

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

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Appeal from Spartanburg County

Deadra L. Jefferson, Circuit Court Judge

S.C. SUPREME COURT

NORMAN STOUDEMIRE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001311

APPENDIX

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about possible representation was that Lorin Williams advised "that the sister *may* be hiring an attorney for him." (R. p. 29, lines 9-11)(emphasis added).

"The Fifth Amendment's privilege against self-incrimination provides an individual who has been accused of a crime the right to consult with an attorney and to have an attorney present during custodial interrogation. *In re Tracy B.*, 391 S.C. 51, 60-61, 704 S.E.2d 71, 75 (Ct. App. 2010), citing *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966). The right to counsel, however, must be plainly asserted. *Davis v. United States*, 512 U.S. at 459 ("the suspect must unambiguously request counsel."). Moreover, a third person may not invoke the rights of another for him. *Hyatt v. Branker*, 569 F.3d 162, 169 (4th Cir. 2009)("To invoke a right to counsel, the suspect himself must request an attorney and a representative of the state must hear that request."). See also *State v. Hanson*, 401 N.W.2d 771, 778 (Wis. 1987)("Since the right to counsel and the right to remain silent are given by the constitution to the defendant, he alone can exercise those rights. Neither his family nor his attorney are threatened with accusations, nor do they have the defendant's knowledge of the case, including the defendant's knowledge of his own guilt or innocence, nor are they subject to the pain of the defendant's possibly guilty conscience. Therefore, no one but the accused can make the decision to make a statement to the police or to ask for the assistance of counsel in making his decision."); *Doyle v. State*, 460 So.2d 353, 356 (Fla. 1984)("appellant's claim that he was denied access to an attorney during questioning is a personal one which must be invoked by the *defendant* in some unambiguous manner")(emphasis in original); *Marr v. State*, 759 A.2d 327, 338 (Md. App. 2000), citing *Commonwealth v. Hall*, 701 A.2d 190, 197 (Pa. 1997), *State v. Peterson*, 472 S.E.2d 730, 733 (N.C. 1996); 16 C.J.S. Constitutional

Law § 114 ("Generally, a person may assert only his or her own constitutional rights, rather than those of third parties...."). The facts in *Doyle v. State*, a Florida case, are very close to the facts here.

In *Doyle*, the defendant's girlfriend tried to obtain counsel for the defendant, but did not testify that defendant instructed her to do so. Moreover, according to the court, "[a]t no time in the questioning did Doyle indicate an unwillingness to answer questions in the absence of counsel." *Doyle*, 460 So.2d at 356. The state court concluded that "[o]n these facts it is impossible to find any indication that appellant wished to deal with the police only through counsel...." *Id.* Likewise, in the instant case, the fact that family believed appellant should have a lawyer is of no consequence to the assertion of his right to counsel.

Moreover, the Supreme Court has rejected "a rule requiring that the police inform a suspect of an attorney's efforts to reach him." *Moran v. Burbine*, 475 U.S. 412, 425 (1986). As the Court wrote, there is "[n]o doubt [that] the additional information would have been useful to respondent; perhaps even it might have affected his decision to confess. But we have never read the Constitution to require that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand on his rights." *Id.* at 422. See also *Hyatt v. Branker*, 569 F.3d at 170 (allegation that "law enforcement officers deceived" the appellant "by failing to inform him of [counsel's] presence at the sheriff's office during the interrogation" rejected pursuant to *Moran v. Burbine*); *State v. Hanson*, 401 N.W.2d at 778 ("We do not believe that the suspect's knowledge of the location of a particular counsel can affect the intelligent waiver of his constitutional rights as described in *Miranda* warnings. Since the knowledge of the location

of counsel adds no constitutional rights, does not alter the facts of the case as the suspect knows them, and does not give rise to any coercive influence by the police, such knowledge is not relevant to the suspect's voluntary decision to waive his rights. Although a suspect who was ready to waive his rights might change his mind when told an attorney was waiting to see him, the critical factor would be the convenience of seeing the attorney, not the intelligent perceived need for legal counsel. Since the convenience of the defendant is not constitutionally protected, the location of a particular attorney is not constitutionally required information.").

Even if one would credit appellant's testimony and assume that he did, in fact, mention to investigators that he wanted to know when the attorney secured by his family arrived and wanted to speak with the attorney, there is no indication that statement was meant to unequivocally invoke his right to counsel. There is little doubt on this record that appellant wished to cooperate with investigators during the interrogation. (See R. p. 63, lines 19-25, "I wasn't going to talk to them and just freeze up and not speak to them. ... I didn't have anything to hide. ... I cooperated with them in every kind of way that I could."). Thus, any vague comment on speaking to an attorney that his family wishes to get for him simply does not clearly invoke the right to counsel. See *State v. Main*, 255 P.3d 1240, 1246-1247 (Mont. 2011) ("Main's conversation with Waldron was a free-flowing exchange covering a variety of topics. Following his comment about calling his mother [who was to contact his lawyer], Main immediately launched into a discussion with Waldron about international affairs. It was not reasonable for the officer to believe that Main was then requesting an attorney and that questioning should immediately cease."). Indeed, even after "an accused

has invoked his right to have an attorney present during custodial interrogation" though the interrogation must then stop, it may continue if "the accused himself initiates further communication, exchanges, or conversations with the police." *In re Tracy B.*, 391 S.C. at 61, 704 S.E.2d at 75-76, quoting *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981). The accused must, however, have "evinced a willingness and a desire for a generalized discussion about the investigation...." *Oregon v. Bradshaw*, 462 U.S. 1039, 1045-1046 (1983). Certainly here, where there was no clear invocation of the right to counsel, the willingness to speak to investigators about the crime is strong evidence of no compulsion or violation of any right in the process of taking the statement. Again, the record well and fully supports Judge Cole's findings and his subsequent ruling that the statements were admissible.

As to the un-preserved portion of the argument – the allegation of physical abuse and/or intimidation – the record supports that there was no coercion by violence. Investigator Bryant admitted touching appellant, several times, in the places where the victim was stabbed in order to produce an emotional response. (See R. p. 16, lines 4-13). He denied the interrogation was ever aggressive. (R. p. 16, lines 16-17). There is no specific ruling on the effect of the touching to review. The only ruling beside the specific ruling on whether appellant was advise of his right to counsel and invoked his right to counsel, was a general ruling that appellant "was not threatened or promised anything," and "the statements provided were freely and voluntarily made, at least based upon the preponderance of the evidence presented." (R. p. 75, lines 7-10).

To the extent the general ruling addressed the touching, Judge Cole would clearly have credited the investigator's testimony that no inappropriate physical contact occurred as

Judge Cole found appellant was not "threatened" in any manner. (R. p. 75, lines 7-10).

Credibility is a factor for the trial judge to consider. *See State v. Parker*, 381 S.C. 68, 93, 671 S.E.2d 619, 632 (Ct. App. 2008) ("the trial judge had the opportunity in the *Denno* hearing to listen to the testimony, assess the demeanor and credibility of the witnesses").

Further, mere physical contact does not create a presumption of abuse or violence; rather, the type and reason for the contact must be considered. For instance, in *Light v. State*, 547 N.E.2d 1073, 1079 (Ind. 1989), the Indiana Supreme Court rejected Light's characterization of "fifteen or so touches on the arm as 'physical force or violence'" where the taps were merely made to keep him alert. The court found such action must be viewed in the totality of the circumstances to keep undue emphasis from attaching to one factor. *Id.* Accord *State v. Saltz*, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001) ("The trial judge's determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the background, experience, and conduct of the accused."). Likewise, when viewed as a whole, the facts here do not support a confession obtained by or through physical violence or threat of physical violence.

Appellant was admittedly well aware of his constitutional rights having received them a "number of times," and that included his right to remain silent. (R. p. 63, lines 3-8). Yet, he continued to cooperate with investigators throughout the interrogation. (See R. p. 63, lines 19-25, "I wasn't going to talk to them and just freeze up and not speak to them. ... I didn't have anything to hide. ... I cooperated with them in every kind of way that I could."). And, while appellant testified that Investigator Bryant touched him, and he felt threatened by Investigator Bryant, he also admitted that the investigator was not in the room for the entire

interrogation, and that no other person touched him or made him feel intimidated or fearful. (R. p. 59, line 2 - p. 60, line 1; p. 64, lines 18-22; p. 66, lines 15-24). Taken as a whole, the testimony at the *in camera* hearing shows that appellant freely cooperated with the investigation from the very beginning – choosing to talk to investigators even though he was well aware of his right to remain silent and his right to counsel. Further, though appellant testified he perceived some discomfort or intimidation from one investigator, he admitted that even in his perception it was not an entirely hostile environment.

However, appellant argued only that the statement should be suppressed because he requested counsel and counsel was kept from him. The argument the statement was a result of physical abuse and/or threats was not argued as a basis for suppression, nor did defense counsel request a specific ruling after the judge's general ruling on voluntariness even though he was given an opportunity to do so. (R. p. 75, lines 11-13). The issue should be considered procedurally barred.

At any rate, under either theory, i.e. denial of right to counsel or physical abuse and/or threats, for all the foregoing reasons, appellant is not entitled to any relief. The record fully and fairly supports the trial judge's ruling on admissibility.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the lower court should be affirmed.

Respectfully submitted,

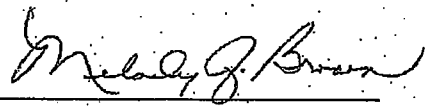
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ATTORNEYS FOR RESPONDENT

March 20, 2012
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
J. Derham Cole, Circuit Court Judge.

The State,

Respondent,

vs.

Norman Stoudenmire,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR. The undersigned also certifies that the Final Brief is in compliance with the South Carolina Supreme Court's Order of August 13, 2007.

Respectfully submitted,

ALAN WILSON
Attorney General

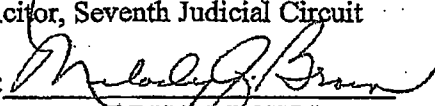
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March 20, 2012.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
J. Derham Cole, Circuit Court Judge

The State,

Respondent,

vs.

Norman Stoudenmire,

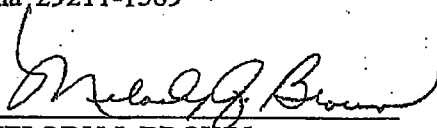
Appellant.

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the Final Brief of Respondent on Appellant by depositing a copy of same in the United States mail, postage prepaid, addressed to his attorney of record as follows:

Robert M. Dudek, Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, South Carolina 29211-1589

This 20th day of March, 2012.


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ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NORMAN SToudenMIRE,

APPELLANT

FINAL REPLY BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES**Cases**

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ARGUMENT IN REPLY

The State's attempt at a procedural bar, where the judge ruled without allowing argument immediately after the testimony concluded, is extremely unfair and misplaced. The argument ignores the obvious fact that the two issues that consumed the suppression hearing were Investigator Bryant's admitted physical contact with appellant, which appellant said was threatening and frightening and caused him to give a false statement. It also fails to acknowledge that the trial judge rejected the argument in his ruling that appellant gave his statement because of these threats.

First, appellant argued that the fact the police deliberately did not allow appellant's lawyer, who was at the police department, was a factor to consider along with the undisputed physical contact that Investigator Bryant had with appellant that appellant testified threatened him and frightened him into giving a false statement.

In the State's brief, it acknowledges appellant's sister, Dena Crump, testified that attorney Clyde Pennington was at the Sheriff's Department while appellant was being interrogated, "and they wouldn't let him in." R. 45, ll. 2-14; Respondent's Brief at 12. The state also acknowledged that "Mr. Pennington testified that he went to the Sheriff's Department at approximately 1:00 pm, and 'told them I would be representing [appellant] and I would like to see him.'" R. 47, ll. 1-8. He stayed until approximately 5:00 pm and was unable to talk with appellant. R. 47, ll. 11-25;" Respondent's Brief at 12.

Further, the State acknowledged that appellant testified "that he was struck in the chest, not gently touched, that it hurt and that he felt 'terrorized,' 'scared to death,' 'scared for [his] safety' R. 59, ll. 2-8. Appellant testified he 'didn't know if that officer, Bryant, was going to hurt me physically' R. 59, ll. 9-11." Respondent's Brief at 13.

In his brief of appellant, appellant noted "without offering for argument on the facts and the law, the judge ruled *immediately after the defense witnesses had testified* . . . The judge reasoned 'another person cannot invoke a constitutional right for him [appellant], and in this case he invoked none' R. 74, l. 14 – 75, l. 6." Appellant's Brief at 8.

The State notes the judge's ruling but argues: "Appellant made no additional argument . . . The only argument preserved for appeal is the argument made to the trial judge: whether appellant asked for counsel and was denied access to counsel." Respondent's Brief at 14.

This assertion is wrong for several reasons.. First,, the judge also ruled "he [appellant] **was not threatened** or promised anything, and I do find statements provided were freely and voluntarily made, at least based upon the preponderance of the evidence presented.' R. 74, l. 19 – 75, l. 10." Respondent's Brief at 14. (emphasis added). Consequently, the judge ruled that he did not think appellant gave his statement as a result of being threatened or terrorized by Investigator Bryant **immediately after he had just heard this testimony.**

Further, Rule 18 of the SCRimP, mandates that trial counsel cannot argue with the judge after he has ruled. Here, the judge heard the testimony at the suppression hearing about the admitted physical contact by Investigator Bryant upon appellant, and appellant's feeling threatened, and he ruled immediately -- without allowing for argument -- that appellant's statement was voluntarily tendered, and it was not given as the result of threats or promises.

Further, the judge heard from Pennington, appellant's sister, and appellant at the suppression hearing about the fact the police deliberately kept Pennington from talking to

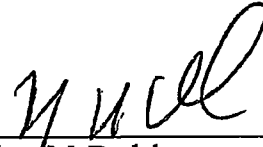
appellant while he was being interrogated. One investigator, while denying he knew Pennington was in the waiting room, said he would not have allowed Pennington to talk to appellant even if he had known because he claimed appellant never invoked his right to counsel. Purposely leaving Pennington to decay in the waiting room of the police department was a **factor for the judge to consider** since he was obligated to consider the totality of the circumstances when ruling on whether appellant's was overborne and whether his statement was voluntarily tendered without the influence of threats or promises. State v. Childs, 299 S.C. 471, 475, 385 S.E.2d 839, 842 (1989); State v. Doby, 273 S.C. 704, 708, 258 S.E.2d 896, 899 (1979) *citing* Schneckloth v. Bustamonte, 412 U.S. 218 (1973); State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990).

The state's attempt to procedurally kick the can down the road in this case to its post-conviction division should therefore be rejected.

CONCLUSION

By reason of the arguments in the brief of appellant and in this reply brief of appellant, appellant's conviction should be reversed and this case remanded to the Spartanburg County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

This 20th day of March, 2012.

**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.

Norman Stoudenmire, Appellant.

Appellate Case No. 2010-157546

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2012-UP-628
Heard October 30, 2012 – Filed November 28, 2012

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, Senior
Assistant Attorney General Melody Jane Brown, all of
Columbia, and Barry Joe Barnette, of Spartanburg, for
Respondent.

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SPARTANBURG COUNTY
2013 APR 11 AM 10:35
M. HOPE BLACKLEY

PER CURIAM: Norman Stoudenmire appeals his conviction of murder, arguing the trial court erred in holding his oral and written statements to officers while in custody were freely and voluntarily given. We find that Stoudenmire's statements were freely and voluntarily given and we affirm.

As to Stoudenmire's argument that physical contact by the officers during his interrogation prevented his statements from being freely and voluntarily given, we find that this issue was not preserved for appeal as it was not argued in his motion to suppress his statement. *See State v. Goodwin*, 384 S.C. 588, 603, 683 S.E.2d 500, 508 (Ct. App. 2009) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court.").

As to Stoudenmire's argument that the officers intentionally kept his attorney from him during the interrogation, we find that Stoudenmire was read his Miranda rights and never invoked his right to silence or his right to counsel. He never stopped talking during his interrogation and there was no indication that his interrogators knew that Stoudenmire's attorney was in the building.

The appellate court in reviewing the trial court's ruling "does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence." *State v. Saltz*, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001). None of the testimony indicated that the officers intentionally kept the appellant's attorney from him.

Accordingly, we find that the trial court did not err in holding that Stoudenmire's statements were freely and voluntarily given.

AFFIRMED.

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



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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April 03, 2013

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Stoudenmire, Norman
Lower Court Case No. 2008GS4207014
Appellate Case No. 2010-157546

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CLERK OF COURT
SPARTANBURG COUNTY
2013 APR 11 AM 10:35
M. HOPE BLACKLEY

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

Enclosure

cc: Norman Stoudenmire
Melody Jane Brown
David Alexander

SCANNED

2013-CP-42-2174⁵²¹

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

Norman E. Stoudennaire Jr.

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

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.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY 15 AM 10:24
M. HOSBEE ACKLEY

1. Place of detention Perry Correctional Inst.
2. Name and location of Court which imposed sentence Spartanburg County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 20008-GS-42-7014
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 31, 2010 Natural Life
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty **X** _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. **South Carolina Court of Appeals** _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. **Affirmed** _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. **Heard October 30, 2012 Filed November 28, 2012** _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. **Unpublished Opinion No. 2012-UP-628** _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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 CLERK OF COURT
 SHERMAN COUNTY
 2013 MAY 15 AM 10:24
 M. HOPE BLACKLEY

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully.

(1). Violation Of Due Process. By violating the Eighth Amendment concerning cruel and unusual punishment, by violating the Sixth Amendment right to procedural rights, by depriving Liberty without Equal protection of law violating the Fourteenth Amendment, and violating title 28 "Judiciary and Judicial procedure." and by the large number of Prosectorial Misconduct actions of the Spartanburg County Solicitors Office.

(2). The Applicant was denied Effective assistance of Appellate Counsel.

(3). Prosectorial Misconduct. The prosecutor's duty in a criminal prosecution is to seek justice. Therefore, the prosecutor should "prosecute with earnestness and vigor," but may not use "improper methods calculated to produce a wrongful conviction" by referring to previous convictions, or other bad acts of the defendant, he may not use staged testimony to attempt to introduce inadmissible evidence. (The Georgetown Law Journal (2010)).

(4). The Applicant was denied effective assistance of Counsel, in violation of the Sixth Amendment to the United States Constitution and Article 1, Section 14 of The South Carolina Constitution.

(5). Abuse Of Discretion Of Trial Judge.

(6). Official Misconduct.

FILED
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SPARTANBURG COUNTY
2013 MAY 15 AM 10:24
HOPE BLACKLEY

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

(1). Violation of Due Process.

(a). Prosecutor's characterization of defendant by, the use of Testimony from states witnesses of prior bad acts.

"See" Constitutional Law Key 268(8). If Violation of defendants Due Process rights is alledged... Court must view the totality of the circumstances ... and then must determine if comments that were made were improper then ... look into the (1). likelihood that the remarks would mislead the Jury or Prejudice the accused.

"See" Direct examination by Ms. Poulos of states witness Phyllis Pack. Transcript Pages. Pg. 212 lines 1-25, Pg. 213 lines 1-25 and Pg. 215 lines 4-6.

"See" Direct examination by Able Gray of States witness John Glenn. Transcript Pages. 248 lines 3-25, Pg. 252 lines 16-17.

"See" Direct examination by Able Gray of States witness Angela Glenn. Transcript Pages. Pg. 262 lines 1-22, Pg. 263 lines 6,11,16.

A fundamental rule of evidence is that a defendant's "Bad Character" cannot be used to argue that the defendant committed the crime for which he is being tried or had the Propensity to commit that crime.

"See" Fed, Rules, Evidence 404(A).

Evidence of a persons Character or a trait of character is not Admissible for the purpose of proving action in conformity therewith on a particular occasion...

"See" Michelson V. United States 335 U.S. 469, 467, 69 S.Ct. 216, 93 L.Ed. 168 (1948). (Stating that improper character evidence weigh[s] too much with the Jury and... overpersuade[s] them as to prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge)

"See" United States V. Vance 871 F.2d 572, 575 (6th cir.1989). (Providing that "Bad acts Evidence is not admissible to prove Character or criminal Propensity" Under Fed. Rules. Evidence 404(B).

"See" United States V. Ring 513 F.2d 1001, 1004 (6th cir 1975).

(States that in Jury Trials Evidence of a criminal defendants Bad Acts or prior misconduct is inadmissible to show criminal propensity Because it "tends to confuse the issue of guilt or innocence of the specific offenses charged and weighs too heavily with the Jury.

When a prosecutor dwells on a defendants Bad Character in this prohibited manner, this is Misconduct and severe Due to his Persistent Adhominem attack on the defendants Character.

"See" Cook V. Bordenkircher 602 F.2d 117, 120, (6th cir 1979).

Asserting facts that were never admitted into evidence may mislead a Jury in a prejudicial way. "See" Berger V. United States 295 U.S. 78, 84, 55 S.Ct 629, 79 L. Ed. 1314 (1935).

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This is particularly true when a prosecutor misrepresents evidence because a jury generally has the confidence that a Prosecuting attorney is faithfully observing his obligation as a Representative of a Sovereignty."See" id. at 88, 55 S.Ct 629.

It is crystal clear from the record that the state went well beyond the limited "USE" proffering an argument that was a prototypical example of how Character evidence should not be used.

I argue that the States action at Trial Constituted Prosecutorial Misconduct that Denied Defendant Due Process, and Because the defense attorney Did Not Object Made "Plain Error"

(b). Violation of Due Process Because of States failure to Properly process crime scene and secure Possible third party guilt evidence. (No prints were taken from around the open drawer that contained \$533.00 dollars in plain view of victims body) "See" Transcript. Pg. 302 lines 1-25 and Pg. 303 lines 1-25.

(C). Violation of Due process Because the state failed to order a Psychological examination.

"See" 14th Amendment Due process clause, (That prohibits states from trying and convicting Mentally incompetent Defendants.

"See" Jeter V. State 308 S.C. 230, 417 S.E.2d 594, 595, (1992).

Testimony of Agents of the States knowledge of Defendants Mental illness prior to Trial is documented on Trial record.

"See" Transcript Pages, Pg. 53 lines 17-25.

The failure to ask for a mental evaluation or placing onto the Court record the mitigating circumstances of the defendant having a history of emotional and mental disturbance problem's both State and defence knew that the defendant was receiving Social Security for suffering from Post Traumatic Stress disorder given the proper investigation. "Defendants mental status was not adequately examined to even test the ability to make these types of choices. Defendants Psychiatric history should have been a "Factor" required to proceed in this case but was not even looked upon by either State, or Defense Counsel, Execution of this information to the Jury was inappropriate and any type of choices placed upon the defendant's known mental "Sickness" was Unconstitutional, Being a denial of Due Process and prejudicial to the case as a whole.

(d). Violation of Due Process Because Defendant after Two Year in the Spartanburg County Jail was Denied a Bond Hearing. This denied the Defendant the meaningful opportunity to retain Defense Counsel of his choice forcing Defendant with a unwanted Public Defender that had over 25 years with the other side creating a conflict of interest."See" Eighth Amendment (No Bail) "See" "See" sixth Amendment (Procedural Rights And the 14th Amendment for depriving liberty without Due process of law and equal protection of law.

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(e). Violation of Due Process for failing to obtain a rights wavier form for the 29th of Feb, 2008,

"See" Transcript Page 316 lines 18-19.

(f). Violation Of Due Process By denial of effective assistance of Counsel.

"See" Ross V. State 250 S.C. 442, 445, 158 S.E.2d 647, 648 (1967) (Citing Crosby V. State 241 S.C. 40, 126 S.E.2d 843 (1962).)

(g). Violation Of Due Process Because the officers failed before custodial interrogation commenced to warn defendant of his 5th Amendment rights.

"See" 384 U.S.436,448-50, 455 (1966). The fifth Amendment Provides in pertinent part that [N]o person... shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V. The privilege against self-incrimination applies to the State through the Fourteenth Amend.

"See" Malloy V. Hogan 378 U.S. 1, 8 (1964). This protection applies only to acts that are communicative or testimonial.

(h). Violation Of Due Process. By Brady violation.

A Brady violation occurs when:(1) evidence is favorable to accused because it is exculpatory or impeaching;(2) Evidence was suppressed By the state either willfully or inadvertently; and (3) prejudice ensued.

In United States V. Bagley, the Court held that the government's Duty under Brady arises regardless of whether the defendant specifically requests material or favorable evidence. Favorable evidence is "Material" if there is a reasonable probability that disclosure of the evidence would have changed the outcome of the proceedings.

(i). Violation Of Due Process. by failure of the Constitutional necessity of Proof beyond a reasonable doubt. The Constitution Prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt.

"See" IN re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L. Ed. 2d 368

A "Reasonable Doubt" has often been described as one "based on reason which arises from the evidence or lack of evidence" Johnson V. Louisiana, 406 U.S. 356, 360, 92 S.Ct. 1620, 1624, 32 L.Ed. 2d 152 (citing cases) For a discussion of variations in the definition used in jury instruction, "See" Holland V. United States 348 U.S. 121, 140, 75 S.Ct. 127, 137, 99 L.Ed. 150 (Rejecting contention that Circumstantial evidence must exclude every hypothesis but that of guilt).

The court must entertain defendants claim that He is being held in "Custody in violation of the Constitution or laws or treaties of The United states", and it is clear that a State prisoner who alleges that the Evidence in support of his State conviction cannot be fairly characterized as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt and has stated a Federal Constitutional Claim.

From the Circumstantial evidence in the record the prosecution only established that the victim had a Non-visible Sample of defendants D.N.A. on her Finger. The prosecution by way of States witness testimony Places defendant at victim home a number of times" Uncontradicted testimony and evidence established this"

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These circumstances were the only evidence that the defendant had at any time been at or in the victims home, no Rational Factfinder readily could have inferred beyond a reasonable doubt that the defendant was there on the day of the killing or had the capacity to form any intent to kill the victim.

Defendant was convicted without any sufficient proof. Due Process requires that no person be made to suffer the onus of a criminal conviction except upon sufficient proof, "Defined as evidence necessary to convince a trier of fact beyond reasonable doubt of the existence of every element of the offence. U.S.C.A.CONT.AMEND.14

"See" Criminal Law Key 741(7) 110k741 weight and Sufficiency of Evidence in general.

110k741(7) k. Failure of Proof.

(j). Violation Of Due Process Fraudulent Indictment.

There was no grand-Jury Hearing in general session Court for the date on the Indictment. and the state acted in a contradictory manner to the constitution and State statutes to obtain a conviction. Defendant challenges the Court's statutory and Constitutional power to Adjudicate his Indictment in the first place. It is an axiomatic rule of law that an Indictment deemed to be a Nullity is something that is "Legally Void" and of no legal effect. (citing Barron's Law Dictionary. 6th Ed. 2010.)

Defendant legitimately questions whether a conviction and sentence based on a Null Indictment brought about by criminal acts on the States part can possibly be allowed to stand under any circumstances.

"See" S.C.Code Ann. 14-5-710

"See" exhibit (9). and Exhibit (10).

The Court of General Sessions for Spartanburg County shall be held on the second monday of January for two weeks, on the fourth Monday of February for one week, on the Fourth Monday after the Fourth Monday of March for one week, on the Third Monday after the Fourth Monday of May for one week, and on the Third Monday after the Fourth Monday of September for three weeks.

"Note" The Grand-Jury Foreman Signed off on the Indictment on November 21, 2008, which "IS NOT" a General Sessions Term!

(2). Ineffective Assistance of Appellate Counsel.

(a). For failure to raise Abuse of Discretion of Trial Judge based on rulings or factual conclusions that were without evidentiary support.

"SEE" Field V. Regional Med. Ctr. Orangeburg, 363 S.C. 19. 609 S.E.2d 506 (2005).

"SEE" Renney V. Dobbs House Inc, 275 S.C. 562 274 S.E.2d 290 (1981)

"SEE" Simons V. Flowers, 231 S.C. 545. 550. 99 S.E.2d 391 393-94 (1957)

Issues as Followed

(1). By ruling that Applicants Statements were voluntarily made without the state proving by the preponderance of the evidence that Applicants rights were voluntarily waived and the police officers threatening conduct did not render the Applicants statement involuntary.

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- (2). for failure to Challenge the ruling after the attempt to use prior bad act at the suppression hearing.
 "SEE" Trans. Pg. 45 lines 16-25 and Trans. Pg. 46 lines 1-13
- (b). Ineffective assistance of Appellate Counsel for failing to Challenge why retained Attorney was kept from Interrogation room.
- (c). Ineffective for abandoning Applicant By closing case and refusing to file a motion for a rehearing and petition for writ of certiorari to the court of Appeals.
- "Note" Applicant Has Life sentence for Murder" "Plus" has a Constitutional right to exhaust all admin. remedies.
- (d). Ineffective assistance of Appellate Counsel For failure to challenge the due process clause of the fourteenth Amendment that prohibits states from trying and convicting mentally incompetent Defendants.
- (e). Ineffective Assistance of Appellate Counsel for failure to challenge the issues that Applicant was convicted after trial attorney failed to make obvious meritorious objections to tainted evidence forming basis of states case.
 "SEE" Kimmelman V. Morrison, 477 U.S. 365 (1986) Also
- "SEE" United States V. Fredrick Lamar McBride, 2:09-cv-01223-PMD-1 United States Appeal No.10-5162. Argued Jan26, 2012. Decided April 23, 2012.
 (on prior bad acts)
- (f). Ineffective Assistance of Appellate Counsel. for failure to challenge the issue that Solicitors may not introduce matters into trial in closing which were not admitted properly into evidence
 "SEE" State V. Sinclair, 274 S.E.2d 411 275 S.C. 608 also "SEE"
State V. Gaines, 244, S.E.2d 539 271 S.C. 65
- (g). Ineffective Assistance of Appellate Counsel, for failure to Challenge the issue that voluntariness of a confession, as such, must not only be determined by Judge, in voir dire or in camera examination, but also must be given to the jury as an issue, If issue is raised, or if issue is present.
 "SEE" 18 U.S.C.A. §§ 3501, 3501 (A,E)
 "SEE" Ex Parte Cobb 448 F.Supp 886, affirmed
 "SEE" U.S. V. Cobb, 568 F.2d 774.
- "Note" when there is conflicting evidence on issue of voluntariness of confession it is for determination "BY" "JURY" unless trial Judge finds evidence must be suppressed as matter of law.
- "SEE" State V. Howard, 369 S.E.2d 132 295 S.C. 462 Once separate reliable determination has been made by Court that the confession of the defendant was voluntary it is "Still Premissible and Proper" to submit issue of voluntariness of the confession to the Jury..
- "SEE" State V. Cannon, 151 S.E.2d 752 In coerced confession cases the Courts must look for "FACT", to the "UNDISPUTED", "UNCONTESTED" evidence of record. In which the Trial Judge or Trial Jury-which ever is charged by the statelaw with the duty of finding fact pertinent to a claim of coercion-Passes upon that claim under an erroneous standard of constitutional law. In such a case, to look to the wholly Undisputed evidence, in the event conflicting evidence is presented, would deprive the state criminal defendant of the benefit of whatever credit his testimony might have been given by the state Judge or the State Jury, had the Judges or Jury employed a proper legal standard. "NOR", in a case where

specific findings are made concerning the allegedly coercive circumstances, can those findings of fact may often be influenced by what the finders is looking for (To what extent, in a particular case, cannot be known)

"Note" A State defendant should have the opportunity to have all issues which may be determinative of his guilt Tried by a State Judge or a State Jury "Under Appropriate State Procedures" "SEE" Constitutional Law Key 268

"SEE" Criminal Law Key 522(1)

A State ~~must~~ establish guilt by evidence independently and freely secured, and may not by coercion prove its charge against an accused out of his own mouth.

"Note" The State failed to apply the standard demanded by the Due process clause of fourteenth Amendment for determining the admissibility of a confession. The decisions under that Amendment have made clear that convictions following the admission into evidence of confessions which are involuntary i.e., the product of coercion, either physical or psychological, cannot stand. This is so Not because such confessions are unlikely to be "True" but because the methods used to extract them offend an underlying principle in the enforcement of our criminal law: That ours is an accusatorial and not an inquisitorial system—a system in which the state ~~must~~ establish guilt by evidence independently and freely secured and may not by coercion prove its charge against an accused out of his own mouth. "The attention of the Trial Judge should have been focused, for purposes of the Federal Constitution on the question whether the behavior of the states law enforcement officials was such as to overbear the Applicants will to resist and bring about confessions not freely self-determined—a question to be answered with complete disregard of whether or not the Applicant in fact spoke the truth.

The employment instead, by the Trial Judge of a standard infected by the inclusion of references to probable reliability resulted in a constitutionally invalid conviction in violation of the rights under our constitution. A Defendant has the right to be Tried according to the Substantive and Procedural Due Process requirements of the Fourteenth Amendment.

- (h). Ineffective Assistance of Appellate Counsel, for failure to challenge the evidentiary sufficiency of the criminal conviction.
- (i). Ineffective Assistance of Appellate Counsel, for failure to raise or preserve meritorious issues in Appellate proceedings.
 "(Counsel should have advised the Court that the strongest ground for Appeal May be Ineffective assistance of counsel)"

"Note" Cumulative error analysis entails quantitative analysis.

Applicant alleges that the representation afforded to him was Constitutionally inadequate because of what his attorney failed to do...

"SEE" Cooper V. Fitzharris, 586 F.2d 1325,1333 (9th Cir 1978).

So there is a reasonable probability that, absent the deficiencies, the outcome of the Appeal might well have been different, because the deficiencies rendered the proceeding fundamentally unfair.

"note" (ultimate focus of inquiry must be on fundamental fairness of the proceeding whose result is being challenged.)

- (j). Ineffective assistance for failure to challenge issue that there was sufficient evidence at trial to establish a reasonable probability that the applicant was incompetent at time of trial due to Post- Traumatic- stress disorder

"SEE" Bouchillon V. Collins, 907,F.2d 589,592-594 (5th Cir 1990).

(3). Prosecutorial Misconduct.

- (a). For improper influence on the Trial Jury, by characterization of defendant by the use of state's witnesses testimony's of prior bad acts. "See" Constitutional Law Key 700(1).

A prosecutor must adhere to the rules and principles that ensure that a jury determines a defendant's guilt based on the evidence before it. A prosecutor must be doubly careful to stay within the bounds of proper conduct, when horrible acts or alleged but scant hard evidence for the jury weigh.

"See" Direct examination by Ms. poulos of Phillis Pack. Transcript Page 212 lines 1-25. Pg. 213 lines 1-25, and Pg. 215 lines 4-6.

"See" Direct Examination by Able Gray of John Glenn. Transcript Page. Pg. 248 lines 3-25. Pg. 252 lines 16-17.

"See" Direct Examination by Able Gray of Angela Glenn. Transcript Pages. Pg. 262 lines 1-22. Pg. 263 lines 6,11,16, .

Prosecutorial Misconduct that is thwarted by a Court usually is addressed under the standard of Kotteakos V. United States 328 U.S. 750, 765, 66 S.Ct. 1239, 1248, 90 L.Ed. 1557 (1946).

Whether the improper behavior "Had Substantial influence" on the course of the Trial. Cf. United States V. Young 105 S.Ct. 1038, 1046-49 84 L.Ed.2d 1 (1985).

The Chapman Standard is designed for Constitutional errors that could affect the process of determining guilt or innocence.

"See" Chapman V. California, 386 U.S. 18, 81 S.Ct. 824, 17 L.Ed.2d 705 (1967).

Other crimes, wrongs, or acts-evidence of other crimes, wrongs, acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for the purpose such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident...

"See" Fed. Ruls of Evidence 404(b).

The purposeful exclusion of such prior "Bad Acts" evidence is not grounded in its irrelevance instead, the general inadmissibility of such evidence is based on the danger that this type of evidence will overly influence the finders of facts, and thereby persuade them "To Prejudge one with a bad general record", and deny him a fair opportunity to defend Against a particular charge".

- (b). Prosecutorial Misconduct, by misleading the Court with the comment that the victim Gween Emory gave the defendant the information that He was unemployed. States witness Lee Walker testified that it was Phillis Pack that delivered this information to the defendant, this was an attempt to mislead the Jury with Motive for the Killing

- (c). Prosecutorial Misconduct, by testimony of Invest. Todd Ruffner concerning a 20 year old scar on defendants neck, State attempted to establish that this scar was a scratch placed there by the victim.

"See" Transcript Pages. Pg. 313 lines 11-25.

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(d). Prosecutorial Misconduct, by misleading the Court and Jury with Testimony Concerning the time of death of the victim. Internet records reveal that she was either alive at 1:30 am or someone was there with the victim at that time. The State had this information and kept it from the Jury.

"See" Discovery page 22022 (exhibit 1.a) Dated 2/24/08. Coroner Report.

"See" Exhibit 1.b) Internet records.

Dr. John David Wren testified that there is no way to pin point a time of death. due to heat or other factors.

"See" Transcript Pages. Pg. 370 lines 1-25 and Pg. 371 lines 1-15

Misleading the Court and Jury in this manner was a improper interference with the jury to find the facts...

(e). Prosecutorial Misconduct. By misleading the Court and Jury with the Failure to bring forth or deliberately withholding that others named had made threats to kill the victim.

"Look at" Brown V. Wainwright, 785 F.2d 1457 (11th cir 1986).

In doing so, Prosecutorial Misconduct. created a Due Process violation in itself concerning a fair Trial. "See" Lyons V. Johnson 99 F. 3d 499 (2d cir. 1996)

(By denying the defense the chance to have the Jury view possibility there was another perpetrator)

(f). Prosecutorial Misconduct, by the use of evidence that was in violation of chain of custody.

Because of the states use of forensic evidence that was received by the sheriff dept. officer Robert Rosenberg, out of a Secured refrigerator That I.D. officer S.L. Sanders placed there.

Dr. Wren testified that he transferred the "Sealed" sexual assault kit to S.L. Sanders who takes the "Sealed" assault kit to the sheriff evidence refrigerator and secures it, as testified at trial. "(No evidence room log-in forms were used or Chain of Custody forms done as required

"See" Transcript Pages. Pg. 355, 324, 325, and 329. Officer Rosenberg picks up Sexual assault kit from "Secured" refrigerator and takes it to the front part of the evidence room, after 31 hours and 14 min. to enter it into the log-in Computer, and then he secures it into the evidence refrigerator.

"See" Transcript Pages. 328, 329, and 330.

Not back into the I.D. refrigerator. Robert Rosenberg testified that when he received package with the seal broken

"See" Property report dated 2-15-08. Discovery Page 00012 Exhibit (19).

Note" State failed to produce any physical log-in forms or required chain of custody forms at trial.

SEE" Transcript Pages Pg. 199 lines 3-6.

S.L.E.D. Officer Koranda William. Testified that forms that they used Were property sheets that were used, not the form that the Spreme Court requires. and they were not what S.E.L.D. would use. The State ask Williams about S.L.E.D. evidence lab, No. 1, 2, 3, 4, and 8, but again failed to produce physical log-in forms at Trial.

Dr. Wren testified that he gave the "Sealed" evidence to "THEM" State failed to bring to the attention of the Court that Officer D.W. Taylor, Dewayne Corn, Mrs. Sander's and Invest. "Jason Bryant" all had access to the "'Sealed Box" when it was received, as testified.

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by Dr. John Wren, at one minute after midnight on the 25th of February 2008.

"See" Transcript Page. 355 lines 6-9.

Officer Shamika Sanders testified that the "Seals" were not broken when the evidence was taken to the sheriff Dept.

"See" Transcript Page. 325 lines 3-4.

"Note" How and who and mainly "Why" the seals were broken is a very important issue to be looked at, But the issue at hand is this, "What ever was in that box cannot be used by Constitutional Law.

"Issue" There was a missing link in the chain for over 31 hours where the box was tampered with, how else could the seals become broken? It was secured! This missing link creates an issue of admissibility alone, (Custody is not complete if it fails to establish the identity of each custodian and the manner of handling of the evidence)

"See" State V. Carter 344 S.C. 419, 544, S.E. 2d. 835 (2001).

A complete chain of evidence tracing possession from the evidence's initial control to its final analysis "Must" be established as far as practicable. (If a substance has passed through multiple custodians, it must not be left to conjecture concerning who had the evidence and what was done with it between the taking and the analysis. While the the chain of custody need not negate all possibility's of tampering The State Must show that the chain is complete!

"See" Criminal Law Key 404.36

"See" Criminal Law Key 404.60

"Note" State violated Rule 6. and Rule 36.(Forms).

"See" Rules of criminal procedure, stating that the Supreme Court shall prescribe the content and format of forms required by these rules "The use of the forms as prescribed is "Mandatory".

(g). Prosecutorial Misconduct. For failing to produce documentary evidence other than the "Hearsay" testimony of Invest. Jason Bryant, and Invest. Todd Ruffner, as to what took place in the interview of Defendant Norman E. Stoudenmire. No Video or Audio was made to back their claim of what took place during the Apox.9 hour interview. (A clear Constitutional Violation).

(h). Prosecutorial Misconduct. By failing to order a Competency hearing (When State had prior knowledge of Defendants Mental background) To determine whether He could stand Trial.

The Prosecutorial Misconduct violated Defendants Due Process.

"See" Dusky V. United States, 362 U.S. 402 (1960) (per curiam) (Holding conviction violates due process if defendant was not competent to stand trial)

"Note" Under the post-conviction procedure act, almost any alleged denial of a Federal Constitutional right is cognizable, and recognizes almost any abridgment of a state created right. The conviction or sentence is subject to collateral attack upon any ground of alleged error [previously] available under any common law, statutory or other motion, writ, petition, proceeding or remedy In sum, an application for post-conviction relief may include virtually any allegation relevant to any phase of the previous court proceedings. (Both the substantive claim and the ineffective assistance of counsel claim should be included in the application for post-conviction relief.)

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(4). Ineffective Assistance Of Counsel.

- (a). Ineffective for failure to investigate in regards to Pre-Trial Preparation. (Less than 8 hours in preparation).**

"See" Exhibits (11), (12), (12a), And (12b).

- (b). Ineffective for failure to investigate , discover, and present evidence that applicant suffers from mental illness.**

"See" Eighth Amendment to the U.S. Constitution. Also "SEE" Atkins V. Virginia. 536 U.S. 304 (2002). "Counsel was found ineffective in Murder case for failing to obtain Defendant's medical and psychiatric records" This was prejudice because the use could have created doubt in the states circumstantial case. (Defense counsel failed to discuss insanity with his client)

"See" Davenport V. State 389 S.E. 2d 649 (S.C.1990).

"It is improper to try a defendant without affording opportunity for meaningful examination and evaluation of his mental condition by qualified psychiatrist before being put to trial. Defendant is entitled to a fair opportunity to present on this vital issue the testimony of an expert of his own choice or one chosen for him by his counsel"

"Even if insanity as a defense could not have been developed, expert opinion evidence that the defendant was effected by Mental illness may well have been produced."

" Ineffective because knowing I was illiterate in the law, "And" suffering from mental disorders never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case, nor did he make an attempt to ascertain whether or not I actually knew what the element's for the crime charged were or whether or not I understood exactly what the term "Criminal element" actually ment. "

" When evidence of mental illness indicates that and inculpatory statement was not understandable and volitional made, the due process guarantees of the Fifth and the fourteenth Amendments require that the statements and its fruits be excluded from use in the criminal prosecution.

"SEE" Harrison V. United States, 392 U.S. 219, 222-226, 88 S.Ct. (2008) 20 L.Ed.2d 1047 (1968). Any suspect who is mentally unbalanced would call for a contrary finding with respect to any admissions he might make. "See" Crooker V. California, 357 U.S. 433, 437-438. 78 S.Ct. 1287, 2 L.Ed.2d 1448 (1958). Mental conditions or a factor that ought to be looked into in relation, the trial judge must hold a hearing at which relevant evidence may be offered including the testimony of experts from which the court will decide whether the accused was at the time he gave statements, was so mentally ill that he was unable, with intelligence, knowledge and understanding, to relinquish or abandon a known right or privilege which was his; or whether "The Statement most probably was not the product of any meaningful act of volition, If it is found that either of these things is so, the Statement must be excluded. "SEE" United States V. Silva 418 F.2d 328, 330 (2d cir.1969)

- (c). Ineffective for failing to ask for jury instructions that life imprisonment mean's until the death of the applicant without the possibility of parole.**

"SEE" Gregg, 428 U.S. at 190. (A jury must not be permitted to consider a sentence of life imprisonment as anything less than a sentence of life imprisonment ((accurate sentencing information is an indispensable prerequisite to a reasoned determination of whether a defendant shall live or die by a jury of people who may never before have made a senten-

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Notes from page (10)

Concerning ~~§§~~. Ineffective for failure to investigate, discover, and present evidence that applicant suffers from Mental illness.

"SEE"

Competence to stand trial.

Pate V. Robinson, 383 U.S. 375, 86 S.Ct. 836 (1966)

Bishop V. United States, 350 U.S. 961 76 S.Ct. 440 (1956)

Thomas V. Cunningham, 313 F.2d 934 (C.A. 4th Cir. 1963)

~~§§§§~~ Trial Counsel failed to ask for Competence hearing....!

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cing decision. "SEE" Pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Art. 1 §§ 3,9,10,11,12,14, and 15, of the south Carolina Constitution, and S.C. Code Ann § 16-3-20(a),(b) for instructions charging the jury that a life sentence will mean that (Defendant) Mr. Norman E Stoudemire Jr. will spend the rest of His life in Prison and will not be "Paroled"

"Note" When a Defendant's life is at stake, a Court must be "Particularly sensitive to insure that ever safeguard is observed" "SEE" Gregg V. Georgia, 428 U.S. 153, 87 (1976).

"Note" A Defendant has a Statutory right, and a Constitutional right to an instruction informing the jury that life means life. South Carolina's law is very clear that life means "Life Imprisonment" It means no possibility of parole. The South Carolina Code provides the following:

The Judge must charge the jury in his instructions that life imprisonment until the death of the defendant without the possibility of parole.

"SEE" S.C. Ann § 16-3-20 (a),(b).

South Carolina has a long history of inadequately instructing jurors regarding parole ineligibility. "Appellate Courts have consistently held that inadequate instructions as to parole violate due process rights" "SEE" e.g. Kelly V. South Carolina, 532 U.S. 246, 256-57 (2002).

* Failed to instruct on parole ineligibility. "SEE" Shafer V. South Carolina, 532 U.S. 36, 53 (2001). and Simmon's V. South Carolina, 512 U.S. 154, 160 (1994) and State V. Stone, 350 S.C. 442, 451 (2002).

(d). Ineffective for failing to place onto the Court record the Known third party guilt evidence, to articulate clearly a Beyond-a-reasonable-Doubt Standard of Proof.

(1) " Did not bring fourth crime-stopper report that someone was watching the victim, by standing at the top of victim's driveway.

"SEE" Exhibit (6) Discovery Pg. :00216

(2) "" Did not bring forth report of arguing and Dogs barking all night for several days prior to victims death.

"SEE" Exhibit (6) Discovery Pg. :00216

(3) " Did not bring fourth the statement from Ben Nevins Concerning visits from Lee Walker to victim's house and victim complaining about it to him.

"SEE" Exhibit (25) Discovery Pg. :00071

"SEE" Exhibit (16) Investigation Report of statement of Ben Nevins concerns That he felt that someone had seen them through his bedroom window the night before victims death, of Him and victim having sex.

(4)"Did not bring fourth statement from victims mother that the victim and Ben Nevins fought often and was very jealous of Lee Walker.

"SEE" Investigative notes of Krista Hicks Exhibit (22) Discovery Pg. :00027

(5)" Did not argue any facts as to why hair found on Back door was not tested.

(6)"Did not argue as to why there were no further tests done to find out who the prints belonged to found on shadow box picture frame.

(7) " Did not bring fourth the love triangle between Victim, Ben Nevins and Lee Walker and statement to Co-worker "Rick Dyer that she (Victim) was tired of Lee smoking crack and his shit.

"SEE" Exhibit (5) Discovery Pg.:00241

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(e). Ineffective for failing to object to the following acts of Official Misconduct.

(1)" Crime scene was not properly secured and processed by failure to dust for prints around opened drawer containing \$533.00 in cash in plain view of victims body.

"SEE" Trans. Pg. 302 lines 1-25 and Pg.303 lines 1-25.

(2)"Victims shirt was not tested for D.N.A. (Agency No.2)

(3) "Victims bedding was not tested for D.N.A. (Agency No. 1,3,4,5, and 6)

(4)"victims Smears were not tested for D.N.A. or spermatozoa's (S.L.E.D.NO. 1,2)

(5)"Inside of Shadow box picture frame was not tested for D.N.A. (Agency No. 10)

(6)"Broken Glass of shadow box picture frame was not tested for D.N.A. (Agency No.11)

(7)"Hair that was found at point of entry was not tested or even talked about being discovered.

"SEE" Trans. Pg. 298 lines 11-25 and Pg. 299 lines 1-12.

(8)"Fingerprint found on Shadow Box picture frame was not properly followed up on.

"SEE" Trans. Pg. 303 lines 2-25 and Pg.304 lines 1-25

(9)" Victim's hands were not properly bagged prior to Body being moved.

(10)" Improper Extraction of evidence from defendant "By using physical force and assaulting Defendant" to gain incriminating evidence and improperly denying access to defendants attorney.

"SEE" Exhibit (17) for other incidence of investigator denying access to attorney.

(11)" Kept reports and other documents from the courts and Jury establishing that someone else other than defendant threatened to Murder the Victim.

"SEE" Brown V. Maynard, 799 F.2d 593 (10th cir) Cert. denied, 479 U.S. 962 (1986) "review To ~~compar~~"

"SEE" Statement on Police reports from Timothy Greene Exhibit (2) Discovery Pg. :00250

"SEE" Statement on Police report from Ricky Dyers. Exhibit (5) Discovery Pg. :00241

(f). Ineffective for failing to object to the Prosecutors characterization and use of alleged prior Bad Act's. And other act's of Prosecutorial Misconduct, that had a improper influence on Juror's.

●. Prosecutor's Characterization of defendant by the use of states witnesses testimony's of prior bad act's.

"SEE" Constitutional law key 268(8).

" Alleged prosecutorial misconduct amounts to a violation of the defendant's due process right's. The Court must (1). View the likelihood that the remarks would mislead the jury or prejudice the accused.

"See" Criminal law key 700(1).

" A Prosecutor must adhere to the rules and principles that ensure that a jury determine a defendant's guilt based on the evidence before it, a prosecutor must be doubly careful to stay within the bounds of proper conduct.

●. Did not object to the misleading testimony of prior bad act's from the following state witnesses.

"SEE" Direct examination by Ms. Poulos of states witness Phillis Pack.

Trans. Pg. 212 lines 1-25, Pg. 213 lines 1-25, and Pg. 215 lines 4-6.

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"SEE" Direct examination by Mr. Gray of states witness John Gleen.
Trans. Pg. 248 lines 3-25 and Pg. 252 lines 16-17.

"SEE" Direct examination by Mr. Gray of states witness Angela Gleen.
Trans. Pg. 262 lines 1-22, and Pg. 263 lines 6,11 and 16.

Admission of testimony of prior bad act's get a review for abuse of discretion. "SEE" United States V. Hodge, 354 F.3d 305, 312 (4th Cir. 2011).

Other crimes, wrongs, or acts-evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. "SEE" Fed. Rules of Evidence 404(b). stating, the general inadmissibility of such evidence is based on the danger that this type of evidence will overly influence the finders of fact and thereby persuade them "to pre-Judge one with a bad general record" and deny him a fair opportunity to defend against a particular charge. "SEE" Michelson V. United States, 335 U.S. 469, 475-76 (1948); United States V. Hernandez, 975 F.2d 1035, 1038 (4th Cir. 1992).

Although prior "Bad Acts" evidence is inadmissible under rule 404(B) to demonstrate a defendant's bad character, as such Rule 404(B) was amended in December 2011 to read...

- (1). Prohibited the use of evidence of a crime, wrong, or other acts is not admissible to prove a person's charter in order to show, to show on a particular occasion the person acted in accordance with the character.
- (2). Permitted use's notice in a criminal case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

On request by defendant in a criminal case, the prosecutor must,

- (A). Provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; (defense attorney was ineffective for failure to request this)
- (B). Do so before trial-or during trial if the Court, for good cause, excuses lack of pretrial notice.

There is a Four-Factor test for Courts to consider when determining the admissibility of prior "Bad Acts" evidence: (defense attorney was ineffective for failure to request this).

- (1). The evidence must be relevant to an issue, such as an element of an offence, must not be offered to establish the general character of the defendant in this regard, the more similar the prior act is (in terms of physical similarity or mental state) to the act being proved, the more relevant it becomes.
- (2). The act must be necessary in the sense that it is probative of an essential claim or element of the offense.
- (3). The evidence must be reliable.
- (4). The evidence Probative value must not be substantially outweighed by confusion or unfair prejudice in the sense that it tends to subordinate reason to emotion in the fact-finding process.

In addition to these Four factor's, we also have stated that other protection against the misuse of "Prior Bad Acts" evidence is provided by

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- (1). The requirement that a criminal defendant receive prior notice of the intent to introduce such evidence.
- (2). The requirement of a limiting Jury instruction explaining the purpose for which the "Prior Bad Acts" evidence may be considered.

"SEE" United States V. Queen, 132 F.3d. 991,997 (4th Cir.1997).

"SEE" United States V. Rawle, 845 F.2d 1244, 1247 (4th Cir 1988).

(Relevance and Necessity) apply's to the challenged evidence.

- For any "Prior Bad Acts" evidence to be relevant, it must be "Sufficiently related to the charged offence" "SEE" Rawle 845 F.2d at 1247 N.3 (citing United states V. Shackelford, 738 F.2d 776, 779 (4th Cir. 1984).

(A defendant's plea of not guilty places at issue all elements of the charged crime's "But" this does not throw open the door to any sort of other crime evidence).

"Note" State witnesses Phillis Pack, John and Angela Gleen's testimony failed to serve a comparable role in my trial, and was not necessary to establish intent regarding the events defendant was charged with, and did not provide any context regarding the events of Feb, 2008. Additionally, the government did not present a basis for concluding that their testimony was an essential part of the crime on trial.

Instead the use of their testimony more closely parallels the improper use of "Prior Bad Acts" evidence The Failure to object to this by defense attorney Robert Hall was prejudicial to the outcome of case. The defendant was on trial for Murder, nothing said in their testimony was connected to what defendant was on trial for, and was improperly provided merely to serve to depict the defendant as a Violent person with unrelated conduct occurring many months prior.

"Note" No Objection from Defense Attorney when the Judge gave no instruction restricting the juries consideration on the unrelated evidence of the Prior Bad Acts that in no case could be considered "Necessary" to prove any elements of intent. Ms. Pack, John and Angela Gleen's testimony was unrelated to the crime for which Applicant was being taken to trial for, and thus was not probative of his intent with regards to the charged offense.

- Under the Fourth Factor of the tests set forth in Johnson and Queen the admission of this "Prior Bad Acts" evidence resulted in unfair prejudice and potential for confusion. Ms. Pack testimony labeled the defendant as a person that carried concealed weapons. The Gleen's testimony labeled the defendant as being a physically violent person. These factors and labels were all the more prejudicial given the fact that the defendant was not indicted for any crime involving either possession of a fire arm, C.D.V. or any other crime. Their testimony Did not naturally fit in the context of the governments case.

No Objection By Defense Attorney for the admission of testimony Concerning Drugs and the use of. Defendant had never had any type of arrest concerning the use of or possession of Narcotics, this had no comparable role at trial, making any and all unrelated testimony "unnecessary" and the states attempt to lay any type of foundation was way out of range and far afield from the issues relevant to the case.

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- (g). Ineffective for failure to object to misleading questioning and statements by state witnesses. And failed to properly preserve arguments concerning the effect the testimony could have on the Jury.

RE: (1). Investigator Todd Ruffner Testified that defendant never would give any details But yet accepted "Responsibility" WHY, and When?

Ruffner was ask , Did the defendant ever out right say he killed her?
He did Not.

"See" Trans. Pg. 61 lines 1-25. and Pg. 63 lines 20-24.

- (2). Prosecutor Timi Poulos gave misleading statement to Jury in her opening statement to the Jury (Gwen Told defendant that He was fired)(And defendant grew angry and resentful) "Note" If this was the case "WHY" would I continue doing work for her as testified to by states witnesses?

"SEE" Trans. Pg. 117 lines 16-19 (No testimony to this)

- (3). Timi Poulos also gave misleading statement to the Jury that the defendant was a crack addict and witnesses would testify to this . (No testimony was given to this). "See" Trans. Pg. 118 line 1

(4). Officer Stephen Finley testified that the victim was fully clothed.
"SEE" redirect examination by Timi Poulos. (Deputy Finley states victim was Fully Clothed (Blue Jeans and Heavy type T Shirt.

"SEE" Trans. Pg. 129 lines 18-20

E.M.S. David Ravan Testified that victim was covered below the waist.

"SEE" Trans. Pg. 140 lines 10-14 "Note" (two different testimonys)

- (5). Officer Sean Nix testified that water-bed had puncture wounds in it, but still held its content of water "How"?

"SEE" States exhibit Nos5,7,and 8.and trans. Pg. 174 lines1-25.

(6). Did not object to the misleading testimony of investigator Jason Bryant
"See" Trans. Pg. 285 lines 23-25 Pg. 286 lines 1-25 Pg. 287 lines 1-6 Pg. 287 lines 7-25.

- (7). Failed to object to the misleading statement that I admitted responsibility of victims death.

"SEE" trans. Pg. 289 lines 20-21 (No statement of responsibility)
Trans. Pg. 288 15-25 or any line did I except responsibility.

- (8). failed to object to misleading statements concerning Red mark on defendants neck.

"SEE" Trans. Pg. 313 lines 11-15 and lines 20, 21.

- (9). Failed to object to the misleading opinion of Officer Robert Rosenburg, (Was not Quified as expert to give testimony)

(h). Ineffective for failure to make obvious and meritorious objections to tainted evidence forming basis of states case

"SEE" Kimmelman V. Morrison, 477. U.S. 365 (1986)

- (1). Trial Courts use of evidence with broken chain of custody, "Evidence Container's seals were broken"

(i). Ineffective for giving erroneous advice Concerning Applicant testifing at Trial.

"See" Simach V. State, 377 S.E.2d 338 (S.C. 1998) also Alexander V. State, 402 S.E.2d 484 (S.C.1991) and Jivers V. State, 406 S.E. 2d 154 (S.C.1991)

"Trial Counsel Found Ineffective for improperly advising Client..."

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" Inadequate advice on right to testify"

"SEE" Cooper V. Moore, 569 S.E.2d 330 (S.C.2002)

Attorney failed to advise client that He had a statutory right to "Personally" address the jury regarding all charges in closing argument "whether or not" the charge carried the Death Penalty on the Murder.

"SEE" S.C. code Ann.§ 16-3-28 (1985 & Supp. 2001)

"Note" Defense Counsel unreasonable strategic decision and error in Professional Judgment in advising the Defendant against testifying and also telling both Defendants Sister's to tell Defendant that he should not that the State would use prior bad acts to impeach him amounts to ineffective assistance of counsel.

"SEE" Beltran V. Cockrell, 294 F.3d 730 (5th Cir 2002) and Ouber V. Guarino, 296 F.3d 19 (1st Cir 2002)

(j). Ineffective assistance for no objection by defense attorney that the state presented only the testimony of the arresting officers to support a finding that the defendant excepted responsibility of the Death of the victim. "Prejudice should be found because state's evidence was limited to the arresting officers.

"SEE" Vaughn V. State, 607 S.E.2d 72 (2004).

(k). Ineffective for failure to object and challenge the "Voluntariness" issue of any alleged statements given by applicant and all other suppression hearing matter's (Known Mental Health issues).

(l). Ineffective for failure to obtain outside D.N.A. experts, and other independent expert testimony pursuant to "Rule 6(d). South Carolina Rules of Criminal Procedure.

(m). Ineffective for failure to object to "Rule 5 violation's

The State failed to disclose to the Court and Jury "Material evidence

"(Material)" under Brady, If there is a "Reasonable Probability" that had the evidence been disclosed the result of the proceedings would have been different. Reversal is required where the defendant suffered "Prejudice from the violation"

"SEE" State V. Proctor, 348 S.C. 322, 330-31, 559 S.E.2d 318,322 (Ct.App 2001)

"Note" Due Process Requires disclosure of Evidence which would be favorable to the accused. "Evidence which may be used to impeach credibility is favorable to an accused and should be "Disclosed"

"SEE" State V. Kirkpatrick, S.C., 462 S.E.2d 884, 890 (Ct. App. 1995).

(Impeachment Evidence Must Be disclosed)

(N). Ineffective Because Attorney Abandoned His "Overarching Duty" to advocate His client's cause making the State Proceeding Almost totally Non-Adversarial.

(o). Ineffective for failure to discharge His Professional Responsibilities while He was handling Applicant's case.

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- ~~(13)~~. Defense Attorney failed to give His complete loyalty.
- ~~(14)~~. Defense Attorney did not have My best interest in mind while he was supposed to be investigating and preparing Applicant's Case.
- ~~(15)~~. Defense Attorney failed to serve Applicant's cause in good faith.
- ~~(16)~~. Defense Attorney failed to do the necessary factual investigation on behalf of Applicant.
- ~~(17)~~. Defense Attorney did not advise Applicant of all my rights or gather information to protect them, nor take any actions that was necessary to "Protect and Preserve them" (Knowing that Applicant was not versed in the law).
- ~~(18)~~. Defense Attorney ,knowing that Applicant was illiterate in the law, and suffering from Mental disorders never properly ascertained whether or not Applicant actually understood or comprehended all of the issues that were involved in Applicant's case.
- ~~(19)~~. Defense Attorney never properly consulted with me or kept Applicant informed with what was going on as far as the case was concerned.
- ~~(20)~~. Defense Attorney never made any attempt to ascertain whether or not Applicant knew what the the element's for the crime charged were or whether Applicant understood exactly what the term "Criminal element" actually ment.
- ~~(21)~~. Defense Attorney never informed Applicant of any defenses that were available.
- ~~(22)~~. Defense Attorney never intended to offer any defense to the Court on behalf of Applicant. And because of this gross neglect and many legal errors no defense at all was put in issue for Applicant during the proceedings.
- ~~(23)~~. Defense Attorney did not subject the prosecution's case to any adversarial testing. Failed to oppose the prosecution's case with any adversarial litigation, and failed to function as the government's adversary in ant sense of the word.
- ~~(24)~~. Defense Attorney failed to pursue any of the legal recourse that were available to Him, and failed to function as the Counsel that the Constitution's Sixth Amendment Guarantees.

(p). Ineffective for failure to chalange void Indictment.
"note"

(Pursuant to South Carolina Code, No term of General sessions on date of Indictment.)

(q). Ineffective for failure to object to "Shackling of Applicant at sentencing
This violated the Applicant's Due process clause because of inadequate prior determination of dangerousness and need for restraints .

"SEE" Elledge V. Dugger, 823 F2d 1439 (11th Cir)

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(r). Counsel was ineffective because He did not object to the inconsistencies between the police officers notes of the interrogation and their trial testimony, and the courts reliance on this error that was misapprehended, "Counsel did not attempt to show any inconsistencies, as a result, this was prejudicial to the Applicant's case.

"SEE" State V. Fulton, 333 S.C. 359 509 S.E.2d 819 (Ct. App. 1998)

(s). Trial Attorney failed to make a motion in arrest of the judgement to preserve for review any apparent errors made in the trial that were apparent upon the face of the record

"Note" Trial counsel's performance during trial were both unreasonable and prejudicial.

"SEE" Strickland v. Washington, 466 U.S. 668 (1984).

(t). Ineffective for his conflict of interest.

Trial Attorney had a 25 year history prior to becoming Applicant's Attorney working for the state as Judge or prosecutor.

"note" His action in the Applicant's case is a striking indication of counsels failure to fulfill his duty of loyalty to the Applicant, "That is apparent from his behavior on record of the trial itself. The conflict in loyalty unquestionably affected his representation and any Defense attorney who abandons his duty of loyalty to his client and effectively joins the state in an effort to attain a conviction suffers from an obvious "Conflict of interest". Such an attorney like unwanted counsel "Represent's the Applicant only through a tenuous and unacceptable legal fiction" "SEE" Faretta V. California, 422 U.S. 806,821.

In fact, an attorney who is burdened by his own sympathies to the prosecutions position is considerably worse than an attorney with loyalty to other's because the interests of the state and the Applicant are necessarily in opposition. The right to effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing.

If this process loses its character as a confrontation between adversaries the Constitutional guarantee is "Violated"

(The defense Attorney simply made poor strategic choices and acted with reckless disregard for His Client's best interests, "Apparently with it in mind and intention to weaken His Clients Case.)

Prejudice whether necessary or not is established under any applicable standard. "SEE" Osborn 639 F.supp. at 616.

If counsel had actively advocated His client's interest's the Court system and Jury would not have had a basis for conviction, Because it was Meritless It could have only infected the immediate decision of the Court and Jury by this failure. His failure also to bring into evidence the disregarded evidence that the state had, that would have shown a reasonable doubt also indicates a failure to actively advocate His client's interest's. The belief of guilt might have been refuted or at least significantly undermined had The Applicant had a true advocate in the Court room.

The simple facts are the Applicant Mr. Norman E Stoudenmire Jr. His Counsel's behavior "Prejudiced" His case and fell below the minimum level of competence required in the representation of a criminal defendant.

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(u). Ineffective for failure to object to any aspect of the prosecutor's egregiously improper closing argument, this was objectively unreasonable.
 "SEE" Hodge V. Hurley, 426 F.3d 368 (6th Cir 2005)

(Misleading and Hearsay) (Scratch Mark) (Changed attitude) (leaves town after)
 The whole closing argument was misleading)

Re: The following document pages.

"SEE" Trans. Pg. 417 lines 12-14.

"Statement" You heard from other witnesses about Mr. Stoudemire and how when he smokes crack he wants more and more... (no testimony to this)

"see" Trans. Pg. 417 lines 21-23.

Stabbed her once, twice, three, four times. He even went for a Fifth and missed and hit the waterbed. (How did it hold its content ? ? ? ...)

"See" Trans. Pg. 418 lines 8-9

He was so intent he didn't go to the bedroom where all the money was... (misleading)

"SEE" Trans. Pg. 418 lines 13-14

Victim gave Defendant message that he was terminated from his job.

(Misleading and false, no testimony) "SEE" testimony of Ms. Pack "Trans Pg. 213 line 21.

"See" Trans. Pg. 418 lines 15-16.

how he had problems on his job because of substance abuse.

(No such testimony) "SEE" Trans. Pg. 213 lines 2-3

Q. Did he ever come to work high on drugs?

A. I don't think he came to work high!

"SEE" Trans. Pg. 418 lines 20-22

You heard him Confess to the officers. I'm a monster when I'm on crack.

"I am responsible for Gwen's death—I am responsible for Gwen's death!"

(Misleading No such testimony)

"SEE" Trans. Pg. 419 lines 2-3

His D.N.A was left behind during the attack. (Never proved that he attacked the victim only that a unknown sample of my D.N.A. was present) "SEE" Pg. 399 lines 1

"SEE" Trans. Pg. 419 lines 9-11

after washing your hands D.N.A. would not be there. (Misleading) "SEE" expert testimony of Lindsay Page Thompson pg. 403 lines 14-16.

"See" Trans. Pg. 421 line 15. (Misleading, scratch was a scar at least 15 years old)

"SEE" Trans. Pg. 422 lines 13-14

You heard testimony that He would beg for money if he needed it. (No such testimony)

"See" Trans. Pg. 422 lines 9-10

Made statement that there was testimony that defendant was a mean crackhead (No such testimony)

"See" Trans. Pg. 422 lines 13-17

MADE STATEMENT THAT DEFENDANT WAS DESPERATE, AND NEEDED MONEY, AND KNEW WHERE IT WAS... (Misleading, If I or any other person that was going to kill someone over money for crack, they would not leave \$533.00 in plain view of the victim...)

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Solicitors may not introduce matters into trial in closing which are not admitted properly into evidence.

"SEE" State V. Sinclair, 274, S.E.2d 411 275 S.C. 608

"SEE" State V. Gaines, 244, S.E.2d 539 271 S.C. 65

(v). Ineffective for failure to properly challenge the issue concerning Attorney Clyde L. Pennington being kept from His client at Spartanburg Sheriff dept.

"SEE" Testimony of Clyde Pennington. Trans. Pg. 77 lines 1-25 and Trans. Pg. 78 lines 1-25

"Told No when He asked."

"SEE" Trans. Pg. 82 lines 3-4

(W). Ineffective for failure to challenge Issue concerning the phone call that was received by Investigator Todd Ruffner in route from Greenville to Spartanburg Sheriff dept. telling them that a Attorney was being retained for Applicant.

"SEE" Testimony Trans. Pg. 64 lines 12-13 and Trans. Pg. 60 lines 7-11

(X). Ineffective for failure to Challenge issue concerning The statement from Investigator Jason Bryant that he did have physical contact with the Applicant to provoke a emotional response.

"SEE" Trans. Pg. 46 lines 23-25 and Pg. 47 lines 1-4

** He also stated that he did not care if the Attorney was down stairs waiting to see the Applicant He was not going to stop the flow of the interview.

"SEE" Trans. Pg. 52 lines 1-11

(Y). Ineffective for failure to challenge issue That the Investigators and State knew that the Applicant suffered from posttraumatic stress syndrome and used that to terrify the Applicant.

"SEE" Trans. Pg. 53 lines 17-23

(z). Ineffective for failure to pursue available theory that someone other than Applicant Committed crime.

"SEE" Henderson V. Sargent, 926 F.2d 706 (8th Cir) Amended 939 F.2d 586 (8th Cir.1991)

"Concerning above "Note"

Arguing Facts not in evidence constitutes misconduct and absent an objection is reversible error...

"SEE" State V. Gregory, 158 Wn.2d 759, 844, 147 P.3d 1201 (2006).

"Note Prosecutors conduct was Flagrant and ill-intentioned while arguing issues in closing that were not in evidence..."

(AA). Ineffective for failure to address Juror that was sleeping and dozing off during trial.

(BB). Ineffective for failure to properly perfect "Appeal"

(CC). Ineffective for failure to object to all testimony that had no relevance to the offense for which the Applicant was charged.

(DD). Ineffective for failure to challenge or object to the failure to properly enter into evidence Applicants D.N.A for a trial exhibit.

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(5). Abuse Of Discretion Of trial Judge.

(a). By admitting evidence that was a clear violation of Criminal law concerning chain of custody handling.

"See" Criminal Law Key 404.(30)

If the Identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated no abuse of discretion by the Trial Judge is shown in admitting the evidence Absent Proof Of Tampering, Bad faith, or Ill-motive.

Testimony From each custodian of fungible evidence is not a prerequisite to establishing a chain of custody sufficient for admissibility.

"See" State V. Pagan, S.C. 201, 208, 631 S.E.2d 262, 265 (2006) and State V. Stanley 365 S.C. 24, 33, 615 S.E.2d 455, 460 (2005). An abuse of discretion occurs when the conclusion of the Trial Court either lack evidentiary support or are controlled by Error of law. "See" Pagan 369 S.C. at 208, 631 S.E.2d at 265.

Defendant argues that the trial Court allowed the introduction of the D.N.A. evidence despite the missing link (31½ hours of un-accounted for time that's outcome was the broken seal) in the chain. The state took up over half a day of Trial time trying to demonstrate and give reasons alleging that the evidence had not been Tampered with by the time Officer Rossenburg received it to send to S.L.E.D. for analysis "This was Error" The Facts are Facts" the seals had been tampered with rendering the evidence inadmissible". The only insight into the handling of the evidence by officers Sanders and Rossenburg is their possession of the Box at some point in time as witnessed by their signature, "Still no reason why or how the seals got broken. The evidence whereabouts is un-accounted for between 12:01 am of February 25, 2008 until February 26, 2008 at 7:15 am. (Officer Sanders testified that the box was sealed when she received it, "See" Transcript Page 324 line 25. and Pg. 325 lines 1-4. While the chain of custody need not negate all possibilities of tampering the State is required to show that the chain is complete, "They failed to Do so". "See" Carter V. State, 344 S.C. at 424, 544 S.E.2d at 837.

Custodial signatures on evidence fail to establish an adequate chain of custody where the custodians do not provide testimony under oath or produce sworn statements (Inspection of the Box containing the evidence by the receiving person as far as evidence of tampering, and making sure its sealed, and had no opening's is "Mandatory" to insure proper chain of possession of the evidence Therefore, the trial Judge Abused his discretion by allowing it to be used and placed on record and used to convict the defendant.

"See" Rule(6)(b) SCRCrimP.

(b). Trial Judge Improperly Allowed, the prosecutor to use defendants unconstitutionally coerced statement to impeach defendant at trial.

"See" Henry V. Kernan, 197 F.3d 1021 (9th Cir. 1999). cert. denied, 528, U.S. 1198 (2000).

(c). Abuse Of Discretion. for failing to address defendants known mental illness issues.

"Once it became apparent that the accused mental condition is a factor that ought to be looked into in relation to the issue, The trial Judge "Must" hold a hearing at which relevant evidence may be offered, including the testimony of experts from which The Court will decide whether the accused was at the time he made statement so mentally ill that he was unable with intelligence, knowledge,

and understanding to relinquish or abandon a known right or privilege which was his, or whether "The Confession most probably was not the product of any meaningful act volition" If it is found that either of these things is so, the statements must be excluded.

"SEE" United States V. Silva, 418 F.2d 328, 330, (2d cir. (1969).

"No "untrustworthy statement is admissible even freely made by a rational person without even so much as a hint of police coercion.

"NO" Statement made under police duress is admissible regardless of its reliability or rationality.

The rational behind out-lawry of convictions based in whole or in part on involuntary incriminating declarations rests not merely on their probable unreliability but even more importantly on the basic premise that our legal system does not permit an advantage to be taken of a person lacking the power to make an intelligent choice.

"SEE" Blackburn V. Alabama, Supra Note 30, 361 U.S. at 207 80 S.Ct. 274.

If the accused's power of reason and volition are impaired, the question whether he was in custody when he spoke is irrelevant, and even the most patient and thorough explanation of constitutional rights will not make admissible the statement/confessions of one whose mental faculties are so blunted by alcohol, drugs or insanity that he cannot be said to have given it voluntarily with "Understanding"

(d). Abuse of Discretion, for allowing admission of testimony of prior bad acts.

(This gets a review for abuse of discretion)

"See" United States V. Hodge, 354 F.3d 305, 312 (4th cir. 2004).

(e). Abuse of Discretion, trial Judge deprived defendant of due process by failure to instruct jury explicitly that before they could accept oral confessions, they must believe beyond that, it was given on his own volition.

(f). Abuse of Discretion, for failing to give a complete definition of what makes a confession voluntary. "This constitutes a reversible error" and conviction should be remanded back for a new trial.

"See" State V. Scott, No.15860 Supreme Court of South Carolina August 2, 1946.

In all the trial Judge was unable to make impartial judgements he allowed Hearsay to be used, this placed himself in a situation to be unable to be free of, or from "Bias"

"See" Harrison V. McBride, 428 F.3d 652 (7th Cir. (2005).

(6). Official Misconduct.

(a). for failure to properly secure possible evidence where no prints were taken from and around open drawer in plain view of victim's body that contained \$ 533.00 cash in mixed bills "SEE" Transcript page 191 lines 16-19.

"SEE" Exhibit (20) Discovery page :00235 Dated 05/05/08.

"SEE" Transcript pages Pg. 302 lines 1-25 and Pg. 303 lines 1-25.

"victim's shirt was not tested for D.N.A.

"SEE" Agency No.2

Victim's bedding was not tested for D.N.A.

"SEE" Agency No.1,3,4,5, and 6.

Victim's Snears were not tested for D.N.A. and Spennatozoa's

"See" S.L.E.D. No.1, and 2.

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Victim's panties were not tested for D.N.A.

"SEE" S.L.E.D. No. 1, and 7,

Inside frame of Shadow Box picture frame was not tested for D.N.A. and the print that was found no follow-up done.

"SEE" Agency No. 10, "SEE" transcript page 190 lines 18-19.

Broken glass of Shadow Box picture frame was not tested for D.N.A.

"SEE" Agency No. 11,

(Defendant was alleged to have taken a twenty dollar bill out of this)

Trace hair found at point of entry; guesstimated to be a couple of inches long was not tested for D.N.A.

"SEE" Agency No.15,

Victim's hands were not bagged before her body was moved around for pictures and removal of her shirt and other reasons.

"SEE" Transcript Page of testimony of Robert Charles Talanges
Pg.192 lines 1-3.

(Lead Investigator Jason Bryant determined what to test)

(All the above listed Evidence that was not processed could have been favorable to Defendant case if testing had of been done)

(b). Improper extraction of Evidence from defendant "By using Physical Force and assaulting Defendant" to gain incriminating evidence.

(Officer Jason Bryant) "SEE" exhibit (21) discovery page :00243.

"SEE" Exhibit (17) for reference to another incidence.

(c). Lead Investigator Jason Bryant kept reports and other documentation from the Court and Jury establishing that someone else other than the Defendant that threatened to Murder the victim.

(This Official Misconduct violated also the Brady disclosure rule)

Stating that the rule extends to evidence that is not in the actual possession of the prosecution but known by other acting on the government's behalf in the particular case, "Including the Police" P. 20

"SEE" Criminal Law Key 2005. "favorable evidence" includes both exculpatory and impeachment evidence.

"SEE" Brown V. Maynard, 799 F.2d 593 (10th cir)

"SEE" Statement from Timothy Green on police report. (exhibit)(2.) Discovery page :00250. and Ricky Dyers statement on Jason Bryant's report.

"SEE" Exhibit (5) Discovery Page :00241.

(d). Official Misconduct for keeping information from the prosecution, b
Ben Nevin concerns about the investigators talking to the neighbors
(because He and the victim fought often).

"SEE" Exhibit (22). Discovery page :00027 (statement from victims mother).

"SEE" Exhibit (23), Discovery Page, :00228, Statement from Leann Webb.

"SEE" Exhibit (24) Discovery page :00272.

(e). Official Misconduct for keeping Crime Stoppers report, reporting that there had been a lot of arguing a few day before the Murder and that the dogs had been also barking all night.

"SEE" Exhibit (6) Discovery page :00216. (Crime Stoppers Report)

(F). Official Misconduct for keeping information that the victim's murder had been in fact committed after 1:00am Sunday February 24th 2008

"SEE" Exhibit (1)b Discovery Page. :00195 Earthlink Call record records:

(g). Official Misconduct, By Keeping from the prosecution and the Court and Jury the information that victim had been getting night visitors (Lee Walker).

"SEE" exhibit (25) Discovery Page. :00071.

[illegible]

- (a) See Attached Pages
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attached Pages
- (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)? No
- (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. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

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- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- 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?

No

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
- i. ☒ _____
- ii. ☒ _____
- iii. ☒ _____
- (b) the proceedings in which each ground was raised:
- i. ☒ _____
- ii. ☒ _____
- iii. ☒ _____

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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) InEffective Assistance of Counsel Non-Appellate Court issue
- (b) Prosecutorial Misconduct, Non-Appellate Court issue
- (c) Ineffective Assistance of Appellate Counsel, Due Process (same)

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
- (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? No

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

- (a) the name and address of each attorney who represented you:
- i. Mr. Robert B. Hall (PA) Spartanburg County Public
- ii. Defender Office, 366 N. Church St. Suite 3000 Spartanburg
- iii. S.C. 29303.
- iii. Mr. Robert M. Dudek Chief Appellate Defender. 1330 Lady St.
- Suite 401 Columbia S.C. 29201-3332, P.O. Box 11589 Columbia
- S.C. 29211-1589.
- (b) the proceedings at which each such attorney represented you:
- i. Trial Attorney.
- ii. _____
- iii. Appellate Defense Attorney.

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

Sentence Vacated or at minimum remanded back for new trial.

20. Are you now under sentence from any other court that you have not challenged?
No

21. Applicant reserves the right to Amend Application upon appointment of Counsel.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of **Spartanburg**)

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.

Norman E. Stoudenmire Jr.

Mr. Norman E. Stoudenmire Jr. #182302

SWORN to and subscribed before me this 15th
day of April, 2013.

Patricia Buchanan (L.S.)
Notary Public

My Commission Expires: 4-26-2020

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**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.

Norman E. Henderson Jr.
Applicant

SWORN or affirmed to and subscribed before me this

15th day of April, 2013.
Patricia E. Buchanan
Notary Public

My Commission Expires: 4-26-2020

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Exhibit (1)a.

SPARTANBURG COUNTY
CORONER'S INVESTIGATIVE NOTES

553

CASE NO: C080069

DAY: SUNDAY

DATE: 2/24/08

NAME: GWENDOLYN ANN EMORY

ADDRESS: [REDACTED] ENOREE SC

PHONE: [REDACTED]

DOB: [REDACTED] AGE: 51 RACE: W SEX: F MARITAL STATUS: M S X D W

PLACE OF EMPLOYMENT: D & P BRICK MASONRY OCCUPATION: BRICK MASON

CONTACT PERSON: CECIL BERNARD EMORY RELATION: FATHER

ADDRESS: [REDACTED] MORGANTON GA
30560

PHONE: [REDACTED]

DAY & DATE OF INJURY: BTW SAT 2/23/08 TIME OF INJURY: BTW 8 PM & 1:15 PM
& SUN 2/24/08 SAT SUNDAY & DATE OF DEATH: BTW SAT 2/23/08 TIME OF DEATH: BTW 8 PM & 1:15 PM
& SUN 2/24/08 SAT SUN

DAY & DATE PRONOUNCED: SUN, 2/24/08 TIME PRONOUNCED: 2:40 PM

PRONOUNCED BY: J. DWAYNE CORN

CERTIFIED BY: J. DWAYNE CORN

AUTOPSY: YES BY: WREN

COPY TO:

TRANSPORTED TO: SRMC BY: TRANSPORT FUNERAL HOME PENDING

REQUESTED:

LOCATION OF INCIDENT: [REDACTED] ROAD, ENOREE SC

CORONER'S LEAD INVESTIGATOR: CORN

SCENE PHOTOS BY: CORN

ASSISTING CORONER'S INVESTIGATOR(S): KRISTA HICKS & STEPHEN EULL

POLICE INVESTIGATORS: JASON BRYANT

MANNER OF DEATH: HOMICIDE

LEGAL I.D. BY: BEN NIVENS

BLOOD FOR TOXICOLOGY: AUTOPSY: YES ADMISSION:

BOTH:

VALUABLES

SCENE PHOTOS

MORGUE PHOTOS

X-RAYS

CO LEVELS

YES NO X

YES X NO

YES X NO

YES X NO

YES NO X

LAB: PRIVATE

SLED X

NOT AVAILABLE

PATHOLOGIST

WREN

TISSUE OR OTHER ITEMS REFRIGERATED:

MAR 16 2008

EVIDENCE WILL BE RETAINED FOR THREE (3) YEARS FROM THE INITIAL INCIDENT
DATE AND THEN DESTROYED UNLESS A WRITTEN NOTIFICATION IS RECEIVED.

LEGAL RULINGS IN THE MANNER OF DEATH ARE OFFICIAL WHEN THE SPARTANBURG COUNTY CORONER
REVIEWS THE CASE AND SIGNS THE INVESTIGATIVE REPORT.

CORONER

INVESTIGATOR

11/27/07

COPY FOR
SOLICITOR'S OFFICE

554bit (1) B.

(05/05/08) : 00195

03/11/08 EarthLink Call Detail Report Page 1

User: ms5478128 (Gwen Emory)
 Month: 20080319
 Node: colum2.spa
 Plan: -Unlimited
 Last On: 02/21/2008

Login	UID	Flags	Connected	Disconnected	Duration	DNIS	ANI
ms5478128 8649694612	gwenemory	ANAL	2/21 00:22:23	2/21 00:56:18	00:33:55	8644764013	
ms5478128 8649694612	gwenemory	ANAL	2/22 12:54:46	2/22 13:52:35	00:57:49	8644764013	
ms5478128 8649694612	gwenemory	ANAL	2/22 19:42:19	2/22 20:44:39	01:02:20	8644764013	
ms5478128 8649694612	gwenemory	ANAL	2/23 21:00:40	2/23 22:36:16	01:35:36	8644764013	
ms5478128 8649694612	gwenemory	ANAL	2/23 22:45:23	2/24 01:00:36	02:15:13	8644764013	

Total Reg Usage Hours: 6.41

03/11/08 EarthLink Call Detail Report Page 1

User: ms5478128 (Gwen Emory)
 Month: 20080219
 Node: colum2.spa
 Plan: -Unlimited
 Last On: 02/18/08

Login	UID	Flags	Connected	Disconnected	Duration	DNIS	ANI
ms5478128 8649694612	gwenemory	ANAL	1/20 13:19:17	1/20 13:20:28	00:01:11	8644764013	
ms5478128 8649694612	gwenemory	ANAL	1/20 15:07:38	1/20 15:16:27	00:08:49	8644764013	
ms5478128 8649694612	gwenemory	ANAL	1/20 17:05:34	1/20 17:15:47	00:10:13	8644764013	
ms5478128 8649694612	gwenemory	ANAL	1/21 18:54:53	1/21 19:29:48	00:34:55	8644764013	
ms5478128 8649694612	gwenemory	ANAL	1/21 19:39:18	1/21 19:41:56	00:02:38	8644764013	
ms5478128 8649694612	gwenemory	ANAL	1/24 00:35:25	1/24 00:50:48	00:15:23	8644764013	
ms5478128 8649694612	gwenemory	ANAL	1/24 01:03:45	1/24 01:14:51	00:11:06	8644764013	
ms5478128 8649694612	gwenemory	ANAL	1/24 01:35:49	1/24 01:46:05	00:10:16	8644764013	
ms5478128 8649694612	gwenemory	ANAL	1/25 17:29:47	1/25 17:32:14	00:02:27	8644764013	

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 STAFFORD COUNTY
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Exhibit (2)

SPARTANBURG COUNTY SHERIFF'S OFFICE

INVESTIGATION REPORT

SC0420000	TYPE : ☐ PRELIMINARY ☐ CONTINUING	CASE : # 2008021354
INCIDENT TYPE : Murder		VICTIM : Emory, Gwendolyn
LOCATION : [REDACTED] Enoree		

Read ✓

On 2-27-08, I went down Lancelot Ln. and spoke with some residents who were at home.

270- was Timothy Greene who described himself as someone who has been in trouble for burglary and has done time for it. He lived there with his fiancé, mom, and a handful of other family members in the last trl. on this rd. He stated that his theory was that Lee did it, even going as far as saying Lee said he was going to kill her one day. He said Lee smoked crack everyday.

Read

255 - Kristin Prenkert stated that she was at work Saturday and Saturday night she was at home. Kim had horses but didn't know the victim.

240 - Stacy Lamberth stated that she was at home with her husband and children, one of which was there with her who seemed to be about 16 years old or older, and mentally challenged, but functioning. They didn't know the victim nor anything about the crime.

235 - Katie Freeman stated that her daughter was home from college that weekend and was out and about taking pictures Saturday, but in the opposite direction of the incident location. Katie stated that her husband works third and sleeps during the day, but did not work Saturday.

I met with Reynold Nitsch "Fritz" in the lobby of the Sheriffs Office. He came in to provide some background on this victim. Nitsch said he knew the victim for about 35 years. She lived in her grandmothers house (Roma Mills) on Mayview St. off of Hwy 9. Her brother ended up burning this house down by alternating the string to suit his trailer out back. Nitsch lives at [REDACTED] and has for 40 years. He is an amateur radio operator and said that Gwen was too on a lower level than he. He stated that when she moved, he took down her antenna and such. He said some years back, she approached him about buying some of her equipment since she was financially strapped because of lack of work and buying some horses. He stated that he helped her out. He said that he went to her house down on Robinson Dairy Rd. about 10 years ago which would be the last and only time. He said about a year ago she came to him and got a radio from him. He said it was a Century 21 model with a serial number of 2916. He said that if she had a operable FCC license at this location that the crime could be a federal offense. Nitsch has always been in communications even during WWII, working for WSPA and our Radio Operations on Westmoreland Dr. His wife has been dead for 12 years.

INVESTIGATOR : Allan Wood

AW

DATE : 2-27-08

APPROVING OFFICER :

DATE :

MIX 100

556: (3)

INVESTIGATION REPORT

B 1003 D

SC0420000	TYPE: ☐ PRELIMINARY ☒ CONTINUING	CASE NUMBER 200802
INCIDENT TYPE Homicide	VICTIM Gwendalyn Emory	
LOCATION [REDACTED]		
On Monday February 25th 2008 I was asked by Inv. D. Taylor To go to the local stores around 586 Robinson Dairy Rd and ask the clerks if they had received a 20 dollar bill within the past two days that had any strange writing on it. Taylor told me this was missing from the victim's residence. At 1pm Inv. Gregg Satterfield and I went to the lil' Cricket at Hwy 146 + Hwy 56. We spoke with the Clerk # [Lynn Jenkins] w/f 50 & [17890 Hwy 56 North, Clinton, SC, Phn # [REDACTED], [REDACTED]] Jenkins stated that she knew the victim because she would come into the store. She stated that she also knew the victim's Ex-Boyfriend Lee. She knew Lee used to work and live with the victim and that he was a crack addict. She also knew [that he had hit her and taken money from her before.] She stated that Lee had been in the store on Saturday at 9:30 am + 11am and that he looked like he was messed up. She stated that she had not taken any suspicious 20 dollar bills. At 1:30pm we went to the One Stop Grocery at 701 Union Hwy (Dorsey). There we spoke to # Adella Robinson w/f Phn [REDACTED], [REDACTED]. She also knew the victim and knew that Lee was a crack addict. She stated that Lee hangs around a w/m who drives a white box style van. She stated he is in his 50's, has grey hair and that he just got out of Prison. She did not know his name. She said he had large arms.		
INVESTIGATOR M. Little	REPORT DATE 2-25-08	
UNIFORM OFFICER WORKING CASE	INCIDENT DATE	
APPROVING OFFICER # [Signature]	DATE RECORDED 3-21-08	

INVESTIGATION REPORT		Page 1 of
SCO420000	TYPE: PRELIMINARY ☐ CONTINUING ☒	CASE 2008021354
INCIDENT TYPE	VICTIM Gwendolyn Emory	
LOCATION		

2/25/08- At approximately 11:15 am, I met with Phyllis Pack, owner of D&P Masonry. Ms. Pack is the owner of D&P Masonry located at 209 Amarillo Trail Greer, SC 29650. Ms. Pack stated that Gwen, the victim, had been employed at D&P Masonry since Oct 2006. She said that Gwen was an easy going, sweet person who rarely said anything negative about anybody. Ms. Pack stated that she last saw Gwen on 2/21/08 around noon when she dropped her off at the Spinx gas station on Hwy 14 at I-85. Ms. Pack stated that she paid Gwen \$405 in cash as her wages and that Gwen got into her truck and drove off. Ms. Pack stated that she didn't know of anyone that had a problem with Gwen, that everyone loved her. Ms. Pack said that she was notified of Gwen's death by Norman Stedmier, Leeland Walker's roommate, on Sunday afternoon. Ms. Pack said that "Lee" and Gwen used to live together and were both started working for her on the same day. Ms. Pack stated that Gwen and Lee rode to work everyday together, that Lee paid for the gas. Ms. Pack said that Lee and Gwen were good friends and didn't have any conflicts even though they used to date and live together. Ms. Pack stated that her "crew" had taken Gwen's death very hard. She stated that Leeland Walker, Carlos Hernandez, Anthony Jeffries, and Dennis Hernandez were currently working for her. Ms. Pack stated that she didn't know much about Gwen's current boyfriend except that she thought he must be a "real piece of work". Ms. Pack said that Gwen's boyfriend would get mad at Gwen and let her horses loose and just recently when it was pouring rain he made her come get her horses because he wanted more money for pasture rent. She said that Gwen had to walk her horses one by one back to her house in the pouring rain. Ms. Pack stated that the only other thing she could think of was that Ricky Dyer had worked with them on the crew until 2 weeks ago when Ms. Pack fired him. Ms. Pack said that two weeks in a row Ricky gave her \$100 out of his wages to give to Gwen to pay on the Pontiac TransAM that he was in the process of buying from her. Ms. Pack stated that Amanda, Ricky's wife, called this morning and left a voicemail asking about Gwen, but that she had Carlos call her back due to the conflict Ms. Pack and Ricky had. Ms. Pack stated that she knew Gwen had a sister and brother and that she didn't get along with the brother because he did drugs. Ms. Pack said that Gwen had recently reconciled with her father and they had traveled to Kentucky together to purchase a car. I left Ms. Pack my contact information and asked her to please call me if she thought of any other information.

Real
Attiv

FILED
02/25/08
SC

INVESTIGATOR: Megan Woody <i>MBJ</i>	REPORT DATE: 02/25/08
UNIFORM OFFICER WORKING CASE:	INCIDENT DATE: 09/10/07
APPROVING OFFICER: <i>Alan Wood</i> 5/21/8	DATE RECORDED:

Dyer. Det. Bryant asked Ricky to tell us anything he knew about Gwen and her relationships. Ricky stated that he recalls Lee saying that he would kill Gwen if he ever caught her with anyone else, even if they were broken up. Ricky stated that he did know much about her new boyfriend. Ricky stated that he last spoke with Gwen on 2/22/08 sometime in the evening. Ricky stated that he tried to call her back on Saturday and Sunday, but did not get an answer. Ricky stated that he did leave a message on her cell phone. Ricky stated that he called Gwen from phone numbers [REDACTED] and [REDACTED]. Ricky stated that he was calling her in reference to the vehicle that he had purchased from her. Ricky stated that he has only made two payments and Gwen was good about letting him pay when he had the money. Ricky stated that Gwen was a good person and has no idea who would kill her or want to hurt her. Ricky added that during his last conversation with Gwen she told him that she was tired of Lee's "shit" and tired of him using crack cocaine all of the time. R Read Attn

02/28/08: Det. Bryant received a call from SLED regarding DNA that was collected from under Gwen's fingernails. Det. Bryant advised me that there was a CODIS match to an unsolved Burglary in Travelers Rest SC. Det. Bryant advised that he contacted Travelers Rest Police and was advised that they may have video, and also obtained a description of the person from the burglary. Det. Bryant advised that the description matched that of Norman Stoudenmire. Det. Bryant and I then responded to Travelers Rest Police Department and met with Clark Brazier and Chief Crowe in reference to the case. We were advised that they in fact did not have video, but the responding officer's got into a foot chase with the suspect and lost him as he was jumping over fences. Chief Crowe advised that it appears from the incident report that the suspect also cut himself and blood was collected and sent to SLED. The description of the suspect matched that of Norman Stoudenmire.

While Det. Bryant and I were in Travelers Rest another detective with the Sheriff's Office was taking the sample of DNA collected from Norman Stoudenmire to SLED to be compared against the sample collected from under the fingernails of Gwen.

At 2155 hours Det. Bryant received a call from SLED. Det. Bryant was advised that the DNA collected from Norman Stoudenmire was a match to the DNA collected during the post-mortem examination of Gwen, and the unsolved Travelers Rest burglary.

After receiving the notification that the DNA was a match I completed search warrants for [REDACTED] in Simpsonville SC and [REDACTED] in Enoree SC.

12/29/08: Det. Bryant and I responded to the Spartanburg County Detention Center and met with 7th Circuit Magistrate, Judge Gowan, in reference to obtaining an arrest warrant for Norman and the two search warrants.

CRIME STOPPERS

CRIME REPORT SHEET

CALL TAKEN BY HortonDATE/TIME CALL RECEIVED 2.25.08 0726TEMPORARY CODE NUMBER 2596INFORMATION REFERRED TO Shooting on 2.24.08
(County, City, and Others)TYPE OF OFFENSE MURDER

INFORMATION GIVEN BY CALLER CALLER STATED THAT HE LIVES ON
Robinson Dairy Rd. and can see the woman's house from his
on. He stated that for the past several days there has
been a lot of arguing and the dogs have barking all night
& that is unusual. The caller also stated there has been
a man that walks & stands outside his house & the
woman's house & would just watch the house. The caller
stated that the man driving an older white van (Big
Square) will know what happened. This man may be
her boyfriend.

CALLER TO CONTACT CRIME STOPPERS OFFICE _____

Date/Time

DAYTIME HOURS: MONDAY - FRIDAY 8:30 A.M. TO 4:30 P.M.

THE REPORT WILL BE PICKED UP THE NEXT WORKING DAY BY CRIME STOPPERS OFFICER.

CLERK OF COURT
FILED
Read

W. Ok.

B. And I've worked since I was damn 13 years old, when I was a little kid I worked on a dairy farm for \$3.00 a day

W. Right

B. It's like, you know,

W. That's hard work for \$3.00 a day.

B. She didn't want nobody to give her nothing, she wanted to earn it and them sorry son of a bitches, Phyllis, she told me to take Lee, Lee was sheetrock person and that's how, he was on a job, she was on a job they met, she said he had a house, car, his mother died and he got a house, he had a Corvette and they seen each other and they moved in and all that and then she found out that he smoked crack and he lost the house, lost the car, and uh, Lee Ann told me, and I didn't know this until when we were talking down there Sunday. She said that Gwen kicked Lee out and he went to rehab and the day after he got out of rehab he stole Gwen's pickup truck and wrecked it and did \$3,000 worth of damage and Gwen made him pay that back. See, Gwen never did tell me about that Gwen, when she approached me about renting my pasture is the first time I ever spoke a word to her. I didn't know her name, she didn't know my name. And on the piece of paper that I've got that's got the date on it, I got her to sign a piece of paper that if her horses got, cause I ain't no insurance or nothing, no hospitalization, no property, no nothing, no kind of insurance except liability car so I got her to sign a piece of paper and it's got I, Gwendolyn A. Emory am responsible for any damage done by my horses in Benn's pasture because

W. Right,

B and Lee Ann, she talked about Lee Ann and Gwen said, she was out laying blocks at her barn and said, it was cold he had on some of them brown overalls and a ball cap and stuff and she said that he drove up and said, "Excuse me sir, how do you like living here?"

W. *chuckling*

B. He thought she was a man. And they joked about that and she liked those two people. And when I, uh, I didn't know Lee Ann, I had never met her because, like I say, Gwen was a very private person and she didn't involve kind of didn't involve our relationship with all her neighbors and that is the reason she came to my house most of the times, you know,

W. Right.

B. I didn't go to her house much but, now I told, I told Bryant this, and I'd like to see if he made a record of this or recorded this as evidence because this was important and I never thought about that they found it but on Gwen's birthday, which was February 9th, I said, why don't you come up. She said, "Well, if it is OK with you, let's just go get a motel room and I'll pay for it." and she said, "that way we want have to worry about Jack waking up or coming in or nothing and I want have to uh, we want have to worry about somebody coming up and knocking on my door in the middle of the night." And I never thought nothing about that but it made me realize that Lee or Norman or somebody could be coming up and knocking on her door in the middle of the night. Who?

W. Right,

EV 4 (9)

Terms of Circuit and Family Court November 2008

Holidays:

Tue Nov 11 - Veterans Day (Observed) (Observed)

Thu Nov 27 - Thanksgiving Day

Fri Nov 28 - Day After Thanksgiving

Circuit Number	11/3/2008	11/10/2008	11/17/2008	11/24/2008
7	Common Pleas Spartanburg Couch, Roger GREEN 3 HOLSTON 4 GREEN 5, 6, 7 Common Pleas Non- Jury Cole, J. FAUCETTE 3, 4, 5, 6 MOFFITT 7 General Sessions Spartanburg Burnett, E. General Sessions 7 Spartanburg Cooper, Gordon G. HOLSTON 7	General Sessions Spartanburg Cole, J. NELSON 10 NO CR NEEDED 11 NELSON 12 NO CR NEEDED 13, 14 General Sessions Spartanburg Dennis, R. GARRISON	General Sessions Cherokee Cole, J. MOFFITT 17 HISKELL 18 NELSON 19, 20 NO CR NEEDED 21 Common Pleas Non- Jury Couch, Roger GREEN Common Pleas Spartanburg Hayes, J. Mark FAUCETTE General Sessions 21 Spartanburg Cooper, Gordon G. WOODS 21	Common Pleas Non- Jury 24 Cole, J. MOFFITT 24 Common Pleas Non- Jury 25 Hayes, J. Mark FAUCETTE 25 FILED CLERK OF COURT SPARTANBURG COUNTY 2013 MAY 15 AM 10:24 M. HOPE BLACKLEY

CERTIFIED TRUE COPY,

151

South Carolina Court Administration

1. SENTENCE MADE BY WITNESSES ☒

2. REPORT ENDED

3. ARREST PULLED

Spartanburg County Sheriff's Department

4. INDEXED

5. CHECKED WHEREAS

6. CHECKED SIGNATURE

7. ASSESSMENT AND

8. ASSESSMENT MADE

9. TRAFFIC VIOLATIONS CORN ☒

ARREST WARRANT NUMBER

K329430

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 11-21-08

VERDICT

Guilty

Foreperson of Petit Jury

Date: 3-31-2010

DOCKET NO.

08-GS-42-7014

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

DEC 07 2008

TERM

THE STATE

v

Norman Eugene Stoudenmire

Indictment for

MURDER

M. HOPE BLACKLEY

SC Code 16-03-0010, 0020

42 MAY 15 AM 10:24

CDR Code 116

Class FEL-EXM

ADVISORY BOARD

CLERK OF COURT

FILED

2008 NOV 26 AM 8:36
MARC KITCHENS

February 14, 2012.

Spartanburg County Detention Facility
 C/O Mr. Chuck Wright (Sheriff, Director)
 950 California Avenue
 Spartanburg, South Carolina 29303-2184

To: Mr. Chuck Wright. (Sheriff, Director)
 From: Mr. Norman E Stoudenmire Jr.
 Date: February 14, 2012
 Re: Dates of Pre-Trial visits from Attorney

Mr. Wright:

Thank you for your return letter with the Requested Information.
 After viewing this information I discovered that I am in Need of further
 information concerning the Pre-Trial Visits From Attorneys.

Please Review your records and forward to me The dates and Times of
 all Pre-Trial visits, all Attorney Visits, From February 29, 2008 To March
 31, 2010. This is to include Visits From,

Mr. Clyde Louis Penninton, Jr., Esquire
 Mrs. Andrea Leah Price, Esquire
 Mr. Robert B. Hall, Esquire

I request this information Pursuant to the freedom of information Act, Title
 5, U.S. code, section 552, & 552(a).

The Information is sought for Non-Commercial Purposes, and to prepare
 a Post-Conviction Application.

If your agency denies this request in whole or part, please specify
 the exemptions under Title 5, U.S. code, section 552, on which the denial
 is based.

I look forward to receiving a response to this request within twenty (20)
 Working days, as required by statute.

Thank you for your Assistance.

Respectfully Submitted,

/s/ Norman E Stoudenmire Jr.

Mr Norman E Stoudenmire Jr. #182302.
 Perry Corr Inst, Q-3-B-112
 430 Oaklawn Rd.
 Pelzer S.C. 29669.

SUBSCRIBED AND SWORN TO BEFORE ME

This 14th day of February 2012.

James T. Milazzo
 Notary Public for South Carolina.

My Commission Expires January 2, 2016

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2012 MAY 15 AM 10:25
 M. HOPKINS

EX-1017565

File Edit Search Print Help

Exit Brch Add Cir Del View List Totl Back Fwd Jadd Jres

Visitor Log Invt Orig Use Pass Chkout

Time/Date In: 12:18:10 03/25/10 Security Post: NJE

Visitor Number: 115419 Disp: []

Last: HART First: ROBERT Mid: B

Address: [REDACTED] Phone: [REDACTED]

City: WOODRUFF ST: SC Zip: 29388 DOB: [REDACTED] SSN: [REDACTED]

Alias For: [REDACTED]

Visitee Number: 5559

Last: STUDENMIRE First: JEROME Mid: EUGENE

Address: [REDACTED] Phone: [REDACTED]

City: ENOREK ST: SC Zip: 29335 DOB: [REDACTED] SSN: [REDACTED]

Alias For: [REDACTED]

Relationship: Public Defender Booking Number: [REDACTED]

Destination: POD 5 POD 5 Officer: Crisp P

Comments: [REDACTED]

Time/Date Out: 13:15:10 04/06/10 Access Denied: [REDACTED]

QUICK SEARCH LIST AND DETAILS OF VISITORS

FILED
CLERK OF COURT
SPRING 2013
M. HOPE BLACKLEY
2013 MAY 15 AM 10:25

THIS IS THE INFORMATION WE HAVE DOCUMENTED PER YOUR REQUEST.

2/8/12
LANA TAYLOR
SECRETARY

January 1, 2012.

Exhibit (12)(b)

Spartanburg County Detention Facility
C/O Chuck Wright (Sheriff, Director)
950 California Avenue
Spartanburg, South Carolina-29303-2184

To: Mr. Chuck Wright (Sheriff, Director)
From: Mr. Norman E. Stoudenmire Jr.
Date: February 1, 2012
Subject: Pre-trial visits from Attorney

Mr. Wright :

I need a Copy of Records concerning Pre-trial visits from Attorney Robert B. Hall Esquire, with Mr. Norman E. Stoudenmire Jr. (Defendant)

Case No: 2008021354
Warrant No: K-329430
Date of Arrest: 2/29/2008

Dates requested are: March 17, 2010 through March 27, 2010.

I request this information Pursuant to the Freedom of Information Act, Title 5, U.S. code, section 552, & 552(a).

The Information is sought for Non- Commercial Purposes, and to prepare a Post Conviction Application.

If your agency denies this request in whole or part, Please specify the exemptions under Title 5, U.S. code, Section 552, on which the Denial is based.

I look forward to receiving a response to this request within twenty (20) working days, as required By Statute.

Thank you for your Assistance.

Respectfully Submitted,

/s/ Norman E. Stoudenmire Jr.

Norman E. Stoudenmire Jr., #182302.
Perry Corr, Inst. Q-3-B-112.
430 Oaklawn Rd.
Pelzer, S.C. 29669.

SUBSCRIBED AND SWORN TO BEFORE ME

this 31st day of January 2012.

Norman E. Stoudenmire Jr.
Notary Public for South Carolina

My Commission Expires: June 22, 2016

FILED
CLERK OF COURT
Spartanburg County
2012 MAY 5 AM 10:25
REC'D DEPT. OF CORRECTIONS

EX-165671210

MR. STOUDEMIRE		Visitor Log Table	
Exit Srch Add Clr X View List Toll Back Fwd Jadd Jres			
Visitor Log Pass Checkout			
Time/Date In: 12:18:10 03/25/10		Security Post: NJE	
Visitor Number: 113419		Disp:	
Last: HALL		First: ROBERT Mid: B	
Add:		Phone:	
City: WOODRUFF ST: SC Zip: 29386 DOB:		SSN:	
Alias For:			
Visitee Number: 5559			
Last: STOUDEMIRE		First: NORMAN Mid: EUGENE	
Add:		Phone:	
City: ENDREE ST: SC Zip: 29335 DOB:		SSN:	
Alias For:			
Relationship: Public Defender		Booking Number:	
Destination: POD 5 POD 5		Officer: Crisp P	
Comments:			
Time/Date Out: 13:15:10 04/06/10		Access Denied:	

MR. STOUDEMIRE,
 FOR THE ABOVE DATES YOU REQUESTED 2-29-08 THRU 3-31-10 WE WERE NOT REQUIRED
 AT THAT TIME TO KEEP RECORDS OF ATTORNEY'S VISITS. THE ABOVE IS WHAT WAS SENT
 PER YOUR FIRST REQUEST. I HAVE NO FURTHER DOCUMENTATION OF ATTORNEY'S VISITS.
 2/17/12
 LANA TAYLOR, SECRETARY

FILED
 CLERK OF COURT
 STAFFORD COUNTY
 2013 MAY 5 AM 10:25
 M. J. BLACKLEY

THIS IS THE INFORMATION WE HAVE DOCUMENTED PER YOUR REQUEST.

2/8/12
 LANA TAYLOR
 SECRETARY

laughing about that car, never hear it anymore and she said yeah, that was Lee's car and I said, "God, I'm glad that I didn't know that he was living with you and that was his car or would have never had nothing to do with you" but she said, he was going to buy crack, going to buy crack, but she said, and I told Bryant this and he didn't seem to be interested but, Lee Ann told me that Gwen kept a list and I don't know if it was the peoples name or what kind of car or what.

W. Crack houses?

B. She kept a list of the people that sold crack to them because she was going to turn them in.

W. Right

B. And Lee Ann, she told me she had that list and I asked Bryant, did they find the list? What would you do in this? And what would you do in that? I'm your buddy, I want piss in your ear and tell you it's raining. He told me that two or three times.

W. Yeah.

B. He kept trying to give me a cigarette and I ain't smoked, I mean, occasionally I'll smoke a cigar

W. Right

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CLERK OF COURT
MAY 15 AM 10:25
HOPE BLACKLEY

B. I ain't smoked a damn cigarette in 30 years and he kept trying to get me a cigarette, you know, you know? I just think that is trying to find Gwen's killer.

W. Right, Well, that is what we're trying to do Benn. You know, and you know, there are a lot of things, obviously we are going to look at the crack houses, we've got the list of the crack houses that she talked about and all that and obviously we are going to look at that and everything else. Is there anybody else you can think of that had come to see her?

B. Yes, now, now, there is, now I ain't mentioned this to anybody because she said he was a good friend and I believed her. She, when I said about Lee riding to work with her and trying to get her, uh, she tried to not take him but Phyllis said, "If you don't bring him, don't come yourself"

W. right

3rd party, guilty

B. And, but on last weekend she said, that this friend of mine from Greenville is going to come down and look at my yellow car and set the timing, says he's got a Trans Am too and I've knowed him for a long time so when you see his car down here don't think nothing of it and I said, "OK, well, I'm glad you told me, see" just one little word like that saves an argument or something, you know, and that is what I'd like to do. If somebody is going to be there and he is letting me know and so, that day there was a little green pickup truck down there and he took uh, told her that the carburetor needed, uh, this piece that cost \$14 and it took 2 screws to put on and she ordered it from Advanced, uh, not Advanced, AutoZone on Asheville Highway in Spartanburg and they didn't have it. She went up there

kissed and we touched each other just a little bit and stuff and so we went into the bedroom, didn't occur to me that those venetian blinds were still open, and like when we went into the bedroom, I always left the light in the living room on just because part of the thing with you know, with me not functioning because I'm old and take blood pressure medicine, part of the turn on is seeing, you know,

W. Right

B. And Gwen had a body like a 20 year old. I never knew how old she was, she would never tell me but I thought there was a terrible age difference because I thought she was younger than she is but she would never tell me how old she was but we went in there Friday night and we kissed, and touched and had oral sex and I'd use the vibrator and stuff and those Venetian, it didn't occur to me, but those Venetian blinds were opened and you know, I thought if Lee had come to her house and knocked on her door and she wasn't there or nothing, if he just walked on up here and looked in the window and seen us doing that, that could have triggered something, you know, because if I just, I'm trying to tell everything that I know that could possibly be some reason because I can't understand it.

W. Well, that is what we need, we need all the information we can that can possibly lead to the person who did this.

B. I really do, I feel weird telling that but I mean, I just feel like I should.

W. Well

Exhibit (16)

(05/05/08) : 00261
INVESTIGATION REPORT

571

SC0420000	TYPE: ☐ PRELIMINARY ☒ CONTINUING	CASE NUMBER 2008021354
INCIDENT TYPE der	VICTIM Gwendolyn Emory	

LOCATION

Enoree, SC

could show me where Lee lives and he said that he had the number for Lee Ann. I told him that I may give him a call back later in the day.

I got to the Sheriff's Office on Tuesday, and when I checked my voicemail, I had a voicemail from Benn that he left on Monday 02/25/08 at 2050 hrs. He said that he wanted me to call him on the voicemail. I recorded that voicemail on tape, and then called him back. I recorded the phone call when I called him back. (This tape has been transcribed see the tape for details)

Benn had invited me to come to his house to speak with him, so I went to his house at approximately 1650 hrs. on Tuesday 02/26/08 to speak with Benn and Jack. Benn told me that Gwen had been at his house on Friday 02/22/08 and stayed until approximately 0030 hrs. and then went home. He said that she rode her motorcycle to his house so that it would appear that she was home so that none of the neighbors would think anything about her being at his house. He said that the blinds were open in his bedroom, and that a light was on in the living room. He told me that he has a hard time getting an erection due to blood pressure medication that he takes so he and Gwen had never had sex, but they did play with each other and have oral sex. He said that he believes that someone could have seen them in the bed together. Benn told me that he had gone to Gwen's house on Saturday night because he did not want her to call him during the Tennessee basketball game. He said that he had attempted to call her a few times and her phone line was busy. He said that he went to her house and she had 2 CD's for him and gave him the CD's. He said that she was making another CD for him, that it would not work so she was going to attempt to make it again. He said that she was supposed to call him on Sunday morning, but she never did. He said that is when he attempted to call her and he went to her house. He said that her truck was there so he first went by her building to make sure her motorcycle was there, and it was. He then went to the door and found it busted in. He said that he went in the house calling her name, and then he found her in the back bedroom. He called 911 and then went to Lee Ann's house because he knew that she and Lee Ann were good friends. He said that he had noticed her truck window was rolled down and thought that was odd. Benn told me that he could tell that Gwen had recently taken a bath because her hair was still damp. He said that he liked the way her hair smelled, he did not know if it was her shampoo or conditioner that smelled so good, but he liked it. I asked him what Gwen was wearing and he said that she had on the blue shirt that she still had on Sunday when he found her and a pair of wrangler blue jeans. He stated that she always wore Wranglers. I asked him if she had on a bra, and he stated "no". He went on to explain that he gave her a "half hug" when he was there and that he rubbed her back. He stated that she almost always wore sports bras and he did not feel the strap for the bra. I asked Benn what Gwen normally would wear to bed, and he stated that she would wear a T-shirt and panties when she went to bed. Benn did become emotionally upset during my interview several times when speaking about Gwen. Benn told me that he did not remember seeing anyone on the road or around Gwen's house that night. He stated that he went to bed with about 5-10 minutes left in the basketball game. He said that he became concerned that Gwen had never called him the next day. He said that she always got up early, and she called if she told him that she was going to call.

Lead
Reac
Att

VESTIGATOR William R. Gary	REPORT DATE 03/04/08
FORM OFFICER WORKING CASE	INCIDENT DATE
PROVING OFFICER <i>Ala. Ward</i> 3-21-08	DATE RECORDED

W. We need to work on you a Gamecock fan.

B. (laughing) Well, my mother was, she was a Gamecock fan and a Braves fan when she died and I just, you know, all I want is whoever done that was the cruelest person and I, I mean and I heard Lee over there saying that everyday when he got out of the truck that he has hugged her and kissed her and told her he loved her and she told me, back when we first started seeing each other, she said, "That damn moron tells me he loves me when he gets out of the truck" but, he didn't kiss her and he didn't tell her he loved her and he ain't been at her house like he was telling them.

W. Yeah.

B. You know, and old Bryant said, "Well Lee took the lie detector test and he passed" and I knew where he was going right there, you know, and I said, well I ain't going to take one and you said, I could stop talking to you and I want to stop talking to you now and he said, "Well, we ain't-" I said, "Just take me home, just take me home and I'll get a lawyer", and he said, "No, we ain't going to take you home" Well, we can't do it because, if you are going to get a lawyer then I can't talk to you anymore and I'd ask him something and he said, "I told you I can't talk to you", but he'd keep talking to me, you know, and I said, "Well, then you can talk to me but I can't talk to you and it just, (sighing) like this morning I've been running a big floor sweeper that you drive at the GE Plant

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W. Uh huh

B. And it's got brushes on it and sweeps up the filings and stuff, and ever since Sunday, it is like that whole day, my hands have been griped as tight as they will go. It is like when I go to the dentist, I hate going to the dentist.

INVESTIGATION REPORT			Page 1 of 1
SCO420000	TYPE: ☐ PRELIMINARY ☐ CONTINUING	CASE 2008021354	
INCIDENT TYPE Murder Investigation	VICTIM		
LOCATION Robinson Dairy Road Enoree, S.C.			

On 02-24-08 I was ask by Investigator Jason Bryant to assist with the interview of Hillard Lee Walker of [REDACTED], Enoree, S.C. about the Death Investigation of Gwen Emory. Once at the sheriffs Office myself and Inv. Bryant went into the interview room where Walker was. Walker advised us that he has known Gwen for about 15 years and told us that they met while working on construction site. She was putting up brick and he was doing sheet rock. Around 5-6 years ago they started dating and broke up about 10-11 months ago due to Gwen's mother moving in and having a problem with Lee's drinking and drug abuse. Walker stated that Gwen had no problems at work with anyone to his knowledge. Everyone liked Gwen. Walker stated that he last talked to Gwen Thursday when they worked together on a job in Greenville, S.C. off of Woodruff Road and he saw her Saturday afternoon 3:00 pm driving down the road toward her house. On Saturday Walker states he went to John's until around 5:00pm then by Jr's house before going home. He goes to bed around 10:00pm and got up around 8:00am to 9:00am. He and John started cutting wood. He recalls that John and his wife came over around 7:00pm about buying a computer. He also stated that Gwen gave JR. a computer a couple months ago. I leave the room and Inv. Bryant continues the interview. *Where does Gwen live?*

Later that evening myself and Inv. Bryant attend the Autopsy of Gwen Emory. Present at the Autopsy was Dr. Wren, Dewayne Corn, I.D. Officer Sanders, Inv. Bryant and myself. As Dr. Wren began the autopsy I noticed what appeared to be stab wounds to the left arm and chest area. Photos were taken of all injuries by I.D. Officers

On 02-25-08 I was ask to have the R.S.U. teams do a Canvass of all the businesses in the area of Robinson Dairy Road, Enoree, S.C. Later that afternoon the R.S.U. team did a neighborhood canvass on Robinson Dairy Road.

On 02-26-08 I received a call from Inv. Bryant to make contact with Jack Nevins at his residence. Myself and Inv. William Gary went to the residence. Inv. Gary went inside first and I followed a short time later. When I walked in Inv. Gary was interviewing Jack so I sat down in a chair. Each time Jack would mention his father he would get upset. Sometime later Inv. Gary asked if Jack would ride to the sheriffs office to talk and he stated that he would. While on the way to the Sheriff's Office Inv. Gary flagged me down and he let Jack out of his car at the Truck Stop near I-26.

On 02-29-07 I was at the Sheriffs Office and was ask to get directions to [REDACTED], Simpsonville, S.C. When I drove by the residence I noticed the driveway was full with vehicles. The directions were relayed

On 03-01-08 I went to [REDACTED] Way, Simpsonville, S.C. and met with detectives from Greenville County S.O. that were to assist with the executions of the search warrant for this residence. Upon entry no one was home. A search was conducted and in a cabinet just inside the front door I located a knife that had a long dark hair attached to it. I called I.D. Officer who photographed it and recovered the knife and hair. A search of the residence was completed. During the search I.D. Officer Baird stepped through the ceiling causing a hole. Photos were taken of the damage.

INVESTIGATOR: D.W. TAYLOR <i>(DW)</i>	REPORT DATE 03-01-08
UNIFORM OFFICER WORKING CASE:	INCIDENT DATE:
APPROVING OFFICER: <i>Al Wail</i> 3-21-8	DATE RECORDED:

574
PROPERTY REPORT

1. Status: Check One ☒ Recovered Property ☐ Found
☒ Evidence

2. Case No.

2008021354

3. Date and Time Impounded

2-24-08/0001 hrs

4. Laboratory Examination

☒ Yes ☐ No

5. For Prop - Room Use Only

Bin No. Vault No. Shelf No.

Property Sec. #

6. Found or Recovered From

☒ Person ☐ Place

7. Where property was impounded (Give exact location - address)

Name: J. David Wren

Owner's Name

9. Owner's Address

10. Owner's Telephone No.

11. Item No.

12. Quantity

13. Description

A

1

Sexual Assault Evidence Collection KIT (Gwendolyn Emory)

H.08-42

DISPOSITION OF PROPERTY

AUTHORITY:

JUDGE DATE TIME

OFFICER DATE TIME

RELEASE TO COURT DATE TIME

RETURNED TO OWNER DATE TIME

SOLD AT PUBLIC AUCTION DATE TIME

DESTROYED DATE TIME

WITNESS: DATE TIME

14. I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.

Signature X

15. Impounding Officer (Print Full Name)

S.L. Sanders

17. Signature

S.L. Sanders

18. Received By

Robert Roschey

19. Reason

Evidence

20. Date and Time Received

02-26-08 1507H

Received By

Robert Roschey

Reason

Returned to Clerk

Date and Time Received

2/26/08 0924

Received By

Robert Roschey

Reason

SLTD

Date and Time Received

2/26/08 1140p

Received By

Robert Roschey

Reason

Return to Evidence

Date and Time Received

06/19/08 1530

Received By

Robert Roschey

Reason

Date and Time Received

Received By

Robert Roschey

Reason

Date and Time Received

Received By

Robert Roschey

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Robert Roschey

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Robert Roschey

Reason

Date and Time Received

Received By

Robert Roschey

Reason

Date and Time Received

INVESTIGATION REPORT		Page 1 of 9
SCO420000	TYPE: ☐ PRELIMINARY ☒ CONTINUING	CASE 2008021354
INCIDENT TYPE Murder / Homicide	VICTIM Emory, Gwendolyn	
LOCATION [REDACTED] Enoree SC		

02/24/08 @ 14:00 Hours: I was contacted by Detective Jason Bryant in reference to a death investigation. Det. Bryant advised that a woman was discovered deceased at [REDACTED] Rd. in Enoree and that there was blood at the scene and the death may be suspicious. Det. Bryant requested that I respond to the Sheriff's Office and await instructions for a search warrant.

I responded to the Sheriff's Office and was contacted by CSI David Hogsed in reference to the search warrant. CSI Hogsed provided the call description and a description of the residence for the search warrant. I completed the warrant and met with 7th Circuit Magistrate, Judge Atkins.

1638 Hours: I arrived at [REDACTED] Rd. with the search warrant. Entry into the residence was made at approximately 1638 hours. Det. Bryant, Det. Chris Durham, Deputy Babb, CSI Talanges, CSI Nix, and I entered the scene. We entered through a rear door into a laundry area that was off of the kitchen. As I entered the kitchen I observed that the dishwasher was open and the bottom rack was pulled out and the top rack was partially pulled out. I then entered a living room area from the kitchen. I observed that the other rear entrance door to the residence appeared to be forced open, parts of the door frame were lying on the floor near a shadow box / picture frame that had been broken and dumped on the floor. The picture frame contained a photograph of a country singer and two David Ball and Friends tickets. There also appeared to be something missing from the frame, there were 4 pieces of Velcro in the vacant area. [The rest of the residence did not appear to be disturbed in any way.] As I entered the master bedroom, I observed a white female later identified as Gwendolyn Emory, laying face down on a water bed. It appeared the livor mortis as well as rigor mortis were set. There also appeared to be blood on the comforter as well as around the face of the victim. I also observed that several items on the head board of the bed appeared to have been moved back against the wall. The items were closest to the door of the room. This belief is based on what appeared to be freshly disturbed dust rings around the items. I also observed an empty Natural Light beer can in the trash can in the bedroom, which was allegedly not Gwendolyn's brand of beer. [I also observed a drawer that was open on the vanity in the master bathroom which appeared to contain several hundreds dollars in multiple denominations.] After photos were taken of the residence a visual inspection of Gwendolyn revealed at least three puncture / stabs wounds to her chest. Gwendolyn was wearing only underwear and a pull over blue long sleeve shirt.

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 MAY 10 2008
 CLERK OF COURT
 JUDICIAL DISTRICT
 OF CLAY COUNTY
 SOUTH CAROLINA

with Norman he was able to recall details from the entire weekend, except for when Gwen was murdered. Norman was able to recall times during the day that he and Lee did things. Norman was able to recall how much crack they smoked and how much beer they drank, but was not able or unwilling to recall details of Gwen's murder. Norman stated at one point that he turns into a monster when he smokes crack and feels he put her murder out of his memory. [Norman accepted responsibility for killing Gwen several times during the interview, but was un-willing to provided details.] Norman also provided a written statement to Det. Bryant at 1320 Hours. Norman requested that Det. Bryant write it for him as he (Norman) dictated it. Det. Bryant continued to speak to Norman concerning how Gwen was murdered, and at one point touched areas on Norman's chest where Gwen had been stabbed. Norman became overwhelmed with emotions and began to cry and was unable to speak. Norman was only able to mumble in-audible words.

Read ✓

Shortly after the statement was completed I left the interview room and contacted Gwen's family and advised them that an arrest has been made in connection with her murder. Det. Bryant continued to interview Norman. After Norman's interview was complete he contacted his sister and was transported to the Spartanburg County Detention Center.

"No 'voice of Audio' to Record Statement"

"I was overwhelmed with emotion because
Det. Bryant attempt to use physical force
extract Confession"

I was transported to jail within a hour after
Statement was Completed Not over five hours
that they claim

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CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY 15 AM 10:25
M. HOPE BLANKLEY

INVESTIGATOR: Todd W. Ruffner - <i>Todd W. Ruffner</i>	REPORT DATE: 03/03/08
UNIFORM OFFICER WORKING CASE:	INCIDENT DATE:
APPROVING OFFICER:	DATE RECORDED:

Exhibit
(22)

SPARTANBURG COUNTY
CORONER'S INVESTIGATIVE NOTES

577

NAME GWENDOLYN ANN EMORY PAGE 3 OF 3
SUPPLEMENTAL BY INV. KRISTA HICKS

DURING CONVERSATION, MOTHER STATED THAT A NEIGHBOR, "BENN", AND THE VICTIM FOUGHT OFTEN. STATED THAT BENN WAS VERY JEALOUS OF LEE. MADE COMMENTS LIKE 'DID YOU STOP AT A MOTEL ON THE WAY HOME' TO THE VICTIM OFTEN. MOTHER STATES, "BENN HAS AN ODD PERSONALITY". MOTHER HAS NO PHONE. INV. LULLY INFORMED HER THAT AN AUTOPSY WOULD BE CONDUCTED ON VICTIM TONIGHT AND HE AND INV. CORN WOULD BE BACK MONDAY MORNING, 2/25/08, TO UPDATE HER ON INVESTIGATION.

FILED
CLERK OF COURT
2013 MAY 15 AM 10:25
M. HOPE BLACKLEY

CORONER

INVESTIGATOR Krista B. Hicks

578

(05/05/08)

00228

SPARTANBURG COUNTY SHERIFF'S OFFICE

Exhibit (23).

INVESTIGATION REPORT

SC0420000

TYPE : ☐ PRELIMINARY ☒ CONTINUING

CASE : # 2008021354

INCIDENT TYPE : Death

VICTIM: Gwen Emory

LOCATION: [REDACTED], Enoree, SC 29335

On the afternoon of 2/25/08, I did speak with Mr. Nevins while he was at work. He did state that I could meet him at his residence on Robinson Dairy Road, which I did at approximately 5:00. At that time I asked him if he would ride to the Sheriff's Office with me and speak with me in regards to the matter of Gwen Emory. He consented to come to the Sheriff's Office.

On the ride to the Sheriff's Office he had ate a cup of soup. He stated that he had known Gwen better than Lee and that they had only had oral sex. We arrived at the Sheriff's Office and Mr. Nevins was advised of his rights.

Upon arrival at the Sheriff's Office also had permission to search form was filled out and a buccal swab kit was performed. During the course of the interview he would only talk about Lee and would not discuss the relationship that he and Gwen had along with the discrepancies in regards to the relationship that they had.

At approximately 6:30 he invoked his rights to an attorney. I then called [REDACTED] Taylor to respond to speak with Mr. Nevins son (Jack) in which he and Inv. Gary did. Later that evening I received a call from Leann Webb and Jennifer Crane. Leann had stated that she had received a call from Benn. She thought that was odd that he would call her due to the fact that she had only recently met Nevins the day of finding Gwen's body.

FILED
CLERK OF COURT
2008 MAY 15 AM 10:25
H. HOPE BLACKLEY

Exhibit (24)

(05/05/08) : 00272
INVESTIGATION REPORT

579

C0420000		TYPE: ☐ PRELIMINARY ☒ CONTINUING	CASE NUMBER 2008021354
INCIDENT TYPE R ER		VICTIM EMORY, GWENDOLYN	
LOCATION [REDACTED] ENOREE, S.C. 29335			

I RECEIVED A PHONE CALL FROM A MIKE WILLIAMS ON 02/27/08 AROUND 1900 HRS. IN REGARDS TO HIM BEING SPOKEN TO BY OUR INVESTIGATORS IN REFERENCE TO THIS CASE. ACCORDING TO MR. WILLIAMS BEN NEVINS CAME OVER TO HIS HOUSE SHORTLY AFTER THE INVESTIGATORS LEFT, AND WANTED TO KNOW WHAT THEY HAD TOLD THE INVESTIGATORS. MR. WILLIAMS LEFT HIS PHONE# [REDACTED] IF AN INVESTIGATOR WANTED TO SPEAK WITH HIM, BUT STATED HE DID NOT WANT MR. NEVINS TO KNOW THAT HE CALLED.

Read ↗

Why?

FILED
CLERK OF COURT
2008 MAY 15 AM 10:25
M. HOPE BLACKLEY

REPORTING OFFICER [Signature]	REPORT DATE 02/27/08
WORKING CASE DERRAMA, G	INCIDENT DATE
REPORTING OFFICER [Signature]	DATE RECORDED

B. So, on her birthday which was Feb 9, and it was either a Friday night or a Saturday night because we didn't have to work the next day and you could look at the calendar and see.

W. It was a Saturday night.

B. We went to Laurens and she went into the motel and got us a room and we spent the night in there, we got up and ate breakfast the next morning at Waffle House and went home. We went in different cars, we didn't take the same car because she had to the next day get groceries and dog food and all that stuff and I told him that because I thought that was important. [I mean, she spent her birthday with me. If she and Lee were doing something, uh, but it made me know that somebody come and knocked on the door at night to. Now, I was in there at least 4 times in the day time and he would come, and you know, my car was there, so he knew I was there and my car was come, I mean, he would come and knock on the door and she would go to the door and he knew I was inside and stuff and he would be on the doorsteps smoking a cigarette, shaking and nervous and stuff saying, "Take me to the store, take me to the store" and she would say, "Go on, get out of here, I ain't gonna take you" and he would just act mad and jump off the steps and go walking up to his house real fast. Now, at least 4 times I know that happened, but like I say, he never was there at night except for a couple of times because she had a water bed and the thermostat didn't work and it was about 100 degrees and I stayed in there one night and felt like one of those hot dogs on the thing that spins around, you knows that cooks slowly, but usually she stayed at my house but if you all will look at my cell phone bills and I mean, they've got ever call and the time and date and stuff listed and I've got'em all in the filing cabinet at my house and that was the reason I told Ole Bryant, I said, "You know, you told me you was going to talk to me at my house and if we was there, I'd show you how

February 16, 2012.

Exhibit 581 (27)

The South Carolina Court Of Appeals
C/O Tanya A. Gee, Clerk
P.O.Box 11629
Columbia S.C. 29211

Re: Norman E. Stoudenmire, #182302 V. STATE
Subject: Permission to file a supplemental
Brief to Reply Brief

Dear Ms. Gee:

Appellant is applying to the Court of Appeals for permission to file a supplemental Brief to Appellant Defense's Reply Brief, filed on January 30, 2012.

Appellant Has already sent this Office Specific issues He wished Appellant Defense to raise on January 18, 2012. Appellant Defense chose to raise issues different than Appellant intended.

Appellant is instructing this Office to forward His "Retraction and reply Brief" previously sent to this Office to the Court of appeals.
See: Smith V. Robbins, 528 U.S. 259, 265, 120 S.Ct. 746, 753, 145 L. Ed. 2d. 756, 767 (2000).

Thank you for your assistance in this matter.

Respectfully Submitted,

/s/ Norman E. Stoudenmire
Norman E. Stoudenmire, #182302
Perry Corr, Inst. Q-3-B-1125
430 Oaklawn Rd.
Pelzer S.C. 29669

FILED
CLERK OF COURT
2013 MAY 15 AM 10
M. HOPE BLACKBURN

SUBSCRIBED AND SWORN TO BEFORE ME
this 16th day of February, 2012.

Shirley F. Mulvaney
Notary Public For South Carolina.

My Commission Expires: January 7, 2016

12/11/2012.

To : Tanya A. Gee,
Clerk of Court for the
South Carolina Court of Appeals

From : Norman E Stoudenmire #182302
South Carolina Dept. of Corr,
Perry Correctional Institution.
Q-2-B-210, 430 Oaklawn Rd.
Pelzer South Carolina 29669.

RE : Request to file a Motion for
Rehearing of Appeal.

Dear Ms, Gee,

this is in reference to the recently affirmed Case before
the South Carolina Court of Appeals, Case No: 2010-157546, Appeal from
Spartanburg County, J. Derham Cole, Circuit Court Judge. Heard October 30, 2012
Filed November 28, 2012.

On January 4, 2012 I sent a letter to my appeal attorney
Mr. Robert M. Dudek Chief Appellate Defender, and a copy of that letter to
the Attorney General's office and Your office. In that letter I instructed
Mr. Dudek that, in the event that my appeal denied or Affirmed, he was to
exhaust all of my defense remedies granted to me through the U.S. Constitution
and the South Carolina Constitution.

Upon receipt of Mr. Dudek's letter, that informed me of the
affirmed denial of my appeal, (See Attached copy) I called him over the phone
and inquired whether he was going file a Rearing for me to exhaust my defense
remedies as he was instructed in the above said letter. He responded by
telling that he would not and that he was no longer representing me, as off
the date my appeal was denied (In fact, he also has had my phone access to
him restricted so that I am no longer able to call him.)

Because that has happened I am forced to proceed without
representation. Through study of civil procedure I have learned that I must
have permission from the Court to file a Petition or Motion For Rehearing
in order to have the Court grant another hearing that concerns the merits
of my appeal.

At this time I am Requesting such permission from the Court
to file a Motion For Rehearing. Also, I wish to place the Court on Notice
that I intent to send a Complaint to the South Carolina Supreme Court
Disciplinary Council that Concerns My appellate attorney conducting himself
in such a way as to render ineffective assistant of counsel.... Instead of
Mr. Dudek filing an Anders Brief and saving the Court and myself three years

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SOUTH CAROLINA
COURT OF APPEALS

of [our] time, he filed an initial brief on issues that had never been properly preserved by my trial attorney to begin with. He also denied me the opportunity to supplement his brief with issues that were relevant to the appellate stage.

I'm a innocent man trapped between court rooms. The cards have been against me from the very beginning what gives? My trial attorney threw me under the bus, my appellate counsel threw me under the bus by filing a meaningless brief, Is the whole system corrupt ?

I've been hung out to dry without protection of a attorney and don't know what to do next. I respectfully request that you bring to the attention of the three concurring Judges, The Honorable Judge Huff, The Honorable Judge Thomas, and The Honorable Judge Geathers To see what they think or feel about my Constitutional right being violated.

Ms. Gee would you please time stamp this letter of request and return to me a copy for my records, I've enclosed a envelope for your convenience.

RECEIVED

DEC 11 2012

P.C.I. MAILROOM

Respectfully Submitted,

s/ Norman E. Atouiden

182302

FILED
CLERK OF COURT
STATE OF MISSISSIPPI
J. HOPE BLACKLEY

2013 MAY 15 AM 10:25

Exhibit (29)

January 03, 2012.

South Carolina Commission On Indigent Defense
 Division of Appellate Defense
 C/O Robert M. Dudek
 P.O. BOX 11589
 Columbia, SC. 29211-1589

Re: Norman E Stoudemire, #182302 V. State.
 Case: Appeal From Spartanburg County;
 In The S.C. Court Of Appeals

Dear Mr. Dudek:

Appellant is instructing Appellate Defense to proceed to the next step if the judgment, conviction, and sentence of the lower Court should be affirmed.

- Steps: (1) Petition for Writ of Certiorari; to the S.C. Supreme Court.
 (2) Discretionary review in the United States Supreme court.

Appellant is instructing Appellate Defense First to Give a Reply Brief to State's Initial Brief of Respondent To comply with Rule 208 (B). Also to send the filed stamped copy of the True-billed indictment and State's Exhibit #1 (Statement) listed in the "Designation of matter to be Included in the Record on Appeal." to Appellant.

Appellate is instructing Appellate Defense to use up all Appellant's remedies before Appellant proceeds to (POR) to include all listed and any and all that are not in the listed steps.

Appellate Defense's obligations will not be fulfilled until all these instructions have been followed and assisted Appellant to the next step of relief; Before Post-Conviction Relief, in the event of an adverse decision of all remedies...

Thank You Sir, and I'm praying that You will follow these instruction to their "Hopes, Dreams, and Goals."

Respectfully submitted

/s/ Norman E Stoudemire Jr.

Norman E Stoudemire #182302
 Perry Corr, Inst. Q-3-B-112.
 430 Oaklawn Rd.
 Pelzer S.C. 29669.

Subscribed And Sworn To before Me
 this 3rd day of January, 2012

/s/ Stewart H. Mulenberry
 Notary Public For South Carolina
 My Commission Expires: June 7, 2016

cc: file

Alan Ellison (Attorney General)

Shirya A. Gee (Clark SC. Court of Appeals)

RECEIVED

JAN 04 2012

P.C.I. MAILROOM

FILED
 CLERK OF COURT
 2012 JAN 15 AM 10:12
 J. HOPKINS BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2013-CP-42-2174
Norman E. Stoudenmire, Jr., #182302,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) May 15, 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 December 2008 term of the Spartanburg County Grand Jury for murder (2008-GS-42-7014). The Applicant was represented by Robert B. Hall, Esquire. On March 31, 2010, the Applicant proceeded to trial and was convicted of the charge by a jury. The Honorable J. Derham Cole 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 Applicant's appeal. State v. Stoudenmire, Op. No. 2012-UP-628 (filed November 28, 2012). Applicant filed a *pro se* Petition for Rehearing, which was denied on February 22, 2013. The Remittitur was returned on April 3, 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 alleges that he is being held in custody unlawfully for the following reasons:

- a. Ineffective assistance of counsel, in that;
 - i. Counsel failed to object to the prosecution's improper introduction of character evidence,
 - ii. Counsel failed to request a mental evaluation or use mental history as mitigation,
 - iii. Counsel failed to challenge issue that there was sufficient evidence at trial to establish a reasonable probability that Applicant was incompetent at time of trial due to Post-Traumatic Stress Disorder,
 - iv. Counsel failed to address juror that was sleeping during trial,
 - v. Counsel failed to properly perfect appeal,
 - vi. Counsel failed to object to irrelevant and improper testimony,
 - vii. Counsel failed to object to the improper introduction of evidence,
 - viii. Counsel failed to pursue a third party guilt defense,
 - ix. Counsel failed to challenge voluntariness of confession,
 - x. Counsel failed to object to prosecution's closing argument,
 - xi. Counsel's prior experience working as prosecutor and magistrate judge indicated conflict of interest,
 - xii. Counsel failed to challenge the void indictment,
 - xiii. Counsel failed to object to shackling of Applicant at sentencing,
 - xiv. Counsel failed to obtain DNA expert,
 - xv. Counsel failed to object to Brady violations,

- b. Ineffective assistance of appellate counsel, in that;
 - i. Failed to raise the issue of the trial judge abusing his discretion in various rulings,
 - ii. Failed to challenge the ruling after the attempt to use prior bad act at the suppression hearing,
 - iii. Closed case and refused to file a motion for rehearing and petition for writ of certiorari,
 - iv. Failed to challenge prohibition of trying and convicting mentally incompetent defendants,
 - v. Failed to challenge fact that Applicant was convicted after trial counsel failed to make obvious meritorious objections to tainted evidence,
 - vi. Failed to challenge the prosecution's introduction of matters in closing that were not properly introduced as evidence during trial,
 - vii. Failed to challenge the voluntariness of the confession,
 - viii. Failed to challenge evidentiary sufficiency of the criminal conviction,
- c. Prosecutorial misconduct, in that;
 - i. Numerous Brady violations,
- d. Violation of due process, in that;
 - i. Applicant was denied bond hearing for two years,
 - ii. Failed to obtain a rights waiver form for February 29, 2008,
 - iii. Officers failed to warn Applicant of his 5th Amendment rights prior to interrogation,
 - iv. Fraudulent indictment,
- e. Abuse of discretion of trial judge, in that;
 - i. Failed to address Applicant's known mental illness issues,
 - ii. Allowed admission of testimony of prior bad acts,
 - iii. Failed to instruct jury regarding voluntariness of confession,
 - iv. Allowed hearsay evidence to be used and improperly admitted other evidence,
- f. Official misconduct, in that;

- i. Officers failed to properly secure possible evidence and test possible evidence.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises

questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Applicant alleged that the State withheld favorable evidence in violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

The Respondent submits that this ground for relief is totally without merit. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.

VI.

The Respondent submits that the allegations regarding due process, abuse of discretion, and official misconduct should be summarily dismissed 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).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, the Court should summarily dismiss these claims for post-conviction relief.

VI.

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

VII.

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

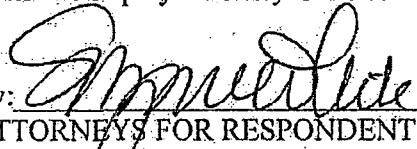
Respectfully submitted,

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

Norman E. Stoudenmire, Jr.,

2014-CP-42-2174

Applicant,

v.

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

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

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 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
 4 NORMAN E. SToudenMIRE, JR.,) TRANSCRIPT
 5 APPLICANT,) OF
 6 vs.) RECORD
 7 STATE OF SOUTH CAROLINA,) 2013-CP-42-2174
 8 RESPONDENT.)

9
 10 January 15th, 2015
 11 Spartanburg, South Carolina

12
 13 B E F O R E:

14 THE HONORABLE DEADRA L. JEFFERSON, Judge.

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

16 LEAH B. MOODY
 17 ESQ.
 18 Attorney for the Applicant

19 SUZANNE H. WHITE
 20 ASSISTANT ATTORNEY GENERAL
 21 Attorney for the Respondent

22
 23 PAMELA E. GREEN
 24 Circuit Court Reporter
 25 Seventh Judicial Circuit

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

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P R O C E E D I N G S

THE COURT: This is Norman Stoudenmire, Junior, 2013-2174, application for post-conviction relief. The Applicant is represented by Ms. Moody. State by Ms. White. Mr. Hall is the trial counsel.

This arises out of an indictment for murder, 2008-GS-42-7014. On March 31st, 2010, there was a trial. The defendant -- the Applicant was convicted, convicted and Judge Cole sentenced him to life. A timely appeal was filed. The Court of Appeals dismissed the appeal in an unpublished opinion. Filed an application pro se for rehearing, which was denied, and a remittitur was issued on April 3rd, 2013.

He alleges multiple grounds, 34 grounds in his application, his original action, his original application, and there's a memo in support of that application, which appears to have been prepared pro se, that has been submitted to the Court.

Is the Applicant ready to proceed?

MS. MOODY: Yes, ma'am.

THE COURT: You may proceed.

MS. MOODY: Your Honor, I'd call Norman Stoudenmire, Stoudenmire.

THE COURT: Sir, if you would, come to the stand and be

Norman Stoudenmire - Direct examination
by Ms. Moody

1 sworn.

2 (Witness complies.)

3 THE COURT: Sir, raise your right-hand to be sworn.

4 NORMAN STOUDENMIRE, being first

5 duly sworn, testified as follows:

6 THE COURT: You can put your right-hand down.

7 (Witness complies.)

8 THE COURT: State your full name for the record.

9 THE WITNESS: Norman Eugene Stoudenmire, Junior.

10 THE COURT: And spell your last name for the court
11 reporter please.

12 THE WITNESS: S-T-O-U-D-E-N-M-I-R-E.

13 THE COURT: You may proceed.

14 DIRECT EXAMINATION

15 BY MS. MOODY:

16 Q Mr. Stoudenmire, am I saying your name correctly?

17 A Yes, ma'am.

18 Q Would -- could you please tell the Court where you're
19 currently being held?

20 A Perry Correctional Institution.

21 Q Okay. And you were charged with murder and that's why
22 you're there?

23 A Yes, ma'am.

24 Q Okay. And you filed a PCR application against your
25 prior attorney, and that prior attorney being Mr. Robert

Norman Stoudenmire - Direct examination
by Ms. Moody

1 Hall?

2 A Yes, ma'am.

3 Q Okay. As well, you indicated your appellate counsel?

4 A Yes, ma'am.

5 Q Mr. Bob Dudek.

6 A Robert Dudek.

7 Q Dudek. Sorry when I say Dudek.

8 So you filed your application against both of those
9 individuals?

10 A Yes, ma'am.

11 Q Okay. And as far as your appellate counsel, after
12 having a conversation with me, you understood that there was
13 an appeal filed on your behalf, correct?

14 A Yes, ma'am.

15 Q Okay. And that he was limited to the issues that were
16 preserved on the record in your trial?

17 A Yes, ma'am.

18 Q Okay. So do you wish to proceed as to what occurred in
19 your trial?

20 A Yes, ma'am, I would like to, like to address them
21 issues.

22 Q Okay. All right. So in your application you alleged a
23 number of ineffective assistance issues, correct?

24 A Right.

25 Q Okay. And you filed an amendment or memorandum which

Norman Stoudenmire - Direct examination
by Ms. Moody

1 contains amendments to your original application?

2 A Yes, ma'am.

3 Q Okay. And you're aware that I presented that to the
4 Attorney General and the Court today?

5 A Yes, ma'am.

6 Q All right. So can you articulate to the Court your
7 issues?

8 Now I'm gonna tell you which issues we're focusing on
9 so we can keep some order with you.

10 All right?

11 A Yes, ma'am.

12 Q Okay. The first issue that you indicated was that your
13 trial counsel failed to conduct a pretrial investigation.

14 A That's correct.

15 Q Can you please explain to the Court what you mean by
16 that?

17 A Okay. They was no mental issues that Mr. Hall failed
18 to address and tried to find out any information concerning
19 that I did suffer from impairments and was receiving a
20 Social Security check five years prior to this alleged
21 incident that Mr. Hall just -- he didn't try to find out
22 anything. He only spent like two hours with me---

23 Q Okay.

24 A ---prior to trial.

25 Q Now, as to the mental health issues, can you please

Norman Stoudenmire - Direct examination
by Ms. Moody

1 tell the Court what issues you -- what your mental issues
2 are?

3 A I got -- I suffer from posttraumatic stress disorder.

4 Q Okay. And did you inform Mr. Hall about that?

5 A Yes, ma'am, and it was testified by the officers that
6 there -- that they had knowledge prior to the trial that,
7 that I did suffer from these instances and no one seemed to
8 care and they didn't try to ask for any kind of competency
9 hearing or anything before trial.

10 Q All right. And you recall asking me to get those
11 records?

12 A Yes, ma'am.

13 Q And do you recall the problems I had getting with
14 those -- getting those records?

15 A Yes, ma'am.

16 Q You want to inform the Court of what happened?

17 A Yes, Ms. Moody tried. She, she got in touch with the
18 Social Security Administration and they said that,
19 unfortunately, the records had been destroyed. I think more
20 or less they was just trying to give her the run around.

21 I have found the diagnosing physician, and prior to
22 coming today I tried to assist Ms. Moody in having my sister
23 call and see if they could recover the records from this
24 office in Taylors, South Carolina and they said that they
25 only keep them for ten years, and then they couldn't get any

Norman Stoudenmire - Direct examination
by Ms. Moody

1 --.

2 Q Records?

3 A Yes, ma'am.

4 Q Okay. And so this is something you've made your
5 attorney aware of or law enforcement made your attorney
6 aware of that you had a mental illness?

7 A Yeah, they, they knew it. They, they knew it and the
8 attorney knew it. They -- he, he knew. I told him.

9 Q Okay. And so your testimony here today is there was no
10 competency hearing; nothing was presented to the Court on
11 your behalf with that?

12 A No, ma'am.

13 Q Okay. Now, you also indicated that, under that heading
14 of your counsel failed to conduct a pretrial investigation,
15 that your counsel failed to investigate the third party
16 guilt issue regarding the love triangle between Ben Nivens
17 and Ben Nivens and Hillard Lee Walker and the victim?

18 A That's correct.

19 Q Can you explain to the Court what that issue is?

20 A They are -- just one second. Let me try to find my --
21 yeah, they, they was instances with Mr. Nivens and, and Lee
22 walker, during the course of several months prior to this
23 incident, which showed that they was a lot of animosity
24 between the two gentlemen and the victim. There was
25 CrimeStopper reports that was part of the discovery that

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1 showed that there was someone watching the victim prior to
2 the night of her death, just actually a night before, that
3 there was dogs barking and other CDV type things that was
4 going on at that time. None of this was raised. None of
5 this was brought up.

6 There was investigator reports from Ruffner -- Mr.
7 Ruffner and Mr. Bryant both took reports from people that
8 said that, in fact, that Mr. Walker said that if he caught
9 her with anybody, even if they wasn't together anymore, that
10 he would kill her, and these two people that basically said
11 the same thing they don't even know each other. They's no
12 way they could of elaborated any, any testimony of anything
13 of that, but they was a whole -- a lot of testimony
14 concerning CDV instances with the victim and my roommate,
15 which is the former boyfriend, that should of been brought
16 out.

17 But I understand that, prior to 2006, you know, the,
18 the -- you couldn't raise third party guilt issues. But
19 after the ruling in 2006, the Supreme Court said that, you
20 know, these issues could of been raised and used to form a
21 complete defense, that it was unconstitutional. Mr. Hall
22 didn't attempt to try to bring any of this out.

23 Q Well, did you-all discuss these issues?

24 I mean you indicated that your roommate was someone who
25 was involved with the victim.

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1 Did you-all discuss it?

2 Did you raise those issues with your attorney?

3 A Yeah, I told him I talked to him about it. I let him
4 know that, look, you know, these -- this stuff, some kind of
5 way, needs to be brought out and I think, at some point, he
6 may of said that he don't, he didn't feel like that he could
7 get it on record or something to that effect.

8 Q Okay.

9 A And until I started doing the research and discovered
10 that yeah, there was a ruling, that it was banded from use
11 in South Carolina, but the 2006 ruling he should of knowed
12 about because his background history with the judicial
13 system, that's something he should of known. He should of
14 known it.

15 Q So -- okay. So, in your defense, before the jury, when
16 y'all were in the trial, you wanted those issues raised and
17 your attorney didn't go there and raise those issues?

18 A No.

19 Q Okay. All right. Is there anything else you want to
20 say on that point?

21 A No, ma'am.

22 Q Okay. Now, you raised your counsel failed to acquire
23 the assistance of an independent DNA analyst for the
24 purposes of comparison and expert testimony.

25 Now, you indicated that there was some DNA in terms of

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1 the victim's fingernails just being in her house.

2 A Correct.

3 Q All right. Can you please explain to the court what
4 you felt the DNA expert would of been able to help you with?

5 A The expert could of shown the -- at first they, they
6 could of brought it out through the fact that it, that my
7 DNA had a legal right to be in the residence because of
8 testimony that placed me there working for the victim. I
9 worked on her, on her computer systems. I worked in the
10 bedroom moving furniture around to find possible routing
11 cable installation, prospected places.

12 I was all in her house. I worked in her -- I worked on
13 all of her vehicles, her motorcycles, her cars, anything
14 that she had contact with I had prior contact with this. So
15 it's very possible that any DNA could of been a secondary
16 transferred source, and an expert could of presented this to
17 the court, could of contradicted, and this would of been
18 something that the jury could of at least heard the
19 possibility that, that the, the DNA wasn't a direct or
20 something that directly came from me, that, that was
21 possible that it could of been a secondary transferred
22 source.

23 Q Okay. Now, there was a, a point in the trial where and
24 you indicated that there was no match of the DNA with the
25 victim. There was some prints were entered into, I guess,

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1 this is A.F.I.S. is what you have, compared to the victim,
2 Gwen Emery, and the suspect, yourself, but no match was
3 made?

4 A That's right. That's correct.

5 Q So you want to explain to the Court what you're talking
6 about A.F.I.S.?

7 A They found, they found trace hair on the entrance door.
8 They found fingerprints on the shadow box picture frame that
9 had the alleged \$20 bill that was missing. They found a
10 print on, on it and some instances they don't send them in
11 if there's not enough quality where they can send them in to
12 get them tested. But in this instance they was and they did
13 send them in and they came back that they was negative for
14 being my---

15 Q From you?

16 A From me or from the victim. But they did -- didn't try
17 to do any further investigation as to who they possibly
18 could of belonged to.

19 Q Okay. And so you wanted -- that's why you wanted -- in
20 addition, that's why you wanted your DNA expert brought in?

21 A Correct.

22 Q And did you discuss this or have an opportunity to
23 discuss this with your attorney?

24 A No, ma'am, because I wasn't under -- I was -- I wasn't
25 familiar with the law and understood at that time that I had

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1 the right to have funding available, cause I was indigent,
2 to have funding for the use of these experts.

3 Q But during the trial you-all talked about, you know,
4 that there were no matches of your---

5 A Oh, yeah, but see the, the prosecution didn't even let
6 us know or let Mr. Hall know about these alleged hairs and
7 the fingerprints till like a day before the trial.

8 Q So when you-all discussed that the day before the
9 trial, what, if anything, did y'all discuss as to how y'all
10 were gonna get or how he was gonna get around the issue or
11 get to the issue?

12 A He, he didn't. He, he didn't say, one way or another,
13 what he was gonna do or how he was gonna handle that issue.
14 He did raise the issue and they did talk about it, but
15 nothing, nothing came of it.

16 Q Okay. All right. Now, is there anything else you want
17 to say about that issue?

18 A Yeah, I would like to -- the record to say, to say that
19 there was colloquy between Mr. Hall and Doctor David Wren
20 regarding the secondary transfer theory and that's like on
21 Trial Transcript Page 375 Lines 2 through 11 and Trial
22 Exhibits 44 and 45 if I could have them made exhibits
23 entered into evidence so---

24 Q Well, you understand -- remember when we talked about
25 this, that the exhibits and the transcript are already in

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1 the record?

2 A Okay. Okay.

3 Q So that's---

4 A Yes, ma'am.

5 Q ---fine?

6 A Yes, ma'am.

7 Q All right. Now, you talked about your trial counsel
8 failed to challenge an attack to break the chain of custody
9 and the -- and/or the integrity of the DNA kit.

10 A Correct.

11 Q And can you explain to the Court what you felt your
12 attorney should of done in that regard?

13 A Well, Doctor Wren testified that he turned this box of
14 evidence over to several of the investigating officers after
15 the autopsy was performed and he testified that the seals on
16 the box were in tact when he turned it over to the
17 investigating officers. Thirty-one hours passed. They had
18 turned -- they had taken these, this box of evidence to ID
19 and booking and put it in a locker in ID and booking.
20 Robert Rosenberg, the evidence custodian, he goes to
21 retrieve the evidence and, at that time, he finds that the
22 seal on them -- the box was broken.

23 Q Right.

24 A I feel that -- he testified that he didn't feel that,
25 he didn't feel that, because the seal was broke, that it was

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1 important---

2 Q So---

3 A ---that he didn't think anybody could of got in the box
4 anyway, but he was not qualified as an expert. Matter of
5 fact, I don't think he had the right to even testify to
6 that.

7 Q Okay. So can you give the Court just a little bit more
8 information?

9 Was this evidence in the correct box?

10 A Yes, ma'am, it was in the, it was in the box that
11 Doctor Wren sent from the autopsy, but the seals was broke.

12 Q Okay. And so nobody explained why the seals were
13 broken when that---

14 A Nobody give any explanation as to why the seals was
15 broke. They didn't give any, any chain of custody forms for
16 the 31 hours that was, that passed, who had contact with the
17 box or who didn't have contact with the box. They didn't --
18 they just more or less swept it under the, under the carpet
19 like it didn't have any bearing on anything and I think that
20 it has a great -- a bearing because, if he had of got an
21 expert that was familiar with those type of containers, he
22 could of, he could of surely -- he could of showed the Court
23 the ease it would of been for somebody to open that box and
24 place evidence into that box.

25 Q So basically what you're talking about is that

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1 contamination of any evidence that was in that box?

2 A Correct.

3 Q Okay.

4 A Or the placement of any evidence into that box.

5 Q Right.

6 So that -- well did you and your attorney discuss that
7 at all?

8 A Well, it was more, it was more or less a shock to
9 Mr. Hall too when it was brought out because nobody knew
10 anything about none of this to the day that it, that it was
11 brought to the Court's attention, and then they spent, spent
12 half the day speaking about how oh, okay, it, you know,
13 yeah, the seal was broke, but we don't believe anybody could
14 of got in it.

15 Q Okay. All right. So is there anything else you want
16 to say about that, that particular issue?

17 A Well, I've alleged an abuse of discretion on the
18 Judge's part and they's some, they's some, some case law
19 that it states, it states that, you know, that it's -- there
20 is no abuse of discretion absent proof of tampering.

21 Q But you felt there was proof of tampering with the
22 seals---

23 A Well, how could it not be proof of tampering when the
24 seals was broken on the box and nobody can explain how the
25 seal got broke or why?

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1 Q Okay. All right. So -- but you said they talked about
2 that throughout the day, but you felt like that the ruling,
3 the final ruling was not appropriate?

4 A No, ma'am.

5 Q Okay. All right. Now, your counsel, you indicated
6 your counsel failed to challenge the procedures and protocol
7 while processing the crime scene. Specifically that law
8 enforcement didn't bag the victim's hands.

9 A Right.

10 Q Now, they, they eventually bagged the victim's hands,
11 but they didn't bag them---

12 A Yes, ma'am, prior to transport. They spent some
13 significant time moving the body around, showed photographs
14 of the body in different positions. Testimony says that
15 they took the shirt off. They did this, they did that. The
16 body was moved around, but the first thing that should of
17 been done was the hands should of been bagged to preserve
18 the contamination or the, the possibility of contamination
19 and they didn't do that.

20 when it's already -- it was already established that,
21 that I had access to the bedroom, to that area, specifically
22 the bed and headboard area and all of that. It's very
23 possible that any contamination may could be -- it could of
24 been contaminated.

25 Q Okay.

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1 A This is the only evidence that, that, physical
2 evidence, that they had in the band of the case was that one
3 piece of alleged DNA --

4 Q Okay.

5 A -- and where it came from and they're said that it came
6 from the hands. So I feel that if they had -- they didn't
7 properly process the crime scene. It should of been, it
8 should of been bagged.

9 Q Okay. And so you wanted your attorney to challenge
10 that and what did you feel that your attorney should of
11 presented in regard to challenging that?

12 A Well, he -- I think he should of presented it to the
13 Court and also I think he should of provided an expert to
14 testify to how the likelihood of contamination could of,
15 could of been and I -- that's very prejudicial to my case
16 because if, if it -- this had of been presented in front of
17 the jury, the jury could of -- a reasonable probability -- a
18 doubt could of been there that well, you know, maybe that
19 DNA got picked up this way instead of the way that the
20 attorney, the prosecutor was alleging that took place.

21 Q So -- okay. In essence, as far as all the DNA was
22 concerned, you felt like your attorney should have obtained
23 a DNA expert to present evidence on your behalf.

24 Earlier you said some things were discovered like at --
25 on the day of the trial and your attorney was surprised, but

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1 this was something that you already knew that your attorney
2 should have---

3 A Yes. Of course.

4 Q ---seen?

5 A Of course.

6 Q Okay. All right. So---

7 A Could I, could I add one thing?

8 Q Yes.

9 A And, and the reason for this was because the
10 prosecution alleged that she got the -- that the DNA that
11 she got came from this scar that's here on my neck that's a
12 20 year old scar that's been -- was actually razor irritated
13 it and they brought this up to the attention of the Court
14 bringing -- assuming and to the -- that the -- misleading
15 the jury that this was, in fact, from a defense of the
16 victim --

17 Q Okay.

18 A -- and that, that was improper. They should of not --
19 Mr. Hall, I know in the closing argument that Mr. Hall, it's
20 not proper ever what happened -- ever to interrupt a,
21 another attorney while he's presenting a closing or anything
22 like that. But he should of countered. He should of
23 brought this up because it misled the jury totally.

24 This, this is -- they didn't take any pictures of it.
25 They didn't present nothing to the Court prior to anything.

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1 They just brought it up. This, this scratch on my neck was
2 in the defensive, defensive nature from the victim.

3 Q Okay.

4 A So I think it was important, yes, that, that
5 contamination or them alleging that that's where that come
6 from, it could of -- may of properly bagged the hands, that
7 they may not have been nothing there at all.

8 Q Okay. All right. So that's all you want to say about
9 that DNA?

10 A Yes, ma'am.

11 Q Okay. So then you have that counsel's general failure
12 to make a contemporaneous -- contemporaneous objections at
13 the critical point throughout trial.

14 Now, that's not going back to this -- the DNA and the
15 or this -- comments within the closing?

16 A No, ma'am.

17 Q Can you please tell the jury exactly what you're
18 talking about in terms of those objections?

19 A Okay. The solicitor, through testimonial evidence,
20 that was not relevant under South Carolina Rules of Court---

21 Q So---

22 A ---said that---

23 Q Let me interrupt you.

24 A ---testified -- ma'am?

25 Q Let me interrupt you on that.

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1 A Okay.

2 Q When you're saying that your -- you're saying that your
3 attorney didn't rise to make the objection and have the
4 Court rule on it?

5 A Right.

6 Q Okay. So that's -- those things, whether it came in or
7 not, you wanted him to make, make those objections---

8 A Correct.

9 Q ---so the Court could rule on it?

10 A Because it was an attack on character and prior, prior
11 bad acts and character had no relevance to the case at all.
12 They was nothing. They was nothing that they can prove any
13 intent. They was no -- nothing that had a relevant bearing
14 on the murder.

15 Q Okay.

16 A So any of that testimony, it didn't, it didn't have
17 them because they lacked personal knowledge. They just
18 not -- you know, they couldn't testify to something that
19 they didn't have personal knowledge to and the fact that I
20 carried a -- that the -- y'all have to bear with me. I got
21 some issues that it's hard for me to do this.

22 Phyllis Pack was my boss lady, and me and Lee, we had a
23 mutual thing with her because of the situation, how we work
24 and how she paid. If we needed money we could get money
25 anytime we needed it in any amount because we made good

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1 money. Paychecks was over a thousand dollars a week and so
2 I went to her house.

3 The, the solicitor led her into testimony that, when I
4 come to her house, I was weird and wired up or whatever, led
5 her into a -- to tell -- to the fact that I was high on
6 crack cocaine, and then it went into the fact that she said
7 well, I was in, in possession of a handgun, and it's not the
8 handgun. My possession of the handgun three months prior to
9 any alleged murder is not relevant. It don't -- all it does
10 is show a -- some kind of characteristic of the -- somebody
11 that was violent or something like this, and I'm -- I don't
12 have a history. I don't have a background of being a
13 violent person or, or somebody that totes a firearm and goes
14 around threatening people.

15 So it was improper, improper, inappropriate. Mr. Hall
16 should of objected to that stuff. He, he should of, you
17 know.

18 It's like here, this, at one point, it says solicitor
19 impermissibly led witness to a conclusion that Applicant
20 smoked crack cocaine when witness only stated that Applicant
21 was high.

22 High on what?

23 Alcohol.

24 Nothing it says.

25 Transcript Page 213, Lines 2 through 8, and she was

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1 asked did he ever come to work high on drugs?

2 I don't think he ever come to work high.

3 Did he ever -- did you ever see him high?

4 Yes, ma'am.

5 And where was that?

6 In my house.

7 How many times had you seen him high on crack?

8 She later says now, when he came to your house, you
9 said he was wired and weird.

10 Did you, did you see him smoke crack cocaine?

11 No, I did not.

12 So her testimony -- Mr. Hall should of, should of
13 objected because this, this is inconsistent.

14 Q So what you're saying is that they painted a picture of
15 you that was not correct?

16 A Prejudicial, just to try to make me out to look like
17 something other than what I am.

18 Q And so he didn't make the objection throughout that---

19 A No, ma'am.

20 Q ---testimony?

21 Is there any other objections that you found that were
22 improper---

23 A On this---

24 Q ---that you wanted him to---

25 A On this issue here?

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1 Q Yes.

2 I mean if there's nothing else, I just wanted to make
3 sure that you -- when you're talking about the character --.

4 A No, ma'am, I'm fine.

5 Q Okay. Now, as to any other objections, did you have
6 other objections that you felt that he should of made on
7 your behalf?

8 A Yes, ma'am.

9 Q what about the objection towards money?

10 A Yeah, what's, what's, what's, what -- if I borrowed
11 money from my boss or if I borrowed money from my neighbor
12 or if I even borrowed money from the victim, if they's a
13 relationship established that I could go to any one of them
14 people and I could borrow money, it was because of my
15 credibility. None of them -- nobody's gonna loan you any
16 money whether though, you know. They gonna get their money
17 back.

18 But what is -- what's, what's that have anything to do
19 if I borrowed money?

20 what's that got to do with any intent on killing
21 somebody?

22 Q well, you remember the shadow box that had the \$20 bill
23 in it.

24 Can you explain to the Court like, you know, what
25 you -- what, if anything, did you explain to your attorney

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1 about that with -- in regards to having money?

2 A Well, the \$20 bill belonged to Lee Walker. They went
3 to that concert together and the, the -- that's the only
4 thing that was disturbed in the home.

5 Q Okay. But did you need the -- I guess what I'm trying
6 to get at is---

7 A That---

8 Q ---what did -- what was your need for that \$20 bill?

9 Did you have a need for that \$20 bill?

10 A I didn't have any need for that \$20 bill. That \$20
11 bill was a personal -- was a memento from the time that the
12 victim and my roommate went to that concert together, and
13 that's the only thing that was missing from, from the crime
14 scene, scene and they recovered \$533.00 that was in plain
15 view of the body. So it's misleading the Court altogether
16 when even, even say that that \$20 was motive or that, that's
17 why I went there and this is why the crime happened, that I
18 went there to take that \$20 bill.

19 Q So what you're saying is there was other -- another
20 large amount of money there---

21 A Yeah, you see the Court---

22 Q ---that you were trying to---

23 A The Court painted a picture that I was a crackhead,
24 that I was a crack monster, that I wanted more, and more,
25 and more, and this is -- no, no testimony was ever

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1 established of that, but the prosecutor addressed the jury
2 in closing to that fact.

3 But if anybody is gonna go into a house and commit an
4 act of violence as far as taking somebody's life, are they
5 gonna take a \$20 bill or are they gonna take the \$533.00
6 that's in plain view of the body?

7 That's, that's not inconsistent. That's not even
8 anybody that has a character of being a drug addict. It's
9 not gonna overlook 500 when they can get a lot more for the
10 500 than they gonna get for the 20.

11 Q Okay.

12 A It's just -- this issue's just --.

13 Q So that was the money issue with the shadow box
14 relationship---

15 A Right.

16 Q ---to---

17 A That's the only thing that was missing. This is
18 alleged -- this is what the solicitor's office said was
19 motive that -- to steal the \$20 bill.

20 Q And so -- and if I understand you correctly, you
21 earlier testified about third party guilt, the relationship,
22 the love triangle.

23 So you're saying that that was something related to the
24 boyfriend?

25 A Yes, they went to that concert together.

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1 Q Okay.

2 A And see he made a statement that -- like I said, I
3 testified before that he, he didn't care about anything. If
4 he caught her with anybody else, even if they wasn't
5 together, he'd kill her. Ben Nivens testified that the --
6 yeah, I believe he did testify and I know they's police
7 reports of his conversation that he felt like somebody seen
8 him through the, through the window the night before ---

9 Q Okay.

10 A -- you know.

11 Q All right. So, now --.

12 (Pause.)

13 THE COURT: And, Ms. Moody, I want to interrupt your
14 questioning, but I'm not here to retry the facts of this
15 case, and I need him to be specific as to how he alleges his
16 attorney---

17 MS. MOODY: Okay.

18 THE COURT: ---was ineffective.

19 MS. MOODY: All right. Your Honor, we'll move on then.

20 You allege that your counsel failed to object and so
21 you alleged these items within your amendment. One of the
22 other amendments or one of the other grounds was your
23 counsel failed to object to the inconsistent statement of
24 State's witnesses, and when you made that allegation, you
25 wanted him to object or you wanted him to bring that up in

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1 the closing argument?

2 A I would of -- he should of objected, objected to any of
3 the testimony altogether.

4 Q Okay. So, in essence, like there was objections that
5 your counsel failed to make that would of been preserved for
6 you to appeal?

7 A Right.

8 Q Okay.

9 A He -- can I give a for instance?

10 Q Yes.

11 A All right. And in all the examination of the
12 investigating officers, they alleged that, that I accepted
13 responsibility of the killing.

14 Q Uh-huh. (Affirmative).

15 A That they kept -- each one of them kept stating
16 Mr. Stoudenmire accepted responsibility. During our
17 interrogation, this is what he told us. He accepted
18 responsibility, accepted responsibility.

19 But, in cross-examination, testimony was did my client
20 ever tell you he killed her?

21 Did he ever directly tell you he killed her?

22 No, he did not.

23 Q Okay. But you understand, with that, he, he questioned
24 them as opposed to objecting to them making the inference,
25 but you wanted him to object to it?

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1 A Right.

2 Q Okay. Now, you indicated that your counsel was
3 ineffective for failure to discharge his professional duties
4 as far as failure to request instructions of definitions as
5 to what makes it voluntary.

6 You mean that you wanted the judge to give the jury
7 instructions as to what was voluntary?

8 A Right.

9 Q Okay.

10 A On -- he should of given voluntary -- he should of
11 given -- he should of asked for instructions on the
12 voluntariness. He should of asked for instructions on the
13 use of prior bad acts, what part -- how much they could of
14 and what they, what the jury could use it for.

15 Q Okay.

16 A The voluntariness issues should of been an issue that
17 should of been -- the trial judge -- the jury should of been
18 able to heard anything that -- concerning voluntariness.

19 Q So, in essence, you wanted the judge -- the -- your
20 attorney to give the judge some---

21 A He should raised issues---

22 Q ---requests?

23 A ---to where the jury could of heard relevant testimony
24 on the voluntariness.

25 Q Okay.

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1 THE COURT: Voluntariness of what?

2 I'm confused?

3 THE WITNESS: The---

4 MS. MOODY: He's referring to---

5 THE WITNESS: Alleged statement and oral statements.

6 MS. MOODY: So he's getting back to his Jackson v.

7 Denno hearing---

8 THE COURT: Okay. So this is the time---

9 MS. MOODY: ---where the judge ruled on the statements
10 coming in. But the jury has to make a finding of fact
11 beyond a reasonable doubt on---

12 THE COURT: He's saying the jury or the judge didn't
13 instruct that?

14 MS. MOODY: Right. Right.

15 THE COURT: Okay.

16 MS. MOODY: Right.

17 THE COURT: All right. I'm clear now.

18 MS. MOODY: Okay.

19 You indicated that you had an issue with the failure of
20 the police to record -- to disclose Rule 5 documents to your
21 attorney?

22 A Right.

23 Q Can you briefly tell the Court what you mean by that?

24 A There's the police officer, Captain Steve Cooper, the
25 Spartanburg Sheriff's Department come in to the

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1 interrogation several times asking me -- the family -- well,
2 he told me. He said the family is downstairs.

3 Q But are you saying that that was some discovery that
4 would of -- should of been in writing?

5 A Yeah, he should of -- they should of been -- he was
6 conducting part -- he was part of the interrogation that it
7 should of been investigative report from him stating what
8 took place between our contact, what went on with me and him
9 when he questioned me---

10 Q Okay.

11 A ---and they didn't have it or they didn't fail -- they
12 failed to produce it.

13 THE COURT: How's that a failure of his lawyer?
14 I, I really need to focus on that.

15 MS. MOODY: I'm trying to get there, Your Honor.

16 THE COURT: Yeah.

17 MS. MOODY: He's saying---

18 THE COURT: Deficiencies in the State's case are not
19 ineffective assistance. If his lawyer served a Rule 5, then
20 he's met his obligation. If he has some indication that the
21 State did not disclose something and his lawyer did not
22 pursue it, but knew about it, then that is relevant.

23 THE WITNESS: Yeah, I did. He knew it. I told him.

24 MS. MOODY: That's---

25 THE COURT: But if it didn't exist, then they couldn't

Norman Stoudenmire - Direct examination
by Ms. Moody

1 have produced it---

2 MS. MOODY: I guess---

3 THE COURT: ---and the witness testified.

4 MS. MOODY: I guess what he's trying to say is that he
5 ended up having a conversation and he thought that they
6 would of documented because they documented his
7 statements---

8 THE COURT: Yeah, I understand---

9 MS. MOODY: ---and they would of documented---

10 THE COURT: ---his argument. He's saying somehow they
11 were deficient for doing that. That's not his attorney's
12 responsibility or obligation, and there's no obligation for
13 the police to document any conversations. They testified as
14 to conversations. They don't reduce to writing all the
15 time. That's an impeachment issue.

16 MS. MOODY: I understand.

17 THE COURT: That's the thoroughness of investigation
18 issue. That's a credibility issue. So I need to sort of
19 focus on exactly how he's saying his lawyer was ineffective
20 because of that.

21 MS. MOODY: well, I guess he's saying, before the
22 trial, confirming whether his attorney had received all the
23 discovery, that that was not confirmed.

24 THE WITNESS: Yeah, he could of -- it should of been in
25 the investigation.

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by Ms. Moody

1 THE COURT: But he has to prove that it existed---

2 MS. MOODY: I understand.

3 THE COURT: ---and that his lawyer knew it existed,
4 that he failed to get it, and somehow it made a difference
5 in the outcome of his trial.

6 MS. MOODY: I---

7 THE COURT: You understand what I'm saying?

8 MS. MOODY: I understand what you're saying and the way
9 I've seen it done is they confirm as to all discovery. They
10 confirm whether it was handed over from the State, if it was
11 some kind of written documentation, then it would of been
12 handed over by the State.

13 THE COURT: Exactly.

14 But based on what he just testified to, I doubt very
15 seriously it would of been reduced to writing or any kind of
16 supplemental report. But to just make a blanket statement,
17 I need, I need more than that. I need more specifics than
18 that because what I'm hearing now is what he feels are
19 deficiencies in the State's case and I'm not a fact finder.
20 I'm not a jury. I'm not gonna rule on the inconsistency of
21 testimony. Again, that's a factual issue. It's a factual
22 dispute.

23 I need to know how he feels his lawyer fell below what
24 is expected of their performance as his advocate and how
25 that prejudiced him --

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1 MS. MOODY: Okay.

2 THE COURT: -- such that the outcome of the trial is
3 undermined.

4 MS. MOODY: But I think, Your Honor, mainly then -- and
5 we'll move on from that point?

6 THE WITNESS: Can I speak one second please?

7 MS. MOODY: Well, is it---

8 THE COURT: No, sir, there's not a question pending.

9 Q Okay. So, let's---

10 THE WITNESS: For the record, we, we---

11 THE COURT: Sir, the record is established by questions
12 being asked of you of your counsel. You don't get to make
13 extemporaneous statements.

14 THE WITNESS: Ma'am, I understand, ma'am, but you said
15 the thing that if it was something like---

16 THE COURT: I gave directions---

17 MS. MOODY: Okay.

18 THE COURT: I gave directions to your attorney as to
19 the scope of the questioning and she's gonna comply with it,
20 and I would ask that you wait for the next question she's
21 gonna ask you.

22 Q Do you have a document that will support your
23 proposition or your example that you just alluded to the
24 Court?

25 Do you have a document?

Norman Stoudenmire - Direct examination
by Ms. Moody

1 A Yeah, I have, I have, I have the testimony of the
2 investigating officers that said that I accepted the
3 responsibility.

4 Q No, no, no.

5 Well, do you understand -- let me explain something to
6 you.

7 A I don't understand.

8 Q I understand.

9 So let me explain something to you.

10 Is there a written document that you've received from
11 the documents that I sent to you that gives some kind of
12 supplemental statement from the officer?

13 A No, they failed to produce it.

14 Q Okay. So what the Court had -- do you understand, when
15 the Court says if it hasn't -- if it's not a written
16 document that you've obtained, okay, like another sheet of
17 paper that is a supplemental report, that if you don't have
18 that to support your statement, that she can not consider
19 that?

20 A I understand that.

21 But how does the Court know that there wasn't a
22 document and then the document---

23 Q Well, that's what we have to---

24 A ---just not -- was not presented?

25 Q Well, that's our---

Norman Stoudenmire - Direct examination
by Ms. Moody

1 THE COURT: That's your burden of proof.

2 Q That's our burden.

3 So the stuff that I sent you of the file, that's our
4 burden.

5 So, of the stuff that I've given you, is that in your
6 documents?

7 A No.

8 Q Okay. So with that, we need to move on to the next
9 point.

10 You understand that?

11 A (Witness nods affirmatively.)

12 Q But you do realize -- you've provided information as to
13 your DNA.

14 Your DNA, you didn't have an expert at the hearing,
15 right?

16 A Right.

17 Q Okay. And you've said some other things. So we're
18 gonna move on. That's just one of your issues.

19 Okay?

20 A Where you at?

21 Q I'm sorry?

22 A What page you at?

23 Where you at?

24 Q Okay. Well, we just -- I'm gonna give you the next
25 question.

Norman Stoudenmire - Direct examination
by Ms. Moody

1 okay?

2 A I need to know what page.

3 Q Okay. All right. On Page 15 you talk about your
4 attorney's failure to prepare a defense, and I think that
5 goes into your medical records and the DNA expert that you
6 talked about?

7 A Do what now?

8 Q So now remember you, you said your attorney didn't
9 prepare a defense on your behalf is one of your allegations.
10 So---

11 A Right.

12 Q ---mostly it consists of having your expert available
13 for the DNA, to refute the DNA because there was not a
14 match.

15 Is that correct?

16 A Correct.

17 Q Okay. And then---

18 A It was a complete breakdown of the adversarial process.
19 It was complete, a complete breakdown.

20 Q Okay.

21 A He only talked to me twice and I've got -- I have, on
22 record, the, the job, the jail records that shows that he
23 only came to the jail two times to visit me, to talk to me
24 for less than an hour each time to prepare for a murder
25 trial.

Norman Stoudenmire - Direct examination
by Ms. Moody

1 Q Okay.

2 A There's no possible way that this gentleman could come
3 prepare a case in two hours for a murder trial. I sit in
4 the Spartanburg County Jail for two years --

5 Q Uh-huh. (Affirmative).

6 A -- and then they gonna bring me to -- notice that I'm
7 going to trial around March the 25th, that I'm going to
8 trial in a couple of days, and he's expected to present to
9 the Court some kind of sufficient defense of any type?

10 There's no possible way.

11 Q Okay.

12 A No way.

13 Q All right. So that goes back to like what I was
14 saying, is your psychological or your mental health records
15 and your DNA expert.

16 A No, just -- that's just on the investigation part.

17 Q Okay.

18 A I mean he didn't investigate anything.

19 MS. MOODY: Okay. I beg the Court's indulgence.

20 THE COURT: Uh-huh. (Affirmative).

21 (Pause.)

22 THE WITNESS: Can I, can I say something?

23 MS. MOODY: Give me one second. I'm just trying to
24 look to make sure I've covered --.

25 (Pause.)

Norman Stoudenmire - Direct examination
by Ms. Moody

1 Q Now, I want to turn to -- you talked about your
2 appellate counsel, that you -- you indicated you wanted them
3 to do a rehearing.

4 A You're getting off the ineffective assistance of
5 counsel?

6 Q Well, no, that's---

7 A So---

8 Q It's all ineffective assistance of counsel. The --
9 this whole application is about ineffective assistance of
10 counsel.

11 A Regardless, regardless of it's a appellate counsel or
12 trial counsel?

13 It's a -- it's the same---

14 THE COURT: Sir, you don't ask questions of her.
15 Please just answer her questions. She knows what she's
16 doing.

17 Q I promise I understand.

18 Your -- you understand your PCR application is about
19 ineffective assistance of counsel, and that you had counsel
20 at the trial level and you had counsel at the appellate
21 level.

22 You understand that?

23 A (Witness nods affirmatively.)

24 Q And so when you made requests of your attorney at the
25 appellate level, you made a request cause you wanted a

Norman Stoudenmire - Direct examination
by Ms. Moody

1 rehearing, correct?

2 A Right.

3 Q Okay. And why did you want a rehearing?

4 A Because I requested for the appellate attorney to file
5 a motion for a rehearing or writ of certiorari and he said
6 I, I've already dismissed your case. I'm not -- I'm no
7 longer your attorney anymore.

8 Q Okay.

9 A So I filed the, the -- I filed the motion. I went
10 right back in where the Court's ruling was that there was
11 nothing, that the issues that he raised was not preserved
12 for review. I went right back into the transcripts,
13 transcript and found where Judge Cole -- the issues was
14 addressed to him. He made a ruling. Ford versus State says
15 that they's not necessary for objections after a Judge's
16 ruling.

17 Q Let---

18 A So the issues was preserved.

19 Q Okay. So that's the basis of why you filed that?

20 A On -- for that---

21 Q Yes.

22 A ---particular issue, yes, ma'am.

23 Q Okay. But -- so that takes you back to your trial
24 counsel when you stated that your trial counsel didn't make
25 objections to preserve your record?

Norman Stoudenmire - Direct examination
by Ms. Moody

1 A Right.

2 Q Okay. So that's also around for your ineffective
3 assistance of counsel---

4 A Right.

5 Q ---against your trial attorney?

6 A Right.

7 Q Okay. So if I were to sum up everything that you
8 have -- if you were to sum up everything you have in terms
9 of ineffective assistance of your counsel, it mainly comes
10 down to failure of your counsel to prepare a defense on your
11 behalf?

12 A Right. He failed, he failed to present any evidence of
13 any mental impairments. He failed to lay any proper
14 foundation.

15 Q Well now let's just stick to like -- I want you to
16 stick to this failure to prepare your defense.

17 A Right.

18 Q So when I asked you if that's one of the grounds that
19 you're thinking that your attorney is ineffective
20 assistance---

21 A Right.

22 Q ---it's as to the defense, he didn't prepare a defense
23 for you?

24 A He didn't -- he, he allowed -- he opened the door for
25 testimony at points in the trial. He opened the door for

Norman Stoudenmire - Direct examination
by Ms. Moody

1 testimony that was damaging, that he had no business opening
2 the doors to this testimony.

3 Q Okay.

4 A Cause there was -- he was doing the job of the
5 prosecutor by opening the door to damaging testimony. He
6 didn't -- he was not allowed to do that, but he done that in
7 several instances.

8 Q Okay.

9 A Do you---

10 Q Well, I just want to -- let me, let me do this cause
11 I'm just trying to narrow it down so the Judge is clear on
12 what you're saying is ineffective assistance of counsel.

13 Okay. So is the failure to prepare a defense, failure
14 to make objections?

15 A Right.

16 Q Okay. Failure to investigate?

17 A Right.

18 Q All right. And then failure to object in the closing
19 argument to some of the testimony or closing arguments of
20 the State?

21 A Right.

22 Q Okay. And then based on that, it prejudiced you
23 because you had issues that could have been from --
24 preserved for the Appellate Court level?

25 A Yes, ma'am.

Norman Stoudenmire - Direct examination
by Ms. Moody

1 Q Okay. And so, if you had to sum it up in terms of how
2 you're prejudiced any further, can you briefly state that
3 for the Court?

4 A He didn't place the State case to any adversarial
5 testing whatsoever. He had no loyalty to his defense, to,
6 to his, to his client.

7 Q Uh-huh. (Affirmative).

8 A He -- it's, it's like what I said in several other
9 instances. Mr. Hall was a judge for 15 years as a third
10 shift magistrate judge. He worked in the Solicitor's Office
11 for ten years prior to that. So he had 25 years background
12 working putting people in jail. They's no way that he's
13 gonna come into a courtroom, I don't care what he -- he's
14 not gonna be loyal to me. Was conflict of interest all the
15 way around.

16 Q Okay. So they had---

17 A They should of never give that man to me. He didn't
18 get -- if he got disrobed or if he stepped down, he didn't
19 do it at -- somebody done it --

20 Q Okay.

21 A -- and for a reason.

22 Q Okay. Now, what is the relief you're seeking from the
23 Court here today?

24 Do you recall what you put?

25 Let's sum it up now.

Norman Stoudenmire - Direct examination
by Ms. Moody

- 1 A Yeah, I'm wanting -- but are we just gonna bypass all
2 the rest of this---
- 3 Q No, sir.
- 4 A ---for the record?
- 5 Q The Court has a copy---
- 6 A Cause this is my one bite at the apple---
- 7 Q I understand.
- 8 A ---and that---
- 9 Q But if you---
- 10 A If I'm not given the right, then I want it on the
11 record that, that I'm being refused the right to get all my
12 issues on, on the record.
- 13 Q Well, you understand -- remember we talked about
14 this---
- 15 A Yes, ma'am, we still---
- 16 Q ---that we filed---
- 17 A It's still my one bite at the apple.
- 18 Q I understand that, but hear me out on this.
19 You've put your transcript pages and all that stuff in
20 your amendments, correct?
- 21 A Yes, I have.
- 22 Q Okay. And you realize that the Judge has a copy of the
23 transcript?
- 24 A But, but I have issues there because I'm not familiar
25 with the law because I'm not laying -- I don't know the law

Norman Stoudenmire - Direct examination
by Ms. Moody

1 like you do---

2 Q Okay.

3 A ---and I don't understand, whether or not I verbally
4 speak this in and get it on the record, whether or not it's
5 gonna be preserved, preserved of the next stage of Court.

6 Q Okay. Well, let me explain to you.

7 You understand when I told you that we gave the Court a
8 copy of your amended application, PCR application?

9 A Right.

10 Q Okay. That means that it's in the record.

11 Do you understand that?

12 A I understand what you're saying, but, no, I don't
13 understand that -- I thought it had -- it had to be
14 testified to. That's what I'm---

15 Q You're testifying to it.

16 Did you understand that, when the Judge said she
17 doesn't want to hear all the facts, she wants to know what
18 you found your counsel to be ineffective or ineffective or
19 deficient as to.

20 A Right.

21 Q And remember I just went over with you the main
22 headings---

23 A Right.

24 Q ---of what was ineffective?

25 A I understand.

Norman Stoudenmire - Direct examination
by Ms. Moody

1 Q Okay.

2 A And I want the Court to understand something that the,
3 the ineffective assistance of counsel is the biggest issue
4 here because, if I had of had an attorney that knew the law
5 enough to where he would present -- his, his duty was to
6 make sure the law, regardless, is upheld. If he had of, if
7 he had of called the witnesses -- he give me advice to --
8 not to testify. Said that it wouldn't make no difference.
9 They'd impeach you with your prior record, and the only
10 thing that they was even gonna be able to bring up was the
11 fact that I had a public disorderly, a drunk and disorderly
12 within the ten year range and the CDV first. That all it
13 was a, was arguing in the, in the yard. No, no violence.

14 But he, he led me to believe that the State had no
15 case. They's no reason -- use for you to testify. So I
16 never give the jury a chance to hear any testimony from me
17 also. I didn't get to defend myself --

18 Q I understand.

19 A -- when they're statute that says Section 16-3-28
20 states that I got a statutory right to address the jury in
21 the closing. He give me instructions and told me that -- to
22 preserve the last argument --

23 Q Right.

24 A -- you don't need to testify. Even went so far as to
25 have my sisters tell me you don't need to testify. Mr. Hall

Norman Stoudenmire - Direct examination
by MS. Moody

1 says that they can't convict you. There's nothing there to
2 convict you on. You don't need to testify. So I took his
3 word and they took my life from me.

4 I'm not guilty. I didn't do this.

5 Q Uh-huh. (Affirmative).

6 A But I been railroaded in my Trial Court and now I'm
7 being railroaded again.

8 Q No, you're not cause you're putting it on the record.

9 Do you understand when I -- they're---

10 A They, they, they should of never been able to take --
11 took me to trial without giving some kind of competency
12 hearing to whether I could even stand it, whether I could
13 even make any decisions.

14 Q Uh-huh. (Affirmative).

15 A Well---

16 Q And you, you told the Court that as well as you got it
17 in writing.

18 You realize that that's of the record?

19 okay?

20 A Yes, ma'am.

21 Q All right. And we talked about that, right?

22 A Yes, ma'am.

23 Q okay. So you realize that every -- you have your
24 original application on file?

25 You realize that?

Norman Stoudenmire - Direct examination
by Ms. Moody

1 A Yes, ma'am.

2 Q Okay. And then today you have had an opportunity to
3 testify here as well as the written amendments are on file.
4 You understand that?

5 A Yes, ma'am.

6 Q Okay. And remember I -- do you recall when we
7 discussed that I said that the judge reads the transcript?

8 A Yes, ma'am.

9 Q And, and I told you about how this particular judge
10 handles reading the transcript and how thorough in detail?

11 A I understand that, but I don't understand because it --
12 everybody has told me so much about how PCR hearings are
13 handled, and this is not no where near what anybody has told
14 me how it's suppose to do.

15 Q Right.

16 A I have---

17 Q But do you understand the two aspects that we're trying
18 to show to the Court is that your attorney was ineffective
19 to the level that a reasonable attorney would have
20 represented you?

21 A Yes, ma'am.

22 Q You understand that?

23 And that you were prejudiced, right?

24 A (Witness nods affirmatively.)

25 Q And so you just told the Court, you recall that, what

Norman Stoudenmire - Direct examination
by Ms. Moody

1 you just said to the Court is how you felt you were
2 prejudiced and they took your life away?

3 Do you understand?

4 A Yes, ma'am.

5 Q Okay. So is there anything -- what kind relief are you
6 asking the Court to give you here today based off of your
7 application you filed, your amendments, and what you've
8 testified here today?

9 A I would like for the Court to remand it back for the
10 new trial so that I can get a fair chance at some kind of
11 defense instead of being throwed under the bus like I was.

12 Q Okay.

13 A If I was guilty, I would accept what was coming to me.
14 I deserved it.

15 Q Uh-huh. (Affirmative).

16 A But I'm not. I'm innocent.

17 Q Okay.

18 A And I -- my mama's done died on me since I've been in
19 here. My dad's on the verge of passing. My children won't
20 have anything to do with me. My grand -- I don't know my
21 grandchildren because of it.

22 Q So you -- you're being put in jail, that's your
23 prejudice?

24 A Being put in jail, no, it's a, it's a total breakdown
25 of the judicial system.

Norman Stoudenmire - Direct examination
by Ms. Moody

1 Q No.

2 But what I'm saying, what you lost---

3 A Yeah.

4 Q ---is your freedom?

5 A I lost my life. I lost everything. I feel sorry for
6 the fact that Ms. Emery, Ms. Emery's -- she was a friend of
7 mine. I would of never wished anything like that on her.

8 Q Okay.

9 A I never would of. I would of never hurt that woman.
10 But there's so much stuff -- that lawyer who let them take
11 my life away from me, and when he should of been the
12 advocate that the Constitution guarantees that I have
13 regardless to if I'm innocent or guilty and he didn't do it.
14 He let them -- let that solicitor paint a picture of me as
15 being a crackhead, monster that nobody in society cared
16 about. That was wrong.

17 He should of defended me. He should of done something
18 to prevent my rights being in breached. I should of had
19 my -- I should of -- I should of been placed on trial for
20 what I did or didn't do. Not for who I am. You know, being
21 a, being a drug addict or, or, or anything like that is
22 not -- it's not -- don't have no bearing cause they's a
23 difference between somebody with the intent to use drugs
24 then the intent to be a murderer.

25 Q Okay.

Norman Stoudenmire - Direct examination
by MS. Moody

1 All right. So, at this time, Your Honor, I would just
2 ask that his amendments be entered in, if they're not
3 already entered in, as a part of the record.

4 THE COURT: That's the amendment you're talking about?

5 MS. MOODY: Yes, ma'am.

6 THE COURT: Uh-huh. (Affirmative).

7 MS. MOODY: And, at this time, I have no further
8 questions for the witness.

9 THE COURT: Any questions for the witness?

10 MS. WHITE: Just briefly, Your Honor.

11 THE COURT: You may proceed.

12 CROSS-EXAMINATION

13 BY MS. WHITE:

14 Q Mr. Stoudenmire, I know you, you feel that your
15 attorney did not do anything on your behalf.

16 He filed a motion and had a hearing trying to get any
17 statements you gave to police prevented from coming in the
18 record, didn't he?

19 A Yes, ma'am.

20 Q Okay. And, in fact, you testified at that because it
21 was having to do with whether or not you had requested an
22 attorney?

23 A Right.

24 Q Okay. And so the judge heard the statements having to
25 do with how the police had talked to you and, and whether or

Norman Stoudenmire - Cross-examination
by Ms. White

1 not an attorney was there for you, and the judge,
2 unfortunately for you, ruled against you.

3 Is that right?

4 A Yeah, correct, even after the testimony of the attorney
5 that was present there in the -- at that time.

6 Q And your attorney had called those people to testify on
7 your behalf at this hearing?

8 He had---

9 A He didn't---

10 Q He had gotten -- that attorney, he had gotten your
11 sister I believe?

12 A He was present at the, at the hearing --

13 Q Right.

14 A -- the attorney was and he testified that he was there
15 and they denied, denied him access to me.

16 Q I mean Mr. Hall, Mr. Hall was the one that called these
17 witnesses on your behalf at the hearing?

18 A Ma'am, I only got, I only -- only thing that Mr. Hall
19 had anything dealing with me in my case was within a week of
20 the trial.

21 Q Mr. Stoudenmire, but he was the one who arranged for
22 those witnesses to be there to testify on your behalf at
23 this pretrial hearing, correct?

24 A Yes.

25 Q Okay. Did he---

Norman Stoudenmire - Cross-examination
by Ms. White

1 A But they -- but he never put them on the stand. He
2 never, he never used them. They were there for no reason.

3 Q They testified at a pretrial hearing where ultimately
4 the Court denied---

5 A No, ma'am. No, ma'am, there was no testimony by
6 anybody in any pretrial hearing. Only, only people that
7 testified was the two investigating officers, my sister, and
8 myself. That's it.

9 Q Mr. Stoudenmire, would you agree with me if there's
10 testimony from Clyde Pennington?

11 A That's my attorney. That was the attorney that's---

12 Q And I need you to listen to me cause I think we're
13 getting confused.

14 Your sister, Mr. Clyde Pennington, and an investigator
15 testified about whether or not your statement to police was
16 given properly, correct?

17 A The only testimony they heard was from the
18 investigating officers. I, I told them point blank that
19 they was, that they pounded on my chest, that they, that
20 they threatened me in the, in the interview and, and stuff
21 to that nature. Yes, ma'am, I did testify to the fact that
22 they was coercive atmosphere. He did pound me in my -- and
23 then he admitted it on the stand that he did have physical
24 contact with me, and for what reason, was to induce an
25 emotional response.

Norman Stoudenmire - Cross-examination
by Ms. White

1 MS. WHITE: And, Your Honor, I just note for the record
2 the, the transcript reflects the pretrial hearing that goes
3 through Page 105 where Mr. Stoudenmire, Mr. Pennington, Ms.
4 Crump, and Investigator Swad testified as to the statements
5 on behalf of the defense.

6 THE COURT: Uh-huh. (Affirmative).

7 Q You said that counsel should of objected because there
8 was no evidence put in the record about this -- the alleged
9 scratch on your neck.

10 Is that right?

11 A That's right.

12 Q Now, didn't Officer Ruffner testify that he had noticed
13 a small red mark on your neck that appeared to be a scratch?

14 A He did.

15 Q Okay. And then he acknowledged that he had not taken
16 any photos of that?

17 A That's correct.

18 Q Okay. So that was in -- that was in the record?

19 A That's correct.

20 Why don't he take a picture?

21 Why didn't he take a photograph?

22 They, they took --.

23 Q Your attorney also asked, or excuse me, Officer
24 Talanges was asked if any of the fingerprints that they
25 found in the residence were matched or did you get any

Norman Stoudenmire - Cross-examination
by Ms. White

1 responses and he said that no, they had not, there was no
2 positive responses for any of the prints that they had
3 submitted?

4 A Correct.

5 Q Do you recall that?

6 A Yes, ma'am.

7 Q Okay. Your attorney also cross-examined Officer
8 Talanges about the fact that they did not bag the victim's
9 hands immediately, that they moved her around, that they had
10 removed her shirt, rolled her over and things like that?

11 That was asked of Officer Talanges did -- was it not?

12 A He testified to that, yes, ma'am.

13 Q Okay. And, and your attorney also cross-examined not
14 only Doctor Wren, but the SLED expert about whether or not
15 there was a possibility of your DNA with secondary transfer?

16 A Which SLED expert?

17 Q I believe---

18 A You talking about Shameka Sanders?

19 Q Hold on one second. One moment.

20 (Pause.)

21 Q Ms. Lindsey Page Thompson.

22 Your attorney cross-examined and said can DNA be picked
23 up from a person's hand by coming in contact with something
24 other than what the DNA came from?

25 Could you pick it up from a table?

Norman Stoudenmire - Cross-examination
by Ms. White

1 So there -- he talked about a lot of variabilities,
2 that there was perspiring, someone was, you know, touching
3 or coming into contact with something.

4 A Correct.

5 Q So he, he cross-examined Doctor Wren about that as well
6 as Ms. Thompson, who was the SLED expert?

7 A (Witness nods affirmatively.)

8 MS. MOODY: I'm sorry. I didn't hear the answer.

9 MS. WHITE: He said yes.

10 Q Okay. Unfortunately you've said that obviously you
11 felt like they portrayed you as a crack addict, but there
12 was testimony from both your roommate as well as others that
13 they knew that you did use crack?

14 A Yeah, I did.

15 Q Okay.

16 A I have. I have. But that has no bearing.

17 What bearing does that have on the case?

18 It's not an element of the crime.

19 Q The State's motive was that you had wanted money to get
20 crack.

21 Is that correct?

22 I mean that's what they were alleging?

23 A They's what they alleged.

24 Q Okay.

25 A Yes, ma'am.

Norman Stoudenmire - Cross-examination
by Ms. White

1 Q And so the State was presenting evidence to show that
2 you borrowed money from, from folks regularly or that you---

3 A None. No.

4 Q ---used crack?

5 A Not on a regular basis, no, ma'am.

6 Q They---

7 A I worked. I had a job and I made a living.

8 Q But they presented testimony and that was their
9 argument was that you had borrowed money from folks,
10 including your boss, Ms. Pack, and that you were looking for
11 money that night perhaps from Ms. Emery.

12 Is that right?

13 A No. No, ma'am.

14 Q I'm not asking whether you were.

15 I said is that what the State was trying to show?

16 A No, ma'am.

17 Q Okay. Your attorney -- there was evidence presented
18 from Mr. Walker that he was the ex-boyfriend of the victim,
19 and that that \$20 bill, he testified that that was something
20 that he had gotten with Ms. Emery when they had gone to a
21 concept.

22 Is that not correct?

23 A That's correct.

24 Q Okay. So, so evidence that that was, the \$20 bill that
25 he had gotten a signature on with Ms. Emery was something

Norman Stoudenmire - Cross-examination
by Ms. White

1 that he was familiar with?

2 A Correct.

3 Q Okay. You're arguing that your attorney should of
4 argued third party guilt.

5 There was no direct evidence that pointed to Mr. Nivens
6 or Mr. Walker either, was there?

7 A Other than the fact that they were fighting for months
8 or amongst each other.

9 Q And that's---

10 A Yeah, they was at -- they's testimony --, they's
11 evidence there that, that that was there. But it wasn't
12 presented to the Court.

13 Q You're, you're saying that the testimony could of been
14 presented of them fighting, but other than that, there was
15 no direct evidence, there was no DNA evidence found on the
16 victim of Mr. Walker or Mr. Nivens.

17 Is that right?

18 A On the victim?

19 Q Correct.

20 A No, ma'am.

21 Q Okay.

22 A There wasn't nothing on the victim.

23 Q Okay. And you said your attorney advised you not to
24 testify, you had prior convictions.

25 One of those was a criminal domestic violence?

Norman Stoudenmire - Cross-examination
by Ms. White

1 A That's correct.

2 Q Is that correct?

3 A That's correct.

4 Q Okay.

5 A But he's also -- that it was also brought before the
6 Court that it wasn't -- that they was an officer that was
7 willing to testify that it was just arguing in, in the yard.
8 It was not no, no physical, no physical contact. It wasn't
9 that type of domestic violence.

10 MS. WHITE: Okay. Your Honor, I think that's all I
11 have at this time.

12 THE COURT: Any redirect?

13 THE WITNESS: Ms. Moody?

14 REDIRECT EXAMINATION

15 BY MS. MOODY:

16 Q Mr. Stoudenmire, you -- as far as the CDV is concerned,
17 your -- what was your point that you were trying to make
18 with regard to that being presented to the jury?

19 A The CDV's not relevant. I mean it's, it's -- it was no
20 violence. It was not no violence. So why would it be a --
21 anything that the jury should of based anything on as me
22 being a violent person because it, it was not a violent act.
23 It was only arguing standing in the yard and I went to jail
24 in order to keep her from going to jail.

25 Q But you're not -- I guess what I'm saying is you didn't

Norman Stoudenmire - Recross examination
by Ms. Moody

1 have a relationship, a relationship with the victim --

2 A No, ma'am.

3 Q -- other than you worked for and you---

4 A No, ma'am.

5 Q ---cut her grass?

6 A I didn't have any kind of victim -- any kind of
7 relationship with the victim that way, no, ma'am.

8 Q And so that's why you didn't want it in -- brought out
9 in front of the jury?

10 A Right.

11 MS. MOODY: Okay. No further questions for this
12 witness.

13 THE COURT: Sir, you may step down.

14 We're gonna break for lunch until two o'clock. At that
15 time we'll resume testimony.

16 MS. MOODY: Thank you, Your Honor.

17 MS. WHITE: Thank you.

18 (WHEREUPON, Court was in recess for the lunch hour.)

19 THE COURT: All right. Are we ready to resume
20 Mr. Stoudenmire's case?

21 MS. WHITE: Yes, Your Honor. They're bringing him in.

22 THE COURT: Okay.

23 (WHEREUPON, the defendant enters the courtroom at this
24 time.)

25 THE COURT: okay. All right. We ready to resume

1 testimony from the Applicant?

2 MS. MOODY: I think I was finished with my questioning.

3 THE COURT: No, I mean if you have any further
4 witnesses.

5 MS. MOODY: Oh, no, sir. No, ma'am.

6 THE COURT: Okay. Is the State ready to proceed?

7 MS. WHITE: Yes, Your Honor.

8 THE COURT: You may proceed.

9 MS. WHITE: We call Robert Hall to the stand.

10 THE COURT: Sir, if you'd come to the stand to be
11 sworn.

12 (Witness complies.)

13 THE COURT: Raise your right-hand to be sworn.

14 ROBERT HALL, being first duly
15 sworn, testified as follows:

16 THE COURT: If you'd have a seat for me, sir, and state
17 your full name for the record spelling your last name for
18 the court reporter.

19 THE WITNESS: All right. My name is Robert Hall. I
20 work for the Public Defender's office.

21 THE COURT: And spell your last name for the court
22 reporter.

23 THE WITNESS: H-A-L-L.

24 THE COURT: You may proceed.

25 MS. WHITE: Thank you, Your Honor.

Robert Hall - Direct examination
by Ms. White

1 THE COURT: You welcome.

2 DIRECT EXAMINATION

3 BY MS. WHITE:

4 Q Mr. Hall, do you recall representing Mr. Stoudemire on
5 his charges?

6 A Yes, I do.

7 Q And at the time that you represented him in 2010,
8 Mr. Stoudenmire is made a statement that you had prior --
9 previously worked as a magistrate and assistant solicitor.

10 Can you give us just a brief, brief statement of your
11 legal experience?

12 A I practiced in Greenville for approximately a year
13 after I was sworn in in January of 1986. In, I think it was
14 March of '87, I came to the Solicitor's Office, did three
15 and a half years in Spartanburg, three and a half years
16 roughly, maybe a little bit more, in Cherokee County. I was
17 basically the, the, I guess, first successful full-time
18 solicitor over there and now they have I think two or three
19 lawyers working full-time in that office.

20 In, excuse me, in July of 1994 I was sworn in as
21 magistrate and I was replaced in May of 2008 and been with
22 the Public Defender's Office since May of -- I think -- no,
23 excuse me. June 2nd, 2008.

24 Q Okay. And, in your experience, you've represented or
25 handled what types of cases?

Robert Hall - Direct examination
by Ms. White

1 A Everything from public disorderly conduct to murder
2 cases, a myriad of felonies, misdemeanors, just about
3 anything that comes into the Criminal Court, and, in
4 Magistrate's Court, did -- I couldn't tell you how many jury
5 trials I presided over and how many civil cases I presided
6 over in addition to all the criminal.

7 Q Mr. Stoudenmire testified that he maybe spent -- he saw
8 you approximately twice, maybe for a total of two hours.

9 Do you recall or have any notes regarding meetings with
10 Mr. Stoudenmire?

11 A Yes, I do. In -- a few months ago we did have a data
12 system upgrade, and, in the old system, we lost a lot of
13 notes, but I do have a lot of handwritten notes and some
14 documents reflected. Probably in the Summer of 2009, I
15 think it was, I got his case from another lawyer, there was
16 some conflict, and I ended up with the case.

17 I know in, I think it was late August, was a notice of
18 a docket, which he was not even on the horizon on, but I --
19 it was my practice, at that point and as much as I can
20 still, to make contact with people, to let you know you're
21 on a docket, but they're not getting to it. This -- and, at
22 that time, it's a new case to me.

23 Excuse me, Your Honor.

24 THE COURT: That's okay.

25 A In the early Fall I think he was -- looked like he was

Robert Hall - Direct examination
by Ms. White

1 gonna be coming up on a docket in December or January, and I
2 found out that he was having some kind of infection, some
3 hemorrhaging or something, and he was going to -- they
4 eventually decided they were going to send him to a, a ear,
5 nose, and throat specialist I think it was here in
6 Spartanburg, and I have some notes of December references
7 that I checked with him on December 23rd. I went back on
8 the 31st to find out what was going on. That's when he said
9 well, I've got a doctor's appointment and that he said I'm
10 not in a hurry at this point, and actually put 20 minutes on
11 that.

12 There was I think a January docket that he was on and
13 the case was continued after -- I, I can't remember for what
14 reason. Excuse me.

15 He next came up -- the docket was gonna be at the end
16 of March when the case was actually tried. My notes that I
17 kept in trial preparation started then on March 15, and I
18 still had -- at 4:30 I went to the jail. We went over the
19 issues. Started going over everything about their theory
20 that he was a crack, crazed crack addict.

21 He started talking about witnesses that we might need
22 to have, made -- were going over the evidence. Autopsy
23 report doesn't have the time of death. The knife, any tests
24 done on that. A lot of notes and things that we need to
25 follow-up on after going through them, and, on that day, I

Robert Hall - Direct examination
by Ms. White

1 left his cell at seven o'clock. So I was there from 4:30 to
2 seven o'clock. Then went to property and booking to look at
3 his booking card, which, if you look at the transcript,
4 that's a big thing of the suppression motions, how long they
5 had him between -- they pick him up. They interrogate him
6 until they finally get him to the jail and I spent another
7 15 minutes or so checking those things.

8 I have another page of notes about the timing of
9 Investigator Bryant and Ruffner, their time schedules for
10 that day of February 29th, 2008, and we've gone over that,
11 and had the note to check the card. And then I have a --
12 it's kind of disorganized, but I wrote down potential
13 witnesses for us including his father, I believe his sister,
14 Mr. Walker who testified, Lynn Jenkins, David Margerite,
15 Phyllis Pack, and John and Angela Glenn, and then I have
16 different notes besides those of later trying to contact
17 them and whether I was successful or not.

18 Q Let me -- can I stop you right there?

19 In regards to witnesses---

20 A Yeah.

21 Q ---whether any witnesses that you were able to contact
22 that you thought would be helpful for your case?

23 A Possibly his son -- possibly his sister, Denna, who, at
24 this point, started telling me I have smoked crack with him.
25 He's not crazed when he's on crack. She changed her story

Robert Hall - Direct examination
by Ms. White

1 at the time of the trial to well, it's been a month before
2 this happened since I'd seen him and it's probably been four
3 or five years since I smoked crack with him. I don't know
4 how he was on crack.

5 Unfortunately, the -- and these are people who are
6 suppose to help him. Like Phyllis Pack was a State's
7 witness that I was able to find and the State, unbeknownst
8 to me, the State really wanted her, they hadn't been able to
9 find her and she contacted them the next day.

10 David Margarite I tracked down in ICU at Spartanburg
11 Regional Medical Center. Got permission from his family to
12 talk to him. I spent, I think it was, 15 minutes before it
13 was clear he was upset, but his concern was to get the case
14 continued so I can testify against him cause he did it. I
15 didn't get what information he supposedly had, but it's
16 clear he was not one of our witnesses, as clear as it was
17 that Ms. Pack was not one.

18 I spoke to his father who made a very blunt statement
19 that I had to take back to Mr. Stoudenmire unfortunately.
20 He said that he could not testify on his son's behalf
21 because he's a Christian and he assumed that I wanted to say
22 good things and he would have to lie to do that and we
23 couldn't use him.

24 Q So -- I'm sorry.

25 So, so indication was, was not good that there were

Robert Hall - Direct examination
by Ms. White

1 gonna be any witnesses that would be helpful for anything on
2 character to anything that happened that evening?

3 A No, every -- almost everybody I tracked down, except
4 his sister, indicated they wanted to testify against him.

5 Q In regards to the trial strategy, he's testified that
6 y'all really didn't discuss a defense, you really didn't
7 prepare that.

8 What was the strategy or defense that you were gonna---

9 A His story was that I was asleep, I didn't do it,
10 somebody else must of done it, and we looked at, and like we
11 do in a lot of cases, the problems in the State's case.
12 There were several things they should of done that they
13 didn't do, they didn't follow-up on.

14 We, I know, had a long discussion about do we move to
15 suppress the statement or do we take the chance and let them
16 go in and testify, and, cause if you read the reports, it
17 sounds like they talked to him for an hour and a half, two
18 hours. It was really eight hours, but we---

19 Q And, and you did all---

20 A Before, before trial we decided no, we're gonna do a
21 suppression.

22 Q Okay.

23 A We talked about the DNA, and at this -- by this time I
24 think I talked to the DNA experts that SLED had and they
25 were telling us what we needed. They can't tell you how

Robert Hall - Direct examination
by Ms. White

1 long the DNA had been there or how it got there. They can't
2 tell you, you know, it if had been there for an hour, if it
3 had been there for several days or several weeks. There's
4 just no way of telling.

5 Q And was this DNA found on the victim?

6 A There was some DNA found I believe from her
7 fingernails. She was a block layer. Her fingernails are
8 rough, her hands are rough, and, you know, things can stick
9 to, you know, a rough surface easier they can to a smooth,
10 smooth surface. I think we brought that out.

11 But in the couple weeks leading up to the trial, I
12 spent several hours at the jail. Sometimes it was a short
13 period of time because I would have to do things.

14 Mr. Pennington was less than cooperative and we needed him
15 for the suppression hearing. I think the week before the
16 trial I spent, gosh, several hours down in Laurens trying to
17 track him down. I think -- let me see when the 25th was.

18 I found his house. I know some people from Laurens. I
19 was able to contact a cousin of his to get the address, but
20 he didn't have a phone number, and when I couldn't find him
21 that evening, I think I was there from -- I left a little
22 before 5:00. I was there till like 8:30 trying to find him,
23 but I got one of our -- I came out there from eight -- 5:45
24 to 8:30 in Laurens and trying to, you know, knock on doors
25 and talk to people. Confirmed he lived there, but he was

Robert Hall - Direct examination
by Ms. White

1 kind of reclusive.

2 Q Let me---

3 A But I got an---

4 Q ---ask you real quick.

5 A ---investigator to get him the next day.

6 Q I'm sorry. About the mental health issues.

7 A Yeah.

8 Q Was that something that was discussed between you and,
9 and the Applicant?

10 A He told me that sometimes he blocks things. Pretty
11 much the same story I think is in the interview with the
12 officers that he saw his young daughter killed in front of
13 him in an accident and sometimes he blocks things out. I
14 don't remember him ever mentioning his posttraumatic stress
15 syndrome or necessarily thinking that. I think it's kind of
16 a normal defense mechanism that humans have.

17 I think he indicated that he had gotten a check and was
18 getting a check, but it's pretty much -- it seemed like he
19 enjoyed the life-style working when he needed to and not
20 working when he could get some other source of income.

21 Q Was there any concern about his competency or anything
22 that would of led you to request a mental evaluation?

23 A No, he understood the conversations we had. He
24 understood the criminal justice process, the system, and
25 there was no doubt in my mind he was competent.

Robert Hall - Direct examination
by Ms. White

1 Q Did you ever look into, and I know you mentioned you'd
2 spoken with the, the DNA expert from the State, was there
3 ever any discussion or thought that you needed to get an
4 independent expert?

5 A No, this was a, as I remember it, was one of those
6 numbers that you had to multiple the population of the world
7 a few hundred times to get somebody with the same DNA. You
8 know, we didn't -- he never denied being in the house. In
9 fact, we solicited from the State's witnesses that he had
10 moved furniture, including the bedroom furniture, that he
11 had moved things around to set up the computer I think for
12 telephone Internet access looking for the phone jack, that
13 he did some programming on her computer. So he was all
14 through the house, which would explain why his DNA was
15 there.

16 Q In reference to third party guilt, obviously there were
17 multiple people involved in the case. There was an
18 ex-boyfriend that was also the Applicant's roommate. There
19 was someone that she -- the victim was kind of seeing at the
20 time and, and other folks.

21 Was there any, any credible evidence that would of
22 raised a question as to the Applicant's guilt that you could
23 of presented?

24 A No, there was nothing that directly pointed to any
25 individual. There was -- we tried to give other people or,

Robert Hall - Direct examination
by Ms. White

1 you know, there was a Mr. Nivens son who was probably
2 jealous of his father's relationship. He was a very close
3 father/son relationship. It's like the boy didn't -- he was
4 old enough to drive, you know, 20 years old or so, didn't
5 have a driver's license, didn't have a job. You know that
6 he would see Ms. Emery has problems in that relationship.

7 His friend, Lee Walker, his roommate who actually did
8 well for us, did very well for us, you know, he had had the
9 relationship and supposedly was jealous about Mr. Nivens,
10 and we put all that to the jury, but we were -- and we were
11 arguing that his DNA certainly had a reason for being there.
12 DNA can stay for a long time and then test positive and then
13 pointed out things that the State did not do.

14 Like I think he testified that they said that that --
15 the fingerprint on the picture box where the photo of David
16 Ball and the \$20 signed bill was, as I recall, they pulled a
17 print, didn't get a hit, and didn't check with -- didn't do
18 anything else. They didn't go to Mr. Nivens, look at his
19 fingerprints, go to Lee Walker and look at his, and I don't
20 even know if they compared it to his -- to
21 Mr. Stoudenmire's.

22 The -- there was rolls of film, a digital camera they
23 did nothing with.

24 Q And so you were trying to use that to, to exploit and
25 cause holes, I guess, or questions as to the State's case?

Robert Hall - Direct examination
by Ms. White

1 A That's correct.

2 Q Okay.

3 A And, you know, the actual killer could be on that
4 digital camera, but they never did anything.

5 Q They did though compare the DNA found and exclude Mr.
6 Walker and Mr. Nivens?

7 A Yes, ma'am.

8 Q Okay. And your client also -- you talked about trying
9 to suppress the statement.

10 He never actually said I killed the victim, but he did
11 talk about responsibility?

12 A Supposedly to Bryant and Ruffner that he said that he
13 felt responsible or something along those lines, yeah. I
14 feel responsible.

15 But we also argued that, even though they had, I forget
16 how long the video of going through the house, they didn't
17 videotape his interview they said because they wanted the
18 flow of communication to continue, and I think, at one
19 point, that may of been before trial, they said that he
20 didn't want it interviewed -- videoed. But I'm not sure if
21 they ever really testified to that.

22 Q Was there any concern about -- other than you raised
23 issues obviously about the failure to bag the victim's hands
24 immediately. The Applicant also talked about the seal being
25 broken on the box.

Robert Hall - Direct examination
by Ms. White

1 Were there concerns of yours that, that any evidence
2 was contaminated or --?

3 A Well, the -- not sealing the hands really fit into our
4 theory that the -- they moved the stiff body and I believe
5 her hands were out and on the bed that he had moved and
6 argued that that's how his DNA got there, that they moved
7 the body a few times before they bagged it. They basically
8 did all their crime scene, I think it was, all the crime
9 scene stuff and then said we're gonna move the body, now we
10 bag the hand, and that fit into our argument that that's how
11 his, his DNA got on her hands.

12 She has rough hands. They moved her around. They
13 don't know where those hands went and that's how I've got
14 picked up.

15 Q In regards to---

16 A And on the box, the sealed box, it's sealed on two
17 sides. It's hinged on one. One of the seals was broken. I
18 think Rosenberg testified that the box can shift and it
19 breaks, but the other side was not broken, which means you
20 couldn't get into the box. If you'd lifted that one side,
21 it would of, it would of broken the other side and he did
22 reseal it.

23 Q Okay. In regards to testimony about the Applicant
24 smoking crack or borrowing money, was there anything that
25 you felt was legally objectionable?

Robert Hall - Direct examination
by Ms. White

1 A No, this -- going in people's -- talking -- supposedly
2 talking about specific instances with him, and I think, on
3 every one of them, we got them to say well, he was upset and
4 I don't know if he was on crack or if he was drinking or
5 what.

6 The one incident they tried to make a big deal out of
7 with the couple that witnessed it, when it came down to
8 cross-examination, because I talked to them before, asked
9 them wasn't this the girlfriend that was causing trouble
10 that he had to evict, yes, and she and her family came to
11 the house and wouldn't leave and he was angry.

12 You know, wouldn't you be angry if somebody -- you told
13 somebody to leave your house and they wouldn't leave?

14 Yeah, I'd be angry. I'd yell at them. That's what he
15 was doing. So I think we disproved the crazed crack addict.

16 Q And ultimately you -- he talked about the fact that he
17 was advised not to testify.

18 Was that something strategic on your part or was that
19 based on anything?

20 A Let's see. In early -- in the -- I have some notes
21 from the middle of March where we did discuss, if he does
22 testify, that I don't think there's really anything of much
23 substance that they can impeach him with, and that we'll
24 just have to see, once we do suppression, how he feels, you
25 know. I think it's, it's clear in the transcript that there

Robert Hall - Direct examination
by Ms. White

1 was really nothing that was within a -- ten years that they
2 could use to impeach him, and, during his suppression or
3 after the suppression, excuse me, he -- we talked and he
4 said I did bad.

5 At that point I said, you know, don't worry about that,
6 you know, we're okay, and we'll, we'll discuss all this
7 later when, you know, about testifying. I think he
8 indicated, at that point, that he was afraid of testifying
9 because he doesn't think he would do well. We had other --
10 I think another discussion and we had -- I had an
11 investigator, Wendy Alley, with me through most of this
12 trial and conversations with him, but we were planning on
13 putting up his sister and probably Mr. Stoudenmire.

14 At the conclusion I asked for time to talk to him. It
15 was -- I was backing up on putting up his sister because she
16 had changed her story towards the end of the trial. She
17 said well, when it comes, comes right down to it, I haven't
18 smoked crack with him probably in four years or better and I
19 don't know, you know, the last time I saw him was a month
20 before this and I don't know if he's smoking crack or not.
21 So I can't tell you how he was close to the time of this
22 event, if he smoked crack, if he was peaceful, if he was --
23 I, I just can't tell you and we discussed whether or not he
24 wanted to testify.

25 He was leaning towards not testifying because he did

Robert Hall - Direct examination
by Ms. White

1 not respond well to the cross-examination on the
2 suppression. He asked us to talk to his sister and I think
3 he said his sister -- we got his sister to talk to him. I
4 don't remember that, but sometimes they'll, they'll let a
5 family member come in to talk to somebody for us, and she --
6 it was her opinion that he shouldn't testify. I didn't tell
7 her to say that.

8 You know, I could go either way. I would -- I don't
9 know how well he would hold up for cross-examination, but we
10 had the, the statement and, in their interrogation, that he
11 smoked crack, he fell asleep. A few hours later he got up
12 and went to bed and he never went up there.

13 Q Okay. So he wouldn't of testified obviously to
14 anything having to do with a specific alibi or self-defense
15 to support---

16 A No, if -- his only testimony would of been I was at
17 home asleep.

18 Q Okay. Thank you.

19 That's all I have at this time.

20 THE COURT: Any cross-examination of the witness?

21 MS. MOODY: Yes, ma'am.

22 THE COURT: You may proceed.

23 MS. MOODY: Thank you.

24 THE COURT: You're welcome.

25 CROSS-EXAMINATION

Robert Hall - Cross-examination
by Ms. Moody

1 BY MS. MOODY:

2 Q Mr. Hall?

3 A Yes, ma'am.

4 Q You indicated that Mr. Stoudenmire had been or had
5 access to the victim's home because of doing the computer
6 kind of work and moving furniture and all that---

7 A Yeah.

8 Q ---as well as that he had -- I guess you said he moved
9 furniture?

10 A Yeah, cause he was in her bedroom to set up a computer
11 in the bedroom. They needed the phone line. He had to move
12 furniture around, including the bed, to find a phone jack to
13 plug into the wall or plug into the computer.

14 Q Okay. And so let me understand -- I understand the
15 strategy that you might -- you had in terms of he was at
16 home asleep.

17 So it didn't cross your mind to get a DNA expert that
18 would be for the defense side?

19 A Well, I had talked to the agents for the State that did
20 the testing and their testimony was we can't tell you how
21 the DNA got there. We can't tell you how long the DNA, you
22 know, if DNA, like on the cans, they couldn't tell -- it was
23 her DNA, but they couldn't tell how long it had been there.
24 We knew that she was not drinking the night before she was
25 found.

Robert Hall - Cross-examination
by Ms. Moody

1 Q But I'm, I'm -- I guess what I'm getting at is like as
2 far as putting up a defense for him, not necessarily what
3 the SLED agents were gonna say, not necessarily what the
4 SLED agents were gonna say on his behalf -- on, on the
5 State's behalf, but as to what an expert would be able to
6 testify as to what they could---

7 A All right.

8 Q ---affirm in terms of him being there testifying on
9 behalf of Mr. Stoudenmire.

10 A If we had hired a DNA expert --

11 Q Uh-huh. (Affirmative).

12 A ---we would of been trying to get him to say we
13 can't -- they can't tell you how long DNA had been somewhere
14 before it gets picked up, whether it's a scratch like they
15 alleged here or DNA that's on furniture that the dead hand
16 rubs up against. We basically got that from the State and I
17 knew they were gonna testify to that.

18 As far as an independent analysis, we were at the
19 numbers that were I think 950 billion to one that, even if
20 we cut that in half, we're still talking 50 or 75 times the
21 population of the world. So the numbers were -- we weren't
22 gonna be able to bring those numbers down.

23 I didn't see what we were gonna get from an independent
24 DNA expert when we got what we wanted from the State's
25 witnesses telling the jury we can't, we can't tell you where

Robert Hall - Cross-examination
by Ms. Moody

1 the DNA came from. We can't tell you how it got there. We
2 can't tell you how long DNA stays and still can be tested.

3 Q Okay. So you just -- from -- you felt like you were
4 gonna get the same response from another expert?

5 A We got the response that we wanted from the State's
6 witnesses.

7 Q Right.

8 So I'm saying the -- not cause sufficient to hire
9 another expert is what -- how you raised it?

10 A I didn't think there was any need to get somebody to
11 say what we got the State's witnesses to say.

12 Q Okay. All right. As far as the crack -- the crack --
13 I think the term is the crazed crack addict --

14 A Uh-huh. (Affirmative).

15 Q -- as -- I understand that you were able to get the
16 witnesses to say, you know, well, you know, I've never seen
17 him on crack. I don't know what he was high on or what have
18 you.

19 At any point did you think it was necessary to try and
20 or did you even know they were gonna come out with a crazed
21 crack comment?

22 A Yeah, we, we discussed that. I knew they were gonna do
23 that. We -- I discussed that with Mr. Stoudenmire, but I'd
24 also talked to the witnesses that the State was gonna call
25 because a lot of them were witnesses that he told me to get

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1 in touch with that were gonna help us that turned out to be
2 State's witnesses.

3 But I knew, from my interviews with them, like the
4 couple, I think the Glenns it was, that were supposedly
5 gonna say he was crazed and all this about the -- but it was
6 the incident where he's telling somebody this is my
7 property, I've evicted you, you and your family leave or I'm
8 calling the police.

9 Q I guess what---

10 A So he went from being a, you know, from them trying to
11 present that witness to show that he was crazed to no, he's
12 a normal human being who owns a home, who somebody's trying
13 to stay on his property, and did he get loud with them to
14 tell them to leave?

15 Yeah.

16 But anybody would. I think Ms. Glenn testified or
17 Mr. Glenn said yeah, I would yell at them and tell them to
18 leave. I'd of done what he did. And then Ms. Pack, when
19 supposedly thought -- she could not say he was on crack.
20 She could not even say that he made a violent threat. I
21 think the threat was I'm gonna call D.S.S. on you for the
22 way you're doing your daughter or something with the
23 daughter, which was not a threat of violence. It's a threat
24 of reporting somebody to the authorities, which is we
25 just -- their witnesses that, you know, were suppose to

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1 testify that he was crazed did not. In cross-examination
2 they said well, no, he wasn't.

3 Q So in terms of -- can you see how that might of
4 influenced the jury in terms of allowing witnesses to or
5 allowing the State to characterize him as that?

6 A Their theory was that he was high on crack, desperate,
7 crazed, whatever, and attacked her and killed her, and every
8 witness they called to try to prove that he's a crazed drug
9 addict, at the end, said well, no, he wasn't.

10 Q Okay. So you objected---

11 A From my talk---

12 Q ---to that -- maybe I missed that.

13 Did you object to -- did you file a motion with regard
14 to the characterization of Mr. Stoudenmire?

15 A No, I did not.

16 Q Like I that they, they made, they made the comments
17 that they thought he was on crack, that the, the State made
18 that comment.

19 A They were trying to put that forth. They argued it in
20 closing. We countered with none of their witnesses told you
21 that. The State says he's a drug crazed maniac, some kind
22 of Superman, or whatever. But he's not. He's a normal
23 person. He smokes crack sometimes, but there's no evidence
24 that he ever gets violent, you know, wild, or anything.
25 It's just not before you. It's not before you.

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1 Q Okay. As far as his testifying on the stand, I think
2 you heard his testimony that it, I guess, it was your
3 decision you didn't think he would be a good witness on the
4 stand?

5 A It was his decision.

6 Q Okay.

7 A I agreed with him, but it was his decision.

8 Q And you're saying you agreed with him based on how he
9 responded on the stand during the in camera hearing?

10 A And how nervous he was at the point when he would be
11 testifying.

12 Q Uh-huh. (Affirmative).

13 A He just -- I didn't think he would do well. He didn't
14 think he would do well. Like I said, we got -- Ms. Alley
15 and I spoke with his sister and she agreed that no, I would
16 think he will not do well on the stand, and it's better for
17 him not to testify.

18 Q Okay.

19 A But that was his decision. If he had wanted to testify
20 we would of put him on the stand.

21 Q Now, as to his competency, and maybe that ties into how
22 nervous he was or what have you, you said you had no opinion
23 that -- you didn't have the opinion that he needed to have a
24 competency evaluation?

25 A No, I did not.

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1 Q Okay. And can you tell me kind of -- and you may of
2 said this. I apologize.

3 A No.

4 Q But---

5 A He understood the criminal justice system. He
6 understood my role, the Judge's role. There was, you know,
7 the, the State's roles, the jury. He understood all that.

8 At -- I guess in the summertime of 2009 whenever I
9 ended up with this case, I had talked with him and there was
10 no reason to believe there was anything mentally deficient,
11 that he suffered from any kind of mental illness that kept
12 him from being criminally responsible or understanding the
13 process, and he was very -- I mean I have, at one point, I
14 think it's in the other folder, three pages of notes of
15 things that he said this is what we got to pay attention to,
16 this is what we got to work on, this is what we need to look
17 at.

18 Each time I went to the jail, and whether it was for
19 half an hour, for two and a half hours, I would come back
20 with notes of things that we talked about yeah, we need to
21 do this. Sometimes he would have a concern and---

22 Q So, you're saying---

23 A ---with addressing---

24 Q ---he was asking you these questions and you were
25 writing these things down?

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1 A Yeah.

2 Q Okay. Is there any reason why -- I guess there was a
3 Buccal swab taken.

4 what happened with -- did you not feel that they needed
5 to put that in to show any information about him being, I
6 guess, the person's nails being---

7 A I don't -- I'm not sure what swab you're talking about.
8 The---

9 Q His swab is not in there.

10 Do you know what happened with why the State didn't
11 introduce that into evidence?

12 Can you---

13 A I know he gave the sample the day they, I think, first
14 interviewed him I think it was. I can't remember for sure.
15 But I don't, I don't recall the -- anything about the --
16 that his swab from the trial. Actually I don't recall if it
17 was in there or not.

18 Q Well on the list it wasn't. I just was wondering why
19 it was---

20 THE COURT: However, in the record, it says it's
21 introduced as State's No. 35 at Page 331 of the transcript.

22 MS. MOODY: Not on mine. It has---

23 THE COURT: It says---

24 MS. MOODY: Are you saying there's---

25 THE COURT: All right. There's also a Buccal, a Buccal

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1 swab collection kit that has a SLED number on here. Looks
2 like No. 8. I believe that refers to Mr. Stoudenmire.
3 State's Exhibit No. 35.

4 MS. MOODY: See we have that as the victim's.

5 THE COURT: Is your signature anywhere on that property
6 sheet regarding the DNA swabs collected from
7 Mr. Stoudenmire?

8 MS. MOODY: What pare are you---

9 THE COURT: No, sir, Page 331.

10 MS. MOODY: See it's not listed in my transcript.
11 That's why.

12 THE COURT: Yeah, it might just be a, a scribner's
13 error with the court reporter when she was marking the
14 exhibits, but in the record it says the State's 35 and that
15 it's his Buccal swab. It came in on Page 396, State's 35,
16 Buccal swab. No, that says victim. I think that's a typo.

17 MS. MOODY: Okay. And that's what I was saying.

18 THE COURT: Because in the actual body of the
19 transcript it says it's his and they have the officer
20 testify, I would assume for chain purposes, as to whose it
21 was. I think it was probably suppose to say defendant's
22 instead of this victim---

23 MS. MOODY: Okay.

24 THE COURT: ---and it's a typo and it wasn't never
25 caught by anybody.

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1 MS. MOODY: Okay. Oh, because they moved all of them
2 in at one -- okay.

3 THE COURT: It came in. I just think the index has a
4 typo.

5 MS. MOODY: Okay.

6 THE COURT: A scribe's error.

7 MS. MOODY: I beg the Court's indulgence.

8 THE COURT: Uh-huh. (Affirmative).

9 (Pause.)

10 THE COURT: And that's at Pages 331 through 336 of the
11 transcript that established the chain --

12 MS. MOODY: Okay.

13 THE COURT: -- regarding his Buccal swab --

14 MS. MOODY: Okay.

15 THE COURT: -- which is State's 35.

16 MS. MOODY: All right.

17 Q Can you recall talking to John about his demeanor on
18 that Sunday, Mr. Stoudenmire's demeanor on that Sunday?

19 A Okay. I -- you're not -- okay. You're talking about
20 Mr.---

21 Q John Glenn.

22 A Yes.

23 Q And you were asking him about his demeanor on that
24 Sunday. I guess this incident occurred on a Saturday.

25 A Yeah, I think they said he was quieter than usual or

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1 something.

2 Q So---

3 A That's correct.

4 Q You were asking that -- can you tell me why you were
5 asking about the demeanor after -- on Sunday?

6 Do you recall?

7 A I, I know that that was -- I think the State had said
8 his -- was trying to say his demeanor was different that
9 day, and so I asked him about it and then argued that, you
10 know, he -- it's just normal behavior. He was cutting wood
11 instead of talking with him I think is what it was, and then
12 he left with his sister and, at some point, I can't remember
13 if it was Mr. Glenn and Mrs. Glenn, I think Mrs. Glenn said
14 he called the house, called her, and I thought it sounded
15 like checking on his house and said gosh, the police are at
16 Ms. Emery's and then he called back and said well, that's
17 just normal.

18 The police are in the neighborhood, you're out of town,
19 you know, what's going on. But it was -- I think they were
20 trying to make more out of it than it was that he, he wasn't
21 talking to Mr. Glenn, but, you know, it -- I think we showed
22 that he didn't have the, you know, necessarily type
23 relationship that he's always gonna stop what he's doing and
24 going to talk to him. He's just -- it's just normal
25 behavior. He's cutting wood or whatever before he leave.

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1 Q So -- and I beg the Court's indulgence.

2 THE COURT: Uh-huh. (Affirmative).

3 (Pause.)

4 Q And as far as -- I just wanted to go back over
5 something. When the State was giving their theory -- I
6 don't know if you had a theory at the beginning of how they
7 were approaching the case. I know you knew about the crack.

8 As far as him being characterized as a, a crazed crack
9 addict and calling him -- questioning the fact that he
10 carried a gun and borrowing money or any of that stuff, did
11 you not feel that that was gonna have some kind of impact on
12 how the jury viewed him in terms of his overall character?

13 A They were trying to build a case, make him look bad,
14 but everybody pretty much they put up to say bad things
15 about him we got to say well, no, he wasn't.

16 Q I guess what---

17 A So---

18 Q I hear what you're saying in that regard.

19 So I guess my question should probably be was it
20 your -- that was your theory or, or you were gonna try to
21 negate their theory as opposed to like---

22 A We made---

23 Q ---seek an objection?

24 A We knew we were going to be able to discredit what they
25 were trying to say. They were trying to get the witness to

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1 apply something, and then when we went into the details, it
2 was something different. You know, he was not threatening
3 to hurt me. He was threatening to call D.S.S. because of
4 the way something with my daughter, the way my -- I was
5 dealing with my daughter.

6 He was yelling and mad. Well, he was telling people to
7 leave his property that wouldn't leave that he had had
8 evicted from his property. It's normal behavior.

9 Q Okay. No.

10 well, as far as the motive for him being the actual
11 person who killed the victim, you know, the -- I think the
12 State advanced the theory that she fired him, the victim
13 fired him, and they had -- I mean they rode to work
14 together, he did work in her house, what have you.

15 Did you know ahead of time or what, what was your
16 position on that in terms of how you were gonna handle that?

17 A That Ms. Emery did not fire her.

18 Q Him?

19 A Him. Excuse me.

20 Q Okay.

21 A All Ms. Emery did was say you need to call Pat.

22 THE COURT: I'm sorry. Please repeat that. I didn't
23 hear you.

24 A You need to call Pat. Pat was the one they worked for,
25 the employer, when -- apparently when he called and said I

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1 don't need you anymore.

2 Q So did you know ahead of time that they were gonna,
3 that that's what -- the direction they were going with that?

4 A I knew that's what they were trying to say, yeah, he,
5 he was mad cause she had fired him, that he -- she stirred
6 things up, but the truth of it, from talking to Lee and the
7 other witnesses was she did not stir things up. All she did
8 was pass on the message I've -- I assume she knew that
9 Mr. Stoudenmire was gonna be fired, but she didn't fire him.

10 There's no evidence that said, hey, you're fired,
11 buddy. It was you need to call Pat, and then apparently she
12 and Lee or whoever went to work. He called Pat and found
13 out he didn't have a job.

14 Q Okay.

15 A So, you know, it's, it's not even shooting the
16 messenger because she wasn't the messenger. All she did was
17 say call Pat. Pat's the one that dismissed him or whatever.

18 Q Now, when you went out to the jail to meet with him and
19 the discovery that you had received from the State, did you
20 go over that discovery with him and explain to him where you
21 might of saw weaknesses or strengths in the case?

22 A Uh-huh. (Affirmative).

23 We really went into a lot of details with the reports
24 for the initial, not the initial interview, but the
25 interview with the confession, and that's when it became

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1 clear that we're not talking about an hour or two. We're
2 talking like eight hours, but they wrote their report like
3 it was over at two o'clock or so I think it was, and when,
4 in reality, they had him for over eight hours.

5 We discussed a lot about gosh, do we do a suppression
6 motion and bring this out. Do we see if, you know -- you
7 know, in the end, we don't want to take the risk of just
8 letting him come in and testify and per chance they say
9 well, and we actually didn't get him to the jail until eight
10 o'clock, you know.

11 With some of these police officers, sometimes they'll
12 get up. They'll just testify as briefly as they can to get
13 to say what they wanted to say and, you know, but the end
14 was we decided it's not, it's not worth the risk. They're
15 going to realize that, you know, Mr. Gray and Ms. Poulos, if
16 not the officers, are gonna look at the reports and say, you
17 know, they're not stupid. They're gonna know that he didn't
18 get to the jail until 8:00 or 8:30.

19 So we did the suppression motion, and, at that point,
20 they certainly did know, but, you know, they -- we -- I mean
21 that's just one example of things we went through. We, we
22 talked about the DNA a great deal --

23 Q Okay.

24 A -- and I told him about this is what their people are
25 saying. The DNA hurts. But they can't answer -- you know,

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1 they can't -- they're gonna give us what anybody could give
2 us that we need it. They can't say how the DNA got on her
3 hands.

4 Q Okay.

5 A The police were---

6 Q So you did go---

7 A ---foolish enough to move a dead body around without
8 bagging the hands. It -- all those things fell into place.

9 Q So y'all did go over the discovery?

10 A Yes, we did.

11 Q Was there an offer in this case?

12 A No, there was not.

13 Q Okay. Did you ever entertain pleading or it was not---

14 A Asked for an offer, yeah, but it's not unusual for
15 Judge's to -- in from other circuits to come in here and
16 have PCRs or whatnot and comment on how our judge's
17 sentence. I don't think any judge that we generally have
18 here or had the opportunity to even consider pleading to,
19 not that he ever entertained pleas, it's I didn't do it.
20 We're going to trial. If he pled to murder, he's probably
21 gonna get life anyway.

22 why not go to trial?

23 Q Okay.

24 All right. No further questions for this witness, Your
25 Honor.

1 THE COURT: Redirect.

2 MS. MOODY: Nothing, Your Honor.

3 THE COURT: I do have a question. There was a ground
4 raised regarding your request for certain jury charges.

5 Did y'all have a charge conference in the case?

6 THE WITNESS: I think it was in chambers, Your Honor,
7 and---

8 THE COURT: Do you recall whether you made any requests
9 for instructions?

10 THE WITNESS: I requested manslaughter, I believe it
11 was, and Judge Cole indicated he did not think there was
12 any -- enough on the record and it's denied.

13 THE COURT: Did you ask about anything regarding any of
14 the statements that were alleged to have been made by
15 Mr. Stoudenmire, any kind of Jackson versus Denno language?

16 THE WITNESS: No, we moved to suppress the statement
17 because we felt like---

18 THE COURT: Uh-huh. (Affirmative).

19 THE WITNESS: ---it was not voluntarily given. He
20 had -- his family had indicated that they were sending a
21 lawyer, in fact, by -- before two o'clock there was a lawyer
22 there. I can't remember if it was one o'clock or two
23 o'clock when he got there and he stayed till after five
24 o'clock and he was asking -- Judge Cole specifically ruled
25 that Mr. Stoudenmire, while indicating that possibly wanted

1 a lawyer, he agreed to talk to the officers without a lawyer
2 there, and, therefore, he waived his right and he said that
3 the lawyer can't assert the right for the client, like
4 Mr. Pennington was about to say. I'm there saying don't
5 talk to my client anymore, I want to talk to him.

6 The Judge found that Mr. Stoudenmire waived his right
7 to an attorney. He never asserted -- and then he never
8 asserted his right that I don't want to talk, I want to have
9 my lawyer here.

10 THE COURT: The language that I'm asking you about is
11 the language where you instruct the jury that it's
12 ultimately their decision, beyond a reasonable doubt, as to
13 whether the statements were ever made and whether the
14 defendant was Mirandized.

15 Did you ever make a request like that?

16 THE WITNESS: I don't remember making that, Your Honor.

17 THE COURT: I think that's the instruction that --
18 isn't that the instruction that Mr. Stoudenmire's saying was
19 not requested?

20 MS. MOODY: Yes, ma'am.

21 THE COURT: And I just needed that addressed.

22 THE WITNESS: Yeah, I, I don't remember. Judge Cole
23 is -- does a lot of that in chambers, and I just -- I don't,
24 I don't specifically---

25 THE COURT: So you don't remember?

1 THE WITNESS: Specifically, no, I don't remember that.

2 THE COURT: So y'all didn't put the charge conference
3 on the record?

4 THE WITNESS: I'm---

5 THE COURT: The record doesn't reflect that it was. I
6 just wanted to make sure---

7 THE WITNESS: I don't think he's---

8 THE COURT: ---it's accurate.

9 THE WITNESS: Like I say, he -- Judge Cole does not --
10 he tries to cut off as much argument as he can in the
11 courtroom.

12 THE COURT: Any questions as a result of the Court's
13 questions from the State?

14 MS. WHITE: Nothing, Your Honor.

15 THE COURT: From the Applicant?

16 MS. MOODY: Your Honor, I would follow-up and just ask,
17 in terms of the charge conference that's held
18 off-the-record, does Judge Cole require you-all to submit
19 written judge -- jury charges?

20 THE WITNESS: No.

21 MS. MOODY: Do you recall if you did any?

22 THE WITNESS: I don't recall doing any. I'm not sure.
23 Like I said, when I check on the old data system, none --
24 some of the documents are gone. Some -- that -- like a --
25 letters, some of them got -- just did not get transferred

1 over, and I was -- I did try to check that.

2 MS. MOODY: Thank you. No further questions, Your
3 Honor.

4 THE COURT: Any questions as a result of the
5 Applicant's questions from the State?

6 MS. WHITE: No, Your Honor.

7 THE COURT: Sir, you may step down.

8 THE WITNESS: Thank you.

9 THE COURT: You welcome.
10 Anything further from the State?

11 MS. WHITE: No other witnesses, Your Honor.

12 THE COURT: Any rebuttal testimony from the Applicant?

13 MS. MOODY: No, Your Honor.

14 THE COURT: Is there any argument?

15 MS. MOODY: Your Honor, we rest on the transcript and
16 the amendments that my client presented and his testimony?

17 THE COURT: Anything from the State?

18 MS. WHITE: No, Your Honor.

19 THE COURT: Okay. I need to review the transcript
20 again in this matter. I'm not inclined, however, to grant
21 the relief as I don't think that the Applicant is met his
22 burden of proof. But there's some portions of the
23 transcript that I need to read again having -- now having
24 had the benefit of testimony. I read it cold before I had
25 any benefit of the testimony, and now I need to read it

1 again now having had the benefit of both Mr. Hall and
2 Mr. Stoudenmire's testimony.

3 I can say, however, that as regards to the DNA, his
4 request that there should of been a DNA expert, I don't find
5 any merit in that argument. As his attorney has indicated,
6 while you have the latitude to hire an independent expert,
7 you hire an independent expert, they're gonna say something
8 different than the expert that's already gonna testify and
9 he was able to elicit favorable testimony he needed from the
10 State's expert without having to have the expenditure of an
11 independent expert or to have his independent expert, while
12 he didn't say this, this is normally what happens in trials
13 when you hire an independent expert, the State then gets
14 into how much that person was paid and it brings their
15 credibility really into question.

16 So for him to be able to have elicited that testimony
17 from the State's expert, I can discern no prejudice from
18 that. Frankly, he advocated in his client's best interest
19 in that regard.

20 I do not find any deficits as regards to the DNA kit in
21 light of Mr. Hall's testimony that, in order for it to have
22 been compromised, both seals would had been broken, that one
23 seal was broken due to jarring, and then it was resealed.
24 So there really was no evidence that would of risen to the
25 level of questioning the integrity of the DNA kit although

1 there's a lengthy discussion about it in the record.

2 He's raised some issues about an abuse of discretion in
3 the Judge's ruling. That would be a matter for appeal and
4 all of the matters that could of been raised in the appeal
5 were objected to and preserved, and so this Court would have
6 no authority nor is that the appropriate basis for a PCR
7 application or relief. And so there's no merit in that
8 argument.

9 He says that his, his lawyer had some deficits because
10 the victim's hands weren't bagged. I can't discern any
11 prejudice to him in that regard because it was fully
12 explored at trial. He fully used it in the line of
13 questioning to impeach the thoroughness of the Stat's
14 investigation meaning the police crime scenes investigation
15 of this matter. And so I can discern no prejudice from that
16 either.

17 He said he, and I'm referring to Mr. Hall, said he felt
18 it was in his client's best interest to really highlight
19 that the scene was not properly processed and to exploit
20 that on his client's behalf, and that was one of the lines
21 of defense in terms of the state being able to meet its
22 burden of proof that he emphasized.

23 He also says that his client should of objected to
24 inconsistent witnesses. There was no basis in the rules for
25 that. There's no such objection that exists.

1 what you do with an inconsistent witness is you impeach
2 them, and then, in argument, you argue that their testimony
3 was inconsistent. But there's no basis that I can discern
4 in the record for any of those witness' testimony to have
5 been excluded. So since no such exception or objection
6 exists, there would be no basis nor any obligation for
7 Mr. Hall to have interposed such an objection as it would of
8 been denied.

9 As regards all the evidence that deals with the State's
10 burden of proof and their theory of the case, again, I can
11 not discern any basis for Mr. Hall to have objected to it,
12 and, in fact, he developed a defense regarding that and, and
13 I'm gonna sort of just summarize what he said, which is the
14 State's theory was one thing, but, upon cross-examination,
15 we were able to bear out and flesh out that half of what
16 they were saying on direct is really inaccurate and could
17 not support their theory, and when you got into the real
18 details of, of it.

19 There's no evidence, there's been no evidence presented
20 that the Rule 5, all the Rule 5 information that was
21 requested was not disclosed, and that really comes down to
22 another question that was not asked of Mr. Hall and I need
23 to ask it now that I'm going through this.

24 Your -- the Applicant indicates that there was some
25 conversation that he had with an officer and that report was

1 not produced. I'm of the mind that no such report existed,
2 and so I need to know whether a report existed and what --
3 was there any information that the State failed to disclose
4 to you in requested -- in response to your discovery
5 requests.

6 THE WITNESS: Your Honor, he told me, during one of our
7 early conversations---

8 THE COURT: Uh-huh. (Affirmative).

9 THE WITNESS: ---that a corporal or a sergeant came in
10 and basically gave the this family needs closure talk, brief
11 talk and then left.

12 THE COURT: Uh-huh. (Affirmative).

13 THE WITNESS: I found out that I believe it was Captain
14 Steve Cooper. I think he may of been a lieutenant at the
15 time.

16 THE COURT: Steve Kirk?

17 THE WITNESS: Steve Cooper.

18 THE COURT: Cooper. Okay.

19 THE WITNESS: And he made no report.

20 THE COURT: Okay. So none existed that would of been
21 able to be turned over?

22 THE WITNESS: Right.

23 THE COURT: Okay. So there was, to your knowledge,
24 there was no information that the State failed to disclose?

25 THE WITNESS: No, ma'am.

1 THE COURT: Okay.

2 THE WITNESS: There was none.

3 THE COURT: Are there any questions for the witness as
4 a result of the Court's question on that, for clarity for
5 the record, on that issue, from the State?

6 MS. WHITE: No, Your Honor.

7 THE COURT: From the Applicant?

8 MS. MOODY: No, Your Honor.

9 THE COURT: There is no merit to his assertion that his
10 attorney never spoke with him. It is clear from the record
11 that, over the course of his time of pre-detention, that
12 Mr. Hall met with him appropriately and explored and
13 investigated his viable defenses and made notes as to the
14 items that need to be followed up as a result of their
15 conversations and I can discern no deficits in that regard
16 nor is there any evidence that he should of had a competency
17 evaluation or that he somehow did not understand the
18 proceedings or was not able to assist in his representation.

19 There's no evidence in the record that he would of met
20 the Blair or M'Naghten standard, and, therefore, based on
21 Mr. Hall's testimony that he had no concerns about his
22 client's ability to communicate with him or to assist in his
23 representation, he had no concerns about his competence,
24 there would of been no basis to have ordered a competency
25 evaluation and not based on PTSD. A lot of people have

1 PTSD. It's not debilitating.

2 People have PTSD from car accidents. It doesn't mean
3 they don't go to work everyday and can't function. They're
4 people that come home from war that have PTSD and they talk
5 about how it affects them. But there's no indication that
6 it debilitates them to the point that they're not capable of
7 functioning.

8 But irregardless of the myriad of ways that PTSD
9 affects other people, there's no indication that it affected
10 him to the point that he was mentally disabled or that it
11 would of posed a viable -- any kind of mental health defense
12 to him, and, therefore, there was no basis for him to have
13 been evaluated and no deficits in Mr. Hall's representation
14 in that regard.

15 There's absolutely no evidence that appellate counsel
16 did not raise all viable issues from the transcript and
17 present, present those in an appeal and, therefore, there's
18 no relief that has been articulated regarding the appellate
19 process.

20 There's absolutely no merit to the argument that
21 defense counsel failed to prepare or present a defense. The
22 record is amply clear that a defense was articulated and
23 that it was presented and pursued in this case.

24 He claims there was some level of conflict of interest,
25 but I really haven't heard anything that would rise to that

1 level of conflict of interest that impaired his counsel's
2 ability to zealously represent him.

3 I also find no merit in his claims that he somehow was
4 dissuaded to testify. The record is very clear that the
5 Court questioned him regarding his right to testify, that it
6 was his right and his right alone, and advise him of his
7 Constitutional rights.

8 I find credible Mr. Hall's testimony that he felt like
9 he didn't do well in the pretrial hearing, that he was
10 nervous, that he didn't make the best presentation, and he
11 was of the mind that he should not testify, and that agreed
12 with him, and that, if he wanted to testify, he would have
13 accommodated that. The Court finds, for the record, that it
14 was his independent decision and assessment not to testify,
15 and there's no evidence that he was coerced in some way not
16 to testify.

17 And even if his lawyer did advise him not to testify,
18 under the circumstances that have been articulated, that
19 would of been a valid strategy especially if he felt his
20 client was not gonna make a proper showing before a jury.
21 That could have hurt him very greatly in the presentation of
22 his case especially where he has no burden of proof and it's
23 the State's burden to prove every element of the offense
24 beyond a reasonable doubt.

25 There is absolutely no evidence in this case of third

1 party guilt that could of been presented. Third party guilt
2 is a very distinct animal in the law, has very distinct
3 elements, and I've heard not anything that would rise to the
4 level of the defense being able to provide testimony of an
5 alternate theory totally inconsistent with the State's
6 theory of the Applicant's guilt, and so there would of been
7 no basis to have provided any testimony on third party
8 guilt.

9 But even in light of that, Mr. Hall still elicited
10 testimony about this alleged love triangle and he was able
11 to get that evidence in the record. So I can not discern
12 any prejudice to Mr. Stoudenmire in that regard.

13 The other thing that really worked against any sort of
14 prevailing on that issue is that DNA excluded both of those
15 individuals from the incident. So he was able to elicit
16 that testimony that Mr. Stoudenmire claims he failed to get
17 into the record, and he could not have met the elements of
18 third party guilt. So -- but even in light of that, he
19 still was able to get a portion of that theory before the
20 jury and I can discern no prejudice to him in that regard as
21 well as the other part and parcel of the DNA is that he was
22 able to elicit that Mr. Stoudenmire frequented her home,
23 that his DNA would of been there, and also the secondary
24 transfer issue. He was able to elicit that from the State's
25 DNA experts.

1 Also, there's no viability to his argument that his
2 lawyer failed to investigate when it came to potential
3 witnesses. I find credible Mr. Hall's testimony that, in
4 fact, he did pursue every witness that his client gave him
5 and that, contrary to what his client represented to him,
6 each of those individuals, including his father, which I
7 think is most damaging, indicated that they did not want to
8 testify for him, and even the witness in ICU asked that the
9 matter be continued so that he could, in fact, come testify
10 against him because he felt he did it.

11 So certainly none of these witnesses would of
12 exculpated him or helped him, and for his father to
13 articulate that he's a Christian and that his, you know, he
14 assumed that they would want him to say good things about
15 his son and that he could not lie and go against his
16 Christian principles to do that, I think that Mr. Hall very
17 clearly exhausted the list of potential witnesses that were
18 provided to him by the Applicant.

19 I can not discern in the record any basis for Mr. Hall
20 to have objected to the State's theory regarding how this --
21 these incidents allegedly developed or transpired. His
22 crack use theoretically was part of the res gestae of this
23 crime. He provided the motive or his motivation and why it
24 would have happened, and I'm, I'm not able to discern in the
25 record any basis which he would of been able to object to

1 that. But even in light of that, he was able to neutralize
2 most of those witnesses and very effectively cross-examine
3 them.

4 Okay. But they're a couple other things I need to read
5 the transcript again about and I'm gonna do that. But, in
6 the mean time, I'm still gonna ask that the State provide
7 the Court with a proposed order within 20 days, and, at that
8 time, I'll determine whether I need a proposed order from
9 Ms. Moody.

10 MS. MOODY: Your Honor, if I may ask?

11 THE COURT: Sure.

12 MS. MOODY: The issues that you're still -- you're
13 gonna review or is it possible that I can know that so that
14 I can---

15 THE COURT: No, I want to read the whole transcript
16 again. I know in my mind what I'm thinking and I don't
17 particularly care to share it.

18 MS. MOODY: Okay. Thank you.

19 THE COURT: You're welcome.

20 I just want to read it again in its totality.

21 MS. MOODY: Okay.

22 THE COURT: I need to read it again now having had the
23 benefit of testimony.

24 MS. WHITE: Thank you, Your Honor.

25 THE COURT: You're welcome.

1 All right. Is there anything else for the record from
2 the State?

3 MS. WHITE: Nothing, Your Honor.

4 THE COURT: From the Applicant?

5 MS. MOODY: No, Your Honor.

6 THE COURT: Thank you so much.

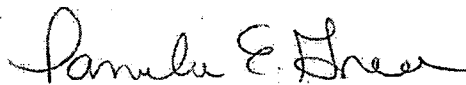
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8 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 15th day of January, 2015.

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

July 13th, 2015



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Norman E. Stoudenmire, Jr., #182302,

The Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2013-CP-42-2174

ORDER OF DISMISSAL

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

Hon. Deadra L. Jefferson
Leah B. Moody, Esquire
Suzanne H. White, Esquire
Robert B. Hall, Esquire
Robert M. Dudeck, Esquire
January 15, 2015
Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 15, 2013. The Applicant also submitted a Memorandum of Law in Support of Post-Conviction Relief Action. The Respondent made its Return on or about March 18, 2014. An evidentiary hearing into the matter was convened on January 15, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Robert B. Hall, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

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PROCEDURAL HISTORY

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 December 2008 term of the Spartanburg County Grand Jury for Murder¹ (2008-GS-42-7014). The Applicant was represented by Robert B. Hall, Esquire. On March 31, 2010, the Applicant proceeded to trial and was convicted of the charge of Murder by a jury. The Honorable J. Derham Cole sentenced the Applicant to life imprisonment.

Chief Appellate Defender Robert M. Dudeck of the South Carolina Commission on Indigent Defense filed a timely notice of appeal and brief on the Applicant's behalf. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Stoudenmire, Op. No. 2012-UP-628 (filed November 28, 2012), *available* at 2012 WL 10864180. The Applicant filed a *pro se* Petition for Rehearing, which was denied on February 22, 2013. The Remittitur was returned on April 3, 2013.

ALLEGATIONS

In his application and *pro se* memorandum, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - i. Counsel failed to conduct pre-trial investigation;

¹ "A person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life or by a mandatory minimum term of imprisonment for thirty [(30)] years....For purposes of this section, "life imprisonment" means until death of the offender without the possibility of parole...No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. No person sentenced to a mandatory minimum term of imprisonment for thirty years [(30)] pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty [(30)] years required by the is section." S.C. CODE ANN. §16-3-20 (2008). Murder is a violent most serious felony. S.C. CODE ANN. §17-24-45 (2008); S.C. CODE ANN. §16-1-60 (2008).

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- ii. Counsel failed to object to the prosecution's improper introduction of character evidence;
- iii. Counsel failed to request a mental evaluation or use mental history as mitigation;
- iv. Counsel failed to challenge issue that there was sufficient evidence at trial to establish a reasonable probability that the Applicant was incompetent at time of trial due to Post-Traumatic Stress Disorder;
- v. Counsel failed to investigate the third party guilt issues regarding the love triangle among Ben Nevins and Hillard Lee Walker and Victim;
- vi. Counsel failed to address juror that was sleeping during trial;
- vii. Counsel failed to properly perfect appeal;
- viii. Counsel failed to object to irrelevant and improper testimony;
- ix. Counsel failed to object to the improper introduction of evidence;
- x. Counsel failed to challenge voluntariness of confession;
- xi. Counsel failed to object to prosecution's closing argument;
- xii. Counsel's prior experience working as prosecutor and magistrate judge indicated conflict of interest;
- xiii. Counsel failed to challenge the void indictment;
- xiv. Counsel failed to object to shackling of The Applicant at sentencing;
- xv. Counsel failed to obtain DNA expert,
- xvi. Counsel failed to challenge and attack break in chain of custody and/or integrity of DNA kit;
- xvii. Counsel failed to challenge procedures and protocol while processing the crime scene, specifically law enforcement failed to bag victims hands to prevent forensic contamination;
- xviii. Failure to object and make contemporaneous objections;

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- xix. Failure to discharge professional duties;
 - xx. Failure to inform the Applicant that he had a right to address the jury in closing;
 - xxi. Failure to present facts that the State had no physical evidence other than alleged DNA "secondary transferred source";
 - xxii. Failure to present a defense;
 - xxiii. Counsel was ineffective for opening the door to damaging testimony;
 - xxiv. Counsel failed to object to Brady violations and failed to request and obtain police report,
2. Ineffective assistance of appellate counsel, in that;
- i. Failed to raise the issue of the trial judge abusing his discretion in various rulings,
 - ii. Failed to challenge the ruling after the attempt to use prior bad act at the suppression hearing,
 - iii. Closed case and refused to file a motion for rehearing and petition for writ of certiorari,
 - iv. Failed to challenge prohibition of trying and convicting mentally incompetent defendants,
 - v. Failed to challenge fact that The Applicant was convicted after trial counsel failed to make obvious meritorious objections to tainted evidence,
 - vi. Failed to challenge the prosecution's introduction of matters in closing that were not properly introduced as evidence during trial,
 - vii. Failed to challenge the voluntariness of the confession,
 - viii. Failed to challenge evidentiary sufficiency of the criminal conviction,
3. Prosecutorial misconduct, in that;
- i. Numerous Brady violations,
4. Violation of due process, in that;
- i. The Applicant was denied bond hearing for two years,
 - ii. Failed to obtain a rights waiver form for February 29, 2008,

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- iii. Officers failed to warn The Applicant of his 5th Amendment rights prior to interrogation,
- iv. Fraudulent indictment,
- 5. Abuse of discretion of trial judge, in that;
 - i. Failed to address The Applicant's known mental illness issues,
 - ii. Allowed admission of testimony of prior bad acts,
 - iii. Failed to instruct jury regarding voluntariness of confession,
 - iv. Allowed hearsay evidence to be used and improperly admitted other evidence,
- 6. Official misconduct, in that;
 - i. Officers failed to properly secure possible evidence and test possible evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This 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 (2003).

Summary of the Testimony

The Applicant testified that Counsel failed to address and failed to conduct pretrial investigations into his mental health, even though Counsel was aware of the Applicant's mental issues. The Applicant testified that at the time of his arrest, he suffered from post-traumatic stress disorder (PTSD) and received disability payments. The Applicant testified that he started receiving a SSI check five (5) years prior to his trial, but that Counsel "did not try to find out anything" regarding his disabilities. The Applicant testified that he told Counsel he suffered from PTSD and that the officers who arrested him were aware that he suffered from PTSD as well.

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The Applicant informed the court that he and PCR counsel attempted to retrieve medical records from the United States Social Security Administration (SSA) to support the claim, but that even though the Applicant found his diagnosing physician and had his sister and PCR attorney call the SSA on his behalf, the SSA gave him "the run around" and told him that the records prior to ten (10) years before had all been destroyed. The Applicant testified that Counsel did not request a competency hearing prior to trial.

The Applicant testified that Counsel was ineffective for failing to investigate the love triangle among the victim and two (2) other men and, consequently, was ineffective for failing to present evidence of third party guilt. The Applicant explained that the victim was involved in a love triangle between her boyfriend (Lee Walker) and another man (Ben Nivens), and the Applicant believes that one of them committed the murder out of a jealous rage. The Applicant testified that there was a great deal of animosity between the two men. The Applicant further explained that he sought relevant crime stoppers reports in discovery, which would reveal possible instances of domestic violence among the victim and her prior roommate and former boyfriend, and which would show that someone was watching the victim and conveying threats to the victim prior to her death. However, the Applicant alleged that Counsel never raised the issue. The Applicant acknowledged that Counsel informed the Applicant that they probably could not get the evidence of prior domestic violence in the record, but alleged that Counsel was obligated to raise third party guilt as a complete defense and that Counsel was incompetent for not understanding the law and not raising the defense on his behalf. The Applicant admitted that he could produce no direct evidence pointing to Nevins' or Walker's guilt.

The Applicant testified that Counsel was ineffective for failing to retain an independent DNA expert to testify as to explain why the Applicant's DNA was found in the victim's home

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and underneath her fingernails. The Applicant testified that he often performed work for the victim in her home, including moving furniture, working on her computer, and fixing her vehicles and cable. Thus, the Applicant testified, a DNA expert could support his theory that the Applicant had prior contact with everything in the residence because he had the right to be at the victim's residence. The Applicant also alleged that a DNA expert could have testified that any DNA found at the residence could have been from a prior transferred source.

Further, the Applicant testified that an expert could be used to identify the trace hair found on the entrance door and the fingerprints found on the shadowbox. The Applicant testified that the fingerprints were not a match for the Applicant or victim, but Counsel performed no further investigation as to the identity of the fingerprints. The Applicant alleged that Counsel was deficient for failing to submit positive results identifying the fingerprints. The Applicant testified that Counsel never discussed the DNA results or obtaining an expert with the Applicant. However, the Applicant acknowledged that Counsel cross-examined pathologist Dr. Wren² and SLED expert Lindsay Thompson on the possibility of secondary transfer of DNA, "but nothing came of it." The Applicant further alleged that the Solicitor did not inform Counsel that the Applicant's DNA did not match the fingerprints found at the scene until the day before trial. However, the Applicant admitted that Counsel cross-examined Officer Talanges regarding the fingerprints at trial. The Applicant also stated that he did not know to ask his attorney about obtaining an independent DNA evaluation and expert because he was not familiar with the law that provides funding to indigent defendants to obtain DNA experts.

The Applicant also testified that law enforcement did not process the crime scene correctly. The Applicant testified that the victim's body was moved from the location in which she was found and the victim's shirt was removed from her body, but prior to law enforcement

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bagging her hands. The Applicant testified that an expert could have assisted in showing how law enforcement's failure to properly process the crime scene could have tainted the results and transferred DNA to the victim's fingernails. The Applicant further alleged that Counsel was ineffective for not challenging this issue and that if law enforcement had properly bagged the victim's hands prior to transporting her body, SLED may not have found any evidence at all.

The Applicant alleged that Counsel was ineffective for failing to challenge the chain of custody of the DNA kit and related evidence. The Applicant testified that one of the boxes that contained DNA evidence had a broken seal on one of the edges and thus the integrity of the DNA kit was compromised. The Applicant explained that when the DNA kit was turned over to investigators, the seals on the box were intact. However, thirty-one (31) hours later, after the box was booked for identification and placed in an evidence locker, when the evidence custodian Rosenberg went to retrieve the evidence, he discovered that the seal was broken. The Applicant further testified that at trial, the State presented no chain of custody forms relating to the thirty-one (31) hours that would prove evidence tampering. Although both he and Counsel were surprised by this revelation and spent half a day talking about the issue, the Applicant alleged that ultimately Counsel did not object to the improper chain of custody.

The Applicant testified that Counsel felt this error was not important and did not require expert testimony. The Applicant understood Counsel's explanation that no expert could be qualified to testify as to the improper chain of custody and that no expert had the right to testify as to that subject. The Applicant further alleged that Counsel provided and elicited no explanation for why the State could not produce the relative chain of custody forms and merely "swept [the issue] under the carpet." The Applicant finally testified that the trial court committed

² The Applicant directed the Court's attention to page 375, lines 2 through 11 of the trial transcript.

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an abuse of discretion by talking about the broken seal but not issuing the appropriate ruling.

The Applicant testified that Counsel failed to investigate or object to the Solicitor's improper implication during closing arguments regarding an "old scratch" found on the Applicant's neck at the time of his arrest. The Applicant summarized that the State's theory was that the victim defended herself by scratching the Applicant. Although the Applicant admitted that testimony regarding the scratch on his neck was elicited during trial, he alleged that Counsel was ineffective for failing to present photographic evidence of his neck. The Applicant also testified that Counsel failed to object to the State failing to turn over a report by Officer Cooper allegedly made during the Applicant's arrest and interrogation that purportedly reported the Applicant and the officer's conversation.

The Applicant alleged that Counsel was ineffective generally for failing to object, especially to improper character evidence.³ The Applicant testified that Counsel failed to object to testimony of Phyllis Pack that she had seen the Applicant with a gun one night while he was using crack cocaine. The Applicant also testified that Counsel failed to object to testimony of Phyllis Pack, Hillard Lee Walker, John Glenn, Angela Glenn, and Ben Nevins regarding the Applicant borrowing money, smoking crack cocaine, and being high. The Applicant explained that he "made good money" at the time—one thousand dollars (\$1,000.00) per week. The Applicant stated that the only item disturbed or missing from the victim's residence was a \$20 bill that served as a memento from the victim's boyfriend on the shadow box, but that the Applicant had no personal need for the victim's money and borrowing money was not relevant to the case. The Applicant further summarized that the State painted the picture that he was a "crack monster" and "crack addict" and that the State's theory of the case was that the Applicant's motive to murder the victim was to obtain money for crack. The Applicant explained

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that the State proved its theory by improperly showing that the Applicant regularly borrowed money to support his crack habit, borrowed money from his boss, and was trying to obtain money for crack the night of the victim's murder.

Additionally, the Applicant alleged that Counsel was ineffective for failing to object to the State's witnesses' prior inconsistent statements.

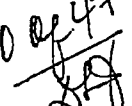
The Applicant also testified that he wanted Counsel to request jury instructions as to the voluntariness of the Applicant's statement and prior bad acts and that Counsel was ineffective for failing to seek definitions of "voluntary" and "voluntariness" as a result of his Jackson v. Denno hearing.

The Applicant testified that he met with Counsel only twice for less than one (1) hour at a time and spent approximately two (2) hours total meeting with Counsel, even though the Applicant was in jail for two (2) years. The Applicant testified that there was "no way" Counsel could have prepared sufficiently for trial. The Applicant testified that Counsel did not put the State to any adversarial testing and showed no loyalty to the Applicant. Furthermore, the Applicant testified that Counsel opened the door for damaging testimony. The Applicant alleged that Counsel improperly opened the door to character evidence and that Counsel failed to present a defense on the Applicant's behalf.

The Applicant testified that Counsel had a conflict of interest in his representation because Counsel had served ten (10) years at the Solicitor's office and fifteen (15) years as a magistrate judge and, consequently, Counsel should have never been appointed to represent him.

The Applicant testified that both his trial and appellate counsel, Robert Dudeck, Esq., were ineffective because appellate counsel was limited to arguing only the issues preserved on the

³ The Applicant directed the Court's attention to pages 213, 215, and 224 of the trial transcript.

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record during the Applicant's trial. The Applicant asserted that the transcript reflects that the trial court did in fact make the appropriate rulings—especially that the court ruled against him on evidentiary issues stemming from his Jackson v. Denno hearing—and that Counsel preserved error for appellate review. The Applicant alleged that he had witnesses present for his Jackson v. Denno hearing, who testified *in camera* including the Applicant's attorney at the time he made his statement to law enforcement, Clyde Louis Pennington, Jr., and the Applicant's sister, Dena Suzanne Crump, and whose testimony aided the trial judge in ruling on the admissibility of the Applicant's statement. Thus, the Applicant argued, the issues stemming from his Jackson v. Denno hearing were preserved for review and should have been argued on appeal by his appellate counsel. The Applicant further testified that appellate counsel was ineffective for failing to move for a rehearing and instead conveying to the Applicant that his case was dismissed and that appellate counsel was no longer his attorney.

The Applicant alleged that he needed to testify on his behalf at trial. The Applicant testified that Counsel was ineffective for stopping him from testifying in order to preserve last argument. The Applicant admitted that Counsel advised him against testifying because of his prior record, which contained a Criminal Domestic Violence conviction, among others. The Applicant further opined that Counsel was ineffective for failing to instruct the Applicant that he had the right to address the jury in closing.

In support of his allegation that he is entitled to a new trial and a "fair chance to present his defense," the Applicant asserted his innocence and claimed that he was "railroaded" during his trial. The Applicant stated that while he was incarcerated, his mother passed away; that his father is on the verge of dying; that his children refuse to "have anything to do with" him as a result of his trial; and that he does not know his grandchildren.

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Counsel testified that he had been a practicing attorney since 1986 and summarized his extensive work history. Counsel testified that he worked with the Spartanburg and Cherokee County Solicitor's offices and then was a Spartanburg County magistrate judge before beginning work at the Seventh Circuit Public Defender's Office. Counsel acknowledged that he had previously worked in the Solicitor's office and as a magistrate judge, but testified his employment history did not affect his representation of the Applicant in any way. Counsel testified that he had worked for the Public Defender's Office continuously since 2008. Counsel testified that he has tried numerous murder cases and a wide variety of other serious and different type crimes. Counsel testified that most of his notes were lost when the Public Defender's Office updated its computer data system, but that he still retained some handwritten notes on the Applicant's case.

Counsel testified that he was assigned the Applicant's case in the summer of 2009 when another attorney in the Public Defender's Office had a conflict of interest with the Applicant's representation. Counsel explained that the Applicant's case appeared on the August 2009 docket but was not expected to be reached. Counsel further explained that the Applicant preferred his case be called in December or January because he had some ear, nose, and throat health problems and "hemorrhaging." Counsel testified that he met with the Applicant several times in December 2009 and that on December 31, 2009, he met with the Applicant for twenty minutes and the Applicant told him that they were not in a hurry at this point in the case. The Applicant's case was again continued from the January docket to the March docket. Counsel testified his notes reflected that he met with the Applicant at the jail on March 15, 2010 for almost three hours from 4:30 PM to 7:00 PM, in which Counsel discussed the State's theory of the case that the Applicant was a "crazed crack addict," potential witnesses, the victim's autopsy,

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testimony about the knife, DNA testing of the knife, suppression of the Applicant's statement, the Applicant's property and booking, how long the Applicant had been in custody, and other issues. Counsel stated that the Applicant's booking and property card from his intake at the jail was a "big issue" for the Applicant, so Counsel spent fifteen (15) minutes or so checking on those things.

Counsel testified that the State's theory was that the Applicant was a drug crazed maniac, but Counsel pointed out during closing arguments that no one had actually testified that the Applicant showed any evidence of violence. Counsel testified that the Applicant provided him with a list of people who could potentially be defense witnesses, including: the Applicant's father, the Applicant's sister, Phyllis Pack, David Marguerite, John and Angela Glenn, Hillard Lee Walker, and Jenkins. Counsel tried to contact each witness and ascertain how successful he would be by adducing their testimony. However, Counsel deduced that the Applicant's sister Dena was the only potentially helpful witness. Counsel summarized that Dena was expected to testify, "I've smoked crack with him and he's not crazed." However, Counsel testified that at the time of trial, the Applicant's sister appeared to be changing her testimony to, "I don't know, haven't done it [crack] in a while" and that she had not seen the Applicant in four (4) to five (5) years and thus did not know how the Applicant acted while high on crack.

One of the witnesses, David Marguerite, was in the intensive care unit at Spartanburg Regional Hospital, and the other witnesses did not have positive things to say about the Applicant. Counsel testified that he obtained permission from Marguerite's family and spoke with him for fifteen (15) minutes at the hospital. In fact, Counsel testified, Marguerite asked Counsel to move for a continuance so that Marguerite could get better and testify against the Applicant because "he [the Applicant] did it." Counsel stated that Phyllis Pack would have

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offered similar testimony against the Applicant. Counsel reached out to the Applicant's father, but the Applicant's father told Counsel that he was a Christian and as a result, could not lie on the stand and testify that his son was a good person. Counsel stated that it appeared all of the potential witnesses wanted to testify against the Applicant. Once Counsel revealed the results of his investigation, he testified that the Applicant was then "upset." Counsel opined that each of the proposed witnesses would support the State's case, not that of the defense.

Counsel testified that the Applicant's defense was that he was asleep at the time of the crime and "didn't do it," so "someone else must have done it" but there were no alibi witnesses, so the trial strategy was to focus on the holes in the State's case and deficits in law enforcement's investigation. Counsel testified that he did request a voluntary manslaughter instruction, which the trial judge denied based on insufficient evidence supporting the theory that the Applicant committed a lesser-included offense, but could not recall if he requested a charge on the voluntariness of the statement. However, Counsel stated that in denying the Applicant's Jackson v. Denno motion, the trial judge determined that the Applicant had waived his Miranda rights as well as his right to have his attorney present prior to volunteering his statement by never asserting his right.⁴

Counsel testified that he debated whether to suppress the Applicant's statement and move for a Jackson v. Denno hearing as a tactical matter and Counsel considered allowing the State to admit the statement. The report concerning the Applicant's statement was written to sound like the Applicant was held in custody for two (2) hours, when he was actually held for eight (8) hours. Counsel testified that he was able to examine law enforcement regarding the interview

⁴ The transcript and evidence presented at the Applicant's evidentiary hearing confirm that the charge conference was held in chambers. The criminal rules of procedure do not require the written submission of requests to charge or that requests be included in the record as court's exhibits. Counsel opined that neither the State nor the Applicant

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and circumstances surrounding the alleged confession in great detail. Counsel stated that he was able to "impeach" witnesses with his detailed cross-examinations regarding the Applicant's statement. Thus, the circumstances surrounding the interrogation and confession supported the defense's theory that law enforcement improperly handled the Applicant's case. Counsel related that the Applicant said, "I feel responsible." Counsel focused his strategy on the fact that law enforcement did not videotape the interview, but videotaped all other proceedings. Counsel testified that ultimately he decided to make a suppression motion. Counsel testified that he needed the Applicant's former attorney, Clyde Louis Pennington, Jr., for the suppression hearing and that he spent hours in Laurens—from 5:00 PM to 8:30 PM—trying to track him down by using an address he had obtained from the Applicant's cousin. Counsel stated that Pennington was "less than cooperative."

Counsel further testified that the Applicant requested he reach out to the Applicant's sister about testifying, which he obliged even though Counsel was unsure as to when the last time the two had seen each other. Counsel stated that he spoke with the Applicant's sister regarding her testifying for the suppression hearing and regarding the Applicant himself testifying. Counsel testified that he explained to the Applicant his right to testify and that Counsel could not take a position on his behalf, either way. Counsel opined that the Applicant did not perform well in his cross-examination during the suppression hearing and therefore he did not feel that the Applicant would perform well on the stand at trial. Counsel further stated that he, the Applicant, and the Applicant's sister all agreed that the Applicant would not perform well on the stand. Counsel stated that the Applicant's only defense and testimony would have been "I smoked crack and was home alone asleep when this happened" and that the Applicant's

submitted written requests to charge and that even though Counsel could not recall whether he requested a charge regarding the Applicant's statement, he tried to check whether he had after the fact to no avail.

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statement was determined admissible. Counsel affirmed that it was the Applicant's decision not to testify, but that he agreed with his decision. Counsel finally stated that if the Applicant had wanted to testify, he would have put him on the stand.

Counsel testified that he discussed the DNA with the Applicant and Counsel had spoken with experts in preparation. Counsel stated that he reviewed the DNA issue a "great deal" and although the evidence "hurt" the Applicant's case, he was constrained to challenge it. Counsel testified that he did not feel it was necessary to call an expert witness because the State's witnesses supported the defense's theory that there was no way to determine at which time the Applicant's DNA had been placed somewhere, how long the Applicant's DNA had been there, or how the Applicant's DNA had gotten there. Counsel summarized that the DNA evidence consisted of scrapings from the victim's fingernails, who was a brick layer and had rough hands and nails, which fact supported the defense's theory of undermining the conclusive and inculpatory nature of the DNA. Counsel testified that he did not believe there was a need for additional expert analysis because the match to the Applicant was a 1:950 billion match. However, Counsel testified that he tried to focus on the question as to when the DNA had been left and the potential contamination of the victim's hands and scene because of mishandling of the crime scene. Counsel also testified that he was aware that law enforcement found a fingerprint on the shadow box, but testified that it was checked against the Applicant, Walker and Nivens and none was a fingerprint match. Counsel stated that he spent time the week before trial reviewing the DNA evidence and several hours at the jail reviewing the evidence with the Applicant.⁵

⁵ Counsel did not accurately recall that the Applicant's Buccal swab was admitted in evidence at trial (Tr. 331-36).

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Counsel testified that he had spoken with the Applicant about his mental state and the Applicant told Counsel that he sometimes blocks things out. Counsel testified that the Applicant witnessed his young daughter's death years earlier and it was a traumatic experience. However, Counsel opined that he considered the Applicant's mental state to be a "normal human reaction" because the Applicant never mentioned his PTSD and Counsel understood that the Applicant enjoyed his work and his life. Counsel testified that there was never a question as to the Applicant's competency to stand trial. Counsel further testified that the Applicant understood the criminal justice system, the process, and his rights.

Counsel stated that he elicited testimony that the Applicant often performed work in the victim's house and that he moved furniture and things around in the victim's house in order to set up her computer. Counsel stated that the Applicant never denied being in the victim's residence. Counsel testified that no direct evidence pointed to the guilt of a third party. Instead, Counsel testified that there were rumors of the love triangle and allegations of prior violence, but nothing concrete. Counsel elaborated that the Applicant's theory was that Nivens was jealous of his father's relationship with the victim and thus could be implicated as a suspect in her murder, which he argued to the jury. Counsel further testified that he completely developed and argued the theory of the other relationships. He further testified that he argued the fact that "the killer was on a digital camera" but that the State did not perform an investigation into other possible suspects. Counsel explained that law enforcement found rolls of film that the State did not develop, which supported the defense's argument of creating reasonable doubt as to the Applicant's guilt and possible third party guilt. However, Counsel testified that the fact that the fingerprint found on the shadow box excluded both Walker and Nivens undermined the defense's third party guilt defense.

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Counsel testified that he cross-examined the SLED witnesses regarding the chain of custody and evidence contamination issues regarding the broken seal on one side of the DNA box. However, Counsel explained that the structure of the box was such that you could not open the box without the other side also being open and that side's seal was intact. Counsel also argued that law enforcement's failure to properly bag the victim's hands until after they had moved the body several times supported the Applicant's secondary transfer argument. Counsel elaborated that the Applicant's argument was that the victim's hands picked up the Applicant's DNA while the body was moved because the Applicant had moved her bed earlier.

Counsel testified that he found no basis to object to the witness' testimony about the Applicant's crack use and that he was able to successfully cross-examine each witness as to potential bias. Counsel testified that he felt he disproved the State's "crazed crack addict" theory by eliciting testimony as to why the Applicant could have been angry. Counsel further testified that the State's theory was that the Applicant's demeanor at trial was different than the day of the incident, so Counsel tried to rebut that theory. Counsel testified that he was prepared to cross-examine each State witness offered to testify against the Applicant and hurt their character by impeaching and discrediting them as well as challenging how the State originally portrayed them on direct. Counsel stated there was testimony at trial regarding "normal behavior." Counsel also testified that another theory was that the victim fired the Applicant, thus establishing his motive to murder her. However, the testimony adduced at trial was that the victim did not fire the Applicant, but simply stated that he needed to call Pat. Pat then said "I don't need you anymore" to the Applicant and did not "stir" things up. Therefore, Counsel stated, that theory establishing motive was negated by the testimony at trial. Counsel stated that he never filed a motion in

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limine regarding the State seeking to admit character evidence, but that the State ultimately presented no evidence that the Applicant was violent or "wild."

Counsel testified that the State extended no guilty plea offers, even though Counsel asked to negotiate a plea agreement. Counsel testified that the Applicant never entertained the idea of a guilty plea because he maintained his innocence. Counsel finally stated that due to the local judges' sentencing philosophies it was likely if the Applicant plead guilty, he would "probably get life anyway," thus the Applicant had nothing to lose by going to trial.

Counsel testified that he saw nothing that he could legally object to during the Solicitor's closing arguments because one of the officers testified that they viewed a small red mark on the Applicant's neck at the time of his arrest, but there was no photo taken of the mark. Further, Counsel testified that the State did not produce a report from Officer Cooper because to his understanding a report was never made. Counsel further clarified that the officer entered the Applicant's interrogation room, said "this family needs closure" to the Applicant, then left.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. This Court found the testimony of Counsel to be more credible than the testimony of the Applicant as to all allegations raised in the application and at the hearing.

In a PCR action, "the burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result."

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Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689, 104 S. Ct. at 2065. There is a strong presumption that counsel's

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conduct falls within the wide range of reasonable professional assistance and the "defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id. This Court finds that the Applicant has failed to meet his burden of proof as to this claim.

Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1996); Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 778-79 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing Goodson v. U.S., 564 F.2d 1071 (4th Cir. 1977)). See Stokes, 308 S.C. at 548, 419 S.E.2d at 778-79 (finding counsel's decision not to call witnesses reasonable where their testimony would have been of no value to the case and witnesses were not credible); Abney v. State, 408 S.C. 41, 51, 757 S.E.2d 544, 549 (Ct. App. 2014) ("While trial counsel should consult with his client, the final decision on strategy belongs to counsel."); Moore v. State, 399 S.C. 641, 723 S.E.2d 871, 873 (2012) (citing Florida v. Nixon, 543 U.S. 175, 187, 125 S. Ct. 551 (2004) ("Attorneys have a duty to consult with their clients regarding important decisions,' including questions of overarching 'defense strategy.' . . . This does not require counsel to obtain the defendant's consent on every strategic decision, but certain decisions regarding the waiver of basic trial rights [to plead guilty, waive a jury, testify on his own behalf, or take an appeal] cannot be made for the defendant by surrogate").

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney

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demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. 2052, 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)).

This Court further finds Counsel adequately conferred with the Applicant and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness. This Court finds Counsel is a criminal practitioner who has experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant's evidentiary hearing. Counsel conferred with the Applicant and discussed the pending charges, his constitutional rights, range of penalty, the elements of the charges, and what the State was required to prove, the Applicant's version of the facts, and the Applicant's defense at trial. The record also reflects that Counsel zealously advocated on his client's behalf.

Failure to Investigate Competency, Mental Health & Sanity

The Applicant alleges that Counsel was ineffective for failing to conduct a pre-trial investigation into his mental health and competency to stand trial, even though Counsel was aware of the Applicant's mental health issues, such as his PTSD; disability determination, and other mental health issues. This Court finds the Applicant has failed to carry his burden of proving Counsel was ineffective in this regard.

Under M'Naughten, "[a]n accused who lacks the capacity to distinguish moral or legal right from moral or legal wrong at the time of the crime is relieved of responsibility for his acts."

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Davenport v. State, 301 S.C. 39, 40, 389 S.E.2d 649, 649 (1990) (citing S.C. CODE ANN. § 17-24-10 (2014)); State v. Law, 270 S.C. 664, 244 S.E.2d 302 (1978); State v. Cannon, 260 S.C. 537, 197 S.E.2d 678 (1973)).

A defendant must be mentally competent to stand trial to assist Counsel in his defense. Drope v. Missouri, 420 U.S. 162 (1975) ("It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.").

In every criminal case, it is presumed the defendant is sane. State v. Milian-Hernandez, 287 S.C. 183, 185, 336 S.E.2d 476, 477 (1985). "This presumption relieves the State of the burden of proving sanity in every case. However, when the defendant offers evidence of insanity, the presumption disappears and it is incumbent on the State to present evidence from which a jury could find the defendant sane. Any evidence of sanity is sufficient to present a jury issue when the defendant relies on the affirmative defense of insanity." Id. Insanity is an affirmative defense to a prosecution for a crime. Id. South Carolina has adopted the M'Naghten test to determine insanity. State v. Lewis, 328 S.C. 273, 277-78, 494 S.E.2d 115, 117 (1997). "A defendant is insane if, at the time of the commission of the act constituting the offense, as a result of mental disease or defect, he lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong." Id. (citing S.C. CODE ANN. § 17-24-10(A) (2014)). South Carolina law provides:

(A) It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.

(B) The defendant has the burden of proving the defense of insanity by a

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preponderance of the evidence.

(C) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish the defense of insanity.

S.C. CODE ANN. § 17-24-10(A) (2014). "[T]he key to insanity is 'the power of the defendant to distinguish right from wrong in the act itself-to recognize the act complained of is either morally or legally wrong'." State v. Wilson, 306 S.C. 498, 506, 413 S.E.2d 19, 23 (1992) (quoting State v. McIntosh, 39 S.C. 97, 17 S.E. 446 (1893)).

This Court finds the allegation that Counsel was ineffective for failing to have the Applicant mentally evaluated to determine his competency to stand trial prior is wholly without merit. In determining whether counsel is ineffective for failing to request a competency hearing, under the second prong of the Strickland standard, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of this trial or plea. Jeter v. State, 308 S.C.230, 417 S.E.2d 594 (1992) (The Applicant claiming that trial counsel was ineffective in failing to pursue this defense "must produce some evidence of insanity or showing that with the exercise of due diligence, an insanity defense could have been developed."). The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980). "In a PCR action, the petitioner bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea." Jeter, 308 S.C. at 222-23, 417 S.E.2d at 596 (citing Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984)). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

In order to show an Applicant was prejudiced by Counsel's failure to pursue the defense of insanity, "the petitioner must produce some evidence of insanity or a showing that with the

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exercise of due diligence, an insanity defense could have been developed.” Id. (citing State v. Vickers, 306 N.C. 90, 291 S.E.2d 599 (1982), Daniel v. State, 282 S.C. 155, 317 S.E.2d 746 (1984)).

This Court finds the Applicant has failed to meet his burden of showing that he was incompetent at the time of his trial or that his mental health issues could support an insanity defense. The only testimony the Applicant provided in support of his contention that he was either incompetent and or insane was that he suffered from PTSD and had been classified as disabled. The Applicant also failed to articulate an argument supporting an insanity defense. The record is devoid of any evidence that the Applicant was either incompetent or insane at the time of his trial or at the time of the offense. Rather, this Court finds credible Counsel’s testimony that he had no indication or reason to question the Applicant’s competence.⁶ Further, this Court finds credible Counsel’s testimony that the Applicant maintained his innocence and that his ultimate defense was that he did not, in fact, commit the crime. Accordingly, this Court finds that the Applicant has failed to meet his burden of proof in this regard.

Failure to Investigate and Argue Third Party Guilt

The Applicant alleges that Counsel was ineffective for failing to investigate and argue a third party guilt defense on his behalf. The Applicant specifically alleges that Counsel failed to admit an alleged crime stoppers report that detailed instances of criminal domestic violence among the purported love triangle and that Counsel was ineffective for failing to request a third party guilt defense jury charge.

This Court finds the Applicant’s contention that Counsel did not conduct an adequate pre-trial investigation or prepare enough for trial is without merit. “[C]riminal defense attorneys have

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a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012), *overruled on other grounds*, Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014). “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)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Wiggins v. Smith, 539 U.S. 510, 521–22, 123 S. Ct. 2527, 2535 (2003).

The admissibility of evidence of third party guilt is governed by the rule set forth in State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941). Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006); State v. Burgess, 391 S.C. 15, 22–23, 703 S.E.2d 512, 516 (Ct. App. 2010); State v. Cope, 385 S.C. 274, 292–93, 684 S.E.2d 177, 186–87 (Ct. App. 2009).

The Gregory rule holds:

[T]he evidence 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. . . . But 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.

⁶ Although Counsel erroneously stated that the Applicant did not divulge his PTSD, this Court notes that the record reflects that all parties knew that the Applicant suffered from PTSD and the fact was never purposefully hidden as a result of Counsel’s ineffective assistance (Tr. 53:12–25).

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Gregory, 198 S.C. at 104-05, 16 S.E.2d at 534-35.

This Court finds that the Applicant failed to meet his burden of proof of establishing that there was any remaining evidence that Counsel could have presented to support a defense of third party guilt. This Court finds credible Counsel's testimony that no direct evidence supported the Applicant's theory, particularly based upon the fact that neither the DNA nor fingerprint found at the crime scene matched either man involved in the love triangle. This Court finds credible Counsel's testimony that he effectively developed and argued the Applicant's theory at trial. This Court finds most compelling the trial transcript, which reveals that Counsel effectively elicited evidence supporting the Applicant's theory during his cross examination of Ben Nevins (Tr. 152:3-164:5, 165:8-166:5); and Lee Walker (237:13-145:17).

The Applicant argues Counsel was ineffective for not introducing an alleged crime stoppers report that details acts of criminal domestic violence among the love triangle. The Applicant failed to present any purportedly beneficial testimony or evidence supporting his theory at the PCR hearing. Our Courts have repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998)); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)). The Applicant's mere speculation as to what a witness' testimony would have been by itself cannot satisfy the Applicant's burden of showing prejudice. Id. (citing Glover, 318 S.C. at 498-99, 458 S.E.2d at 540). Further, this Court finds credible Counsel's testimony that he told the Applicant that the report would not be admissible at trial based on the South Carolina Rules of Evidence. See Rules 401, 402, 403,

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SCRE. Therefore, this Court finds that the Applicant has failed to meet his burden of proof as to this allegation.

Failure to Obtain DNA Expert and Challenge DNA Evidence

The Applicant alleges Counsel was ineffective for failing to retain an independent DNA expert to testify as to explain why the Applicant's DNA was found in the victim's home and underneath her fingernails. The Applicant generally alleges that Counsel was ineffective in challenging the State's DNA evidence. The Applicant specifically alleges that Counsel failed to adequately challenge the chain of custody and law enforcement's failure to properly process the crime scene. This Court finds that the Applicant has failed to meet his burden in this regard.

"[A] party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable. State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205-06 (2007) (citing Benton v. Pellum, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957)). "Where an analyzed substance that has passed through several hands, the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture." Id. (citing Benton, 232 S.C. at 33-34, 100 S.E.2d at 537). "Accordingly, if the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive. Id. (citing State v. Taylor, 360 S.C. 18, 25, 598 S.E.2d 735, 738 (Ct. App. 2004)). However, "[t]estimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility. . . . Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." Id.

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"A complete chain of evidence must be established as far as practicable, tracing possession from the time the specimen is taken from the [source] to the final custodian by whom it is analyzed." State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001) (citing State v. Cribb, 310 S.C. 518, 426 S.E.2d 306 (1992); Raino v. Goodyear Tire & Rubber Co., 309 S.C. 255, 422 S.E.2d 98 (1992); State v. Kahan, 268 S.C. 240, 233 S.E.2d 293 (1977)). "Proof of chain of custody need not negate all possibility of tampering so long as the chain of possession is complete." Id. (citing State v. Williams, 301 S.C. 369, 392 S.E.2d 181 (1990)). Additionally, the value of the specimen is a credibility determination for the jury, not an impediment to admissibility:

In applying this rule, our Supreme Court has found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the specimen was not established at least as far as practicable. . . . On the other hand, where the identity of persons handling the specimen is established, the Supreme Court has found that evidence regarding its care goes only to the weight of the specimen as credible evidence. . . . In other words, where there is a weak link in the chain of custody, as opposed to a missing link, the question is only one of credibility and not admissibility.

State v. Horton, 359 S.C. 555, 567-68, 598 S.E.2d 279, 286 (Ct. App. 2004) (citing Carter, 344 S.C. at 424, 544 S.E.2d at 837).

This Court finds that the State established the chain of custody and processing of the crime scene in accordance with the above standards at trial and that various failures regarding the DNA testing, chain, crime scene processing, and obtaining proof of the Applicant's scratches on his neck were in fact presented to the jury (Tr. 308:10-313:25). This Court finds credible Counsel's testimony that he effectively elicited information supporting the Applicant's theory of the case at trial.

Further, this Court finds that Counsel's strategic trial decision not to present the testimony of an independent DNA expert is valid. Cf. Dempsey v. State, 363 S.C. 365, 370, 610

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S.E.2d 812 (2005) (citing McLaughlin v. State, 352 S.C. 476, 483-84, 575 S.E.2d 844-45 (2003)) (finding defense counsel's decision not to call an expert witness to rebut the State's expert witness was legitimate strategic decision and any resulting prejudice to the Applicant would be merely speculative). See Roseboro, 317 S.C. at 294, 454 S.E.2d at 313; Underwood, 309 S.C. at 562, 425 S.E.2d at 22 (1992); Stokes, 308 S.C. at 548, 419 S.E.2d at 778-79. Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Strickland, 466 U.S. at 693, 104 S. Ct. at 2067. Where counsel articulates a valid strategic reason for his action or inaction, based on an objective standard of reasonableness, counsel's performance should not be found ineffective. See Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes, 308 S.C. at 548, 419 S.E.2d at 779. This Court finds credible Counsel's testimony that he interviewed potential DNA experts prior to trial, none of whose testimony would have been beneficial. This Court further finds credible Counsel's testimony that he was able to elicit favorable testimony and all the requisite testimony supporting the Applicant's case from the State's scientists.

Moreover, the Applicant has failed to provide this Court with any actual evidence tending to prove his assertions that a DNA expert would offer beneficial or exculpatory testimony on his behalf at the PCR hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458

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S.E.2d 538 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)). Ultimately, the Applicant has failed to produce the putative witnesses and present their purportedly beneficial testimony at the PCR hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)). The Applicant failed to produce any evidence or testimony to support his claim.

Finally, this Court notes that even if the Applicant had proved Counsel was ineffective for failing to produce an independent DNA expert or even if the Applicant had been successful on appeal, it is unlikely that he would have been granted a new trial. "In order to obtain leave from this Court to move for a new trial based on after-discovered evidence, an appellant must make a *prima facie* showing that a new trial is warranted." State v. Ford, 301 S.C. 485, 491, 392 S.E.2d 781, 784 (1990) (citing State v. Butler, 261 S.C. 355, 200 S.E.2d 70 (1973); State v. Jennings, 40 S.C. 553, 18 S.E. 932 (1894)). "The requirements for a new trial are: (1) the evidence is such as will probably change the result if a new trial is granted, (2) the evidence has been discovered since the trial, (3) the evidence could not have been discovered prior to trial by the exercise of due diligence, (4) the evidence is material to the issue, and (5) the evidence is not merely cumulative or impeaching." Id. (citing Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983); State v. Allen, 276 S.C. 412, 279 S.E.2d 365 (1981)).

Just because the Applicant exercised his rights pursuant to the Access to Justice Post Conviction DNA Testing Act, see S.C. CODE ANN. § 17-28-10 (2014), does not mean that the Applicant has also satisfied the requirements of the Act, has met his burden of proving the DNA evidence was actually exculpatory and supports his theory of the case, and has established the requisite prejudice supporting the grant of a new trial. See S.C. CODE ANN. § 17-28-100 (2014)

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("If the results of the DNA test are exculpatory, the applicant may use the exculpatory results of the DNA test as grounds for filing a motion for new trial pursuant to the South Carolina Rules of Criminal Procedure. If the results of the DNA test are inconclusive, the court may allow for additional DNA testing or may dismiss the application."). Cf. Bagwell v. State, 410 S.C. 259, 268, 763 S.E.2d 630, 635 (Ct. App. 2014), *reh'g denied* (Oct. 21, 2014), *cert. denied* (Feb. 27, 2015) ("Although the DNA test results indicating Bagwell's blood was not found on the pieces of glass do not exonerate Bagwell or preclude the possibility of his guilt, we believe the jury more likely than not would have reached a different verdict had this evidence been presented at trial."); Harrington v. Richter, 562 U.S. 86, 131 S. Ct. 770, 792, 178 L.Ed.2d 624 (2011) (recognizing Strickland prejudice "does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case' "). The Applicant has failed to show that he has suffered prejudice as a result of Counsel's alleged failures.

Finally, the Applicant asserts that the trial judge committed error based on an improper and incomplete ruling regarding the admissibility of the State's scientific evidence against the Applicant. This Court finds that any allegation of trial court error raises direct appeal issues that are procedurally barred by S.C. CODE ANN. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, this Court summarily dismisses those claims.

Failure to Object to the Solicitor's Closing Argument & Brady Violations

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The Applicant testified that Counsel failed to object to the improper implication made by the Solicitor during closing arguments regarding a scratch found on the Applicant's neck at the time of his arrest.

"A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (citing Kyles v. Whitley, 514 U.S. 419, 432-42, 115 S.Ct. 1555, 1565-69, 131 L.Ed.2d 490, 505-10 (1995); Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196 (1963); State v. Von Dohlen, 322 S.C. 234, 241, 471 S.E.2d 689, 693 (1996). This rule applies to impeachment evidence as well as exculpatory evidence. Id. (citing United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 L.Ed.2d 481, 490 (1985)). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 388-89, 434 S.E.2d 266, 267-68 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id.

The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624-25 (1996). Furthermore, the solicitor's closing argument must not appeal to the personal biases of the jurors. Id. To be entitled to a new trial for improper closing arguments, the test is whether "the Solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Darden v. Wainwright, 477 U.S. 168, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986); Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868,

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40 L.Ed.2d 431 (1974); State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997); State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990); State v. Brisbon, 323 S.C. 324, 474 S.E.2d 433 (1996).

This Court finds that the Applicant has failed to meet his burden of proof as to this issue. The record reflects that testimony had been previously presented regarding a mark on the Applicant's neck and the Solicitor was allowed to reference evidence or reasonable inferences drawn from the evidence (Tr. 313:11-25). Therefore, there was no legal basis for Counsel to object.

As it relates to the alleged Brady violation, this Court finds that this allegation lacks merit. This Court finds Counsel's testimony to be most credible in that there was no report to turn over.

Failure to Object to Improper Character Evidence

The Applicant alleges Counsel was ineffective for failing to object to the admission of improper character evidence regarding the Applicant's drug use, anger, violence, firearm use, and borrowing money. The Applicant specifically asserts that Counsel was ineffective for failing to highlight the State's witnesses prior inconsistent statements.

Further, "[i]n a criminal case, the State cannot attack the character of the defendant unless the defendant herself first places her character in issue." Mitchell v. State, 298 S.C. 186, 188-89, 379 S.E.2d 123, 125 (1989) (citing State v. McElveen, 280 S.C. 325, 313 S.E.2d 298 (1984); State v. Swords, 279 S.C. 554, 309 S.E.2d 750 (1983); State v. Gamble, 247 S.C. 214, 146 S.E.2d 709 (1966)). Further, evidence of prior bad acts is inadmissible to show criminal propensity or to demonstrate that the accused is a bad person. State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987). "It is well settled that when the defendant in a criminal prosecution becomes a witness in his own behalf, he places his reputation for truth and veracity in issue and

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may be cross-examined about any of his past transactions tending to affect his credibility, but his general character is not put in issue and may not be assailed by cross-examination or otherwise.” Taylor v. State, 258 S.C. 369, 375-76, 188 S.E.2d 850, 853 (1972) (citing State v. Knox, 98 S.C. 114, 82 S.E. 278 (1914); State v. Bolin, 177 S.C. 57, 180 S.E. 809 (1935); State v. Corn, 215 S.C. 166, 54 S.E.2d 559 (1949)). “Evidence is relevant if it ‘ha[s] any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.’” State v. Braxton, 343 S.C. 629, 634, 541 S.E.2d 833, 835 (2001) (citing Rule 401, SCRE). Evidence of prior bad acts by the defendant is admissible to prove motive, intent, identity, lack of accident or mistake, or common scheme or plan. Rule 404(b), SCRE. A logical connection between the prior bad act and the crime is required. State v. Ford, 334 S.C. 444, 513 S.E.2d 385 (Ct. App. 1999); State v. Lyle, 125 S.C. 406, 118 S.E.803 (1923).

This Court finds that the Applicant has failed to meet his burden of proof as to this claim. The State’s theory was that the Applicant was high on crack cocaine and when the victim refused to loan him money, he became angry and killed her. Therefore, evidence and testimony regarding the Applicant’s crack cocaine abuse and previous times borrowing money were relevant and admissible to prove motive. This Court finds no basis for Counsel to object to inconsistent witness testimony. This Court finds credible Counsel’s testimony that he effectively impeached the State’s witnesses. This Court further finds that Counsel was effectively able to use cross-examination to address and combat harmful testimony.

Further, this Court finds that the testimony would be considered *res gestae* and not improper character evidence. The testimony in question would not have been excluded as an impermissible reference to a prior bad act, but would have been admissible as part of the *res*

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gestae of the crime. See Rule 404(b), SCRE; State v. Blackburn, 271 S.C. 324, 327–28, 247 S.E.2d 334, 336–37 (1978) (“In order to qualify as a part of the *res gestae*, a statement must be substantially contemporaneous with the litigated transaction and be the spontaneous utterance of the mind while under the active, immediate influence of the event.”); State v. Dennis, 321 S.C. 413, 417–18, 468 S.E.2d 674, 676–77 (1996) (citing State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995)) (same); State v. King, 334 S.C. 504, 512–13, 514 S.E.2d 578, 582–83 (1999) (citing State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370–71 (1996)) (“The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred.”); see also, State v. Gagum, 328 S.C. 560, 563 & n.2, 492 S.E.2d 822, 823 & n.2 (1997) (citing State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923); State v. Bolden, 303 S.C. 41, 43, 398 S.E.2d 494, 495, n.1 (1990)) (“While there are times when evidence may be admissible under *Lyle* and Rule 404(b) and the *res gestae* exception, the *res gestae* exception is properly viewed as independent of *Lyle*—that is, some evidence that would be inadmissible under *Lyle* and Rule 404(b) would be admissible as part of the *res gestae*.”).

Additionally, “[d]efense counsel may decide as a strategic matter not to object because his objection would highlight the erroneous evidence, argument, or charge.” State v. Torre, 305 S.C. 45, 65, 406 S.E.2d 315, 326 (1991). See Fernandez v. State, 306 S.C. 264, 467, 411 S.E.2d 426, 428 (1991) (counsel’s failure to object to admission of syringe into evidence not ineffective assistance of counsel where counsel impeached State witness and bolstered the applicant’s case by showing that the syringe was not consistent with the State’s case against the applicant.). See Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000) (citing Stokes, 308 S.C. 546, 419 S.E.2d 778 (1992)) (finding valid strategy not to request curative instruction

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"because they tend to bring into focus precisely the item the objector has kept out"). Accordingly, this Court finds that Counsel executed a valid strategy and was not ineffective. See Roseboro, 317 S.C. at 294, 454 S.E.2d at 313; Underwood, 309 S.C. at 562, 425 S.E.2d at 22 (1992); Stokes, 308 S.C. at 548, 419 S.E.2d at 778-79. Therefore, this Court finds the Applicant has failed to meet his burden of proof.

Failure to Prepare and Properly Investigate

This Court finds that the Applicant's allegations that Counsel did not conduct an adequate pre-trial investigation or prepare enough for trial are without merit. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012), *overruled on other grounds*, Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014). "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)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 525 (2003). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 359-54, 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

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counsel more fully prepared for the trial. Thus, respondent has failed to show his counsel's lack of preparation prejudiced him."); Skeen v. State, 325 S.C. 210, 213-14, 481 S.E.2d 129, 131-32 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must also show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 659, 104 S.Ct. 2039, 2047 (1984); U. S. v. LaRouche, 896 F.2d 815, 823 (4th Cir. 1990).

The Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel been more fully prepared or had additional time prior to the case being called to trial. This Court finds the allegation that Counsel was unprepared, did not investigate, and did not sufficiently meet with the Applicant prior to trial lacks merit. This Court finds Counsel's testimony on this issue to be credible and it is clear from the record and from Counsel's testimony that he met with the Applicant appropriately and fully investigated possible defenses for trial. This Court notes that Counsel has years of experience representing clients on similar charges. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation or lack of investigation. Accordingly, this allegation is without merit.

Conflict of Interest

The Applicant alleges Counsel should have been replaced due to a conflict of interest. "To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance." Lomax v. State, 379

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S.C. 93, 101, 665 S.E.2d 164, 168 (2008) (Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001)). The test used to determine when a conflict of interest results in a violation of sixth amendment rights is:

In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance . . .

[A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. . . .

But until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.

Duncan v. State, 281 S.C. 435, 437-38, 315 S.E.2d 809, 810-11 (1984) (citing Cuyler v. Sullivan, 446 U.S. 335, 348-350, 100 S. Ct. 1708, 1718-19, 64 L.Ed.2d 333 (1980)). An actual conflict of interest occurs "when a defense attorney places himself in a situation inherently conducive to divided loyalties. . . . If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists." Id. (citations omitted) "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." Id. (citing State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005)). "Additionally, the fact that counsel does not advise a defendant of the potential conflict of interest does not affect the constitutionality of the conviction." Id. (citing Jackson v. State, 329 S.C. 345, 355, 495 S.E.2d 768, 773 (1998)). Moreover, the "Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction." Langford v. State, 310 S.C. 573, 577, 426 S.E.2d 793, 795 (1993).

South Carolina jurisprudence contemplates a criminal defendant is prejudiced where his attorney has an actual or concurrent conflict of interest concerning multiple representations of adverse parties or parties to the same criminal episode. See Lomax, 379 S.C. at 101, 665 S.E.2d at 168; Duncan, 281 S.C. at 438, 315 S.E.2d at 811. Here, the Applicant stated that Counsel

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should have been removed because his conflict of interest was his prior service as a magistrate judge and a solicitor. This Court finds that the Applicant's allegation of a conflict of interest lacks merit. There was no credible evidence presented to support the claim. See Padgett v. State, 324 S.C. 22, 27, 484 S.E.2d 101, 103 (1997) (the mere possibility of a conflict of interest is insufficient to impugn a criminal conviction).

Failure to Present the Applicant's Testimony

The Applicant alleges Counsel was ineffective for failing to allow him to testify on his behalf. This Court finds Counsel's testimony credible that he and the Applicant extensively discussed his right to testify, that he discussed his right to testify with the Applicant's sister, that the Applicant came to his own decision not to testify freely, intelligently, voluntarily and of his own will, and that based on the Applicant's poor performance on cross-examination during his pre-trial hearing, all parties agreed with the Applicant's decision not to testify. Moreover, the record reflects that Counsel and the Applicant again took time to discuss the Applicant's right to testify at the end of the State's case, the State published the Applicant's prior criminal record for purposes of impeachment, and trial court fully advised the Applicant of his right to testify, which he waived, thereby curing any error on behalf of counsel (Tr. 405:10-412:20).

Failure to Challenge the Confession

The Applicant claims Counsel was ineffective for failing to obtain a jury charge on the voluntariness of his statement. The record reveals that the trial court's general charge to the jury regarding their role as fact finder, the Defendant's presumption of innocence, considering the weight and value of witness testimony and evidence, and the defendant's right not to testify, was proper and the trial court properly instructed the jury that in order to find the Applicant guilty the

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burden remains on the State to prove each element of the offense beyond a reasonable doubt (Tr. 439:13-447:22).

The Court further finds credible Counsel's testimony that he debated whether to suppress the Applicant's statement and move for a Jackson v. Denno hearing as a tactical matter and considered allowing the State to admit the statement. The Court finds credible Counsel's testimony that he was able to effectively examine law enforcement regarding the circumstances surrounding the interview and the alleged confession in great detail. The Court finds credible Counsel's testimony that he was able to effectively "impeach" witnesses with his detailed cross-examinations regarding the Applicant's statement. The Court finds credible Counsel's assessment that the circumstances surrounding the interrogation and confession supported the defense's theory and strategy that law enforcement improperly handled the Applicant's case. Counsel related that the Applicant said, "I feel responsible." The Court finds that the Applicant's statement is less than inculpatory and subject to many different interpretations falling short of an admission of guilt. The Court further finds valid Counsel's strategy to use the statements to focus on the fact that law enforcement did not videotape the interview, but videotaped all other proceedings.

This Court finds Counsel's testimony credible that the voluntariness of the Applicant's confession was a non-issue at trial based on the trial court's ruling on the Applicant's Jackson v. Denno motion. Counsel made a motion to suppress the Applicant's statement to police and a full pre-trial hearing was held, at which the Applicant testified. Counsel then renewed his objection during trial at the time of the officer's testimony regarding the statement. The voluntariness of the Applicant's confession was addressed on direct appeal and affirmed by the South Carolina Court of Appeals. Specifically, the Court of Appeals held:

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As to Stoudenmire's argument that the officers intentionally kept his attorney from him during the interrogation, we find that Stoudenmire was read his Miranda rights and never invoked his right to silence or his right to counsel. He never stopped talking during his interrogation and there was no indication that his interrogators knew that Stoudenmire's attorney was in the building. . . . Accordingly, we find that the trial court did not err in holding that Stoudenmire's statements were freely and voluntarily given.

State v. Stoudenmire, No. 2012-UP-628 (S.C. Ct. App. filed Nov. 28, 2012), *available at* 2012 WL 10864180.⁷

Further, as referenced above, the Applicant's statement was determined admissible, was read into the record and published for the jury, and was not a true confession (Tr. 288:15–289:19). Thereafter, Counsel effectively cross-examined the officer who published the Applicant's statement (Tr. 290:15–305:13).

It is not clear from the record whether Counsel requested an instruction, whether an instruction was requested and denied or whether the lack of giving the charge was a simple omission on the part of the trial Court. While it is prudent to give an instruction on the voluntariness of the Applicant's statement the omission of the instruction is subject to a harmless error analysis. When considering whether an error with respect to a jury instruction was harmless the reviewing Court must determine beyond a reasonable doubt that the error complained of did not contribute to the verdict. State v. Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014). The relevant inquiry is not what the verdict would have been had the jury been given the correct instruction, but whether the erroneous charge contributed to the verdict rendered. State v.

⁷ While the Court of Appeals held that the Applicant's argument that "physical contact by the officers during his interrogation prevented his statements from being freely and voluntarily given" was not properly preserved for appellate review "as it was not argued in his motion to suppress his statement," Counsel testified that the main basis for challenging the Applicant's statement was the fact that he was held for eight (8) hours, did not have the benefit of an attorney's advice, and other issues. See State v. Stoudenmire, No. 2012-UP-628 (S.C. Ct. App. filed Nov. 28, 2012), *available at* 2012 WL 10864180. Neither Counsel nor the Applicant testified as to any physical contact. Thus, the Applicant has not met his burden of proof as to this issue. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998)); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)).

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Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014). Whether or not an instruction error was harmless is a fact-intensive inquiry. Id. Further, precedent is clear that the failure to give an instruction is subject to "harmless error" analysis. Id. Therefore, this Court finds the Applicant's allegation is without merit.

In determining this issue on post-conviction relief the Court finds if Counsel failed to request the instruction, failed to preserve the issue for appellate review or the instruction was simply not given due to an omission on the part of the Court such error was harmless beyond a reasonable doubt. State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009); State v. Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014). Considering Counsel's strategy as articulated in the summary of testimony above and the breadth of the record in this case establishing the Applicant's guilt it is clear beyond a reasonable doubt that any error in not giving the charge did not contribute to the verdict rendered in this case.

Ineffective Assistance of Appellate Counsel

The Applicant alleges Appellate Counsel was ineffective for failing to argue preserved error and failing to file a petition for rehearing on his behalf. This Court finds the Applicant has failed to meet his burden of proof. The Applicant articulated no specific grounds of Appellate Counsel's error. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (quoting Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 58 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)).

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose

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among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

This Court finds that there was no evidence or testimony presented to show that appellate counsel did not raise the preserved issues that counsel felt had merit. Further, the South Carolina Supreme Court has held that appellate counsel has no duty to pursue rehearing and/or certiorari following the decision of the Court of Appeals in a criminal direct appeal. Douglas v. State, 369 S.C. 213, 215-16, 631 S.E.2d 542, 543-44 (2006).

Due Process Violations

This Court finds that the allegations of due process violations raised by The Applicant are direct appeal issues that are procedurally barred by S.C. CODE ANN. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973).

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The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, this Court summarily dismisses those claims.

Prejudice

"In order to prevail on a claim of ineffective assistance of counsel, petitioner must demonstrate that but for counsel's ineffectiveness, there is a reasonable probability the result of the trial would have been different." Palacio v. State, 333 S.C. 506, 511 S.E.2d 62 (1999). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Jackson v. State, 329 S.C. 345, 348, 495 S.E.2d 768, 769 (1998).

The overwhelming evidence of the Applicant's guilt presented by the State at trial negates any claim that Counsel's performance could have reasonably affected the outcome of the Applicant's trial. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding no reasonable probability the result of trial would have been different had counsel's performance not been deficient where there is overwhelming evidence of guilt).

This Court finds that the Applicant has failed to meet his burden of proof. Based on the testimony provided at the evidentiary hearing and a review of the record, this Court cannot discern any error in Counsel's performance that would undermine this Court's confidence in the jury's verdict. This Court finds that a reasonable jury could find the Applicant guilty of the

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charged offense. Therefore, this Court finds that the Applicant has failed to establish prejudice supporting vacating his convictions.

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations, which are denied and dismissed.

CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel, The Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness. This Court finds that the Applicant failed to meet his burden of proof to support his claims. Therefore, they are denied and dismissed.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that Counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland and 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel's representation. See id. The Applicant's complaints concerning Counsel's performance are without merit and are denied and dismissed.

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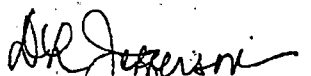
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 454, 409 S.E.2d 395, 396 (1991), and the Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. The Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4th day of June, 2015.


 Deadra L. Jefferson
 Presiding Judge
 Seventh Judicial Circuit

Charleston, South Carolina
 At Chambers

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1. SENTENCE MADE ☒ WITNESSES ☒
2. REPORT ENDED ☒
3. CARD PULLED ☒
Spartanburg County Sheriff's Department
4. INDEXED ☒
5. ARREST WARRANT ☒
6. CHECKED SIGNATURE ☒
7. ASSESSMENT AND ☒ CARD MADE ☒
8. TRAFFIC VIOLATIONS COPY ☒

ARREST WARRANT NUMBER

K329430

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 11-21-08

VERDICT

Guilty

Foreperson of Petit Jury

Date: 3-31-2010

DOCKET NO.

08-GS-42-7014

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

DEC 01 2008

TERM

THE STATE

v

Norman Eugene Stoudenmire

Indictment for

MURDER

SC Code 16-03-0010, 0020
CDR Code 116
Class FEL-EXM

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on NOV. 21 2008, the
Grand Jurors of Spartanburg County present upon their oath:

MURDER

That Norman Eugene Stoudenmire, did in Spartanburg County on or about
February 23, 2008, feloniously, willfully, and with malice aforethought, kill Gwendolyn
Emory, by stabbing the victim, and she died as a proximate result thereof, all in violation
of §16-3-0010, 0020, *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.

Paul P. Ehr
ASSISTANT SOLICITOR