

RECEIVED

OCT 06 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

VOLUME II OF II

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Michael G. Nettles, Circuit Court Judge

KENNETH SAMUEL WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-000182

APPENDIX

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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

RUSTON NEELY
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

PAGES 501 – 665

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JULY 26 – 29, 2010	1
APPLICATION FOR POST-CONVICTION RELIEF	582
RETURN.....	590
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	595
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED OCTOBER 17, 2016	597
LETTER FROM JUDGE NETTLES	657
ORDER OF DISMISSAL.....	659

1 An intent may be shown by acts and conduct of the
2 defendant, and from other circumstances from which you may
3 naturally and reasonably infer intent from.

4 So, the basic elements that have to be proven beyond a
5 reasonable doubt as a threshold matter is -- are that the
6 defendant entered the dwelling of another, and that the
7 entry was without consent, and that it was done with the
8 intent to commit a crime in the dwelling. Those three
9 things have to be proven as a threshold matter. And then
10 in addition, in order to complete the crime of burglary in
11 the first degree, the state has to prove one of two
12 additional elements.

13 The state has to prove that the defendant who entered
14 the dwelling without consent and with the intent to commit
15 a crime caused physical injury to a person who was not a
16 participant in the crime, or that the entering occurred in
17 the nighttime. The state does not have to prove both
18 physical injury to a person and entering in the nighttime.
19 But it does have to prove at least one of those two things
20 in order for those three -- in addition to those three
21 other elements that I explained to you in order to
22 constitute the crime of a burglary in the first degree.

23 If the state meets its burden of proof as to each of
24 those elements as I have instructed you, the state is
25 entitled to a verdict of guilty as to that charge. If the

1 state fails as to any of those elements, it has not met its
2 burden, and the defendant is entitled to a verdict of not
3 guilty as to that charge.

4 Now, criminal intent is a necessary element of each
5 crime, and it has to be proven beyond a reasonable doubt.
6 Criminal intent is always a matter that has to be
7 determined by you from the circumstances which surrounded
8 the situation. Obviously, obviously, there's no way to
9 prove to a mathematical certainty what anybody had in their
10 mind at any particular time. There's no way that we can
11 dissect a person's brain and look down in there and say,
12 well, what were you thinking at the time. And so the law
13 says that criminal intent can be inferred from the
14 circumstances which were shown to have existed.

15 Criminal intent, then, is a state of mind, and it
16 operates jointly with an act in the commission of a crime.
17 It is a mental state. It is a conscious wrong doing, and
18 so it's up to you as a jury to determine what the defendant
19 intended to do based on the circumstances which were shown
20 to have existed. I remind you that the state has to prove
21 criminal intent beyond a reasonable doubt, as it has to
22 prove every other element of the offense charged.

23 Now, ladies and gentlemen, I tell you that when two or
24 more persons get together to aid each other, to encourage
25 each other, to abet or assist each other in the commission

1 of a crime, all parties who are present are principals and
2 are equally guilty. When two or more persons combine
3 together to commit a crime and the crime is committed, all
4 of those who are present to aid and abet and assist in the
5 commission of a crime are guilty. The act of one becomes
6 the act of all; the hand of one becomes the hand of all.
7 It makes no difference by whose immediate hand the crime is
8 actually committed. All are principals.

9 However, mere presence at the scene of a crime, even
10 with knowledge that it is being committed, but without an
11 intent to aid or abet or assist in its commission, would
12 not constitute guilt. To be guilty as an aider or abettor,
13 the participant must have knowledge of the principal's
14 criminal conduct because mere presence is not enough to
15 establish guilt as an aider or abettor.

16 Mere presence at the scene, even in the company of
17 one, does not alone make one an aider or abettor. The
18 conduct of the individual charged or other circumstances
19 attending his presence must be such as to show that he has
20 associated himself with and participated in the criminal
21 undertaking something of significance. In other words,
22 beyond the mere fact of presence is necessary to justify a
23 conviction.

24 To convict one of aiding and abetting, however, it is
25 not necessary that the identity of the principal be

1 established, nor that he be convicted himself. But the
2 state has to prove that the offense has been committed, and
3 that that defendant was present during its commission,
4 aiding and abetting and assisting the one who was
5 committing it. And so the burden is upon the state, then,
6 to establish beyond a reasonable doubt that this defendant
7 was present, and that he was there with a criminal intent.
8 That is to say with an intent to aid, encourage, and abet,
9 or assist another in committing the crimes charged.

10 Now, the state offers by way of proof in support of
11 the charges which it has brought both direct and
12 circumstantial evidence. There are two types of evidence:
13 one is direct; one is circumstantial. Direct testimony is
14 the testimony of an eyewitness, a person who sees something
15 and comes into the court and tells you what I saw or what I
16 heard. Circumstantial evidence, on the other hand, is
17 proof of a chain of facts and circumstances which indicate
18 the existence of another fact.

19 For example, and once again by way of example only,
20 and it doesn't apply very often around here in our part of
21 the country. But if you can imagine going to sleep on a
22 winter's night and looking out across your front yard and
23 your lawn, and all you see out there before you go to sleep
24 is the brown, dead grass of winter. And the next morning
25 when you get up, you see that your front yard is covered

1 with snow, and as you look closer, you notice that in that
2 snow are footprints that lead up to your front door.

3 So, what can you conclude from what you saw from after
4 the fact? Well, one thing that you conclude is that after
5 you went to bed, it snowed. You didn't see a single flake
6 fall, but you know that it snowed, and you know that it
7 snowed after you went to bed. And you also know that some
8 time after it snowed, somebody came up to your front door.
9 You don't know who they were, but you know that they came,
10 and you know when they came. And you reach those
11 conclusions by drawing on circumstantial evidence.

12 And so the law doesn't make any distinction whatsoever
13 between the weight or the value to be given to either
14 direct or circumstantial evidence, and it doesn't require a
15 greater degree of certainty or proof of circumstantial
16 evidence than it does of direct evidence.

17 You should weigh all of the evidence in this case.
18 And after weighing all of the evidence, both direct and
19 circumstantial, if you're not convinced the defendant of
20 the guilt beyond -- the guilt of the defendant, I'm sorry.
21 If you're not convinced of the guilt of the defendant
22 beyond a reasonable doubt, then you must find him not
23 guilty.

24 Now, ladies and gentlemen, finally -- that's a word
25 you've been hanging on to hear for a while, isn't it,

1 finally. Finally, ladies and gentlemen, let me tell you
2 that you don't serve as partisans or advocates in this or
3 in any other case either for the state or this defendant.
4 You don't serve as jurors to punish your enemies, nor to
5 reward your friends. You have been selected by both sides
6 in this case to serve fairly and impartially as a jury. It
7 is your duty in this case, then, by your joint deliberation
8 to determine the truth of this case, giving to the
9 defendant the benefit of every reasonable doubt on each and
10 every issue. And then, as I've said, the truth that you
11 find and the law that I will give you will result in a
12 verdict which will speak the truth of this case. That's
13 what the word verdict means. It means a truthful saying.
14 And once you have done that, you will have satisfied the
15 oath that you took before you began this trial to well and
16 truly try this case, and render a true verdict according to
17 the evidence and the law so help you god, and I know that
18 you will do just that.

19 Now, Madame Forelady and members of the jury, I'm
20 going to give you the forms of the verdict in this
21 particular case. There are three possible verdicts, and so
22 you will write a separate verdict as to each of the charges
23 in this particular case.

24 The order in which I have written those verdict forms
25 on that sheet of paper doesn't mean a thing in the world,

1 and so you're not to draw any conclusions or any inferences
2 whatsoever in the order that I have written the forms of
3 the verdict. I write them simply in the order that I find
4 easiest to explain.

5 As I have said, there are three different charges.
6 You will write a verdict as to each charge. You will
7 consider the evidence as to each charge independent of the
8 evidence on any other charge. This defendant may be
9 convicted or acquitted on any or all the charges contained
10 in these three indictments.

11 The first possible verdict deals of the crime of
12 murder, and the verdict form says as to that indictment
13 number: On the charge of the murder of Jack Koch, we the
14 jury unanimously do find the defendant, Kenneth Sammy
15 Williams. And the first possible verdict is guilty.
16 That's the verdict that you will arrive at if you find that
17 the state has met its burden of proof as to each of the
18 elements of the charge of murder as I have instructed you.

19 And if that's the verdict that you arrive at as to
20 that charge, Madame Forelady, you will put an X or a check
21 in the blank that you see we provided.

22 The next possible verdict form as to that charge is:
23 We the jury by unanimous consent find the defendant,
24 Kenneth Sammy Williams, not guilty of the charge of murder.
25 That's the verdict you'll arrive at it you find that the

1 state has failed to meet its burden of proof as to any of
2 the elements of the crime of murder beyond a reasonable
3 doubt.

4 And if that's the verdict that you arrive at,
5 likewise, Madame Forelady, you'll indicate by putting an X
6 or a checkmark in that space.

7 As to the other two charges, the verdict forms are
8 exactly the same: guilty if the state has met its burden of
9 proof, not guilty if it fails to meet its burden of proof.

10 I remind you again that you will consider each
11 indictment and each charge separate and independent of the
12 other one. Your verdict on one does not control your
13 verdict on another. I've given the verdict form to the
14 forelady because she's the one who's got to fill it out.
15 She's the one who's got to sign it. But obviously the
16 verdict will not be hers alone. The verdicts have to be
17 unanimous; all twelve of you have to agree to what the
18 verdict is going to be.

19 And, Madame Forelady, you are not authorized to write
20 the verdict, nor to sign that form until all twelve of your
21 number have agreed as to what the verdict shall be.

22 I'm going to send you to your jury room right now, and
23 I'm going to ask that you wait just a few moments before
24 you begin your deliberations. I've got to talk with the
25 lawyers to see if I've left out anything, or if I have

1 misstated anything, and if I have, I'll have to bring you
2 out to make a correction. But if we do not have to bring
3 you back out, we will send in the items of evidence. And
4 once the items of evidence are delivered to you, that will
5 be your signal to begin deliberations.

6 Please, Madame Forelady, not begin until then.

7 And once the items of evidence have been delivered to
8 you, then you will begin your deliberations, and you will
9 deliberate until you have reached a verdict on each of
10 these cases.

11 And once you have done that, Madame Forelady, you will
12 fill out that form and sign it, knock on the door. We'll
13 bring you out to receive the verdict at that time, okay?

14 If you will please return to your jury room. Please
15 do not yet begin your deliberations.

16 Ms. Nix, Ms. Williams, ladies, if you'll just stay
17 right where you are, please, ma'am.

18 (THE JURY EXITS AT 2:42 P.M.)

19 BAILIFF: The jury is clear, Your Honor.

20 THE COURT: Thank you.

21 Ms. Tanner, other than previously noted, are there any
22 exceptions or requests for additional charge from the
23 state?

24 MS. MCCALL-TANNER: Nothing from the state, Your
25 Honor.

1 THE COURT: Mr. Hood, other than previously noted, any
2 exceptions or requests for additional charge from the
3 defense?

4 MR. HOOD: None, Your Honor, except I'm a little
5 concerned about the example that you gave as far as robbery
6 is concerned about a person reaching into an occupied car
7 and taking an item and leaving with it, but that's the
8 only...

9 THE COURT: Well, I was somewhat chastised by the
10 Court of Appeals in an opinion sometime ago because I used
11 to put the jury in the place: if you go back to your car
12 this afternoon. And the Court of Appeals instructed me,
13 although it said that it was harmless error -- of course,
14 I'd rather not commit any error at all, even harmless one.
15 But they instructed me at that point in time that I should
16 not try to put the jury in the place, as we all knew. And
17 really, I -- and in that particular case, it happened to be
18 a case where it was a sort of a snatch and grab robbery,
19 and it was a little too close. And so when I -- and I
20 modified that to try to just describe it in some more
21 sterile way that doesn't ask the jury to put themselves in
22 that position.

23 I note your exception and your concern in that regard.
24 And I'm sure if it becomes an issue, the Court of Appeals
25 will look at it and tell me again if I'm wrong. They've

1 done it in the past. Thank you.

2 MR. HOOD: Thank you.

3 THE COURT: Folks, if you all will make sure that the
4 evidence is all together and once it's all together, you
5 can send it in.

6 (THE ALTERNATE JURORS ARE EXCUSED BY THE COURT AS BOTH
7 COUNSELORS REVIEW THE EVIDENCE WITH THE COURT REPORTER.)

8 MS. McCALL-TANNER: I have reviewed the evidence with
9 the court reporter, and everything appears to be there.

10 (JURY DELIBERATIONS BEGIN AT 2:51 P.M.)

11 (OFF THE RECORD.)

12 THE COURT: Thank you, folks. Please be seated.

13 Folks, we have two questions from the jury. I'll read
14 them to you, then get your response.

15 Question number one: Because Kenneth Williams was
16 present during the incident, is this murder? And then a
17 part of question one: What is the definition of murder?
18 Would you please redefine the definition of murder in
19 regard to multiple people?

20 Question number two: Why not first-degree murder or
21 second-degree murder?

22 In order to answer question number one, obviously, and
23 to respond specifically to the jury's request, I will
24 redefine murder. I'll redefine, of course, malice inherent
25 in that, and I will redefine the hand of one is the hand of

1 all. That will, I think, address those two concerns.

2 Why not first-degree murder and second-degree murder,
3 of course as you know, we don't have anything like
4 second-degree murder. We've got murder, manslaughter of
5 several types, and different types of homicide that do not
6 involve murder itself.

7 The only way I know to answer that without getting too
8 far afield is to let them know that while the law does
9 recognize, while the law does recognize different types of
10 homicide, that in this particular case, the elements of
11 those other particular crimes do not apply in this, in this
12 case. I don't know how else to deal with that.

13 And so let them know that their, their only decision
14 is to decide if the state has proven the elements of murder
15 as I have defined it. That its met its burden of proof.
16 And if they -- if the state has not been met its burden of
17 proof in that regard as to each of the elements, then their
18 verdict would be not guilty. They're not to be concerned
19 with other, other degrees of homicide.

20 What says the state, Ms. Tanner?

21 MS. MCCALL-TANNER: I believe your responses have been
22 fair. I really don't have anything to add or detract from
23 those.

24 THE COURT: All right.

25 Mr. Hood, what says the defense?

1 MR. HOOD: Judge, I disagree with the homicide matter.

2 THE COURT: Okay.

3 MR. HOOD: I think that the state has made this
4 allegation. The state has chose to proceed on this
5 allegation.

6 THE COURT: Right.

7 MR. HOOD: And that they are to make a decision based
8 solely upon that particular charge, and not that you have
9 not advised them of anything else.

10 THE COURT: I don't disagree with that. I think that

11 ---

12 MR. HOOD: Because if you tell them ---

13 THE COURT: I'm prepared ---

14 MR. HOOD: --- that I, I didn't advise you that there
15 were other, you know, crimes ---

16 THE COURT: Right.

17 MR. HOOD: --- that you're not to, you know...

18 THE COURT: I'll just tell them they're not, they're
19 not concerned -- that they are only concerned with the
20 charge in this particular case, not something that's not
21 charged. Their decision would have to be made on the basis
22 of this case.

23 MR. HOOD: That the decision was made by the state to
24 call that charge.

25 THE COURT: Okay, I won't have to go into all that,

1 but I will, I will tell them they're not concerned with any
2 other degrees other than the murder as has been charged.

3 MR. HOOD: Right.

4 THE COURT: Let me get these charges back in front of
5 me once again.

6 (A PAUSE.)

7 THE COURT: Okay, I was looking for some better
8 definition of malice, but the more complete definitions
9 which don't, don't fit in this particular case. As a
10 matter of fact, the malice instruction which was presented
11 by the state which I gave earlier I think is still the
12 appropriate, the appropriate charge on the law.

13 All right, bring us a jury, please.

14 BAILIFF: Yes, sir, Your Honor.

15 (THE JURY ENTERS AT 3:41 P.M.)

16 BAILIFF: Jury is seated, Your Honor, and I have a
17 note for you.

18 THE COURT: Okay.

19 (A PAUSE.)

20 THE COURT: All right, folks, let me talk with -- I
21 have to talk with the lawyers about these questions before
22 I answer them. So, let me see if I can deal with this last
23 question over here at sidebar.

24 (OFF-THE-RECORD BENCH CONFERENCE.)

25 THE COURT: Okay, let me deal first of all with the

1 questions that were presented first. The question is:

2 Because Kenneth Williams was present during
3 incident, is this murder? And what is the
4 definition of murder? Would you please
5 redefine the definition of murder in regards
6 to multiple people?

7 And question number 2: Why not first-degree murder or
8 second-degree murder?

9 Let me answer your questions in the order that they
10 were presented. First of all, the definition of murder and
11 redefining that in regards to multiple people, and that
12 would be the hand of one being the hand of all.

13 Murder is the unlawful killing of another person with
14 malice aforethought, either expressed or implied. And so
15 in order for the state to prove the defendant guilty of
16 murder, it must be proven beyond a reasonable doubt that
17 the defendant killed a person, and that the killing was
18 done with malice aforethought. It is that element of
19 malice aforethought that makes the killing of a person
20 murder.

21 The state is not required to prove any motive for the
22 killing, but it is required to prove malice. And so
23 obviously the definition of malice is a critical element of
24 the charge of murder.

25 Malice is the intentional doing a wrongful act without

1 just cause or excuse, and with an intent to inflict injury.
2 Malice aforethought is the well formed purpose to do the
3 unlawful act. Aforethought means was that the intention to
4 do the unlawful act was conceived or planned some time
5 before the actual commission of the unlawful act, but the
6 malice need not exist for any particular length of time
7 prior to the act.

8 Malice is a word that suggests a wickedness, or a
9 hatred, or a determination to do what one knows to be wrong
10 without just cause or excuse or legal provocation.

11 Malice need not be in the mind of the one doing the
12 killing for any particular length of time before the act of
13 killing in order to render the killing murder. If it is
14 present in the mind of the one doing the killing any length
15 of time before the act, then its presence would be
16 sufficient to render the killing murder.

17 Malice is defined as being hatred or ill will. Malice
18 in its legal sense does not necessarily mean ill will
19 toward the individual injured but signifies, rather, a
20 general malignant recklessness of the lives and safety of
21 others. Or a condition of the mind which shows a heart
22 regardless of social duty and faithfully bent on mischief.
23 Malice is a wrongful intent it injure another person. It
24 indicates a wicked or a depraved spirit on doing wrong.

25 Malice is a legal term implying wickedness and

1 excluding a just cause or excuse. It is a doing of a
2 wrongful act intentionally and without just cause or
3 excuse. The term malice indicates a formed purpose and
4 design to do a wrongful act under the circumstances that
5 exclude any legal right to do it.

6 Although malice must be aforethought, there is no
7 requirement that it must exist for any appreciable length
8 of time before the commission of the act. It may be
9 conceived at the very moment the act occurs. But there
10 must be a combination of the evil intent and the act
11 producing the result.

12 I remind you that malice can be expressed or inferred.
13 Malice is expressed when there's shown a violent,
14 deliberate intention to unlawfully take away another human
15 life. Malice can be inferred where no legal provocation or
16 excuse for the killing occurs, and when the circumstances
17 attending a killing show an abandoned heart, or a heart
18 fatally bent upon mischief.

19 And so it is the element of malice that is a critical
20 element of the crime of murder. The state has the burden
21 of proving that the defendant killed someone with malice
22 aforethought, either expressed or implied. And juxtaposed
23 on that crime is the charge on aiding and abetting.

24 When two or more persons aid, encourage, and abet each
25 other in the commission of a crime, all who are present are

1 principals and equally guilty. Where two or more persons
2 combine together to commit a crime and the crime is
3 committed, all those who are present to aid and abet and
4 assist in the commission of that crime are guilty. The act
5 of one becomes the act of all; the hand of one becomes the
6 hand of all. It makes no difference by whose immediate
7 hand the crime is committed. All are principals.

8 However, mere presence at the scene of the crime, even
9 with knowledge of the commission of the crime, but without
10 an intent to aid, abet, or assist in its commission would
11 not constitute guilt because to be guilty as an aider or an
12 abettor, the participant must have knowledge of the
13 principal's criminal conduct. Mere presence at the scene
14 is not sufficient to establish guilt as an aider or
15 abettor. Mere presence at the scene, even in the company
16 of one or more principal wrongdoers and even with the
17 knowledge that the crime is being committed, does not alone
18 make one an aider or abettor.

19 The conduct of the individual charged, or other
20 special circumstances attending his presence, must be such
21 as to show that he has associated himself with and
22 participated in the criminal undertaking. Something of
23 significance, in other words, beyond the fact of presence
24 is necessary to justify a conviction.

25 So, to convict one of aiding and abetting, it is not

1 necessary that the identity of the principal be
2 established, or that he be convicted of the crime. But the
3 state has to prove the offense itself, that it has been
4 committed. And that the defendant was present aiding and
5 abetting as the law defines it.

6 And so the hand -- mere presence at the scene without
7 -- even with knowledge is -- but without an intent to aid
8 or abet or assist in its commission would not constitute
9 guilt. And so the burden, then, is upon the state to
10 establish beyond a reasonable doubt that this defendant was
11 present, and that he was there when a criminal intent with
12 a principal involved, if there was a principal other than
13 this defendant. That is to say with an intent to aid, or
14 to encourage, or to abet another in committing the offenses
15 charged in this regard.

16 That is the law on aiding and abetting. There are
17 numerous ways to say it, but I've tried to say it in accord
18 with the definition under the law.

19 The second question was: Why not first-degree murder
20 or second-degree murder? That is not a concern of yours,
21 nor is it a concern of mine. The state has charged in the
22 indictment the crime of murder as I have described it to
23 you: the unlawful killing of another person with malice
24 aforethought.

25 If it meets the elements of those -- of that crime,

1 each of them beyond a reasonable doubt, it has met its
2 burden and is entitled to a verdict of guilty on the
3 charge. If it fails to meet its burden of proof to each of
4 those elements beyond a reasonable doubt, the defendant is
5 entitled to a verdict of not guilty. So, you only concern
6 yourself with the crime charged and not with anything else
7 beyond that.

8 The third question is:

9 When or who mentioned Skinner's fingerprints
10 were in the house, and when was Skinner
11 there, and why was he in the house, and how
12 many times?

13 The last question, why was he in the house and how
14 many times, there is no answer to that question because no
15 testimony was offered in that regard. There's nothing in
16 the evidence, and you have to confine your deliberations to
17 the evidence in this particular case.

18 As to when and who mentioned the fingerprints were in
19 the house, we're going to have to call on you and your
20 collective memory to remember that. There is -- there's no
21 consensus as to what was said in that regard, if anything
22 at all. Nonetheless, your collective memory will serve you
23 and certainly not ours. This record, of course, may have
24 that information. We don't know whether it does or not.
25 But try to determine that on the basis of your collective

1 memory, and if you cannot, then we will try to help you
2 further in that regard.

3 Thank you, ladies and gentlemen. If you will retire
4 to your jury room now and continue your deliberations.

5 (THE JURY EXITS AT 3:53 P.M.)

6 BAILIFF: The jury's clear, Your Honor.

7 THE COURT: Thank you.

8 Madame Reporter, as to question number three, we met
9 at sidebar. Question number three had actually three
10 parts. As to when and who mentioned Skinner's fingerprints
11 were in the house and when he was there, there was not any,
12 any consensus between Ms. Tanner and Mr. Hood about what
13 that testimony was. Mr. Hood mentioned his recollection,
14 that one of the officers had testified they had mentioned
15 to Skinner that they had his fingerprints, and then he had
16 been forthcoming with some questions.

17 If the jury cannot recall that, then it may be
18 necessary for us to reclaim that testimony to find out what
19 it actually said and let the jury hear it if they cannot
20 decide that issue.

21 There was consensus, however, as to the final
22 question: Why was he in the house and how many times. That
23 was not in the evidence, and so there is no way that that
24 question can be answered in the basis of the evidence.

25 Ms. Tanner, are there any exceptions or requests for

1 additional remarks on my behalf to the jury in connection
2 with any of those questions?

3 MS. McCALL-TANNER: I don't think so, Your Honor. I
4 mean, I'm a little concerned. I would rather the jury hear
5 that there is no such thing as degrees of murder verses
6 just telling them it was the state's decision to bring it
7 on murder.

8 THE COURT: Right. Right.

9 MS. McCALL-TANNER: But I defer to Your Honor on that,
10 that decision. But, you know, I think that it did come out
11 to the jury that it was -- this is the state's -- and it's
12 true. I mean, it's our decision about charging.

13 THE COURT: Right.

14 MS. McCALL-TANNER: So, I really don't have an
15 argument to make about that other than...

16 THE COURT: Right.

17 MS. McCALL-TANNER: You know, if it were up to me and
18 I could tell them what I wanted to tell them, I would tell
19 them there's no such thing as decrees of murder.

20 THE COURT: Right, but there are degrees of homicide.

21 MS. McCALL-TANNER: Yes, sir.

22 THE COURT: Of course, and that would get into a
23 rather long and involved discussion of voluntary
24 manslaughter, involuntary manslaughter, reckless homicide,
25 homicide by child abuse, all of those things which I'm

1 afraid would end us up way away from where we are in this
2 particular case.

3 I note your concern about that, and of course I do,
4 too. Sometimes as an educational exercise, it probably
5 would be well to be able to explain we have first or
6 second-degree murder. But that does not mean that we don't
7 recognize that there are different levels of culpability
8 and different levels of responsibility and punishment that
9 attaches itself to different types of homicide.

10 MS. McCALL-TANNER: Yes.

11 THE COURT: I didn't see how we could go into that.
12 Mr. Hood.

13 MS. McCALL-TANNER: My, my only concern ---

14 THE COURT: Excuse me.

15 MS. McCALL-TANNER: --- is if they believe there is
16 first-degree murder and second-degree murder, what in the
17 world do they think that is, and what are they using to
18 deliberate? It's clearly something they've seen on
19 television because it is not South Carolina law.

20 THE COURT: Right.

21 MS. McCALL-TANNER: So, that was my only concern.

22 THE COURT: Right.

23 MS. McCALL-TANNER: But I'm satisfied with Your
24 Honor's charge to the jury.

25 THE COURT: Okay. Thank you. I share that concern,

1 but I didn't know how I could address it, quite frankly,
2 without getting too far overboard.

3 Mr. Hood.

4 MR. HOOD: Judge, I think that any other comment,
5 you'd be commenting on the case.

6 THE COURT: Right.

7 MR. HOOD: And I don't think you can do that.

8 THE COURT: Right. Right.

9 MR. HOOD: I'm a little concerned about the last
10 statement that we made about -- again, we're commenting on
11 the evidence. When we say there, there is no evidence of
12 this, that we've agreed that there ---

13 THE COURT: That's not a comment on the evidence.
14 That's a comment on the lack of evidence.

15 MR. HOOD: Well, the lack of evidence. Well, it's
16 sort of confusing about how many times because again, if I
17 recall correctly, when we were on the sidebar, you know,
18 we, we were discussing the fact that memory served us that
19 one of the officers when he was questioning Mr. Skinner
20 made the comment that we got your fingerprints or something
21 like that inside of the house.

22 THE COURT: Right.

23 MR. HOOD: And he says oh, I was there before.

24 THE COURT: Right.

25 MR. HOOD: You know, and that I've been there before.

1 THE COURT: Right.

2 MR. HOOD: Something along that, along that line, and
3 I recall that testimony.

4 THE COURT: Right.

5 MR. HOOD: But, you know, the question about us saying
6 that there is no evidence about how many times he had been
7 there, I -- well, anyway.

8 THE COURT: Or why.

9 MR. HOOD: I just that it's difficult to ---

10 THE COURT: Right.

11 MR. HOOD: --- make those statements.

12 THE COURT: Well, I did create a distinction between
13 the first and the second questions.

14 MR. HOOD: Right.

15 THE COURT: I did indicate to them that there was not
16 any agreement on the first part. That they would have to
17 rely on their collective memories and if they couldn't get
18 up, we would try to find it in the record, the answer to
19 that question, to allow -- to know if they, if they
20 couldn't determine it on their own.

21 But, but it's quite common when a jury asks a question
22 that the evidence does not answer either because something
23 was just omitted because the question wasn't asked or
24 answered. Most of the time it occurs in a civil context
25 when they want to know, well, how much has the plaintiff

1 received from his insurance company or that sort of stuff,
2 you know.

3 But whether it's a civil or criminal context, if the
4 jury asks a question that the answer -- that the record
5 does not contain the answer of, I think I'm obligated to
6 tell them we don't know the answer to that because it's not
7 in the record. And you have to confine on your
8 deliberations to the record itself. I don't know how else
9 to deal with that.

10 I don't want them to be laboring -- that we're trying
11 to hide something from them because then they could draw
12 all sorts of adverse inferences from that. I think the
13 truthful thing -- or the safest thing is to tell them the
14 truth. It's not in the record, and so I can't answer it.

15 Now, we don't know how many times he was in the house.
16 The officers may have testified at one point in time or
17 another what he said, or what one of the witnesses or the
18 other witness said. But there's no way, I think, to
19 determine how many times he was there: whether they were
20 talking about the same times, or whether there was
21 overlapping, or whether they were talking about separate
22 times. I just, I just didn't think we could get into that
23 because I didn't know.

24 MR. HOOD: Well, I, I agree with you, but what I'm
25 concerned about is there are two questions there. Number

1 one, I think it's talking about fingerprints first.

2 THE COURT: Right.

3 MR. HOOD: And then the second question was, obviously
4 it was sort of tag on to that one, saying how many times
5 had he been in the house.

6 THE COURT: Right, and why.

7 MR. HOOD: In the first one, we said you'll have to
8 rely upon your memory as to any fingerprint evidence.

9 THE COURT: That's right.

10 MR. HOOD: And the second one, we said there is
11 absolutely no evidence as to that question.

12 THE COURT: No. The question is there's no evidence
13 as to why he was in the house. That was the second
14 question.

15 MR. HOOD: Correct.

16 THE COURT: Well, right.

17 MR. HOOD: Yeah, why or how many times.

18 THE COURT: That's right.

19 MR. HOOD: I think it's just, it's just another one of
20 those points that it's extremely difficult. You don't know
21 how a jury is going to take it.

22 THE COURT: No, and you're right.

23 MR. HOOD: And I, you know, I just object to it.

24 THE COURT: Okay.

25 MR. HOOD: Just based on the fact that I think it's

1 confusing, you know, myself.

2 THE COURT: All right. I'll note that, and thank you.

3 Madame Reporter, if you'll mark those as Court's
4 Exhibits next, please.

5 All right, folks, we'll stand aside until the jury
6 lets us know they need some more information.

7 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
8 NUMBER 5.)

9 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
10 NUMBER 6.)

11 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
12 NUMBER 7.)

13 (OFF THE RECORD.)

14 THE COURT: All right, folks, we will bring in the
15 jury, and I will read the portions of the statute, or the
16 relevant portions of the common law that deal with these
17 three offenses. I will charge the bare bones charge of
18 murder from the statute, explain to them. As you all have
19 said, I've already charged them twice on malice. I'm
20 afraid it's not going to get any better, so hopefully we'll
21 -- they want me to read that to them again, I will. I will
22 charge them as to the appropriate elements of the burglary
23 charge, and the common law, as I've said, on the strong-arm
24 robbery.

25 Bring in the jury, please.

1 BAILIFF: Yes, sir, Judge.

2 (THE JURY ENTERS AT 5:23 P.M.)

3 BAILIFF: The jury's seated, Your Honor.

4 THE COURT: Thank you.

5 Ladies and gentlemen, I received your request for
6 formal copies in print of some of these charges I've given
7 you. Unfortunately, we're not set up to deliver them quite
8 that easily. These charges are generally embodied in a
9 larger section of the law, and when I read them to you, I
10 read certain portions that are relevant to this particular
11 case, or to whatever case we have pending. And so I'm
12 going to have to count on you all to write them down as I
13 read them slowly. But some of the statutes could be
14 printed out, but by the time we were able to e-mail these
15 from one back and forth to the other, it's probably just as
16 easy to do what we're going to do. And it also gives me a
17 chance to inquire of you concerning some areas of your
18 questions.

19 Let's begin with murder. The definition of murder is
20 quite simple. Murder is the killing of any person with
21 malice aforethought, either expressed or implied.

22 Now, folks, I have defined for you twice malice, and
23 I'll be glad to define it for you again. But can you all,
24 without blurting it out -- is there some particular aspect
25 of the charge on malice that is creating some problem so

1 that I'll know to give some emphasis to that is needed, or
2 to try to explain that particular aspect of the charge in a
3 different way? Or is it just the general, overall aspect
4 of malice that is creating problems?

5 Madame Forelady, can you, can you give me any guidance
6 in that regard, or are you prepared to do that?

7 FOREPERSON: Yes, sir. Give me a minute.

8 THE COURT: Yes, ma'am.

9 (FOREPERSON CONFERS WITH JURORS.)

10 FOREPERSON: We would like to have the definition of
11 malice again with multiple people.

12 THE COURT: Okay. Now, the definition of malice does
13 not confine itself to one person or two people or three
14 people. Malice is defined in an abstract fashion as it
15 deals with the person's state of mind. It is the hand of
16 one, the hand all that deals with more than one person.
17 So, the elements of malice do not pertain to a number of
18 persons. The definition of malice does not change whether
19 it applies to one person or more than one person. It is
20 the hand of one or hand of all of that deals with more than
21 one person.

22 I'll be glad to explain that to you again, but I
23 gather that it is not so much the individual definitions of
24 malice, or the individual definition of the hand of one or
25 the hand of all that's creating problems for you. Based on

1 what you just said, it appears to me that the difficulty is
2 in applying those two things in conjunction with each
3 other, or perhaps separate from each other, but bringing
4 those two concepts together, malice and the hand of one,
5 the hand of all. Is that -- am I ---

6 FOREPERSON: Yeah. That's exactly it.

7 THE COURT: Okay, I may need to do some more research
8 on that particular issue, but I will do the best that I can
9 with what, with what I have in front of me right now.

10 (A PAUSE.)

11 THE COURT: I've told you, and I'm sure that you all
12 understand, that malice refers to a state of mind. It is a
13 state of mind that combines with an act. Malice is the
14 intentional doing of a wrongful act without just cause or
15 excuse, and with the intent to inflict or cause injury.

16 I don't think you're confused by the fact of malice
17 aforethought. I gathered that you understand what
18 aforethought means. That it means that the intention has
19 to be conceived at some time prior to the actual
20 commission, but it doesn't have to be there for any length
21 of time. If it is present at the time of the act, then it
22 is enough to render the killing murder.

23 Now, so question is, I suppose, if two or more people
24 aid and abet each other in the commission of a crime, does
25 the malice expressed by one person or shown by one person

1 transfer itself to another person? And all I can do is to
2 tell you that the guidance that the law gives us in that
3 regard is that when two or more persons get together and
4 help each other and aid each other and abet each other in
5 committing a crime, all of them who are present aiding and
6 abetting and encouraging each other are equally guilty.

7 Where two or more persons combine together to commit a
8 crime and the crime is committed, all of those who are
9 present to aid and abet and assist in the commission of the
10 crime are guilty. The act of one person, in other words,
11 becomes the act of all who are together aiding and abetting
12 each other.

13 The hand of one becomes the hand of all. It doesn't
14 matter by whose hand the crime itself is committed. All
15 who are present aiding and abetting and assisting in the
16 commission of the crime are principals and are equally
17 guilty.

18 Would you like for me to go over that again? Does
19 everybody understand that concept?

20 (THERE IS NO AUDIBLE RESPONSE BY THE JURY.)

21 THE COURT: However, just because someone is present
22 at the scene of the crime, even with knowledge that a crime
23 is being committed, would not constitute guilt unless they
24 are there with an intent to aid or abet or assist in the
25 commission of the crime. In other words, mere presence

1 where a crime is being committed, even if one knows that
2 the crime is being committed, does not give rise to the
3 hand of one being the hand of all. The person has to have
4 knowledge that the crime is being committed, and must be
5 there to aid and to abet and to assist.

6 Does that make sense? Everybody understand that part
7 of it?

8 (THERE IS NO AUDIBLE RESPONSE BY THE JURY.)

9 THE COURT: Okay, now, if you need some more help
10 insofar as malice and how it impacts with the hand of one,
11 the hand of all, which is what your question seemed to
12 suggest, Madame Forelady, I'll be glad to do some more
13 research. We've got books that say these things in more
14 than one way, and I'll try to find another way to make it
15 plainer if the need arise..

16 And of course the hand of one, the hand of all does
17 not just apply to the charge of murder. It applies to any
18 of the charges that are relevant if you find that there's
19 evidence to make it applicable.

20 Now, you asked about burglary. Burglary is simpler to
21 define, and we're talking about burglary in the first
22 degree, and the elements in this case are quite simple.

23 The state has to prove that this defendant entered
24 somebody else's dwelling. So, the entry of the dwelling of
25 somebody else is number one. Secondly, the entry has to be

1 without consent. So, without consent is the second
2 element. And the third element is the entry has to be with
3 the intent to commit a crime. The intent to commit a crime
4 must be present at the time of the entry.

5 So, we start out as a threshold matter with those
6 three elements. You enter someone's dwelling, and it is
7 without their consent, and it is with intent to commit a
8 crime. All three of those have to be present.

9 Now, in order to make this burglary in the first
10 degree, one of two additional elements have to be present.
11 Not both of them but one of two. It could be either, it
12 could be both, but it must be at least one present or else
13 there is no burglary in the first degree.

14 And so one of the additional elements that has to be
15 present is that while they're going into the house, or
16 while they are in the house, or while they're leaving the
17 house, either the defendant or another participant in the
18 crime causes injury to someone else. So, while the house
19 is being entered, or while they are in the house, or while
20 leaving the house, either the defendant or another
21 participant in the crime causes injury to someone else.
22 Either that, the entry or the staying in the house occurs
23 in the nighttime. It doesn't have to have both of those
24 last two, but it has to have at least one of them in order
25 to constitute burglary in the first degree.

1 Do you want me to go over any of that with you again?

2 Everybody have understand that?

3 (THERE IS NO AUDIBLE RESPONSE BY THE JURY.)

4 THE COURT: Okay, let's talk about common-law robbery.

5 Robbery involves the taking of someone else's property,

6 personal property. I remind you that money is personal

7 property. So, the first element is that the defendant

8 takes someone else's personal property. And secondly, the

9 taking is without consent. And thirdly, there is the

10 intent to take that property, to steal it so that the owner

11 is deprived of its possession, and the taker converts it to

12 his own use and possession.

13 So, you've got the taking of someone else's property

14 without the consent of the owner and against his wishes,

15 and removing it from him with a wrongful intent to steal

16 it. That is, so that it no longer belongs to the rightful

17 owner. It belongs to the person who took it. That's what

18 we call stealing, simple as it can be.

19 What makes stealing robbery is this: if that property

20 is taken from the person of the owner, or if it is taken in

21 the presence of the owner, either by violence or by threat

22 of violence.

23 Do you want me to go over that again? Any of those

24 elements you need me to go over again?

25 (THERE IS NO AUDIBLE RESPONSE BY THE JURY.)

1 THE COURT: And I remind you again that even though I
2 charged you or asked -- I'll say charge you, told you about
3 the hand of one being the hand of all in connection with
4 the murder charge, because that's what you asked me to do.
5 That was a concern that you had. I remind you that the
6 hand of one and the hand of all applies to any crime in
7 which the facts of the crime meet the elements of the hand
8 of one, as I just instructed you.

9 Does that give you something to go back on and chew on
10 for a while?

11 (THERE IS NO AUDIBLE RESPONSE BY THE JURY.)

12 THE COURT: Okay. I wish I could have done it
13 simpler, but I hope that...

14 MR. HOOD: Your Honor.

15 THE COURT: Yes, sir.

16 MR. HOOD: Could we approach for just a minute?

17 THE COURT: Sure.

18 All right, just a minute before you go. I might need
19 to save you coming back in.

20 (OFF-THE-RECORD BENCH CONFERENCE.)

21 THE COURT: You all can go back and keep on talking.

22 (THE JURY EXITS AT 5:41 P.M.)

23 BAILIFF: The jury's clear, Your Honor.

24 THE COURT: Thank you very much.

25 At sidebar, Madame Reporter, Mr. Hood approached with

1 a concern about the portion of the statute on burglary in
2 the first degree that says if the defendant or another
3 participant in the crime causes injury to a person who's
4 not a participant. And his concern was about did that only
5 apply in the case of the hand of one being the hand of all.
6 Of course I instructed them that the hand of one, hand of
7 all applies to any of these crimes if the facts of the
8 crimes itself meet that.

9 But I think implicit in the, in the statute when it
10 says either that the defendant or the person -- and another
11 participant in the crime causes somebody else harm, I think
12 implicit in that is that there are two participants in the
13 crime, and that the hand of one be the hand of all is
14 implicit in the statute.

15 I don't know how else to say it, Mr. Hood, other than
16 that.

17 MR. HOOD: Well, and I agree with you, but, you know,
18 as I said, you know, interpreting these statutes is quite
19 difficult.

20 THE COURT: Well, it is. It is. It's fraught with,
21 it is fraught with peril.

22 (A PAUSE.)

23 THE COURT: All right, folks, we'll stand aside in
24 this case until we hear further.

25 (OFF THE RECORD.)

1 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
2 NUMBER 8.)

3 THE COURT: Bring us a jury, please.

4 BAILIFF: Yes, sir, Judge.

5 (THE JURY ENTERS AT 8:05 P.M.)

6 BAILIFF: Jury's seated.

7 THE COURT: Thank you.

8 Ladies and gentlemen, as you were writing your note to
9 me, I was about to write one to you all, and so our letters
10 would have crossed in the mail, as it were. I'm going to
11 answer your question to begin with as best I can, and then
12 I want to let you know some concerns that we have
13 concerning scheduling matters, okay?

14 Your question was:

15 Does the lack of taking action to help
16 someone after they have been beaten
17 constitute aiding and abetting murder or
18 malice?

19 You might recall that I told you in my instructions to
20 you that I'm the judge of the law, and you're the judge of
21 the facts. And as the trial judge, I'm not allowed to
22 comment to you on the facts of the case, or to indicate
23 anything to you that I might feel about my opinion of facts
24 or what your decision should be.

25 You're asking me, in other words, to give you an

1 opinion as to whether or not something in this particular
2 case constituted aiding and abetting, or constituted
3 malice. I'm not allowed to do that. That would be a
4 comment upon the facts of the case, and so I'm sorry. I
5 can't help you.

6 I've defined malice for you as best I can, and I'll
7 continue to whittle away at that and try to think of other
8 ways to do it, but I must necessarily define it in the
9 abstract. In other words, I can't define it in terms of
10 any particular case. That would be, as I've said, a
11 comment on the facts, and you have to decide the facts and
12 apply the law. And so I know that's not any help to you,
13 but it's all that I can do under the law.

14 Now, let me tell you what our concerns are concerning
15 scheduling. In about forty minutes from now, this
16 courthouse goes into an armed status, some sort of a DEFCON
17 4 or 5. I'm not sure what it is, purple level it gets up
18 to. What that means is that the courthouse is literally
19 armed against motion, and any movement sets off alarms.
20 And it's a wonderful system, and it protects you all's
21 beautiful, valuable courthouse from any sort of security
22 breaches during the night. But it also sets a limit on how
23 long we can stay under certain circumstances. And I'm
24 aware of the fact that some of you may have some concerns
25 about driving home after nightfall approaches.

1 And so I was going to suggest to you strongly and urge
2 you to consider going home now, and resting overnight, and
3 letting your minds clear for at least a few hours of what
4 you've had on your minds all afternoon long. And come back
5 in the morning fresh and anew to begin again your
6 deliberations, picking them up where you left off today.

7 Now, if you -- had you asked me a question that I'd
8 been able to answer definitely, frankly I was going to say
9 okay, now having answered that question, if that will help
10 you reach a decision, go back there and try to reach it,
11 but I haven't. I haven't answered your question
12 definitely. And so you still don't know any more about
13 this now than you did before you came out as far as what I
14 can tell you. And so I'm going to ask you now to go home
15 for the evening and return tomorrow morning.

16 Does that create any problems for anything? Is anyone
17 just completely put apart by that and just said, you know,
18 we'll stay here all night if we have to? Anybody want to
19 stay here all night?

20 (THERE IS NO AUDIBLE RESPONSE BY THE JURY.)

21 THE COURT: I don't think so, and I don't blame you,
22 and we wouldn't expect you to. And so I'm going to send
23 you home with our deepest gratitude for the efforts that
24 you have put thus far in this case, and for the continued
25 efforts that I know you will make tomorrow when you get

1 back.

2 Now, let me tell you a few things now that are
3 particularly important and significant, more so than at any
4 time before you've left this courtroom. I've been telling
5 you every time before you leave this courtroom not to
6 discuss this case with anybody, not to let anybody else
7 talk with you about it, and not to expose yourself to any
8 information about this case outside of this courtroom. Now
9 more than ever those instructions are critically important.

10 I can appreciate the fact that you all have been
11 struggling in there. You've let me know you've been
12 struggling. You've sent out questions, and I understand
13 that, and I'm somewhat frustrated that I'm not better able
14 to answer your questions. I've done the best that I can,
15 and the lawyers and I have gotten together to try to
16 fashion answers to your questions within the law and within
17 the bounds that we're allowed to move in doing that. But I
18 appreciate the fact that we haven't been unable to answer
19 the difficult questions because in the back of your mind,
20 you want to ask us what should we do, and that's a question
21 that I can't answer. Nobody can answer that but you all.

22 And so I appreciate as you have struggled with that.
23 Certain questions may have arisen in your mind, and you're
24 wondering what you should do. And you might want to, when
25 you get home tonight, discuss it with your spouse or with a

1 significant other or with a family friend, or with somebody
2 who's important to you and whom you trust and say what do
3 you think about this, and let me tell you what we've done,
4 and let me tell you what we've heard. Let me tell you what
5 we're saying. Now what do you think I ought to do?

6 Don't do that because that person hasn't heard two
7 days of testimony. That person doesn't know the facts to
8 this case. That person hasn't heard me instruct you as to
9 the law and try to answer the questions about the law that
10 you've had. And the verdict can't be that person's
11 verdict. That person is not under oath.

12 The verdict has to be yours, so please, please
13 continue to do what I know you've done up until now. Do
14 not discuss this case with anyone. You can tell them
15 you're struggling. Can't tell them why, and you can't tell
16 them anything else than that because they're going to want
17 to know why you're coming home at 8:15 at night when you
18 left this morning to be here at 9:30. And you've certainly
19 got a right to tell them you've got more work to do in this
20 case. But you can't tell them what it is, and you can't
21 tell them what you're thinking, and you can't tell them
22 what problems and questions you might have.

23 So, just don't discuss anything other than the fact
24 that you've been working hard, and that you all still have
25 to reach a verdict, and you've got to come back tomorrow

1 morning to accomplish that.

2 And it's important that you all come back tomorrow.

3 If somebody doesn't show up tomorrow, I've turned the two
4 alternates loose. We don't have them anymore. If somebody
5 doesn't show up tomorrow, this thing's out the window and
6 it's got to be done all over again. The defendant in this
7 case, the victims in this case will have to wait another
8 day after another trial before another jury if all of you
9 all don't show up tomorrow. So, please be back in your
10 jury room tomorrow at 9:30, and we will pick up where we
11 left off. Everybody understand that? All right have any
12 questions about that?

13 (THERE IS NO AUDIBLE RESPONSE BY THE JURY.)

14 THE COURT: Thank you, folks.

15 (THE JURY EXITS AT 8:12 P.M.)

16 BAILIFF: Jury's clear.

17 THE COURT: Thank you.

18 Ms. Tanner, any exceptions to those remarks by the
19 court?

20 MS. McCALL-TANNER: No, sir, nothing from the state.

21 THE COURT: Thank you.

22 Mr. Hood.

23 MR. HOOD: Nothing that I can think of, Your Honor.

24 THE COURT: All right, sir.

25 MR. HOOD: Obviously, we'd just as soon they continue

1 on, but I understand the circumstances.

2 THE COURT: Thank you.

3 Okay, folks, tomorrow morning.

4 (WHEREUPON, THE CASE IS AT EASE.)

5 THURSDAY, JULY 29, 2010

6 (COURT RESUMES AT 9:38 A.M.)

7 THE COURT: Good morning, ladies and gentlemen. The
8 jury is present. They are in a separate jury room from the
9 one in which they have been deliberating where all the
10 evidence is. I was going to bring them in and inquire and
11 make sure they still had not read anything about the case.

12 How does either side feel about me at this point in
13 time giving an Allen charge *sua sponte* in view of some of
14 the difficulties they appear to be having and deliberated
15 this length of time? If both sides agree, I will go ahead
16 and give it.

17 What says the state?

18 MS. McCALL-TANNER: Your Honor, I do not agree at this
19 point.

20 THE COURT: Okay.

21 MS. McCALL-TANNER: I know we stayed late. For us it
22 was late. However, for a murder case, they really only
23 deliberated about four and a half hours.

24 THE COURT: Okay.

25 MS. McCALL-TANNER: Dinner was included in that. They

1 ate during that time period. I don't think it's been an
2 unusual amount of time. They have not sent us any notes
3 that say we're deadlocked and we can't do this. They've
4 only sent questions clarifying the law; they wanted some
5 clarification on some of the facts.

6 THE COURT: Right.

7 MS. McCALL-TANNER: But other than that, they haven't
8 indicated in any way that they cannot reach a verdict, or
9 that they are hung up.

10 THE COURT: Okay.

11 MS. McCALL-TANNER: And they're willing to still keep
12 working. So, I would ask that we hold off on the Allen
13 charge until they give us more direction on that.

14 THE COURT: Okay.

15 Mr. Hood, I won't come to you for a response because -
16 - in view of the fact that the state has opposed that, and
17 I understand that. And, frankly, it could very well -- if
18 I were to give it at this time unsolicited from the jury,
19 it could tend to put undue pressure on some of the folks
20 who may be on one side or the other. And so I will, I will
21 refrain from giving that charge unless I'm asked to do it
22 by the jury because they're having some difficulty reaching
23 a verdict in this case.

24 And I agree. Four hours on a case of this nature is
25 not an unduly long period of time to deliberate. It was

1 the number of questions that I continued to get that gave
2 me some concern about their struggles. I will bring them
3 in and inquire, and then send them back for further
4 deliberations in the jury room.

5 You can bring them in.

6 BAILIFF: Yes, sir.

7 THE COURT: Thank you.

8 MR. HOOD: Judge.

9 THE COURT: Excuse me just a second.

10 MR. HOOD: Yesterday afternoon when we closed and you
11 were talking to the jury, you made a comment about the fact
12 they should consider the, the, the victims in the case.
13 The fact that they had to, you know, sit here and whatever,
14 you know.

15 THE COURT: I said that after I had said the
16 defendant. I said the defendant and the victims.

17 MR. HOOD: Right.

18 THE COURT: Exactly.

19 MR. HOOD: I, I agree, but I just, I, I think that
20 either the comment of the victims, in my opinion, is, is
21 not, not appropriate, in my opinion.

22 THE COURT: Well, I would expect you to say that, and
23 I would expect Ms. Tanner to say the same thing about the
24 defendant.

25 MS. McCALL-TANNER: Your Honor, and I think you said

1 that in the context of them showing back up today.

2 THE COURT: Exactly.

3 MS. McCALL-TANNER: And that -- not in deliberations
4 but just coming back to finish.

5 THE COURT: It was. It was designed to impress upon
6 them the importance of everybody coming back, and you're
7 right. But I did make that, and it was a measured comment,
8 Mr. Hood, you're exactly right, and I made it out of due
9 deliberation for what I was saying, and I tried to make it
10 as balanced as I could make it. But I appreciate your
11 concern, and I'll note that.

12 And bring us a jury.

13 (THE JURY ENTERS AT 9:43 A.M.)

14 BAILIFF: Jury is seated, Your Honor.

15 THE COURT: Thank you.

16 Good morning, Madame Forelady and members of the jury.
17 Thank you for your prompt return, all of you again this
18 morning. And I simply needed to inquire of you whether any
19 of you had been exposed to the article in the newspaper
20 today. It was once again front page news, and I can
21 understand that you could not avoid the headline if you
22 picked up your paper from the paper box this morning, just
23 as I did when I got my copy. And that doesn't concern me.

24 However, if any of you have read the article, I would
25 like to inquire of you further in that regard. Have any of

1 you read the article in the paper this morning? Have any
2 of you been exposed to other publicity from any other
3 source about this case?

4 (THERE IS NO AUDIBLE RESPONSE FROM THE JURY.)

5 THE COURT: All right. Thank you. I'm going to send
6 you back now.

7 When you came down the hall, you saw that yellow tape
8 over the, over the -- probably wonder what's gone on
9 overnight. Well, I think the evidence is in there, isn't
10 it?

11 CLERK OF COURT: Yes.

12 THE COURT: The evidence is kept in there overnight,
13 and obviously that has to be maintained in a secure
14 environment. And so that tape simply indicates that the
15 evidence is just like you left it yesterday when you left.
16 Nothing bad has happened in the room overnight, and so
17 we'll turn you back loose now to go back into that room and
18 continue your deliberations. And let us know if we can
19 help you further. Thank you.

20 (THE JURY EXITS AT 9:45 A.M.)

21 BAILIFF: Jury is clear, Your Honor.

22 THE COURT: All right, thank you, sir.

23 Ms. Tanner, is there anything further from the state
24 before we stand aside in this case temporarily?

25 MS. McCALL-TANNER: Nothing from the state, Your

1 Honor.

2 THE COURT: Mr. Hood, from the defendant as ---

3 MR. HOOD: Nothing, Your Honor.

4 THE COURT: --- we stand aside? Okay, thank you,
5 folks. We'll stand aside in this case until we hear
6 further from the jury.

7 (OFF THE RECORD.)

8 THE COURT: Thank you, ladies and gentlemen. If you
9 will please be seated.

10 Elizabeth, if you will please mark this.

11 COURT REPORTER: Number 9.

12 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
13 NUMBER 9.)

14 THE COURT: Ladies and gentlemen, we have received
15 another note from the jury, specifically from an individual
16 juror. I have shared this with counsel in chambers. They
17 have seen it, and it deals in part with the issue of
18 reasonable doubt. It appears to deal in part with a
19 concern about sentencing.

20 I will reinstruct on reasonable doubt because that is
21 a specific request in the note itself. I will indicate
22 that the matter of sentencing is a prerogative of the court
23 and not of the jury, and the jury need not concern itself
24 with that matter, but that is a matter that must be
25 entrusted to the court. And then I will also include an

1 Allen charge or hung jury charge because they think it
2 embodies some points that address some of the concerns
3 raised by this particular note.

4 All right, bring us a jury, please.

5 (THE JURY ENTERS AT 12:32 P.M.)

6 BAILIFF: All jurors are present, Your Honor.

7 THE COURT: Thank you.

8 Ladies and gentlemen, I want to address some issues
9 that were raised by the latest note that I received, and
10 will try to answer those concerns as best I can within the
11 limits that the law allows me.

12 One of the concerns in the note had to do with the
13 matter of reasonable doubt, and so I will reinstruct you on
14 the issue of reasonable doubt.

15 I have told you earlier, ladies and gentlemen, that
16 the burden of proof is upon the state to prove a defendant
17 guilty beyond a reasonable doubt. That the defendant is
18 presumed innocent of the charges contained in the
19 indictment, and the presumption of innocence accompanies
20 the defendant throughout the course of this trial, and even
21 with you all now as you are deliberating and considering
22 the question of his guilt or his innocence. And so the
23 burden, then, that is upon the state is to prove guilt
24 beyond a reasonable doubt.

25 I remind you that in a civil case where one side has

1 the burden in that type of case, the judge tells the juries
2 that it is only necessary for the party that has the burden
3 of proof to present evidence that is more likely true than
4 not true. Or, in other words, the evidence on one side is
5 more convincing than the evidence is on the other.

6 But in criminal cases, the state's proof has to be
7 more powerful than that. Here it must be proof beyond a
8 reasonable doubt. And so what do we mean by proof beyond a
9 reasonable doubt? Proof beyond a reasonable doubt is proof
10 that leaves you firmly convinced of the defendant's guilt.

11 There are very few things in this world that you and I
12 know with absolute certainty. And in criminal cases, the
13 law does not require proof that overcomes every possible
14 doubt. And so if, based on your consideration of the
15 evidence, you are firmly convinced that the defendant is
16 guilty of the crime charged, you must find him guilty. If,
17 on the other hand, you think there's a real possibility
18 that he is not guilty, you must give him the benefit of the
19 doubt and find him not guilty.

20 Reasonable doubt can arise from evidence in the case,
21 or it might arise from the lack of evidence in the case.
22 But you all must determine whether or not reasonable doubt
23 exists as to the guilt of the defendant.

24 The defendant is entitled to every reasonable doubt
25 arising in the case. And so if on any issue of fact which

1 is necessary to a conviction and a verdict of guilty you
2 have a reasonable doubt as to how that issue should be
3 resolved, it is your duty to resolve that reasonable doubt
4 in favor of the defendant because the defendant is never
5 required to prove his innocence.

6 And state is required in law to prove every essential
7 element of the offense charged against him by evidence that
8 satisfies you as a jury of the guilt of the defendant
9 beyond a reasonable doubt before you can convict him and
10 find him guilty.

11 And so if, then, upon the whole case you have a
12 reasonable doubt as to the guilt or the innocence of the
13 defendant, he is entitled to that reasonable doubt and
14 would be entitled to an acquittal and a verdict of not
15 guilty. But, on the other hand, if upon the whole case you
16 find that the state has proven by evidence that satisfies
17 you as a jury of the guilt of the defendant beyond a
18 reasonable doubt, then in such circumstances it is equally
19 your duty to convict the defendant and to find him guilty.

20 Now, ladies and gentlemen, in the note there is also
21 apparently a concern about the possibility of sentencing.
22 I read that as a possibility of a concern that the note
23 expresses. Let me tell you, ladies and gentlemen, that the
24 matter of sentencing, the prerogative of sentencing, the
25 duty, the responsibility, the task of sentencing lies

1 entirely with the court, the judge. Me in this particular
2 case.

3 Juries are only concerned with the matter of guilt.
4 That is whether or not the state has met its burden of
5 proof in proving someone guilty beyond a reasonable doubt.
6 And as I have just said, if the state has met that burden
7 of proof, then the state is entitled to get a verdict of
8 guilty on the charge. If the state fails to meet that
9 burden of proof, the defendant is entitled to a verdict of
10 not guilty on the charge, and that's the jury's
11 responsibility. I cannot intrude into that responsibility.
12 That is a responsibility that lies solely on the shoulders
13 of a jury.

14 However, the matter of the sentencing is uniquely the
15 prerogative in a case of this sort of the judge alone. A
16 jury is not concerned about the matter of sentencing. A
17 jury's conscience is not bound by the sentence that a judge
18 passes. That matter rests with the judge himself or
19 herself.

20 And so I'm going to ask you now to continue to make an
21 effort to reach a verdict in this case. As I have told
22 you, you all are the sole judges of the facts and the
23 evidence. And as the judge, I am not permitted to even
24 give you so much as a hint how much I might feel about a
25 factual matter. And certainly I would not give you any

1 hint about what I think your verdict ought to be in this
2 case. It is my duty to state the law which applies to this
3 case, as I've done. And it is your duty to bring in the
4 verdict.

5 But I can say this. When a matter is in dispute, as
6 this obviously is, it is not always easy for even two
7 persons to agree. And when twelve must agree, it becomes
8 that much more difficult. But it is important that
9 litigation -- and this is litigation -- be ended, if it can
10 be ended, without a single one of you doing violence to
11 your own conscience because no juror is expected to give up
12 an opinion based on reasoning satisfactory to himself or
13 herself merely for the purpose of being in agreement. And
14 I want each of you to understand that.

15 You're not often called upon to try cases. On the
16 other hand, over the last thirty-seven years now, I have
17 taken part in quite a number of cases, first as a lawyer
18 and now for the last eighteen years as a judge. And I
19 think you should know it is very, very unusual for a jury
20 to go out and return promptly with a verdict. That's what
21 would happen if you were in agreement before you began your
22 deliberations.

23 But at the same time, almost every jury is able to
24 return a verdict, and what that means is this. It is
25 normal for jurors to disagree at first. But the fact that

1 we normally get a verdict also means that after reasonable
2 persons lay aside all extraneous matters and determine to
3 decide a case on the basis of the law and the evidence,
4 they nearly always come to a common understanding and
5 return a verdict.

6 It has never been intended that the verdict of a jury
7 be the verdict of any one person. On the other hand, the
8 verdict of the jury is a collective reasoning of all
9 persons put together. That's why we have the jury: so that
10 we may have the benefit of your collected reasoning.

11 It is the duty of each of you to tell the other jurors
12 how you feel about the case, and why you think as you do,
13 and I'm sure you've been doing just that. On the other
14 hand, it becomes the jurors, other jurors' duty to explain
15 and exchange their views with you. And so you should
16 listen to each other and give the others' thoughts such
17 meaning as you think it should have. And to some degree,
18 it can be said that jury service, then, is a matter of give
19 and take.

20 A mistrial of a case is an unfortunate thing. If you
21 don't agree on a verdict, it doesn't mean that neither side
22 wins. It just means at some future time, another term of
23 court before some other judge perhaps, twelve more citizens
24 will sit right where you're sitting. The same participants
25 will come. The same lawyers will probably come. They will

1 ask basically the same questions, presumably they will get
2 the same answers, and so we will go through this entire
3 process once again. I don't have any reason to think that
4 any twelve citizens of this county will be any more capable
5 of solving this controversy than you all are. And so I'm
6 going to ask at this time that you deliberate further and
7 see if you cannot reach a verdict in this case.

8 And I want to close this part of these instructions by
9 reminding you of what I told you a moment ago. That while
10 it is important that litigation be ended, it should be
11 ended in the form of a verdict which does no violence to
12 any juror's conscience. No juror is expected to give up an
13 opinion based on reasoning satisfactory to himself or
14 herself merely for the purpose of being in agreement with
15 the others.

16 With that added instruction, Madame Forelady, I ask
17 that you return to your jury room. Continue. Deliberate.
18 I understand that the pizza is on the way, and so you can
19 deliberate as you continue, and eat at the same time.
20 Thank you.

21 (THE JURY EXITS AT 12:41 P.M.)

22 BAILIFF: Jury's clear. Door's closed, Judge.

23 THE COURT: Thank you.

24 Ms. Tanner, any exceptions to those remarks from the
25 court?

1 MS. McCALL-TANNER: Nothing from the state, Your
2 Honor.

3 THE COURT: Thank you.

4 Mr. Hood.

5 MR. HOOD: Nothing.

6 THE COURT: Thank you.

7 All right, folks, we'll stand aside.

8 (OFF THE RECORD.)

9 THE COURT: Ladies and gentlemen, we are advised that
10 the jury has reached a verdict. Are both the state and the
11 defense ready to receive the verdict?

12 Ms. Tanner?

13 MS. McCALL-TANNER: State's ready, Your Honor.

14 THE COURT: Mr. Hood?

15 MR. HOOD: We are, Your Honor, except the defendant's
16 family is not here yet, but we have tried to contact them.

17 THE COURT: Okay, are they on their way, so far as you
18 know?

19 MR. HOOD: They should be here.

20 THE COURT: Okay.

21 UNIDENTIFIED WOMAN: Your Honor, I left a voice
22 message on Ms. Roper's voice mail.

23 THE COURT: Okay, Mr. Hood, would it be acceptable if
24 we go forward, receive the verdict? And before, if
25 necessary, I deal with any matters of mitigation, should it

1 become that, I'll wait on your family to get here. Is that
2 acceptable?

3 MR. HOOD: I, I think that's fine. Yeah.

4 THE COURT: Okay.

5 MR. HOOD: We can do that, Your Honor.

6 THE COURT: All right. Folks, obviously this has been
7 a long trial, and it's certainly an emotional one for
8 everybody on either side of the aisle. And you have acted
9 with dignity and decorum on both sides, and I'm sure that
10 you will continue to act that way and to show no outward
11 emotion when the jury verdict, jury's verdict is announced.

12 I realize -- I don't expect you to be a robot, and
13 certainly you'll have feelings one way or the other. There
14 will be relief on one side perhaps, or anguish on one side.
15 I don't know, but I know that those things could happen.
16 All that I ask is that you refrain, please, from any
17 outward show of your emotions. And if you don't think you
18 can control your emotions, I'll give you a chance to leave
19 the courtroom at this time before the jury is brought in.
20 If you stay, I'll assume that you will be able to control
21 yourself just as you have throughout this trial, and I
22 appreciate that.

23 All right, bring us the jury.

24 (THE JURY ENTERS AT 1:45 P.M.)

25 BAILIFF: Jury entering, Your Honor.

1 THE COURT: Thank you.

2 BAILIFF: The jury is seated, Your Honor.

3 THE COURT: Thank you.

4 You've reached a verdict?

5 FOREPERSON: We have, Your Honor.

6 THE COURT: Is the verdict unanimous?

7 FOREPERSON: Yes.

8 THE COURT: If you will hand it to the clerk -- or the
9 bailiff, and he'll hand it to me. Thank you.

10 (A PAUSE.)

11 THE COURT: You may publish the verdict.

12 CLERK OF COURT: The Court of General Sessions,
13 indictment numbers 2007-GR-07-01918, 01919, 01920, *State of*
14 *South Carolina vs. Kenneth, Kenneth Sammy Williams,*
15 *verdict.*

16 As to indictment number 2007-GS-07-1918, the charge of
17 murder of Jack Koch, we the jury unanimously find the
18 defendant, Kenneth Sammy Williams, guilty. As to
19 indictment number 2007-GS-07-1920, the charge of burglary
20 in the first degree, we the jury unanimously find the
21 defendant Kenneth Sammy Williams guilty. As to indictment
22 number 2007-GS-07-1919, the charge of robbery, common-law
23 robbery, we the jury unanimously find the defendant,
24 Kenneth Sammy Williams, guilty.

25 Signed and dated.

1 THE COURT: Thank you.

2 Ladies and gentlemen, if this is the verdict of each
3 of you, please indicate by raising your right hand.

4 (THE JURY COMPLIES.)

5 THE COURT: Thank you.

6 Mr. Hood, does the defendant desire polling the jury?

7 MR. HOOD: He does, Your Honor.

8 THE COURT: Thank you.

9 Ladies and gentlemen, you're going to be polled
10 individually now. That means your names are going to be
11 called individually. And as your name is called, if you
12 will please stand in place right where you are and respond
13 to the questions that the clerk will put to you. He will
14 ask you are these your verdicts, and were these your
15 verdicts, and are these still your verdicts. And if you'll
16 give whatever the appropriate answer is to those questions.

17 Mr. Clerk.

18 CLERK OF COURT: Charles Barna, were these your
19 verdicts?

20 JUROR: Yes.

21 CLERK OF COURT: Are they till your verdicts?

22 JUROR: Yes.

23 CLERK OF COURT: Joan Simmons, were these your
24 verdicts?

25 JUROR: Yes.

1 CLERK OF COURT: Are they still your verdicts?

2 JUROR: Yes.

3 CLERK OF COURT: Elaine Gannt, were these your
4 verdicts?

5 JUROR: Yes.

6 CLERK OF COURT: Are they still your verdicts?

7 JUROR: Yes.

8 CLERK OF COURT: Pamela John, were these your
9 verdicts?

10 JUROR: Yes.

11 CLERK OF COURT: Are they still your verdicts?

12 JUROR: Yes.

13 CLERK OF COURT: Elaine Maury, were these your
14 verdicts?

15 JUROR: Yes.

16 CLERK OF COURT: Are they still your verdicts?

17 JUROR: Yes.

18 CLERK OF COURT: Celine Sayers, were these your
19 verdicts?

20 JUROR: Yes.

21 CLERK OF COURT: Are they still your verdicts?

22 JUROR: Yes.

23 CLERK OF COURT: John Dunn, were these your verdicts?

24 JUROR: Yes.

25 CLERK OF COURT: Are they still your verdicts?

1 JUROR: Yes.

2 CLERK OF COURT: Susan Workman, were these your
3 verdicts?

4 JUROR: Yes, sir.

5 CLERK OF COURT: Are they still your verdicts?

6 JUROR: Yes, sir.

7 CLERK OF COURT: Jerry Cartmill, were these your
8 verdicts?

9 JUROR: Yes.

10 CLERK OF COURT: Are they still your verdicts?

11 JUROR: Yes.

12 CLERK OF COURT: Brian Gruly, were these your
13 verdicts?

14 JUROR: Yes.

15 CLERK OF COURT: Are they still your verdicts?

16 JUROR: Yes.

17 CLERK OF COURT: Christine Beal, were these your
18 verdicts?

19 JUROR: Yes.

20 CLERK OF COURT: Are they still your verdicts?

21 JUROR: Yes.

22 CLERK OF COURT: Donald Calhoon, were these your
23 verdicts?

24 JUROR: Yes.

25 CLERK OF COURT: Are they still your verdicts?

1 JUROR: Yes.

2 THE COURT: Thank you.

3 Mr. Hood, are there any matters for the jury before
4 the jury is dismissed?

5 MR. HOOD: None, Your Honor.

6 THE COURT: Thank you.

7 Ladies and gentlemen of the jury, I want to thank you
8 now your service as jurors in this particular case. I
9 don't know when I've had a jury work as hard as you all
10 have worked in a case of this nature, and struggle with the
11 issues that have been presented to you. And that's the way
12 it should be.

13 These answers should not be easy, and the decisions
14 that you had to make in a case like this should not be an
15 easy one that you would rush to, and you have not. You
16 have given it due thought and deliberation. You have
17 talked about it, you have asked questions about it, and you
18 have done exactly what we would ask jurors like yourself to
19 do when you're dealing with the monumental issues that
20 confronted you in this particular case.

21 You have been exposed in this case to a side of life
22 and society that has not been very pleasant, and we
23 apologize for that, but that's what we do in this courtroom
24 from time to time. We have to expose good folks like you
25 to that in order to get a measure of justice for both sides

1 in cases. And certainly that has been done in this case.

2 You are now free to talk about this case with anybody
3 that you want to when you leave here today. The
4 restrictions that I had previously given you obviously no
5 longer apply. And so if someone wants to talk with you
6 about this case, or if you want to talk with someone,
7 certainly you are free to do that.

8 But if someone should ask you about the case, and if
9 you do not care to talk to them about it, you do not have
10 to talk with them about it. Just tell them that you don't
11 care to discuss the case. That you have lived with this
12 case for four days, and that's all you want to devote of
13 your time and emotion to it, and that should end that
14 discussion.

15 But if it does not, and if for some unforeseeable
16 reason someone continues to persist in their efforts to
17 talk with you after you've told them you don't care to do
18 that, just find out who they are. Get their name, please,
19 and furnish it to the clerk of court. And she'll contact
20 me, and I'll come down to Beaufort, and we'll deal with
21 those folks for you. I don't think that will happen, but I
22 wanted to let you know there is recourse in that regard.

23 In reality, ladies and gentlemen, you don't have to
24 answer to a single soul for your decision in this case
25 except your own conscience. And I can tell you I have seen

1 and heard everything that you've heard in this case, and
2 you don't need to fear your conscience for the decision you
3 have reached in this particular case.

4 You are now free for the next three years from jury
5 service. You should not even get called. If you do get
6 called and want to serve, I'm sure the judge would like to
7 have you, just as I have this week. But, on the other
8 hand, if you don't care to submit yourself to this sort of
9 emotional strain in the next three years, just tell them
10 that you served in July in this courtroom, and that judge
11 will let you go.

12 You will get a check in the mail.

13 In the next few days?

14 CLERK OF COURT: Yes, sir.

15 THE COURT: In the next few days. You will be
16 overwhelmed by the amount of the check. Obviously, there's
17 no way that we can pay jurors like yourself the true value
18 of your services. There's no way we can, we can pay you
19 what you are worth to this system. We have to depend on
20 good folks like you to make a contribution of your time and
21 of your effort and of your emotions to help us resolve the
22 cases that we have to resolve. And you'll find out how
23 great that contribution has been when you see how small
24 that check is.

25 Let me tell you that I hope you never get caught up in

1 this system. I hope none of you or any of your family
2 members ever find yourself seated on the inside of this
3 rail or on either side of this courtroom where the
4 defendant and his family are seated, where the victim's
5 family is seated. I hope you never find yourself there.

6 But I can tell you you don't have to volunteer to get
7 caught up in this system. You can get caught up in it
8 whether you want to or not. And while I hope that never
9 does happen to you, if it ever does, if it ever does, and
10 if you find yourself seated inside this rail, when the
11 jurors are called in that Monday morning to try your case,
12 and when you turn around and look into the faces of the
13 people who are seated out there as jurors for your case,
14 the case that you have a deep and abiding interest in,
15 you're going to hope that you look into the faces of people
16 just like you. People who've got things to do better than
17 serving as jurors. People who have other demands on their
18 time and on their lives. But people who are willing to put
19 aside those things that they had planned to do to help us
20 do the things that we have planned to do.

21 The last thing that you would want for us to do to get
22 jurors to try your case would be to scrape around the
23 streets of Beaufort and see if we can't find twelve people
24 who don't have a better thing in the world to do than come
25 into court and dispose of your case. Nobody wants that

1 kind of juror. They want folks like you, and you have
2 given us that kind of juror, and we are grateful for it.

3 I still have some matters out here that I have to take
4 up outside of your presence. There are some motions that
5 always are made. And there a matter of sentencing, which
6 as I told you is my prerogative. You're free to stay for
7 that if you want, but you don't have to. You can go to
8 your jury room. I would like for you to wait there for a
9 few moments. Before you go, I would like to have a chance
10 to express my gratitude to you individually. But if you
11 don't want to hang around, you don't. You've spent enough
12 time with us, and I will not keep you waiting any longer
13 beyond the time that you've already spent with us.

14 Thank you, ladies and gentlemen. You are free to go
15 now.

16 (THE JURY EXITS AT 1:54 P.M.)

17 BAILIFF: The jury is clear, Your Honor.

18 THE COURT: Mr. Hood, I'll be glad to hear motions
19 now. I will, I will momentarily delay the matter of
20 sentencing, both in aggravation and mitigation, until the
21 defendant's family is here, if that's okay.

22 MR. HOOD: Judge, I would just renew all of my motions
23 that I made during the course of this trial, along with the
24 objections and whatever that I made during the portion of
25 the deliberations concerning any instructions and things of

1 that nature.

2 THE COURT: Right.

3 MR. HOOD: And my request at this, at this junction
4 would be a motion for a new trial based upon the previous
5 motions that I had made during the, during the trial.
6 Motion for the directed verdict, and motion for, you know,
7 the lesser-included instruction.

8 THE COURT: Right.

9 MR. HOOD: Involuntary manslaughter, and the other
10 request that I made, and objections that I made to the hand
11 of one, hand of all and things of that nature.

12 THE COURT: I understand. Thank you, sir. I think
13 the record is adequately preserved in that regard, Mr.
14 Hood. Certainly from your perspective from the motions
15 that you made and argued very fully and completely during
16 the course of this trial.

17 Likewise, I think that I have responded to those in
18 rulings that are sufficient to preserve the record in that
19 regard. And so I simply renew my rulings as to those
20 earlier motions at this time.

21 MR. HOOD: Thank you.

22 THE COURT: All right, is the defendant's family here
23 at this point in time?

24 MR. HOOD: We are still missing a few.

25 THE COURT: All right.

1 (A PAUSE.)

2 MR. HOOD: Okay.

3 THE COURT: They're here?

4 MR. HOOD: They are.

5 THE COURT: Is the state ready to proceed to
6 sentencing?

7 MS. McCALL-TANNER: The state is ready, Your Honor.

8 THE COURT: All right. All right, come around,
9 please.

10 (A PAUSE.)

11 THE COURT: Ms. Tanner.

12 MS. McCALL-TANNER: Yes. You've heard the facts. I
13 won't go into that any more.

14 The state did previously ten days before trial serve
15 notice of intent to seek life imprisonment on Mr. Williams.
16 That was based on the rap sheet that we had that was
17 provided on Mr. Williams.

18 However, since then I've received certified copies of
19 his prior convictions. There was some questions about the
20 New York charges, how that actually qualified under our
21 statutes, and I, I can't honestly say I'm still clear on
22 that.

23 THE COURT: I see.

24 MS. McCALL-TANNER: And his Beaufort County charges
25 that would qualify under the statute, one of the charges

1 that I based my motion on, or my notice, actually turned
2 out to be a nonviolent offense. Our electronic court
3 records indicate it's a violent burglary. However, once I
4 get copies of sentencing sheets, it turns out it was a
5 nonviolent burglary.

6 THE COURT: All right.

7 MS. McCALL-TANNER: So, I cannot with one hundred
8 percent confidence say that his charges actually fall under
9 the statute. So, with that being said, I will not be
10 pursuing statutorily life without -- imprisonment.

11 THE COURT: Right.

12 MS. McCALL-TANNER: However, he has been convicted of
13 two charges now that carry life: burglary first and murder.
14 And the state still thinks it's an appropriate sentence
15 under, under the facts.

16 I will give you the remainder of his prior record; it
17 goes back to 1983. That was a -- back in 1983, actually
18 they call it criminally stealing from a person.

19 THE COURT: Right.

20 MS. McCALL-TANNER: I don't know if that's a
21 strong-arm robbery or a grand larceny.

22 THE COURT: Yes, ma'am.

23 MS. McCALL-TANNER: He was convicted of that. Then
24 again in 1983 assault and battery, petit larceny,
25 disorderly conduct. He did serve some time for those

1 offenses. Then in 1984 in Beaufort County, he had what was
2 then called housebreaking, which now we commonly refer to
3 as burglary.

4 THE COURT: Right.

5 MS. McCALL-TANNER: I have not been able to pull an
6 actual copy of that report. I don't know what degree it
7 would have been other than that it is called housebreaking back
8 in 1984. He was convicted of that, as well as grand
9 larceny and received an indeterminate one to six year
10 confinement on that under the YOA provisions.

11 It looks like there was -- I can't tell from the rap
12 sheet. This may have been a revocation of some sort in
13 1986 because it's the same type of offense. It's house --
14 well, no. This is a new one. It's a housebreaking, grand
15 larceny. He received ten years suspended, five years'
16 probation back in 1986. And these are only South Carolina
17 charges.

18 In 2007, being April 2007 -- again, this crime being
19 committed that we're here today for was in September. In
20 April, he was convicted of the burglary second degree
21 again. Turned out to be nonviolent under our
22 classification.

23 He then has a New York record from the nineties. The
24 rap sheet indicated that it was a burglary of a dwelling,
25 causing injury to a person, a sexual abuse with contact

1 which was forcible, robbery second. The rap sheet shows
2 convictions in '97.

3 And those offenses, when we contacted New York, they
4 could provide us copies, and I do have copies for the court
5 of those offenses from New York. I have provided them to
6 defense counsel. It looks like there was some type of plea
7 agreement in that. And I honestly can't tell you exactly
8 what the sentence was from there. It's, it's confusing.
9 They did tell me that there was some type of plea
10 agreement, and that's why I'm not able ---

11 THE COURT: Right.

12 MS. McCALL-TANNER: --- to proceed with my initial
13 notice.

14 In '98, he has a robbery third degree from New York.
15 '99 grand larceny and criminal possession of stolen
16 something from New York, which he received five years. In
17 1999, there's also a narcotics drug conviction from New
18 York, and these are the ones I was able to confirm by rap
19 sheet.

20 THE COURT: All right. Does the family wish to be
21 heard?

22 MS. McCALL-TANNER: Your Honor, I asked the family.
23 They are obviously present; they have been here the whole
24 time. They have been very patient over the three years
25 it's taken to come to court. They don't want to speak

1 openly in court, but obviously they are here and showing
2 support.

3 THE COURT: Thank you. Anything further from the
4 state?

5 MS. McCALL-TANNER: Nothing from state, Your Honor.

6 THE COURT: Thank you.

7 Mr. Hood.

8 MR. HOOD: Judge, basically the things I can tell you
9 about Sammy, you, you've heard all the facts of the case.
10 You know what we're involved with here. We've basically
11 got a hand of one, hand of all type situation. The
12 question is which one hand did the business.

13 THE COURT: Right.

14 MR. HOOD: And we aren't quite sure, obviously, and,
15 and that's the reason we ended up trying this case.

16 And Sammy, you know, he has been forthright, you know,
17 with me and working with me on this case. And, you know,
18 I, I appreciate his, his assistance to me and, and allowing
19 me the opportunity to, to handle this case, to tell you the
20 honest truth.

21 He has never been a burden to me, you know, in the
22 entire three years that I've had him. Sammy has sat very
23 quietly over at the -- in the jail where he's been for
24 three solid years. And, you know, he's, he's just, he's
25 always been Sammy, you know, every time I've been there.

1 And we, we've spent quite a bit of time together. Three
2 years obviously, and at least once a month, twice a month
3 or whatever. And I've always found Sammy to be agreeable
4 and just easy to work with, to be perfectly honest.

5 I've known Sammy's family and part of Sammy's family
6 obviously for at least three years, and some of them I've
7 known longer than that. And Sammy, as you notice, spent
8 some time in New York, but basically his whole life has
9 been here in Beaufort County. His mother lives here in
10 Beaufort County. And she, she was in, in the courtroom the
11 whole time this, this case was going on, and they all
12 support Sammy obviously.

13 I don't know whether any of them might have something
14 they'd like to say. I've been in contact with one of
15 Sammy's sisters who lives in New York, one that lives in
16 Washington D.C., one that lives in Atlanta and -- I mean,
17 not Atlanta. In, in Savannah. And just a variety of
18 people that are related to Sammy. They all support Sammy,
19 and that's the reason they've all been here, you know,
20 during this period of time.

21 Sammy is, like I say, forty-five years old. And you
22 and I both know we're talking about a minimum of thirty
23 years.

24 THE COURT: Right.

25 MR. HOOD: On the life -- I mean, on the murder case.

1 THE COURT: That's right.

2 MR. HOOD: That's the least he can receive up to life
3 without parole. And Sammy, like I say, is forty-five years
4 old. You add a day-for-day thirty years to that, you know,
5 he's, he's seventy-five. And that's -- you know, basically
6 what we would ask for is the, is the thirty-year sentence
7 day for day. And Sammy is, you know, well prepared to, you
8 know, accept responsibility for, you know, what he's been
9 convicted of.

10 THE COURT: Thank you, Mr. Hood.

11 Mr. Williams, do you want to add anything to what Mr.
12 Hood has said?

13 DEFENDANT: Yes. What I would like to say today, that
14 I stand in front of this court as a man today, right. That
15 first of all, I want to say to my family I love y'all to
16 death. Y'all know that, you know?

17 I did a lot of wrong things in my life, but to my
18 family and to the victim family, y'all Pops was a Pops to
19 me. I would -- you, you, you been there a couple time when
20 I call your Pops Pops. I never took nobody to your daddy
21 house for your daddy to get murdered. I never went there
22 to murder your father. Now, how these people found me
23 guilty today on murdering your father, I don't know.

24 But as a man, me standing in front of this court, I
25 did not murder your father. But I'm willing to accept the

1 fact that I took these people to your father house. And
2 when I pulled that other person off your father and walked
3 out that door and didn't pick up the phone and call help
4 for your father, I'm willing to accept the responsibility
5 that this court is going to put on me today because I feel
6 guilty. I didn't -- it didn't look it was that bad. I
7 didn't -- I was under the influence, and from the bottom of
8 my heart, I'm very, very sorry for that. Every night I
9 think and sees your father.

10 I'm not a murderer. My mom didn't raise a murderer;
11 my mom and my sisters didn't raise me to be a murderer. I
12 never fight. I never been in a fight, so I'm standing here
13 as a man today and telling y'all that I did not murder
14 y'all father. I didn't go there to murder y'all father. I
15 didn't go to rob your father. I'm very, very sorry.
16 That's all I got to say.

17 I love y'all, love y'all. I'm going to come home.
18 God's going to make me come home.

19 SENTENCE OF THE COURT:

20 THE COURT: Thank you, Mr. Williams.

21 This is a difficult case, obviously. A human life has
22 been lost, and nothing that this court does is going to
23 change that. And I recognize that this situation probably
24 started out as everyone indicted it started out: just to go
25 there and get some money somehow. There is a difference of

1 opinion, of course, as to how the money was going to be
2 obtained. But no one, I think, contends that however the
3 money was going to be obtained, that it was going to be
4 obtained by the use of force, certainly fatal force brought
5 about on Mr. Koch.

6 Regardless of the intentions, of course, Mr. Koch is
7 gone, and we can't replace that loss. And so we have to
8 address it somehow or another as best we can, but we have
9 to take into account the facts and circumstances
10 surrounding this case.

11 Mr. Williams, obviously your record speaks for itself.
12 There's nothing I can say about that, nothing Mr. Hood can
13 say about it. It is what it is, and you've done what
14 you've done. And I guess the simple thing for me to do is
15 just go ahead and give you life without parole and wash my
16 hands of this and move on.

17 But I'm mindful of the fact that you're forty-five
18 years old. And as Mr. Hood has said, the minimum sentence
19 means that you will be seventy-five years of age before you
20 will ever see the light of free day again. And so I take
21 that into account, the impact of this sentence on you, and
22 what would be served by additional time beyond that if you
23 were to be able to survive a thirty-year sentence in and of
24 itself. If serving life imprisonment on your part without
25 possibility of parole would somehow or another replace the

1 loss to these folks of their father, I'd give it without a
2 moment, but it's not.

3 And so, Mr. Williams, on the charge of strong-arm
4 robbery, the sentence is fifteen years. On the charge of
5 burglary in the first degree violent, the sentence is
6 thirty years. On the charge of murder, the sentence is you
7 be committed to the Department of Corrections for a period
8 of thirty years. These sentences run concurrent to each
9 other. You'll get credit for the time that you've served.

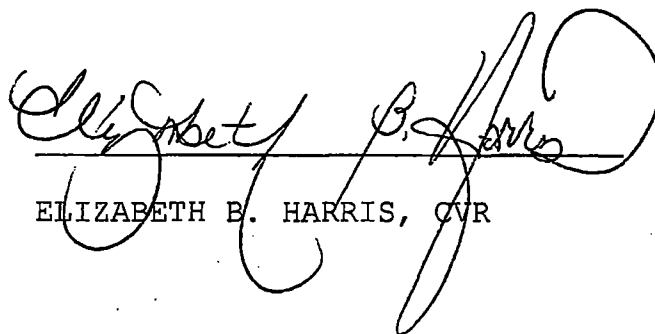
10 Thank you.

11 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR BEAUFORT COUNTY, SOUTH CAROLINA, ON THE 26TH, 27TH, 28TH, 29TH DAYS OF JULY, 2010.

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



ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

JANUARY 19TH, 2011

Office of the Clerk of Court

RANDOM STRIKE SHEET

JUDGE NAME : Cooper, G. Thomas

TRIAL TYPE : Criminal

PANEL ID : 2007GS01918

COURTROOM CTR

DESCRIPTION : STATE VS KENNETH WILLIAMS

Sorted by: Random Nbr

Trial

				STATE/ PLAINTIFF	DEFENDANT		
NAME	JUROR NBR	RACE	SEX	Chal	Strk	Court	REMARKS
1 Cuppia, Jerome C	46	W	M	()	~~()~~	()	
2 Barna, Charles J	8	W	M	()	()	()	✓
3 Haefner, Mark D	88	W	M	()	~~()~~	()	
4 Hergenroeder, Ann D	95	W	F	()	~~()~~	()	
5 Simmons, Joan B	185	B	F	()	()	()	✓
6 Gantt, Elaine Y	76	W	F	()	()	()	✓
7 Vannus, Cynthia L	207	W	F	()	~~()~~	()	
8 John, Pamela J	111	W	F	()	()	()	✓
9 Pittman, Barbara R	168	W	F	()	~~()~~	()	
10 Maury, Elaine D	140	W	F	()	()	()	✓
11 Fletcher, Robert E	68	W	M	()	~~()~~	()	
12 Sayers, Celine J	182	W	F	()	()	()	✓
13 Dunn, John P	57	W	M	()	()	()	✓
14 Workman, Susan J	222	W	F	()	()	()	✓
15 Cartmill, Jerry L	30	W	M	()	()	()	✓
16 Gruly, Brian J	85	W	M	()	()	()	✓
17 Beal, Christine H	12	W	F	()	()	()	✓
18 Calhoon, Donald F	27	W	M	()	()	()	✓
19 Sullivan, Lillian F	197	W	F	()	~~()~~	()	
20 Nix, Sharon A	154	B	F	()	()	()	✓
21 Bott, Mary Joan	16	W	F	()	~~()~~	()	
22 Williams, Latoya M	218	B	F	()	()	()	✓
23 Webb, Jane G		W	F	()	()	()	
24 Deroche, Marshelle D	52	W	F	()	()	()	

Office of the Clerk of Court
RANDOM STRIKE SHEET

581

JUDGE NAME : Cooper, G. Thomas

Sorted by: Random Nbr

TRIAL TYPE : Criminal

PANEL ID : 2007GS01918

DESCRIPTION : STATE VS KENNETH WILLIAMS

Trial

COURTROOM CTR

NAME	JUROR NBR	RACE	SEX	STATE/ PLAINTIFF	DEFENDANT		REMARKS
				Chal	Strk	Court	
25 Sinsheimer, Barbara A	186	W	F	()	()	()	
26 Wright, Bettye J	223	B	F	()	()	()	
27 Starry, Paul L	194	W	M	()	()	()	
28 Hineline, Richard H JR	99	W	M	()	()	()	
29 Evans, Dora B	60	W	F	()	()	()	
30 Martin, Maria J	138	W	F	()	()	()	
31 Shamay, Petro Joy A	184	W	F	()	()	()	
32 Hogan, Nancy K	101	W	F	()	()	()	
33 Groeschel, Carol K	83	W	F	()	()	()	
34 Huntley, Mary B	105	W	F	()	()	()	
35 Maggi, Dorothy M	135	W	F	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

AW
14

STATE OF SOUTH CAROLINA)

County of Beaufort)

IN THE COURT OF COMMON PLEAS

2014-CP-07-1841

Kenneth S. Williams #140886)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2014 JUL 30 PM 3:02

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Beaufort County Court of General Session
3. Name(s) of co-defendant(s) (if any) Timothy C. Skinner, Jenny Chase, Lisa Scheneman
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder, First Degree Burglary, Arson 6609, 2007-05-07-1918

- (b) 2007-GS-07-1919, 2007-GS-07-1920
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 29, 2010
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. So. Cal. Supreme Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 11, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. No Citations
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A

- (b) _____
 (c) _____

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

- (a) See Attach Sheet
 (b) _____
 (c) _____

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

- (a) See Attach Sheet
 (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? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. _____
 iii. _____

- iv. _____
- (c) the disposition thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is the first opportunity to raise the aforementioned
 (b) issues
 (c) _____

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

(a) your arraignment and plea? _____
 (b) your trial, if any? ✓
 (c) your sentencing? ✓
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Gene G. Hadd, Esq., Trial Counsel
Susan B. Hackett, Appeal Counsel
 ii. _____
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Mr. Hadd, was trial Counsel
Ms. Hackett, was my Counsel on appeal
 ii. _____
 iii. _____

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

New Trial

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Beaufort)

VERIFICATION

I, Kenneth S. Williams, 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.

Kenneth S. Williams #140886

SWORN to and subscribed before me this 17th
day of July, 2014.

Ludiean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

I, Kenneth S. Williams, 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.

Kenneth S. Williams #140886
Applicant

SWORN or affirmed to and subscribed before me this
17th day of July, 2014.

Lechean Bryant
Notary Public

My Commission Expires: May 26, 2020

Attach Sheet

The Applicant set forth this Cause of action pursuant to the Jurisdiction that are set forth in Chapter 17-27-20 (1) & Collateral attack upon his Conviction & any grounds & alleged error heretofore available under this uniform Post Conviction Act that are being submitted or amended."

The Applicant asserts one ground for relief at this time: (1) ineffective assistance of trial Counsel. Applicant also asserts that due to his lack of understanding of the Law, Applicant request that Counsel be appointed Pursuant to 71.161 Ed. Rev. P. and S.C. Code of Laws 17-27-90.

Applicant asserts that there are further grounds to be raised but due to the lack of records and the assistance of Counsel it would be chronologically impossible for the applicant to carry such burden to show his entitlement for relief by a preponderance of the evidence, and for the appointment of Counsel to insure that all available grounds for relief are included in the application.

Therefore, Applicant request that this Court appoint Counsel in the above mentioned application. Applicant moves this Honorable Court to grant leave to amend this application in this Cause of action due to the lack of Counsel and Applicant is a lay person at Law.

Applicant seeks this Court approval of this application so that Applicant right to a PCR won't be deem abandon due to the fact that Applicant has only one (1) year to file this Application from the date of a Final Judgment or from the remittitur to the lower Court's which ever comes first.

Respectfully Submitted

July 17, 2014

Kenneth S. Williams
Kenneth S. Williams #140896

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Kenneth S. Williams, #140886,

2014-CP-07-1841

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on July 30, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted by the October 2007 term of the Beaufort County Grand Jury for Burglary, 1st degree (2007-GS-07-1920), Murder (2007-GS-07-1918) and Strong Arm Robbery (2007-GS-07-1919). Gene Hood, Esquire, and Dale Cobb, Esquire represented him. On July 29, 2010, the Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable Thomas G. Cooper sentenced the Applicant to confinement for thirty (30) years for Murder, thirty (30) years, concurrent, for Burglary, 1st degree and fifteen (15) years, concurrent, for Strong Arm Robbery.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Williams, 2012-UP-573 (filed October 24, 2012). The Applicant appealed this Order to the South Carolina Supreme Court, but certiorari was denied on June 11, 2014. The Remittitur was issued on June 26, 2014.

II.

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

a. Ineffective Assistance of Counsel

Attached herewith and incorporated herein by reference are the records of the Beaufort County Clerk of Court regarding the subject convictions, the Applicant's application, the trial transcript and the Order from the South Carolina Court of Appeals. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness under professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of 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).

IV.

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

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By:  for JRJ
ATTORNEYS FOR RESPONDENT

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

October 26, 2015

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

2014-CP-07-1841

KENNETH S. WILLIAMS, #140886

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

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

James K. Falk, Esq.
 Falk Law Firm, LLC
 PO Box 1058
 Charleston, SC 29402

DATED this 26th day of October, 2015.


 Elizabeth McCallan, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOR THE 14th JUDICIAL CIRCUIT
Kenneth Williams)
Applicant) 2014-CP-07-1841
vs.)
State of South Carolina) AMENDED PCR APPLICATION
Defendant,)
_____)

TO: Ruston Neely, Esq. Office of SC Attorney General, PO Box 11549,
Columbia, SC 29211-1549.

Applicant Kenneth Williams, by counsel amends his PCR application filed July 30, 2014. In his initial PCR application, Applicant cited ineffective assistance of counsel. At this time Applicant amends his PCR to provide the more specific grounds for relief as follows:

1. Trial counsel was ineffective for failing to object to that portion of the trial court's initial charge to the jury that had the effect of shifting defendant's burden of proof. (Trial transcript page 117 lines 1 through 13.)
2. Trial counsel was ineffective for stipulating to the admissibility of SLED agent Stephanie Stanley's testimony as a proxy for the testimony of SLED agent John Ortuno who was unavailable. (Trial transcript page 91 line 19 through page 92 line 20.) Agent Stanley had no independent basis for her opinion evidence regarding DNA testing performed by agent Ortuno. As such Stanley's testimony regarding the DNA testing and results was inadmissible hearsay. See State v McCray, 413 S.C. 2015, 773 S.E.2d 914 (SC Ct App 2015); Crawford v Washington, 541 U.S. 36 (2004).

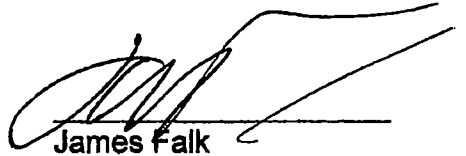
Respectfully Submitted,



James Falk, Esq.
PO Box 1058
Charleston, SC 29402
(843) 606- 6007
(843) 972 9005 fax
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

Undersigned certifies that on September 30, 2016 a copy of the above was deposited in the US Mail to the above named party at the above identified address.



James Falk

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2014-CP-07-01841

KENNETH SAMUEL WILLIAMS

PETITIONER

VERSUS

OCTOBER 17, 2016

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING
BEAUFORT, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

RESPONDENT

B E F O R E:

HON. MICHAEL G. NETTLES, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

10-17-16 WILLIAMS V STATE

APPEARANCES

ON BEHALF OF PETITIONER
KENNETH SAMUEL WILLIAMS:

HON. JAMES K. FALK
FALK LAW FIRM, LLC
30 BROAD STREET, SUITE 350
POST OFFICE BOX 1058
CHARLESTON, SOUTH CAROLINA 29402-1058
843-606-6007
jfalklaw@gmail.com

ON BEHALF OF RESPONDENT
STATE OF SOUTH CAROLINA:

HON. RUSTON NEELY
ASSISTANT ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549
803-734-3693
rneely@scag.gov

10-17-16 WILLIAMS V STATE

INDEX

Caption.....	1
Appearances.....	2
Index.....	3
By the Court.....	4

KENNETH WILLIAMS

Direct Examination	
By Mr. Falk.....	32
Direct Examination	
By Mr. Nally.....	38

HON. GENE GRAHAM HOOD

Direct Examination	
By Mr. Falk.....	42
Examination	
By the Court.....	49
Cross-examination	
By Mr. Falk.....	51
By the Court.....	56

10-17-16 WILLIAMS V STATE

ATTACHMENTS

Certificate of Reporter.....58

Keyword Index

No exhibits were admitted.

10-17-16 WILLIAMS V STATE

BY THE COURT

1 BEGINNING 11:35 A.M.

2 BY THE COURT:

3 THE COURT: All right. Mr. Attorney General, you
4 can call your next case.

5 MR. NEELY: Thank you, your Honor. The case calls
6 -- the case is the State -- or Kenneth Williams versus
7 the State of South Carolina. It is 2014-CP-07-01841.

8 THE COURT: Which one is this one?

9 MR. NEELY: It's Kenneth Williams, your Honor.

10 THE COURT: Now, do we have another plea? This is
11 the last case for the day, Mr. Neely?

12 MR. NEELY: Yes, sir.

13 THE COURT: He's coming.

14 MR. NEELY: This is Kenneth Williams versus State
15 of South Carolina. The applicant is incarcerated in the
16 South Carolina Department of Corrections, pursuant to a
17 Beaufort County Clerk of Court's Order of Commitment.
18 He was indicted on October 2007 term for burglary first
19 degree and strong-armed robbery. He was represented by
20 Mr. Gene Hood.

21 On July 29, 2010, applicant proceeded to a jury
22 trial, on which he was found guilty of all charges. The
23 Hon. Thomas Cooper sentenced the applicant to
24 confinement for thirty years for murder, and thirty
25 years concurrent for burglary in the first degree, and

1 fifteen years concurrent for strong-arm robbery.

2 This appeal was filed on applicant's behalf and
3 perfected, and a remittitur was issued on June 26, 2014.
4 The applicant is alleging general ineffective assistance
5 of counsel. And it was amended by Mr. Falk to allege
6 that trial counsel was infective for failing to object
7 to trial court's initial charge to jury that had the
8 effect of shifting defendant's burden of proof; and
9 trial counsel was ineffective for stipulating the
10 admissibility of SLED agent's testimony as a proxy for
11 testimony of SLED Agent John Fortuna, who was
12 unavailable.

13 THE COURT: Mr. Falk, you're recognized. If you
14 can just sort of set out specific grounds that you're
15 alleging.

16 MR. FALK: I think he's characterized it as that.
17 I do think there was a burden-shifting statement in the
18 initial charge, and that the -- and I will point the
19 Court specify to the language that I was talking about,
20 which falls on Page 117 of the trial record.

21 THE COURT: Hang on just one second.

22 MR. FALK: 117, Lines 1 through 9.

23 THE COURT: Hang on just a second. Page 117. Is
24 that correct?

25 MR. FALK: Yes, your Honor.

10-17-16 WILLIAMS V STATEBY THE COURT

1 THE COURT: All right.

2 MR. FALK: And if I could just read into the record
3 what the language we're talking about where he begins:

4 *But if any of you have more than one*
5 *child or if you've got more than one grandchild,*
6 *you know exactly what I mean. When the two*
7 *of them come to you, and one of them says he*
8 *hit me, and the other one says, no, she hit*
9 *me first, well, you've got to make a decision.*
10 *Somehow or another, you reach a decision.*

11 And then, going on at the end:

12 *You reach a decision as to where the*
13 *truth lies.*

14 And I think that that expression is contrary to the
15 South Carolina Supreme Court's decision in *State versus*
16 *Daniels* where they talk about this kind of burden-
17 shifting instructions, whether it's in the initial
18 charge or in the subsequent charge, which is 401 *South*
19 *Carolina* 251. The West cite is 737 S.E.2nd 473. And my
20 argument on this particularly is the jury does not have
21 to choose which witness is telling the truth. That
22 would be an appropriate charge to the jury, that would
23 be an appropriate instruction to the jury in a civil
24 case where you have a burden where the -- a
25 preponderance-of-the-evidence burden. But in effect, in

1 this case, it's really pitting one witness against the
2 other. My client doesn't have to -- and it's making my
3 client prove that the other guy is lying.

4 As I say, I don't think that is what the burden of
5 proof is. The State has to prove beyond a reasonable
6 doubt that my client is guilty, but this makes it seem
7 like the State's -- the jury's supposed to look at one
8 case [sic], look at the other, see which one you think
9 is more believable and go that way. But that is not the
10 case. As again, they have to decide whether or not the
11 State's proved their case beyond a reasonable doubt.
12 So, that's what my argument is. And there, I think
13 trial counsel is ineffective for not preserving that
14 issue. And therefore, it would have been an issue for
15 direct appeal had the issue been preserved. It not
16 having been preserved, there's nowhere to go with it on
17 appeal. There's no, you know, clear error.

18 The law in South Carolina is that, if an objection
19 is not preserved, it's lost on appeal. So, although
20 that would appear to be more of a direct appeal issue
21 and not a collateral attack issue, it's our argument
22 that it's ineffective because trial counsel, by not
23 objecting to it, he lost the right to do it on appeal.
24 Plus, he lost the -- you know, there's no opportunity
25 for, you know, a curative instruction or a curative

10-17-16 WILLIAMS V STATE

BY THE COURT

1 statement for the court. So, that's that issue.

2 THE COURT: All right.

3 MR. FALK: And the next issue --

4 THE COURT: Just one second. How exactly is that
5 shifting the burden of proof to the defendant? This is
6 what it -- this appears to be -- I've never actually
7 seen the text of this type charge but. It says:

8 *It is a simplistic example, and I use*
9 *it perhaps not meaning to mean anything that*
10 *would go on in this courtroom, because the*
11 *issues here are far more important than this*
12 *example suggests. But if any of you have more*
13 *than one child, or if you've got more than*
14 *one grandchild, you know exactly what I mean*
15 *when the two of them come to you, and one of*
16 *them says he hit me, and the other one says,*
17 *no, she hit me, well, you've got to make a*
18 *decision somehow or another. And somehow or*
19 *another, you do it. You put the question in*
20 *your mind, you let them run through the*
21 *machinery -- you've let them run through*
22 *the machinery of your common sense, and you*
23 *reach a decision as to where the truth lies.*
24 How's that putting the burden of proof on the
25 defendant?

1 MR. FALK: Well, if I could read from the decision
2 in *Daniels*, which is in a --

3 THE COURT: Yeah, you can read the decision. I'm
4 just asking you.

5 MR. FALK: No, again, what it's doing, my guy has
6 no -- we're not looking for what the truth is; we're
7 looking for whether or not the State has proven their
8 case beyond a reasonable doubt. And by having -- by
9 telling the jury that they're supposed to look to find
10 out where the truth lies between two competing stories,
11 that's a proper instruction in a general -- in a Common
12 Pleas case. But where the truth lies in a General
13 Sessions case, the only issue is whether or not they
14 proved it beyond a reasonable doubt. The jury could
15 say, well, you know, I think the State might be right.

16 THE COURT: But don't you think that, at some point
17 in time, it described proof beyond a reasonable doubt?
18 I don't think anything's inherently wrong with him
19 talking about a jury having to listen to the competing
20 testimony and make a decision as to what's correct,
21 unless -- I'm asking you. I'm asking you to explain it
22 to me.

23 MR. FALK: Your Honor, as again, it seems to me to
24 be very similar to the charge that was at issue.

25 THE COURT: All right. Read that case to me. Read

10-17-16 WILLIAMS V STATE

BY THE COURT

1 the appropriate ruling in that case.

2 MR. FALK: This is also a case where it was not
3 preserved. And so, the Court said:

4 *Although the issue is not preserved --*

5 THE COURT: This is a South Carolina Supreme Court
6 case?

7 MR. FALK: South Carolina Supreme Court.

8 THE COURT: And what year? What year was it?

9 MR. FALK: 2012. This is *State versus Daniels*. I
10 marked up the *Westlaw* cite, but here's the --

11 THE COURT: Okay. Very good.

12 *Although the issue is not preserved,*
13 *we instruct the trial judge to remove any*
14 *suggestion from his General Sessions charges*
15 *that a criminal jury's duty is to return a*
16 *verdict that's fair and just to all parties.*
17 *Such a charge would effectively altered the*
18 *jury's perception of the burden of proof,*
19 *substituting justice and fairness for the*
20 *presumption of innocence in the State's*
21 *burden to prove the defendant's guilt*
22 *beyond a reasonable doubt.*

23 *Moreover, to a lay person, all the*
24 *parties involved in the criminal case may*
25 *well extend beyond the defendant in this*

1 state and include the victim. These
2 inaccurate and misleading charges risk
3 depriving the criminal defendant of his
4 right to a fair trial.

5 And in this --

6 THE COURT: That case is what type case, and what
7 was the ruling of the court?

8 MR. FALK: That was a ruling. Well, what it was,
9 is the --

10 THE COURT: Was it a post-conviction relief case?

11 MR. FALK: Yes.

12 THE COURT: All right. Did they reverse it, or did
13 they say it was harmless error?

14 MR. FALK: They affirmed.

15 THE COURT: Affirmed what?

16 MR. FALK: The appellate's convictions and
17 sentences are affirmed. So, this, I guess, is
18 different.

19 THE COURT: I think they were just kind of spelling
20 out that it's not a good idea to say you need to do
21 what's just and what's right to everybody concerned. In
22 my mind, it's completely different from what we have
23 here where it's talking about how you resolve questions
24 of fact, to me.

25 MR. FALK: Well, again, my contention is we don't

10-17-16 WILLIAMS V STATE

BY THE COURT

1 resolve any questions of fact. It's not which one you
2 believe more. It's has the State proven their facts
3 beyond a reasonable doubt. That's the only -- that's
4 how the -- and the General Sessions case, it's our
5 argument that that's how you resolve questions of fact;
6 did the State provide it beyond a reasonable doubt; not
7 which one proved it more. When you're talking about two
8 grandsons coming --

9 THE COURT: I don't think it says anything about
10 who proved it more. It just says you've got to use your
11 good common sense and see whether or not they -- which
12 is true. And obviously, later on in this charge, it
13 talks about they've got to prove each and every element
14 beyond a reasonable doubt. But when you've got
15 conflicting testimony about it, it has to be -- they
16 have to evaluate conflicting testimony. I think this is
17 what that goes towards.

18 What does the State have to say about that
19 particular issue?

20 MR. NEELY: Two things, your Honor. I think
21 another case that's kind of enlightening on the issue is
22 the *State versus Aleksey*. The site on that is 343 S.C.
23 20. I believe the crux of counsel's argument is that
24 jury instructions -- and this is quoting directly from
25 that case:

1 *Jury instructions on reasonable doubt*
2 *which charge the jury to seek the truth are*
3 *disfavored because they run the risk of*
4 *unconstitutionally shifting the burden to the*
5 *defendant.*

6 In this case --

7 THE COURT: Say that again. Say that again.

8 MR. NEELY: It's:

9 *Jury instructions on reasonable doubt*
10 *which charge the jury to seek the truth are*
11 *disfavored because they run the risk of*
12 *unconstitutionally shifting the burden of*
13 *proof to the defendant.*

14 I do not think we have that here. I think in this
15 case the judge presented an example where two different
16 people say completely opposite things, and you need to
17 decide which one's telling the truth, because they can't
18 both be telling the truth. So, I think that's just on
19 the weighing of the credibility of the witnesses.
20 That's why the jury's responsibilities, this is not
21 concerning. I don't think he's saying seek the truth
22 and don't consider the burden beyond a reasonable doubt,
23 because the judge, shortly thereafter, I believe on the
24 same page, talks about the burden of proof lies on the
25 State. And certainly, he goes back over that in his

1 final instructions.

2 In the *State versus Aleksey*, which is the case I
3 just cited from, Justice Toal goes back over that case
4 and says:

5 Any errors or potential errors where
6 the jury might be able to misread or mishear
7 a judge saying your only job is to seek the
8 truth, not to find what the State proved
9 their burden of proof, can be fixed and
10 cured by the judge's later instructions.

11 Which I think happened in this case, happened in
12 the *Aleksey*, and happened in *Daniels*. None of those
13 cases were reversed. And in this case, that we have a
14 jury charge that is not nearly as damning as the one in
15 *Daniel* or *Aleksey*. The charge in *Aleksey* was:

16 *Ladies and gentlemen, throughout this*
17 *entire process you have but one single*
18 *objective, and that is to seek the truth.*
19 *To seek the truth regardless of from what*
20 *source that truth may be derived. Now, all*
21 *these things, ladies and gentlemen, you will*
22 *consider bearing in mind that you must give*
23 *the defendant benefit of a reasonable doubt.*

24 So, he focused the jury on the one single truth,
25 and then, supplemented it with the reasonable doubt. In

1 this case, we don't even have that strong of a language
2 from the judge. We have an example of the credibility
3 of witnesses, and then, the judge continually re-affirms
4 the burden is on the State.

5 And just for the record, your Honor, I would note ,
6 that Chief Justice Toal concurred in that decision in
7 *State v. Daniel*, but her finding and her concurrence was
8 significantly different than the majority's finding. In
9 fact, I believe her concurrence was as long as the
10 majority's opinion itself. And I think they must be
11 read concurrently to understand the full picture of that
12 decision.

13 THE COURT: What do you have to say about the fact
14 that it was not appealed? You're saying it was
15 meritless and there's no need to --

16 MR. NEELY: That's correct. I believe any
17 objection would have been meritless and would have been
18 quickly overruled.

19 THE COURT: All right. Yes, sir. You may proceed.

20 MR. FALK: To my next issue?

21 THE COURT: Or, if you want to say something more
22 about this, you can.

23 MR. FALK: I would just be repeating myself.

24 THE COURT: Okay. Very good. All right. The next
25 issue is?

10-17-16 WILLIAMS V STATE

BY THE COURT

1 MR. FALK: This is a case where somebody got
2 assaulted in their home, and there was blood evidence,
3 and there were two possible people who could have
4 assaulted and killed this man. And I believe that the
5 DNA evidence was highly prejudicial against my client in
6 that his DNA was found on the doorknob; his DNA -- my
7 client's DNA was found on the porch step, the porch
8 floor. That all comes up on Page 360 of the transcript.
9 Again, there's a reference to the doorknob --

10 THE COURT: You're saying that applicant's DNA was
11 found where, again?

12 MR. FALK: Leading up to the house. Three
13 different places. Leading up to the house, including
14 the doorknob of the house. The victim was assaulted
15 inside of his house.

16 MR. NEELY: Judge, just for verification, I believe
17 it was the victim's blood, not the applicant's blood,
18 that was found.

19 MR. FALK: I believe he's right, but my bigger
20 concern is on Page 369. Mr. Skinner, who was the other
21 party in this case, his DNA was excluded from the sample
22 that was found on the doorknob and in the van. For
23 example, on Page 368, Line 3 -- no -- Line 2, what was
24 indicated, the DNA testing was performed, and the DNA
25 obtained from Item 11, the swab from the front door, was

1 a mixture of Jack Koch, who is the victim, and Kenneth
2 Williams cannot be excluded from the possible
3 contributors to this partial DNA mixture.

4 And then, you have -- then, they were not able to
5 exclude Skinner's DNA from the door handle, so. Again,
6 because that this -- this was a scuffle case, and my
7 client testified that he was trying to pull Mr. Skinner
8 off, and it was Skinner who was actually beating the guy
9 up, and my client was trying to save him, the fact that
10 this DNA does not support the story that Mr. Skinner was
11 involved in the scuffle I believe was prejudicial to my
12 client.

13 I believe that trial counsel could have excluded
14 all of the DNA testimony, because the actual DNA
15 examiner who test -- who did the DNA was unavailable for
16 testifying. And Stanley, Agent Stanley from SLED,
17 testified as to the results of the DNA examination that
18 was performed by Mr. Ortuno, and that is hearsay
19 evidence.

20 The only way that Stanley could have testified
21 about somebody else's DNA analysis is if Stanley had
22 taken some part in the actual analysis. But the
23 solicitor tried to sort of bootstrap the fact that
24 Stanley did a peer review of it, and therefore, was
25 trying to -- would therefore -- because Stanley did a

10-17-16 WILLIAMS V STATE

BY THE COURT

1 peer review of somebody else's results, and that was a
2 typical practice at SLED for different agents to do
3 reviews of the other ones, that that would suffice in
4 order to get around the *Crawford* problem.

5 But I believe -- and I think there's South Carolina
6 case law right on point that says that, in this
7 situation, you cannot have the -- I'll draw the Court's
8 attention to *State versus McCray*, which is 413 *South*
9 *Carolina* 76, and the *West* cite is 773 *S.E.2d* 914. And
10 actually, in the *McCray* case, this is the exact same
11 fact pattern to the point it was the exact same witness,
12 Stanley, from SLED, was testifying as to a DNA report
13 that somebody else did. Now, *McCray*, that case was not
14 affirmed because -- I mean, it was not -- was not
15 remanded because there was overwhelming evidence of
16 guilt, but the court clearly said that that was
17 impermissible testimony because the DNA testing is
18 clearly testimonial, and therefore, you get a part of
19 the *Crawford* problem in that it's brought by somebody
20 who is -- you know, you have testimonial hearsay coming
21 out.

22 And we think that, had Mr. Hood objected to -- not
23 only did he not only object to letting Stanley testify
24 to someone else's DNA results, he stipulated that that
25 person could testify. And we believe that he could have

1 kept that all out, and it would have made a significant
2 difference in my client's case. It certainly would have
3 been easier to argue that Mr. Skinner was very much
4 involved in the scuffle. And you know, as I said, the
5 blood evidence seems to show that Mr. Skinner was not
6 part of the blood evidence.

7 THE COURT: Be glad to hear from you.

8 MR. NEELY: Thank you, your Honor. I just want to
9 -- this thing's been a little bit mischaracterized, and
10 this is a fairly confusing back and forth with these
11 expert witnesses, but the DNA expert that testified
12 actually performed an independent DNA analysis on Item
13 25, which is State Exhibit 46. You see that on --

14 THE COURT: And this expert's name is what?

15 MR. NEELY: Stanley.

16 THE COURT: Stanley.

17 MR. NEELY: And that's on Page 369, Line 14. And
18 then, that's also indicated back on Page 92 where --

19 THE COURT: So, you're essentially saying that the
20 hearsay aspect of it was alleviated by virtue of the
21 fact that he did his own independent test?

22 MR. NEELY: I believe it was a she. She did her
23 own independent test on one of the samples. There were
24 other samples that were taken directly from Ortuno. And
25 those samples she actually used as part of developing

1 her DNA -- her independent DNA analysis on the Item 25.
2 So, the State would argue -- well, we have a number of
3 arguments. The first of which is, experts are allowed
4 to bring in and talk about the hearsay evidence that
5 they used in drawing up their own independent
6 evaluations and opinions. And in that case -- in this
7 case, she performed her own independent DNA evaluation
8 on 9-25, and relied on DNA evaluations done by Ortuno
9 that she did peer review.

10 I mean, that is a significantly different fact
11 pattern than *State v. McCray*, where she only peer
12 reviewed, and in the court's words, was used merely as a
13 conduit to get to the expert opinions. In this case,
14 she was not a mere conduit to get to the expert
15 opinions; she was part and parcel of the DNA analysis
16 herself. And then, again, any hearsay elements are
17 permissible for a state expert or any expert to use in
18 finding their opinions, and they can explain that to the
19 jury and that goes to the weight for the jury to
20 consider, not to the admissibility.

21 Furthermore, I don't believe the evidence ever
22 shows -- and Mr. Falk, correct me if I'm wrong. I
23 believe the only evidence ever showed was that they
24 couldn't rule Skinner or Williams out. So, it was --
25 this was not -- this was not a smoking gun by any

1 stretch of the imagination. This was much more of a
2 we're not sure; can you tell me that this is not his
3 DNA; no, we cannot.

4 THE COURT: So, essentially, the DNA was of no
5 evidentiary value. They put up the evidence to say they
6 did it, but really, it's inconclusive.

7 MR. NEELY: That's correct. Other than the victim.
8 They could identify it was the victim's blood. But
9 again, I don't think it's --

10 THE COURT: So, what you're saying is, that it
11 wasn't -- regardless of whether it's admissible or not,
12 it was not prejudicial, because it didn't establish
13 anybody.

14 MR. NEELY: That's correct. I believe it was not
15 prejudicial.

16 THE COURT: Any amount of blood that was there.

17 MR. NEELY: I don't believe it's prejudicial and I
18 believe the hearsay was perfectly admissible, and that
19 Stanley's analysis --

20 THE COURT: What do you think -- in addition to
21 that, what do you think about whether or not there's
22 overwhelming evidence? other than the blood evidence.
23 Obviously, the blood evidence, there must have been a
24 bunch of it, because, obviously, the blood evidence did
25 establish that the defendant did it.

10-17-16 WILLIAMS V STATE

BY THE COURT

1 MR. NEELY: Right. I would probably hesitate to
2 qualify. I'm not saying it's not overwhelming evidence
3 in the case, but I don't think that this is an
4 overwhelming evidence case. In the cases where your
5 Honor heard earlier where you have DNA and the man in
6 the bedroom lying in basically a pile of crack cocaine
7 overwhelming evidence case. This is putting all the
8 pieces together. And all the pieces point, beyond a
9 reasonable doubt, to the defendant. And that's how I
10 would qualify this evidence.

11 THE COURT: Okay.

12 MR. FALK: Your Honor, if I could call your
13 attention to the transcript, starting at Page 360, Line
14 10.

15 THE COURT: 360?

16 MR. FALK: 360, Line 10, where a question was
17 asked. The question was:

18 *Okay, back to our evidence in this case,*
19 *your Item Number 3, that would be your State's*
20 *Exhibit 37, the swab from the driveway. Can*
21 *you tell the jury the results of that DNA*
22 *test.*

23 *Yes. The blood indicated on that Item*
24 *DNA testing was performed, and the DNA*
25 *profile developed from Item 3, a swab from*

1 *the driveway matches DNA profile of Kenneth*
2 *Williams.*

3 Then, if you go down into Lines 20, through 23:

4 *The swab from the porch step matches*
5 *the DNA profile of Kenneth Williams.*

6 Then, if you go on to Page 361, Lines 4 through 7:

7 *The swab from the front porch matches*
8 *the DNA profile of Kenneth Williams.*

9 So, the blood certainly did put him at the scene.

10 And again, there was another test where they tried to
11 see whether or not they could exclude Skinner from it,
12 and he couldn't be excluded from it. So, I do think the
13 blood evidence was prejudicial in this case. And --

14 THE COURT: What do you have to say to that, Mr.
15 Attorney General?

16 MR. NEELY: That's my mistake, your Honor. I
17 missed those.

18 THE COURT: So, essentially, it doesn't show that
19 he was there at their altercation, but he was present at
20 the scene, on the outside of the steps, on the door, but
21 not necessarily --

22 MR. FALK: But I mean, this is a situation where a
23 car drives up. There are four people in the car. There
24 was going to be some elicited activity that was going to
25 go on. They were bringing women to entertain the

10-17-16 WILLIAMS V STATE

BY THE COURT

1 victim. At the time, he was interested in that. The
2 altercation -- Mr. Skinner is the one who provided the
3 women. And so, the altercation takes place at the front
4 door. I think it's more like a trailer, and so, it's a
5 very short step from the car up the driveway, porch, and
6 front door. So, I mean, it puts him at the scene, and
7 it's a very small crime scene. So, I do think it's
8 prejudicial.

9 And then, all I can say is you have this Stanley
10 testifying where, on Page 362, where she's talking about
11 these DNA samples of Kenneth Williams, the one that I
12 just alluded to, the porch, the driveway, et cetera.
13 And the question is:

14 The one that was elected for DNA testing
15 from the porch floor is the DNA of Kenneth
16 Williams.

17 That is correct.

18 And we talked earlier about the
19 strength of the sample, a strong sample
20 versus a weak sample. Is there any
21 quantitative amount given to the strength
22 of these swabs, and that includes the
23 driveway, the porch step, and the porch
24 floor indicates how strong it was?

25 And then, here's her response.

1 I didn't perform these exact tests.

2 When I performed analysis, I had multiple
3 swabs from the same item.

4 So, she's saying that she didn't perform -- it
5 appears to me she's saying I didn't perform these tests
6 on these items.

7 MR. NEELY: Your Honor, I must have been thinking
8 of a different case about there not being the
9 defendant's DNA. The actual item that this expert
10 examined, which is Item 25, on Page 369, had Kenneth
11 Williams' DNA, which put him at the scene in the van.
12 And it was -- her personal test excluded Skinner, and it
13 matched positively with Williams. So, the argument
14 would be very different in this case. It would be that
15 this other evidence that she used indicated that
16 Williams was there, was in addition to her own
17 personally reviewed analysis on the DNA Sample 25, which
18 was -- indicated that Williams was there as well. So,
19 she also performed independent analysis that confirmed
20 Williams' location at the scene in addition to the other
21 peer reviewed samples that she used as part of her
22 analysis that indicated Mr. Williams was also at the
23 scene.

24 MR. FALK: I don't think DNA from a van is
25 necessarily proof of him being at the scene. It's a van

10-17-16 WILLIAMS V STATE

BY THE COURT

1 that he's driving. The van obviously transports, so it
2 could have been at any place. So, DNA taken from a swab
3 from the van is not the same as the DNA taken from the
4 porch floor of the house.

5 THE COURT: What you're saying the issue -- you're
6 maintaining that she did an independent test. You still
7 maintain that.

8 MR. NEELY: Yes, sir.

9 THE COURT: And then, she's also relying on some
10 tests that she did not do an independent test on, and
11 she's allowed to do that because she's an expert witness
12 and allowed to rely on hearsay testimony and other
13 things that an expert witness would normally rely on.

14 MR. NEELY: That's correct. And further than just
15 if this was an expert she relied on out of a book or
16 read his notes. This is even more than that, because
17 she actually peer reviewed behind him to make sure that
18 he had followed all the steps that were necessary for
19 his own independent analysis. So, her involvement in
20 his analysis is even more so than just using the notes
21 using hearsay for a regular expert.

22 THE COURT: Okay.

23 MR. FALK: And your Honor, again, that's exact --
24 the peer review analysis I think is completely shot down
25 as being *Crawford* hearsay testimony, because that's what

1 Agent Stanley did in the *McCray* case; she peer reviewed
2 Ortuno. Whatever somebody else --

3 THE COURT: Now, he's saying it's different in that
4 she did an independent test.

5 MR. FALK: She did an independent test of the swab
6 of the van. Now, but the swabs from Items Number 37,
7 Item 4, Item 3, Item 5, 30, 31, 32, 33, all these ones
8 that we're referring to, she said she didn't do those
9 tests. So, she did a test of the swab from the van, and
10 the van's not at the scene. The van could have been at
11 the scene. You know, what I'm saying is that there's a
12 big difference between a swab even if --

13 THE COURT: Those inculpatory ones she did, she was
14 not involved in doing an independent tests of those.

15 MR. FALK: That's correct.

16 MR. NEELY: Yes, sir. And I would -- the State
17 would only allege that she brought in one sample. And
18 the page, I believe, was 92, the State talks about how
19 they had a sample that they thought they had sent, but
20 hadn't sent. So, they sent it after the original batch
21 of samples, and she performed the analysis on that
22 sample.

23 And I would want to make another note for your
24 Honor. This case came out June 24, 2015, he case Mr.
25 Falk's relying on heavily, *State v. McCray*. This trial

10-17-16 WILLIAMS V STATE

BY THE COURT

1 took place in 2010. So, Mr. Hood obviously doesn't --
2 can't predict the future, can't predict the decisions of
3 the Court of Appeals in this case is going to come down
4 with five years from the date of the trial. So, he is
5 unaware that this is going to be an issue that he could
6 challenge for peer review. So, I think that asking Mr.
7 Hood or finding Mr. Hood is ineffective for challenging
8 an issue that hadn't been raised before or found to be
9 an issue is also beyond the scope of post -- well, not
10 beyond the scope, but definitely beyond the burden of
11 proof of post-conviction relief.

12 MR. FALK: Your Honor, I think *Crawford* was 2004.
13 I know that South Carolina adopted *Crawford* in *State*
14 *versus Ladner*, which is 644 S.E.2d 684 (2007). There
15 was a similar fact -- what I'm saying is, the State
16 didn't come from whole cloth to reach this conclusion.
17 It's a series of case law that existed starting with
18 *Crawford* where we threw out -- where we came to the
19 recognition that the use of testimonial hearsay in a
20 trial like that violates my client's confrontation
21 clause. So, I mean, the fact that -- I certainly will
22 accept that *State versus McCray* post-dated the trial in
23 this case, but the cases upon which that decision was
24 based, *Crawford*, its progeny, *State versus Ladner*,
25 *Bullcoming versus New Mexico*, which is a United Supreme

1 Court case, they all pre-date. Excuse me. Not
2 *Bullcoming*, but certainly the *Crawford* and certainly
3 *Ladner* do. So, I mean, the issue of the use of non-
4 testimony -- of testimonial hearsay is not a new thing,
5 was not a new thing in 2010. And the fact that it's a
6 violation of the confrontation clause was not a new
7 thing in 2010.

8 THE COURT: Anything further?

9 MR. NEELY: Yes. The expert witnesses peer
10 reviews, none of that was from the *Crawford* decision.
11 I've already stated -- I'm repeating myself now, but
12 it's an expert using hearsay that she was personally
13 involved in to help form her opinion, that was
14 independent analysis.

15 THE COURT: All right. Anything further?

16 MR. FALK: Not on that issue, no, your Honor.

17 THE COURT: Okay. Can we move forward with any
18 other issues that you have.

19 MR. FALK: Unless you want me to take testimony on
20 those issues. And my client would like to testify.

21 THE COURT: Certainly. Yeah, that's why I'm
22 recognizing -- I recognize you to do whatever you feel
23 is --

24 MR. FALK: Can I call my client to the stand?

25 THE COURT: Yes, you may.

10-17-16 WILLIAMS V STATE

WILLIAMS - DIRECT - FALK

1 MR. FALK: I call my client, Kenneth Williams, to
2 the stand.

3 THE COURT: Mr. Williams, please come forward. I'm
4 going to ask you, if you could, to place your left hand
5 on the *Bible* and raise your right hand while the Court
6 administers the oath.

7 MADAM CLERK: It's right here. It's right here.

8 THE COURT: Put your left hand on the *Bible*, raise
9 your right hand.

10 MR. WILLIAMS: It's kind of hard.

11 MADAM CLERK: Do you solemnly swear or affirm the
12 testimony you give in this case shall be the truth, so
13 help you God?

14 MR. WILLIAMS: I do.

15 MADAM CLERK: You may be seated.

16 THE COURT: Mr. Williams, pull up real close to
17 that microphone, and speak loudly, clearly, and slowly
18 we can hear everything that you have to say. And let's
19 start with your full name.

20 KENNETH SAMUEL WILLIAMS: Kenneth Samuel Williams.

21 THE COURT: Mr. Falk, you're recognized.

22 KENNETH WILLIAMS

23 DIRECT EXAMINATION

24 BY MR. FALK:

25 Q Mr. Williams, I tried to characterize sort of the

1 events that led up the victim's death in this case, but
2 could you tell me what happened that night.

3 A Yes. Well, early that day, I did a job for this
4 young lady on Port Royal. I did -- I was doing yard
5 work. That was my thing. And then, later on, I went to
6 Skinner house, and he was drinking and getting high,
7 smoking marijuana and everything, and ran short of some
8 money. So, early that day -- actually, I did two jobs
9 that day. I did -- cause the old man that was Koch, I
10 was working for him on the regular. I did a job for him
11 earlier; and I did a job for this other young lady;
12 then, I went to Skinner house. And like I say, we was
13 drinking and smoking and stuff.

14 Q What is the name of the victim in this case?

15 A Jack Koch.

16 Q And you work for him?

17 A Yes, I was working for him off and on like probably
18 twice a week.

19 Q For over what period of time?

20 A Oh, probably about two months. About two months
21 before the crime -- this crime happened.

22 Q Okay.

23 A But then, we -- we -- we ran out of money, and Mr.
24 Knox -- I used to take -- Mr. Knox always asked me if
25 I'd go get young ladies for him, young girls, and I used

10-17-16 WILLIAMS V STATE

WILLIAMS - DIRECT - FALK

1 to go get young girls for Mr. Knox sometime. He had
2 wanted a female companion. I used to get one for him,
3 and he will pay them, and he will look out for me, too.

4 So, when we ran out of money that night, I told Mr.
5 Skinner and the two young lady that we -- that we had
6 that, well, I know somebody that will we go to his house
7 and he will pay for some sexual favor or dance or
8 whatever. They agreed they would go. So, we got there.
9 it's about -- it's about 10:30. About 10:30, 11:00
10 o'clock that night we got there.

11 It was Knox answered the door. Me and Jenny and
12 Timothy Skinner, we got out of the van. Lisa Summer
13 didn't get out of the van. She was playing drunk.
14 Actually, she wasn't drunk. She just didn't want to
15 perform those -- she didn't want to be no prostitute.
16 So, she acted she was too intoxicated.

17 So, we got out the van and went to the door and
18 knocked on the door. Mr. Knox recognized Jenny from
19 working at a restaurant that he owns. So, off the bat,
20 he like, you all, I want you all out my house, get off
21 -- get off my porch. Leave. So, I'm, oh, my bad, then.
22 My bad. I was very intoxicated, but I wasn't
23 intoxicated that I didn't know what was going on. So, I
24 turned around and left off the porch and went to the
25 van.

1 Mr. Skinner standing there, but he want money for
2 his gas for coming all the way from Burton to Port
3 Royal. So, next thing I know, I had to come and open up
4 -- I getting ready to open the van side door to go in
5 the back of the van, and I heard the tussling, and
6 that's when I ran back to see what was going on. Mr.
7 Skinner was on top of Mr. Knox between the porch and
8 door.

9 Now, earlier, we was at -- Skinner put a window, a
10 bedroom window frame in his mother bedroom in her room,
11 and he had a box cutter in his shirt up-side-down. When
12 I snatched Mr. Skinner off Mr. Knox, I got cut on my
13 hand, on my left finger.

14 At this time, I didn't notice. And this happened
15 on the porch. So, when I snatched Mr. Skinner off him,
16 I asked him, what are you doing, man; I said, this man
17 don't know you; I work for this man; this man know me.
18 But at the time, Mr. Knox was -- he was conscious, but
19 he was laying on the floor.

20 So, if I had -- if I'd a known that that man was
21 going to die, I would have never left out of the house
22 without picking up a phone and calling for help. That's
23 the only thing I regret is not picking up that phone and
24 calling help for this man, because, like I say, when I
25 pulled Mr. Skinner off Mr. Knox, he was conscious, but

10-17-16 WILLIAMS V STATE

WILLIAMS - DIRECT - FALK

1 he was struggling, trying to get off the phone. Now,
2 when you -- when you high and intoxicated, in a
3 situation like that, you panic. And I panic. And I'm
4 -- and I'm paying for my panic now, yes. But I did get
5 cut, but I never stepped foot in Mr. Knox house. I
6 never went cross that door. Far as I went in that man
7 house was the porch.

8 So, that -- that -- that basically what happened.
9 I mean, I -- I panic. I told the officers, when they
10 first interviewed me, I lied, you know. When we -- when
11 we under pressure, we do make bad mistakes, you know
12 what I'm saying. So, I just was scared and I lied. And
13 they came back, and they asked me what happened to my
14 finger. They saw the cut on my finger. I told them I
15 happened to be -- it happened, I was doing yard work. I
16 should have told him the truth. But I did lie the
17 couple times. Finally, I did recognize the trouble I
18 was in, I called the detective back and told somebody at
19 the jail that I want to see the two detectives that
20 arrested me, because I want to come truth with what
21 really happened. And -- and that's -- that what
22 happened.

23 Q Do you have anything else you want to add?

24 A Like I say, I'm going to accept my responsibility
25 for -- for doing -- for even taking these people to this

1 man house. I'm 51 years old, and I ain't never hurt a
2 man in my life. You know, I did some bad things in my
3 life, so nobody ain't perfect. You know, I did some bad
4 things in my life that I'm not proud of, but hurting a
5 human being is not one of them. I ain't never in my
6 life physically hurt a human being.

7 That's my mother back there. My mother, I love my
8 mother to death. My mother never turned her back on me.
9 And for me to sit there and see my mother back there
10 crying, my mother know how she raised me. She's not
11 seen me raised no murderer. To kill a 87-year-old man
12 -- a 78-year-old man, that's not me. Or a 16-year-old
13 man, that's not me, you know.

14 But like I said, today, I can stand here, I say I
15 accept my responsibility for leaving out the house and
16 not picking up the phone and calling for help for that
17 man, but God knows I thought that man was alive and was
18 going to be all right. And I turned around and pushed
19 Mr. Skinner off that man.

20 Q And so, your involvement was just pulling Skinner
21 off of --

22 A That's -- that's it. And I took these people to --
23 I told them the cost. The \$57.00 they took from that
24 man, I could have asked that man for that, and he would
25 have give it to me. The man -- the man help -- I was on

10-17-16 WILLIAMS V STATE

WILLIAMS - DIRECT - FALK

1 parole -- parole. I got paroled from E.R. The man
2 helped me pay my parole fee and everything. I look at
3 them, I said, Knox would have give it to me. You know.
4 My mistake was taking these individuals to this -- to
5 Koch house, Mr. Koch house and let that happen, and
6 walking out that house without calling for help for this
7 man.

8 And if I got to do these thirty years, they'll be,
9 you know, because some time I look at it like they said,
10 it might going to be for the things that I been charged
11 I'm doing the thirty years for; it might be for the
12 things that I thought I got away in the past; bad things
13 that I have done that I never got caught for or
14 whatever, I might be paying for it now.

15 So, I can sleep at night, you know. God have
16 forgive me. I forgive myself, so. And his son and
17 daughter have forgive me. So, I can go on with my life.
18 That's all -- that's all I got to say.

19 Q And you didn't testify at your trial. Is that
20 right?

21 A No. My -- my lawyer thought it was -- asked me not
22 to testify.

23 MR. FALK: No further questions.

24 THE COURT: Mr. Nally.

25 MR. NEELY: Yes, just briefly.

1 KENNETH SAMUEL WILLIAMS

2 CROSS-EXAMINATION

3 BY MR. NALLY:

4 Q Mr. Williams, do you recall law enforcement coming
5 to you and interviewing you shortly after the incident
6 took place?

7 A Yes, sir.

8 Q And do you recall telling them that you weren't
9 there; you didn't know anything about it?

10 A Sir, I just sit here and say that there's a few
11 things that I lied and say to the sheriff. I'm not
12 denying it. Under pressure, yes. I just -- I'm not
13 denying it.

14 Q And whenever they told you that your blood was on
15 the scene and in the van, you told them that you pricked
16 it on -- you pricked yourself on a thorn bush?

17 A Yes, working in the yard, yes, sir.

18 Q And then, after you received discovery, you said
19 that you cut your hand on box cutters that were in Mr.
20 Skinner's pocket?

21 A Yes, sir.

22 Q And then, you changed your story to you took them
23 to the house. You told law enforcement, after you got
24 discovery, that you took Mr. Skinner to the house and he
25 committed the crime.

10-17-16 WILLIAMS V STATE

WILLIAMS - CROSS - NALLY

1 A I said we -- we all went to the house. Not just
2 Mr. Skinner. Four of us went to the house.

3 Q And it was your testimony that you watched this
4 take place to Mr. --

5 A No. No. No, sir, I didn't watch nothing. I tried
6 to stop him. Like I say, when -- when we left off --
7 when I left off the porch, Mr. Skinner was arguing about
8 gasoline. So, by the time I got to the van, I heard the
9 tumbling. He had already jumped on Mr. Knox. And I ran
10 back on the porch, and he was on top of this man hitting
11 him. And that's when I went to snatch him off and the
12 box cutter nipped me on my finger, sir.

13 Q Okay. You remember that the evidence at trial from
14 the doctor was that this man's head was bashed into a
15 wall multiple times, and then, he was dragged by his
16 clothing into the house?

17 A Well, um, see, I don't know about his head being
18 bashed into the wall multiple time. I know this is
19 something that they find some hair on the closet door or
20 something like that, but I didn't witness all that. No,
21 I didn't. Once I got -- like I said, by the time I got
22 back up there, I went there, I witness Mr. Skinner on
23 top of this man. He hit about two time -- I don't know
24 how many times he hit him, but I say about two swings by
25 the time I pulled him off. So, I can't tell him -- I

1 can't answer that question right there.

2 Q So, but your testimony that, after he hit him a
3 couple of times, you pulled him off and the it stopped
4 there.

5 A Yes. Yes. And we -- I pushed him outdoors and he
6 got in the van. I -- I -- I push him in the van and
7 told him let's go. That's -- that's what I did.

8 Q Okay.

9 A And his girlfriend was on the porch screaming and
10 begging him to stop, Ms. Jenny.

11 Q So, your testimony is that the evidence found in
12 the house was not part of the fight; it all happened on
13 the porch?

14 A Sir, this is in the house. Okay. You're going to
15 the porch. It's a big screen porch and it's a door.
16 The door was open. It was in between the door and the
17 porch. Halfway in the door. It was top of Mr. Knox,
18 but half his body was in the livingroom and half was in
19 the porch.

20 Q But the hair and the tests --

21 A Sir, I understand what you asking me, but I can't
22 answer that, because I wasn't there to see that. So,
23 like I say, I only know about the hair and all this on
24 hair so say so when we went to trial.

25 Q Okay. But your testimony is you walked to the car,

10-17-16 WILLIAMS V STATE

WILLIAMS - CROSS - NALLY

1 turned around and saw him swinging, and you went and
2 stopped it.

3 A No. No. My testimony is -- I left. When Mr. Knox
4 say I want you all to leave from my porch before I call
5 the police, Mr. Skinner started yelling about money. He
6 want money for his gas for coming all the way from
7 Burton to Port Royal. I left out walking going to the
8 door, to the van. Open -- we still open the side door.
9 I heard the fall, sound like something fell. So, I
10 turned back around, and that's when Lisa -- or Jenny was
11 screaming stop, stop. So, when I ran upon the porch,
12 there was already -- Mr. Skinner was already on top of
13 Mr. Knox. And like I said, when I ran up, he was
14 swinging on him, like two or three times before I could
15 snatch him off. When it first started -- what
16 altercation they start, I wasn't there when he first
17 started swinging on him or whatever happened. I wasn't
18 there when it first started. I wasn't there when he
19 first hit him or bashed his head or whatever. I didn't
20 see that part. I'm telling you what I saw and what I
21 did. What I did is pull Mr. Skinner up off him, cut my
22 hand doing box cutters. I saw him hit him two or three
23 times. Yeah, saw Mr. Skinner hit -- swing on him two or
24 three times.

25 MR. NEELY: No further questions.

1 THE COURT: Any re-direct?

2 MR. FALK: No re-direct.

3 THE COURT: You may step down. You may call your
4 first witness.

5 MR. FALK: That's all we have.

6 THE COURT: Very good.

7 MR. NEELY: The State will call Gene Hood.

8 THE COURT: Mr. Hood, please come forward.

9 MADAM CLERK: Do you solemnly swear or affirm the
10 testimony you give to the Court in this case shall be
11 the truth, so help you God?

12 HON. GENE GRAHAM HOOD: I do.

13 MADAM CLERK: You may be seated.

14 THE COURT: Have a seat in the witness chair, and
15 pull up real close to that microphone. Speak loudly,
16 clearly, and slowly in order that we can hear everything
17 that you have to say. And start with your full name.

18 HON. GENE GRAHAM HOOD: Gene Graham Hood.

19 GENE GRAHAM HOOD

20 DIRECT EXAMINATION

21 BY MR. NEELY:

22 Q Mr. Hood, just some preliminary questions. When
23 were you admitted to the Bar in South Carolina?

24 A My Bar Number's 2597, so, it was in 1973.

25 Q And during the course of your forty-plus years as

10-16-17 WILLIAMS V STATE

HOOD - DIRECT - NEELY

1 an attorney, how much of that was done in the criminal
2 field?

3 A A lot of it. I was in the Army JAG Corps. And I
4 was a defense counsel, I was a prosecutor, I was a
5 military judge. So, yeah.

6 Q Suffice it to say you have a lot of experience in
7 criminal matters.

8 A Correct.

9 Q Are you currently retired?

10 A Yes, as of 1 October this year.

11 Q And did you represent Mr. Williams in the trial?

12 A I sure did.

13 Q If you wouldn't mind, just give us a brief summary
14 of your view of the facts of that trial as you best
15 recollect.

16 A You know, the facts of the trial, if I recall
17 correctly, my theory of the case was basically the same
18 thing that Mr. Williams has said. And that was that Mr.
19 Skinner had actually committed this crime, and that Mr.
20 Williams had been cut, which he had admitted, and -- and
21 had never changed his story with me. I mean, it was
22 always the same story. And he -- he -- he bled in the
23 house and coming out of the house because of being cut
24 by this box cutter, which was allegedly in Mr. Skinner's
25 pocket.

1 The young ladies that were there were there for the
2 purpose of providing sexual entertainment for the
3 deceased. I know that previously, Mr. Williams had gone
4 with Mr. Koch, I believe his name was. I've forgotten
5 now. But and had tried to -- they had been driving in
6 Mr. Koch's vehicle, and they would go from house to
7 house looking for a female to provide the services, and
8 Mr. Williams would take Mr. Koch to these homes. That's
9 how Mr. Williams got identified, because, on one of
10 these occasions, and that was the day before, where he
11 had been working at Mr. Koch's house, when he finished,
12 Mr. Koch had agreed to take him to home, but before they
13 went home, he was going to go to several -- well, to
14 find him a female. Mr. Koch a female. So, they started
15 riding.

16 Mr. Koch, unfortunately, got -- they went to
17 several places and weren't able to, you know, consummate
18 the deal. And eventually, Mr. Koch got stopped by a
19 sheriff's deputy. And during the course of that stop,
20 there was conversation between the officer, Mr. Koch,
21 and Mr. Williams. And that's how they got Mr. Williams'
22 name and Mr. Koch's name, because Mr. Koch was given a
23 ticket for something. And so, therefore, in the report,
24 they had Mr. Williams listed as an occupant in the
25 automobile. So, that's how they ended up interviewing

1 Mr. Williams with respect to this particular crime.

2 But basically, everything that he said was
3 basically true, except, you know, for the fact that
4 there were several other witnesses, the other females,
5 and you know, who said that -- and testified that that
6 wasn't true; that, really, what had happened was, they
7 claim, that they went there, and he, Mr. Williams,
8 supposedly got out of the vehicle because he knew that
9 he could borrow some money perhaps from Mr. Koch. And
10 so, he went in, and they drove around the block and came
11 back around, and when they did, Mr. Williams was coming
12 out of the house. They picked him up. He had a credit
13 card or something of that nature, if I recall correctly.
14 I think there was some question about the credit card.
15 But that's -- that's basically the -- some of the
16 testimony from the other witnesses in the case that
17 indicated that, yes, they had gone there to get money,
18 but Mr. Williams knew the individual, and that, you
19 know, he would be able to perhaps get a loan from Mr.
20 Koch.

21 Q But just kind of going back over that, all these
22 witnesses that testified that kind of contradicted your
23 former client's story, you cross-examined each one of
24 those witnesses about Mr. Skinner.

25 A Oh, absolutely. Absolutely. The whole -- the

1 whole theory of the case was shift, shift around what
2 they were saying about Mr. Williams. But what Mr.
3 Williams had told me about what Mr. Skinner had said,
4 and I got the females to admit, you know, everything
5 right down the line. And there was even some question
6 about all of them being under the influence of a variety
7 of drugs.

8 But you know, Mr. Skinner knew the females. Mr.
9 Skinner perhaps had been to that house earlier with a
10 female, if not the same one who came -- or ones that
11 came where this particular night. There was testimony
12 from a witness who stated that that van had been seen in
13 the proximity of Mr. Koch's house previously. So, that
14 gave us this theory that Mr. Skinner was going there,
15 like Mr. Williams said, to provide sexual services for
16 Mr. Koch. And it perfectly matched with, you know, Mr.
17 Williams' statement that, you know, he was out seeking
18 females for him when they got stopped by the officer.

19 So, putting all that together, and -- and I was
20 trying to shift, obviously, to say that Mr. Skinner was
21 the one who attacked the individual; Mr. Skinner was the
22 one who is -- was responsible for the death of Mr. Koch;
23 and that Mr. Williams had nothing to gain. Mr. Williams
24 worked for the man. So, I mean, why would he want to,
25 you know, attack him. It had to be Mr. Skinner, and his

10-16-17 WILLIAMS V STATE

HOOD - DIRECT - NEELY

1 refusal, Mr. Koch's refusal, to accept this particular
2 female.

3 Q And the story that Mr. Williams kind of gave on the
4 stand today closely parallel's the story he gave to law
5 enforcement the second time, after he had been locked up
6 for the crime that he gave law enforcement.

7 A That is correct.

8 Q And that came in at trial through law enforcement.

9 A It did.

10 Q And that would have been the basic essence of what
11 Mr. Williams would have testified to if he'd took the
12 stand.

13 A Correct.

14 Q But it would have opened him up.

15 A Yeah. I mean, he had -- he basically told them the
16 same story that he told here; that he pulled Mr. Skinner
17 off; injured his finger in doing that with the box
18 cutter; and that's how the blood and the DNA and
19 everything got in the area where this event took place.
20 His -- his blood.

21 Q So, the blood was never even debated against. The
22 blood was in his story as well.

23 A Correct.

24 Q Because he explained it away to law enforcement.

25 A Absolutely.

1 Q Did you take that into consideration when he didn't
2 object to the DNA analysis concerning the fact that Mr.
3 Williams admitted that his blood was at the scene? He
4 admitted that it was his blood.

5 A Well, absolutely. I mean, you know, because you
6 don't -- you know, he'd already put himself in jeopardy
7 by saying, yeah, I was there; yeah, I did pull him off;
8 and I cut myself in the process of pulling him off, you
9 know. And then, we have the -- we know that he was in
10 the van because of the independent, you know,
11 examination by the guy with the DNA inside of the van.
12 And on -- I think he was on the credit card, if I recall
13 correctly, of Mr. Koch.

14 Q That's correct. I mean, the I.D. card or the
15 credit card.

16 A Yeah, there was something that belonging to the
17 victim in the case.

18 Q And so, what was your reason behind advising Mr.
19 Williams not to testify?

20 A Well, he couldn't tell them anything. He could
21 lose a lot, you know. He had already told them his
22 complete story, you know, and we were trying to prove
23 that that's what happened, you know, as opposed to --
24 so, why should he -- and I think I even made it in my
25 closing argument, I probably did, something to the

10-17-16 WILLIAMS V STATE

EXAMINATION BY THE COURT

1 effect he's already told you everything he has to know
2 about this case and pulling Mr. Skinner off of, you
3 know, Mr. Koch; and that he had nothing to gain by doing
4 that, because he was employed by the man. So, it was
5 all consistent.

6 Q And the only evidence in the case that put Mr.
7 Skinner out of the vehicle on the porch near the victim
8 was your client's testimony.

9 A That's correct.

10 Q And matter of fact, there was no DNA evidence, no
11 other testimony came in, that would put him outside the
12 vehicle, correct?

13 A Well, the two females, they were -- they were quite
14 a pair. You know, I don't remember all of the cross-
15 examination of these women, but it was extremely
16 suspect, let's say.

17 Q Would it be fair to characterize Mr. Skinner as a
18 pimp and the two ladies with him as his clients?

19 A That's basically it, yes.

20 Q Okay.

21 A Yes.

22 MR. NEELY: No further questions.

23 EXAMINATION BY THE COURT:

24 THE COURT: But the ladies did, indeed, testify it
25 was Mr. Williams who went in the house while they ran

1 around the block?

2 A Correct. That Mr. Williams, if I remember
3 correctly -- this has been a long time ago -- but I'm
4 pretty sure. And there were so many different stories
5 that were coming out. But if I recall correctly, they
6 said that nobody got out of the van except for Mr.
7 Williams; and that they drove around the block and
8 picked Mr. Williams up coming from the house somewhere
9 in the location, yes. That's what I recall from the
10 testimony of -- I think it was Jenny or either it could
11 have been that other female. I know that Jenny has
12 died, or died about a year after this event from an
13 overdose. So, anyway.

14 THE COURT: All right, Mr. Hood, let me ask you
15 this question. What do you think about the allegations
16 of the applicant that the expert who testified only did
17 a peer review and only did a test on one of the blood
18 samples? What do you think about that?

19 A What did I think about it at the time?

20 THE COURT: Yeah, what did you think about it at
21 the time? Is it something that you should have objected
22 to?

23 A Well, I didn't think --

24 THE COURT: And if you did object to it, would it
25 have made any difference?

10-17-16 WILLIAMS V STATEHOOD - CROSS - FALK

1 A Well, I didn't think it would make any difference,
2 Number 1. But number 2, you know, juries are kind of
3 strange. If you object to something that, you know, is
4 later admitted, and it looks like you're trying to hide
5 something from them. And we weren't trying to hide
6 anything, because he had already told them, I bled in
7 the house. So, the bottom line was, we wanted to be
8 basically consistent. We didn't want to hide anything
9 from the jury or think that we were trying to, you know,
10 hide something from them. And as long as the testimony
11 was consistent, then, and we were okay, you know, in
12 telling our story in the manner we told it.

13 THE COURT: Anything further?

14 MR. FALK: Yes, your Honor.

15 HON. GENE GRAHAM HOOD

16 CROSS-EXAMINATION

17 BY MR. FALK:

18 Q Would your case -- would your case have been
19 stronger had there been no DNA evidence of my client at
20 the scene?

21 A I don't think so. That's -- that's my personal
22 opinion, but I don't think so.

23 Q Because you had testified that we had two witnesses
24 who were prostitutes, who were possibly concealing while
25 they were there, maybe not wanting to admit that they

1 were rejected by the other party. Certainly, they're
2 not the most credible witnesses. Is that correct?

3 A That's correct. That's correct.

4 Q But it certainly is credible evidence that my
5 client was at the scene, because his DNA was found
6 walking up to the house. Is that correct?

7 A Um-hmm.

8 Q The DNA, his DNA -- not Skinner's DNA -- his DNA is
9 found on the driveway, porch, doorknob. Is that
10 correct?

11 A If I recall correctly, yes.

12 Q Okay. But you're saying that you don't believe
13 that that was persuasive evidence or significant
14 evidence against my C.I.

15 A Well, it was -- it was some evidence, you know.
16 But the bottom line here, it was consistent with his
17 statement to the police. Everything was consistent.
18 So, if you want to, you know, stay consistent, you know,
19 and -- and not try to think that the jury -- you're
20 trying to mislead the jury or something of that nature,
21 you know, he had already told them that the blood was
22 his, you know. So, at that point in time, it gets
23 pretty difficult to, you know, attack this person who's
24 saying, yeah, that's his blood. Or, his DNA.

25 But I mean, again, that wasn't the -- if you took

1 out the DNA, you have his statement; you have the
2 females' statements; you also have the possibly that --
3 you know -- well, at that time, we didn't know whether
4 Mr. Skinner was going to testify against Mr. Williams.
5 You know. So, we had all these things going on, you
6 know. So, you have to, well, make decisions. And I
7 made the decision.

8 Q Because he's testifying that, in his statement, he
9 said that he cut his finger, but he did not testify that
10 those samples were from my blood. He testified -- his
11 statement to the police is he cut his finger, so that,
12 that blood could have been mine, but not that, you know,
13 that was my blood and it wasn't Skinner's blood.

14 A Well, again --

15 Q I'm just saying he did not admit that those samples
16 were all my blood. His statement to the police wasn't
17 that the samples were my blood. His statement to the
18 police was I cut my finger and it was bleeding.

19 A That's correct.

20 Q Thank you. Did you have any concerns about in the
21 initial instructions to the jury that the trial court
22 was sort of burden shifting and saying that you have to
23 decide -- if you have two grandkids, you've got to
24 decide which one's telling the truth?

25 A No, I did not. You know, and again, when you're --

1 when you're in here, and you're trying to pay attention
2 to everything that's going on in the courtroom, and the
3 judge is speaking, and your client is trying to get your
4 attention and things of that nature, you miss things.

5 Q Sure.

6 A You know. I mean. But even if I -- after what
7 you've said, I still don't believe that it is, in fact,
8 burden shifting. My opinion.

9 Q And let me just clarify it. Do you think that it
10 would be your opinion that Officer Stanley's testimony
11 was hearsay testimony? Stanley's testimony regarding
12 the samples that Ortuno did. Do you believe that was
13 hearsay testimony when she testified to an out-of-court
14 statements made by the other DNA analysis.

15 A Well, I -- I agree with the State that you can
16 consider that; that that expert -- that expert opinion
17 can consider hearsay evidence. I mean, as part of --

18 Q My question was -- because you're admitting that
19 it's hearsay evidence.

20 A I'm sorry. I didn't --

21 Q My question is: do you admit that that testimony
22 was hearsay?

23 A Well, I -- I don't know whether it's all the
24 testimony that this person gave or what part of it.

25 Q But the testimony regarding the samples. She

10-17-16 WILLIAMS V STATE

HOOD - CROSS - FALK

1 testified about samples, and we can go back through
2 them, but those ones that I referred to before where
3 she's testifying about the samples that were found on
4 the porch, the porch floor, and on the doorknob that had
5 Mr. Williams' DNA in them; and that she had testified
6 that she did not do the DNA analysis on those samples.
7 But her testimony that it contained Mr. Williams' DNA,
8 is it your belief that that is hearsay testimony? Is it
9 an out-of-court -- were they out-of-court statements?

10 A I assume you're talking about the fact that she
11 didn't run those analysis.

12 Q Yes.

13 A Is that correct?

14 Q Yes.

15 A Yes. Yes.

16 Q Okay. And would you admit that it's testimonial in
17 that it is -- the analysis were done for the purpose of
18 use at a trial? You don't do DNA analysis unless you're
19 planning to use it at a trial. So, it's testimonial
20 hearsay.

21 A I -- I agree.

22 Q I'm just trying to put it in terms of *Crawford*
23 *versus Washington* where you have a hearsay statement,
24 and then, the next analysis is whether or not that
25 hearsay is testimonial in nature.

10-17-16 WILLIAMS V STATEBY THE COURT

1 A Yeah. Yeah. Again, I go back to what I said
2 previously. We had already really established that Mr.
3 Williams had bled inside of the house. And you know,
4 perhaps droplets of blood were found on the steps or
5 wherever, because we knew he was bleeding. He told him
6 he was bleeding. What would be the purpose of me
7 attacking or bringing or -- or trying to attack this
8 woman -- I've forgotten who she was -- if, in fact, we'd
9 already established certain things?

10 Q Well, I understand that.

11 A Okay.

12 Q Just for the record, whether or not you chose not
13 to do it under trial strategy, I just want to know if
14 you will acknowledge that those statements about the
15 blood samples was testimonial hearsay.

16 A I did not object to them. And I -- again, I go
17 back to what you say, the trial strategy, and yes, they
18 were hearsay.

19 MR. FALK: Thank you. No further questions.

20 BY THE COURT:

21 THE COURT: Anything further from the State?

22 MR. NEELY: Not from the State, your Honor.

23 THE COURT: You may step down. Anything further?

24 MR. FALK: No, your Honor.

25 THE COURT: Anything from the State?

10-17-16 WILLIAMS V STATEBY THE COURT

1 MR. NEELY: Not from the State, your Honor.

2 THE COURT: Once again, these are important
3 matters, and I'm going to take these matters under
4 consideration, and I'll -- I'm going to review more of
5 this transcript. And I'll prepare a memo, and I'll send
6 it to both counsel, and I'll give directions as to the
7 substance of the order you need to draft.

8 MR. FALK: Thank you, your Honor.

9 MR. NEELY: Thank you, your Honor.

END PROCEEDING 12:51 P.M.

10-17-16 WILLIAMS V STATECERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

OCTOBER 17, 2016

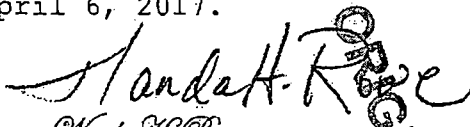
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing October 17, 2016 Transcript of Post-conviction Relief Hearing is a true, accurate, and complete record of the proceedings had on said date, in the case of Kenneth Samuel Williams versus State of South Carolina, Beaufort County, Court of Common Pleas, Case Number 2014-CP-07-01841; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my digital signature and is attached to the original of this transcript requested by SCCID. Pursuant to SCACR 607, requests for copies of transcripts must be made to the court reporter. Unauthorized copying/ mailing is prohibited.

Witness my signature April 6, 2017.


Wanda H. Rowe
Wanda H. Rowe, CVR-M
Official Court Reporter

ORIGINAL

10-17-16 WILLIAMS V STATE

CERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

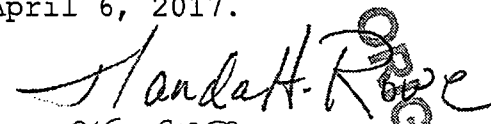
OCTOBER 17, 2016

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING
 STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing October 17, 2016 Transcript of Post-conviction Relief Hearing is a true, accurate, and complete record of the proceedings had on said date, in the case of Kenneth Samuel Williams versus State of South Carolina, Beaufort County, Court of Common Pleas, Case Number 2014-CP-07-01841; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my digital signature and is attached to the original of this transcript requested by SCCID. Pursuant to SCACR 607, requests for copies of transcripts must be made to the court reporter. Unauthorized copying/ mailing is prohibited.

Witness my signature April 6, 2017.


Wanda H. Rowe
 Wanda H. Rowe, CVR-M
 Official Court Reporter



State of South Carolina
The Circuit Court of the Fourteenth Judicial Circuit

Michael G. Nettles
 Judge

Florence City-County Complex
 180 North Irby Street, MSC-XX
 Florence, SC 29501
 Phone: (843) 292-7433
 Fax: (843) 292-7436
 mnettl@sccourts.org

October 17, 2016

TO: Ruston Neely, Esquire
 Office of the Attorney General

RE: Post Conviction Relief Hearings
 Fourteenth Judicial Circuit
 October 17, 2016
 Kenneth S. Williams 2014-CP-07-1841

Mr. Neely,

I am denying Mr. Williams's application for Post Conviction relief. Please prepare an order consistent with this memorandum and mail it to my attention at the Beaufort County Courthouse with a self-addressed, stamped envelope.

Burden Shifting

Applicant contends that trial counsel was ineffective in not objecting to the manner in which the trial judge instructed the jury to evaluate the credibility of witnesses. The charge in question is located on page 117 of the trial transcript:

It is a simplistic example, and I use it perhaps not meaning to demean anything that will go on in this courtroom because the issues here are far more important than this example suggests. But if any of you have more than one child, or if you've got more than one grandchild, you know exactly what I mean when the two of them come to you and one of them says he hit me, and the other says no, she hit me first. Well, you've got to make a decision somehow or another. And somehow or another you do it. You put the question in your mind, you let them run through the machinery of your common sense, and you reach a decision as to where the truth lies.

2016 OCT 18 PM 3:18
 CLERK OF COURT
 BEAUFORT COUNTY, SC

I find that the charge in question does not shift the burden of proof to the defense. It merely explains how to address a conflict in testimony. This charge in conjunction with the reasonable doubt charge is an adequate and fair statement of the law. Applicant contends that trial counsel should have objected to the charge set forth above and should have filed an appeal. This contention is without merit.

DNA

Applicant contends that trial counsel committed error in not objecting to the testimony of the SLED forensic expert who introduced the DNA results which established that the defendant was at the scene of the crime. Applicant is correct in that this testimony was violative of *Crawford* and did not allow defendant to cross examine the forensic expert who actually tested various samples.

However, in this circumstance it was a legitimate trial strategy not to object because the defendant's theory of the case was that he indeed was present and that he admitted that his blood was at the scene because he was cut in his efforts to rescue the deceased from his attacker, Mr. Skinner.

Applicant's counsel shall inform applicant of his right to appeal.

Sincerely yours,



Michael G. Nettles

MGN/csb

cc: James K. Falk
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Kenneth Williams, #140886,)

Case No. 2014-CP-07-1841

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

2016 DEC 28 PM 12:51
JEREMY ANN LUSK
BEAUFORT COUNTY CLERK OF COURT

This Court convened an evidentiary hearing into the matter on October 17, 2016, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel Gene Hood, Esquire (hereinafter "trial counsel") was present and testified. Testimony was elicited from Applicant. The Court had before it a copy of the trial transcript, the records of the Beaufort County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. Applicant was indicted by the October 2007 term of the Beaufort County Grand Jury for Burglary, 1st degree (2007-GS-07-1920), Murder (2007-GS-07-1918) and Strong Arm Robbery (2007-GS-07-1919). Gene Hood, Esquire represented him. On July 29, 2010, the Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable G. Thomas Cooper Jr.

sentenced the Applicant to confinement of thirty (30) years for Murder; thirty (30) years, concurrent, for Burglary, 1st degree; and fifteen (15) years, concurrent, for Strong Arm Robbery.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Williams, 2012-UP-573 (filed October 24, 2012). The Applicant appealed this Order to the South Carolina Supreme Court, but certiorari was denied on June 11, 2014. The Remittitur was issued on June 26, 2014.

II. ALLEGATIONS

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

1. Failure of trial counsel to object to the trial judge's jury instruction regarding witness credibility.
2. Failure of trial counsel to object to DNA results, for which the examiner was not available to testify.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings

"cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this first prong, the proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 688.

This Court begins with a strong presumption trial counsel made all significant decisions in the exercise of reasonable professional judgment. Applicant has not overcome this presumption. Therefore, this application is dismissed for the reasons laid out hereafter:

A. Burden Shifting Jury Instruction

Applicant contends trial counsel was ineffective for failing to object to the trial judge's instructions to the jury on how to evaluate the credibility of witnesses. The charge in question is located on page 117 of the trial transcript:

It is a simplistic example, and I use it perhaps not meaning to demean anything that will go on in this courtroom because the issues here are far

more important than this example suggests. But if any of you have more than one child, or if you've got more than one grandchild, you know exactly what I mean when the two of them come to you and one of them says he hit me, and the other says no, she hit me first. Well, you've got to make a decision somehow or another. And somehow or another you do it. You put the question in your mind, you let them run through the machinery of your common sense, and you reach a decision as to where the truth lies.

The Court finds the charge in question does not improperly shift the burden of proof to the defense. "There is not a reasonable likelihood the jury applied the challenged instruction in a manner inconsistent with the burden of proof beyond a reasonable doubt. The trial court's instructions concerning seeking the truth were given in the context of the jury's role in determining the credibility of witnesses." State v. Aleksey, 343 S.C. 20, 28-29, 538 S.E.2d 248, 252 (2000). In this case, the charge merely explains in layman's terms how a jury can address direct conflict in witness testimony. This charge, in conjunction with the reasonable doubt and burden of proof charges, is an adequate and fair statement of the law. Applicant contends trial counsel should have objected to the charge set forth above and should have filed an appeal; However, the charge was proper. Therefore, this contention is without merit. This allegation is dismissed.

B. Failure to Object to DNA Evidence

Applicant contends trial counsel committed prejudicial error by failing to object to the testimony of the SLED forensic expert who introduced the DNA results. The DNA results established that the Applicant was at the scene of the crime. The majority of the DNA results submitted were not analyzed by the SLED forensic expert who admitted the results. Applicant is correct in that the admission of the DNA samples not personally examined by testifying SLED forensic expert violated Crawford.¹ Applicant was not able to cross-examine the forensic expert

¹ Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004)

who actually tested the various samples, which were used for testimonial purposes. However, in this circumstance, it was a legitimate trial strategy not to object to the DNA results under the defendant's theory of the case. When counsel focuses on some issues to the exclusion of others, there is a strong presumption of doing so for tactical reasons rather than sheer neglect, Yarborough v. Gentry, 540 U.S. 1, 8, 124 S.Ct. 1,5, 157 L.Ed.2d 1 (2003). The defense theory of the case was:

1. Applicant was present and confessed to law enforcement that his blood was at the scene of the crime;
2. However, Applicant was cut in his efforts to rescue the deceased from the attacker. This was the story that Applicant told trial counsel.

Applicant verified his attorney's recounting of that story and reasserted the same story at the evidentiary hearing.

Furthermore, no prejudice resulted from trial counsel's lack of objection. Applicant gave a full statement to law enforcement admitting he bled at the scene of the crime. Witnesses placed Applicant at the scene of the crime. There was DNA evidence, personally tested by the testifying forensic analyst, placing Applicant in the vehicle with the witnesses before the crime. The objectionable DNA evidence that was introduced was merely confirmation of a part of Applicant's story and corroborated part of the witness's testimony. Neither the State nor Applicant received a substantial benefit from the introduction of the DNA evidence. Therefore, there was no error when trial counsel chose not to object to the DNA evidence and there was no prejudice by the introduction thereof. This allegation is dismissed.

C. All Other Allegations

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

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

IV. CONCLUSION

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

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

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20 day of December, 2016.



MICHAEL G. NETTLES
Presiding Judge
Fourteenth Judicial Circuit

Florence, South Carolina