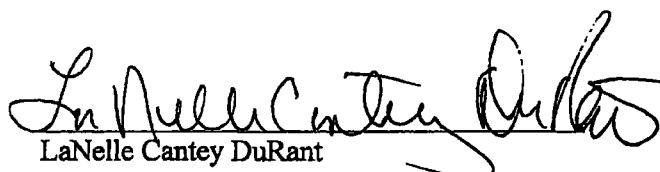
V.

RASHAWN MURPHY,

APPELLANT

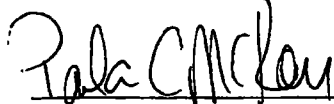
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and upon Rashawn Murphy, # 323547, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 29th day of August, 2012.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of August, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

Client

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2011-188766

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

RASHAWN MURPHY,

APPELLANT.

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<u>State v. Gregory</u> , 198 S.C. 98, 16 S.E.2d 532 (1941)	8, 9, 10
<u>State v. Holmes</u> , 361 S.C. 333, 605 S.E.2d 19 (2004)	8
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STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's request to argue "third-party guilt" in closing where there was no evidence in the record that any particular third party committed the crime and where evidence that other people were present in the home, with nothing more, did not constitute evidence of third-party guilt.

STATEMENT OF THE CASE

Appellant was indicted in Spartanburg County in May 2009 for homicide by child abuse. On March 14-17, 2011, he proceeded to trial before the Honorable Letitia H. Verdin and a jury. The jury found Appellant guilty as indicted, and Judge Verdin imposed a sentence of life imprisonment. A timely notice of appeal was served and filed.

ARGUMENT

The trial judge properly denied Appellant's request to argue "third-party guilt" in closing where there was no evidence in the record that any particular third party committed the crime and where evidence that other people were present in the home, with nothing more, did not constitute evidence of third-party guilt.

Background Facts

Appellant and his girlfriend lived together for about two months prior to the incident in question. On January 2, 2009, Appellant's girlfriend went out with her sister around 7:30 pm and left her three children, an eight-year-old boy, a two-year-old boy, and the eleven-month-old female victim, in the care of Appellant. The eight-year-old testified that after his mother left, he and his two-year-old brother ate dinner with Appellant and then watched television downstairs. Later, after Appellant went upstairs with the eleven-month-old victim, the eight-year-old heard loud thumping sounds coming from upstairs. He went upstairs to see what was going on, and he discovered the door to the master bedroom locked. He knocked on the door and Appellant opened it and, when asked what was happening, Appellant told him he was moving furniture. The eight-year-old did not actually see Appellant moving any furniture. However, the eight-year-old did observe the victim in the master bedroom leaning up against a wall, crying loudly. Appellant then told the eight-year-old to go back downstairs, which he did. Later, Appellant put the victim to bed and the boys also went to bed. They all slept in the same room upstairs. (See R. p. 408-474).

Appellant's girlfriend testified that she returned home around 10:00 pm. She noticed that Appellant had been drinking. She checked on the children two times, once after she changed clothes and once around 2:00 am. Both times she peeked in the room but did not actually approach any of the children. In the morning, the alarm clock in the master bedroom upstairs went off at 5:45 am. Appellant insisted on being the one to go

up and turn it off and he also said he would check on the children. When he came back down he indicated the children were fine. Sometime later, the eight-year-old came running down the stairs crying and saying that something was wrong with the eleven-month old victim. Appellant and his girlfriend ran upstairs, found the victim not breathing and unresponsive, and called 911. At some point during the 911 call Appellant threw the phone against the wall, breaking it, and also punched a hole in the wall. (See R. p. 408-439).

The victim was taken to the hospital where she later died from acute subdural hemorrhage secondary to blunt force trauma to the head. It was also discovered that the victim had a spiral fracture to her right leg and numerous recent contusions and abrasions all over her face and body. The forensic pathologist testified that a simple fall would not have caused the victim's head injury and that one fall could not account for all of the victim's injuries. He testified that it would take ninety pounds of force to cause this type of head injury to an infant. He also testified that the victim would have had to fall six feet unobstructed before one would expect to find any significant injury. In other words, if the victim were falling down stairs, she would have to fall about eight steps down without hitting the steps in between. The forensic pathologist also testified that the stairs in this case were carpeted and that carpet would cushion a fall. (R. p. 289-336).

After the victim's death, Appellant gave three separate statements. The first statement was made to the coroner's investigator. In this statement, Appellant essentially stated that the victim seemed fine the evening of January 2, 2009 and that he heard her breathing in her sleep in the morning. (R. p. 140-43). Appellant's second statement was made to Investigator Bryant following Miranda warnings. Appellant basically provided the same story that he gave the coroner's office – that the victim seemed fine all night.

(R. p. 97-105). He also told Investigator Bryant that the eight-year-old did not do anything to hurt the child; that the child's mother was not home that evening, and that no one broke into the house. (R. p. 106). After viewing a picture of the victim's injuries, Appellant gave a third – and vastly different – statement. In his third statement, Appellant stated he found the victim close to the bottom of the stairs at some point after he put her to bed. He stated that she was asleep on the steps and that he woke her up and took her to her room. He stated that the victim did not want a bottle, so he gave her a pacifier and put her to bed. He also stated that it seemed like the kids were fine when he checked on them. (R. p. 108-110).

At some point after his arrest, the victim wrote a letter to his girlfriend, the victim's mother. In this letter he basically reiterated the version of events contained in his third statement but added some details. He also claimed that the thumping that the eight-year-old heard was from him pounding on the floor and wall because he hurt his foot when he was alone in the master bedroom. He stated that, although he knew "she hit her head on the step that her head was on," the victim did not seem hurt on the stairs and therefore he did not mention the incident to his girlfriend that night. In this letter Appellant also admitted that he had a "temper problem." (R. p. 274-86).

Applicable Law

In State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941), our Supreme Court held as follows:

[E]vidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible. . . . Before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such

other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose. An orderly and unbiased judicial inquiry as to the guilt or innocence of a defendant on trial does not contemplate that such defendant be permitted, by way of defense, to indulge in conjectural inferences that some other person might have committed the offense for which he is on trial, or by fanciful analogy to say to the jury that someone other than he is more probably guilty.

State v. Gregory, 198 S.C. 98, 104-105, 16 S.E.2d 532, 534-35 (1941) (quotations omitted). In State v. Gay, 343 S.C. 543, 541 S.E.2d 541 (2001), and later State v. Holmes, 361 S.C. 333, 605 S.E.2d 19 (2004), our Supreme Court expanded the Gregory rule regarding admission of third party guilt and concluded that where there is strong evidence of a defendant's guilt, especially strong forensic evidence, proffered evidence about a third party's purported guilt does not raise a reasonable inference as to the defendant's own innocence.

In Holmes v. South Carolina, 547 U.S. 319 (2006), the United States Supreme Court found that State v. Gay's "radically changed and extended" rule was arbitrary and interfered with the defendant's right to present a meaningful defense. See Holmes v. South Carolina, 547 U.S. 319, 328 (2006). Holmes overruled the application of limits on third-party guilt evidence to the extent that these limits relied on the strength of the prosecution's case rather than on the strength of the third-party guilt evidence proffered by the defendant. See Lorenzen v. State, 376 S.C. 521, 532, 657 S.E.2d 771, 777 (2008); State v. Mitchell, 378 S.C. 305, 317-18, 662 S.E.2d 493, 500 (Ct. App. 2008); State v. Burgess, 391 S.C. 15, 22-23, 703 S.E.2d 512, 516-17 (Ct. App. 2010). However, "Holmes v. South Carolina preserves Gregory as the appropriate standard for evaluating the admissibility of evidence of third-party guilt." Burgess 391 S.C. at 23, 703 S.E.2d at 517.

Discussion

In this case, Appellant argues that the trial court erred in denying his motion to argue “third-party guilt” in closing argument because there were three people “in the home” besides Appellant around the time of the child’s death. To the contrary, the trial judge properly refused to allow Appellant to specifically blame a third party where there was absolutely no evidence anywhere in the record supporting that any one of the three other persons in the home actually committed the offense. (See R. p. 97-336; p. 401-477; p. 485-88). It would have violated Gregory to allow Appellant to point the finger at one of the three other persons simply because they were present in the home around the time of death where there was no “train of facts or circumstances” tending to “clearly to point out such other person as the guilty party.” Gregory, 198 S.C. at 105, 16 S.E.2d at 535. Indeed, as the trial judge pointed out at least twice, “evidence which can have (no) other effect than to cast a bare suspicion upon another . . . is not admissible.” Id. (See R. p. 63, line 21 – p. 64, line 5; p. 486, line 14 – p. 488, line 2).

The evidence in the record indicating that the mother, the eight-year-old, and the two-year-old were present in the home around the time of death¹ - *with nothing more* – was insufficient to create an issue of third-party guilt since it raised only “conjectural inferences that some other person might have committed the offense.” Id.; see State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct.App.2000) (proffered third-party guilt evidence that another man who lived in the apartment complex where the defendant was found also matched the victim's description of the perpetrator was properly excluded

¹ Note that the forensic pathologist testified that the fatal injuries occurred around two hours, although possibly longer, prior to death. (See R. p. 299, lines 16-21; p. 310, lines 13-21; p. 312, line 5 – p. 314, line 16).

where the evidence cast merely a bare suspicion on the other man and did not show his guilt, nor was it inconsistent with the defendant's own guilt); State v. Al-Amin, 353 S.C. 405, 429, 578 S.E.2d 32, 45 (Ct. App. 2003) (testimony that the police generally begin a murder investigation by investigating a person's family members or persons in their immediate surroundings and that the victim had a roommate that was recently evicted was properly excluded because there was no evidence tying the former roommate to the murder and such evidence would cast a bare suspicion on the former roommate; the evidence did not show the former roommate's guilt nor was it inconsistent with the defendant's culpability; instead, such evidence "presents an even weaker case for admissibility than the evidence in Mansfield."); State v. Burgess, 391 S.C. 15, 22-23, 703 S.E.2d 512, 516-17 (Ct. App. 2010) (testimony of five witnesses indicating that the victims had been threatened by persons other than the defendant in the months leading up to their murders was properly excluded because "none of th[is] evidence was inconsistent with [the defendant's] guilt" and was "mere conjecture and surmise."); State v. Tindall, 379 S.C. 304, 313, 665 S.E.2d 188, 193 (Ct. App. 2008) (reversed on other grounds by State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010)) (evidence indirectly implicating a third party – specifically, the defendant's testimony that he did not rent the car containing the drugs but only took possession of it after a friend left it in his driveway – was not proper third-party guilt evidence because there was no "testimony in particular blaming a third party" and because "evidence that someone other than [the defendant] placed the drugs in the car raised merely a conjectural inference at best."); Lorenzen v. State, 376 S.C. 521, 532, 657 S.E.2d 771, 777 (2008) (in criminal sexual conduct with a minor case, evidence that the victim's father was listed on the sex offender registry was properly excluded because the defendant's allegation that the victim's father may have been the

perpetrator based upon this evidence was “so nebulous that it would have had no other effect than to ‘cast a bare suspicion;’” therefore, such facts were not inconsistent with the defendant’s guilt and did not raise a reasonable inference of his innocence); State v. Mitchell, 378 S.C. 305, 317-18, 662 S.E.2d 493, 500 (Ct. App. 2008) (telephone directory listings of names similar to the name a co-defendant initially gave to police as one of her accomplices was properly excluded under Gregory because “the fact that the directories may have contained listings of individuals with names that were either identical or similar to the name [the co-defendant] initially gave to the police is simply not evidence that any of these individuals was (sic) involved in the incident.”); State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (2007) (overruled on other grounds by State v. Byers, 392 S.C. 438, 710 S.E.2d 55 (2011)) (a co-defendant’s prior statement vaguely pointing to a third person whose identity was unclear was not admissible as third-party guilt evidence because such evidence cast a mere “bare suspicion” because there was no “proof of connection with the crime” and no “train of facts or circumstances” tending clearly to “point out such other person as the guilty party”).

Indeed, defense’s counsel’s own arguments illustrate the speculative and conjectural nature of the third-party guilt issues he wished to argue. (See R. p. 61, line 12 (arguing that “maybe” there was an abusive environment); p. 61, lines 16-18 (arguing that there were three other people who “could have” contributed to the victim’s injuries and “could have” contributed towards her death); p. 63, lines 18-20 (arguing that “there’s too many possibilities out there as to other things that could have happened to this child”); p. 63, line 21 – p. 64, line 3 (asserting that other injuries that may have been caused by the two-year-old child “could be part of the reason and contributed to the injury”); p. 487, lines 10-14 (“As far as third-party guilt, I think enough was possibly

offered by the mother saying she was up at 2:00 in the morning that would bring her in as somebody the jury could infer that *could possibly be responsible.*").

The evidence indicating that there was a two-year-old and an eight-year-old present in the home that night was not inconsistent with Appellant's own guilt, and such facts did not as raise a reasonable inference as to Appellant's own innocence. (See R. p. 61, line 22 – p. 62, line 11; p. 65, line 5 – p. 66, line 13; p. 486, lines 6-13). Further, the fact that the victim's mother arrived home around 10:00 pm and stayed home through the morning also did not raise a reasonable inference of Appellant's innocence and was not inconsistent with Appellant's guilt, particularly where Appellant was undisputedly the only adult supervising the victim and the other two children for a two-and-a-half hour period prior to 10:00 pm. (R. p. 503, lines 19-20; p. 526, lines 5-6). Therefore, since there was no evidence in the record meeting the Gregory standard for admission of third-party guilt, the trial judge properly refused to allow Appellant to argue third-party guilt in his closing argument. (See R. p. 485-88).

In any event, Appellant suffered no prejudice from the judge's ruling preventing him from pointing the finger at a specific individual because, inasmuch as there was evidence in the record that three other persons were in the home around the time of the victim's death, nothing prevented defense counsel from arguing that the State could not prove beyond a reasonable doubt that Appellant was in fact the perpetrator in light of the fact that there were three other people in the home around the time of death. (See R. p. 486-88). Notably, defense counsel was also not precluded from arguing that there were "facts inconsistent with [his] guilt" (Brief of Appellant, p. 10), and he did in fact do so.²

² He also argued that the State's theory that Appellant slammed the victim's head into the wall changed in the middle of trial after the defense witnesses' testimony that Appellant in fact punched the hole in the wall the next morning. (See R. p. 494-515).

(See R. p. 494-515). Therefore, where the trial judge properly limited the scope of Appellant's closing argument to exclude improper references to third-party guilt, and where Appellant suffered no prejudice from the judge's ruling because he was free to make proper arguments regarding the evidence in the record, Appellant's appeal is without merit.

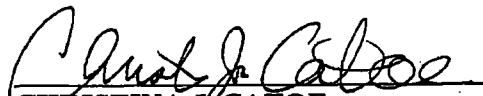
CONCLUSION

For the reasons discussed above, Respondent requests that this Court affirm Appellant's conviction and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

CHRISTINA J. CATOE
Assistant Attorney General


CHRISTINA J. CATOE
SC Bar No. 73562

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

July 13, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable Letitia H. Verdin, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

RASHAWN MURPHY,

APPELLANT.

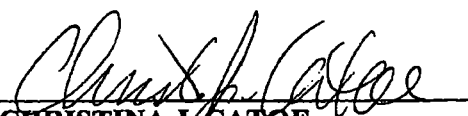
**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondent submits that the following should be included in the Record on Appeal:

- (1) True-Billed Indictment; and
- (2) Trial Transcript, pages 60-67; 97-336; p. 401-527.

**ALL DOCUMENTS DESIGNATED SHOULD BE REDACTED IN
ACCORDANCE WITH THE SOUTH CAROLINA SUPREME COURT ORDER
ON PERSONAL DATA IDENTIFIERS.**

The undersigned hereby certifies this Designation contains no matter that is irrelevant to this appeal.


CHRISTINA J. CATOE

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

July 13, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable Letitia H. Verdin, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

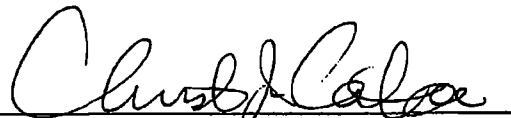
v.

RASHAWN MURPHY,

APPELLANT.

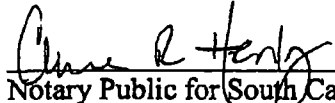
AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Initial Brief of Respondent and Designation of Matter** in the above-referenced case has been served upon **LaNelle C. DuRant**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this 13th day of July, 2012.



CHRISTINA J. CATOE
Assistant Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

SWORN to before me this 13th day of July, 2012.

Notary Public for South Carolina

My Commission Expires: 7/18/2017

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Rashawn Murphy, Appellant.

Appellate Case No. 2011-188766

Appeal From Spartanburg County
Beritia H. Verdin, Family Court Judge

Unpublished Opinion No. 2013-UP-028
Submitted December 3, 2012 – Filed January 16, 2013

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Salley W. Elliott, and Assistant
Attorney General Christina J. Catoe, all of Columbia; and
Solicitor Barry Barnette, of Spartanburg, for Respondent.

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CLERK OF COURT
SPARTANBURG COUNTY
2013 FEB -6 PM 1:32
M. HOPE BLACKLEY
SCANNED

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Cope*, 385 S.C. 274, 283, 684 S.E.2d 177, 181 (Ct. App. 2009) ("The trial [court] has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion."); *State v. Burgess*, 391 S.C. 15, 23, 703 S.E.2d 512, 517 (Ct. App. 2010) (holding *State v. Gregory*, 198 S.C. 98, 16 S.E.2d 532 (1941), is "the appropriate standard for evaluating the admissibility of evidence of third[-]party guilt"); *Gregory*, 198 S.C. at 104, 16 S.E.2d at 534 ("[E]vidence offered by [the] accused [of third-party guilt] must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence . . ."); *id.* ("[E]vidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible."); *id.* at 104-05, 16 S.E.2d at 535 (holding evidence of third-party guilt must clearly point to another person as the guilty party in order to be admissible); *id.* at 105, 16 S.E.2d at 535 ("Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose.").

AFFIRMED.¹

HUFF, THOMAS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Spartanburg)

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

Raishawn Sha-meik Marghu)
v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-42-1445

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg County Court House
3. Name(s) of co-defendant(s) (if any) N/A 180 Magnolia St.
Spartanburg, SC 29301
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-65-42-2210
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 17 2011
 - (b) _____

CLERK OF COURT
Spartanburg County
2013 MAR 22 AM 9:49
M. HOPE BLANCHET
Revised 3/2009

- (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?
☒
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Supreme Court of Direct Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 16 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion No. 2013-up-028
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: N/A

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Revised 9/2003

2013-CP-42-1445

- (a) _____
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) N/A
 (b) _____
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
 (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)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
 ii. _____
 iii. _____
 iv. _____
- (c) the disposition thereof:
- i. N/A
 ii. _____
 iii. _____

CLERK OF COURT
 JEFFERSON COUNTY
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 M. HOPE ALAVALLEY

2013-CP-42-1445

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
N/A
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

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SPARTANBURG COUNTY
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M. HOPE BRADLEY
Revised 2003

2013-CP-42-1445

- (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? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- Rodger Poole
 - Christopher Thompson
 - LaNelle Canty DuRant - South Carolina Commission on Indigent De
- (b) the proceedings at which each such attorney represented you:
- Rodger Poole - Arraignment
 - Christopher Thompson - Trial & Sentencing
 - LaNelle Canty DuRant - Appeal
19. State clearly the relief you seek in filing this application:
- Overturn Conviction
20. Are you now under sentence from any other court that you have not challenged?
- NO

CLERK OF COURT
SPARTANBURG COUNTY
2013 MAR 22 AM 9:49
M. HOPE BLANKLEY

2013-CP-42-1415

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

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.

Risham Murphy

SWORN to and subscribed before me this 20
day of March, 2013.

Debra Sims (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED
CLERK OF COURT
HARTLAND COUNTY
2013 MAR 22 AM 9:49
M. HOPE BLANCHET

2013-CP-42-1445

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.

Rickanne Maphys
Applicant

SWORN or affirmed to and subscribed before me this

22 day of March, 2013.

Debra Sims

Notary Public

My Commission Expires: 11-4-2015

CLERK OF COURT
PORTLAND, OREGON
2013 MAR 22 AM 9:49
M. HOPE BLANKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2013-CP-42-1445
Ra'Shawn Sha-meik Murphy, #240829,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed March 22, 2013, 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 Spartanburg County Clerk of Court. He was indicted at the May 2009 term of the Spartanburg County Grand Jury for homicide by child abuse or neglect (2009-GS-42-2210). The Applicant was represented by Christopher P. Thompson, Esquire. On March 17, 2011, the Applicant proceeded to trial and was found guilty by a jury. The Honorable Letitia H. Verdin sentenced Applicant to a sentence of life.

A timely notice of appeal and brief were filed on Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal. State v. Murphy, Un. Pub. Op. No. 2013-UP-028 (filed January 16, 2013). The Remittitur was returned on February 4, 2013.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant fails to set forth any allegations that he is being held in custody unlawfully.

III.

The Court should summarily dismiss this application for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985). The Respondent respectfully submits that it is incumbent on the Applicant to amend the application and

provide specifics so that adequate preparation is possible.

The Respondent therefore moves for summary dismissal of this allegation pursuant to S.C. Code Ann. § 17-27-70(c) (2003), unless the PCR Application is amended to include with specificity what Applicant alleges.

VI.

WHEREFORE, having made its Return, the State requests that the application be amended to include specific allegations, or be summarily dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

March 18, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Ra'Shawn Sha-meik Murphy,

)
)

2013-CP-42-1445

Applicant,

)
)

v.

)
)

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

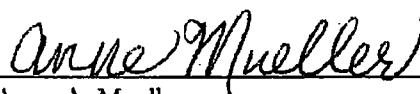
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Respondent.

)
)

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 Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Ms. Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
P.O. Box 1015
Rock Hill, SC 29730



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 18th day of March, 2014.

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF COMMON PLEAS
3 COUNTY OF SPARTANBURG)
4
5 RASHAWN SHA-MEIK)
6 MURPHY,)
7) TRANSCRIPT OF RECORD
8) 2013-CP-42-01445
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11)
12)
13)
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15)
16)
17)
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APPLICANT,)
-vs-)
STATE OF SOUTH)
CAROLINA,)
RESPONDENT.

B E F O R E:

THE HONORABLE R. KEITH KELLY, JUDGE.

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

LEAH B. MOODY, ESQUIRE
ATTORNEY FOR THE APPLICANT

ALICIA A. OLIVE, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE RESPONDENT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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EXHIBITS

NO. DESCRIPTION
(NO EXHIBITS MARKED)

ID. EV.

1 (PROCEEDINGS, MARCH 23, 2016)

2 THE COURT: Yes, ma'am.

3 MS. OLIVE: May it please the court, Your Honor,
4 this is RaShawn Sha-meik Murphy, docket number
5 2013-CP-42-1445.

6 Mr. Murphy was indicted May 2009 for homicide by
7 child abuse or neglect. He was represented by Christopher
8 Thompson.

9 On March 17th, 2011, he proceeded to trial before
10 Judge Letitia Verdin and a jury. He was found guilty and
11 Judge Verdin sentenced him to life.

12 A timely notice of appeal and brief were filed on
13 his behalf. The South Carolina Court of Appeals dismissed
14 the appeal, and the remittitur was returned February 4th,
15 2013.

16 He filed this application for post-conviction
17 relief on March 22nd, 2013.

18 Initially, for the record, he did not set forth
19 any allegations.

20 One of the reasons why this case is a little bit
21 older, the State initially made a motion to dismiss, and
22 that was March 18th, 2014. Mr. Murphy was given thirty days
23 to amend his pleadings, and then I believe he made a motion
24 to relieve counsel.

25 Back in November of 2015, the November PCR term,

1 he again expressed a desire to hire alternative counsel.
2 The judge gave him until the end of January to do so. It's
3 my understanding Ms. Leah Moody still represents him. He
4 has not chosen to retain other counsel.

5 Mr. Murphy is present today represented by Leah
6 Moody.

7 She did provide me with a couple of amendments
8 this morning, so I believe he's going forward on several
9 issues of ineffective assistance of counsel.

10 I'll turn it over to Ms. Moody at this time.

11 THE COURT: Okay. Ms. Moody.

12 MS. MOODY: Thank you, Your Honor.

13 If it please the court?

14 THE COURT: Yes.

15 MS. MOODY: Just for clarity's sake, I spoke with
16 Mr. Murphy, and the court may choose to ask him further
17 questions, but he intends to go forward with my
18 representation. Several things happened in between the
19 November term and at the end of January that prevent him
20 from hiring counsel.

21 I have discussed with him this morning whether he
22 wanted to go forward, but I did file his amendments to his
23 post-conviction relief application, seeing as no one has
24 contacted me and I would assume that he still wanted to go
25 forward with his application. Without that, without any

1 other issues, Your Honor, he says that he does want to go
2 forward and he would be my first witness.

3 THE COURT: Okay.

4 Sir, you are RaShawn?

5 THE APPLICANT: Yes, sir.

6 THE COURT: Sir, you are Mr. RaShawn Murphy.

7 It's my understanding from what I just heard that
8 you were going to hire private counsel, or other counsel,
9 but you have not done so. Do you desire to go forward with
10 Ms. Moody?

11 THE APPLICANT: Yes, sir.

12 THE COURT: Okay. All right.

13 Are you ready to call him to the stand?

14 MS. MOODY: Yes, sir.

15 THE COURT: Come around and be sworn, sir.

16 RASHAWN SHA-MEIK MURPHY, having been first duly
17 sworn, testified as follows:

18 THE COURT: Thank you, sir. Please be seated.

19 Sir, once you are seated and comfortable, tell us
20 your full name, please.

21 THE WITNESS: RaShawn Sha-meik Murphy.

22 THE COURT: All right.

23 Yes, Ms. Moody.

24 MS. MOODY: Thank you, Your Honor.

25

1 DIRECT EXAMINATION BY MS. MOODY:

2 Q. Mr. Murphy, could you please state where you are
3 currently incarcerated?

4 A. Lee Correctional.

5 Q. And you are there based on the charges that the State
6 has already provided to the court?

7 A. Yes, ma'am.

8 Q. How long are you incarcerated?

9 A. Life without parole.

10 Q. Okay. And you went to trial as it relates to these
11 charges?

12 A. Yes, ma'am.

13 Q. Who was your counsel?

14 A. Mr. Christopher Thompson.

15 Q. Was he your only attorney?

16 A. Yes, ma'am.

17 Q. When did you first meet with Mr. Thompson?

18 A. I think it was 2011. I'm not sure what date. I'm not
19 sure what date, but if I'm not mistaken it was 2011, or
20 close to end of 2010.

21 Q. Okay. And was that around the time that you got
22 arrested, or you got arrested and you were held in custody?

23 A. You see, what happened was I had got arrested and held
24 in custody.

25 I was originally being represented by Roger Poole.

1 Well, Roger Poole wasn't doing anything at all and I wasn't
2 getting no type of meetings or anything, so I wrote to
3 relieve him and they appointed me with Mr. Thompson.

4 Q. Okay. So earlier when you testified you had an
5 attorney, but you didn't have any exchange with that
6 attorney?

7 A. Yes, ma'am.

8 Q. And that was Roger Poole?

9 A. Yes, ma'am.

10 Q. Okay. And then you got a new attorney, Mr. Thompson,
11 and he started advising you as to what you needed to do in
12 terms of this case?

13 A. Yes, ma'am.

14 Q. Okay. All right.

15 So when you first met with Mr. Thompson, you had an
16 understanding that he was going to represent you, and now
17 that you filed this PCR application, you allege that he did
18 not do some of those things?

19 A. Yes, ma'am.

20 Q. Can you state for the court what it is that you feel
21 your counsel did not do?

22 A. Yes, ma'am. If you would give me a minute.

23 Mr. Thompson failed to investigate and prepare
24 adequately for the trial. He should have hired his own --
25 well, I'm not going to say he should have, but I felt like

1 he could have hired his own investigator and did his own
2 forensics to find out more.

3 Q. Okay. Well, let's kind of put this in context.

4 With the charges you told him what happened in terms of
5 from your side of the occurrence with this child?

6 A. Yes, ma'am.

7 Q. Okay. And so based off of what you informed him --

8 Well, actually tell the court what did you tell Mr.
9 Thompson?

10 A. I don't exactly remember everything I told Mr.
11 Thompson.

12 Q. Well, what -- you are saying then the facts of the case
13 were something else?

14 A. Yes, ma'am.

15 Q. Okay. What's the portion of the facts that you wanted
16 Mr. Thompson to hire someone else for to investigate?

17 A. Because it was being said that I slammed the baby
18 through the wall. And like everything -- there was a whole
19 bunch of theories and -- which during the trial he did crush
20 every theory that was thrown out there, but I felt like if
21 we had more evidence to really prove and show, that things
22 would have turned out differently.

23 THE COURT: Let me ask a question. I don't mean
24 to interrupt you. He is Mr. Thompson?

25 THE WITNESS: Yes, sir.

1 THE COURT: Okay. Mr. Thompson crushed every
2 theory --

3 THE WITNESS: Yes, sir.

4 THE COURT: -- that they had?

5 THE WITNESS: Yes, sir.

6 BY MS. MOODY:

7 Q. Well, you felt like he did a good job as to dealing
8 with the theories of the State's case?

9 A. Yes, ma'am.

10 Q. Okay. And in terms of the expert that you wanted him
11 to hire, whom you thought he would have hired, you are
12 talking in terms of in defense? As you presented your
13 evidence for the case, you would have had experts for your
14 defense?

15 A. Yes, ma'am.

16 Q. Okay. And so did you all have an opportunity to
17 discuss that?

18 A. No, ma'am.

19 Q. Why is that?

20 A. I only talked to Mr. Thompson three times, at the most.

21 Q. So the first time that you talked to him --

22 A. And each time I talked to him was probably no longer
23 than thirty minutes.

24 Q. Okay. But, you know, during the time that you were
25 talking to him you had an opportunity to tell him that could

1 you hire somebody to testify? I mean, did y'all talk about
2 the fact that you were going to trial?

3 A. Yeah, but, I mean, we talked -- we talked about it when
4 it came -- when it did come up and the thing about it was we
5 didn't find out about it until like the week before.

6 Q. What do you mean you didn't find out about it?

7 A. Well, the week before the trial he come -- I was in pod
8 six at 950 California Avenue. He came -- he came to see me
9 and he let me know like -- well, they -- like they just --
10 they just -- they just came -- they just came in a week and
11 let them know they we were going to trial next week, that we
12 would start to trial next week. I believe it was on a
13 Thursday, that Thursday that he had let me know this, or a
14 Wednesday, or something, but the next following week we was
15 going to trial.

16 Q. Okay. Well, let's back up a little bit.

17 So you get arrested. You had Mr. Poole as your
18 attorney. You move to have Mr. Poole relieved as your
19 counsel and you get Mr. Thompson.

20 A. (Shaking head yes).

21 Q. You initially meet with Mr. Thompson, correct?

22 A. Yes, ma'am.

23 Q. So when you initially talked to him about your case,
24 was there any offer on the table for you to plead to the
25 charges?

1 A. No, ma'am, the offer didn't come until the first day of
2 the trial.

3 Q. Okay. So you never received an offer, so you said all
4 along that you wanted a trial?

5 A. Yes, ma'am.

6 Q. Okay. And then you got served with a notice for life
7 without parole?

8 A. Yes, ma'am.

9 Q. Okay. So when you got served that notice of life
10 without parole, you didn't discuss with Mr. Thompson how you
11 were going to prove that you were innocent in the case?

12 A. No, I didn't get -- I didn't know about the life -- I
13 didn't get the life without parole until after -- until
14 after the verdict.

15 Q. How is that?

16 A. Unless I'm misunderstanding what you are saying.

17 Q. You got sentenced to life without parole?

18 A. Yes, ma'am.

19 Q. But do you recall ever being served that the State was
20 seeking life without parole?

21 A. No, it's my understanding they were seeking twenty
22 years -- twenty years to life. Twenty years to life.

23 Q. Okay. And so you didn't get served with a life without
24 parole notice. They just were going to go for whatever the
25 range was and there was no plea offer given to you

1 whatsoever?

2 A. Not until the first day of trial.

3 Q. Okay. And so you are saying that it didn't occur, or
4 that the death of the child didn't occur the way the State
5 was presenting it to the jury or how they were stating to
6 you that they knew that you actually committed this
7 homicide?

8 A. Yes, ma'am, that's what I'm saying.

9 Q. Okay. What specifically did you tell your attorney as
10 to whether you were guilty or innocent? Did you tell him
11 that you were innocent?

12 A. I told him I was innocent.

13 Q. Okay. And so then y'all proceeded going to trial?

14 A. Yes, ma'am.

15 Q. Okay. And so when you say that he failed to
16 investigate, what, other than hiring an expert, did he not
17 do that you feel that he should have done?

18 A. As far as investigation, that's it for the
19 investigation.

20 Q. So the only thing up to the --

21 A. No -- no -- no, let me correct that. Like a background
22 check on the mother and -- and like her private -- like her
23 private duties. Like if she had certain charges, you know,
24 background charges, or whatever, dealing with -- dealing
25 with child abuse or anything like that.

1 Q. Did you know of anything that she had in her
2 background?

3 A. No, ma'am.

4 Q. But you wanted him -- did you tell him that you wanted
5 him to do that kind of investigation?

6 A. I think I recall I did.

7 Q. Okay. And what -- do you recall any response coming
8 from him?

9 A. I don't recall.

10 Q. Anything else as to the failure to investigate?

11 A. No, ma'am.

12 Q. You also alleged that he failed to prepare for trial.
13 What do you mean by that?

14 A. I believe we covered both of that at the same -- within
15 the same time.

16 Q. On him failing to investigate the mother and her
17 background --

18 A. Yes, ma'am.

19 Q. -- and not hiring an attorney, you say that's the
20 investigation and the that also goes to him being prepared
21 for trial?

22 A. Yes, ma'am.

23 Q. Okay. You -- initially you indicated that you didn't
24 meet with him but so many times, and you are also alleging
25 in your amendment that he failed to consult with you?

1 A. Yes, ma'am.

2 Q. Is that the same thing, or is it something else that
3 you were looking for him to inform you of?

4 A. No, it's the same thing.

5 Q. Okay. And you say you only met with him how many times
6 again?

7 A. Three times, at the most.

8 Q. Three times, at the most.

9 A. Three times, at the most. The first was the
10 introduction. He came around the second time, and the third
11 time was letting me know that we were going to trial.

12 Q. All right. Now, during the trial what, if anything, do
13 you feel that your attorney did not do that he should have
14 done?

15 A. Samantha's statement, okay?

16 Q. Samantha?

17 A. Samantha's statement and Michael's statement. I feel
18 as though if those statements was presented to the jury,
19 that -- I'm not saying that I would have had a different
20 verdict, or anything, but I would feel like the trial would
21 have been more fair.

22 Q. How so?

23 A. Because if -- if my -- if my statements is being
24 presented to the jury and they are just going off this, just
25 going off of my statements and trying to make my statements

1 seem like, oh, this is some bad statements, which it's not,
2 what's all these other statements? That's part of the
3 evidence too, am I wrong?

4 Q. Well, it depends, but wasn't -- isn't it true that
5 Samantha and Michael testified at the trial?

6 A. My attorney had to call them as witnesses on my behalf
7 because of their statements.

8 Q. Okay. So if he talked -- he talked to them about their
9 statements that they gave?

10 A. He -- he -- he talked to them with certain things that
11 a judge wouldn't let him talk to them about.

12 Q. Okay. So there were -- there were some rulings in
13 place that limited your attorney talking to Ms. Hill and Mr.
14 Johnson?

15 A. Yes, ma'am.

16 Q. Okay. And so are you saying that you wanted the actual
17 statement pieces of paper?

18 A. I'm saying yes and I'm saying I wanted the jury to read
19 that also. If -- if everything else is being presented to
20 the jury from the State to make me look bad, okay, how can I
21 defend myself if the little evidence that I do have is not
22 being presented to the jury?

23 Q. Okay. Did you discuss this with your attorney?

24 A. Yes, ma'am.

25 Q. And what was your understanding of your discussion?

1 A. To my understanding the judge wouldn't allow him to do
2 it. That's what he told me. It's -- it's not going to be
3 done.

4 Q. Okay. And so you feel that somehow -- you recall this
5 is what your attorney did not do. What should he have done
6 in terms of the judge's ruling?

7 A. I feel like he should have -- I can't say how hard he
8 tried, but I think he should have tried harder to see if he
9 can get that presented to the jury, because, again, how can
10 I fight a murder trial with my life on the line if I can't
11 present my evidence, the only evidence I have for myself?

12 Q. Okay. Is there anything else as it relates to Samantha
13 Hill and Mike Johnson?

14 A. No, ma'am.

15 Q. Okay. What other issues do you have with your lawyer's
16 performance in your trial?

17 A. As far as my lawyer, that's -- that's it.

18 Q. Okay. Well, in your amendments that you requested does
19 he -- you indicated that the judge on your trial withheld
20 evidence from the jury. Is that the Samantha Hill and
21 M.J. [REDACTED] evidence?

22 A. Yes, ma'am.

23 Q. Okay. And as to the judge allowing their statements
24 to -- your statements to be admissible for the jury to hear,
25 and you didn't testify because your attorney informed you it

1 was not in your best decision, what is your issue with the
2 statement coming in and you are not testifying?

3 A. My statement coming in?

4 Q. Yes.

5 A. I'm not understanding it.

6 Q. Well, in your amendment you said that Judge Verdin was
7 in violation for allowing your statement to be admissible
8 for the jury to hear. Therefore, that you didn't -- you did
9 not testify because your attorney informed you it was not in
10 your best -- it was not the best decision.

11 So, in other words, you didn't get on the stand and
12 testify. The only thing the jury heard was or saw was your
13 statement.

14 A. The problem with that was like if -- if I'm not -- if
15 I'm not getting on the stand to testify and to help myself
16 is like why -- why use my statement to try -- try to use my
17 statement against me to -- to harm me, if I can't -- if I'm
18 not getting up there to defend myself.

19 Q. So -- well, then, you know, your attorney told you it
20 wasn't in your best interest to testify.

21 A. Yes.

22 Q. And so you still have -- you still have that
23 opportunity to testify, but you didn't, so why didn't you
24 testify?

25 A. Because I was informed it was not in my best interest.

1 Q. So whatever he says, that was the decision that you --

2 A. I mean, because I'm -- I'm just going to be honest with
3 you, Your Honor, I don't -- I didn't take law school
4 courses. I don't -- I don't know a lot about the law, so
5 I'm going to depend on someone who is getting paid to --
6 to -- to speak the law, someone who studied the law. Do you
7 understand? So when he -- when he was telling me something,
8 I'm going with that, do you understand, because I feel like
9 he had my best interests.

10 THE COURT: All right, sir, that's fair.

11 BY MS. MOODY:

12 Q. Okay. As to -- you indicated that the prosecution --
13 you alleged misconduct on the prosecution for introducing
14 your statement to the jury and that --

15 And this is your amendment. You said, and I don't know
16 understand what you mean by this, but that he was -- that
17 you were hiding guilt behind your actions, or the prosecutor
18 was hiding guilt behind your actions?

19 A. No, I believe -- I believe it was written out wrong, or
20 whatever, but it's like -- excuse me.

21 The prosecution was basically, I felt like, was feeding
22 the jury what they wanted them to hear. Like, okay, he
23 didn't -- like basically I didn't hop up on the stand, so
24 I'm hiding guilt.

25 Q. Oh.

1 A. And -- and if I'm not mistaken -- and I'm not sure
2 which page it is in my transcript, and I know everything is
3 recorded in that transcript, it should -- it should have
4 been where the prosecution actually told the jury that.

5 Q. So you are saying that the prosecution commented on
6 your guilt and used your statement as to --

7 A. No, no.

8 Q. -- to get their conviction against you?

9 A. Yeah, that too, but that's not what I was getting at
10 right here. What I was getting at is like I felt like -- I
11 felt like -- like the prosecution -- it wasn't -- it wasn't
12 right for them to do that. Like how can you try to paint
13 this picture for the jury like, oh, do you understand what
14 I'm saying, he's -- he's hiding guilt. He's hiding guilt
15 because he won't hop up on the -- he won't get up on the
16 stand.

17 Q. So you are saying they commented on the fact that you
18 did not testify?

19 A. Yes, ma'am.

20 Q. Okay. And your attorney didn't do anything about it
21 and you feel like he should have done something about it or
22 objected to it?

23 A. He probably -- he probably -- he probably objected to
24 it, but I'm not -- I'm not -- I'm not saying he did anything
25 wrong on that one right there.

1 Q. So you are saying that the misconduct was on the part
2 of the prosecution?

3 A. Yes, ma'am.

4 Q. So you are saying they should not have objected -- they
5 should not have commented on the fact that you didn't take
6 the stand?

7 A. Yes, ma'am.

8 Q. Okay. And they used your statement and they tried to
9 paint pictures of your statement?

10 A. Yes, ma'am, and this is after the judge told them like
11 just -- basically like just because he's not hopping up on
12 the stand, do not look at him as being guilty.

13 Q. Okay. So that -- you are saying the misconduct on the
14 prosecution?

15 A. Yes, ma'am.

16 Q. Okay. All right.

17 Now, you also state that the trial court erred
18 improperly limiting the scope of the defense counsel's
19 cross-examination of the State's witnesses. That goes back
20 to Samantha Hill and M.J. [REDACTED] or is there other
21 witnesses that you feel that the judge should not have
22 limited your counsel on?

23 A. No, ma'am, because -- I mean, to my understanding
24 everybody else -- the judge -- the judge -- the judge didn't
25 stop Mr. Thompson from cross-examining them, but how he was

1 wanting to cross-examine them.

2 Q. So that's -- so my question is is that only as it
3 relates to Ms. Hill and Mr. Johnson's testimony?

4 A. Yes, ma'am.

5 Q. Okay. You also indicate that there was an abuse of
6 discretion by the judge for not -- she upheld the objection
7 made to the suppression of the evidence of the witnesses
8 testimony and the statements in favor of defense?

9 A. Yes, ma'am.

10 Q. Can you explain that to the court?

11 A. It's like I was just saying, she -- she basically told
12 Mr. Thompson he couldn't -- he couldn't present -- well,
13 first they couldn't present their testimony -- their
14 statements to the jury; and then told Mr. Thompson that he
15 couldn't like question them on the statement.

16 Q. Okay. You mean present it to the just to let them read
17 the full statement --

18 A. Uh-huh.

19 Q. -- and then coming back and questing them on the
20 statement?

21 A. Yes, ma'am. And I admit Mr. Thompson did try to read
22 the statement out, but she stopped him and -- and they
23 took -- if I ain't mistaken they took a break and I guess to
24 figure out how he was going to read -- how he was going to
25 play reading the statement out without actually reading

1 everything out in the statement to Samantha and Michael.

2 Q. All right. Now, as to the closing you have indicated
3 that feel like your rights were violated. You wanted the
4 privilege of making the last statement during the closing
5 argument?

6 A. That was one that I was going to -- I was going to do
7 away with.

8 Q. Okay. Are you sure you want to withdraw that?

9 A. Yes, ma'am.

10 Q. You indicate that there was cumulative prejudice, and
11 that goes back to Samantha Hill and Mr. Johnson, by allowing
12 statements -- when the evidence -- excuse me, the evidence
13 within -- you are saying that there was evidence within the
14 witnesses statements that was allowing cumulative evidence?

15 A. No, what I was really saying was -- was like, okay --
16 excuse me.

17 I mean about like the prejudice. It's dealing with the
18 statements, and it's also dealing with the fact that the
19 judge I was supposed to go up in front of was a male judge,
20 Judge Cole. That's the judge I was scheduled to go in front
21 of. That's the one who I thought I was going in front of.
22 Okay. I ended up coming in front of a female judge, and
23 look at -- look at -- look at -- look at the details of the
24 charge in dealing with a child. A mother and her child.
25 I'm pretty sure Judge Verdin -- how you pronounce the name,

1 I'm pretty sure she's a mother, so it's like why -- why
2 would you take me in front of another mother with a charge
3 like this and, you know, I'm not going to -- women --
4 women -- women are more sensitive to subjects like that.

5 Q. So you are saying that Judge Cole would not be
6 sensitive and he's a father?

7 A. I mean, I'm not saying that. What I'm saying is he
8 played -- I know he would have played by the book. If I was
9 wrong, I was wrong. If I was right, you know what I'm
10 saying, he's going to make sure what I'm saying, if he knows
11 that I'm right.

12 Q. You are saying that the Judge Letitia Verdin, Judge
13 Letitia Verdin, would not have played -- would not have used
14 the law --

15 A. No, you are right.

16 Q. -- or that she did not use the law in your case?

17 A. You are right. Yeah, you are right.

18 Q. I'm not saying that. I'm asking you a question. Are
19 you saying that Letitia --

20 A. Yeah, that's what -- that's what I'm saying, because
21 otherwise certain -- certain -- like I say, these statements
22 that would have been presented to the jury, you see what I'm
23 saying? Instead of -- instead of -- instead of denying
24 this, denying that, or I can't use this, I can't use that.
25 Really -- really just blocking me of any -- of any type

1 defense.

2 Q. Because she's a female judge?

3 A. Yes. That's how I feel, yes.

4 Q. Okay. And what did you want your lawyer to do about
5 the judge?

6 A. I mean, there was nothing that he could do about the
7 judge, to my understanding.

8 Q. Okay. The last one you indicated that your Miranda
9 Rights were not properly given and you do not recall signing
10 a waiver form?

11 A. Unless -- unless that's the signed my own -- unless
12 that's the signed my motion or anything, because I don't
13 recall signing a waiver.

14 Q. And do you recall talking to law enforcement?

15 A. Yes, ma'am.

16 Q. Okay. And --

17 A. And I also recall telling them like I don't want -- I
18 don't want to talk -- you know what I'm saying, "I need a
19 lawyer," but they were like "oh, we can't help you with
20 that."

21 Q. All right. So what did you want your attorney to do
22 with the Miranda Rights violation?

23 A. First I want to know if I actually signed them,
24 because -- because -- because at the time -- you got to
25 think about it. At the time I'm being -- I'm being

1 interrogated for a murder of a loved one. This is not just
2 a random child, a random person. This is one I actually
3 cared about, do you know what I'm saying? And -- yeah, and
4 it really had me messed up, got me grieving, so a lot of --
5 a lot of things that -- that -- that -- that -- that was put
6 in the statements and everything about me was me trying to
7 recollect the date, you know what I'm saying, the night
8 before. I mean, I ain't going to lie. I have been scared.
9 I didn't know what they were going on. The only thing I
10 know, they called -- they called us to come to the -- to
11 come to the station.

12 Q. Who were they?

13 A. Me and Samantha. They called us to the station to come
14 give a statement and the next thing I know, they come
15 reading me -- they come told me, oh, you are getting accused
16 of murder and all type stuff like that.

17 Q. Well, did you tell your lawyer about your confusion and
18 your grief and your fear?

19 A. Yes, ma'am, I did. I believe I did.

20 Q. And did you all discuss that and discuss it in the
21 context of your Miranda Rights and your statement?

22 A. I don't recall.

23 Q. Okay. All right.

24 Is there anything else that you want the court to
25 consider in terms of this PCR application?

1 A. No, ma'am, I believe we hit all the issues.

2 Q. So, now, all these issues, how do you feel like this
3 was unfair? How do you feel like your lawyer's performance
4 was unfair to you and caused you harm?

5 A. I just feel like certain things that I mentioned
6 probably could have been done.

7 Q. I'm sorry?

8 A. Like certain things that I mentioned probably could
9 have been done.

10 Q. Okay. And so you feel that that caused you to get
11 convicted?

12 A. No, I -- I just feel like the trial would have been
13 more fairer, because it's -- again, how can you have a fair
14 trial with you not having everything laid out on the table?

15 Q. Okay. And so what relief are you seeking from the
16 court?

17 A. I would just want a new trial.

18 Q. All right. So you want a new trial?

19 A. Yes, ma'am.

20 Q. And you recognize that you would start all the way
21 over?

22 A. I mean, I'm serving a life sentence now, so what credit
23 do I have?

24 Q. But do you recognize --

25 A. Yes, ma'am, I understand.

1 Q. -- that you would start all the way over?

2 A. I understand.

3 Q. And so you want the court to grant you that relief so
4 that you can go back and have a fair trial?

5 A. Yes, ma'am.

6 Q. Is there anything else you want to tell the court?

7 A. No, ma'am.

8 Q. Are you sure?

9 A. Yes, ma'am.

10 Q. Okay.

11 MS. MOODY: No further questions from this
12 witness, Your Honor.

13 THE COURT: Ms. Olive.

14 MS. OLIVE: Thank you, Your Honor.

15 May it please the court?

16 THE COURT: Yes, ma'am.

17 CROSS EXAMINATION BY MS. OLIVE:

18 Q. Mr. Murphy, you testified that you feel your lawyer
19 failed to -- well, you testified that he should have hired
20 his own investigator, correct?

21 A. Yes, ma'am.

22 Q. Do you -- but you don't know what an investigator would
23 have shown, correct?

24 A. No, ma'am, I don't.

25 Q. Okay. And you told your attorney everything that you

1 knew about what happened, correct?

2 A. Yes, ma'am.

3 Q. And am I correct in that you weren't -- you were not
4 served with a notice that the State intended to seek life
5 without parole, but just was what you were sentenced to,
6 correct?

7 A. Yes, ma'am, twenty to life.

8 Q. And you have said that you think your lawyer should
9 have looked into the background of Samantha regarding any
10 charges she might have?

11 A. Yes, ma'am.

12 Q. But you also testified that you don't know of any
13 charges --

14 A. Yes, ma'am.

15 Q. -- that she has in her background. Okay.

16 And you don't have anything with you here today that
17 would show that she has any?

18 A. No.

19 Q. And, again, Samantha and Mi key both testified at your
20 trial, did they not?

21 A. Yes, ma'am, but it was more like on my behalf.

22 Q. Right, they testified for you?

23 A. Yes, ma'am.

24 Q. I mean, your -- your attorney called them to the --

25 A. Yes, ma'am.

1 Q. And you also testified that your attorney did attempt
2 to get their statements in on the record?

3 A. Yes, ma'am.

4 Q. Okay. And Samantha testified essentially to what was
5 in her statement, did she not?

6 A. I'm not -- I'm not going to really say she just
7 willfully testified. It was more like my attorney had to
8 really -- had to really throw certain questions at her at
9 certain angles and try to get certain answers up out of her
10 without actually reading off of the statement.

11 Q. But she essentially did testify to what was in her
12 statement, did she not?

13 A. Yes, ma'am.

14 Q. Okay.

15 MS. OLIVE: That's all the questions that I have.
16 Thank you.

17 THE COURT: Ms. Moody, anything further of this
18 witness?

19 MS. MOODY: No, sir.

20 THE COURT: All right, sir, you may step down.
21 Please be careful.

22 Anything further?

23 MS. MOODY: No, sir, Your Honor.

24 THE COURT: Yes, ma'am.

25 MS. OLIVE: Your Honor, the State would call Mr.

1 Christopher Thompson to the stand.

2 THE COURT: Mr. Thompson, come forward, please.

3 CHRISTOPHER THOMPSON, ESQUIRE, having been first
4 duly sworn, testified as follows:

5 THE COURT: Thank you, sir.

6 Mr. Thompson, tell us your full name for the
7 record.

8 THE WITNESS: Christopher Paul Thompson.

9 THE COURT: Thank you.

10 Ms. Olive.

11 MS. OLIVE: Thank you, Your Honor.

12 May it please the court?

13 THE COURT: Yes, ma'am.

14 DIRECT EXAMINATION BY MS. OLIVE:

15 Q. Mr. Thompson, do you -- were you appointed or retained
16 in this case?

17 A. Appointed.

18 Q. Do you recall at what point you began representing Mr.
19 Murphy?

20 A. I would assume sometime in January of 2011. I just --
21 I have got my -- the record of time I kept when I billed the
22 office of Indigent Defense and it indicates that on the 21st
23 of January I began reviewing the case file and discovery,
24 and there was a lot of discovery, so I may have been
25 appointed earlier in the year, in that month.

1 Q. Okay.

2 A. And RaShawn is right, we -- we -- we went from January
3 to -- we were in trial in March.

4 I -- I believe that Roger Poole may have been on the
5 case for awhile and I guess it was nearing the -- you know,
6 getting up on the docket. I'm not sure, so -- but it was --
7 it did come up sooner than -- most of the time you know how
8 you get hired on a case. I think -- I think that the child
9 had died in '09, or so, so it was later on.

10 Q. Do you feel that you had ample time to prepare,
11 notwithstanding the fact that the trial was in March?

12 A. I -- I did. I noticed on here I think I had five
13 visits to the jail on this transaction sheet. And, as a
14 matter of fact, one of them was over two hours. RaShawn and
15 I went through the file and reviewed the discovery and --

16 I do recall -- I think the first time was pretty short.
17 I had noticed a letter in the file that he had written from
18 jail to the child's mother. And shortly after being
19 appointed, I did run down there and tell him he couldn't
20 send anything else out like that.

21 Q. You testified that you reviewed all the discovery with
22 Mr. Murphy, is that correct?

23 A. Yes, ma'am. I have got it down as maybe March the 3rd.

24 Q. Okay.

25 A. So it was about two weeks before the trial.

1 Q. And regarding the statement that you just mentioned, do
2 you recall whether there was a Jackson v. Denno hearing at
3 the trial?

4 A. We did. If you look in the transcript we did a Jackson
5 v. Denno. I think RaShawn had provided law enforcement with
6 three statements the day after the child's death, so we did
7 a Jackson v. Denno.

8 My main complaint was I think he had been down there
9 for over five hours between the two and I guess I was
10 arguing duress or --

11 Q. And you presented that to the judge in that hearing?

12 A. I did, and -- but the -- they came in and I -- I -- I
13 guess it was two-fold. They wanted to get his statement in
14 and then also they used the statement to support the
15 testimony of a SLED handwriting expert to verify the letter.

16 Q. And you challenged -- but your testimony is that you
17 challenged all those statements?

18 A. Right, I -- I requested a Jackson v. Denno, I think
19 that's what they call them, Jackson v. Denno hearing, to
20 suppress the statements.

21 And RaShawn is right, at one point I tried to enter the
22 mother and the child's statements and the judge didn't allow
23 those in, so that's what he was referring to is -- and I
24 didn't -- once the judge said she denies it, I'm not going
25 to argue with her.

1 Q. Did Mr. Murphy discuss with you his version of the
2 event?

3 A. Yes, he did, and he had basically -- and his statements
4 weren't incriminating. He didn't say anything in there that
5 I -- that was horrible to his case. He basically had
6 testified to -- or written down that he put the child to bed
7 and came back downstairs and then at some point during the
8 night the child did come down the stairs and he didn't
9 realize it and believes she could have fallen down the
10 stairs.

11 Q. And, in fact, what -- well, let me back up.

12 Did you discuss any possible defenses that Mr. Murphy
13 might have had?

14 A. Well -- and like RaShawn has said, and I -- Barry
15 Barnette come in and -- if you -- by way of history it
16 don't -- that was a civil docket that week and Barry pushed
17 it and wanted it heard that week, or tried that week, and I
18 think it was Judge Verdin's first trial as a circuit court
19 judge, and so we wound up in there and she granted what
20 Barry does often as a third-party guilt motion, whereby you
21 are not -- you are restricted in saying that anybody else or
22 you are theorizing anybody else could have committed the
23 crime other than the defendant. So my counter-argument was
24 that there is three other people in the house that night
25 and, therefore, there is no basis for the third-party guilt,

1 but she did grant that and that put me in the situation
2 where I had to call the mother as a witness, and the
3 brother, who was maybe seven years old at the time, to get
4 in what I wanted in, because they didn't -- the only -- they
5 didn't -- the didn't -- the only witnesses that they called
6 were SLED, Dr. Wren, and then law enforcement.

7 Q. Is it your recollection that -- did she rule on that
8 motion right away, the third-party guilt?

9 A. She -- she -- she did not. She -- I had -- in the --
10 it's a terrible case. This baby -- through the autopsy the
11 doctor had discovered a broken leg that had been broken
12 prior to that evening when she died, and my argument was,
13 well, you know, we -- you can't grant that motion until at
14 least we hear from Dr. Wren, due to, you know, the earlier
15 injuries that occurred before RaShawn even moved into the
16 house. So she did wait until after Dr. Wren's testimony to
17 renew that -- or to grant that motion.

18 Q. Is it not your -- I mean, is it possible she might have
19 granted the motion a little later? I mean --

20 A. She may have. I'm -- I just remember -- you know, I'm
21 scanning through the transcript, too, that -- that the -- we
22 were going to wait until after Dr. Wren testified. Now, it
23 may have been at the close of their case, or something, that
24 she granted it.

25 Q. Did you, in fact, make a proffer, do you recall?

1 A. I believe, if you read the case law, that's one of
2 the -- one of the requirements is that you have to proffer
3 evidence that substantiates someone other than the defendant
4 being potentially the culprit and I believe I made that
5 proffer.

6 My proffer was -- the seven year old's statement was
7 that the two or three year old child would stand on the bed
8 and jump up and down and -- it was a bunk bed and grabbed
9 the bars and jump and jump and my argument was that those
10 injuries to the child could be consistent with that child
11 jumping on a small baby, and I believe the -- I think we
12 proffered the -- I think Dr. Wren testified also that the
13 broken leg, or the fractured leg, was, in fact, older than
14 the injuries that the child sustained on the night of her
15 death.

16 Q. Were there any other theories that you were proceeding
17 on at trial other than attempting to --

18 A. Well, either RaShawn killed that child, or the momma
19 killed that child, or that little child baby could have been
20 jumping up and down all the time, so I pursued all those.
21 But like I say, I had to -- I had to bring the mother in. I
22 had to bring her in as my -- call her as my witness. And
23 she even had in her statement I think that she was in the
24 bed all night with RaShawn and he -- she didn't think he
25 could have done it.

1 The State's theory was that RaShawn had smashed the
2 child into the wall, and there was broken -- what do you
3 call them, the wall, sheet rock. And we did get the
4 seven-year old to say that no, RaShawn had hit the wall with
5 his fist after they couldn't revive the child the next
6 morning. I think I even went into that on -- in closing
7 that I believe that created reasonable doubt and I think I
8 even made a motion notwithstanding the verdict based upon
9 their theory was disproved.

10 But my theory was the mother -- you know, I think there
11 were scratches on the child and the mother did it, and she
12 even came to court with long fingernails, but that
13 third-party guilt motion granted kind of limited what I
14 could go into on the mother.

15 It was -- I think in closing I tried to use the Bible
16 and talked about my wife's long fingernails peeling pages
17 back, just to kind of put in the jury's mind that the mother
18 had those long nails and there was injuries to the child
19 from scratches.

20 Q. Did you have an investigator in this case?

21 A. I did not.

22 Q. Did you -- did you feel that was necessary?

23 A. Well, I mean, I'm kind of two years after the crime, so
24 I'm sure the scene would be nothing like it was originally.

25 I don't recall RaShawn ever asking for an investigator.

1 I do recall -- I think I pulled a rap sheet on the
2 baby's father and I believe he may have had a criminal
3 domestic violence, or something. It wasn't anything major.

4 And then I did subpoena medical records from the
5 hospital concerning the children. What I was looking for
6 was a pattern of abuse prior to RaShawn moving into the home
7 and uncovered a little bit of it, but -- through Dr. Wren
8 and I thought his testimony was probably better than the
9 records.

10 MS. OLIVE: Beg the court's indulgence.

11 THE COURT: Yes, ma'am.

12 (Off the record)

13 (Back on the record)

14 BY MS. OLIVE:

15 Q. Mr. Thompson, was Mr. Murphy served with a notice that
16 the State was seeking life without parole, or was he simply
17 sentenced to life?

18 A. I believe they were offering thirty years on a plea,
19 maybe, but I don't recall being served with a notice to seek
20 life without parole. And I don't recall what the
21 sentence -- just like a murder carries thirty to life, but,
22 you know, he wasn't interested in the thirty years, but I --
23 I don't recall being served with it. I'm not -- he could
24 have been, but I just don't recall it.

25 Q. Mr. -- and I believe you just touched on this. Mr.

1 Murphy stated you didn't -- you received a plea offer, but
2 that the only plea offer he received was the first day of
3 trial. Is that the --

4 A. That probably was right. I don't think they offered
5 anything leading up to trial --

6 Q. Okay.

7 A. -- that I was ever -- but -- because of -- I mean, the
8 victim is less than a year old, I guess, and --

9 Q. And the thirty years you mentioned, is that the offer
10 that he was --

11 A. I think. I believe it -- I believe that offer came,
12 maybe.

13 Q. You are not positive?

14 A. I'm not a hundred percent sure. I do recall when I got
15 involved there was no offer.

16 Q. If there had been an offer, would you have communicated
17 that offer to him?

18 A. Sure, I know -- yeah, sure, I think I did on maybe the
19 day of trial or day before.

20 Q. Did you have any reason to doubt Judge Verdin's
21 impartiality in this case?

22 A. I don't -- I don't -- I don't believe there was any
23 unfairness or anything like that. I -- I -- I do believe --
24 I believe -- I don't believe Judge Cole would have granted a
25 third-party guilt motion. I -- I just -- I think maybe she

1 was a little inexperienced. I do recall going to the bench
2 and, you know, off the record say I'm going to raise a
3 third-party guilt motion. She said "well, I'll grant it."
4 I was like I hadn't argued it yet, but, you know, maybe it
5 just being her first trial was, I don't know, something that
6 maybe that's what RaShawn picked up on.

7 Q. But that sort of thing is not on an error that is
8 addressed on a direct appeal? I mean --

9 A. That I don't know. I have never done an appeal.

10 Q. An alleged error? In terms of if she made a ruling
11 that could be perceived as erroneous, that would be
12 something to address?

13 A. Yeah, sure, abuse of discretion or something along
14 those lines.

15 Q. Are you familiar with the appellate records in this
16 case?

17 A. No, ma'am.

18 Q. Okay. Thank you.

19 MS. OLIVE: That's all the questions that I have.

20 THE COURT: Ms. Moody.

21 MS. MOODY: Thank you, Your Honor.

22 CROSS EXAMINATION BY MS. MOODY:

23 Q. Good afternoon, Mr. Thompson.

24 A. Hey, Ms. Moody.

25 Q. As far as -- I think you said earlier that you

1 requested a judgment notwithstanding the verdict at the end
2 of the trial?

3 A. I believe I did.

4 Q. Okay. And so after the sentence in this case, did you
5 make a request for a reconsideration?

6 A. I don't know if I did a motion to reconsider or just
7 did the appeal.

8 Q. Okay. So you filed a notice of appeal for him?

9 A. Yeah, because I think you got ten days there so it's
10 really -- I think it would be too -- you would be too
11 pressed for time if you tried to get Appellate Defense to do
12 it, and they generally pick them up after a notice is filed.

13 Q. Okay. As far as -- you came into the case after Mr.
14 Poole was on the case. Did you meet with Mr. Poole and
15 discuss any occurrences?

16 A. I'm sure I did, because I probably -- usually when you
17 pick up a public defender case, they will -- they are happy
18 to share the file with you, to give you the file, so I'm
19 sure I did, but I don't -- I don't recall.

20 Q. Okay.

21 A. I don't recall discussing any specifics with him.

22 Q. Okay. So I believe earlier you testified that when you
23 came into the case, because it had been so far off since the
24 death of the child, you didn't have an investigator, but do
25 you know whether Mr. Poole and those had an investigator

1 involved?

2 A. I -- I don't -- I don't recall. I don't.

3 Q. So like from your notes and everything would you have
4 notated that when you reviewed the file that this is what
5 the evidence is from the State, this is what has been
6 revealed since the date of the arrest?

7 A. I -- I probably would have written down any offer that
8 was conveyed and, you know, would have -- if he would have
9 said hey, you need to check this out, or -- you know, I
10 would have jotted that down too, but like I say, I don't
11 recall any specifics on that.

12 Q. Okay. Now, at any point did you -- and I recognize
13 that there was only an offer like right before the trial
14 began, but at any point did you think that Mr. Murphy should
15 have pled?

16 A. I -- I believe at the end of everything I think -- I
17 felt like we could get the verdict in our favor. I think
18 RaShawn felt like that. Two jurors went back and said not
19 guilty to start with, so it --

20 I mean, I always say you try to tell someone in their
21 early twenties to plead to thirty years, they're just not
22 going to deal with it. I mean, that's -- and I don't --

23 You know, RaShawn never said he did it. I never
24 observed any qualities in RaShawn that would make me believe
25 he did it. So he wanted to go forward and I --

1 I don't think -- I mean, I don't believe he would have
2 pled, but at no time did I think things looked so bad that
3 he needed to plead, you know, and that's easy for me to say
4 because I'm not the one going to trial.

5 Q. Okay. Now, I know that you said RaShawn never asked
6 for an investigator. What about an expert in terms of
7 like -- I believe you testified that you got mostly what you
8 wanted out of Dr. Wren?

9 A. Yes, ma'am.

10 Q. Prior to going to trial did you talk to Dr. Wren or you
11 kind of had a feeling of what he was going to say?

12 A. Well, no, Dr. Wren is a State's witness in every murder
13 case, so I didn't -- I didn't attempt to discuss anything
14 with him prior to.

15 Q. Okay.

16 A. I say Dr. Wren. Like I said, he testified about the
17 broken leg. He even testified that the injuries to the
18 child were consistent with someone that fell down stairs.
19 So, you know, I felt okay about Dr. Wren. I mean, he's --
20 he's slanted. He's slanted towards the State, in my
21 opinion, but, no, I didn't -- I didn't seek him out prior
22 to.

23 Q. Okay. And I want to ask you something that I normally
24 don't ask, but I need to ask you, but this case it seems to
25 be -- it was definitely a tough case. Do you feel like you

1 didn't do something that you should have done that could
2 have made the verdict different in this case, recognizing
3 that there were two jurors that went back and said not
4 guilty?

5 A. You know, you always think you could have done
6 something. Maybe -- maybe, you know, convince RaShawn to
7 testify.

8 I think we spoke with his sister, or somebody, prior
9 to, and, like I say, I think things were looking pretty good
10 and we were -- we didn't want him lose his temper on the
11 stand or anything and I think he's a little scared of that,
12 too. And I felt like we -- if he gets up and loses his
13 temper in front of the jury, then that would prejudice him a
14 good deal. So maybe -- you know, maybe -- I've had that
15 discussion a long period of time.

16 Maybe -- I don't know, maybe pursue the -- pursue the
17 mother's guilt. Maybe -- maybe even risk a mistrial. You
18 know, the verdict could have been -- I mean, the motion
19 would have been granted, but -- you know, maybe I could have
20 been more aggressive with the mother and said "you have got
21 long nails. You" -- but I'm sure that would have drawn an
22 objection and possibly call for a mistrial, I don't know,
23 but I guess I could have done that. You know, but I
24 always every trial go back and said or done something
25 different.

1 Q. Okay.

2 MS. MOODY: No further questions for this witness.

3 Thank you.

4 THE COURT: Anything, Ms. Olive?

5 MS. OLIVE: Just briefly, Your Honor.

6 THE COURT: Yes, ma'am.

7 REDIRECT EXAMINATION BY MS. OLIVE:

8 Q. In terms of Mr. Murphy's -- I mean, he ultimately
9 made -- did he make the decision not to testify?

10 A. He did. Yeah, he -- yeah, and like I say, we -- I
11 think he was -- just didn't want to -- you know, he might
12 lose his temper. At that point I believe --

13 If you look at the transcript, Tony Leibert started out
14 as the prosecutor and then Barry basically took it over
15 until the closing argument. And, you know, I just told him
16 to be careful if he does take the stand. And we -- you
17 know, I can't remember if it was his cousin, sister,
18 somebody they were there supporting him and it just come to
19 the conclusion that he wouldn't testify.

20 Q. But did you fully advise him on the risks and
21 advantages of testifying?

22 A. Yeah, and -- I mean, especially with -- I thought that
23 he would get beat up on that letter and the three statements
24 pretty much, too, so, I mean, it was a consensus between us
25 that he just not testify.

1 I mean, like I say, I -- I thought we tried a good case
2 and put a good bit of defense up there, but --

3 Q. Okay. And you testified that you could have further
4 pursued the mother's guilt, or is that something you think
5 maybe you could have done better?

6 A. Like I say, I likely would have had a mistrial on my
7 hands and I might have got myself in trouble, but -- I mean,
8 you know, I had to play the hand I was given, but, yeah, I
9 mean, you know, the -- I mean, I took a risk calling her as
10 a witness. And like RaShawn said, we did get her to say
11 what was in the statement.

12 Q. Was there any other way you could have done that
13 without calling her?

14 A. I -- I don't see -- no, there is no way. Like I say,
15 they didn't -- they didn't call her or the child, so that
16 kind of -- and the only way I -- because both statements had
17 things in there that were favorable for RaShawn, so the only
18 way I could get those in were was to call those two
19 witnesses.

20 Q. Okay. And even though you think maybe there are
21 certain things you could have done better, do you really
22 know whether those would have affected the outcome of this
23 trial?

24 A. I -- I -- no, I don't know. I mean, you know, we
25 all -- we all want to go back there and see what happens in

1 the jury room sometimes, so I -- I think they stayed out
2 maybe two, three hours. I think they came back one time
3 with a question or something, but I -- I mean, I don't know.
4 I don't think so, but, you know -- you know, if we --

5 I guess the thing I wanted to do is cross-examine the
6 mother, but they didn't -- you know, they didn't -- they
7 didn't put her up, so I didn't get that opportunity. So
8 I -- I don't think -- I don't know if it would have swayed
9 the verdict or not. I don't know what's going on in that
10 room.

11 Q. Okay.

12 MS. OLIVE: Thank you.

13 THE COURT: Anything Ms. Moody?

14 MS. MOODY: No, Your Honor, but I would ask that
15 the court allow this record to stay open. Ms. Canty,
16 Lenelle Canty is not here. She was his appellate counsel.
17 And based on the testimony from Mr. Thompson, it appears
18 that he tried to challenge these things and the only thing
19 that would appeal to the Court of Appeals was third-party
20 guilt. Nothing as to the statements and the limiting of
21 those statements that were part of the witnesses statements
22 were appealed.

23 THE COURT: Okay. So?

24 MS. MOODY: I think that when the client filed
25 ineffective assistance of counsel, as to his appellate

1 counsel she was ineffective for raising those grounds on
2 appeal for him.

3 THE COURT: Let me see the lawyers.

4 (Whereupon, the lawyers approached the bench for
5 an off-the-record discussion)

6 THE COURT: Anything further from this witness?

7 MS. MOODY: No, sir.

8 MS. OLIVE: No, Your Honor.

9 THE COURT: Okay. You may step down, Chris.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Any other witnesses from the
12 government?

13 MS. OLIVE: No, Your Honor.

14 THE COURT: Okay.

15 All right. I understand there is a motion to
16 leave the record open. That's under advisement.

17 Now, sir, let me tell you how we do this. My law
18 clerk is seated here to my right. She and I, we're going to
19 read a lot of this material up here and digest what's been
20 testified to and she's made notes and I have made notes. We
21 will get a ruling out to you through your lawyer, okay?
22 Whatever we decide we are going to do, Toria will then
23 e-mail your lawyer and the government's lawyer at the same
24 time, okay? So we won't communicate with them first and we
25 don't communicate with your lawyer first. It's

1 simultaneously, do you understand?

2 THE APPLICANT: Yes, sir.

3 THE COURT: And they will tell you what the ruling
4 is, okay?

5 THE APPLICANT: Yes, sir.

6 THE COURT: And that would conclude this
7 hearing.

8 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 23rd day of March, 2016.

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

JULY 18, 2016



Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	FOR THE SEVENTH JUDICIAL CIRCUIT
RaShawn S. Murphy, #240829,)	Case No. 2013-CP-42-1445
323547)	
Applicant,)	ORDER OF DISMISSAL
v.)	
State of South Carolina,)	
Respondent.)	

SPARTANBURG COUNTY
2016 JUN 14 PM 1:54
M. HOPE BLACKLEY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 22, 2013. Respondent made its Return on or about March 18, 2014, requesting that the application be summarily dismissed pursuant to Rule 12(b)(6), SCRCP.¹ Applicant filed an amended Application on March 23, 2016. The Court convened an evidentiary hearing into the matter on March 23, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Leah B. Moody, Esquire. Alicia A. Olive, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Christopher P. Thompson, Esquire, also testified.² The Court had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, Applicant's records from the South Carolina

¹ Applicant's PCR application stated "N/A" as its grounds under paragraphs 10 and 11. On September 17, 2014, Respondent also orally moved to dismiss the application. The hearing judge continued the PCR hearing and granted Applicant thirty days to amend. On December 29, 2014, Applicant filed a letter stating he wished to have a new attorney. In November 2015, Applicant again appeared for a hearing, and asked to have his attorney removed. The judge refused to relieve counsel, but provided Applicant until the end of January 2016 to obtain new counsel and informed Applicant his case would be scheduled for an evidentiary hearing in March 2016. Applicant failed to retain new counsel and proceeded with Leah Moody as counsel.

² At the request of PCR counsel, the record was held open for several weeks to allow PCR counsel to determine whether the testimony of appellate counsel would be necessary. After receiving no indication that such testimony would be necessary, this Court closed the record and ruled on the evidence presented.

Department of Corrections, the pleadings, the return and amendment. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In May 2009, the Spartanburg County Grand Jury indicted Applicant for homicide by child abuse or neglect (2009-GS-42-2210). Christopher P. Thompson, Esquire ("Counsel"), represented Applicant. On March 17, 2011, Applicant proceeded to trial before the Honorable Letitia H. Verdin and a jury. The jury found Applicant guilty as indicted. Judge Verdin sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal. Lanelle Canty Durant, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed the appeal. State v. Murphy, Op. No. 2012-UP-589 (S.C. Ct. App. filed Jan. 16, 2013). The remittitur was returned to the circuit court on February 4, 2013.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel, in that:

- a. Counsel failed to conduct a proper closing argument
- b. Counsel erred in allowing the State the advantage of having the final argument
- c. Counsel failed to investigate and prepare for the trial; and
- d. Counsel failed to consult with Applicant

2. Trial court error, in that:

- a. The trial judge withheld evidence from the jury.
- b. The trial judge was in violation for allowing his statements to be admissible for the jury to hear. Therefore, Applicant did not testify because his attorney informed him it was not the best decision. The

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M. HOPE BLACKLEY
CLERK OF COURT

trial judge erred in improperly limiting the scope of Counsel's cross-examination for State's witnesses; and

- c. The trial judge abused her discretion under Rule 5 which upheld the objection made suppressing evidence of witness testimony and statement in favor of defense.
3. Applicant requests a Sixth Amendment violation if the Brady claim is turned down based on the confrontation clause.
 4. Applicant's Miranda rights were not properly given; he does not recall signing a waiver form.
 5. There was "cumulative prejudice" in that,
 - a. The evidence within witness (Samantha Hill and M.J. [REDACTED]) statements were allowed in as evidence.
 6. Prosecutorial misconduct, in that:
 - a. The State introduced Applicant's statements to the jury and that he was hiding guilt behind his actions.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Summary of Testimony

Applicant testified that although he asked Counsel to hire an independent investigator and independent forensic team, he does not know of any additional facts the investigator would have discovered. He testified that Counsel attempted to admit evidence, but the State objected and the trial judge sustained the objections. Applicant testified Counsel objected to the State's comments during closing arguments regarding his failure to testify. Further, Applicant testified that the judge instructed the jury that the fact that he did not testify could not be used against him.

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 CLERK OF COURT

Applicant testified that Counsel "did crush every theory that was thrown out there." Applicant testified he met with Counsel three or four times at most, and for thirty minutes each time. Applicant testified that a plea offer was not made until the first day of trial and that it was a thirty year offer.

Applicant testified he wanted the statements of the victim's mother, Samantha, and brother, Mike, admitted. However, Applicant also agreed, and the record reflects, that they testified at trial. He further admitted that Counsel tried to get their statements in. The record also reflects that Counsel questioned them based on the statements. Applicant also agreed that both witnesses testified to what was in the statements.

Applicant testified that three statements were used against him at trial, and that his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966) were not properly given and he does not recall signing a waiver form.

Counsel testified that he met with Applicant on at least five occasions and discussed the charge, possible sentencing, possible defenses, reviewed discovery materials, and discussed Counsel's trial theories and strategies. Counsel testified that Applicant had made three statements. Counsel testified that a Jackson v. Denno, 378 U.S. 368 (1964), hearing was held. Counsel testified he challenged all statements in the hearing. Counsel testified that the statements of the mother and the brother were not allowed. Counsel testified that he did make a proffer of third party guilt. Counsel testified that the trial judge ultimately excluded evidence of third party guilt, but not right away. Counsel testified that the possible theories of the case were that the victim's death was caused by Applicant, the victim's mother, or the victim's brother. Counsel testified that the State's theory was the Applicant had smashed the victim's head into the wall. Counsel testified he tried to show that Applicant punched the wall. Counsel also stated that Dr.

Wren testified that the victim's injuries could have been consistent with falling down the stairs. Counsel testified that he did not feel going to the scene to investigate was necessary because it would be nothing like it was before. Counsel testified he also ran rap sheets on the victim's father, pulled medical records, and looked for patterns of abuse by the father.

B. Ineffective Assistance of Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). 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).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the Court measures counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688).

Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

This Court finds Applicant has failed to satisfy his burden of proving ineffective assistance of counsel. The Court's findings as to the specific allegations raised at the hearing are below.

Failure to investigate

Applicant alleged counsel failed to investigate and prepare for trial. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he been more fully prepared for the trial. *Jackson v. State*, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Here, Applicant alleged Counsel should have hired his own investigator and an independent forensic team. However, Applicant testified he did not know of any additional facts the investigator would have discovered, and Applicant provided no evidence that any additional investigation would have yielded any helpful information. In addition, though Applicant testified that Counsel should have looked into the mother's background, Applicant testified that he did not know of anything in her background, and he presented no evidence in that regard. Applicant provided no evidence as to what information any additional investigation would have uncovered

in this case. Applicant also stated that Counsel "crushed" every theory that was presented at trial. Applicant also testified that Counsel attempted to admit certain evidence at trial, but was barred from doing so because of the judge's rulings on the State's objections. Applicant testified that he thought Counsel should have pulled the mother's rap sheet, but admitted he was unaware of anything in her background, and presented no evidence to substantiate that allegation at the PCR hearing.

Counsel testified he had ample time to prepare for trial and that he reviewed all discovery with Applicant. Counsel testified that he did not feel going to the scene to investigate was necessary because it would be nothing like it was before. Counsel testified that the possible theories of the case were that the victim's death was caused by Applicant, the mother, or the victim's brother. Counsel testified that the State's theory was the Applicant had smashed the victim's head into the wall. Counsel testified he tried to show that instead Applicant punched the wall. Counsel also testified that Dr. Wren testified that the victim's injuries could have been consistent with an accidental fall down the stairs. Counsel testified he also pulled rap sheets on the victim's father, pulled medical records, and looked for patterns of abuse by the father. Counsel was asked if there was anything else that he could have done, and he testified "maybe convince [Applicant] to testify," or pursue the mother's guilt.

This Court finds Counsel conducted a reasonable investigation into Applicant's case. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011) (citing Daniels v. State, 676 S.E.2d 13 (Ga. 2009)). Applicant has failed to point to any helpful information that could have been uncovered had Counsel conducted any additional investigation. Therefore, this Court finds Counsel's performance was not deficient in this regard and Applicant has failed to satisfy his

burden of proving either deficient performance or prejudice as to this allegation. Accordingly, this allegation is denied and dismissed.

Failure to present certain evidence at trial

Applicant alleged that Counsel failed to introduce statements of the victim's mother and brother at trial. This Court presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Applicant testified and the trial transcript reflects that the State objected to the reading of the statements into the record and that the trial judge sustained the objections. Applicant agreed, and the record reflects, that both the mother and the brother testified at trial. He further admitted that Counsel tried to get their statements in. The record also reflects that Counsel questioned them based on the statements. Applicant also agreed that both witnesses testified to what was in the statements. Counsel testified that the statements of the mother and the brother were not allowed. Counsel also testified that the trial judge ultimately excluded evidence of third party guilt, but not right away. Counsel testified and the transcript reflects that he did make a proffer of third party guilt. Counsel testified that he had no reason to doubt the trial judge's impartiality regarding her rulings on the State's objections to the evidence he attempted to admit, the motion regarding third party guilt, or rulings made in the Jackson v. Denno hearing. Counsel testified, and the record reflects that he sought judgment notwithstanding the jury's verdict and properly filed the Notice of Appeal on Applicant's behalf.

Applicant has failed to show that Counsel failed to make the necessary motions, objections, or arguments in this case. This Court finds that Counsel's performance was not deficient with respect to this allegation. Therefore, Applicant has failed to show either deficiency or prejudice and this allegation is denied and dismissed.

Failure to consult with Applicant

Applicant also alleged that Counsel failed to consult with him. This Court finds Counsel adequately consulted with Applicant and that Applicant has failed to show deficient performance as to this allegation. "[T]here is no established 'minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.'" Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005) (citing United States v. Olson, 846 F.2d 1103 (7th Cir. 1988)). Here, Applicant testified that once Counsel was retained, he met with Counsel three or four times for about thirty minutes each time. Counsel testified he met with Applicant at least five times and that in those meetings he reviewed all discovery with Applicant and discussed the charge, possible sentencing, possible defenses, and trial theories and strategies. Therefore, this Court finds Counsel adequately consulted with Applicant, and Applicant has failed to satisfy his burden of proving either prong of Strickland with respect to this allegation. Accordingly, this allegation is denied and dismissed.

Failure to properly advise Applicant regarding plea of not guilty

At the PCR hearing, Applicant testified a plea offer was made on the first day of trial and that it was an offer of thirty years. Applicant also testified that the relief he seeks in this action is a new trial. Counsel testified that he properly advised his client to proceed with trial for several reasons: (1) the State did not make an offer until the day of trial, (2) the State's offer was a sentence of 30 years, and (3) that he would not generally advise a 20 year old to enter a plea with a 30 year sentence. Counsel also testified that he felt they could get a verdict in Applicant's favor. Counsel further testified that Applicant never said he did it and that he did not exhibit any

qualities that made him believe he did. This Court finds Counsel's performance in advising Applicant was not deficient. See Butler, at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690) (holding courts must strongly presume that trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment). Therefore, Applicant has failed to show either deficiency or prejudice with regard to this allegation. Accordingly, this allegation is denied and dismissed.

Advice not to testify

Applicant alleged in his amended application that he did not testify because Counsel informed him it was not the best decision. At trial, the Court ruled that Applicant's prior record would be admissible for impeachment purposes if Applicant decided to testify. The Court then advised Applicant of his right to testify. Applicant related to the trial judge that he had adequate time to discuss the decision with Counsel, that he was not forced into his decision, and that no one had promised him anything to enter the decision regarding his right to testify. Applicant testified Counsel objected to the State's comments during closing arguments regarding his failure to testify. Further, Applicant testified, and the trial transcript reflects, that the judge instructed the jury that the fact that he did not testify could not be used against him. This Court finds Counsel is a seasoned attorney and that his decision to advise Applicant not to testify was a strategic and tactical decision based on possible impeachment and character issues. Therefore, this Court finds Applicant has failed to satisfy his burden of proving either deficient performance or prejudice as to this allegation. Accordingly, this allegation is denied and dismissed.

Failure to conduct a proper closing argument

Applicant alleges that Counsel failed to conduct a proper closing argument, and that Counsel erred in allowing the State to have the advantage of the final argument. This Court finds

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Applicant failed to present any testimony as to this issue at the PCR hearing. Applicant also claimed that he requested to speak during the closing argument, but Applicant voluntarily withdrew this claim at the PCR hearing. Accordingly, the Court finds Applicant has abandoned these allegations.

Failure to suppress statements pursuant to Miranda

Applicant alleged his statements should have been suppressed pursuant to his rights under Miranda v. Arizona, 384 U.S. 436. This Court finds this allegation is without merit and must be denied and dismissed. Counsel testified that a hearing pursuant to Jackson v. Denno, 378 U.S. 368, was held regarding his motion to suppress three statements that Applicant made to law enforcement after the victim's death. Counsel testified he challenged all three statements in that hearing. Counsel testified that the main complaint regarding Applicant's interrogation and statements was that he was under duress because he was held and questioned over a five-hour period. The Court ultimately ruled that the statements were admissible. Counsel testified he had no reason to doubt the trial judge's impartiality regarding this decision. Because Applicant's testimony and the record clearly show that Counsel made and argued a motion to suppress these statements, though the motion was ultimately denied, this claim is without merit. Therefore, Applicant has failed to present any evidence in support of this allegation, and has failed to show either deficiency or prejudice. Accordingly, this allegation is denied and dismissed.

C. Trial Court Error

Applicant alleges the trial court erred in ruling on certain issues raised in Applicant's trial. Specifically, Applicant alleged the trial judge withheld evidence from the jury, admitted his statements, limited the scope of Counsel's cross-examination for State's witnesses, and abused her discretion "under Rule 5 which upheld the objection made suppressing evidence of witness

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testimony and statement in favor of defense." This Court finds these allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). "In a direct appeal, the focus generally is upon the propriety of rulings made by the circuit court in response to a party's motions or objections." Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). "Errors in a petitioner's trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings." Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975). Accordingly, issues that could have been raised at trial on direct appeal cannot be asserted in a PCR action absent a claim of ineffective assistance of counsel. Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993). This Court finds that any issues regarding alleged errors of law by the trial judge are issues that cannot be raised in a PCR proceeding, but are direct appeal issues. Accordingly, these allegations are denied and dismissed.

D. Prosecutorial Misconduct

Applicant alleges the State engaged in prosecutorial misconduct in that it introduced his statements to the jury and that he was hiding guilt behind his actions. This Court finds Applicant has failed to present any evidence regarding this allegation. Accordingly, the Court finds Applicant has abandoned this allegation. The Court addresses the admission of Applicant's statements and the State's reference to Applicant's decision not to testify in closing as claims of ineffective assistance of counsel above in Part B supra.

E. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any

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evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

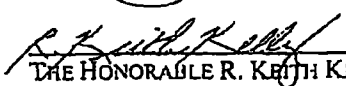
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

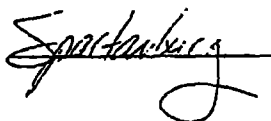
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

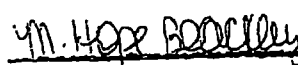
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14 day of June, 2016.


THE HONORABLE R. KEITH KELLY
Presiding Judge

, South Carolina

Page 13 of 13

A CERTIFIED COPY

CLERK OF COURT
SPARTANBURG COUNTY
BY: 
DATED: 10-15-16

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

05
JUL 16 2016

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable R. Keith Kelly, Presiding in Spartanburg County

J.

Case No.: 2013-CP-42-1445

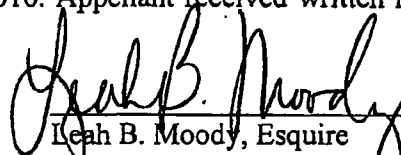
Rashawn ShaMeik Murphy, ... Appellant,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Rashawn ShaMeik Murphy appeals the order of the Honorable R. Keith Kelly, dated June 14, 2016 and mailed on June 16, 2016. Appellant received written notice of entry of the final order on June 21, 2016.



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IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Presiding in Spartanburg County

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Case No.: 2013-CP-42-1445

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SC SUPREME COURT

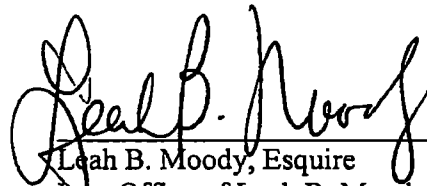
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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Alicia Olive by depositing a copy of it in the United States Mail, postage prepaid, on June 30, 2016 addressed to its attorney of record, Alicia Olive, Post Office Box 11549, Columbia, South Carolina, 29211-1549.


Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29731

June 30, 2016

cc Rashawn ShaMeik Murphy
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
M. Hope Blackley, Clerk of Court, Spartanburg County
Sharon A. Graham, SCCID

**IN THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas**

The Honorable R. Keith Kelly, Presiding in Spartanburg County

Case No.: 2013-CP-42-1445

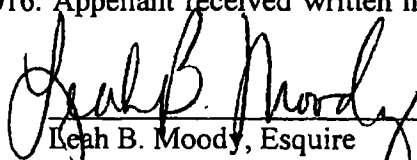
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Rashawn ShaMeik Murphy appeals the order of the **Honorable R. Keith Kelly**, dated June 14, 2016 and mailed on June 16, 2016. Appellant received written notice of entry of the final order on June 21, 2016.


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**IN THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas**

The Honorable R. Keith Kelly, Presiding in Spartanburg County

Case No.:2013-CP-42-1445

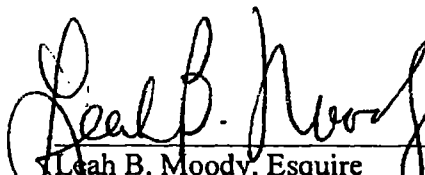
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 Leah B. Moody, Esquire
 Law Office of Leah B. Moody, LLC
 235 E. Main Street, Suite 115
 Post Office Box 1015
 Rock Hill, South Carolina 29731

June 30, 2016

cc Rashawn ShaMeik Murphy
 Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
 M. Hope Blackley, Clerk of Court, Spartanburg County
 Sharon A. Graham, SCCID

WITNESSES

Spartanburg County Sheriff's Department

1. SENTENCE MADE

2. REPORT ENDED

3. CARD FILED

4. CHILD ABUSE WARRANTS

ARREST WARRANT NUMBER

7. ASSIGNMENT AND
FINE CASE MADE

M085603

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

VERDICT

GUILTY UNANIMOUSLY

Foreperson of Petit Jury

Date: 3/17/11

DOCKET NO.

09-GS-42-2210

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 11 2009

TERM

THE STATE

vs.

Rashawn Shameik Murphy

Indictment for

HOMICIDE BY CHILD ABUSE
OR NEGLECT

SC Code: 16-3-85 (A) (1)

CDR Code: 2356

Class FEL/EXM

MARK KITCHENS

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

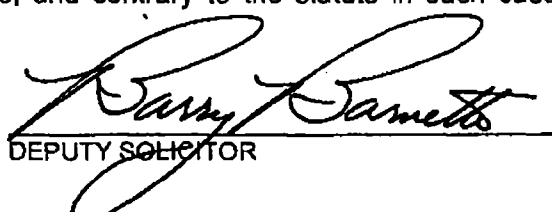
INDICTMENT

At a Court of General Sessions, convened on MAY 07 2009 the
Grand Jurors of Spartanburg County present upon their oath:

HOMICIDE BY CHILD ABUSE OR NEGLECT

That Rashawn Shameik Murphy did in Spartanburg County on or about January 3, 2009, cause the death of [Minor], a child under the age of eleven, while committing child abuse or neglect, and the death occurred under circumstances manifesting an extreme indifference to human life, in that he shook the child, and/or struck the child, and/or caused the child to strike some object, in violation of §16-3-85 (A) (1) 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.


DEPUTY SOLICITOR