

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Frank R. Addy, Circuit Court Judge

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S.C. SUPREME COURT

DAMON JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002564

APPENDIX

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MOTIONS AND MATTERS

1 (Proceedings June 25, 2013)

2 THE COURT: Ms. White, you ready to proceed?

3 MS. WHITE: Yes, Your Honor.

4 THE COURT: Mr. Teague, you ready to proceed?

5 MR. TEAGUE: Yes, Your Honor.

6 THE COURT: Very good.

7 MS. WHITE: Your Honor, this is the case of Damon Jones
8 vs. the State, Case Number 2010-CP-42-6623, he's represented
9 today by Reed Teague. Mr. Jones was indicted August of '05 on
10 murder charges, proceeded to trial represented by Mr. Chris
11 Brough and on November 30th 2005 he was convicted of murder
12 and given a sentence of life without parole. He filed this
13 application December 15th 2010, uh, and I will note we've had
14 several hearings on motions to be relieved prior to this and
15 that's why with that and scheduling of witnesses this case is
16 just being heard.

17 THE COURT: Okay

18 MS. WHITE: And I will, uh, point out that in the return,
19 Your Honor, and in some amendments he's filed alleging
20 ineffective assistance of trial counsel, several allegations
21 for that, prosecutorial misconduct, juror misconduct, due
22 process violations and the Court's abuse of discretion and at
23 this time I will turn it over to Mr. Teague.

24 MR. TEAGUE: Thank Your Honor, uh, this point I would
25 like to go into, there's an issue in the PCR I believe under

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1 the pleadings, it's listed as issue number 7 and has to do
2 with the jury with a, one of the jurors making a ---

3 THE COURT: Is this on your amended application for
4 post ---

5 MR. TEAGUE: Yes, Your Honor. Yes, ---

6 THE COURT: --- conviction ---

7 MR. TEAGUE: --- Your Honor, ---

8 THE COURT: --- relief?

9 MR. TEAGUE: --- I believe it's issue 7.

10 THE COURT: Okay, and let me, let me say this: I met with
11 Ms. White, Mr. Teague in my chambers, they gave me heads up on
12 the issues that were comin' up regarding alleged juror
13 misconduct and tell both counsel we did a quick check, haven't
14 done exhaustive check but I found a case, uh, *McCoy vs. State*
15 which is -- what's the cite?

16 (Whereupon, a discussion was held off the record.)

17 THE COURT: It's 2013 case, I'll give it to you in a
18 minute. Anyway that appears to indicate that there's a
19 different analysis than you would have under a
20 after-discovered evidence procedure.

21 MS. WHITE: Your Honor, I would like to make a statement
22 about that if if you would allow me.

23 THE COURT: At the appropriate time ---

24 MS. WHITE: Okay.

25 THE COURT: --- we will. I just wanna put on record that

MOTIONS AND MATTERS

1 we had this back room, that I found this, that's what was
2 basically we talked about, okay, and, Ms. White, would you
3 like to add anything of substance to the conversation, not
4 argument, but to the -- to our conversation in chambers?

5 MS. WHITE: Not to the conversation in chambers, Your
6 Honor, ---

7 THE COURT: Okay, Mr. ---

8 MS. WHITE: --- no.

9 THE COURT: --- Teague, anything about the conversation
10 in chambers would you like to add for the record, ---

11 MR. TEAGUE: Uh, nothing other than what was said in
12 changers [sic], uh, ---

13 THE COURT: --- okay, that I just said. Okay, very good,
14 go ahead, Mr. uh, Teague.

15 MR. TEAGUE: Uh, Your Honor, I would like to go ahead and
16 proffer that testimony in reference to the juror issue.

17 THE COURT: Well I had decide that it's not right, I
18 thought that, uh, it may not be right so go, I I wanna hear
19 arguments ---

20 MR. TEAGUE: Oh, you wanna go ahead, okay.

21 THE COURT: --- as to what it is at this point.

22 MR. TEAGUE: Alright, Your Honor. Uh, we would, uh, in
23 this case there was a jury, there was a voir dire question
24 that was submitted by defense counsel ---

25 THE COURT: Just one second.

MOTIONS AND MATTERS

1 MR. TEAGUE: --- as to if you're -- if you have been,
2 ever been the victim of a violent crime that you should, uh,
3 answer that question and come forward, Your Honor, Juror 86
4 and I I misspoke, it's, uh, actually Issue 10 in the amended
5 pleadings, Juror 86, uh, did not respond to that question.
6 After the trial, after the defendant was found guilty, uh, I
7 believe a day or two later one of the other jurors,
8 Mr. Kershner, who's also under subpoena here today wrote a
9 letter to trial counselor Mr. Brough and indicated that one of
10 the jurors, he didn't mention her by name but it ended up
11 bein' Ms. McGraw, made statements in the jury deliberations
12 indicating that someone, that her ex-husband at some point had
13 placed a gun in her mouth or had -- somethin' in relation to a
14 gun that can be taken as victim of a violent crime. Mr., uh,
15 Juror, I'm not sure his number but Mr. Kershner wrote
16 Mr. Brough indicating that, uh, he was the lone hold out on
17 the jury and that he was not pla -- that at that time he was
18 not planning on voting guilty against Mr., uh, Mr. Jones.
19 After hearing this comment, he later signed an affidavit to
20 this, after hearing this comment, additional other things he
21 then changed and did vote guilty. He wrote this letter few
22 days later saying that that, hearing that information made him
23 change his mind, that a couple days later he felt like he
24 offered the wrong verdict and that Mr. Jones was not guilty of
25 murder. Uh, ---

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1 THE COURT: Well let let me stop you right there. I
2 know ---

3 (Whereupon, a discussion was held off the record.)

4 THE COURT: Let me see somethin'.

5 (Pause.)

6 THE COURT: Alright. Mr. Teague, I interrupted you, go
7 right ahead.

8 MR. TEAGUE: Your Honor, the State asks for copy of the
9 affidavit, I'll just provide 'em a copy real quick if you
10 don't mind.

11 THE COURT: When was this information, when was the
12 letter written by the attorney, I mean, to the attorney?

13 MR. TEAGUE: When was it written? Uh, got that right
14 here as well. It was written on December the 7th 2005, I
15 believe this trial was the week of December the 1st, um, I'll
16 I'll have to look at the front of the trial transcript.

17 THE COURT: Were any new trial motions made at that
18 point?

19 MR. TEAGUE: November 29th, there weren't any.

20 THE COURT: There were no no new trial motions?

21 MR. TEAGUE: Your Honor, from what I gather, the letter
22 came in and while the letter was coming in they filed the
23 appeal ---

24 THE COURT: Got ya.

25 MR. TEAGUE: --- and so . . .

MOTIONS AND MATTERS

1 THE COURT: Now I -- did you have -- do you -- are you
2 familiar with *McCoy vs. State* case, Ms. White?

3 MS. WHITE: I am, Your Honor.

4 THE COURT: And, Mr. Teague, are you familiar with that
5 case as well?

6 MR. TEAGUE: Your Honor, I'm not. I have some other case
7 law but I don't have that that case ---

8 THE COURT: Well ---

9 MR. TEAGUE: --- in front of.

10 THE COURT: --- it's 2013 case and it, uh, well my law
11 clerk keeps taking information away but, uh, it appears that
12 the after-discovered evidence rule there's a 5-part part
13 analysis, it's not the analysis you use, uh, they have
14 analysis under *Woods* case and that's what he's going to get.

15 MR. TEAGUE: Yes, sir, I have that ---

16 THE COURT: Okay.

17 MR. TEAGUE: --- right here.

18 THE COURT: What is the analysis there, Mr. Teague?
19 Would you ---

20 MR. TEAGUE: Okay.

21 THE COURT: --- provide, would you educate me on that,
22 please.

23 MR. TEAGUE: Yeah, and I think I have case here. Uh,
24 I've got it written out, "When a juror conceals information
25 inquired them to during voir dire, a new trial's required only

MOTIONS AND MATTERS

1 when the Court finds the jury intentionally concealed the
2 information and that the information concealed would have
3 supported a challenge for cause or would have been material
4 factor in the case of the party's peremptory challenges.
5 Intentional concealment occurs when the question presented to
6 the jury on voir dire is reasonably comprehensible to the
7 average juror and the subject of inquiry is of such
8 significance that juror's failure to respond is unreasonable."

9 THE COURT: Okay. Alright, do you agree with that as the
10 standard?

11 MS. WHITE: Your Honor, I do agree that that's the
12 standard for unintentional or intentional concealment, uh, of
13 jury voir dire questions, I do have, uh, argument in regards
14 to first the issue of whether or not information that was
15 revealed. I think Rule 606 is pretty clear that information
16 that was discussed during jury deliberations, specific
17 information or or how that information affected a juror in
18 regards to deli -- deliberations preve -- prevented from
19 coming in unless it has to deal with fundamental fairness
20 issues, uh, so I think getting that information in is one
21 question but then I also think the *McCoy* case responds
22 specifically to allegations of newly-discovered evidence of
23 juror misconduct and in this case this was known, this alleged
24 allegation was known within a week after the trial so
25 newly-discovered evidence I don't think would apply in this

MOTIONS AND MATTERS

1 case in the fact that this has been known since 2005.

2 THE COURT: Well if it's under *Ruger* it can be an
3 incon -- ineffective assistance a counsel, it was known that
4 point, failure to make post-trial motions on that wouldn't
5 that fall under the grounds of ineffective if that's in fact
6 correct and the standard's met?

7 MS. WHITE: Well I think the testimony, the testimony
8 would prove that there is -- there were post-trial motions
9 made and there were attempts to try to get that information
10 in. The fact that suddenly now they've been able to subpoena
11 a juror who is now willing to testify I don't think would
12 qualify that as newly-discovered evidence because it was
13 presented, available and known back in 2005 whereas this is
14 now, you know, he filed the application in 2010, five years
15 later and you have one year from the time that it could have
16 been known or was known to file any allegations regarding that
17 evidence.

18 THE COURT: Okay, let me make sure, I was just handed
19 about 3 inches of material, Mr. Teague, do you agree that
20 within a week of the trial that this juror made known the
21 alleged misconduct to trial counsel?

22 MR. TEAGUE: That's the date of his letter. From what I
23 gather and I was gonna get on if when Mr. Brough ---

24 THE COURT: So how could the -- when did this -- did this
25 go up on direct appeal?

MOTIONS AND MATTERS

1 MR. TEAGUE: It it did and ---

2 THE COURT: When did it come back down on remitter?

3 MR. TEAGUE: It didn't, the, uh, ---

4 THE COURT: It didn't come back down?

5 MR. TEAGUE: I was going to ame -- one of the things that
6 we agreed to was I was going to amend my plean -- pleadings
7 to, uh, move for ineffective assistance of appellate counsel
8 against Robert Dudek for failing ---

9 THE COURT: That's not ---

10 MR. TEAGUE: --- to ---

11 THE COURT: --- I'm not goin' there, ---

12 MR. TEAGUE: Different issue?

13 THE COURT: --- I'm not goin' there, I want you to answer
14 the question. When did the case come back to the trial of so
15 that he -- that PCR time begin to r -- it began to run, do you
16 know?

17 MR. TEAGUE: I don't know, Your Honor.

18 MS. WHITE: Se -- it was September 22nd 2010.

19 THE COURT: And this was filed when?

20 MS. WHITE: December 15th 2010.

21 THE COURT: So it is timely.

22 MS. WHITE: I will ---

23 THE COURT: Okay.

24 MS. WHITE: --- agree with Your Honor if that's
25 what -- I I I -- and our ---

MOTIONS AND MATTERS

1 THE COURT: And the remit ---

2 MS. WHITE: --- impression ---

3 THE COURT: --- the remitter was September 2010, the
4 application's December 2010?

5 MS. WHITE: I do believe if you're looking at it from a
6 PCR standport [sic] perhaps, ---

7 THE COURT: You're right, ---

8 MS. WHITE: --- uh, I I think ---

9 THE COURT: --- I I know you have a different
10 standard ---

11 MS. WHITE: Right, ---

12 THE COURT: --- for ---

13 (Indiscernible cross-talk.)

14 MS. WHITE: --- we have a different idea but ---

15 THE COURT: Okay. Alright, here's what I'm gonna do: I'm
16 not sayin' that I'm going to, uh, well, I wanna hear evidence
17 on the issue of jury misconduct. It seems to me, I'm not
18 gonna make a determination of the time in this issue until I
19 had a chance to review anything so to avoid delay I'm goin'
20 ahead and take the testimony, uh, and and let me tell you to
21 all here in this courtroom it's been brought up to my, uh,
22 attention that there's some acrimony here, understandable, but
23 you will, uh, conduct yourselves in the appropriate manner or
24 you'll be expelled from the courtroom, that bein' said, uh,
25 would you call your first witness on the issue of jury

MOTIONS AND MATTERS

1 misconduct, please.

2 MR. TEAGUE: Uh, ---

3 MS. WHITE: Your Honor, I'm sorry, could I hand up two
4 cases just in support of ---

5 THE COURT: Sure, ---

6 MS. WHITE: --- the State's position?

7 THE COURT: --- absolutely.

8 MS. WHITE: *State v. Sh* -- or *Shumpert v. State* and *State*
9 *v. Franklin*, Your Honor.

10 THE COURT: Mr. Teague, you have ---

11 MR. TEAGUE: And ---

12 THE COURT: --- somethin' ---

13 MR. TEAGUE: --- I'll hand ---

14 THE COURT: --- for me too?

15 MR. TEAGUE: --- forward *State v. Woods* that that ---

16 THE COURT: Okay.

17 MR. TEAGUE: --- Your Honor reference.

18 (Whereupon, counsel handed the documents to the Court.)

19 MR. TEAGUE: And at this point I would -- we've agreed
20 that I can orally amend my pleadings to assert a a an
21 additional issue, uh, against the appellate, ineffective
22 appellate counsel for failing to, uh, return this case back
23 down to the trial level so that trial counsel could file a
24 motion for a new trial for after-discovered evidence.

25 THE COURT: Is is that your agreement?

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1 MS. WHITE: Yes, Your Honor.

2 THE COURT: Okay. I'm curious how the counsel could
3 refer it back down, not the appellate court but I guess that
4 be another issue.

5 MR. TEAGUE: Well ---

6 THE COURT: Go ahead.

7 MR. TEAGUE: --- well he, uh, for ---

8 THE COURT: Uh-uh, call your witness on juror misconduct,
9 please.

10 MR. TEAGUE: Alright, I'll call Mr. Robert Dudek which is
11 by phone.

12 (Whereupon, a discussion was held off the record.)

13 THE COURT: Well, I want to hear, let's make sure we're
14 clear, I want to hear the testimony of this alleged juror is
15 what ---

16 MR. TEAGUE: Oh, okay.

17 THE COURT: --- I'm askin' for.

18 MR. TEAGUE: I'll call Ms. McGraw to the stand, ---

19 THE COURT: Okay.

20 MR. TEAGUE: --- I think ---

21 MS. WHITE: She's outside.

22 MR. TEAGUE: --- she's outside yes, Your Honor.

23 THE BAILIFF: Ms. McGraw.

24 (Whereupon, the witness came forward.)

25 (Whereupon, a discussion was held off the record.)

SANDRA MCGRAW - DIRECT EXAMINATION BY MR. TEAGUE

1 SANDRA MCGRAW, having been
2 first duly sworn, testified as follows:

3 THE BAILIFF: Have a seat, please.

4 THE WITNESS: Okay.

5 (Whereupon, a discussion was held off the record.)

6 DIRECT EXAMINATION BY MR. TEAGUE:

7 Q. Hey, Ms. McGraw, this is -- would -- can you spete [sic]
8 your -- state your name for the record, please.

9 A. Sandra McGraw.

10 Q. Okay, and do you live here in Spartanburg County?

11 A. Yes.

12 Q. And do, and do you recall serving as a juror back in 2005
13 on a case entitled "State vs. Damon Jones?"

14 A. Yes.

15 Q. Okay, uh, and do you recall what the outcome a that case
16 was?

17 A. Yes, he was found guilty.

18 Q. Okay. And, uh, do you -- were you in the -- you were on
19 the jury and you went back to the jury room and there was a
20 deliberation after the evidence was put in, is that correct?

21 A. Yeah, um-hum.

22 Q. Okay, and, uh, during that deliberation there there was
23 discussion amongst the jurors concerning the guilt or the the
24 evidence in the case, is that right?

25 A. Concernin' evidence?

SANDRA MCGRAW - DIRECT EXAMINATION BY MR. TEAGUE

1 Q. Yeah.

2 MS. WHITE: Your Honor, I just wanna make sure my ---

3 THE COURT: As a ---

4 MS. WHITE: --- I ---

5 THE COURT: --- generic sense, I'm not gonna let you get
6 into the jury discussions.

7 MR. TEAGUE: Oh, no, I'm just tryin' to ---

8 THE COURT: Okay.

9 MR. TEAGUE: It's ---

10 MS. WHITE: I was gonna say I just wanna place my ---

11 THE COURT: I sustain ---

12 MS. WHITE: --- objection ---

13 THE COURT: --- the objection ---

14 MS. WHITE: --- on the reco ---

15 THE COURT: --- on that basis.

16 MS. WHITE: Thank Your Honor.

17 THE WITNESS: Oh, of course we discussed everything.

18 BY MR. TEAGUE:

19 Q. Okay. Do you remember voir -- do you remember answering
20 questions before you were placed on the jury?

21 A. Answering questions?

22 Q. Did the judge ask you questions before you were picked to
23 be on the jury?

24 A. Uh, yes.

25 Q. Okay. And do you recall a question that said, Have ya

SANDRA MCGRAW - DIRECT EXAMINATION BY MR. TEAGUE

1 ever been a victim of a violent crime?

2 A. No, I don't recall that.

3 Q. You don't recall it, okay. Once you were in jury
4 deliberation, uh, did you ever indicate while when and I say
5 "deliberation" while everyone's kinda talkin' and tryin' to
6 decide what's goin' on, did you ever recall stating that your
7 ex-husband or your husband at one point placed a .357 Magnum
8 to your head?

9 A. No.

10 Q. Okay. Uh, did you ever mention in there any reference to
11 your ex-husband and a .357 Magnum or a gun?

12 A. Yes.

13 Q. Okay, and can you explain what was said in the jury room.

14 A. The, uh, the gun had been brought in and that was pu ---

15 THE COURT: Excuse me, do you mind me asking you repeat
16 that, I'm sorry, I just didn't hear what you said.

17 A. Okay. The, uh, gun was brought in to, uh, someone on the
18 jury requested for some reason to see that, when it was
19 brought in, it was passed from one to the other and I recall
20 saying that, uh, at one poi -- at one time I'd been afraid of
21 guns but I wasn't anymore and, uh, the -- there was several
22 men in the jury room that knew a lot about guns, a lot about
23 guns and were discussin' it and I had said at one time that I
24 ha -- had to take a gun away from my ex-husband, that he was
25 sayin' he was gonna kill himself and I talked him into handing

SANDRA MCGRAW - DIRECT EXAMINATION BY MR. TEAGUE

1 the gun to me.

2 Q. Okay. Anything else?

3 A. No, that's it.

4 Q. Okay. Did, uh, any of the other jurors appro ---

5 THE COURT: Let me stop you right there.

6 MR. TEAGUE: Okay.

7 THE COURT: If that's the basis for her testimony, we're
8 not gonna go any further than that, okay, sir.

9 MR. TEAGUE: Can can I ---

10 THE COURT: Yes. You can make a proffer. If she's --
11 she denied, uh, the allegations of any, you know, uh, domestic
12 abuse, she just said that she took the gun away from her
13 husband for a -- the suicide attempt which is clearly
14 contrary, that the things that you anticipated in our meeting
15 would come out, we're not goin' further beyond that. I'll let
16 you make a proffer, if I make a mistake then they'll correct
17 me down in Columbia but I'm not gonna have anymore question of
18 this witness, okay.

19 MR. TEAGUE: Okay. Your Honor, I'd like to make a
20 proffer at this point.

21 THE COURT: Okay, I'm gonna excuse this witness from
22 further testimony at this point. You can make your proffer,
23 you should make your proffer. I'm gonna ask that you stay
24 outside just for a minute and then we'll send word whether or
25 not you'll be excused, okay?

MOTIONS AND MATTERS

1 THE WITNESS: Okay, thank you.

2 THE COURT: Yes, ma'am.

3 THE BAILIFF: Come this way, please.

4 (Whereupon, the witness left the stand and exited the
5 courtroom.)

6 THE COURT: Go ahead make your proffer, yes.

7 MR. TEAGUE: Okay, I was and -- may we approach real
8 quick for one second?

9 THE COURT: Uh, oh, yes, ---

10 MR. TEAGUE: Okay.

11 THE COURT: --- c'mon.

12 (Whereupon, a bench conference was held off the record.)

13 MR. TEAGUE: Okay, Your Honor, we move at this moment to,
14 uh, have additional testimony from Ms. McGraw as to her
15 conversations with a private detective hired by appellant
16 counsel Mr. Skip Smith where Mr. Smith indicates that
17 Ms. McGraw stated to him that her husband did put a .357
18 Magnum to her head and that he had an affidavit prepared --
19 prepared, she never did sign it but he indicates that that was
20 said to her -- to him, he also indicates that Ms. McGraw
21 indicated that she was, uh, her husband was very abusive --
22 sive and there was strong domestic violence issues in that
23 relationship. Your Honor, there was additional, we would
24 offer additionally the testimony of Mr. Kershner which he
25 could provide testimony as to ---

MOTIONS AND MATTERS

1 THE COURT: Is he one of the jurors?

2 MR. TEAGUE: He was one of the jurors, yes, Your Honor.

3 THE COURT: Okay, sir.

4 MR. TEAGUE: Mr. Kershner who is under subpoena and here
5 today would provide testimony that, uh, Ms. McGraw did
6 indicate that her husband placed a .357 Magnum or a gun to her
7 head at that time. Your Honor, we also have an affidavit of
8 Mr. Kershner which, uh, which, Your Honor, we would offer on
9 proffer that indicates that that occurred, we also have
10 affidavits of Mr. Skip Smith he signed indicating that
11 Ms. McGraw did in fact tell him, uh, information in reference
12 to a gun and domestic violence.

13 THE COURT: Who was the last one, please?

14 MR. TEAGUE: Skip Smith is the investigator that I
15 referenced earlier.

16 THE COURT: Oh, earlier. Okay, so if I understand you on
17 the record you want to be allowed to recall, uh, this last
18 witness that I stopped you on and question her about giving
19 statements inconsistent with her in-court testimony to an
20 investigator, correct?

21 MR. TEAGUE: That's correct, Your Honor.

22 THE COURT: You also wanna call the testimony about the
23 substance of those outta court statements about what she said
24 in delib -- in the deliberations, correct?

25 MR. TEAGUE: That's correct, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: And also you wanna, uh, have aff -- you would
2 have testimony of another juror ---

3 MR. TEAGUE: Yes, Your Honor, Mr. ---

4 THE COURT: --- and she allegedly made the statements to?

5 MR. TEAGUE: That's correct, Your Honor.

6 THE COURT: Okay, and at this point are you movin' to
7 allow allow those, uh, that testimony to occur ---

8 MR. TEAGUE: Yes, Your Honor, I am.

9 THE COURT: --- or renewin' your motion? I will deny
10 that, uh, I I think you are properly protected on the record.

11 MR. TEAGUE: Okay.

12 THE COURT: I think just for purposes of protection of
13 the record, uh, make sure you mark the affidavit of the, uh,
14 uh, investigator or the juror or any other exhibits that
15 would, that would go along with your proffer, ---

16 MR. TEAGUE: Okay, Your Honor.

17 THE COURT: --- okay?

18 MR. TEAGUE: This time I -- of the -- I would mark, uh,
19 affidavit of Vaughn Kershner Exhibit 1.

20 (Affidavit of Vaughn Kershner marked Applicant's Exhibit
21 No. 1 for identification.)

22 MR. TEAGUE: Exhibit 2 is affidavit of Skip, Calvin
23 "Skip" Smith dated say July the 18th 2008.

24 (Affidavit of Calvin "Skip" Smith dated July 18, 2008
25 marked Applicant's Exhibit No. 2 for identification.)

MOTIONS AND MATTERS

1 MS. WHITE: And I missed -- Reed what's the second one?

2 MR. TEAGUE: Skip Smith July the 18th 2008. And 3 the
3 affidavit of Calvin "Skip" Smith dated July the 23rd 2008.

4 (Affidavit of Calvin "Skip" Smith dated July 23, 2008
5 marked Applicant's Exhibit No. 3 for identification.)

6 THE COURT: Any objections to those comin' in?

7 MS. WHITE: Your Honor, for the purposes of proffer no
8 but, you know, we would object ---

9 THE COURT: Otherwise.

10 MS. WHITE: --- pursuant to our earlier objections, sir.

11 THE COURT: I'll note I directed him to put -- admit 'em
12 anyway. Uh, so just so the record's clear the proffer made
13 there's, uh, Mr. Teague moved to have the witnesses testify
14 and I denied that and I assume that you're objecting to that
15 ruling.

16 (Applicant's Exhibit Nos. 1, 2 and 3, affidavits,
17 admitted into evidence.)

18 MR. TEAGUE: Yes, Your Honor, I object and also would
19 like to make one more issue on the proffer and that is, ---

20 THE COURT: Sure.

21 MR. TEAGUE: --- uh, we were gonna call Robert Dudek to
22 provide as appellant counsel to provide testimony, uh, just to
23 have him discuss the issues of, uh, why the case wasn't
24 brought -- sent back town to the circuit court, uh, we would
25 have entered that evidence as well.

MOTIONS AND MATTERS

1 THE COURT: Okay. And go ahead, you might wanna cover
2 that a little bit further so it's clear on the record, uh, ---

3 MR. TEAGUE: Yeah, we were gonna have, uh, Mr. Dudek
4 testify as to the -- the case was appealed before there was an
5 opportunity to make a a motion for a new trial for
6 after-discovered evidence and so after it was appealed this
7 new evidence came in in reference to the juror issue. Uh,
8 Mr. Dudek then did not make a motion with the appellate court
9 to have this case removed back down to circuit court so that
10 trial counsel could make a motion for new trial and motion on
11 after-discovered evidence, Your Honor.

12 THE COURT: And and if I understand from my prior
13 conversation with the attorneys that Mr. Dudek sent the
14 investigator out to this lady and she, uh, he prepared an
15 affidavit consistent with her statements but she refused to
16 sign, is that correct?

17 MR. TEAGUE: He did, Your Honor.

18 THE COURT: So otherwise he didn't have any evidence in
19 the appellate court other than a affidavit -- a letter from a
20 juror.

21 MR. TEAGUE: Nothin' further, Your Honor.

22 THE COURT: Okay, and that -- and you're moving, you're
23 moving to have that included too?

24 MR. TEAGUE: In the proffer, yes, Your Honor.

25 THE COURT: Okay, that that's included in the proffer,

MOTIONS AND MATTERS

1 excluded in, uh, testimony of this matter though.

2 MR. TEAGUE: Okay, Your Honor, I just note my objection
3 for the records.

4 THE COURT: Thank, you, sir. Okay, now would ya call
5 your next witness on the, uh, that's jury misconduct issue and
6 any other issues you wanna do now ---

7 MR. TEAGUE: Uh, ---

8 THE COURT: --- go ahead. Uh, any further testimony
9 'bout jury misconduct?

10 MR. TEAGUE: That's all, Your Honor.

11 THE COURT: Okay, uh, and that ci -- that's trial jury
12 and appellate counsel misconduct related to that, correct?

13 MR. TEAGUE: Yes, Your Honor.

14 THE COURT: Alright, for the record I'm gonna exclude,
15 I'm gonna go ahead and tell this, uh, juror that she can be
16 excused subject to your objection and then we'll move to next
17 issue.

18 MR. TEAGUE: And Mr. Kershner as well, the other juror?

19 THE COURT: Yes, ---

20 MR. TEAGUE: Okay.

21 THE COURT: --- Mr. Kershner as well.

22 MR. KERSHNER: Can be excused?

23 MR. TEAGUE: You can be excused.

24 MR. KERSHNER: Thank you.

25 THE COURT: Okay, you -- would you let her know she's

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 excused.

2 THE BAILIFF: Let her know she's excused.

3 THE COURT: Yes, sir, okay. Go ahead and call your next
4 witness.

5 MR. TEAGUE: Your Honor, I call Mr. Damon Jones to, Damon
6 Jones to the stand.

7 THE BAILIFF: Right this way, please.

8 (Whereupon, the applicant came forward.)

9 THE BAILIFF: Left hand on the Bible, raise your right
10 hand.

11 DAMON JONES, having been
12 first duly sworn, testified as follows:

13 THE BAILIFF: Okay, sir, have a seat, please.

14 (Whereupon, a discussion was held off the record.)

15 DIRECT EXAMINATION BY MR. TEAGUE:

16 Q. State your name for the record, please.

17 A. Damon Jones.

18 Q. Mr. Jones, uh, you're here today on, uh, on a PCR, is
19 that right, ---

20 A. ^ Correct.

21 Q. --- okay, in reference to, uh, trial, your trial
22 counsel's deficiencies at trial, is that correct, ---

23 A. Correct.

24 Q. --- uh, as to prosecutorial misconduct, is that
25 right, ---

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 A. Correct.

2 Q. --- okay, and as to the witness issue that's already been
3 addressed today, is that right?

4 A. That is right.

5 Q. Okay. Um, I'm gonna -- you filed a petition, um, is that
6 right, before I was involved in this case?

7 A. That is true.

8 Q. Okay, and I'm gonna go through the issues with ya here.
9 You okay up there?

10 A. I'm I'm strugglin' but I'm alright.

11 Q. Okay.

12 THE COURT: If you need help, Mr. Teague will come up
13 there and help you get it out or one of our officers ---

14 MR. TEAGUE: Yeah, if you just -- may I approach, Your
15 Honor?

16 THE COURT: (No audible response.)

17 MR. TEAGUE: Just sit these up here (indicating).

18 (Whereupon, a discussion was held off the record.)

19 BY MR. TEAGUE:

20 Q. Okay, before we get started on those there's you had in
21 your amended application nearly, let's see, thirteen I believe
22 issues, is that right?

23 A. Correct.

24 Q. And at this time you're gonna withdraw several of those
25 issues, is that right?

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 A. Correct.

2 Q. Okay. Uh, do you know what what issues you would like to
3 withdraw today or do you want me to go through 'em with you?

4 A. Uh, one about the, uh, court reporter, I'm withdrawing
5 that.

6 Q. And is that number 12, issue number 12?

7 A. I don't have it on this one but ---

8 Q. Okay. Your Honor, issue number 12 is in reference to an
9 inaccuracy conspiracy as to the court reporter. Mr. Jones,
10 you're wantin' to withdraw that here today?

11 A. That is correct.

12 Q. Okay, and issue number 11 which is kind of a general and
13 broad issue regarding conspiracy, is that -- your wishin' to
14 withdraw that here today, just issue number 11, not all of the
15 conspiracy?

16 A. I I would have to s -- I would have to actually see the
17 original ---

18 MR. TEAGUE: Okay, may ---

19 A. (Indiscernible cross-talk.)

20 MR. TEAGUE: --- I approach, Your Honor?

21 THE COURT: Yes.

22 BY MR. TEAGUE:

23 Q. Okay. I'm I'm handing you your amended petition, that's
24 issue number 11, are you ---

25 A. That is correct, I would like to withdraw.

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 Q. Okay.

2 THE COURT: So issue number 11 is withdrawn in its ---

3 MR. TEAGUE: It's ---

4 THE COURT: --- entirety?

5 MR. TEAGUE: Yes, Your Honor.

6 BY MR. TEAGUE:

7 Q. Issue number 9 within your petition, your amended
8 petition, uh, indicates the length of time the jury was out,
9 uh, are you wishin' to withdraw that here today?

10 A. Uh, yes, I do, I'd like to, I'll withdraw that line.

11 Q. Okay. And issue number 8 in reference to an Allen
12 charge, are you wishing to withdraw that here today?

13 A. Yes, I do, I withdraw number 8 as well.

14 Q. Okay. What about issue number 7 in reference to the jury
15 notes, are you wishin' to withdraw that here today?

16 A. Yes, I do, I withdraw it.

17 Q. Okay. Do -- are there any other issues that you believe
18 you'd like to withdraw here today or you goin' forward on the
19 others?

20 A. I'm goin' forward with, uh, ---

21 Q. Okay.

22 A. --- issues.

23 Q. Alright. As to issue number 1 within your, uh,
24 complaint, you indicate that the trial counsel and solicitor,
25 uh, withheld information from you, can you explain what kind

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 of information was withheld from you.

2 A. Uh, the DNA analysis reports, the fingerprint analysis
3 reports.

4 THE COURT: Don't -- just, yeah, just lean back a little
5 bit, I think you're rubbin' on it.

6 A. The fing, the fing -- can you hear me?

7 Q. Yeah, I can hear you.

8 A. Fingerprint analysis reports, the DNA analis reports, the
9 signed coroner's report and Atiba Long's first written
10 statement and supplemental, a couple supplemental
11 investigative reports.

12 Q. From who? Investigative reports from who?

13 A. Uh, I I've just, I received, uh, Talanges' supplemental
14 investigative report 2006, it was mailed to me by, uh, counsel
15 Chris Brough.

16 Q. Okay.

17 A. Uh, ---

18 Q. And so it's your testimony that you before the trial you
19 didn't receive the DNA analysis report?

20 A. Or the fingerprint ---

21 Q. And, ---

22 A. --- analysis report.

23 Q. --- uh, since that time have I provided that to you?

24 A. Yes, you did, I I received the, uh, fingerprint ---

25 Q. Okay.

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 A. --- analis [sic] reports.

2 THE COURT: Hang on for a second, let me make sure I
3 understand. DNA, criminal -- criminologist report, coroner's
4 report and two supplemental investigative reports, ---

5 THE APPLICANT: And ---

6 THE COURT: --- that correct?

7 THE APPLICANT: --- and Atiba Long's first written
8 statement.

9 THE COURT: And two what?

10 THE APPLICANT: And Atiba Long's first written statement.

11 MR. TEAGUE: One of the ---

12 THE COURT: Look at me and tell me.

13 THE APPLICANT: Atiba Long's first written statement,
14 sir.

15 THE COURT: Oh, somebody -- Atiba Long?

16 THE APPLICANT: Atiba Long ---

17 THE COURT: Atiba Long.

18 THE APPLICANT: --- his first written state [sic], yes,
19 sir.

20 THE COURT: Okay.

21 BY MR. TEAGUE:

22 Q. Okay, and and you indicated, one of the things that you
23 indicated was a report from Officer Talanges, is that correct?

24 A. That is correct.

25 Q. Okay. And I'm handing you, uh, Officer Talanges' report

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 and tell me what was in that report that could have assisted
2 you at trial.

3 A. It was a a a drop, a large drop a blood that was on the
4 driver's side roof of the car which, uh, solicitor Barnette
5 got up, he had argued that it happened at the back of the car
6 and I shot him at a 45 degree angle so that that that
7 contradicts this actual report, uh, along with the, uh, the
8 digital photography and that I di -- I I knew, I knew then I
9 knew nothing about digital photography and that, uh, and that
10 goes into the other, the my fourth issue but, uh, pretty much
11 the blood at this point with that question bein' asked about,
12 uh, blood on the drive, uh, driver's side roof a my car.

13 Q. Okay, so it's your testimony that that you did not
14 receive the Officer Talanges' report prior to, uh, the trial
15 on this case.

16 A. That is correct.

17 Q. Okay, and within that report was an indication of blood
18 on the driver's side roof a the car.

19 A. That is correct, yes.

20 Q. And at trial you didn't know that that blood existed.

21 A. No, I did not.

22 Q. Okay. And did Mr. Brough indicate that that blood, uh,
23 was on the car and exist?

24 A. No, he did not.

25 Q. Okay. This time we would enter this into as Exhibit,

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 uh, ---

2 COURT REPORTER: Four.

3 Q. --- Exhibit 4 to Mr. Jones's case.

4 THE COURT: Any objection, Ms. White?

5 MS. WHITE: No, Your Honor.

6 THE COURT: Alright, it'll be admitted without objection.

7 Identify that document for me.

8 MR. TEAGUE: Yeah, it's, uh, Officer Talanges'
9 supplemental report, it's a 3-page report, Your Honor.

10 THE COURT: Okay, thank you.

11 (Officer Talanges' supplemental report marked Applicant's
12 Exhibit No. 4 for identification and admitted into evidence.)

13 (Whereupon, a discussion was held off the record.)

14 BY MR. TEAGUE:

15 Q. And, Mr. Jones, in reference to not receiving certain
16 evidence before trial, you would like to offer into evidence
17 letters that you wrote to Mr. Brough and to the solicitor's
18 office asking for full Rule 5 disclosure, is that correct?

19 A. That's correct, SLED and other agencies as well, ---

20 Q. Okay.

21 A. --- yes, sir.

22 MR. TEAGUE: Uh, at this point in time, Your Honor, I
23 would offer into evidence, uh, numerous letters that Mr. Jones
24 wrote to Mr. Brough.

25 THE COURT: These as a result of this PCR or ---

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 MR. TEAGUE: These are, ---

2 THE COURT: --- prior to trial?

3 MR. TEAGUE: --- these are in the original trial.

4 THE COURT: Okay. It -- are are you -- is it your, uh,
5 contention or is it your applicant's contention that trial
6 counsel didn't file Rule 5?

7 MR. TEAGUE: No, it's that it was vi -- that Rule 5 was
8 violated and that they didn't respond to his Rule 5, Your
9 Honor.

10 THE COURT: Okay. Does the State stipulate that there
11 was proper Rule 5 and and Brady material request in this
12 matter?

13 MS. WHITE: Your Honor, to our knowledge there was a
14 proper Rule 5, uh, Brady motion filed and the documents were
15 received by trial counsel prior to trial.

16 THE COURT: Let's just make those a court exhibit for the
17 record, I think it's unnecessary but let's go ahead and do
18 that.

19 MR. TEAGUE: Okay.

20 THE COURT: I'll make that a court exhibit as a
21 group, ---

22 MR. TEAGUE: Okay.

23 THE COURT: --- okay.

24 (Letters to Mr. Brough marked Court's Exhibit No. 1 for
25 identification.)

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 BY MR. TEAGUE:

2 Q. Okay, and in addition to number, uh, to issue or now to
3 issue 2, you, uh, indicated that, just answer my questions
4 will ya, okay, ---

5 A. Right.

6 Q. --- we're just gonna go, we're gonna go through this,
7 alright. And to issue 2 you're indicating that Atiba Long's
8 had a first written statement that you weren't provided, is
9 that correct?

10 A. Yes, sir.

11 Q. Okay, and tell me why you believe that.

12 A. Because this this document that I have right here that
13 is, uh, on the third page, it's it's Atiba Long's statement
14 that state on the third page I was allowed to make the needed
15 changes.

16 Q. Okay, and this is the voluntary statement I'm handing to
17 ya right now?

18 A. That is correct.

19 Q. Okay. And from that indication on the bottom that says,
20 "Mr. Long indicated I have read the statement which consists
21 of three pages and I was allowed to make the needed changes,"
22 from that statement you believe that there was a first a a an
23 additional written statement that you weren't provided, is
24 that right?

25 A. That is correct ---

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 Q. Okay.

2 A. --- a along with my, uh, the preliminary hearing that I
3 had that Alexandra Wolf, uh, was at attendance of, she read me
4 a totally different statement and also his personal notes that
5 you provided me with it, states on here the second statement
6 that second attorney, totally different changes.

7 Q. Okay, and tell me about that preliminary hearing.

8 A. Well that what I remember about Ms. Alexandra Wolf
9 reading me about that statement was that it -- she s -- it it
10 stated Atiba Long stated that I came, I was around other side
11 of the car on, uh, passenger side of the car that and and and
12 I came out from around the back a the car, I heard the shot,
13 that's it, but this person who wrote that sta -- second
14 statement that second attorney totally different changes, I'd
15 like to enter that into evidence as well.

16 Q. And so you're indicating as to a, this is a written note
17 of Mr. Brough that indicates at the bottom a second
18 statement ---

19 (Whereupon, a discussion was held off the record.)

20 MR. TEAGUE: As a basis that there was a second
21 statement, uh, we're offering a note of trial counsel that
22 states "second statement", uh, however it doesn't indicate who
23 the second, uh, second statement is in reference to, I don't
24 know that it's admissible but I -- we would offer this time, I
25 believe it's State ---

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 MS. WHITE: Your Honor, the State objects, uh, for the
2 purposes of as it relates specifically to Atiba Long's
3 statement and this allegation, there's no indication that it
4 was a second statement of Atiba Long. I believe those are
5 Mr. Brough's notes during the trial so I don't think we can
6 identify what what right now he was writing and maybe
7 Mr. Brough can explain but I don't think this is the proper
8 witness for it to come in anyway.

9 MR. TEAGUE: I ---

10 THE COURT: So they're trial counsel's trial notes sayin'
11 second statement, that's it?

12 MR. TEAGUE: Yes, Your Honor, there's no indication as to
13 who it's in reference to.

14 THE COURT: I sustain the objection and this goes without
15 prejudice to you to subsequently try.

16 MS. WHITE: Thank Your Honor.

17 BY MR. TEAGUE:

18 Q. Now there are a couple things in the first issue that I
19 forgot to touch with ya, specifically there was -- was it --
20 do you recall trial testimony in reference to blood on your
21 sneaker ---

22 A. Uh, ---

23 Q. --- by Officer Talanges or T ---

24 A. Yes.

25 Q. Okay. And did -- and are you alleging that Mr. Brough

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 was, uh, deficient by not going into the blood on your
2 sneaker, uh, at at trial?

3 A. Yes, along with the, uh, ---

4 Q. Well just as to the blood on ---

5 A. Yeah.

6 Q. --- the sneaker.

7 A. Yes.

8 Q. Okay, and, uh, and why is that?

9 A. 'Cause it it it it lends to distance determination, you
10 know, uh, and bein' that that was not brought to the Cour --
11 attention of the courts or to the jurors, you know, that that
12 that that proves a close proximity.

13 Q. Okay. Alright, I'm gonna move on to issue 3 in your
14 application. Now in issue 3, uh, at the, at the trial there
15 was reference to a 45 degree angle of the shot, is that
16 correct?

17 A. Yes, that is, that is correct.

18 Q. And it's your alleg -- and and you're alleging that, uh,
19 that there wa -- that the evidence presented did not, had it
20 been presented properly by your attorney that that wouldn't
21 have shown a 45 degree angle and that the blood on the car was
22 not submitted by the State or by, uh, your own trial counsel,
23 is that right?

24 A. That is correct.

25 Q. Okay. And, Mr. Jones, uh -- I can, Your Honor, I can

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 pull out Exhibit 13 and show you that this is the photograph
2 that was marked, the one that I went to the, to the clerk's
3 office and pulled was in black and white. I went to the
4 solicitor's office and got pictures and ---

5 THE COURT: Just try to get it in ---

6 MR. TEAGUE: Okay.

7 THE COURT: --- and we'll we'll go through ---

8 BY MR. TEAGUE:

9 Q. Uh, ---

10 THE COURT: --- that.

11 Q. --- is that the exhibit you believe was Exhibit 13 in the
12 trial?

13 A. Yes, it is.

14 Q. Okay. And tell me on the top of the roof a that car do
15 you see any blood on that photograph?

16 A. Which was pointed out yes to me, yeah.

17 Q. Do you see blood on the top a the, top a the car?

18 A. Yeah.

19 Q. Okay, is that a yes?

20 A. Yes.

21 Q. Okay. And, uh, at the trial did -- is it your
22 recollection and within the, uh, transcript that Mr. Barnette
23 indicated that there was no blood around the driver's side
24 door?

25 A. Correct.

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 Q. And it's your contention that Exhibit 13 sets forth that
2 there was blood around the driver's side door.

3 A. Correct.

4 Q. Okay. And did Mr. Brough, uh, indicate or put into
5 evidence that there was blood around the driver's side door on
6 Exhibit 13?

7 A. No, he did not.

8 Q. Okay.

9 THE COURT: Was Exhibit 13 admitted into evidence?

10 MR. TEAGUE: Yes, Your Honor.

11 MS. WHITE: At trial.

12 MR. TEAGUE: I assume it was in color but I, when I went
13 to -- I don't know if it was or not.

14 THE COURT: That's fine.

15 MR. TEAGUE: And at this point I would mark this as
16 Exhibit, uh, 5 to Mr. Jones' case.

17 THE COURT: Any objections to that exhibit?

18 MS. WHITE: No, Your Honor, other than his testimony as
19 to whether or not that is blood I don't think he can testify
20 exactly without being an expert but ---

21 THE COURT: I agree.

22 MS. WHITE: --- it was entered into evidence at trial.

23 THE COURT: Exhibit 5 which is Exhibit, trial Exhibit 13
24 will be admitted without objection.

25 (Trial Exhibit No. 13 (photograph), marked Applicant's

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 Exhibit No. 5 for identification and admitted into evidence.)

2 BY MR. TEAGUE:

3 Q. Okay, in addition to the photograph that indicated blood
4 on the car, was there an r -- a report by Officer Talanges
5 that indicates there was blood on the windshield and on the
6 top a the car?

7 A. That is correct.

8 Q. Okay. And did, uh, did Mr. Brough call Mr. Talanges to
9 elicit that testimony at trial or did he, Ms. -- did
10 Mr. Talanges elicit that testimony based on a question
11 provided by Mr. Brough at trial

12 A. No, he did not.

13 Q. No, he didn't? And did Mr. Barnette ask that question at
14 trial?

15 A. No, he did not.

16 Q. Okay. Uh, how 'bout was there also an additional report
17 by a Lieutenant Lamb and I'm gonna hand you a report that was
18 in in this case in reference to Lieutenant Lamb and I'd ask
19 you just to read in that portion of the report.

20 A. "I observed droplets of what appeared to be blood on the
21 left side of the vehicle's windshield, there were also several
22 smear marks on the windshield and driver's door, it appeared
23 these marks could have come from someone's hand."

24 Q. Okay. And did Mr. Brough call Mr. Lamb at trial to ask
25 him about these blood smears on the windshield and on the

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 driver's side door?

2 A. No, he did not.

3 MR. TEAGUE: Okay, this time we'd admit this as Exhibit 6
4 to Mr. Jones' case.

5 MS. WHITE: Your Honor, I just ask that the, uh, if we
6 can, I know it's bein' admitted into evidence, the full
7 paragraph being read, I think the applicant ---

8 MR. TEAGUE: Oh yeah, if you'd like to do that, that's
9 fine.

10 MS. WHITE: --- ended with "it looks like it can be from
11 someone's hand," and then the officer said, "Next I noticed
12 the victim had abrasions to his face and on the back of his
13 hand, it appeared these injuries could have occurred from when
14 he fell to the ground after he was shot," so and that those
15 were pointed out to Talanges and Saar ---

16 THE COURT: Okay, ---

17 MS. WHITE: --- and ---

18 (Indiscernible cross-talk.)

19 THE COURT: --- obviously the documents will speak for
20 themselves but ---

21 MS. WHITE: No objection to the document bein' ---

22 (Indiscernible cross-talk.)

23 MS. WHITE: Yeah, that's fine.

24 MR. TEAGUE: Okay.

25 (Whereupon, a discussion was held off the record.)

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 (Lieutenant Lamb's supplemental report marked Applicant's
2 Exhibit No. 6 for identification and admitted into evidence.)

3 BY MR. TEAGUE:

4 Q. Okay. Alright, Mr. Jones, and it's your contention that
5 had that information been provided to the jury by your
6 attorney and by the State that you would have had received a
7 different outcome in this case, is that correct?

8 A. I'm certain yes, sir.

9 Q. Okay. And that's that ha -- and those -- and what we
10 just discussed was as to issue 3 and issue 4 of your, uh, post
11 of your application, is that right?

12 A. That is correct.

13 Q. Okay, now I'm gonna go over to issue 5 your application
14 and it's in reference to Sigida Long's criminal record, okay,
15 uh, and you indicate that your counsel was deficient by
16 failing to enter, uh, Sigida Long's lengthy criminal record,
17 uh, in this case, is that right?

18 A. That is correct.

19 Q. And you believe that had that information been entered
20 into the record that that the outcome a this trial woulda been
21 different.

22 A. Correct.

23 Q. Okay. Do you have that criminal record with ya here
24 today?

25 A. I do, I'm tryin' to get to it.

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 Q. This (indicating) ---

2 A. It's ---

3 Q. --- it?

4 A. --- that's not all of it. I mean, that's that's other
5 other documents in there.

6 (Whereupon, a discussion was held off the record.)

7 MR. TEAGUE: Okay, and y -- and, uh, at this point we
8 would enter into the record Sigida Long's criminal record that
9 we've been provided in discovery here.

10 MS. WHITE: And, Your Honor, uh, the State would object
11 because this was not admissible pursuant to Rule 404 of
12 character evidence, this was the victim in the case, uh, and I
13 think that there were prior incidences that they were able to
14 get in, counsel was, but based on the rules that this would
15 not have been allowed in and therefore it's irrelevant to the
16 proceedings today.

17 THE COURT: Under what rule would it come in under?

18 MR. TEAGUE: Your Honor, I'd argue that under 404(a)(2)
19 character of a victim. Now this case was all about
20 self-defense, um, it says 404(a)(2) indicates, Evidence of a
21 pertinent trait of character of the victim of the crime
22 offered by an accused, or by prosecution to rebut the same or
23 evidence of a character trait or peacefulness of the victim
24 offered by the prosecution in a homicide case to rebut
25 evidence that the victim was the first aggressor, and we would

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 indicate that based on 404(a)(2) that this woulda been
2 admissible at trial.

3 MS. WHITE: Your Honor, the State would just say that
4 there was no indication, uh, there was no argument about the
5 character trait of the victim prior to by the State and ---

6 THE COURT: Can you ---

7 MS. WHITE: --- cer ---

8 THE COURT: --- establish character trait from
9 peacefulness or violence by extrinsic evidence such as a a
10 criminal record?

11 MS. WHITE: I think i ---

12 THE COURT: Does it have to be by, uh, reputation
13 evidence?

14 MS. WHITE: I think it has to be reputation evidence,
15 Your Honor, testimony by witnesses.

16 THE COURT: Okay, I'll take that under advisement.

17 MR. TEAGUE: Okay, thank Your Honor.

18 MS. WHITE: And, Your Honor, I would just note too that
19 based on 404(b) with the prior acts, prior bad acts that that
20 would fall under that exception as well of not being able to
21 come in.

22 THE COURT: There any evidence, any charges on that
23 record that has to go to truthfulness or lack of truthfulness?
24 If you had to look at it from that regard, that's okay.

25 MR. TEAGUE: I could, I could look that up and try to

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 provide that to ya after the hearing but I don't know at this
2 time.

3 THE COURT: Okay.

4 BY MR. TEAGUE:

5 Q. Uh, Mr. Jones, your sixth issue indicates that your
6 counsel was ineffective for failing to enter, uh, a witness at
7 the trial, Mignon, I hope I'm pronouncin' that properly,
8 Williams', uh, written statement to impeach her trial
9 testimony, is that correct?

10 A. Yes, that is true.

11 Q. Okay, and, uh, you believe that the -- is it your belief
12 that had that, uh, that that written statement contradicted
13 her trial testimony?

14 A. That is correct.

15 Q. Okay, and you believe that if that witness is, that that
16 witness was a pretty powerful witness at trial, is that
17 right?

18 A. I think the jury, the the believability for the jury that
19 it was pretty, she pretty credible.

20 Q. Okay, and if Mr. Brough had had entered in her, had
21 impeached her with that written statement, you believe you
22 mighta had a a different outcome in this case, is that
23 correct?

24 A. Absolutely.

25 Q. Okay.

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 THE COURT: Which witness is this?

2 MR. TEAGUE: Uh, Ms. Williams. At this time we would
3 offer into evidence her written, Ms. Williams' written
4 statement.

5 MS. WHITE: No objection.

6 THE COURT: Okay. Admitted without objection. That
7 issue 6?

8 MR. TEAGUE: I think that's Exhibit' 7.

9 MS. WHITE: Seven.

10 MR. TEAGUE: Oh, issue, I think you're right, ---

11 MS. WHITE: Yes.

12 MR. TEAGUE: --- issue si -- I'm gettin' 'em ---

13 THE COURT: That's alright.

14 (Mignon Williams' written statement marked Applicant's
15 Exhibit No. 7 for identification and admitted into evidence.)

16 BY MR. TEAGUE:

17 Q. And, Mr. Jones, there's one issues 13 to your application
18 you indicate that, uh, there was a conflict of interest
19 between yourself and Mr. Brough and that as a result a that
20 conflict of interest you believe that there was
21 insufficient -- ineffective assistance of counsel, is that
22 right?

23 A. That is correct.

24 Q. And can ya explain that to, pl -- explain that to the
25 Court.

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 A. Well, uh, since the outset of this charge when the charge
2 occurred, uh, counsel Chris Brough, counsel Christopher Brough
3 had always set atmospheres of confusion meaning that when I
4 ask him about all the my discovery material, he would tell me
5 that I had everything when in fact I did not. Uh, there were
6 several documents that we had already previously mentioned
7 that that I have obtained through you and I am thankful for
8 that that I did not have, uh, there was, uh, this, that there
9 was a issue about right before my trial he stated to me and I
10 quote that, You need to plead guilty because now the
11 prosecution is gonna say that Sigida was shot at a 45 degree
12 angle point blank range, that's why you need to plead,
13 unquote, this is exactly what he told me. Uh, see all these
14 things led me to write to the South Carolina Supreme Court
15 Disciplinary Counsel along with the administrative law judge
16 at that time to try to get counsel to withdraw from my case
17 because I knew that he was tryin' to railroad me, you know,
18 uh, and I have these exhibits right here (indicating) to prove
19 it.

20 Q. Anything else?

21 A. Uh, that's that's, I I I think these exhibits will speak
22 for themselves.

23 Q. Now, Mr. Jones, in your trial your main defense was
24 self-defense, is that right?

25 A. Correct.

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 Q. Okay. . And you believe that, uh, the State's failure to
2 identify certain evidence and your counsel's failure to
3 identify certain evidence to trial counsel and your, uh,
4 re -- resulted in a a different result than what would have
5 happened had the evidence been presented at trial, is that
6 right?

7 A. That's correct.

8 Q. Alright, and you also indicate that the s -- that the
9 testimony provided by Mignon Williams and Mr. Long, 'Atiba
10 Long, uh, that your counsel was deficient in cross-examining
11 and providin' information to the jury in reference to those
12 two two witnesses.

13 A. Absolutely.

14 Q. Okay. And is there anything else, uh, that you would
15 like to tell this court in reference to, uh, your piece --
16 post-conviction relief action? Go ahead, go ahead and talk.

17 A. I would like to put these, uh, ---

18 Q. Well, what you got there?

19 (Attorney/client discussion held off the record.)

20 Q. Alright, in reference ---

21 THE COURT: Do those, do those attempt to raise new
22 issues not pri -- previously raised?

23 MR. TEAGUE: What's that?

24 THE COURT: Whatever they are.

25 MR. TEAGUE: This (indicating)? This is in reference to

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 the conflict of interest. He's wantin', to enter 'em in as
2 letters to disciplinary ---

3 THE COURT: Any objection?

4 MR. TEAGUE: --- counsel.

5 MS. WHITE: I ---

6 MR. TEAGUE: You can look at 'em.

7 MS. WHITE: I'm -- okay, I couldn't exactly hear what
8 these are.

9 MR. TEAGUE: They're letters to disciplinary counsel.

10 MS. WHITE: Oh, about ---

11 (Whereupon, counsel for the respondent examined the
12 documents.)

13 MS. WHITE: No objection, Your Honor.

14 THE COURT: Admitted without objection.

15 MR. TEAGUE: I got Exhibit 8.

16 (Letters to disciplinary counsel marked Applicant's
17 Exhibit No. 8 for identification and admitted into evidence.)

18 BY MR. TEAGUE:

19 Q. Okay. Now, Mr. Jones, uh, is there anything else you'd
20 like to tell the Court today in reference to your application
21 for post-conviction relief?

22 A. Uh, other than ---

23 Q. Is there anything we've left out?

24 A. Yes, I would like to ---

25 Q. No, tell tell me what issue it's on.

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 A. Issue number 1 about the evidence, ---

2 Q. Okay, ---

3 A. --- stickin' with the evidence.

4 Q. --- and what does, what does ---

5 A. The latent ---

6 Q. --- that re ---

7 A. --- these are the latent prints that I received from you.
8 I would like to put those into evidence.

9 Q. What is it now?

10 A. The latent prints that I received from you.

11 Q. Oh, the fingerprint analysis you'd like to place that
12 into evidence as to issue 1?

13 A. I want what the coroner's report that I received from
14 you ---

15 Q. Okay, and I di ---

16 A. --- that I did not have original.

17 Q. And it's a coroner's report that you indicate ---

18 A. I want what but ---

19 Q. Go ahead.

20 A. I want what counsel Chris Brough personal notes he did
21 that states when he rec -- when he had received the coroner's
22 report and and reviewed the coroner's report which was on
23 November 18th 2005 when he received a coroner's report, this
24 is on his personal notes.

25 MR. TEAGUE: Okay. Okay, Your Honor, as to issue 1, we'd

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 also like to enter into evidence, uh, number 1 the finger, the
2 latent prints report that Mr. Jones pr -- indicates that he
3 did not receive prior to trial, we would mark that as Exhibit
4 No. 9.

5 MS. WHITE: The State has no objection to that, Your
6 Honor.

7 THE COURT: Okay, admitted without objection.

8 (Latent prints report marked Applicant's Exhibit No. 9
9 for identification and admitted into evidence.)

10 THE COURT: Go over all those with Ms., uh, White, see if
11 she can agree to ---

12 MR. TEAGUE: Oh, okay.

13 THE COURT: --- just move it in.

14 (Whereupon, a discussion was held off the record.)

15 MS. WHITE: Your Honor, the State does object to the two
16 other documents, uh, one is a copy of a document when when
17 Mr. Teague I believe subpoenaed for the their own copy of the
18 coroner's report, that is not the actual coroner's report that
19 counsel received or reviewed prior to the trial and I think
20 the other document are his personal notes that would not be,
21 uh, admissible ---

22 THE COURT: The applicant's ---

23 MS. WHITE: --- through this ---

24 THE COURT: --- personal notes?

25 MS. WHITE: I'm sorry?

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 THE COURT: The applicant's personal notes?

2 MS. WHITE: No, that the attorney Chris Brough's personal
3 notes during trial and so we would argue that they're not
4 admissible through this, uh, witness.

5 THE COURT: As to the notes I sustain the objection
6 without prejudice, uh, is it, is it a replica copy of the
7 other coroner's report?

8 MR. TEAGUE: The issue that Mr. Jones brings up ---

9 THE COURT: Uh-uh-uh-uh.

10 MR. TEAGUE: Okay, sorry.

11 THE COURT: Ms. White, is it, is it a duplicate copy of
12 the coroner's report?

13 MS. WHITE: It, to be honest, Your Honor, it's got some
14 written notes and everything on it so I think it's ---

15 THE COURT: I got ya, ---

16 MS. WHITE: --- it's ---

17 THE COURT: Alright.

18 MS. WHITE: --- it's a personal copy that he had that
19 that has made some notes on, ---

20 THE COURT: Well if it's a ---

21 MS. WHITE: --- it's ---

22 THE COURT: --- duplicate copy without the notes, I I
23 would ---

24 MS. WHITE: Right.

25 THE COURT: --- overrule your objection, ---

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 MS. WHITE: Okay.

2 THE COURT: --- it's got notes on it, uh, from the
3 applicant I sustain the objection but I'll find that a
4 duplicate copy can be placed into evidence, ---

5 MS. WHITE: Okay, thank ---

6 THE COURT: --- okay.

7 MS. WHITE: --- Your Honor.

8 MR. TEAGUE: Well it's actually not a duplicate copy,
9 it's one that I, the one that we received and Mr. Jone was
10 wantin' to find was a signed copy of the coroner's report,
11 that was never provided. I r -- I received this, I sent a
12 subpoena to the, uh, ---

13 THE COURT: What is the difference between the reports?

14 MR. TEAGUE: I don't think there's any report, one's just
15 signed and one's unsigned so Mr. Jones was indicating, uh,
16 Mr. Jones, what was your problem with with ---

17 THE COURT: Uh-uh, talk to me.

18 MR. TEAGUE: Okay, uh, ---

19 THE COURT: So ---

20 MR. TEAGUE: --- it was unsigned ---

21 THE COURT: --- what's the significance of havin' it
22 signed versus unsigned?

23 MR. TEAGUE: Well an unsigned document at -- to me if it
24 doesn't have any bearing if it's not signed and ---

25 THE COURT: Okay. If you'll give me a clean copy without

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 his notes of the signed ---

2 MR. TEAGUE: Okay.

3 THE COURT: --- then I'll find it's admissible.

4 MR. TEAGUE: Okay, Your Honor.

5 THE COURT: Alright, thank you.

6 MR. TEAGUE: I'm gonna go ahead and en -- enter that as
7 exhibit 9 and I will, uh, pull it out and I'll get a clean
8 copy.

9 (Whereupon, a discussion was held off the record.)

10 MR. TEAGUE: It needs to be Exhibit 10. I'll mark it as
11 Exhibit 10.

12 (Coroner's report marked Applicant's Exhibit No. 10 for
13 identification and admitted into evidence.)

14 BY MR. TEAGUE:

15 Q. Okay, Mr. Jones, uh, we were discussing any other issue
16 that you wanna present to the Court reference to your
17 post-conviction relief application is there anything, this
18 your chance to tell the Court is there anything else you'd
19 like to tell it?

20 A. Um, ---

21 (Whereupon, a discussion was held off the record.)

22 A. Well I have to say at this point that, uh, I would hope
23 that bein' that we're at tw -- at the year 2013 that the type
24 of conduct that had taken place in my case I would hope that
25 this'll never happen to another defendant or applicant again

DAMON JONES- DIRECT EXAMINATION BY MR. TEAGUE

1 because even though I have my ideology 'bout a lotta different
2 things, I don't, I woulda never thought that they would've
3 went to these extremes to convict someone, I I I mean, other
4 than experiencing myself personally, yeah, but goin' to such
5 extremes it's shockin' to the universal system justice, I
6 mean, it shouldn't happen, I mean, talkin' about fundamentally
7 unfair, I mean, ooh.

8 Q. Okay. And, Mr. Jones, and, uh, I was appointed to
9 represent you after a different attorney, is that right, on
10 the PCR?

11 A. Correct.

12 Q. Okay, and since that time had you -- have I done
13 everything that you've asked me to do?

14 A. Yes, you have.

15 Q. Okay, did I travel to McCormick to meet with you?

16 A. Correct.

17 Q. Okay, and have I responded to your mail and answered your
18 mail?

19 A. All the time.

20 Q. Okay, do you have any complaints about my service?

21 A. No, I do not.

22 Q. Okay, that's all I have for ya.

23 THE COURT: Cross-examination.

24 MS. WHITE: Thank Your Honor.

25 CROSS-EXAMINATION BY MS. WHITE:

DAMON JONES - CROSS-EXAMINATION BY MS. WHITE

1 Q. Mr. Jones, uh, do you recall how long you were
2 represented by Mr. Brough prior to the trial November 29th
3 2005?

4 A. Think he was appointed probly 'bout eight months I
5 believe.

6 Q. So eight months prior to that. And did you have a chance
7 to talk with him about your version of the facts of the
8 case?

9 A. Yeah.

10 Q. And did you have a chance to talk with him about what the
11 strategy was gonna be for your defense at trial?

12 A. I mean, we we talked about certain things, yeah.

13 Q. And in fact you presented predominantly a self-defense
14 charge, is that right, or self-defense defense?

15 A. It was, it was a actual struggle over the gun so, I mean,
16 I was attacked in my car and me and him we struggled over the
17 gun.

18 Q. And after trial that was the strategy that you have was
19 to convince the jury that this was self-defense, is that
20 right?

21 A. Correct.

22 Q. Okay. And in regards to the discovery items you
23 indicated, you said that the prosecution withheld that
24 information but you're saying you didn't receive it, do
25 you -- are you aware if your attorney had these documents?

DAMON JONES - CROSS-EXAMINATION BY MS. WHITE

1 A. Am I aware if he had those document?

2 Q. Yes.

3 A. He stated that he did not.

4 Q. Okay, so your belief is that your attorney did not have
5 the DNA analysis report, the la -- the fingerprint, the
6 supplemental investigation report, you allege a ---

7 A. The cor ---

8 Q. --- second, uh, first statement of Atiba Long and a
9 signed coroner's report, is that correct?

10 A. Could you repeat that again.

11 Q. Okay, you said earlier that the prosecution withheld the
12 DNA analysis report, the fingerprint report, the signed
13 coroner's report, the first statement you allege Mr. Long
14 made, Atiba Long, and the supplemental investigation report of
15 Mr. Talange, is that correct?

16 A. It was -- I -- it was considered af ---

17 Q. Okay, so I need you to answer my question though you,
18 you're saying that you didn't ---

19 A. I'm answerin' ---

20 Q. --- receive ---

21 A. --- the question.

22 Q. --- those documents but you're -- you do not know if your
23 attorney had those.

24 A. Obviously he had the coroner's report, it's it's in the
25 notes.

DAMON JONES - CROSS-EXAMINATION BY MS. WHITE

1 Q. Okay, so again your answer is you don't know if your
2 attorney had ---

3 A. No, ---

4 Q. --- those documents ---

5 A. --- I'm telling you ---

6 THE COURT: Hold on for one second. Do not interrupt her
7 again. Let her ---

8 THE APPLICANT: Yes.

9 THE COURT: --- finish her question. I'm gonna direct
10 you to answer the question bein' asked, ---

11 THE APPLICANT: Yes.

12 THE COURT: --- okay, sir?

13 THE APPLICANT: Yes. Yes, Your Honor.

14 THE COURT: If you want to explain, if you want to
15 explain your answer, you may do so only after you have
16 answered her question and your response is, uh, your
17 explanation responsive to the questions asked okay, sir?

18 THE APPLICANT: Yes, Your Honor.

19 THE COURT: Alright, thank you.

20 BY MS. WHITE:

21 Q. And again, I was just trying to clarify, you said you did
22 not have these documents, that they were withheld.

23 A. No, I did not.

24 Q. Okay, but you do not know if your attorney had copies of
25 these documents prior to trial or do you?

DAMON JONES - CROSS-EXAMINATION BY MS. WHITE

1 A. I don't know.

2 Q. Okay. Your only statement is that you you didn't, your
3 attorney didn't review them with you you claim, right?

4 A. That's -- I didn't get 'em, I didn't have 'em.

5 Q. Okay. Now in regards to, uh, the drop of blood on the
6 roof a the car you said that it was indicated on that report,
7 now Mr. Barnette during the testimony indicated there was no
8 blood on the inside of the car because your s -- your defense
9 was that you struggled over the gun as he was trying to pull
10 you out of the car, is that correct?

11 A. On the driver's side door.

12 Q. Correct.

13 A. On driver's side door car no blood in that area.

14 Q. Right, okay. Uh, in regards to Mr. Long, you said that
15 you believe there was a first statement and that was based on
16 the the the only reason you have that belief is that bottom
17 part of his statement that says he had a chance to make
18 changes?

19 A. That along with being a regular set -- a first written
20 statement by Alexander [sic] Wolf at preliminary hearing.

21 Q. Okay, but you don't have a copy of this alleged first
22 statement?

23 A. No, I do not.

24 Q. Okay. Uh, you also testified that you believe counsel's
25 ineffective because he failed to raise the issue of the fact

DAMON JONES - CROSS-EXAMINATION BY MS. WHITE

1 that there was blood on your sneakers, that correct?

2 A. Yes.

3 Q. Okay, and whether or not that dealt with the close
4 proximity of where you were with Mr. Long when when the
5 struggle over the gun happened?

6 A. Co -- could you repeat that one more time so I can be
7 clear on it ---

8 Q. Sure. You said that you felt like that was important
9 because it helped determine that you were in close
10 proximity ---

11 A. Right, ---

12 Q. --- to to Mr. Long ---

13 A. --- yes, ma'am.

14 Q. --- but wasn't it true that they had photos of you, there
15 was no blood on your clothes, correct?

16 A. Think there was some on the sweater I think.

17 Q. Okay, but no ---

18 A. (Indiscernible cross-talk.)

19 Q. --- large amount of blood on your clothes, on your body,
20 anywhere else other than ---

21 A. Other than the sneaker ---

22 Q. --- the sneaker.

23 A. --- that I'm aware of.

24 Q. Okay. In regards to the 45 degree angle, you think that
25 that was something that was a concerted effort against you,

DAMON JONES - CROSS-EXAMINATION BY MS. WHITE

1 your attorney cross-examined Dr. Wren pretty extensively about
2 the fact that he didn't use anything scientific to come up
3 with this 45 degree angle, is that right?

4 A. He questioned yes.

5 Q. Okay, so he actually tried to call into question the
6 credibility of this 45 degree angle that Mr. -- Dr. Wren had
7 had come up with.

8 A. He questioned him, yes.

9 Q. Okay. In regards to the -- hold on one moment, Your
10 Honor. Uh, in regards to Dr. Wren's testimony as well, did
11 your attorney ask questions prior to his being qualified as an
12 expert?

13 A. I think so.

14 Q. And he objected to his being qualified as an expert, is
15 that right?

16 A. He may have.

17 Q. But he was overruled?

18 A. Uh, may have been.

19 Q. Okay. In regards to the, uh, background and the criminal
20 record of Mr. Long, your attorney brought -- you actually
21 testified, did you not?

22 A. Yes, I did.

23 Q. And that was to support your self-defense theory?

24 A. Yes.

25 Q. Okay. And did --- was he able to ask you about prior

DAMON JONES - CROSS-EXAMINATION BY MS. WHITE

1 incidences where you had had some conflict with Mr. Long?

2 A. Yes.

3 Q. And so that was presented to the jury by you and at least
4 one other witness, is that correct, your brother?

5 A. Yeah, uh, yeah, yeah.

6 Q. Okay. And he also -- you also had testimony from
7 Mr. Gregg Hardy who had been with you that night you testified
8 as to incidents and the fact that the Longs, he alleged that
9 Mr. Long came at you and tried to pull you outta the car?

10 A. Greg did testify, yes.

11 Q. Okay. Uh, you testified that counsel failed to impeach
12 Ms. Williams with her written statement, did he not ask her to
13 clarify whether or not she had accurately said some things in
14 her testimony as compared to her statement during
15 cross-examination?

16 A. Repeat that one more time, please.

17 Q. During cross-examination of Ms. Williams, did he not
18 bring out several issues that she had said with more detail on
19 the stand than she had said in her statement? Let me ask a
20 shorter, I'll start it ---

21 A. I'm tryin' to ---

22 Q. --- off a different way. Did your attorney cross-examine
23 Ms. Williams?

24 A. She -- he did, he did.

25 Q. Did he talk to her about some inconsistencies?

DAMON JONES - CROSS-EXAMINATION BY MS. WHITE

1 A. Yeah, she said that -- yes, 'bout bein' out with a friend
2 or somethin' like that but there was no evidence of a
3 friend.

4 Q. And how much she could see that night, how much detail
5 and who she saw is that some things that he asked her about?

6 A. Yes.

7 Q. Okay. In regards to, uh, your complaint of any kind of
8 allegation of conflict of interest or that counsel was
9 ineffective because of your writing ODC, weren't you also
10 given a report that indicated they had found no misconduct on
11 Mr. Brough's behalf?

12 A. Standard, yes.

13 Q. Okay. One moment please, Your Honor. And, Mr. Jones,
14 did you have conversations with your attorney prior to about
15 the fact that this case was coming up on the trial docket and
16 you wanted him to to do the best he could at this point or
17 just have the case reassigned?

18 A. I want him to withdraw.

19 Q. Okay, so you never told him that you wanted him to go
20 ahead and proceed with trial, do the best he could?

21 A. I wanted him to withdraw, those documents already in
22 evidence.

23 Q. So your answer to my question's no?

24 A. Yes.

25 Q. Okay. Your Honor, that's all I have for this witness.

DAMON JONES - REDIRECT EXAMINATION BY MR. TEAGUE

1 THE COURT: Redirect?

2 MR. TEAGUE: Yeah.

3 REDIRECT EXAMINATION BY MR. TEAGUE:

4 Q. In reference to, uh, Mignon, uh, your counsel's testimony
5 provided from Mignon Williams, did he ever ask Ms. Williams
6 how far you for -- under her rendition of the facts, he ever
7 ask how far you were from the victim?

8 A. I don't, I don't think so.

9 Q. You don't think so, okay. I don't have any further
10 questions.

11 THE COURT: Alright. Thank you, sir, you may step down.
12 (Whereupon, the applicant left the stand.)

13 THE COURT: As to your, uh, thank you, matter I took
14 under advisement, was it Atiba Long's criminal record?

15 MR. TEAGUE: No, it's it's ---

16 MS. WHITE: Sigida ---

17 MR. TEAGUE: --- Sigida Long, ---

18 MS. WHITE: S ---

19 Mr. TEAGUE: --- the the victim.

20 THE COURT: Okay, who was it again?

21 MR. TEAGUE: Sigida Long.

22 THE COURT: Okay, uh, and that's the victim, correct?

23 MS. WHITE: Yes, sir.

24 THE COURT: Okay, uh, under 404-82 *State vs. Boyd* and I'm
25 gonna deny, I'm gonna sustain the objection, it has to be by

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1 way of reputation testimony. Uh, we looked it up but if you
2 want to proffer that, I'll let, I'll accept it as a court's
3 exhibit for the record in case I'm incorrect.

4 MR. TEAGUE: Okay.

5 THE COURT: Okay.

6 MR. TEAGUE: I think I put it in evidence, didn't ---

7 MS. WHITE: No, it was under ---

8 THE COURT: It's under advisement.

9 MS. WHITE: It's identified, it was numbered for
10 identification but not entered into evidence.

11 THE COURT: And I'm not ---

12 MR. TEAGUE: Oh, okay.

13 THE COURT: --- and I sustain the objection but I'll make
14 it a court exhibit.

15 MR. TEAGUE: Okay. Yes, Your Honor, I would like to
16 proffer that in Mr. Sigida Long, the victim in this case, it's
17 his criminal record into evidence and state that counsel was
18 ineffective for place -- for not placing that, uh, criminal
19 record before the jury, uh, and that said information is
20 relevant and admissible based on rules of ev -- South Carolina
21 Rules of Evidence 404(a)(2).

22 THE COURT: Okay, ---

23 MS. WHITE: And, ---

24 THE COURT: --- that's ---

25 MS. WHITE: --- Your Honor, if the State can just put on

MOTIONS AND MATTERS

1 the record two cases in support of your position and our
2 position that it should be sustained: *State v. Day* 341 S.C.410
3 and *State v. Brown*, 321 S.C.184.

4 THE COURT: Okay. Thank you, ma'am. Alright, you have
5 any other witnesses?

6 MR. TEAGUE: I do, Your Honor.

7 THE COURT: Okay, sir.

8 MR. TEAGUE: This point I would call, uh, Officer Ila
9 Simmons to the stand.

10 THE COURT: And which issue would this be with regard to
11 her issues?

12 MR. TEAGUE: Your Honor, I I didn't hear you.

13 THE COURT: I'm sorry. Just for my notes which issue or
14 issues is this witness ---

15 MR. TEAGUE: In reference to the GSR, GS gunshot residue
16 evidence.

17 THE COURT: Okay.

18 (Whereupon, the witness came forward.)

19 (Whereupon, a discussion was held off the record.)

20 ILA SIMMONS, having been
21 first duly sworn, testified as follows:

22 THE BAILIFF: Have a seat, please.

23 (Whereupon, a discussion was held off the record.)

24 MR. TEAGUE: If I could have one second, Your Honor,
25 I wanna ---

MOTIONS AND MATTERS

1 (Whereupon, a discussion was held off the record.)

2 MR. TEAGUE: Okay. Your Honor, we failed to mark, uh,
3 Court's Exhibit 2 which is -- was Atiba Long's written
4 statement, uh, think I submitted it but it didn't get, uh, we
5 didn't get it marked ---

6 THE COURT: Atiba Long's ---

7 MR. TEAGUE: --- so I would offer that.

8 THE COURT: --- written statement?

9 MR. TEAGUE: Yes, Your Honor.

10 MS. WHITE: Okay. No objection to that, Your Honor.

11 THE COURT: Alright, very good. Thank you, sir. Thank
12 you madam court reporter.

13 (Atiba Long's written statement marked Court's Exhibit
14 No. 2 for identification.)

15 MS. WHITE: And, Your Honor, at this point I I I just
16 spoke to Mr. Teague earlier but I'm not really sure the State
17 would tend to have an objection, I'm not sure how this
18 testimony is going to any of the allegations raised, uh, we
19 would argue it appears that it's going to a new allegation,
20 uh, that was not placed in but I'm I wanted to put that on the
21 record before ---

22 THE COURT: Does does his proposed testimony raise new
23 issues not raised in the, uh, amended application for relief?

24 MR. TEAGUE: One of his issues is the 40 ---

25 THE COURT: Does it raise new issues?

MOTIONS AND MATTERS

1 MR. TEAGUE: I don't believe it does.

2 THE COURT: Okay, what issue in the ---

3 MR. TEAGUE: Just ---

4 THE COURT: --- amended application would it go towards,
5 please?

6 MR. TEAGUE: Believe it's, uh, if I can grab my ---

7 THE COURT: Yeah, certainly.

8 MR. TEAGUE: Alright. Okay, in number, issue number 1
9 applicant, uh, discusses the DNA analysis report ---

10 THE COURT: This is the exculpatory -- excu ---

11 MR. TEAGUE: Yeah, ---

12 THE COURT: --- exculpatory Brady material?

13 MR. TEAGUE: Yeah, and that's in in reference to a DNA
14 analysis report but not as to the GSR, uh, wait.

15 THE COURT: Go ahead proffer his testimony, ---

16 MR. TEAGUE: Yeah, I I ---

17 THE COURT: --- then I'm gonna look and see -- I'll make
18 a determination then whether it's properly ---

19 MR. TEAGUE: If you look in number -- in issue 1 it
20 discusses his, it discusses the applicant's issue where the
21 applicant told the trial counsel that he was attacked and
22 bein' pulled from the car then he fell back inside, grabbed
23 the gun, co, uh, cocked it and jumped back out holding it
24 waist side telling brothers to back up, uh, and it discusses
25 the close proximity and that's the reason I was askin', uh,

ILA SIMMONS - DIRECT EXAMINATION BY MR. TEAGUE

1 brought in Ms. Simmons is to testify as to a report that
2 wasn't done that could've proven the pro -- close proximity of
3 the shot.

4 THE COURT: Alright, I'll allow the testimony.

5 MR. TEAGUE: Okay.

6 DIRECT EXAMINATION BY MR. TEAGUE:

7 Q. Can you state your name for the record.

8 A. My name is Ila Simmons.

9 Q. Ms. Simmons thanks for comin' up here, I wanna make this
10 as short as possible. Uh, what was your task at the trial?

11 A. Uh, to testify on the gunshot residue evidence at the
12 scene that went to our laboratory.

13 Q. Okay, and you, and you -- were you certified as an
14 expert?

15 A. Yes, sir, I was.

16 Q. You were? Okay, and I'm gonna hand ya, is this a copy of
17 your report?

18 A. Actually, this is a copy of the entire case file ---

19 Q. Okay, ---

20 A. --- everything in my report, yes.

21 Q. --- can you find it in there the part that's your report?

22 A. Yes, sir, right here (indicating.)

23 Q. Okay. And what part for SLED, what type of report did
24 you, uh, provide, what type of analysis did you perform?

25 A. We analyzed two gunshot residue kits in this case that

ILA SIMMONS - DIRECT EXAMINATION BY MR. TEAGUE

1 were submitted for analysis.

2 Q. Okay, and at that time in two thou -- this is in 2005
3 when you woulda performed this test?

4 A. Yes.

5 Q. Okay. Uh, did you -- did SLED determine, do an analysis,
6 determine the distance of from where the shot was fired from
7 to the victim?

8 A. Uh, we could have if we had had the victim's clothing, we
9 would have also had the the, had to have had the weapon that
10 was in question ---

11 Q. Okay.

12 A. --- as well as rounds from that weapon, it could have
13 been done, yes, sir.

14 Q. Okay, and at that point in time was that SLED's protocol
15 to perform that, uh, analysis?

16 A. We could yes, sir, ---

17 Q. You could.

18 A. --- if they sent it ---

19 (Indiscernible cross-talk.)

20 Q. Why didn't you perform it in this case?

21 A. Uh, we did not receive clothing in this case.

22 Q. Okay, and who's responsible for providing ya the
23 clothing?

24 A. Uh, generally it is brought in by the submitting agency,
25 it woulda been, uh, I think Department of Public Safety of

ILA SIMMONS - DIRECT EXAMINATION BY MR. TEAGUE

1 Spartanburg that that sub ---

2 Q. Spartanburg Department of Public Safety?

3 A. --- yes, sir, that submitted the GSR kits.

4 Q. Is that -- would the -- if you had, if you'd been
5 provided that clothing, would you have done that analysis?

6 A. At that time we would have, yes.

7 Q. Okay, and tell me when you receive the clothing what does
8 that do for you, what do you, what do you do with the
9 clothing, what type analysis do ya do on it?

10 A. Uh, we would do a Griess test on it which would determine
11 if there were any gunpowder particles present, ---

12 Q. Okay.

13 A. --- we would then take the actual gun and the actual
14 submitted ammunition and shoot the gun to try and determine
15 how far the gun was from the clothing when it was
16 discharged.

17 Q. Okay, but but you weren't able to perform that test
18 because the clothing wasn't provided to ya.

19 A. No, sir, it was not submitted according to my notes.

20 Q. Did the ded -- did the, uh, defendant ever contact SLED
21 and request that that clothing be analyzed?

22 A. I'm not certain of that.

23 Q. Okay, uh, that's all I have for ya, thank you.

24 THE COURT: Cross-examination?

25 CROSS-EXAMINATION BY MS. WHITE:

ILA SIMMONS - CROSS-EXAMINATION BY MS. WHITE

- 1 Q. Ms. Simmons, uh, or Officer Simmons is it?
- 2 A. It's, ---
- 3 Q. Yeah, okay.
- 4 A. --- it's Agent Simmons is fine.
- 5 Q. And you did do the gunshot residue kit on both the victim
- 6 and, uh, the applicant Mr. Jones in this case, did you not?
- 7 A. That's correct.
- 8 Q. And in fact Mr. Jones came back with a negative
- 9 finding ---
- 10 A. Correct.
- 11 Q. --- even though he acknowledges he was the one to shoot
- 12 the gun?
- 13 A. Yes, ma'am.
- 14 Q. And the victim had various metals on his hand.
- 15 A. Yes, that's correct.
- 16 Q. Now he didn't have the right, uh, grouping of metals to
- 17 reference gunshot residue but did it not indicate that he
- 18 could have been near potentially the gun?
- 19 A. He had what we call "metals associated with gunshot
- 20 residue", they weren't the highest category that we can find
- 21 but they were consistent with gunshot residue and, uh, it was
- 22 found on the back of the left hand so yes, that is consistent
- 23 with someone being in close proximity probly within 6 feet of
- 24 a handgun ---
- 25 Q. Okay.

ILA SIMMONS - CROSS-EXAMINATION BY MS. WHITE

1 A. --- when it was discharged.

2 A. Now could it been, uh, also there various ways that this
3 metal, the metal could have gotten on his hand: if he had held
4 his hand up as the the bullet was goin' back, could that have
5 been a possibility?

6 A. Yes, that's correct..

7 Q. And the metals aren't only from the shooting of a gun, is
8 that correct, there other things in the world that would
9 create these metals on somebody's ---

10 A. Yes, o ---

11 Q. --- hand.

12 A. --- are other environmental factors that can cause
13 these ---

14 Q. Okay.

15 A. --- metals to be present.

16 Q. Alright, hold on one second, Your Honor. Uh, do you
17 recall if you testified ho -- about the the number of each of
18 the metals and whether or not that indicated that the victim's
19 hand had to have been near the gun when it was fired?

20 A. Um, it was probly wi -- like I said within 6 feet of that
21 gun with the quantities of metals that was -- that were ---

22 Q. Okay. So in regards to specification and narrowing that
23 down, can you do that when you analyze the gunshot residue,
24 uh, numbers on the metals?

25 A. Uh, we can give an estimation because each gun with

ILA SIMMONS - REDIRECT EXAMINATION BY MR. TEAGUE

1 different types of ammunition is different.

2 Q. And how close had the tests been done on the clothing,
3 what kind of range would you have been able to determine?

4 A. It would have had to have been, at that time we had to
5 have a window of 2 feet so it would had to have been within 2
6 feet.

7 Q. Ha -- and that woulda been had you found what you were
8 looking for on the, on the clothing and they were within 2
9 feet of each other.

10 A. That's correct.

11 Q. Okay.

12 MS. WHITE: I think that's all I have, Your Honor.

13 REDIRECT EXAMINATION BY MR. TEAGUE:

14 Q. Uh, and your your report and just indicates quantities of
15 metals detected on the back a the left hand may be associated
16 with gunshot residue, ---

17 A. Yes, sir.

18 Q. --- uh, had you received the clothes is there a
19 possibility that you could have found increased gunshot
20 residue on that clothing?

21 A. We would not have tested for gunshot residue, we would
22 have tested for gunpowder which is a different component.

23 Q. Okay. If you, had you received the clothes you would
24 have performed a test to determine -- could you have
25 determined an exact distance?

ILA SIMMONS - REDIRECT EXAMINATION BY MR. TEAGUE

1 A. Not an exact dista -- distance, it would have been within
2 3 to 4 feet of of the distance, the exact distance ---

3 Q. So ---

4 A. --- that's as close as the scientific, ---

5 Q. Sorry.

6 A. --- that's close the scientific proximity can get in that
7 test.

8 Q. So had you received the clothes you would have been able
9 to give a better approximation than the approximation that you
10 were able to give at trial.

11 A. Yes, sir, with by about 2 feet, ---

12 Q. Okay.

13 A. --- yeah, plus or minus 2 feet.

14 Q. Okay, thank you.

15 THE COURT: Do you mind if I ask a question?

16 THE WITNESS: Yes, sir.

17 THE COURT: Does this type a test that, uh, the gunpowder
18 test, I I don't know the name of it, but is it, does it have a
19 limited shelf life like a GSR test does that it doesn't last
20 very long or will it last for the long as you have the
21 clothing or and the guns you can test it for a period a time?

22 THE WITNESS: Uh, you can and as long as the clothing has
23 not been laundered in some way, also blood can break down this
24 material so if there's a lotta blood on the clothing it can
25 break down material, it all depends on the condition of the

ATIBA KEITA LONG - DIRECT EXAMINATION BY MR. TEAGUE

1 clothing.

2 THE COURT: Alright, thank you. Any question by counsel
3 as a result of that?

4 MS. WHITE: No, nothing, Your Honor.

5 MR. TEAGUE: Nothing, Your Honor.

6 THE COURT: Alright, thank you. May this witness be
7 excused?

8 MR. TEAGUE: Yes, Your Honor.

9 MS. WHITE: Yes, your Honor.

10 THE COURT: Thank you.

11 (Whereupon, the witness left the stand.)

12 THE COURT: May I see the attorneys up here, please.

13 (Whereupon, a bench conference was held off the record.)

14 (Whereupon, a discussion was held off the record.)

15 MS. WHITE: Your Honor, I think what -- want us to
16 approach, Your Honor?

17 (Whereupon, a bench conference was held off the record.)

18 THE COURT: Call your next witness, please.

19 MR. TEAGUE: Call Atiba Long to the stand.

20 (Whereupon, the witness came forward.)

21 THE BAILIFF: Put your left hand on the Bible, raise your
22 right hand, please.

23 ATIBA KEITA LONG, having been,
24 first duly sworn, testified as follows:

25 DIRECT EXAMINATION BY MR. TEAGUE:

ATIBA KEITA LONG - DIRECT EXAMINATION BY MR. TEAGUE

1 Q. State your name for the record, please.

2 A. Atiba Keita Long.

3 Q. Okay, Mr. Long, uh, were you a witness to this, uh, to
4 the cri -- the issue at, uh, in this trial in 2005?

5 A. Yes, sir.

6 Q. Okay, and did you give a written statement in this
7 case?

8 A. Yes.

9 Q. Okay, I'm present you which is, uh, Court's Exhibit No.
10 2, uh, you can, you can read it if you'd like to, I've got a
11 question about the the final page of that, uh, ---

12 (Indiscernible cross-talk.)

13 THE COURT: Now just one second, I don't want him to read
14 the whole statement ---

15 MR. TEAGUE: No, I'm givin' him an opportunity to look at
16 it, ---

17 THE COURT: Oh, okay.

18 MR. TEAGUE: --- he wants to familiarize himself.

19 (Whereupon, the witness examines the document.)

20 BY MR. TEAGUE:

21 Q. Just let me know when you're ready.

22 A. I'm ready.

23 Q. Okay, the the final paragraph of your sta -- may I
24 approach, Your Honor?

25 THE COURT: Yes, sir, absolutely, ---

ATIBA KEITA LONG - DIRECT EXAMINATION BY MR. TEAGUE

1 MR. TEAGUE: Okay.

2 THE COURT: --- you don't have to ask.

3 MR. TEAGUE: Okay.

4 BY MR. TEAGUE:

5 Q. Uh, can you read that final paragraph.

6 A. "I have read this statement that which consist of three
7 pages and I have allowed to make the, make the needed changes,
8 I also received a copy of the statement -- statements."

9 Q. Okay, uh, di -- was that the first statement that you
10 ever gave?

11 A. Uh, yes, I think so.

12 Q. Okay. Do you recall ever giving another sta -- written
13 statement in this case?

14 A. Uh, I can't recall.

15 Q. You don't recall?

16 A. No.

17 Q. Okay, uh, that sentence that says, "I was allowed to make
18 the necessary changes," did you make any cha -- after you
19 wrote out the statement did you go back and make any
20 changes?

21 A. I didn't make any changes.

22 Q. Okay, alright, that's all that I have.

23 A. Alright.

24 THE COURT: Any cross-examination?

25 MS. WHITE: Nothing, Your Honor.

MIGNON WILLIAMS - DIRECT EXAMINATION BY MR. TEAGUE

1 THE COURT: May this witness be excused?

2 MR. TEAGUE: Yes, Your Honor.

3 THE COURT: Thank you, sir, you may be excused.

4 THE WITNESS: Alright.

5 (Whereupon, the witness left the stand.)

6 THE COURT: Alright, would you call your next witness,
7 please, sir.

8 MR. TEAGUE: Yes, Your Honor, uh, ---

9 THE COURT: Yes, sir.

10 MR. TEAGUE: --- call Mignon Williams to the stand.

11 (Whereupon, the witness came forward.)

12 THE BAILIFF: Place your left hand on the Bible, raise
13 your right hand.

14 MIGNON WILLIAMS, having been
15 first duly sworn, testified as follows:

16 (Whereupon, a discussion was held off the record.)

17 DIRECT EXAMINATION BY MR. TEAGUE:

18 Q. Can you state your name for the record, please.

19 A. My name is Mignon Williams.

20 Q. Thank you. Uh, were were you a wi ---

21 THE COURT: Could you spell that for the court reporter,
22 please, ma'am, I wasn't sure ---

23 THE WITNESS: M-I-G-N-O-N.

24 THE COURT: And what's your last name?

25 THE WITNESS: Williams.

MIGNON WILLIAMS - DIRECT EXAMINATION BY MR. TEAGUE

1 THE COURT: Williams. Mignon Williams?

2 THE WITNESS: Yeah.

3 THE COURT: Okay, thank you, ma'am.

4 BY MR. TEAGUE:

5 Q. Thank you, Ms. Williams. Uh, were you a witness to the,
6 uh, crime that was went to a trial in 2005 involving Damian
7 Jones?

8 A. Yes.

9 Q. Okay, and, uh, did you give a recorded statement?

10 A. Yes, I did, I I did give a statement.

11 Q. Okay, and did you also come to trial and and provide
12 testimony in fronta the jury?

13 A. Yes.

14 Q. Okay. Uh, within that did you ever mention a second
15 person that was with you at the time of this action of the, of
16 the shooting?

17 A. Yes, it was a friend a mine, ---

18 Q. Okay.

19 A. --- I mean, I was doin' some work for her.

20 Q. Okay, and was she there when the shooting occurred?

21 A. Yes.

22 Q. Okay, and do you recall her name?

23 A. No.

24 Q. Okay. Did the State or, uh, the the attorney for
25 Mr. Jones, Mr. Brough ever contact you and try to get any

MIGNON WILLIAMS - DIRECT EXAMINATION BY MR. TEAGUE

1 information in reference to who that individual was?

2 A. No.

3 Q. No one did?

4 A. No.

5 Q. Okay. Did that individual see the shooting?

6 A. No, she had her back to the -- to them, she was facing'
7 me.

8 Q. Okay, but she heard it?

9 A. She heard the, uh, the noise.

10 Q. She heard the what?

11 A. She heard the noise, they was arguin'.

12 Q. Okay, and sh -- did she leave the scene right after that
13 or did she stick around?

14 A. No, she left.

15 Q. Okay. Alright, and and and you're certain you don't
16 recall who that individual was?

17 A. No, I don't remember.

18 Q. Okay. Thank you for -- thank you.

19 THE COURT: Cross-examination.

20 MS. WHITE: Uh, the State has nothing for this witness,
21 Your Honor.

22 THE COURT: May Ms. Williams be excused?

23 MR. TEAGUE: She can.

24 MS. WHITE: Yeah.

25 THE COURT: Thank you, Ms. Williams.

BARRY BARNETTE - DIRECT EXAMINATION BY MR. TEAGUE

1 THE WITNESS: Yeah.

2 (Whereupon, the witness left the stand.)

3 MR. TEAGUE: Your Honor, can I take a one minute
4 bathroom?

5 THE COURT: Yes, sir, let's take about a ---

6 MR. TEAGUE: Okay.

7 THE COURT: --- 5- minute break.

8 MR. TEAGUE: Okay, thank you.

9 (Whereupon, a recess was taken.)

10 THE COURT: Call your next witness.

11 MR. TEAGUE: Yes, Your Honor, uh, Solicitor Barnette.

12 (Whereupon, the witness came forward.)

13 THE BAILIFF: Put your hand on the Bible, raise your
14 right hand.

15 BARRY BARNETTE, having been
16 first duly sworn, testified as follows:

17 THE BAILIFF: Thank you, take the stand, please.

18 THE WITNESS: Thank you.

19 DIRECT EXAMINATION BY MR. TEAGUE:

20 Q. State your name for the record, please.

21 A. Barry Barnette.

22 Q. Okay. Mr. Barnette, what was your involvement with this
23 case?

24 A. I was the prosecutor on the case along with, uh, Jennifer
25 Jordan.

BARRY BARNETTE - DIRECT EXAMINATION BY MR. TEAGUE

1 Q. Okay, and as the prosecutor did you have access to all
2 the reports generated by Spartanburg County or Spartanburg
3 City Police Departments?

4 A. What happens is they usually send those reports to us,
5 everything that's involved in a case and we'll forward that
6 discovery to the defense.

7 Q. Okay, and do you review all that information?

8 A. I do.

9 Q. You do, okay. Did you have an opportunity to review O^c--
10 uh, Officer Talanges' report, see if I can find it here in the
11 exhibits. Hand ya Exhibit 4 and, uh, believe it's on the
12 second or third page. Were you aware of there being, Officer
13 Talanges indicating or Investigator Talanges indicating that,
14 uh, there was blood on the driver's side door or on the dri --
15 driver's side area around the door? You can read in whatever,
16 I ---

17 A. No, sir, I I think if you read the report it says a large
18 drop was located on the roof area of the vehicle on the
19 driver's side.

20 Q. Okay, would that be around the driver's side door?

21 A. Well to me when it's located on the roof area it's not on
22 the driver's side door, located around the driver's side door,
23 this provided to defense.

24 Q. Okay. Do you recall if the photographs that were
25 entered into evidence at trial were in color?

BARRY BARNETTE - DIRECT EXAMINATION BY MR. TEAGUE

1 A. I can't remember but we would enter that, uh, obviously
2 entered that picture into evidence ---

3 Q. Okay, ---

4 A. --- as State Exhibit 13.

5 Q. --- yeah, that's what I -- that's true but when I g --
6 went back to the -- well did -- do you know if it was in color
7 or not?

8 A. Oh, I think this is the picture, I think that's the,
9 uh, ---

10 Q. Well there's a -- go ahead, I didn't mean to interrupt
11 ya.

12 A. I I think this is the picture, I don't think -- I think
13 this is in color to be honest with ya.

14 Q. Oh, yeah, that one is ---

15 A. That's ---

16 Q. --- and that's when I went over to your -- to the
17 solicitor's office and located in the solicitor's file. Uh,
18 do you know if the one that was actually presented at trial
19 was in color?

20 A. I assume it was 'cause I I usually don't enter black and
21 whites, I don't think I've ever had a ---

22 Q. Okay. Would it have been entered on a projection screen
23 or just like this (indicating)?

24 A. We enter it, this be a picture like this that we'd enter
25 then obviously we use projector screens to show it up there,

BARRY BARNETTE - DIRECT EXAMINATION BY MR. TEAGUE

1 we call it "elmo."

2 Q. Okay, alright, and from your view of, uh, Exhibit 5 which
3 was Exhibit 13 to trial, to the trial, would you say that
4 that, can you see this (indicating) red dot on the roof right
5 above the driver's side door?

6 A. I d -- and well to show you what I usually do is is, uh,
7 I have to go back transcript make sure but usually when we
8 enter this in evidence I'll ask the judge to publish at that
9 time, I publish it to the Court, I mean to the jury so the
10 jury can see the picture.

11 Q. Okay, and what I'm asking is do you see a red drop a
12 blood on the top of this Exhibit 13?

13 A. I don't know if it's blood or not, it looks like a
14 speckle on it but I can't tell ---

15 Q. Okay.

16 A. --- and I -- this is a colored picture so I really can't
17 tell if it is or not.

18 Q. Have you had an opportunity to look on the computer with
19 a CD?

20 A. No, sir, I have not ---

21 Q. Okay. Uh, ---

22 A. --- and I may have back in '05 or '06 but I have not
23 recently.

24 MR. TEAGUE: Your Honor, I can pull that picture up on
25 CD, on on a CD that I have and it's much clearer, that's the

BARRY BARNETTE - DIRECT EXAMINATION BY MR. TEAGUE

1 clearest photograph that I could get. Uh, I don't know if the
2 Court's inclined to have me do that for Mr. Barnette to look
3 at that area of the car.

4 THE COURT: Well, Mr. Teague, without some type a testing
5 of that, whatever is reflected in the picture, wouldn't it
6 just be at best speculation?

7 MR. TEAGUE: Well I can, Your Honor, I can bring in the
8 officer to testify that did the report, uh, maybe I need to do
9 it that way.

10 THE COURT: Well let's do that, I mean, I I just
11 don't -- askin' not just the solicitor, anyone to say that
12 what is on this roof in this picture and say it looks like
13 blood or resembles blood or somewhat, you can't say that based
14 on some type a scientific analysis it is blood, ---

15 MR. TEAGUE: Okay.

16 THE COURT: --- okay?

17 BY MR. TEAGUE:

18 Q. Okay. Mr. Barnette, from Mr. Talang -- Officer,
19 Investigator Talanges' report, uh, does it indicate that there
20 is blood in the area of the roof near the driver's side
21 door?

22 A. All I can tell ya is what his report says, A large drop
23 was located on the roof area of the vehicle on the driver's
24 side.

25 Q. Okay. Alright, did you also, would you have also had an

BARRY BARNETTE - DIRECT EXAMINATION BY MR. TEAGUE

1 opportunity to review Investigator or Officer Lamb's,
2 Lieutenant Lamb's report?

3 A. I have not recently, I'm assumin' when I ---

4 Q. Okay.

5 A. --- reviewed the case I would have.

6 Q. Alright, could you read here, I've outlined a little
7 section of Lieutenant Lamb's report.

8 A. I saw that but I think if I remember right lookin' at the
9 pictures, the pictures didn't show that.

10 Q. Okay, co -- could you read that in, please.

11 A. "I observed droplets of what appeared to be blood on the
12 left side of the vehicle's windshield, there's also several
13 smear marks on the windshield and driver's door, it appears
14 that these marks could have been someone's hand."

15 Q. Okay. Was one a the major issues at trial, the State's
16 argument, that Mr. Jones was on a grassy hill in front of the
17 car shootin' down at the back a the car towards Ms., towards
18 the, uh, deceased Mr. Long?

19 A. The back of the car's where all this occurred.

20 Q. Okay, and did Mr. Jones when -- di -- didn't he testify
21 at trial?

22 A. He did.

23 Q. He did. And didn't he testify that in fact hi -- there
24 was an altercation at the door of the car and that there was a
25 a a kind of a hustle over the gun and that the gun went off

BARRY BARNETTE - DIRECT EXAMINATION BY MR. TEAGUE

1 near the driver's side door a the car and that was where the
2 fatal wound, uh, was shot?

3 A. That was part of his story but one thing I do
4 specifically remember, I think if I remember correctly he said
5 he got the gun from the glove box ---

6 Q. Okay.

7 A. --- which was some that was very unusual, he said he was
8 fight with the individual then got the gun from the gun
9 bo -- I mean, glove box in the car, it just didn't make
10 sense ---

11 Q. Okay, but ---

12 A. --- and then ---

13 Q. --- but it---

14 A. --- one one other thing too was, uh, you know, the issue
15 I've heard about the blood from other witness listenin' to it,
16 uh, we were lookin' at inside part a the car where the car was
17 inside the door, uh, inside where the driver's was and there
18 was no blood indicated in there.

19 Q. Okay. If the -- can you explain how the blood would have
20 gotten there if if your version that was argued at trial that
21 Mr. Jones shot from the grassy hill and hit him at the back a
22 the car?

23 MS. WHITE: Your Honor, I would just object to
24 speculation 'cause Solicitor ---

25 MR. TEAGUE: I'll I'll tr ---

BARRY BARNETTE - DIRECT EXAMINATION BY MR. TEAGUE

1 MS. WHITE: --- Barnette ---

2 MR. TEAGUE: --- I'll ---

3 MS. WHITE: --- to to try to imagine is ---

4 MR. TEAGUE: --- I'll withdraw the question.

5 BY MR. TEAGUE:

6 Q. Did you sub -- did you pres -- get Officer Talanges or
7 have Officer Lamb testify as to these blood drops that they
8 witnessed at the scene?

9 A. No, Officer Tal -- Talanges testified, Officer La -- I
10 don't think Officer Lamb did.

11 Q. So I think I've been pronouncin' Talanges, is that
12 right?

13 A. I may ---

14 Q. Okay.

15 A. --- not be pronouncing correctly, ---

16 Q. Alright.

17 A. We call him "Taco" just for short just to make it
18 easier ---

19 Q. Okay.

20 A. --- for everybody.

21 Q. Now did you arg -- now were -- did you submit arguments
22 to the jury at trial or questions that there was no blood
23 around the driver's side door of the car, uh, where Mr. Jones
24 claims that he fired the shot?

25 A. Inside the driver's door I said there wasn't any

BARRY BARNETTE - DIRECT EXAMINATION BY MR. TEAGUE

1 blood, ---

2 Q. Okay.

3 A. --- I never said there was any outside the door on the
4 roof or anywhere else, course there was pictures that was
5 entered into evidence, uh, ---

6 Q. Okay.

7 A. --- that was submitted too.

8 Q. That that's another -- would there, would there be any
9 other pictures of when a, I don't know if you would know this
10 and if you don't just say I don't know but if the, if a
11 officer sees blood on a car and there's an indication that
12 that the the person you think committed murder shot a gun and
13 killed somebody right where that happened, wouldn't you think
14 the off -- would the officer normally take photos of that?

15 A. That be speculation on my part, ---

16 Q. Okay.

17 A. --- I just take the evidence as we receive it from law
18 enforcement.

19 Q. I'm gonna show ya the trial transcript here and have you
20 read startin' on page 201 ---

21 A. There is one thing ---

22 Q. Okay, okay.

23 A. --- talk about to go back to to Officer Talanges' report,
24 I guess this is Applicant's 4 where I read the spla -- uh, or
25 basically a large drop was located on the roof area of the

BARRY BARNETTE - DIRECT EXAMINATION BY MR. TEAGUE

1 vehicle driver's side, he also said no blood splatter was
2 located on inside of the vehicle, ---

3 Q. Okay.

4 A. --- that was also part of his report.

5 Q. Okay. Alright, can ya read for me here, I'm lookin' at
6 the trial transcript page 201, uh, startin' at line 22 and if
7 you could read, you can read as far as you'd like to but, uh,
8 I think line 2 on page 202.

9 A. This Mr. Jones' testimony?

10 Q. Yeah, that's Mr. Jones's -- you're, uh, crossin' him.

11 A. Okay. Yes, uh, can I read before that?

12 Q. Yeah, you can read, if you, if you wanna put it in
13 context you wanna.

14 A. Uh, I'm goin' up to the top 201, "When you got outta the
15 car, where was Mr. Long at?" His answer was, "He was standin'
16 the doorway of my car."

17 "So he's at the doorway in your car, so what happened
18 then?"

19 "I jumped out with the gun and point it towards the
20 ground."

21 "So you jumped outta the car with him in the doorway a
22 the car?"

23 "He was at the doorway."

24 "He stand -- my question is, "He's standin' at the
25 doorway, he's blockin' your way out?"

BARRY BARNETTE - DIRECT EXAMINATION BY MR. TEAGUE

1 His answer was, "Not in the doorway, he was at the
2 doorway."

3 My question is, "So he's at the doorway, you jump out,
4 you got the gun, you show it to him?"

5 His answer was, "He saw it."

6 My question was, "He saw it? So what did ya do then?"

7 Answer was, "I told him to back up, both of them."

8 Question: " He back up?"

9 Answer: "He rushed me."

10 Question: "So you jump outta the car, he rushes you, you
11 have a struggle right there in the doorway a the car?"

12 "It was right at the doorway, around the doorway area."

13 Question: "Okay, why isn't there any blood there?"

14 Answer: "I can't answer that."

15 Question: "Isn't it true Mr. Long was killed at the end a
16 your car on the sideway -- there's sidewalk near the roadway?"

17 Answer: "I can't answer that," so . . .

18 Q. Did you read enough?

19 A. Yes, at this point.

20 Q. Okay. And do you believe from that, from that question
21 on page 202, "Okay, why isn't there any blood there," after
22 there's reference to the doorway of the car, do you believe
23 from Ms. -- Officer Talanges' and Lamb's report and Exhibit 13
24 that that there was actually blood in that area of the car?

25 A. No.

BARRY BARNETTE - DIRECT EXAMINATION BY MR. TEAGUE

1 Q. Okay. So what is your testimony in reference to that
2 that what's your referencing there?

3 A. There was no blood there to show the struggle or show
4 where he was shot at that point, the blood was obviously the
5 back end a the car.

6 Q. Okay. So you ju -- and I'm just tryin' to get this
7 straight for -- are you sayin' that you don't believe there
8 was any blood in that area, there was no -- are you sayin'
9 there was no blood in the car?

10 A. In the car where the doorway where he was talkin' about.

11 Q. Okay.

12 A. I know there's been, I mean, reports and so forth 'bout
13 blood bein' on top a the car but the indication was there's no
14 blood where he curr -- where the struggle occurred at.

15 Q. Okay, and that -- but actually but Officer Talanges did
16 testify that there was blood on the driver's side of the hood,
17 uh, top a the car.

18 A. I can't -- I know that picture was entered in to, uh,
19 obvious State Exhibit 13 where there is a spot that is on
20 top ---

21 Q. I to -- yeah, I I mean, in his report it does indicate
22 there was blood ---

23 A. In in in his report it does, I can't remember his
24 testimony from that ---

25 Q. Okay.

BARRY BARNETTE - DIRECT EXAMINATION BY MR. TEAGUE

1 A. --- standpoint.

2 Q. Alright. I'm gonna ask you about one other section here
3 which was the closing argument, you'll give me one second to
4 find the exact spot. If you -- court's indulgence for one
5 second.

6 THE COURT: Yes.

7 (Pause.)

8 Q. Okay, and this may be in context and explain but there's
9 a section here in your closing argument on page 274 of the
10 transcript, I I'm referencing the last line but you're probly
11 gonna wanna read that full paragraph near the bottom, start at
12 line 20 if you can read what you'd like to.

13 A. I know the Court can read, I can read several parts of
14 the closing. Alright, if you look in context, I'll read the
15 part you asked me to, "Well if that happened where's the blood
16 in the car? If he shot him in the car, there's no blood,
17 ladies and gentlemen, there's no blood in the car, there's no
18 blood beside the driver's side door of the car," and lookin'
19 at that is it's like I said before there was no blood inside
20 the car, there was no blood in that area right at the doorway
21 there and that was the context that I was usin' that argument
22 for.

23 Q. Okay. Okay. I'm gonna hand you a, if you'd like to
24 read, here's what I'm gonna do: I'm gonna hand you a ---

25 A. Yes, sir.

BARRY BARNETTE - DIRECT EXAMINATION BY MR. TEAGUE

1 Q. --- a report here that looks like a report by Officer
2 Talanges. If you'd see there's a point there where it says
3 "four swabbings", do you know what those four swabbings were
4 for on the Buick?

5 A. All I can tell ya is what his report says.

6 Q. Okay.

7 A. "A total of four swabbings were taken, after the
8 swabbings the vehicle was towed."

9 Q. Well and that's what I'm asking, what are the, what are
10 they swabbing?

11 A. I I can't answer that.

12 Q. Can't answer that, okay.

13 A. Yes.

14 Q. And did you recei -- I would like to, uh, o -- another
15 exhibit, did you receive this prior to trial this exhibit by,
16 prepared by Officer Talanges?

17 A. Yes, sir.

18 Q. Okay. And this may be somethin' you may have already
19 responded do you, on the Buick there's five dots on the front
20 left side on the windshield, on the top and on the hood, do
21 you know what those dots stand for?

22 A. I I can't answer that.

23 Q. Okay. Alright, thank you. I can grab that from ya. Did
24 you, uh, did -- yours -- that's all the questions that I have
25 for ya. Thank you, Solicitor.

BARRY BARNETTE - CROSS-EXAMINATION BY MS. WHITE

1 THE COURT: Cross-examination?

2 MS. WHITE: Just briefly, Your Honor.

3 CROSS-EXAMINATION BY MS. WHITE:

4 Q. Solicitor Barnette, the questions have been about a few,
5 uh, potential drops of blood or maybe a smear of of blood on
6 the rooftop of the car, how did the victim die in this case?
7 What kind of wound was it?

8 A. Gunshot wound.

9 Q. And what -- to what area of the body?

10 A. Oh, I'd I'd have to review ---

11 Q. Oh, you ---

12 A. --- my notes to make sure.

13 Q. Could it have possibly been a head wound?

14 A. Yes, but I ---

15 Q. And ---

16 A. --- think it was a head wound. I just wanna make sure
17 that I was telling you correctly.

18 Q. Okay. And in regards to the photos that were entered at
19 trial as to where the victim was located when the police
20 arrived, was there a large amount a blood ---

21 A. Yes, ma'am.

22 Q. --- in the area?

23 A. Yes, ma'am.

24 Q. And in fact there was a extreme amount a blood around the
25 body and around the wound and on the victim?

BARRY BARNETTE - CROSS-EXAMINATION BY MS. WHITE

1 A. Yes, ma'am.

2 Q. So the testimony of the defendant that he had shot him
3 right at the entry into the driver's side door there was no
4 blood on the ground at that location.

5 A. There was no ground the bloo -- you know, no no blood
6 there. I feel like if it was a head or that kinda shot you
7 would had definitely had some blood in that area.

8 Q. And even if if if he had stumbled away there still woulda
9 been some blood most likely on the ground on the way to where
10 he fell, is that correct?

11 A. Yes, ma'am, and the other thing too is, uh, if you got
12 the pictures don't reflect or whatever you go out, that's an
13 angle that road is, I didn't realize there's that much of
14 angle on on that street, so, uh, obviously it's goin' downhill
15 from where he -- from from driver's side down and they're
16 showin', uh, ---

17 Q. It's ---

18 A. --- down ---

19 Q. --- and the the jury was able to see the the scene of the
20 crime, weren't they?

21 A. They were.

22 Q. And and ---

23 A. I think that was a big part of it to have them see the
24 the angle, where the angle coulda been from the bullet and so
25 forth.

BARRY BARNETTE - REDIRECT EXAMINATION BY MR. TEAGUE

1 Q. And so based on the location of the defendant's car the
2 front end of the car was on the higher part of a hill, the
3 back end where the victim was located ---

4 A. Was on the lower.

5 Q. --- on the lower end. Okay, thank you, that's all I
6 have, Your Honor.

7 REDIRECT EXAMINATION BY MR. TEAGUE:

8 Q. Are you aware if any blood was found on the back of the
9 Buick?

10 A. I'd have to review my notes to see, to check ---

11 Q. Okay.

12 A. --- for sure ---

13 Q. Uh, ---

14 A. --- but most the blood was behind the Buick on the road
15 if I remember right where he laid, ---

16 Q. Okay.

17 A. --- it was where all the blood was basically.

18 Q. Was ---

19 THE COURT: Where was it, please.

20 THE WITNESS: It was behind -- at the Buick where the
21 bo -- he's got the diagram there, it's where the body was
22 found, that basically he fell, appeared to fell right, fell
23 right there.

24 THE COURT: Okay.

25 BY MR. TEAGUE:

BARRY BARNETTE - REDIRECT EXAMINATION BY MR. TEAGUE

1 Q. But are you aware of any any testimony or evidence that
2 was provided to the jury to show to them, show them that there
3 were -- there was addition -- that there was drops a blood at
4 the front a the car?

5 A. The only pict -- uh, you know, I I didn't see any blood
6 from that standpoint, there was pictures obviously there
7 pictures from all locations and from different angles, the
8 problem was we, ya know, obviously we couldn't enter the body,
9 'cause obvious that be too prejudicial but if I -- jury didn't
10 even see that so if the jury woulda saw that, I think it would
11 end in a stronger argument from that standpoint but obviously
12 they weren't allowed 'cause they're too prejudicial from that
13 standpoint.

14 Q. Had but I'm -- if you would an -- uh, do do ya know if
15 any any evidence or testimony was provided to the jury to to
16 at least allow them the opportunity to know that there were --
17 was blood at the fronta the car?

18 A. Well obviously State Exhibit 13 was a picture that was
19 entered and and obviously they could see that picture and see
20 what it showed.

21 Q. Okay, so just from the naked eye?

22 A. Possibly from what, you know, I mean, all that was
23 entered in and I I know that's not the exact picture that
24 we're obviously talkin' about, I don't know what that picture
25 showed. I know it was -- had to be in color 'cause we don't

MOTIONS AND MATTERS

1 enter black and whites.

2 MR. TEAGUE: Okay, thank ya.

3 THE COURT: May this witness be excused?

4 MR. TEAGUE: Yes, Your Honor.

5 MS. WHITE: Yes, Your Honor.

6 THE COURT: Thank you, sir.

7 THE WITNESS: Thank you.

8 (Whereupon, the witness left the stand.)

9 THE COURT: Where are we for the day? I mean, I know
10 we've got people who've got kids to pick up, it's 5:30 and I
11 don't mind goin' but I ---

12 MR. TEAGUE: I I have no problems with finishin' tomorrow
13 and one other issue that I have is with O -- the Investigator
14 Talanges he said he could be here tomorrow so I could also do
15 him and it looks like I do need to get testimony from him
16 'cause, uh, Solicitor Barnette wasn't able to testify as to
17 those issues.

18 THE COURT: Right. How long do, I I know this is a guess
19 but how long most -- how many more witnesses? Two more ---

20 MR. TEAGUE: It's ---

21 THE COURT: --- how long do ya think they'll take ---

22 MR. TEAGUE: Uh, ---

23 THE COURT: --- roughly?

24 MR. TEAGUE: --- I would hope that I could finish those
25 in in one hour or less I would hope.

MOTIONS AND MATTERS

1 THE COURT: Okay. And how many witnesses do you intend,
2 do you ---

3 MS. WHITE: Your Honor, if he calls Mr. Brough then the
4 State's gonna present no other witnesses, we'll just
5 cross-examine.

6 THE COURT: Very good. Alright, guys, we're gonna break
7 for the day and, uh, we'll see you tomorrow at 9:30 and, uh,
8 and we'll resume testimony at that point.

9 MR. TEAGUE: At 9:30, Your Honor?

10 MS. WHITE: Or ni ---

11 THE COURT: Yeah, I think ---

12 MS. WHITE: Okay.

13 THE COURT: --- so, I think ---

14 (Whereupon, a discussion was held off the record.)

15 MR. TEAGUE: Thank you.

16 MS. WHITE: Thank you.

17 THE COURT: Yes, sir.

18 (Proceedings June 26, 2014)

19 (Whereupon, a discussion was held off the record.)

20 THE COURT: Alright, Mr. Teague, you ready to proceed?

21 MR. TEAGUE: Yes, Your Honor.

22 THE COURT: Ms. White, you ready?

23 MS. WHITE: Yes, Your Honor.

24 THE COURT: Would you call your next witness, Mr. Teague.

25 MR. TEAGUE: Uh, if I could before I do that, I talked to

MOTIONS AND MATTERS

1 the State, if I could enter the, uh, SLED analysis report into
2 evidence, I do don't think there's any objection.

3 MS. WHITE: No, sir, no objection.

4 THE COURT: Admitted without objection.

5 (SLED analysis report marked Applicant's Exhibit No. 11
6 for identification and admitted into evidence.)

7 MR. TEAGUE: Okay, what number?

8 COURT REPORTER: Number 11.

9 THE COURT: SLED analysis report?

10 MR. TEAGUE: It's the entire SLED report, yes.

11 THE COURT: Yes.

12 MR. TEAGUE: Number?

13 COURT REPORTER: Eleven.

14 MR. TEAGUE: It's Exhibit 11.

15 MS. WHITE: Is that Number 11 she said?

16 MR. TEAGUE: Yeah.

17 (Whereupon, a discussion was held off the record.)

18 MR. TEAGUE: Call Officer Talanges to the stand.

19 (Whereupon, the witness came forward.)

20 THE BAILIFF: Come on. Left hand on the Bible, raise
21 your right hand.

22 ROBERT CHARLES TALANGES, having
23 been first duly sworn, testified as follows:

24 THE BAILIFF: Have a seat, please.

25 DIRECT EXAMINATION BY MR. TEAGUE:

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. TEAGUE

1 Q. Could you state your full name for the record, please.

2 A. Uh, Robert Charles Talanges.

3 Q. Okay, and do you recall, uh, working on a case of State
4 vs. Damia -- Damon Jones back in 2005?

5 A. Uh, I was just reading over reports that reflect, yes, I
6 do.

7 Q. Okay, and tell me what your role was in that case.

8 A. Uh, my role was to respond to location, uh, photograph
9 and collect any and all evidence at that scene.

10 Q. Okay, tell me what that entailed, what would ya do after
11 with the evidence that you collect?

12 A. Pardon me?

13 Q. What would you do afterwards after you collected the
14 evidence?

15 A. Uh, after collection or after collection of evidence, uh,
16 it would be submitted or, uh, be analyzed if it was, uh,
17 deemed necessary for evidence for, uh, SLED to to, uh, analyze
18 whatever evidence we send to them.

19 Q. Okay. Would you actually do an analysis or would all the
20 analysis be performed by SLED?

21 A. Only thing else is I woulda done woulda been latent print
22 work because I was AFIS qualified at that time, still am, uh,
23 firearms, toolmarks, uh, DNA or blood, anything, it would all
24 be submitted out.

25 Q. Okay, and was it your protocol to send everything that ya

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. TEAGUE

1 had down to SLED?

2 A. Uh, no, it wasn't that protocol.

3 Q. Okay, what was the protocol?

4 A. At the time whatever investigator wanted submitted out
5 basically.

6 Q. Okay, and who was the investigator?

7 A. Uh, I had several there I know that.

8 Q. Okay.

9 A. According to the report I had, uh, Investigator Saar, I
10 know there was, uh, Lieutenant Lamb there, uh, that's the only
11 two I see in the report.

12 Q. Okay, would you normally send, uh, the victim's clothes
13 to SLED?

14 A. It all depends, all depends what they're looking for on
15 it, if they're lookin' for GSR.

16 Q. Okay, so if it, if it -- there was an issue with GSR, you
17 would send those clothes to SLED?

18 A. Yes, they would be.

19 Q. Okay. Uh, so you you were out there the night of the
20 incident, is that right?

21 A. I got called at a incident, that's correct.

22 Q. Okay, and s -- and you photographed the scene ---

23 A. That's correct.

24 Q. --- correct? Okay, I'm gonna hand you been marked as
25 Exhibit 5 to the Applicant's case, uh, is that a photograph

1 that you took?

2 A. Photograph of a vehicle. Uh, from what I seen at the
3 other photographs that you showed me earlier it looks to be
4 the same vehicle that we discussed.

5 Q. If that photograph was entered through you at trial, you
6 woul'da -- it would've been a photograph that you would have
7 taken, is that right?

8 A. Yes, any ---

9 Q. Okay.

10 A. --- photographs entered.

11 Q. And, uh, from looking at that photograph, did you do your
12 reports in this case? You do reports that you provide to the
13 investigator, is that right?

14 A. That's correct.

15 Q. And from from the photographs that you took and what ya
16 observed, you you, uh, performed your reports, is that
17 right?

18 A. That's correct.

19 Q. Okay. Uh, did you find any blood on the car?

20 A. Uh, per my report I did.

21 Q. Okay. Do you notice any blood in that photograph?

22 A. You, uh, pointed out earlier that, uh, there was a spot
23 up on the roof area.

24 Q. Do you see a spot on the roof?

25 A. I see a spot there, I can't say if it's blood on that.

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. TEAGUE

1 Q. I'm gonna hand you, uh, what I believe is a a drawing
2 that you produced through your investigation, is that right?

3 A. Yes, sir.

4 Q. Okay, and on that drawing there's four dots on the car:
5 two two on the windshield, two on the hood and one on the roof
6 roof, uh, ---

7 THE COURT: Where where are the dots?

8 THE WITNESS: Right on the windshield, the roof and hood
9 on driver's side.

10 BY MR. TEAGUE:

11 Q. Okay. What do those dots stand for?

12 A. There should be three other diagrams with this so ---

13 Q. Okay.

14 A. --- do do you have the other diagrams as well?

15 Q. Uh, I don't have 'em handy.

16 A. The other diagram will stipulate, uh, exactly what
17 evidence is or what number it is, stuff like that.

18 Q. Okay. Uh, well from this photograph can you tell what
19 those dots would be?

20 A. From this photograph, uh, just reading my report it just
21 said I I found blood spatter up on the the roof and the
22 windshield area.

23 Q. Okay, and this is, I'm gonna hand you what's been marked
24 as Applicant's Exhibit 4 and if you would, uh, just indicate
25 where in your report it shows there was blood on the car.

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. TEAGUE

1 A. Uh, second page 'bout midway says, uh, uh, I and it says
2 several swabbings of the windshield driver's side of the Buick
3 tag number of 268 tango Mary Mary parked in front of [REDACTED]
4 [REDACTED], uh, spatter in the windshield was medium size spatter,
5 a large drop located on the roof or the vehicle driver's side
6 so ---

7 Q. Okay.

8 A. --- windshield, hood and and roof area.

9 Q. Okay. What does medium size mean?

10 A. Uh, let's see, it's .2 millimeters and little bit bigger
11 than that so it's ---

12 Q. Okay.

13 A. --- it's very small.

14 MR. TEAGUE: I'm gonna mark this, uh, drawing as a
15 Exhibit 12 to the Applicant's ---

16 MS. WHITE: No objection, Your Honor.

17 THE COURT: Admitted without objection.

18 (Drawing marked Applicant's Exhibit No. 12 for
19 identification and admitted into evidence.)

20 BY MR. TEAGUE:

21 Q. Officer, I also hand you what looks to be a report that
22 you may have performed, is that a report that you would have
23 performed in relation to this case?

24 A. It's gonna be a property evidence sheet ---

25 Q. Is it, ---

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. TEAGUE

1 A. --- that's ---

2 Q. --- is it somethin' that you ---

3 A. That I generated?

4 Q. Yeah.

5 A. Yes, sir, it is.

6 Q. Okay, and I have a outline there and it says "four
7 swabbings", would that be in relation to the blood on the
8 car?

9 A. If I recall that's gonna be correct.

10 Q. Okay. I'm gonna enter that as Exhibit 13 to Applicant's
11 case.

12 MS. WHITE: No objection, Your Honor.

13 THE COURT: Admitted without objection.

14 (Property evidence sheet marked Applicant's Exhibit
15 No. 13 for identification and admitted into evidence.)

16 BY MR. TEAGUE:

17 Q. Okay, based off of your review of your report, what you
18 remember from the case, this diagram, did ya find any blood at
19 the back of the car on the car?

20 A. On the car no I did not.

21 Q. No you didn't, okay. Do you recall, you may not recall
22 this but at trial did Solicitor Barnette or the applicant's
23 attorney ask you about the blood located on the fronta the
24 car?

25 A. I don't recall, ---

1 Q. You don't recall?

2 A. --- it's -- I was lookin' over the transcript real quick
3 to see ---

4 Q. Okay.

5 A. --- what it said.

6 Q. But you would, you would rely on what the transcript
7 says.

8 A. I would have to.

9 Q. Okay. Okay, uh, were you ever asked to give an o -- an
10 opinion or anything to anyone of how you believed based off of
11 your photographs and the blood that you found at the scene of
12 how the accident or the incident occurred?

13 A. Repeat that again.

14 Q. From from your investigation, photographs that ya took,
15 the blood that you found at the scene, were ya ever asked to
16 give any type of opinion as to how you believed the shooting
17 occurred?

18 A. Uh, no, sir.

19 Q. Do you have any opinion based off of the, uh, photographs
20 that you reviewed here today and and in ---

21 MS. WHITE: Your Hon ---

22 Q. --- perform an investigation?

23 MS. WHITE: --- Your Honor, I would just object at this
24 point. He said that he had no independent recollection until
25 reviewing this, I don't know that he can offer an opinion

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. TEAGUE

1 today without seeing all the evidence and being present there,
2 he's only had a chance to look at a couple a photos.

3 MR. TEAGUE: I have an additional photograph I'd like ---

4 THE COURT: Le -- let me just, let me ---

5 MR. TEAGUE: Okay.

6 THE COURT: --- address the objection. Uh, I do
7 understand he says he has limited recollection, uh, but I
8 think you're gonna have to do further foundation to establish
9 his, uh, ability to give an opinion in the area you're asking
10 him to give okay, sir?

11 MR. TEAGUE: Okay, Your Honor.

12 BY MR. TEAGUE:

13 Q. Officer, I'm gonna hand ya another photograph, it's a
14 photograph of where, uh, Sigida Long after being shot ended up
15 at the crime scene, have you see -- did you -- would you have
16 taken that photograph?

17 A. Uh, yes, I did.

18 Q. Again, have you had a chance to review that photograph?

19 A. I have now yes, sir.

20 Q. Okay, and and you notice that there's blood on the
21 sidewalk leading towards, uh, Mr. Long, ---

22 A. That's correct.

23 Q. --- is that right? And so from the review of the first
24 photograph that I showed you and this photograph, uh, can you
25 provide an opinion as to how you believed the shooting would

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. TEAGUE

1 have occurred?

2 MS. WHITE: Your Honor, I I feel like he's almost asking
3 for an expert opinion and and the cause ---

4 THE COURT: He is ---

5 MS. WHITE: --- of death ---

6 THE COURT: --- asking for ---

7 MS. WHITE: --- and he ---

8 THE COURT: --- expert opinion.

9 MS. WHITE: --- he's not been qualified as an expert and
10 doesn't ---

11 THE COURT: No, sir, you need ---

12 MR. TEAGUE: Well ---

13 THE COURT: --- to do that.

14 MR. TEAGUE: --- do you ---

15 THE COURT: I sustain the objection.

16 MS. WHITE: Thank Your Honor.

17 BY MR. TEAGUE:

18 Q. Officer, uh, tell me about your training as a, um,
19 investigator a crime scenes.

20 A. I started in about 1997, I took, uh, numerous courses
21 through SLED, did an internship through SLED for basic crime
22 scene analysis, uh, crime scene evidence collection,
23 photographic photographing, uh, took, uh, my my more expertise
24 is in latent prints versus I guess, uh, I guess crime scene
25 reconstruction, uh, I never had a class in that so I could

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. TEAGUE

1 not ---

2 Q. Have ya ev -- have ya ever done crime scene
3 reconstruction?

4 A. Uh, no I have not.

5 Q. Okay, have ya ever been qualified as an expert at trial
6 to provide an opinion based on the photographs and, uh,
7 investigations performed to provide an opinion as to the
8 reconstruction?

9 A. Uh, never.

10 Q. You never have?

11 A. Uh, no, sir.

12 Q. Okay. I'll withdraw the, uh, previous question.

13 THE COURT: Okay, sir.

14 MR. TEAGUE: Thank you. I would like to offer this
15 photograph as Applicant's Exhibit 14.

16 MS. WHITE: No objection, Your Honor.

17 THE COURT: Admitted without objection.

18 (Photograph marked Applicant's Exhibit No. 14 for
19 identification and admitted into evidence.)

20 MR. TEAGUE: Thanks.

21 BY MR. TEAGUE:

22 Q. Did you -- would you have taken any additional
23 photographs of the blood droplets on the windshield or the
24 hood?

25 A. As, in, uh, scaled photographs, uh, ---

1 Q. Um-hum.

2 A. --- at this point I can't, I can't recall if I did or did
3 not, uh, I I didn't get the chance even to review the case
4 file so I couldn't tell you what photographs are even in this
5 file.

6 Q. Okay, and is that the normal, if you, if you did find
7 blood and draw a diagram, is it normal, your normal protocol
8 to not photograph that blood on the car?

9 A. It should be photographed.

10 Q. It shoulda been photographed?

11 A. That's correct.

12 Q. Okay, and if it's in your report although it's not
13 photographed, you would testify that that blood was present on
14 the car.

15 A. Correct.

16 Q. Okay. I don't have any further questions for ya, thank
17 you.

18 THE COURT: Cross-examination.

19 MS. WHITE: Uh, just briefly.

20 CROSS-EXAMINATION BY MS. WHITE:

21 Q. Mr. -- Officer Talanges, you did testify at the trial,
22 uh, for Mr. Jones, did you not?

23 A. Uh, yes, ma'am.

24 Q. Okay, and you've testified that you don't really recall
25 what obviously 'cause this was 'bout eight years ago at

ROBERT CHARLES TALANGES - CROSS-EXAMINATION BY MS. WHITE

1 trial?

2 A. Uh, just overlooking the photos and read report, uh,
3 that's about as much as I do recall about it.

4 Q. Okay, so in regards to anything that is in the report
5 testified to or not, this is, you're just gonna rely on that
6 without havin' a chance to review and actually independently
7 re-examine all the evidence, determine if there were photos or
8 if there were swabs or anything of ---

9 A. That's correct.

10 Q. Okay.

11 MS. WHITE: Uh, I think that's all I have, Your Honor.

12 THE COURT: Any redirect?

13 MR. TEAGUE: No, Your Honor.

14 THE COURT: May this witness be excused?

15 MS. WHITE: Yes, Your Honor.

16 MR. TEAGUE: Yes, Your Honor.

17 THE COURT: Okay, thank you, you're excused, sir. Uh,
18 would you call your next witness, please.

19 (Whereupon, the witness left the stand.)

20 MR. TEAGUE: I call Mr. Brough to the stand.

21 (Whereupon, the witness came forward.)

22 CHRISTOPHER BROUGH, having
23 been first duly sworn, testified as follows:

24 THE BAILIFF: Have a seat, please.

25 DIRECT EXAMINATION BY MR. TEAGUE:

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 Q. State your name for the rec, please.

2 A. Christopher Brough, B-R-O-U-G-H.

3 Q. Alright, and tell me what your involvement was with the
4 State vs. Jones case.

5 A. I was Mr. Jones's trial counsel. I was appointed to his
6 case back in, uh, 2005, uh, when I was working as an assistant
7 public defender with the Spartanburg County Public Defender's
8 Office.

9 Q. Okay. And, uh, have you had an opportunity to review his
10 post-conviction relief application?

11 A. I had reviewed it briefly yes, sir.

12 Q. Okay. Alright, one of the issues that he indicates is
13 that he wasn't provided the DN -- the reports from SLED, the
14 fingerprint analysis report, he also indi -- do you know if
15 that was provided to, uh, Mr. Jones?

16 A. In terms of the fingerprint analysis report as to the on
17 the weapon, is that what you're referring ---

18 Q. Yeah, ---

19 A. Okay. Uh, ---

20 Q. --- performed ---

21 A. --- I believe it's, ---

22 Q. --- by SLED.

23 A. --- I believe it was testified to at trial that those
24 prints were S prints in the magazine of the weapon. If I
25 recall correctly, I believe I need to double check my notes on

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 this, that the magazine was actually had been removed from the
2 gun and was found separated from the gun, ---

3 Q. Um-hum.

4 A. --- uh, and those items were not actually submitted to
5 SLED for testing, ---

6 Q. Okay.

7 A. --- and I believe that's what Officer Talanges testified
8 to at trial. ---

9 Q. Okay, uh, so you don't -- but do you know whether or not
10 before the trial the SLED report was provided to Mr. Jones?

11 A. There would not be a SLED report if it wasn't tested.

12 Q. There was never one, ---

13 A. No, s ---

14 Q. --- not by Spartanburg County ---

15 A. All that we had I had shared with Mr. Jones at the time
16 that I had received it.

17 Q. Okay.

18 A. I did receive some discovery little bit later about a
19 couple weeks before trial, uh, which consisted of I believe
20 the, uh, coroner or autopsy report and some additional
21 evidence and I did go over that with him forthwith upon
22 receiving that but ---

23 Q. Okay.

24 A. --- I I had gone over all of his evidence with him
25 prior ---

1 Q. Okay.

2 A. --- to trial so . . .

3 Q. And so, uh, do you know if he ever received a signed
4 coroner's report?

5 A. I believe I sent him a complete copy of everything I had
6 in my file.

7 Q. Okay, so if you had it it went to him ---

8 A. Yes, sir.

9 Q. Alright.

10 A. --- including even the, I don't necessarily know I was
11 obligated to, including my personal notes from the case. I
12 never attempted to hide anything from Mr. Jones.

13 Q. Okay. Well let's, uh, as to the blood on the car, were
14 you aware that there was blood, there were reports indicating
15 there was blood on the car around the driver's side door?

16 A. There were two reports indicating that there was some
17 blood, however the vast majority of the blood as demonstrated
18 in the photographs was actually at the rear of the vehicle.

19 Q. Okay. Was there any blood at the rear of the vehicle?

20 A. At the rear of the vehicle?

21 Q. On the vehicle at the rear, sorry, that was -- said that
22 the wrong way.

23 A. Okay. Uh, I'd have to double check the photographs, uh,
24 I don't necessarily recall there being o -- any on the vehicle
25 itself at the rear. I do recall that there being a

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 significant puddle of blood, uh, on the roadway by the rear of
2 the vehicle which is where the victim's body was found in the
3 case.

4 Q. Okay. In reference to the victim's body, there's a
5 Exhibit, Applicant's Exhibit 14, is there also blood further
6 back up the sidewalk from where he is laying even with his
7 waist?

8 A. I I would say that it on the sidewalk which he appears to
9 be almost adjacent to the sidewalk in the roadway, there there
10 is a little bit of blood on the sidewalk at that ---

11 Q. Okay, ---

12 A. --- point, sir.

13 Q. --- but he was only shot in his head, uh, is that
14 right?

15 A. That's what they had said yes, sir.

16 Q. Okay, so that was where the blood was coming from.

17 A. I would assume so.

18 Q. Okay, and then this blood on the sidewalk is not not
19 adjacent to his head.

20 A. It's not adjacent to his head, uh, it looks like there
21 might be some on his hand as well, he might have touched it
22 stumbling backwards.

23 Q. Okay. Your -- Mr. Jones' entire argument was
24 self-defense, is that right?

25 A. Yes, sir.

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 Q. Alright, and he claimed that he was at the door of his
2 car and the victim came to the door, an altercation occurred
3 and he pulled a gun and during the altercation the gun went
4 off and shot the victim, is that right?

5 A. Yes, sir.

6 Q. Okay. Now the solicitor's rendition of how the shooting
7 occurred was much different, is that, is that correct?

8 A. Yes, sir.

9 Q. Okay, what was his -- how was he portraying to the jury
10 how the shooting occurred?

11 A. Essentially the State was arguing that there there was no
12 altercation between the two of them, that Mr. Jones fired at
13 Mr. Long and the bullet traveled on a 45 degree downward path
14 and that was essentially the crux of their argument.

15 Q. Okay, and they were claimin' that that the, uh, victim
16 was standin' at the back a the car when he was shot, is that
17 right?

18 A. Um-hum.

19 Q. And that -- is that a yes?

20 A. Yes, sir.

21 Q. And that Mr. Jones was standin' in the yard, is that
22 right?

23 A. Yes, sir.

24 Q. Okay. Do you not -- when Mr. Jones' entire argument that
25 the shooting occurred at the door a the car and the State's

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 entire argument is that the shooting occurred with Mr. Jones
2 in the yard and that Mr. Long at the back a the car, did ya
3 not think it was important to get into evidence and let the
4 jury know that there were four to five droplets of blood at
5 the driver's side area of the car?

6 A. Not necessarily and if I may explain why.

7 Q. Okay.

8 A. The crux of his argument was essentially that it was
9 self-defense, that there was a struggle over the gun, now that
10 is specifically why we had hired and contracted with the GSR
11 expert who testified, Jeff Hollifield, uh, to come to court
12 for trial because his testimony and as well as during our
13 cross of Ila Simmons who I believe was the SLED agent that
14 spoke here yesterday there was indications that on the back of
15 the victim's hand that there was a possible positive analysis
16 for gunshot residue which would have indicated that he was in
17 close proximity to the gun and the weapon when it was
18 fired ---

19 Q. Okay.

20 A. --- and I believe that that was the significant forensic
21 evidence that was needed in order to show that that situation
22 had occurred.

23 Q. Well when you combine that evidence with four or five
24 droplets a blood on the, right at the driver's side door where
25 your client's sayin' the shooting occurred, wouldn't that have

1 bolstered his testimony and gone against the State's
2 evidence?

3 A. My problem with the the couple droplets of the blood that
4 you're referring to is is that there was a massive pool of
5 blood at the rear of the vehicle. The couple droplets of
6 blood that you had could easily have been blood spatter, it
7 could have easily been explained away. Uh, I don't think that
8 that substantiates the fact that the shooting necessarily
9 occurred right there, I don't think it disproves self-defense
10 either or or proves it any way whatsoever because my
11 understanding is is that Mr. Jones was essentially pulled
12 outta the vehicle and then the struggle ensued so regardless
13 of where the gun went off the important things to me in the
14 case were; number one, first of all, the Longs approached
15 Mr. Jones's vehicle because they were in an adjacent yard,
16 there were prior difficulties between the two of them where
17 Mr. Jones had been threatened with which we, uh, went into
18 those prior instances including witnesses that even ended up
19 testifying that Mr. Long was a known drug dealer, that he had
20 threatened Mr. Jones, etc., so from our standpoint what the
21 jury needed to see is that Mr. Long approached Mr. Jones,
22 there was a struggle, there was forensic evidence to support
23 the fact they were in close proximity when the weapon was
24 fired and ultimately that's what ended up occurring.

25 Q. Alright, but the State never had to explain the blood on

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 the car, did they, 'cause you never asked the question.

2 A. No, I don't know that I ever did ask the question, ---

3 Q. Okay.

4 A. --- I I didn't necessarily deem it to be that important a
5 piece of evidence in light of all the other evidence.

6 Q. Well do you recall the State's Mig -- Mignon Williams
7 testifyin' at trial?

8 A. Yes. ---

9 Q. Okay, and do you recall what her testimony was?

10 A. I I recall that, uh, her testimony, I need to if I can
11 just ---

12 Q. Yeah, I can give ya the trial ---

13 A. Uh, ---

14 Q. --- transcript if you'd like.

15 THE COURT: You got it, alright.

16 (Whereupon, counsel handed the transcript to the
17 witness.)

18 A. Yes, sir.

19 Q. Okay, and tell me what she -- how she testified that the,
20 uh, acts or the, uh, the shooting occurred.

21 A. She testified that Mr. Jones was standing in the yard,
22 raised his arm and fired.

23 Q. And so that was and then ultimately that's what the
24 solicitor argued to the jury, is that right?

25 A. They did make that argument yes, sir.

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 Q. Well was that their main argument that that was how the
2 shooting occurred?

3 A. That was their argument that that's how the shooting
4 occurred.

5 Q. Okay, and when Ms. Williams or yeah, when Ms. Williams
6 was on the stand did you, uh, ever present her with her
7 recorded statement?

8 A. No, but I did cross-examine her based upon her statement
9 and I believe she did back up in her cross-examination. I
10 think she was asked that and it stated that she couldn't
11 remember if it was at the front or the back of the car but
12 where he fell at is where he was shot so I I do believe that
13 we did a good job of going after her credibility as to her
14 ability to perceive everything.

15 Q. Okay, but did she say a lot more at trial than she did in
16 her recorded statement?

17 (Whereupon, counsel handed a document to the witness.)

18 A. Yes, sir, she did did say some additional things that
19 were not in her statement which is why we went through and
20 cross-examined her as to her credibility.

21 Q. Did ya hand, but did ya go through and impeach her
22 testimony with the recorded statement?

23 A. I did not specifically give her or at least I don't see
24 it in the record her recorded statement but I felt that we did
25 a sufficient job cross-examining her.

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 Q. Okay, I'll grab that back. Thanks. When you were, uh,
2 cross-examining Ms. Williams, did you ever ask her how far
3 Mr. Jones was from Mr. Long?

4 A. I did ask her if she was looking up across the street so
5 I did ask her that.

6 Q. You ask her how far Mr. Jones was from Mr. Long?

7 A. I believe I left it as being across the street.

8 Q. Okay. Uh, didn't the SLED ---

9 A. Well I I take that back. I do see in the transcript
10 where I asked her if it was several houses down and she said
11 well yes.

12 Q. But that was how far she was from the shooting, is that
13 right?

14 A. I believe that's what you just ---

15 Q. No, I'm asking you did you ever ask her if she witnessed
16 the shooting how far Mr. Jones was from Mr. Long?

17 A. No, I did not and I think the reason I didn't is when
18 Mr. Barnette was questioning her on direct and I believe he
19 asked that question, she made some reference that it was the
20 distance between the two of them as he was questioning her.

21 THE COURT: What was that response again?

22 A. That I believe Mr. Barnette had asked Ms. Williams 'bout
23 how far the distance was and she had testified that it was
24 about the distance between Mr. Barnette and herself in the
25 courtroom so no I did not ask that question, sir.

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 Q. Okay, do you think it woulda been important based on
2 SLED's testimony from the GSR that it was, coulda been within
3 five to six feet to have gotten an eyewitness to testify how
4 far it was from the victim?

5 A. Think the, I mean, obviously it would be helpful, I think
6 my main contention was to show that she was distracted, that
7 she wasn't exactly sure where the person fell at and to
8 discredit her testimony as a whole which is what I attempted
9 to do.

10 Q. Okay. Did you ever, uh, Officer Talanges in his
11 testimony noted that Mr. Jones had blood on his shoe, you
12 recall that?

13 A. Yes, sir.

14 Q. Okay. Did you ever go into any cross-examination of
15 Offs -- Investigator Officer Talanges in reference to the
16 blood on Mr. Jones' shoe?

17 A. I can't recall specifically that I did no, sir.

18 Q. Okay. Do you think that it would have been important to
19 emphasize that issue to the jury considering your client was
20 claimin' that it was a real close contact shot self-defense?

21 A. I believe he did state that there was blood on the
22 shoe.

23 Q. Okay, but you didn't cross-examine him on that issue?

24 A. Well I I was happy with the answer that he had given, I
25 didn't feel the need to allow him the chance to potentially

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 explain it away.

2 Q. Okay. Did you go into it in closing argument at all, do
3 you recall?

4 A. Uh, I can't recall that I specifically pointed that out
5 in my closing no, sir.

6 Q. Okay. Do you think it was important to point out at
7 clo -- to the jury in closing?

8 A. Well I I think that anything that woulda supported
9 Mr. Jones' claim would be helpful to point out in our closing,
10 I mean, you never close perfectly, I think we did a decent job
11 of arguing it.

12 Q. Okay. Ms., on the, uh, yesterday I went through with
13 Mr. Barnette several spots where he indicates it's up for
14 interpretation whether there was blood on the door, do you
15 recall that?

16 A. Yes, sir.

17 Q. Okay. I'm gonna find those spots real quick if you give
18 me one second. Page 202, start on page, on page, uh, this is
19 Mr. Barnette cross-examining your client and, uh, it's on
20 bottom of 201 to the top a 202, if you could read that, I
21 think it starts at 23.

22 A. Let's see, "So you jump outta the car, he rushes you, you
23 have the struggle right there in the doorway of the car?"

24 Answer: "It was right at the doorway, right around the
25 doorway area."

1 Question: "Okay, why isn't there any blood there?"

2 Answer: "I can't answer that."

3 Q. Okay. Why didn't you object to that question?

4 A. Uh, I I don't -- I suppose I could have said it was
5 speculation, he's just asking a question on cross-examination,
6 what would my objection have been?

7 Q. But why didn't you on cross-examination have Mr. J --
8 show Mr. Jones [sic] the photo and have him bring out that
9 there was blood on the car?

10 A. Well I think the photo that you're referring to it the
11 problem with that photo is is while the report says there's a
12 si -- it makes it seem as if there's a significant amounta
13 blood, when you look at that photo, doesn't really show a
14 whole lot.

15 Q. Okay. Why didn't you call, why didn't you ask Officer
16 Talanges about the blood that he noted in his report, four to
17 five droplets of blood on the car?

18 A. Again, I think the issue is is that the incident occurred
19 at Mr. Jones's vehicle and not necessarily where specifically
20 at that vehicle that it occurred ---

21 Q. Um-hum.

22 A. --- and and quite frankly my recollection is is I don't
23 believe Mr. Jones could tell you specifically other than when
24 the incident started and where it ended when that gun
25 specifically went off at what point.

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 Q. Okay. Why didn't you call Officer Lamb and have him
2 testify as to blood that he found on the car?

3 A. Again, I I -- the the four to five drops that you're
4 referring to when there is a large pool of blood elsewhere and
5 it is right at his vehicle didn't necessarily matter to me,
6 also from a practical standpoint if the vehicle's door is open
7 which it was in the diagram, ya can't pull somebody out with
8 the door blocking your way to have the altercation at the
9 front of the vehicle, it woulda ha -- if he pulled somebody
10 outta the car and the door opens like this (demonstrating), he
11 would've had to have come around behind that door which means
12 it didn't necessarily surprise me that the altercation
13 occurred at the rear of the vehicle.

14 Q. Well if he was shot in the door, could he not a stumbled
15 backwards and ended up where he did as I showed ya in
16 photograph which is it it Exhibit, uh, ---

17 MS. WHITE: Your Honor, I think that calls for
18 speculation ---

19 Q. --- 14.

20 MS. WHITE: --- at this point.

21 THE COURT: Overruled, go ahead.

22 THE WITNESS: I'm sorry, could you repeat the question.

23 BY MR. TEAGUE:

24 Q. So if the shot occurred right at the door, could he not
25 have after being hit then stumble backwards and ended up where

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 he is on Exhibit, Applicant's Exhibit 14?

2 A. Yes, that very well could have happened yes, sir, ---

3 Q. Okay.

4 A. --- but I I don't see how the blood on the the the hood
5 of the vehicle at the front necessarily helps that argument.

6 Q. Well the solicitor's arguin' to the jury that Mr. Jones
7 is in the yard shooting Mr. Long in the back, at the back a
8 the car and your client's testifyin' that he's at the door a
9 the car shootin' Mr. L -- havin' altercation, shoots Mr. Long
10 at the door a the car, why is it not important to at least
11 tell the jury and have the State have, when they have a high
12 burden reasonable doubt to have that in their head that there
13 is blood at the door a the car and it could have been an
14 altercation that occurred right there at the door and not as
15 the State's arguing?

16 A. If you bring that up, and I believe it was testified to
17 by everyone that there was no blood inside the vehicle, you
18 have a vehicle with the door open and if you're gonna argue
19 that it, the shooting occurred right there specifically in
20 fronta that door, I think that the jury would expect that
21 there'd be blood inside that vehicle which there wasn't.

22 Q. Okay. Um, at trial there was an issue with a, with your
23 expert hadn't performed a second part of a test, do you recall
24 that? There was a break in the, you had a night, apparently
25 there was a misunderstanding of whether a second part of the

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 GSR sticky tab -- what was your expert's name?

2 A. What's that?

3 Q. What was the expert's name?

4 A. Jeffrey Hollifield.

5 Q. Hollifield.

6 A. There was an issue with the second test, I don't know
7 that we ever did get that test done. Obviously I had

8 --- consulted with Mr. Hollifield, I relied on his expert
9 opinion, ---

10 Q. Okay.

11 A. --- in fact, I believe that I even met with Mr. Jones
12 with Mr. Hollifield present ---

13 Q. Okay.

14 A. --- on at least one occasion.

15 Q. Do you know what the second part a the test was for?

16 A. It was for the sticky tab test where they were looking
17 for gunshot residue particles I believe.

18 Q. And what do they, what does that second part determine or
19 what is the analysis? Are they try -- does that part to try
20 to determine how far the victim is from the shooter?

21 A. No, I I can't recall, I'm sorry.

22 Q. Okay. But the second part of the test was never
23 performed, is that right?

24 A. That that is correct but the ---

25 Q. Okay.

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 A. --- first part a the test did indicate a potential
2 positive. In other words, he was able to testify as was Ila
3 Simmons that there was potentially evidence that there was
4 gunshot residue, that it could potentially be gunshot residue
5 on the victim's hands.

6 Q. Okay. But had he done the second part a the test could
7 he have provided further testimony as to gunshot residue?

8 A. I I -- what it would show I don't know.

9 Q. Okay. Did you ever ask, uh, your expert to, uh, do an
10 analysis of the victim's clothes?

11 A. No, sir, I did not.

12 Q. Okay, and why not?

13 A. Because I believe that we had a positive on his hands and
14 if I did ask him to do that and the test came back and it
15 showed that they were some distance apart, I thought it would
16 hurt our self-defense argument.

17 Q. Okay. Uh, as to Ms. Williams did you ever con -- that in
18 her statement and in her testimony she indicates that she was
19 talkin' to somebody else, did you ever contact her to get that
20 person's identity?

21 A. Uh, both myself and, uh, the investigator working for me
22 at the public defender's office that time we do make contact
23 with that witness, I can't recall her name offhand. I do
24 recall her indicating that she did not actually see the
25 shooting, that she did hear the gunshots but she did not

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 actually witness anymore than that, uh, and I don't think in
2 light of that just hearing gunshots would've helped us in any
3 way whatsoever.

4 Q. Okay. Did you, uh, relay that information to
5 Mr. Jones?

6 A. Uh, I'm sure I most likely did, I, you know, I had
7 extensive conversations. I met with him a number of times.

8 Q. Okay. As to the, uh, the State put up Dr. Wren to
9 testify as to the angle of the shot, you recall that?

10 A. Yes, sir.

11 Q. Okay. Uh, did you per -- did you have any analysis done
12 or any, hire anybody to determine the angle of the shot?

13 A. We did not hire anyone to determine the angle of the
14 shot, I felt it was sufficient to cross-examine him based on
15 the information that we had and as I recall, uh, he did admit
16 that he did not use any measuring device whatsoever in coming
17 up with that angle, that he essentially eyeballed it and I
18 believe he admitted that on cross.

19 Q. Okay. Uh, Atiba Long's statement, I mean, testimony of
20 how the shooting occurred and Mignon Williams' testimony of
21 how the shooting occurred didn't correlate, did they?

22 A. I would say one of the problems with this case is is that
23 no one's testimony as to how the shooting occurred actually
24 correlated.

25 Q. Okay, but Mr. Long's statement kinda indicates similar to

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 Mr. Jones that it happened both individuals were on the
2 sidewalk, is that right? Think I may have it marked.

3 (Whereupon a discussion was held off the record.)

4 Q. I think I wrote down the page number.

5 A. No, I believe he indicated that the the scuffle did begin
6 in the car.

7 Q. And does he ever indicate that Mr. Jones is in the yard
8 when the shot went off?

9 A. Yes, sir.

10 Q. He does? Where at?

11 A. Yes, sir.

12 Q. Can you read that to me.

13 A. Okay. Said, "And where was the gun, what was he doing
14 with the gun at that time," this is page 67 line 23 starting
15 there, Answer: "He had the gun in his hand."

16 Question: "What was he doing with it?"

17 Answer: "He had it pointed at him. He was standing up.
18 We was in the street. He was standing up because their yard
19 is kinda like elevating, he was standing above me with the gun
20 in his hand."

21 Q. Now that's when he's pointing the gun at Mr. Atiba Long,
22 is that right, that's not at Sigida, the victim? Check out
23 the f -- where I I folded, I think it's right, think if you
24 look right here (indicating).

25 A. Oh, I'm sorry.

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 Q. Yeah.

2 A. Okay. Question: "When he shot your brother, what
3 happened after that?"

4 Answer: "He shot my brother, he stepped back in his yard,
5 I walked down to my brother, I had to proceed with caution
6 because the guy he just shot my brother."

7 Q. And so it doesn't say he was in his yard, he said he
8 stepped back into the yard after the shot.

9 A. Correct.

10 Q. Okay. Uh, and you can, you're welcome to look but would
11 you rel -- in closing argument did you decipher to the jury
12 how different Ms. Williams' statement was as opposed to
13 Ms. Long's statement as to how the shooting occurred?

14 (Pause.)

15 A. I don't, I don't know that I compared any directly
16 exactly, however I believe that I did go through both of their
17 statements and talk about why they weren't credible.

18 Q. Okay, uh, but you didn't compare the two?

19 A. I did indicate on let's see, page 268 beginning line 1
20 said, "Let's go to the eyewitnesses probly most key important
21 witness in the case the State has given you two eyewitnesses,
22 they gave you Atiba Long," and I went through a number of
23 things with Mr. Atiba Long, then on -- then I went through at
24 the end a 268, "Then the State put up another witness, Mignon
25 Williams, to try to assert that she saw what happened down the

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 street," and then I went through that so . . .

2 Q. Okay. But the State was arguing that Ms. L --

3 Mr. Long's testimony wasn't accurate, they were arguing only
4 Ms. Williams, isn't that what Mr. Barnette argued at closing
5 that Mr. Lon -- that Mr., uh, Jones was in the yard?

6 A. I believe he argued that their their stories are
7 consistent, I believe that's what he said.

8 Q. Yeah, and were they consistent?

9 A. I would contend not but I thought I did a decent job of
10 pointing that out.

11 Q. Okay. On 275 in Mr. Barnette's closing argument he
12 indicates no blood beside the driver side a the car, uh, do'
13 you think you should have objected to that statement in
14 closing?

15 A. Sorry, I don't ---

16 Q. 275, think it's near the -- maybe 274, I may have written
17 that down wrong.

18 A. Believe what he said on 2 ---

19 Q. Yes.

20 A. --- 74 on ---

21 Q. Yeah.

22 A. --- line 20 he said, "Well if that happened, where is the
23 blood in the car?"

24 Q. Well read the last sign -- leave the -- read the last
25 line, sorry.

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 A. And then he said, "There's no blood beside the driver's
2 side door a the car," ---

3 Q. Okay, uh, ---

4 A. --- which there wasn't any on the roadway beside it, I
5 don't know that that was an improper statement.

6 Q. Okay, but there there was some blood beside it, it was
7 just on the car, it wasn't on the sidewalk.

8 A. - He didn't say it was on the car; he said beside the car,
9 I mean, he's allowed to argue that, I can't just, I have to
10 have a basis for an objection.

11 Q. Okay. Uh, I have just a few, I'm gonna finish up here.
12 Are the -- this is a note, is this from a trial or beforehand?
13 It -- the the one that's outlined, I'm sorry, I didn't mean
14 to, this one right here (indicating.)

15 (Whereupon, the witness examined the document.)

16 A. I believe these are just some preparation notes.

17 Q. They're prep notes?

18 A. Yeah, not ---

19 Q. And ---

20 A. --- I don't think that this actually was anything other
21 than just some preparation stuff.

22 Q. Okay, and but it's just a note indicating the blood on
23 the car, is that proper ---

24 A. Uh, ---

25 Q. --- characterization of it?

CHRISTOPHER BROUGH - DIRECT EXAMINATION BY MR. TEAGUE

1 A. --- I think there's there's a note there talks about
2 that. I I think it's says what says, it was just some notes
3 that I had made regarding different things in the case.

4 Q. Okay, but it does indicate blood on the car, right?

5 A. I I i believe the report says that too ---

6 Q. Okay.

7 A. --- that you had brought up.

8 Q. Alright.

9 MR. TEAGUE: Your Honor, if I could have one second with
10 my client.

11 THE COURT: Yes.

12 (Attorney/client discussion held off the record.)

13 BY MR. TEAGUE:

14 Q. Uh, do you recall Mr. Jones filing a motion to ha -- for
15 you to or asking you to withdraw as counsel?

16 A. I remember that Mr. Jones had, uh, filed something with
17 disciplinary counsel, that we had a meeting afterwards, that
18 disciplinary counsel said that we hadn't done anything wrong.
19 I believe his main contention is we were trying to rush him
20 into a speedy trial I believe ---

21 Q. Um-hum.

22 A. --- is what he was arguing which ---

23 Q. Okay.

24 A. --- I don't believe I've ever heard of that before, uh,
25 and we did have a conversation afterwards. Uh, my

CHRISTOPHER BROUGH - CROSS-EXAMINATION BY MS. WHITE

1 recollection of that conversation is is that, uh, he was okay
2 with me continuing as his counsel and that I gave him the
3 option to have somebody else assigned to it, ---

4 Q. Okay.

5 A. --- that he wished me to continue.

6 Q. So he told you that he, that he wanted you to continue?

7 A. After all that had cleared yes, sir.

8 Q. Okay, so, uh, that do you believe there was a conflict of
9 interest there?

10 A. I don't think so, I mean, I did everything I could for
11 him.

12 Q. Okay.

13 MR. TEAGUE: Okay, Your Honor, that's all I have at this
14 time.

15 THE COURT: Ms. White.

16 MR. TEAGUE: Thank you, Mr. Brough.

17 MS. WHITE: Thank you, Your Honor.

18 CROSS-EXAMINATION BY MS. WHITE:

19 Q. Mr. Brough, uh, you made a statement that the problem was
20 that all of the witness's stories were inconsistent, ---

21 A. Yes, ma'am.

22 Q. --- and we heard stories and and testimony about the fact
23 that somebody said he was pulled out of the car and then shot,
24 uh, Ms. Williams said she saw him in the yard shooting,
25 Mr. Jones, what was his story, was that he was pulled out of

1 the car and shot?

2 A. Yes, ma'am.

3 Q. And then didn't his ---

4 A. Well he was pulled outta the car, there was a struggle
5 over the weapon, he got the weapon in order to defend
6 himself ---

7 Q. So got back in the car, got ---

8 A. Well ---

9 Q. --- the weapon ---

10 A. --- he he had because there had been prior threats made
11 against his life by the Longs, that that was his contention,
12 that there was a struggle over the weapon and then the gun
13 went off.

14 Q. And in fact his, I believe it was a relative of his that
15 was with him that night then gave another story that actually
16 said he was in the car when he shot.

17 A. Mr. Hardy.

18 Q. Mr. Hardy, is that right?

19 A. Yes, ma'am.

20 Q. So the fact that there might have been a couple droplets
21 of blood resulting from the shooting, there was no large
22 amount of blood at the driver's side door inside the car at
23 all.

24 A. That that's correct, there was nothing inside the
25 vehicle.

CHRISTOPHER BROUGH - CROSS-EXAMINATION BY MS. WHITE

1 Q. And there was no large amount of blood on the ground
2 beside the door.

3 A. No, there was not.

4 Q. Okay. And there's no large amount a blood on the ground
5 even as far back as the passenger side door, I mean, excuse
6 me, the back door on the driver's side?

7 A. On the back door I believe there there there was some
8 blood by the back door and by the rear of the vehicle as well,
9 uh, and we took that to be that that could have been where the
10 struggle ensued at that point. To me the main thing that
11 supported self-defense is the fact that the Longs approached
12 the vehicle, I mean, it's not as if Mr. Jones got out of his
13 vehicle looking for a fight, uh, they did approach his
14 vehicle. Uh, there were prior threats that had been made
15 against his life by them of which we put that into evidence
16 including the fact that I believe that the the victim was
17 actually a drug dealer who had threatened him, etc. and that
18 he was threatened at his son's birthday party, they threatened
19 to shoot him in the head and, I mean, we we had put all that
20 in and we'd actually even asked for a a specific self-defense
21 instruction, uh, that you don't necessarily you have the right
22 to act on appearances and you don't have to wait until after
23 you're necessarily assaulted so I I felt that the main thing
24 was is that they approached his vehicle, he did not approach
25 them and then that was the situation at that point.

1 Q. And in fact for jury charges you were able to have the
2 jury charged with voluntary manslaughter, involuntary
3 manslaughter, the self-defense charge, the State had the duty
4 to retreat and regarding the prior record of the defendant, is
5 that correct, does that sound accurate?

6 A. Uh, that we had no duty to retreat, is that what you
7 meant?

8 Q. Uh, the State had requested about the duty to retreat and
9 let me get back in here that ---

10 A. Oh, that that was part of the standard self-defense ---

11 Q. Part ---

12 A. --- instruction ---

13 Q. --- of the standard self-defense, correct.

14 A. --- and we had actually drafted or I had drafted a a
15 specific self-defense instruction because, uh, we had cited to
16 a case where I actually believe that Judge Burch who was
17 trying it was specifically reversed for not doing that and
18 then we had gone on and asked for that instruction and on the
19 right to act on appearances and you don't have to wait until
20 after the other person has the drop on you, etc.

21 Q. And that was charged to the jury.

22 A. Yes, ma'am, ---

23 Q. Yeah.

24 A. --- it was.

25 Q. And in regards to the different stories about whether or

CHRISTOPHER BROUGH - CROSS-EXAMINATION BY MS. WHITE

1 not he stepped back into the yard or was in the yard, from the
2 photo you've seen and from the testimony at trial there was a
3 concrete wall that divided the sidewalk from the yard, is that
4 correct?

5 A. I I believe so, I'd have to look at it ---

6 (Indiscernible cross-talk.)

7 MS. WHITE: May I approach, Your Honor.

8 THE COURT: Yes, ma'am.

9 (Whereupon, counsel approached the witness.)

10 MS. WHITE: Well it's not in any of these pictures. I
11 can, uh, pull it up or I can -- let me look at the testimony.

12 (Indiscernible cross-talk.)

13 MS. WHITE: Do you have ---

14 MR. TEAGUE: What are you looking for?

15 MS. WHITE: The one that shows the yard with the concrete
16 wall.

17 (Whereupon, a discussion was held off the record.)

18 MR. TEAGUE: Is that the one?

19 MS. WHITE: Yeah, yeah.

20 BY MS. WHITE:

21 Q. So does this accurately from your recollection show
22 the ---

23 A. Yes, ma'am.

24 Q. --- the sidewalk, there's a concrete ---

25 A. Yes, ma'am.

1 Q. --- wall? Okay, and at that point is that couple a feet
2 from the car?

3 A. I I I would guess, I I I didn't ---

4 Q. Yeah.

5 A. --- measure it, I can't recall offhand ---

6 Q. Okay.

7 A. --- but it doesn't look to be that far.

8 Q. Okay. And so when the testimony could have been he
9 stepped back into the yard, it actually could very well have
10 matched the State's argument that he was standing on the wall
11 and shooting down.

12 A. Uh, potentially. Like like I said, I mean, it it it it
13 could have. I mean, I think one of our contentions was always
14 that the downward angle was never accurately measured so . . .

15 Q. And you were able to cross-examine Dr. Wren on that and
16 have him acknowledge that he actually could be anywhere within
17 15 degrees difference, that he did not use anything scientific
18 to measure.

19 A. Yes, and I believe, I also objected at his being qualified
20 as an expert and point out the fact that he was not board
21 certified in forensic pathology even though he does do most of
22 the autopsies in this county.

23 Q. Okay. Now in regards to, uh, what you did, just some
24 overall testimony, uh, you said that you had an investigator
25 for the case?

CHRISTOPHER BROUGH - CROSS-EXAMINATION BY MS. WHITE

1 A. In the public defender's office they had a couple of
2 investigators that would help you just assist tracking down
3 witnesses, etc., it wasn't a, it wasn't a hired private
4 investigator or anything like that, uh, but on occasion they
5 would help you track down some witnesses.

6 Q. Okay. And were you able to, did you feel like you were
7 able to talk to all the witnesses that were available in the
8 case?

9 A. Yes, I I I felt as if we had talked to all the witnesses,
10 uh, that we needed to speak to, uh, and I I felt that,
11 realistically I I felt that this is probably not the result
12 that should have been reached, uh, I will tell you that. I
13 did receive a letter after, uh, the verdict and I had appealed
14 the case at that point order to preserve Mr. Jones' right to
15 appeal by Mr. Kershner who I believe was present here
16 yesterday, uh, and in that letter he actually went through a
17 number of detailed factual findings and all of them actually
18 supported self-defense which is essentially what we argued,
19 uh, and, you know, from from an attorney standpoint that's
20 very frustrating, uh, you know, I did have some concerns about
21 trying the case in light of the Dr. Wren report that came out
22 in November talking about the downward angle, uh, I discussed
23 the plea offers that were available to Mr. Jones at the time,
24 uh, but, you know, I mean, that's essentially where we came
25 from.

1 Q. And in regards to plea offers your client did not ---

2 A. He was ---

3 Q. --- want to accept ---

4 A. --- initially offered a plea of voluntary manslaughter of
5 25 years, uh, right before the trial he was offered a plea to
6 voluntary manslaughter, uh, in front of Judge Burch, that was
7 relayed to him as well, I think that's what he was referring
8 to when he said we had a conversation where I indicated he
9 might really consider pleading.

10 Q. And he did not wanna plead to that.

11 A. That's correct, I don't think he feels that he did
12 anything wrong, ---

13 Q. Okay.

14 A. --- I I really don't think he did, uh, and and, you know,
15 I think he was wanted to contest it at trial and, you know, I
16 I think this is one a these situations where perhaps the wrong
17 result was reached by the jury for whatever reason but again,
18 I don't know there's anything we coulda done differently that
19 would've been better or different or woulda helped him.

20 Q. Okay. In regards to, uh, I just wanna go back to the
21 testimony yesterday of Officer Simmons that testified about
22 possible tests that could have been done on the victim's
23 clothing, ---

24 A. Um-hum.

25 Q. --- she testified that at the time I believe at trial

CHRISTOPHER BROUGH - CROSS-EXAMINATION BY MS. WHITE

1 they testified it was a range of about it looked maybe coulda
2 been within 5 feet based on the gunshot residue, does that
3 sound like ---

4 A. I have to check. She said that, "Gunshot," and this on
5 page a hundred I believe on line 6 she said, "If you would
6 tell us the results of your findings and tell the jury how you
7 do gunshot residue, how you test for it and what your findings
8 are," and her answer was, "Gunshot residue is a mixture of
9 microscopic chemicals that come out of a gun when it's fired.
10 It can get on the hands of the person shooting the weapon or
11 anything in the proximity of a weapon 5 to 6 feet within the
12 range of the weapon when it's fired."

13 Q. Okay, and again on page 102 she says, "I can't
14 specifically say but in that caliber the range would be 5 to 6
15 feet." Did she -- she testified yesterday if she had been
16 able to do the clothing she might have been able to f --
17 change within another 2 to 4 feet, ---

18 A. Correct.

19 Q. --- do you think based on the si -- the distance would
20 you have wanted to do that potentially in this case, you think
21 it would have made a difference?

22 A. Uh, I I think that because there's also testimony about
23 the location of the gunshot residue, that it it wasn't just
24 the range, it was the location as well and there was testimony
25 that if there was gunshot residue on the back of someone's

CHRISTOPHER BROUGH - REDIRECT EXAMINATION BY MR. TEAGUE

1 hands, that would be consistent with them being near the
2 weapon when it was actually fired and I believe both she
3 testified and Mr. Hollifield testify that there was a
4 potential positive for gunshot residue that they couldn't
5 exclude that it was on the victim's, back of the victim's
6 hands, so I I think that from the proximity argument that
7 supported our claim on that.

8 MS. WHITE: Your Honor, I think that's all that I have
9 for this witness.

10 THE COURT: Any redirect?

11 REDIRECT EXAMINATION BY MR. TEAGUE:

12 Q. Mr. Brough, I just have a couple quick questions for ya.
13 Uh, could you have hired someone to determine the exact angle
14 of the shot?

15 A. No, I I don't know if the exact angle could be determined
16 or not, I I couldn't tell you that.

17 Q. Okay, but you didn't have it performed through to see.

18 A. I did not have somebody, I thought it was sufficient to
19 cross-examine on that issue.

20 Q. Okay. Can you -- Atiba Long's statement, uh, the
21 Attorney General indicated that Mr. Jones may have been in the
22 yard, the second paragraph of Mr. Long's statement, is there
23 any indication that Mr. Jones is not on the sidewalk, that, I
24 mean, doesn't he -- if you'll just read that second paragraph.

25 A. "I don't know who threw the first punch but my brother

CHRISTOPHER BROUGH - REDIRECT EXAMINATION BY MR. TEAGUE

1 and Damian got into a little scuffle. My brother was at the
2 car and the other guy was sitting in the car. I saw people
3 moving around in the car. I was walking around to the car to
4 see what was going on, the guy pulled out a gun and my brother
5 backed up. I don't know what type it was, all I know the guy
6 had a handgun. I heard the shot, my brother fell. I was
7 standing behind him when he shot my brother. When I walked
8 up, Damian turned the gun and pointed it face level at me, he
9 acted like he was going to shoot me, I told my mother call the
10 police."

11 Q. Okay, and so there's no indication that Mr. Jones was
12 standing in the grass in his recorded statement.

13 A. And I believe that Mr. Long did indicate that, uh, the
14 incident occurred at the car, started at the car, even in his
15 trial testimony.

16 Q. Okay. Do you recall scrapes on the victim's hands? I
17 don't know if that's in the trial.

18 A. No.

19 Q. Do you recall -- can you see scrapes on the victim's
20 hands?

21 A. It looks like there's some blood there.

22 Q. Okay, so so you don't recall lookin' at the photos and
23 seein' that there there was s -- in in the autopsy report that
24 there was some actual scrapes on his hands?

25 A. I haven't reviewed it prior to today, ---

CHRISTOPHER BROUGH - REDIRECT EXAMINATION BY MR. TEAGUE

1 Q. Okay.

2 A. --- if you have it, I'd be happy to look at it.

3 Q. Okay. Uh, did you, uh, ever argue the informa -- any any
4 reference to scrapes or the body possibly bein' moved right
5 after the shooting occurred?

6 A. I don't think I had anything to support the fact that the
7 body had been moved or anything of that nature.

8 Q. Okay. That's all I have. Thank you, Mr. Brough.

9 THE COURT: Thank you, sir, you may step down.

10 THE WITNESS: Thank you, sir.

11 (Whereupon, the witness left the stand.)

12 THE COURT: Mr. Teague, any further witnesses?

13 MR. TEAGUE: That's that's, uh, all the witnesses we
14 have, Your Honor.

15 THE COURT: Thank you, sir.

16 MS. WHITE: And, Your Honor, the State has no witnesses.

17 THE COURT: Alright. Thank you, gentlemen, for your
18 presentation and preparation, uh, obviously there's a lotta
19 information I need to digest in this case and so I'm gonna
20 take this matter under advisement, give you my decision.

21 MR. TEAGUE: Thank Your Honor.

22 MS. WHITE: Thank Your Honor.

23

24

25

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on June 25 and 26, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 5 through 151 inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

September 16, 2014

Margaret A. Woods

Margaret A. Woods, Court Reporter

in and for the State of South Carolina at Large.

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

THE STATE,)

Respondent,)

v.)

DAMION JACQUISE JONES)

Appellant.)

IN THE SOUTH CAROLINA COURT OF APPEALS

AFFIDAVIT OF VAUGHN KERSHNER

PERSONALLY appeared before me, Vaughn Kershner, who being duly sworn, deposes and says:

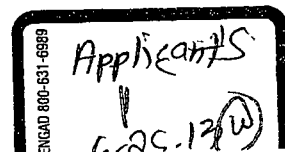
1. I was a juror in the murder case of State v. Damion Jones. The state's case was that Mr. Jones shot the victim in cold blood, and not out of self-defense.

2. The jury struggled to reach a verdict in this case. However, we ultimately found Mr. Jones guilty.

3. I subsequently wrote to trial counsel to notify him that I thought one woman juror, who I later described as being in her 40's with "big blonde hair," had improperly brought her own dealing with domestic violence and guns into the jury deliberations. Specifically, this juror was talking with another woman juror during deliberations about a gun being pointed at her head by her former husband, and that she knew how it felt.

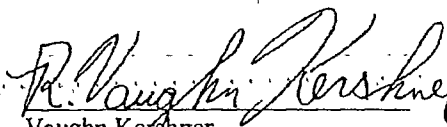
4. I felt this invited a verdict on an emotional basis based on this woman's prior dealings with having a gun pointed at her head by her ex-husband. I later learned, after an investigation, that this woman has now been identified as Juror Sandra T. McGraw. I very much regret that I "caved in," and ultimately voted to convict Mr. Jones.

5. I later learned that Ms. McGraw did not answer the *voir dire* question about anyone having been a victim of a violent crime. Although I am an engineer and not a lawyer, I understand that lawyers cannot intelligently choose to seat or dismiss jurors unless they are honest and reveal important facts about

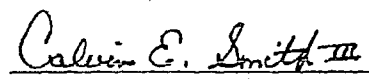


their life's experiences.

6. Finally, I would like to add that I am a law and order citizen and certainly not a person prone to have any sympathy for criminals. However, in this case, in my opinion, what happened to the accused, Mr. Jones, was very unfair. I am available to testify and to be cross-examined about the above if it will assist in righting this injustice.


Vaughn Kershner

SWORN TO before me this 19TH
day of JULY, 2008.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 02-06-2014

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG,)

THE STATE,)

Respondent,)

DAMION JACQUISE JONES)

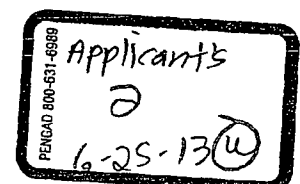
Appellant.)

IN THE SOUTH CAROLINA COURT OF APPEALS

AFFIDAVIT OF CALVIN E. "SKIP" SMITH, III

PERSONALLY appeared before me, Calvin E. "Skip" Smith, III, who being duly sworn, deposes and says:

1. I am a licensed private investigator in South Carolina, number 1754. I am also worked undercover for law enforcement.
2. I was retained by the Office of Indigent Defense, and Robert M. Dudek, to work on the murder case of State v. Damion Jones which I understand is on appeal this date in the South Carolina Court of Appeals.
3. I was provided information about a juror, Vaughn Kershner, who had written to trial counsel, Christopher Brough, following the defendant's murder conviction in this case. Mr. Kershner was raising to trial counsel the issue of misconduct in the deliberations because one woman juror had not revealed she was the victim of a violent crime. She said her ex-husband held a gun to her head. I understand that Mr. Brough would have struck her from the jury if she had revealed, when asked, during *voir dire*, if she had ever been the victim of a violent crime.
4. I interviewed Mr. Kershner who vividly remembered what occurred in the jury room during deliberations. Mr. Kershner described a blonde lady in her forties who was very talkative. Mr. Kershner heard this woman talking about being a victim of a violent domestic crime where her ex-husband put a gun



to her head. This juror was very adamant in talking about that incident.

5. My next duty was to investigate, and attempt to find this woman juror. I was able to identify her through my investigation as Sandra T. McGraw. I went to her house on five different occasions and each time there were vehicles in the driveway, but no one would come to the door.

6. Finally, I was able to set up an interview with her for May 5, 2008. Ms. McGraw was interviewed in the presence of her husband about the Stare v. Damion Jones case. Ms. McGraw told me that she remembered there was two holdout jurors who she thought were black females. She commented that Vaughn Kershner and the foreman or a teacher were very smart people.

7. Ms. McGraw was eventually asked directly if she remembered any discussion about a gun being pointed at anyone in the past being discussed during the jury deliberations in this case. Ms. McGraw told me she did not remember saying anything about a gun, but she acknowledged in the presence of her husband that her ex-husband had pointed a held a .357 magnum with the hammer back at her for a period of time. She expressed to me that she feared for her life, and that he had held the gun on her for some time. She ultimately was able to talk him down and get the gun away from him.

8. I already knew from interviewing Christopher Brough that Ms. McGraw, who we could not located by name at that time, had not revealed during voir dire that she was the victim of a violent crime, and that he would have struck her if she would have answered the question posed to all of the jurors

9. I am available to testify if Mr. Jones is given a hearing on this issue in the future.

Calvin E. "Skip" Smith III
Calvin E. "Skip" Smith, III

SWORN TO before me this 18TH
day of JULY, 2008.

Judy L. Smith (L.S.)
Notary Public for South Carolina
My Commission Expires: 02-21-2017

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

THE STATE,)

Respondent,)

v.)

DAMION JACQUISE JONES)

Appellant.)

IN THE SOUTH CAROLINA COURT OF APPEALS

AFFIDAVIT OF CALVIN E. "SKIP" SMITH, III

PERSONALLY appeared before me, Calvin E. "Skip" Smith, III, who being duly sworn, deposes and says:

1. I am a licensed private investigator in South Carolina, number 1754, and a licensed private investigator in North Carolina, number 3591.

2. I was retained by the Office of Indigent Defense, and Robert M. Dudek, to work on the murder case of State v. Damion Jones which I understand is on appeal this date in the South Carolina Court of Appeals.

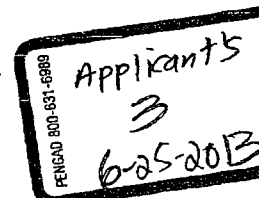
3. On July 18, 2008 I received three (3) affidavits to review and take to members of the jury in the Damion Jones trial which I had conducted interviews with to review and sign.

4. On the same date above I contacted juror #70 Vaughn Kershner by telephone and set up a meeting with him for the following morning of July 19, 2008.

5. Mr. Kershner and I met at 8:30 A.M. and he reviewed the affidavit as well as signing it with no hesitation or changes.

6. On July 19, 2008 I drove to the residence of juror #86 Sandra McGraw at [REDACTED] in Spartanburg, SC.

7. Again as before after knocking on the door several times with three (3) vehicles in the carport



and driveway and NO one answering I returned to my vehicle and departed the area.

8. I drove around the corner from the residence of Mrs. McGraw and called (864) [REDACTED] from my cell phone and Mrs. McGraw answered the phone.

9. At that time I explained to Mrs. McGraw the purpose of my visit and the phone call and asked her if she would read the affidavit and sign it.

10. Mrs. McGraw asked what was on the affidavit?

11. I explained that there was some question that during the Voir Dire questioning that maybe something had not been disclose.

12. Mrs. McGraw at that time got very defensive as her voice got loud.

13. Mrs. McGraw told me that she did not disclose the fact of a gun being pointed at her because it was no ones business.

14. Mrs. McGraw was getting very upset on the phone as I was trying to comfort and calm her down, and I would come to her residence at her convenience.

15. She asked me to read her the part of the Voir Dire that would require her to disclose the fact that she had a .357 pointed at her.

16. I read question #5, Have you or anyone you know ever been the victim of a violent crime?

17. Mrs. McGraw went on to say that she had done her job during the trial and that I was just trying to get that guy off.

18. I expressed to Mrs. McGraw that I had no connection to the trial and that I was only contracted to conduct the interviews based on information provided during the trial.

19. Mrs. McGraw asked me several times which jurors were talking about what she had said in the jury room.

20. I explained that I was not able to disclose that information and that if she would like to read the affidavit she could sign it or I would send it back unsigned.

21. Mrs. McGraw said to me at that time, "so if I had not told the truth about the gun being pointed at me this would not be happening".

22. I then explained to Mrs. McGraw that it is very important to always tell the truth.

23. At that time Mrs. McGraw told me to call her on Monday July 21, 2008, and agreed that I would be glad to wait until Monday.

24. On Monday July 21, 2008 I began calling (864) [REDACTED] 8 at approximately 11:30 A.M. and I received a busy signal throughout the afternoon until approximately 7:05 P.M. when Mr. McGraw answered the phone.

25. Mr. McGraw asked me to read the affidavit to him over the phone, which I did read it to him word for word.

26. Mr. McGraw went on to say to me that I/we were only trying to get this guy off.

27. Again I explained to Mr. McGraw that I had connection to the trial and that I was only conducting the interviews as well as the follow up to the interviews.

28. Mr. McGraw told me that he was waiting on a call from his attorney and that Mrs. McGraw would not sign the affidavit.

SWORN TO before me this 23rd
day of July, 2008.

Calvin E. "Skip" Smith, III
Calvin E. "Skip" Smith, III

Judy L. Smith (L.S.)
Notary Public for South Carolina
My Commission Expires: 02-21-2017

Exhibit #591

Entered By: R C TALANGES, On 2/26/2005 8:00:02 PM
Edited By: R C TALANGES, On 5/4/2005 11:03:47 PM

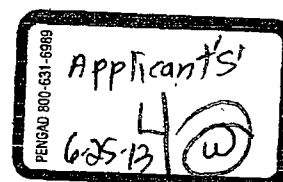


Exhibit 31

Title: Supplemental Report Talanges, R

02-25-05 18:48 hours, I Spo Talanges was contacted by Sgt McDonald in reference to a shooting call at [REDACTED]. Sgt McDonald advised the victim was shot in the head area. I responded to the incident location at [REDACTED].

18:58 hours, arrived at incident location. Area blocked off.

19:05 Entered the crime scene and proceeded to Video tape incident. The incident location was located in front of [REDACTED]. A Buick 4Dr vehicle was parked in front of the residence facing the wrong way. The drivers door was open and the head light were on. The vehicle's trunk was ajar. I observed at the rear of the vehicle a B/M subject laying on the ground near the curb. The b/m subject had a white cloth bundle around the top of his head, blood was present. Subject was wearing a green blue and yellow short sleeve shirt over a long sleeve white shirt, black jeans belt Timberland boots. The subject had a new York base ball cap laying on the ground next to the left middle torso area. I continued to video the incident scene from all angles. After video taping the incident area, I was advised by Sgt Brewton that the suspect entered the residence at [REDACTED] and placed the weapon on top of a cabinet, magazine in a chair and a bullet was laying in the floor of the residence. Officer Hall was standing guard overlooking these evidence items inside the residence. I video taped the inside area [REDACTED] showing the located evidence gun, magazine and bullet. After video tape the interior of the residence [REDACTED]. I returned to my vehicle and proceeded to taken 35MM photographs of the incident scene and [REDACTED] then took photograph in digital. While photographing the area of the victim, a spent shell casing was located on the sidewalk a several feet away from the victim. The spent shell casing was located in a crease area on the sidewalk at [REDACTED]. The shell casing was photographed. Upon arrival of the Coroner Wall, I continued to photograph the incident area. After all photographs were taken of the outdoor incident area, I entered and photographed the interior. Upon arrival of Inv Saar, I proceeded to make the evidence located at the incident scene. The following evidence was marked. 1- Victims location in roadway in front of [REDACTED] 2- shell casing. Photographs were taken showing the evidence #1 AND #2. I along with Inv Saar went to the residence were Spo Hall was guarding the gun, magazine and bullet. Entering, I observed evidence numbers placed were the evidence was located. The numbers observed were #13, #14 and #15. I asked Spo Hall who marked the evidence, Hall replayed Lt. Lamb. I removed the evidence numbers that were placed on the evidence and proceeded to photograph the interior of the room. The room is a bedroom with bathroom. The room has a separate entrance and a door leading the the rest of the residence. I was advised the residence is a board house. I took the photographs of the interior and the marked the evidence. The evidence a semi auto pistol with the hammer in the firing position was located on a cabinet neat the entrance door. A magazine loaded with rounds was located in a green chair next to the bed. also located was a bullet in the floor near the dresser that was located near the inside door that leads into the residence. After photographs of the items were taken, I re numbered a the evidence #3- Auto Pistol, #4- Magazine w/ bullets, #5- Bullet in floor. The interior of the residence was re photographed. After the evidence with number was photographed, returned to the victims location and photographs were taken of victim, the area of the victim was marked using couch, I checked the victim and located one gun shot wound to the right side head area about 5" from the right ear. I checked for an exit wound as Inv Saar took photographs of the victims injuries. I did not locate an exit wound on the victim. I removed all items from the victims pockets, and turned it over to the Coroner Office Inv Wall in the presents of Lt. Lamb, Inv Saar, Coroner Forester and patrol units. The items removed from the victim were photographed. I checked the victims body upper torso front / back areas for wounds. I observed in checking the victim, a large scrape to the top head area left of center, scrape to both left and right

6600-6600 backs, photographs were taken. After checking the victim, I could not find an exit wound on the victim. EMS Transport was contacted to remove the victim. Upon arrival of EMS Transport, the victim was removed and taken to the Hospital Morgue. I was advised the autopsy was joint to be at 9:00 am. I along with Inv Saar returned to [REDACTED] and took measurements of the inside boarding house room. Only the room containing the evidence was measured.

Room Size- 13' 10" x 13' 9" (a)

Evidence #3 Auto Pistol Bersa thunder 45 #582214 with hammer back and no magazine located on top cabinet left of entrance door (a) 4'8" to 5'2" from corner of room.

Evidence #4 Magazine with bullets was located on green plastic chair next to bed (a) 9' 6.5' from corner of room.

Evidence #5 Bullet in floor near dresser in front of bathroom door (a) 6' from corner near bathroom door.

After measurements were taken, I and Inv Saar went outside and took measurements of the incident area. The stone brick wall in front of residence was used for measurements.

Stone wall - 47'8" (A) long (a) 20" high sidewalk 6

stone wall to victim #1- (a) 15'

stone wall to #2 shell casing on sidewalk (a)- 9' 3"

stone wall to #8 green dew rag w/ bullet hole (a) 14' 9"

vehicle Buick 4dr 1G4CW53L6P1635562 S.C. TAG 268-TMM RL Bumper (a) 16' 4", RR Bumper (a) 19' 6", FL Bumper (a) 19' 4", FR Bumper (a) 21' 6"

After measurements were taken, I several swabbings from the windshield Drivers side of the Buick (sc 268-TMM) parked in front of [REDACTED]. The spatter on the wind shield was medium size spatter. A large drop was located on the roof area of the vehicle on the driver side. No blood spatter was located on the inside of the vehicle. A total of 4 swabbings were taken. After taking the swabbings, the vehicle was towed by ACE TOWING. The vehicle was taken to Police storage area. After vehicle was removed, The items near [REDACTED] were collected. The evidence marked #6 was a black boot belong to victims mother. boot was returned. Evidence #7 black knit hat (timberland) was collected from the hood windshield of the chevy 598-SDK.

22:20 hours Upon arrival of the search warrant, The evidence inside the residence [REDACTED] was collected. I collected the following evidence, #3 Bersa 45 auto pistol #582214 no magazine in weapon; the hammer was in the cocked position, #4- Magazine w/ live rounds in green chair, #5- live 45 auto round. all collected were placed on search warrant an copy was giver to Mr. Foster.

22:47 I Spo Talanges returned to city hall and proceeded to mark evidence from the incident scene to be turned into evidence.

23:00 I Spo Talanges was advised that the subject Jones needed to be photographed and his cloth collected. I Photographed Jones checking his hands and face for injuries. Mr. Jones reported no injuries. Photographs were taken of his hands and face areas. area on shoe (left toe area) looked to be possible blood. Photograph taken of his shoe. Clothing was collected by me in the present of Inv Hearst. The following clothing was collected, Black Rebock shoes, pr white socks, blue short sleeve shirt, Blue pullover long sleeve jacket, blue jeans pants, Blue Boxer shorts. All clothing was placed in paper bags. Subject Jones was given orange jump suit. After collection of clothing, all photographs were down loaded into photo computer.

02-26-05

01:00 Departed City Hall.

08:36 Arrived at Hospital Morgue and proceeded to preform a GSR Kit on the victim. After completing the GSR Kit, Dr Wren preformed the Autopsy. The following attended the autopsy, Sgt Forrester, Inv Hearst, Inv Porter, Inv Saar, and I. The Coroner Office B. Wall, R. Forester, K. Tony.

Exhibit # 31

05 (a) Dr Wren started autopsy. Inspection with clothing on, I and Inv Saal took photographs of the autopsy. After washing the victim body, scrapes were located on both hands and the top left area of the victim head. photographs were taken. The entrance wound was photographed and re photographed after being scaled. small indentation near bullet hole to the right side head above the right ear about 5". Advised that we needed x rays taken of victim head. X rays taken. Upon returning with the x rays, the bullets was visible in the lower neck region area of the victim. Dr Wren located a copper jacketed in the side skull cavity. A bullet hole was also observed in the lower skull cavity were the bullet traveled through. The head was skewed with a trajectory rod and a trajectory path was located. The trajectory angle was photographed. Dr Wren had to cut into the victims neck back side to recover the bullet.

I collected the bullet and copper fragment (photographs taken) from Dr Wren after the autopsy. I also collected the victims clothing from the morgue. The following evidence was collected from the autopsy, victims clothing, boxer shorts, black jeans w/ belt, green, blue, yellow short sleeve shirt, long sleeve white shirt, pr socks white, timberland boots, white blanket. Bullet and copper fragment, 2- x rays, GSR Kit. All evidence was placed into evidence room.

02-28-05 Information of the vehicle was obtained from the storage area. The Buick 1G4CW53L6P1635562 S.C. tag 268- TMM. The keys to the vehicle were sitting in the front seat. Keys and information taken to turn into Evidence. The search warrant was taken back to the county and Judge Hall signed the return. A copy was made of the search warrant.

03-01-05 Processed the Bersa 45 Thunder auto pistol #582214. The evidence was fumed and then dusted for prints. No prints were lifted. The magazine of the weapon showed signs of ridge detail. The magazine had etched prints in the metal. The weapon was swabbed (2 taken) for DNA. Weapon Bersa 45 Thunder will be sent to SLED for etched print work and for DNA.

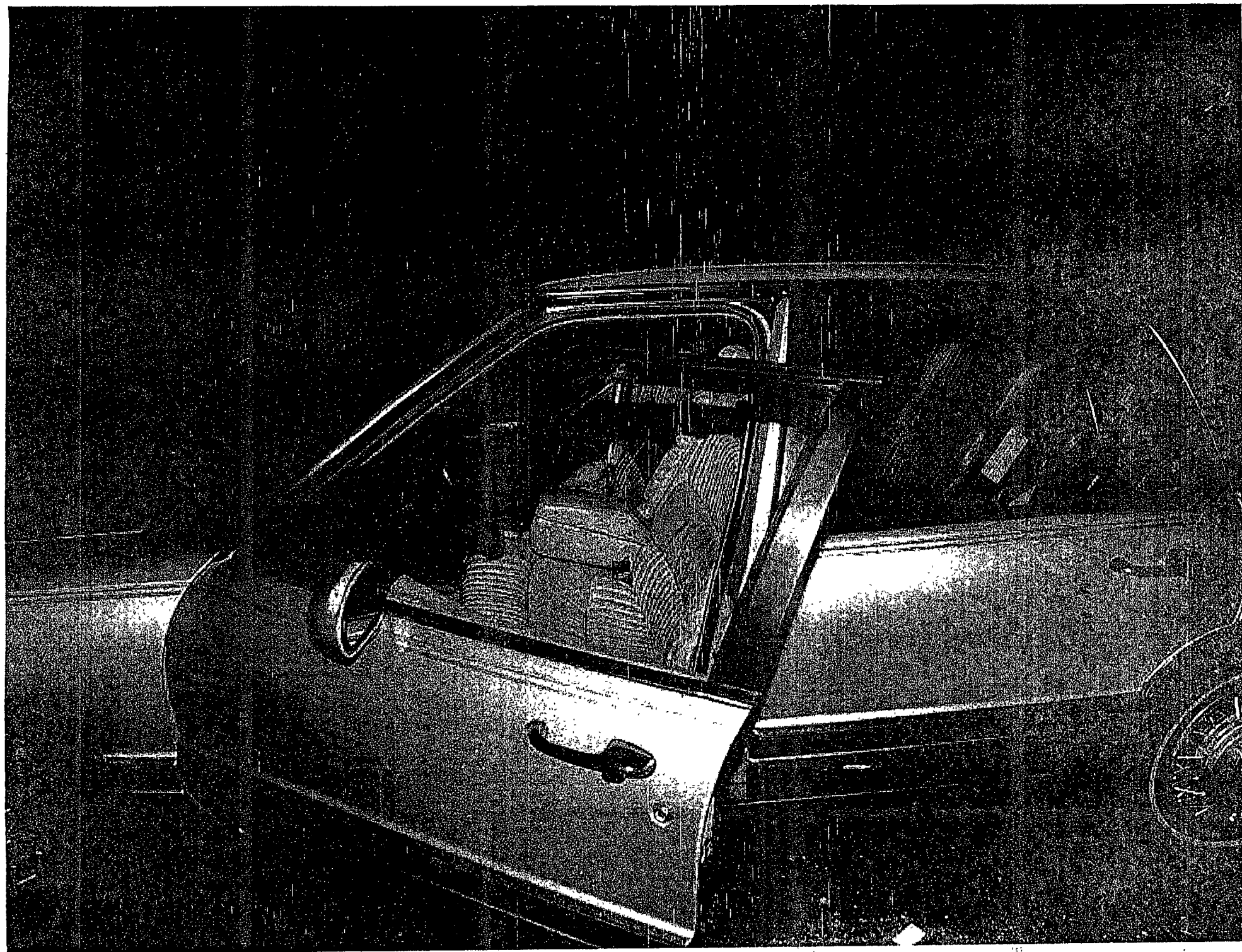
03-11-05 Worked on computer sketches for the crime scene. A total of 4 sketches were completed. finished computer sketches on 03-12-05 (20:00) Turned into Evidence at 20:30 hours.

05-04-05, Received SLED report in reference to the GSR kit. The report stated that GSR Kit from Damon Jacques Jones, the quantities of metals detected did not indicate the presence of gunshot residue. GSR Kit from Sigida Long in hte samples submitted in the kit labeled Long Sigida Kenyatta, the quantities of metals detected on the back of the left hand may be associated with gunshot residue. Agent Ila N. Simmons .

Exhibit #

Talanges Report was withheld by Chris Brough

Exhibit 31

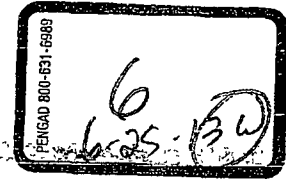


04-20-2005 0034

Entered By: S R LAMB, On 02/28/2005 10:06 56 AM

Title: Lt. Lamb - Supplemental

Case: 02-0771-05
 Date: February 26, 2005
 Subject: Homicide Investigation
 Time: All times are approximated



1850 hours-I was notified by Sgt. McDonald that patrol was responding to a shooting on [REDACTED]. A few minutes later, Sgt. McDonald recontacted me by Nextel and stated that the victim was deceased. She advised they had a suspect in custody and had also located the weapon used in the murder. I contacted Sgt. Taylor and advised him of the investigation. I next contacted Inv. Hearst and assigned him as lead investigator. I also notified Inv. Bradley, Porter, Saar, and Boozer and requested them to respond to the scene.

I made the following assignments by Nextel before arriving on the scene:

- Talanges-evidence technician.
- Saar-to assist Talanges in the documenting and recovery of evidence
- Boozer-assigned to City Hall to assist with witnesses
- Hearst-lead investigator
- Porter-to assist the lead
- Taylor-to coordinate interviews at City Hall
- Bradley-to respond to the scene and assist in canvassing the area with patrol

1934 hours-I arrived on the scene on [REDACTED]. The victim, Sigida Kenyatta Long, was lying in the roadway. A gold four door Buick, tag 268 TMM, was parked in front of [REDACTED]. The driver's side door was open and the vehicle was parked facing South Church Street.

I was briefed by Officer Scott Watts. He stated that a Damon Jones was in custody at City Hall. Officer Watts also advised that a handgun had been located in one of the rooms of the boarding house at [REDACTED]. Officer Hall had secured the room and was guarding the weapon until it could be recovered as evidence. Officer Watts advised that he was unsure of what took place but had gathered some basic information about the incident. He stated the two subjects were arguing and the victim possibly tried to pull the suspect out of his vehicle. The victim may have had a gun as well. He also stated the suspect had placed his weapon in [REDACTED]. This was the same weapon that Officer Hall was guarding. Officer Watts was unsure of the events that occurred and could not confirm his statements as factual. I forwarded this information to Sgt. Taylor and Inv. Hearst.

1950 hours-I requested Sgt. Roper to plot the crime scene with the department's laser system.

1956 hours-I entered the boarding house at [REDACTED]. There was a black semi-automatic handgun lying on the top of a brown cabinet as you entered the residence. The residence consisted of one room and a bathroom. I next observed a black ammunition magazine lying in a green plastic chair beside the bed. I could not determine the caliber or number of rounds in the magazine. There was one live round beside a chester drawer in the same room. Later in the investigation, Sgt. Roper and Officer Lindsay plotted the room and the evidence locations before they were recovered.

2020 hours-I looked over the crime scene area. I observed droplets of what appeared to be blood on the left side of the vehicle's windshield. There were also several smear marks on the windshield and driver's door. It appeared that these marks could have been from someone's hand. Next I noticed the victim had several abrasions on his face and on the back of his hand. It appeared these injuries could have occurred from when he fell to the ground after he was shot. I pointed these items out to Inv. Talanges and Saar.

Exhibit A 34

664 victim, Mr. Long, lived at [REDACTED]. There was one brown boot lying in the front yard of this residence. Also, the victim's brother's vehicle was parked on the street in front of the residence. There was a toboggan type hat lying on the windshield wipers of this vehicle. I was unsure if these items were related to the incident but had Inv. Talanges to document and recover them.

2053 hours-EMS responded and transported the victim.

04-20-2005 0035

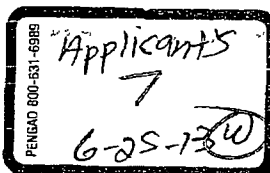
2144 hours-I requested Ace Towing to transport the suspect's vehicle to the department's evidence lot.

2210 hours-The department's fire department responded and saturated the crime scene area with water. They were called to help remove a large amount of body fluid that was on the sidewalk and street area.

2236 hours-I left the crime scene area and returned to City Hall. When I arrived at the investigation division, investigators had completed their interviews and were planning to charge Mr. Jones with murder. I was not involved with any of the interviews and had coordinated the crime scene the entire time.

PUBLIC SAFETY DEPARTMENT

CITY OF SPARTANBURG
P.O. BOX 546 - 145 W. BROAD ST.
SPARTANBURG, S.C. 29304



04-20-2005 0056

CASE NUMBER
02-771-05

WITNESS INTERVIEW FORM

Name: MIGNON WILLIAMS Address: [REDACTED]Telephone: [REDACTED] Social Security Number: [REDACTED]Date of Birth: [REDACTED] Today's Date: 02-25-05 Time: 20:05

Interview conducted at [REDACTED] on MIGNON WILLIAMS BIF
59 YOA. who Resides at [REDACTED] Statement is in Reference to
a Homicide. Statement is Written By MIGNON WILLIAMS.
While coming out of my front door with
a constant the men was loud and when
I look over there the gun went off. The
guy in the yard shot another in the street.
The other guy said man you didn't
have to do that. I don't know who the
man was. End of statement

Time Interview Began: 2005 P.m.Time (Statement/Interview) was completed: 2015 P.m.

I have read this statement consisting of 1 page(s), and I swear or affirm that the facts contained therein are true and correct.

Copy of Statement Given

I further state that I have received a copy of this statement.

SWORN TO AND SUBSCRIBED TO BEFORE ME

THIS _____ DAY OF _____

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: _____

Signed: Mignon WilliamsWitness: Toby Budd

Witness: _____

DAMON L. JONES

950 California Ave

Spartanburg, SC 29306

July 24, 2005

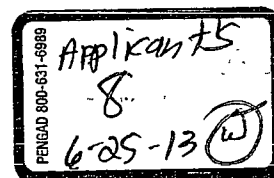
Spartanburg County

Public Defender's Office

Christopher D. Braugh

258 N. Main St.

Spartanburg, SC 29306



Chris Braugh: I am not
ready to go to court as of yet, and
I'm not sure if you care for my well
being, there are TONS of things
that we have not gone over in my
case, things I know you know
exist. But I speedily that is not
what I want or need. So in telling
you this, I am asking you to release
your self from my case.

DAMON JONES

My Request for my entire/full discovery always went
ignored by defense counsel Chris Braugh.

H 682321

= Exhibit #44

BJS

DAMON J JONES

950 CALIFORNIA AVE

SPARTANBURG S.C. 29303

*7-28-05 Forwarded to Solicitor,

Public Defender, inmate

JULY 24 2005

CLERK OF COURT
SPARTANBURG COUNTY
2005 JUL 28 AM 11:58
MARC KITCHENS

Clerk of Court

Chief Administrative Judge

For the 7th Judicial Circuit

180 MAGNOLIA STREET

P.O. Box 3483

SPARTANBURG S.C. 29304-3483

TO THE Honorable Chief Administrative Judge: I DAMON JONES would like to inform you that my counsel Christopher D Brough of the Spartanburg County Public Defenders Office has not shown that he is offering me 100% fight. Nor has Christopher D Brough gone over my entire case with me. Christopher Brough is trying to rush me into a speedy trial and that is not what I or my family need. I am asking you to relieve my current counsel and appoint me with private counsel. My current counsel is in violation of South Carolina Rules of Professional Conduct, Rules 1.1, 1.2, 1.3, 1.4. I have not written the Disciplinary Board as of yet but it also appears necessary. Thank for your Anticipated cooperation.

Respectfully Submitted: DAMON JON

C.C.I FILE



COPY

The Supreme Court of South Carolina

OFFICE OF THE DISCIPLINARY COUNSEL

HENRY B. RICHARDSON, JR.
DISCIPLINARY COUNSEL

SUSAN M. JOHNSTON
DEPUTY DISCIPLINARY COUNSEL

POST OFFICE BOX 12159
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-2038

August 8, 2005

PERSONAL AND CONFIDENTIAL

Mr. Damon Jones
950 California Avenue
Spartanburg, SC 29303

RE: Lawyer: Christopher Brough
Case No.: 05-DE-L-895

Dear Mr. Jones:

This is to acknowledge receipt of your complaint against the above named lawyer. An investigation will be conducted by this office into the matters you have reported in your complaint.

In this letter, we seek to address in advance issues and questions which often arise and to give you some understanding as to what this office and the Commission on Lawyer Conduct (the Commission) can do, and, more importantly, what they cannot do in connection with your complaint. It is important that you understand that neither this office nor the Commission can take any action to protect or promote your personal interest. So, you should not delay in seeking advice or taking action needed to protect your own personal interest.

The authority of this office and the jurisdiction of the Commission on Lawyer Conduct are limited to issues of whether a lawyer has committed misconduct or is incapacitated within the guidelines set out in the Rules for Lawyer Disciplinary Enforcement - Rule 413, SCACR, promulgated by the Supreme Court of South Carolina. Where such misconduct is found, sanctions may be imposed upon a lawyer ranging from a confidential letter of caution all the way up to disbarment. If our investigation does not reveal either evidence of lawyer misconduct or incapacity as described in the applicable Supreme Court rules or reason to believe further investigation would reveal such evidence, these rules require the complaint to then be dismissed.

Exhibit # 45

Mr. Jones
August 8, 2005
Page Two

Often, persons filing complaints with the Commission or our office seek advice as to what to do about their case or request help in getting a lawyer to take certain action. However, under the applicable rules, the efforts of this office and those of the Commission must be directed toward promotion of institutional values for the benefit of the public as a whole, and not toward obtaining relief for or rendering assistance to any individual complainant.

Neither this office nor the Commission has authority to give advice or to seek to obtain any relief on behalf of an individual complainant. Neither this office nor the Commission have any authority to determine whether the outcome of a case was fair, nor do we have the authority to intervene in any matter presently pending before any court or other tribunal or to seek to change in any way a prior decision of any court or other tribunal. Both this office and the Commission are without authority to seek to make a lawyer take any particular action on your behalf.

We take this opportunity to advise you of the limited role of this office and that of the Commission so that, if you have sought assistance or advice from either this office or the Commission, you will now be aware that such assistance or advice cannot be provided by us and that you should promptly seek any such assistance or advice that you might need from legal counsel or such other source as you might select.

You will be notified as to the final disposition of your complaint in this matter. However, you should be alerted that it is often many months after receipt of a complaint before a final disposition of a complaint can be made. The complainant is notified as to the nature of such final disposition. Please refer to the case number set out above in any future correspondence or inquiries to this office concerning this matter.

Very truly yours,

Barbara W. Hinson
Administrative Assistant

bwh

Exhibit 45



COPY

671

The Supreme Court of South Carolina

OFFICE OF THE DISCIPLINARY COUNSEL

HENRY B. RICHARDSON, JR.
DISCIPLINARY COUNSEL

SUSAN M. JOHNSTON
DEPUTY DISCIPLINARY COUNSEL

POST OFFICE BOX 12159
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE (803) 734-2038

September 6, 2005

PERSONAL AND CONFIDENTIAL

Mr. Damon Jones
Spartanburg Detention Center
950 California Avenue
Spartanburg, SC 29303

Re: Lawyer: Christopher Brough, Esquire
Case Number: 05-DE-L-0895

Dear Mr. Jones:

You previously filed a complaint with the Commission on Lawyer Conduct concerning the above-referenced matter which has been assigned to me for investigation. As required by applicable rules, I must make a report on my findings and a recommendation as to the disposition of this matter.

Prior to completing my report, I would like to know if you have any updated information you feel relevant to this matter that was not included in your initial complaint. If you have any such additional or updated information that you would like for us to consider, please give me a call on the telephone or write to me. If you elect to write, you can either furnish such additional or updated information in writing or send me your current telephone number and I will be most happy to call you if you so request.

In communications with our office please make reference to the case number set out above. Some time after fifteen (15) days from the date of this letter, I will complete my report based on such information then at hand. Your interest in lawyer conduct and assistance to our office in connection with this matter is appreciated.

Yours very truly,

C. Tex Davis, Jr.
Assistant Disciplinary Counsel

Exhibit # 45



The Supreme Court of South Carolina

OFFICE OF THE DISCIPLINARY COUNSEL

HENRY B. RICHARDSON, JR.
DISCIPLINARY COUNSEL

SUSAN M. JOHNSTON
DEPUTY DISCIPLINARY COUNSEL

POST OFFICE BOX 12159
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE (803) 734-2038

September 27, 2005

PERSONAL & CONFIDENTIAL

Mr. Damon Jones
Spartanburg County Detention Center
950 California Avenue
Spartanburg, SC 29303

Re: Lawyer: Christopher Brough, Esquire
Case Number: 05-DE-L-0895

Dear Mr. Jones:

This office has conducted a preliminary investigation concerning the allegations of lawyer misconduct set out in the complaint you filed in connection with the above-referenced matter. This investigation focused solely on those grounds for misconduct set out in the *Rules for Lawyer Discipline Enforcement (RLDE)* - Rule 413, SCACR promulgated by The Supreme Court of South Carolina, as we are required to do under these rules.

This office is not authorized to give any advice concerning any case or dealings with any lawyer nor is it empowered to intervene in any case. We cannot seek to cause things to be done by a lawyer on behalf of any complainant nor can we seek to change the outcome of any case. Instead, this office deals solely with issues of misconduct or incapacity related to lawyers under these rules. We do so to preserve institutional values of the legal system in South Carolina for the benefit of the public as a whole, not to obtain any individual benefit for any complainant.

The provisions of RLDE do not apply to legal matters related to whether or not the outcome of a case was fair nor to errors of law that might have been made in a case. These are legal matters, which must be addressed by you at trial or on appeal using appropriate appellate procedures.

Exhibit # 45

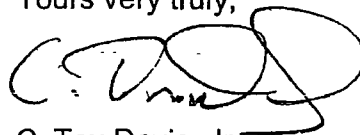
Damon Jones
September 27, 2005
Page Two

In your letter of complaint, you allege that Christopher Brough is rushing you into a speedy trial and that Mr. Brough is not representing you properly. As a result of your letter, this office conducted a preliminary investigation to ascertain if the above-named lawyer's conduct violated the Rules of Professional Conduct and the RLDE.

From our investigation, this office has determined that there is no evidence of any such lawyer misconduct as defined in RLDE on the part of the above-named lawyer arising out of the events mentioned in your complaint and that further investigation would not likely reveal any such evidence.

Accordingly, the complaint in the above-referenced matter is dismissed pursuant to the provisions of Rule 19(b)(2) of RLDE. As required by these rules, the above-named lawyer is, by copy of this letter, being notified of the action herewith taken concerning this complaint.

Yours very truly,



C. Tex Davis, Jr.
Assistant Disciplinary Counsel

CTD

cc: Christopher Brough, Esquire

Exhibit# 45

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

LATENT PRINTS DEPARTMENT

SPO Robert C. Talanges
Spartanburg Department of Public Safety
145 Broad Street
Spartanburg, SC 29301

November 1, 2005
SLED Lab No: L05-02844
Your Case No: 0277105
Incident Date: 02/25/05
(S) Jones, Damon Jacques
(V) Long, Sigida Kenyatta

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

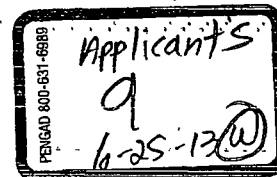
ITEMS OF EVIDENCE:

Item 4: Bersa Thunder 45 #582214 w/magazine and 6 CCI 45 auto rounds

Item 4.1: Latent impression represented on item 4

RESULTS:

NO VALUE for identification.



These examinations and comparisons were conducted by Special Agent Phillip E. Coonfield, Examiner with this Division.

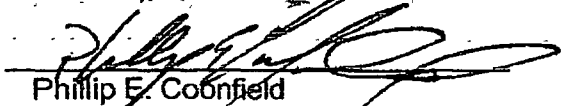

Phillip E. Coonfield
PEC

Exhibit 25



This Evidence
was withheld



INVESTIGATIVE REPORT
SPARTANBURG, SC
CORONER'S OFFICE

SIGIDA KENYATTA LONG

Sigida Kenyatta Long, a 31-year-old male who formerly resided in Spartanburg, South Carolina, was pronounced dead on February 25, 2005. His death was investigated by Coroner's Investigator Brad Wall.

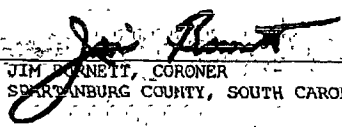
Investigator Wall reported he was dispatched to [REDACTED] in Spartanburg regarding a shooting.

Investigation revealed that the victim had been shot in the head by an assailant with whom he was having an argument.

An autopsy was performed by J. David Wren, Pathologist, who reported, "Therefore, based on the history and autopsy findings as stated in this protocol, it is my opinion that this individual died as the result of a gunshot wound to the head."

SLED analysis showed 0.071% (w/v) blood alcohol and negative for other drugs.

The Spartanburg County Coroner's Office has ruled the death of Sigida Kenyatta Long to be a homicide.


JIM BENNETT, CORONER
SPARTANBURG COUNTY, SOUTH CAROLINA

Applicant's

10

6-26-13

Wrote 7-15-05
Call 8-8-05

676

JUN -14' 05 (TUE) 09:15

DNA 3RD FLR ADMINISTRATION

TEL: 8038967541

P. 012/028

06-14-2005 0012

105-2844

(11) CM Jns

GUNSHOT RESIDUE ANALYSIS INFORMATION FORM

(Fill out all information requested then return form to kit envelope)

Collecting Officer's Name: Russell Porter Badge No.: 0101Collecting Agency's Name: Sptbg. Public Agency Case No.: 02-771-05
☒ Homicide
 ☐ Suicide
 ☐ Assault
 ☐ Drive By
 ☐ Other: _____
 (Describe)
SUBJECT INFORMATIONSubject's full name: Damon Jacques Jones DOB: [REDACTED]Subject is: ☐ Living ☐ DeadSubject is: ☒ Right-handed ☐ Left-handed ☐ UnknownAny debris and/or blood on subject's hands? ☐ Yes ☒ No

If yes, describe: _____

Has subject washed his/her hands since shooting? ☐ Yes ☒ No ☐ UnknownSubject's occupation: stocker @ local game club

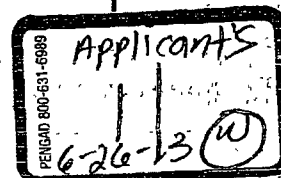
Subject's hobbies: _____

 Write a brief description of subject's activity between the time of the shooting and the time of the GSR collection: After incident went into House and told Aunt, waited for Police Arrival.
SHOOTING INFORMATIONDate and time shooting occurred: Date: 2-25-05 Time: 6:40 am ☒ pmPlace (example — in kitchen, parking lot, indoors, outdoors): outdoorsType of firearm used: Baco Thunder Auto 45 #502214 Caliber: 45Caliber of ammunition used: 45 Manufacturer of ammunition: CCINumber of shots fired: 1

* Note: If cartridge manufacturer is unknown, draw head stamp here:



Base of Cartridge

Collecting Officer's Signature: Russell D PorterDate: 2-25-05 and Time: 7:30 am ☒ pm of GSR collection.

00-14-2005 0013

105-2844

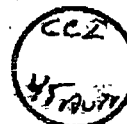
(12) CCM (JS)

GUNSHOT RESIDUE ANALYSIS INFORMATION FORM

(Fill out all information requested then return form to kit envelope)

Collecting Officer's Name: T. L. Jones Badge No.: 6124Collecting Agency's Name: SPARTANburg Public Safety Agency Case No.: 02-0771-05☒ Homicide ☐ Suicide ☐ Assault ☐ Drive By ☐ Other: _____
(Describe)**SUBJECT INFORMATION**Subject's full name: Long Sigida Kenyatta DOB: [REDACTED]Subject is: ☐ Living ☒ DeadSubject is: ☒ Right-handed ☐ Left-handed ☒ UnknownAny debris and/or blood on subject's hands? ☒ Yes ☐ NoIf yes, describe: Blood and Scrape on Both HandsHas subject washed his/her hands since shooting? ☐ Yes ☒ No ☐ UnknownSubject's occupation: UNKSubject's hobbies: UNKWrite a brief description of subject's activity between the time of the shooting and the time of the GSR collection: SHOT IN HEAD TAKEN TO Hospital POA**SHOOTING INFORMATION**Date and time shooting occurred: Date: 02-25-05 Time: 6:40 ^(A) _{am}Place (example — in kitchen, parking lot, indoors, outdoors): OUTDOORS, STREETSceneType of firearm used: BERSA Thunder 45 A&S #582214 Caliber: 45 A&SCaliber of ammunition used: 45 A&S Manufacturer of ammunition: CCINumber of shots fired: 1

* Note: If cartridge manufacturer is unknown, draw head stamp here:



Base of Cartridge

Collecting Officer's Signature: [Signature]Date: 02-26-05 and Time: 9:00 ^(A) _{am} of GSR collection.

Lab Number/Name: L05-2844 Damon Jones

Analyst: Ila Simmons

Date: 4/14/2005

	<u>Right Palm</u>	Range	<u>Right Back</u>	Range	<u>Left Palm</u>	Range	<u>Left Back</u>	Range
Antimony	5	0	1	0	10	0	1	0
Lead	17	0	4	0	33	1	7	0
Barium	-46	117	70	124	60	146	-297	121

Raw Data

	Sb / 121	RSD	Pb / 208	RSD	Ba / 137	RSD	Cu / 63	RSD
Cl	1.12	8.61	5.35	3.42	5,623.00	2.05	50.83	2.88
Right Palm	6.58	5.64	22.33	2.10	5,577.00	2.10	264.80	2.41
Right Back	1.72	11.87	9.79	2.42	5,693.00	2.17	68.34	2.73
Left Palm	11.56	4.32	38.12	3.91	5,683.00	2.57	554.40	3.04
Left Back	2.17	5.54	12.13	2.50	5,326.00	2.27	114.40	2.97
CC	66,320	2	121,400	2	246,700	2	10,430	2
Blank	15.38	30.14	27.23	33.01	7,948.00	2.50	20.55	6.27
	Zn / 66	RSD	Sr / 88	RSD				
Cl	3,258.00	2.60	72.71	2.15				
Right Palm	3,242.00	2.19	46.04	2.80				
Right Back	3,232.00	2.40	44.16	3.30				
Left Palm	4,329.00	3.30	56.95	2.82				
Left Back	3,031.00	3.00	42.68	2.87				
CC	17,350	2	319	3				
Blank	4,190.00	2.18	29.80	2.31				

Data Files 015SMPL.D 016SMPL.D 017SMPL.D 018SMPL.D 019SMPL.D 020SMPL.D 021SMPL.D

06-14-2005 0014

JUN -14' 05 (TUE) 09:15

DNA 3RD FLR ADMINISTRATION

TEL: 8038967541

P. 014/028

B. Cam

06-14-20 0 0015

Lab Number/Name: L05-2844 Sigida Long

Analyst: Ila Simmons

Date: 4/14/2005

	<u>Right Palm</u>	Range	<u>Right Back</u>	Range	<u>Left Palm</u>	Range	<u>Left Back</u>	Range
Antimony	13	1	5	0	10	0	12	1
Lead	57	2	119	3	51	1	284	8
Barium	12,797	805	7,927	314	1,083	160	6,677	313

Raw Data

	Sb / 121	RSD	Pb / 208	RSD	Ba / 137	RSD	Cu / 63	RSD
Cl	2.25	9.86	8.98	4.44	6,943.00	1.93	29.43	3.09
Right Palm	15.18	4.37	65.81	3.24	19,740.00	4.08	594.90	3.70
Right Back	7.63	4.21	127.90	2.55	14,870.00	2.11	154.20	2.70
Left Palm	12.29	3.42	60.13	2.33	8,026.00	1.99	251.50	3.23
Left Back	13.92	3.84	292.50	2.57	13,620.00	2.30	179.80	3.68
	Zn / 66	RSD	Sr / 88	RSD				
Cl	3,428.00	2.89	45.28	3.36				
Right Palm	3,860.00	3.58	259.60	4.13				
Right Back	3,754.00	2.85	172.90	2.38				
Left Palm	3,830.00	2.70	74.21	2.73				
Left Back	3,986.00	3.58	145.80	3.81				

RP ⊖
 RB ⊖
 LP ⊖
 LB ⊖
 (ins)

Data Files 023SMPL.D 024SMPL.D 025SMPL.D 026SMPL.D 027SMPL.D

(14) Can

Run: D:\gsr\simmons\041405\

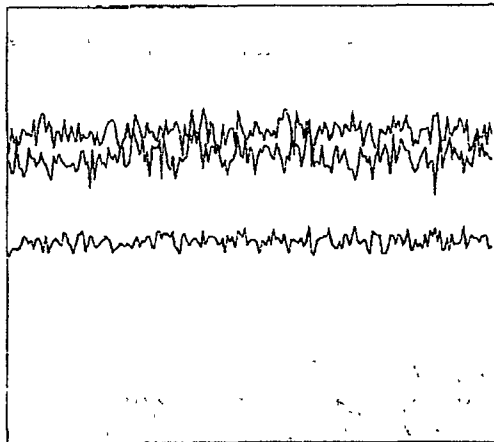
Tune Report

Tune File : ATUNE.U

06-14-2005 0013

OK INS

Rh OK

(15) CEN
LO5-2844

m/z:	7	89	205
Range:	20,000	50,000	20,000
Count:	12,828 ✓	22,224 ✓	13,942 ✓
Mean:	12995.2	22884.4	14148.3
RSD%:	4.18 ✓	3.29 ✓	3.36 ✓
n:	200		

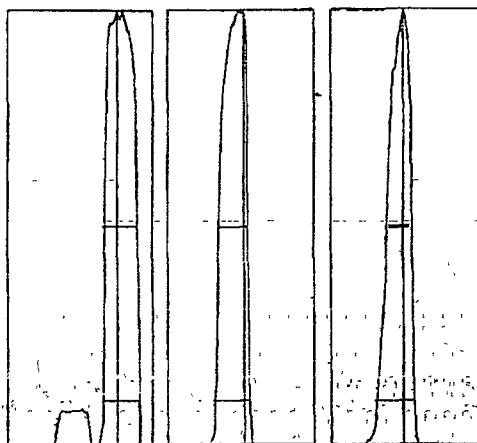
Integration Time: 0.1000 sec

Sampling Period: 0.3100 sec

Oxide:	156/140	0.79% ✓
Doubly Charged:	70/140	1.46% ✓

Background:

m/z:	7	89	205
Cps:	1.7 ✓	1.5 ✓	1.9 ✓



m/z:	6	89	205
Height:	14,193	23,609	14,097
Axis:	6.80	89.10	204.95
W-50%:	0.70	0.60	0.55
W-10%:	0.7500	0.7500	0.600

Integration Time: 0.1000 sec

Acquisition Time: 22.7600 sec

Y axis: Linear

Tuning Parameters

===Plasma Condition===

RF Power: 1200 W
 RF Matching: 1.81 V
 Smpl-Depth: 6.4 mm
 Torch-H: 0.1 mm
 Torch-V: 0.2 mm
 Carrier Gas: 1.08 L/min
 Makeup Gas: 0 L/min
 Optional Gas: 0 %
 PeriPump1: 0.1 rps
 PeriPump2: --- rps
 S/C Temp: 2 degC

===Ion Lenses===

Extract 1: -117.2 V
 Extract 2: -9 V
 Einzel 1,3: -66 V
 Einzel 2: 8 V
 Omega Bias: -30 V
 Omega (+): 4.8 V
 Omega (-): -11 V
 QP Focus: -5 V
 Plate Bias: -12.1 V

===Q-Pole Parameters===

AMU Gain: 129
 AMU Offset: 125
 Axis Gain: 0.9996
 Axis Offset: -0.05
 QP Bias: -2.1 V

===Detector Parameters===

Discriminator: 11 mV
 Analog HV: 1730 V
 Pulse HV: 980 V

Generated : Apr 14, 2005 12:41:52

Printed : Apr 14, 2005 12:41:57

OR INS

16 Can

Los-2544

Temp.pps

00-14-2005 0017

P/A Factor Tuning Report

Acquired:Apr 14 2005 00:46 pm

Mass[amu]	Element	P/A Factor
63	Cu	0.068639
66	Zn	0.068653
88	Sr	0.067442
103	Rh	0.070175
121	Sb	0.069258
137	Ba	0.068584
208	Pb	0.066524

===Detector Parameters===

Discriminator: 11.0 mV

Analog HV: 1730 V

Pulse HV: 990 V

Calibration Report

Calibration : C:\ICPCHEM\1\CALIB\GSR.C
 Last Calib: Apr 14, 2005 14:10
 Cal Type : External Calibration Method
 Cal Title : Gunshot Residue

06-14-2005 2010

Standard Data Files

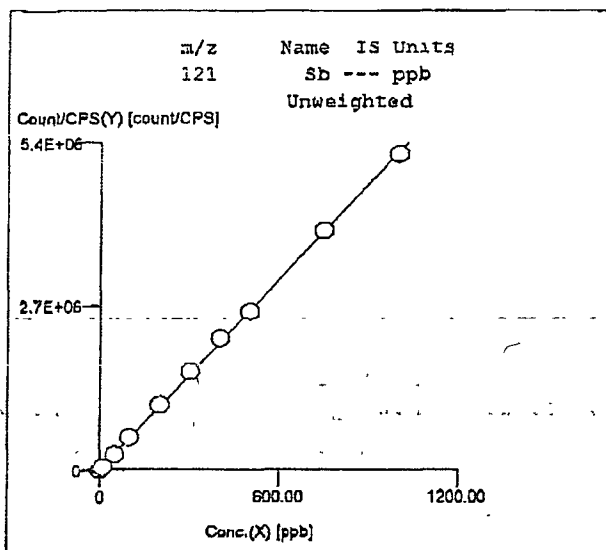
Level	DataPath	DataFile	Date Acquired
1	d:\gser\simmons\041405\	001_std.d	Apr 14 2005 12:52 pm
2	d:\gser\simmons\041405\	002_std.d	Apr 14 2005 01:00 pm
3	d:\gser\simmons\041405\	003_std.d	Apr 14 2005 01:07 pm
4	d:\gser\simmons\041405\	004_std.d	Apr 14 2005 01:15 pm
5	d:\gser\simmons\041405\	005_std.d	Apr 14 2005 01:22 pm
6	d:\gser\simmons\041405\	006_std.d	Apr 14 2005 01:29 pm
7	d:\gser\simmons\041405\	007_std.d	Apr 14 2005 01:36 pm
8	d:\gser\simmons\041405\	008_std.d	Apr 14 2005 01:44 pm
9	d:\gser\simmons\041405\	009_std.d	Apr 14 2005 01:51 pm
10	d:\gser\simmons\041405\	010_std.d	Apr 14 2005 01:58 pm
11	d:\gser\simmons\041405\	011_std.d	Apr 14 2005 02:05 pm
12	---		
13	---		
14	---		
15	---		
16	---		
17	---		
18	---		
19	---		
20	---		

Level	BkgPath	BkgFile	Interference Correction
1	---	---	OFF
2	---	---	OFF
3	---	---	OFF
4	---	---	OFF
5	---	---	OFF
6	---	---	OFF
7	---	---	OFF
8	---	---	OFF
9	---	---	OFF
10	---	---	OFF
11	---	---	OFF
12	---	---	---
13	---	---	---
14	---	---	---
15	---	---	---
16	---	---	---
17	---	---	---
18	---	---	---
19	---	---	---
20	---	---	---

OK INS

18 Can
Los-
2844

06-14-2005 0019



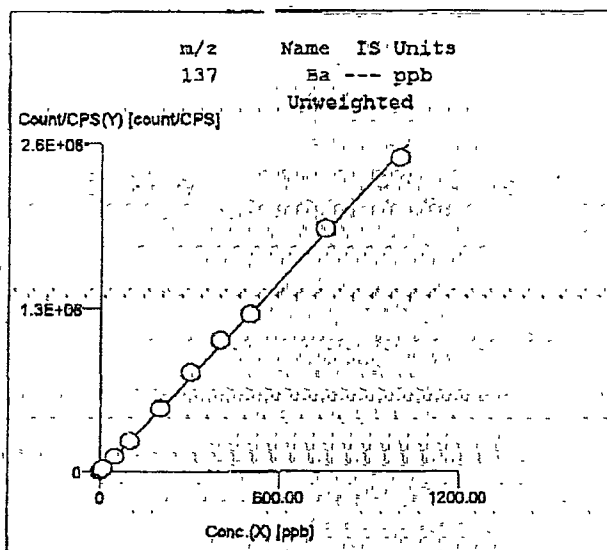
CurveFit : Y=aX+[blank]

$$Y = 5.245E+3 * X + 6.436E+2$$

$$X = 1.907E-4 * Y - 1.227E-1$$

Lv.	Conc.	Count/CPS	RSD %
1	0.00	644.00 P	62.80
2	5.00	2.60E+4 P	2.21
3	10.00	5.08E+4 P	3.37
4	50.00	2.52E+5 P	2.45
5	100.00	5.39E+5 M	2.64
6	200.00	1.07E+6 A	9.50E-1
7	300.00	1.62E+6 A	1.79
8	400.00	2.17E+6 A	1.70
9	500.00	2.60E+6 A	2.86
10	750.00	3.94E+6 A	1.82
11	1000.00	5.20E+6 A	1.29
*12	---	---	---
*13	---	---	---
*14	---	---	---
*15	---	---	---
*16	---	---	---
*17	---	---	---
*18	---	---	---
*19	---	---	---
*20	---	---	---

MinConc: 0.00



CurveFit : Y=aX+[blank]

$$Y = 2.537E+3 * X + 1.867E+2$$

$$X = 3.941E-4 * Y - 7.356E-2$$

Lv.	Conc.	Count/CPS	RSD %
1	0.00	187.00 P	110.00
2	5.00	1.26E+4 P	2.79
3	10.00	2.41E+4 P	2.63
4	50.00	1.24E+5 P	2.91
5	100.00	2.51E+5 P	2.92
6	200.00	5.13E+5 A	1.12
7	300.00	7.97E+5 A	2.33
8	400.00	1.05E+6 A	1.84
9	500.00	1.26E+6 A	2.45
10	750.00	1.93E+6 A	2.15
11	1000.00	2.49E+6 A	1.53
*12	---	---	---
*13	---	---	---
*14	---	---	---
*15	---	---	---
*16	---	---	---
*17	---	---	---
*18	---	---	---
*19	---	---	---
*20	---	---	---

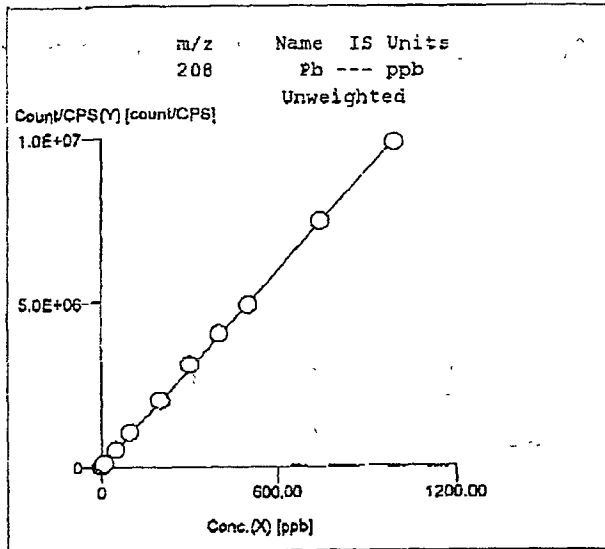
MinConc: 0.00

05-14-2015 0020

CE INS

(19) Am

L05.2844

CurveFit : $Y=aX+[blank]$

$$Y = 9.948E+3 * X + 9.569E+2$$

$$X = 1.005E-4 * Y - 9.620E-2$$

Lv.	Conc.	Count/CPS	RSD %
1	0.00	957.00 P	80.90
2	5.00	4.95E+4 P	2.02
3	10.00	9.61E+4 P	3.02
4	50.00	5.20E+5 A	1.91
5	100.00	1.05E+6 A	2.63
6	200.00	2.03E+6 A	1.53
7	300.00	3.12E+6 A	1.54
8	400.00	4.05E+6 A	2.07
9	500.00	4.93E+6 A	1.73
10	750.00	7.48E+6 A	1.75
11	1000.00	9.87E+6 A	8.82E-1
*12	---	---	---
*13	---	---	---
*14	---	---	---
*15	---	---	---
*16	---	---	---
*17	---	---	---
*18	---	---	---
*19	---	---	---
*20	---	---	---

MinConc: 0.00

00-14-2005 0021

tmpqnttrp.txt

Quantitation Report - Summary

File Name : 005 STD.D ✓
File Path : D:\GSR\SIMMONS\041405\
Method : C:\ICPCHEM\1\METHODS\GSR.M
Calibration : C:\ICPCHEM\1\CALIB\GSR.C
Acq Time : Apr 14 2005 01:22 pm
Sample Name : 100 PPB ✓
Sample Type : CalStd ✓
Comments :
Prep Dilution : 1.00
Auto Dilution : Undiluted
Total Dilution : 1.00
Operator Name: Ila Simmons
Acq Mode : Spectrum
Cal Title : Gunshot Residue
Cal Type : External Calibration Method (Unweighted)
Last Calib : Apr 14 2005 02:10 pm
Bkg File : -----
Bkg Rejected Masses: -----
Interference Correction : OFF
Blank File : -----

Element	Mass	IS	CPS	Conc.	RSD(%)	Time(sec)	Rep
Cu	63		761,169.5 A	107.0 ppb	2.52	0.30	12
Zn	66		137,950.6 P	98.18 ppb	2.57	0.30	12
Sr	88		2,008,541 A	104.2 ppb	2.33	0.30	12
Rh	103		2,304,690 A	---	---	---	---
Sb	121		539,262.3 M	102.7 ppb	2.64	0.30	12
Ba	137		251,178.6 P	96.92 ppb	2.92	0.30	12
Pb	208		1,054,999 A	106.0 ppb	2.63	0.30	12

End of Report

Thu Apr 14 14:27:34 2005

06-14-2005 0022

tmpqntrip.txt

Quantitation Report - Summary

File Name : 014SMPL.D
File Path : D:\GSR\SIMMONS\041405\
Method : C:\ICPCHEM\1\METHODS\GSR.M
Calibration : C:\ICPCHEM\1\CALIB\GSR.C
Acq Time : Apr 14 2005 02:27 pm
Sample Name : 100 PPB STD
Sample Type : Sample
Comments : 1st check at beginning
Prep Dilution : 1.00
Auto Dilution : Undiluted
Total Dilution : 1.00
Operator Name: Ila Simmons
Acq Mode : Spectrum
Cal Title : Gunshot Residue
Cal Type : External Calibration Method (Unweighted)
Last Calib : Apr 14 2005 02:10 pm
Bkg File : -----
Bkg Rejected Masses: -----
Interference Correction : OFF
Blank File : -----

Element	Mass	IS	CPS	Conc.	RSD(%)	Time(sec)	Rep
Cu	63		756,409.9 A	106.3 ppb	2.78	0.30	12
Zn	66		136,721.1 P	97.3 ppb	2.85	0.30	12
Sr	88		1,993,261 A	103.4 ppb	2.39	0.30	12
Rh	103		2,266,166 A	---	---	---	---
Sb	121		533,758.9 M	101.7 ppb	4.02	0.30	12
Ba	137		248,048.9 P	97.7 ppb	3.83	0.30	12
Pb	208		1,039,547 A	104.4 ppb	2.55	0.30	12

End of Report

Thu Apr 14 14:36:19 2005

(21) Cm
Los-
2844

05-14-2005 0023

tmpqncrp.txt

Quantitation Report - Summary

File Name : 014SMPL.D ✓
File Path : D:\GSR\SIMMONS\041405\
Method : C:\ICPCHEM\1\METHODS\GSR.M
Calibration : C:\ICPCHEM\1\CALIB\GSR.C
Acq Time : Apr 14 2005 02:27 pm
Sample Name : 100 PPA STD ✓
Sample Type : Sample
Comments : 1st check at beginning ✓
Prep Dilution : 12.00 - Should be 1.00
Auto Dilution : Undiluted
Total Dilution : 12.00 - Should be 1.00
Operator Name: Ila Simmons
Acq Mode : Spectrum
Cal Title : Gunshot Residue
Cal Type : External Calibration Method (Unweighted)
Last Calib : Apr 14 2005 02:10 pm
Bkg File : -----
Bkg Rejected Masses: -----
Interference Correction : OFF
Blank File : -----

Element	Mass	IS	CPS	Conc.	RSD(%)	Time(sec)	Rep
Cu	63		756,409.9 A	1,276 ppb	2.78	0.30	12
Zn	66		136,721.1 P	1,168 ppb	2.85	0.30	12
Sr	88		1,993,261 A	1,241 ppb	2.39	0.30	12
Rh	103		2,266,168 A	---	---	---	---
Sb	121		533,758.9 M	1,220 ppb	4.02	0.30	12
Ba	137		248,048.9 P	1,172 ppb	3.83	0.30	12
Pb	208		1,039,547 A	1,253 ppb	2.55	0.30	12

End of Report

Thu Apr 14 14:36:19 2005

⊗ Must divide these concentrations by twelve to get actual value. This sample is undiluted. (Ins)

30-14-2005 0024

tmpqntpr.txt

Quantitation Report - Summary

File Name : 014SMPL.D ✓
File Path : D:\GSR\SIMMONS\041405\
Method : C:\ICPCHEM\1\METHODS\GSR.M
Calibration : C:\ICPCHEM\1\CALIB\GSR.C
Acq Time : Apr 14 2005 02:27 pm
Sample Name : 100 PPB STD ✓
Sample Type : Sample
Comments : 1st check at beginning ✓
Prep Dilution : 1.00
Auto Dilution : Undiluted
Total Dilution : 1.00
Operator Name: Ila Simmons
Acq Mode : Spectrum
Cal Title : Gunshot Residue
Cal Type : External Calibration Method (Unweighted)
Last Calib : Apr 14 2005 02:10 pm
Bkg File : -----
Bkg Rejected Masses: -----
Interference Correction : OFF
Blank File : -----

Element	Mass	IS	CPS	Conc.	RSD(%)	Time(sec)	Rep
Cu	63		756,409.9 A	106.3 ppb	2.78	0.30	12
Zn	66		136,721.1 P	97.33 ppb	2.85	0.30	12
Sr	88		1,993,261 A	103.4 ppb	2.39	0.30	12
Rh	103		2,266,168 A	---	---	---	---
Sb	121		533,758.9 M	101.7 ppb	4.02	0.30	12
Ba	137		248,048.9 P	97.66 ppb	3.83	0.30	12
Pb	208		1,039,547 A	104.4 ppb	2.55	0.30	12

End of Report

Thu Apr 14 14:36:19 2005

⊗ Corrected values (INS)

0025

06-14-2005 0025

tmpqnt.rpt.txt

(24) Am
Los -
2844

Quantitation Report - Summary

File Name : 0225MPL.D ✓
File Path : D:\GSR\SIMMONS\041405\
Method : C:\ICPCHEM\1\METHODS\GSR.M
Calibration : C:\ICPCHEM\1\CALIB\GSR.C
Acq Time : Apr 14 2005 03:26 pm
Sample Name : L05-2844 Damon Jones 100 PPB STD ✓
Sample Type : Sample
Comments :
Prep Dilution : 1.00
Auto Dilution : Undiluted
Total Dilution : 1.00
Operator Name: Ila Simmons
Acq Mode : spectrum
Cal Title : Gunshot Residue
Cal Type : External Calibration Method (Unweighted)
Last Calib : Apr 14 2005 02:10 pm
Bkg File :
Bkg Rejected Masses: -----
Interference Correction : OFF
Blank File : -----

Element	Mass	IS	CPS	Conc.	RSD(%)	Time(sec)	Rep
Cu	63		773,621.6 A	109.7 ppb	1.40	0.30	12
Zn	66		142,146.1 P	101.2 ppb	2.27	0.30	12
Sr	88		2,031,117 A	105.4 ppb	2.07	0.30	12
Rh	103		2,297,998 A	---	---	---	---
Sb	121		544,973.6 M	103.8 ppb	2.92	0.30	12
Sa	137		252,466.7 P	99.42 ppb	2.50	0.30	12
Pb	208		1,057,446 A	106.2 ppb	1.71	0.30	12

End of Report

Thu Apr 14 15:59:45 2005

05-14-2005 0026

tmpqntpr.txt

Quantitation Report - Summary

File Name : 028SMPL.D✓
File Path : D:\GSR\SIMMONS\041405\
Method : C:\ICPCHEM\1\METHODS\GSR.M
Calibration : C:\ICPCHEM\1\CALIB\GSR.C
Acq Time : Apr 14 2005 04:10 pm
Sample Name : L05-2844 Sigida Long 100 PPB STD✓
Sample Type : Sample
Comments :
Prep Dilution : 1.00
Auto Dilution : Undiluted
Total Dilution : 1.00
Operator Name: Ila Simmons
Acq Mode : Spectrum
Cal Title : Gunshot Residue
Cal Type : External Calibration Method (Unweighted)
Last Calib : Apr 14 2005 02:10 pm
Bkg File : -----
Bkg Rejected Masses: -----
Interference Correction : OFF
Blank File : -----

Element	Mass	IS	CPS	Conc.	RSD(%)	Time(sec)	Rep
Cu	63		770,529.1 A	108.3 ppb	4.60	0.30	12
Zn	66		142,710.2 M	101.6 ppb	6.23	0.30	12
Sr	88		2,029,507 A	105.3 ppb	4.38	0.30	12
Rh	103		2,293,346 A	---	---	---	---
Sb	121		539,021.6 M	102.6 ppb	4.35	0.30	12
Ba	137		251,691.7 P	99.12 ppb	4.76	0.30	12
Pb	208		1,040,180 A	104.5 ppb	4.86	0.30	12

End of Report

Fri Apr 15 08:16:42 2005

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor

05-14-2005 0027



ROBERT M. STEWART
Chief

TRACE EVIDENCE DEPARTMENT

SPO Robert C. Talanges
Spartanburg Department of Public Safety
145 Broad Street
Spartanburg, SC 29301

April 26, 2005
SLED Lab No: L05-02844
Your Case No: 02-771-05
Incident Date: 02/25/05
(V) Long, Sigida Kenyatta
(S) Jones, Damon Jacques

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item 2: One GSR kit from Damon Jones.

RESULTS:

In the samples submitted in the kit labeled "Damon Jacques Jones", the quantities of metals detected did not indicate the presence of gunshot residue.

Item 3: One GSR kit from Sigida Long

RESULTS:

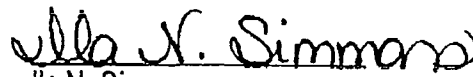
In the samples submitted in the kit labeled "Long Sigida Kenyatta", the quantities of metals detected on the back of the left hand may be associated with gunshot residue.



05-14-2005 0928

L05-02844
Page 2 of 2

These examinations were conducted by Special Agent Ila N. Simmons, Forensic Trace
Evidence examiner with this Division.



Ila N. Simmons
Special Agent

April 26, 2005
Date

INS/cem



4416 Broad River Road, P. O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300

04-20-2005 0068

02-0771-05

02-25-05

Inv Talanges

WALL- 47' 8" (A TO B)

A TO #1= 15'

A TO #2= 9' 3"

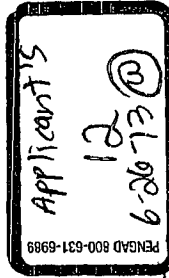
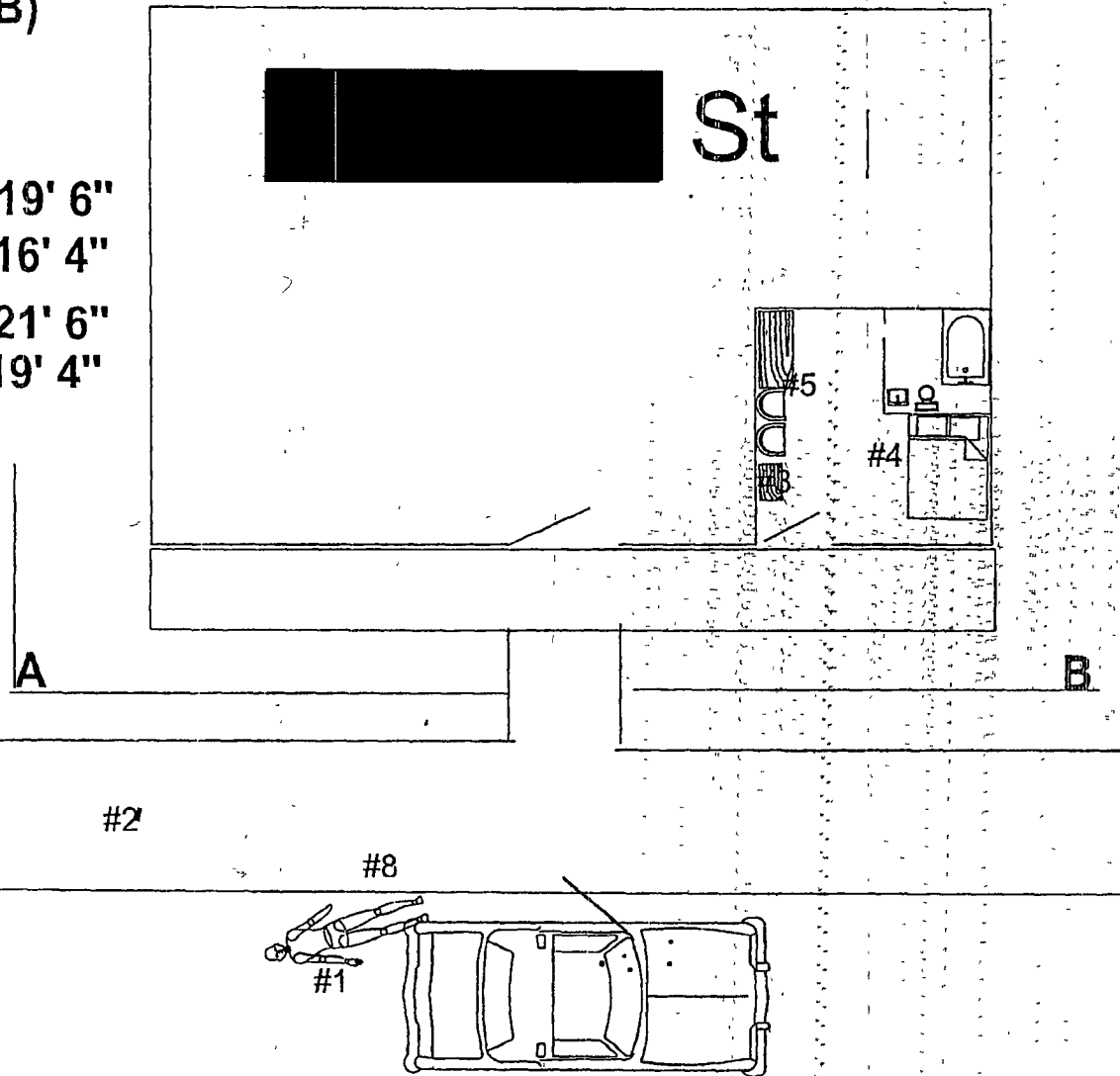
A TO #8 = 14' 9"

A TO RR Bumper = 19' 6"

A TO LR Bumper = 16' 4"

B TO FR Bumper = 21' 6"

B TO FL Bumper = 19' 4"

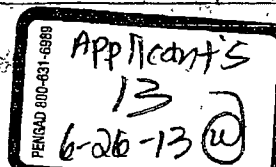


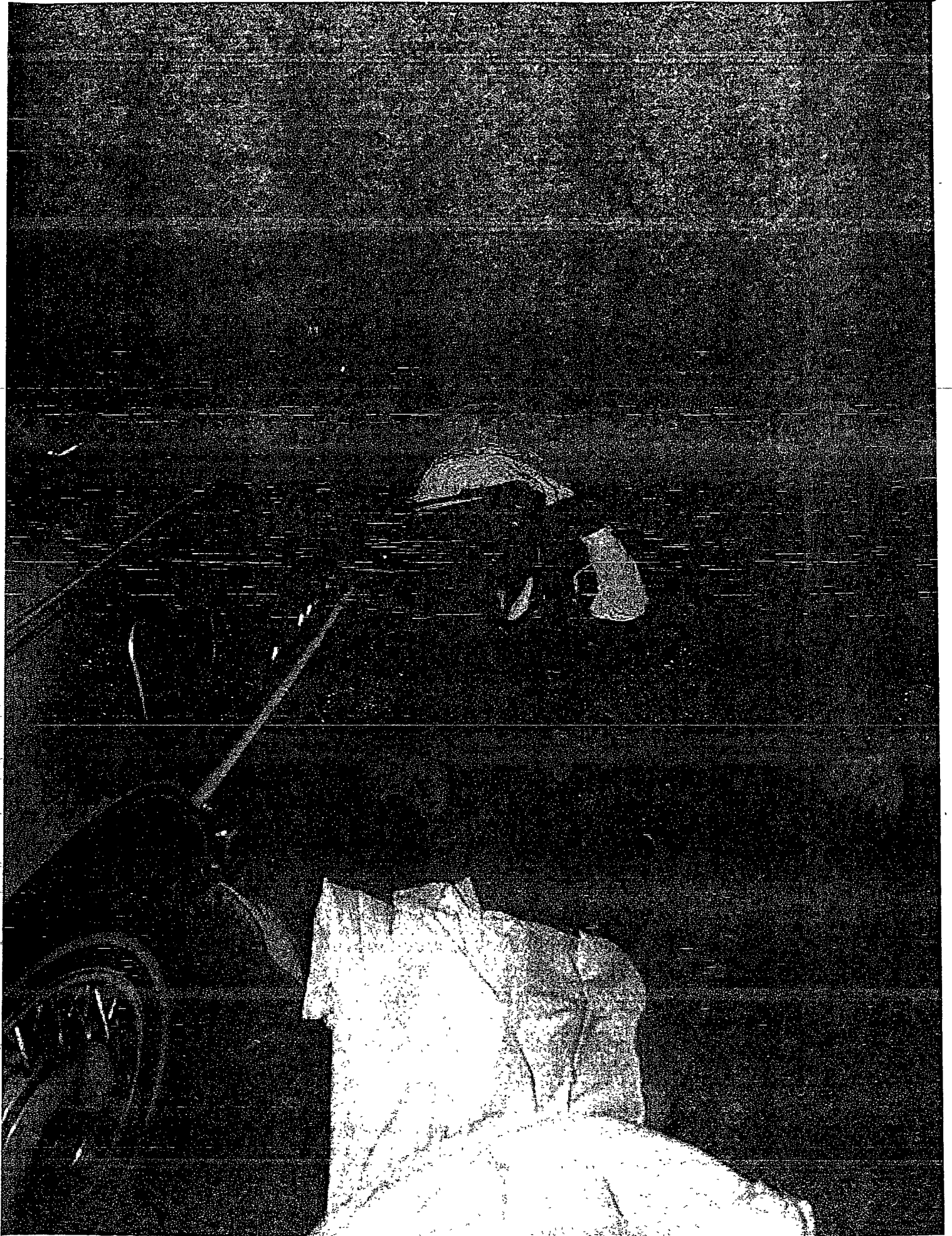
Driveway Area

[illegible]

Form A-31

Exhibit 2





DAMON J JONES
950 CALIFORNIA AVE
SPARTANBURG SC 29303

July 7, 2005

Spartanburg County Public Defender
Christopher D Brough, ESQ
258 N Church St
Spartanburg SC 29306

MR Christopher Brough;

I am writing this request to inform
you that I would like a copy of all
Brady Materials & Discovery in my case.
THANK YOU

If no response within TEN (10) DAYS
This letter will become sub Judice.

Exhibit 1

court's exhibit

6-25-13 @

CCI File

MR. DAMON JONES
 SCDC# 150331 MONT127 BRCI
 4460 BROAD RIVER RD.
 COLUMBIA, S.C. 29210

December 23, 2005

SPARTANBURG COUNTY CLERK OF COURT
 P.O. BOX 3483
 SPARTANBURG, S.C. 29304-3483

ESQUIRE, CHRISTOPHER D. BROUGH
 ATTORNEY AT LAW, P.A.
 184 N. DANIEL MORGAN AVE.
 SPARTANBURG, S.C. 29306

RE : COPY OF CASE FILES IN YOUR OFFICE TO INCLUDE
 ARREST WARRANTS, SENTENCING SHEETS, INDICTMENTS,
 (MOTION OF DISCOVERY FILES)

DEAR CLERK OF COURT AND COUNSEL BROUGH :

YOUR OFFICE HAS BEEN CONTACTED REGARDING THE ABOVE MATTER
 I AM IN QUESTION REGARDING THE ABOVE SUBJECTS TO WIT: [ARREST WARRANTS, CRIMINAL
 INDICTMENTS, SENTENCING SHEETS, ~~RULE 5 PACKET MOTION OF DISCOVERY DOCUMENTS~~
 ALL WHICH SHOULD BE IN YOUR CASE FILES. THEREFORE, I AM REQUESTING FOR YOU TO PL
 PLEASE FORWARD ME ALL OF THE ABOVE REQUESTED DOCUMENTS] SO I CAN PURSUE FILING
 A APPEAL IN MY CASE.

SUBSEQUENTLY, I AM ALSO REQUESTING TO KNOW [HAS A NOTICE OF
 INTENT TO FILE A APPEAL IN MY CASE BEEN FILED] WITH THE S.C. COURT OF APPEALS
 OFFICIALS? IF SO THEN PLEASE FORWARD ME A COPY OF THE [NOTICE OF INTENT TO FILE
 A APPEAL] THAT HAS BEEN FILED AS I DID REQUEST FOR MY COURT APPOINTED COUNSEL TO
 FILE FROM MY CONVICTION.

YOUR ATTENTION AND ASSISTANCE IN THIS MATTER IS WELL APPRECIATED,
 DO NOT HESITATE TO CONTACT ME IF YOU HAVE ANY QUESTIONS.

Exhibit 2

RESPECTFULLY I REMAIN :

Damon Jones

MR. DAMON JONES

SCDC NO. # 250332 BRCI MONT A. 127

4460 BROAD RIVER RD.,

COLUMBIA, S.C. 29210

CC: COUNSEL BROUGH

CC: SPARTANBURG COUNTY CLERK OF COURT

CC: RETAINED.

DECEMBER 23, 2005

COLUMBIA, SOUTH CAROLINA

Exhibit 2



The Law Offices Of
Christopher D. Brough



699

184 N. Daniel Morgan Ave.
Spartanburg, SC 29306

Telephone (864) 585-3088
Fax (864) 585-0068

January 31, 2006

Mr. Damon Jones
SCDC # 250322
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Jones:

I am in receipt of your letter requesting arrest warrants, criminal indictments, sentencing sheets, and Rule 5 Motion of Discovery Documents, as well as appeal information so that you may have help in your appeal. All of your case information has been forwarded to the Office of Appellate Defense, who is representing you on appeal. I have enclosed copies of the Notice of Intent to Appeal your case, a letter of receipt from the court of Appeals, a motion to remand the case to Circuit Court based on juror misconduct, as well as copies of your arrest warrant, indictment, and sentencing sheet. ~~AS I have already given you a copy of your discovery materials while you were in the Spartanburg County Detention Center, I have not enclosed another copy.~~ Please note that the Office of Appellate Defense will have a complete copy of the transcript from the trial.

Sincerely

Christopher D. Brough

Exhibit 3

Damon J Jones # 250332

BRCI mo-127

4460 Broad River Rd

Columbia, S.C. 29210

March 1, 2006

Chief Justice

Honorable Jean Toal

1231 Gervais Street

P.O. Box 12456

Columbia, S.C. 29211

RECEIVED

OFFICE OF
CHIEF JUSTICE

CERTIFIED TRUE COPY

of original

184 Mar 2006

Date

E. Cabell Wood
Notary Public for South Carolina
My Commission Expires July 29, 2007

Dear Chief Justice: I am writing to ask if you would so kindly assist me in obtaining all of my (Rule 5) Brady Material, which I am entitled to. I was giving only a small portion of my Brady Material while detained at Spartanburg Co Detention Center July 2005. I have tried several times since July 2005 to obtain all of my Documentation with no results, the only thing that was giving to me was some black & white scene photos, 3 statements, 3 supplemental police reports, & background checks. I'm missing the Coroner's Jim Burnett signed investigative report, Gun shot residue data sheets, Aftab Long's Very 1st statement, 4 swabbings for blood analysis that was done on my car, X-Rays, any and all documentation that the state has I need. I have enclosed a copy of letter to SPTBG Co Clerk of Court's former attorney requesting my Brady material with no results.

Dear Chief Justice: Please help me obtaining all of my (Rule 5) Brady Material which is my right, which has been violated.

Exhibit 4

Exhibit #

Thank you sincerely,

Damon Jones
Damon Jones



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

March 6, 2006

Christopher Brough, Esquire
Law Offices of Christopher Brough
184 N. Daniel Morgan Ave.
Spartanburg, SC 29305

184 N. Daniel Morgan Ave.
Spartanburg, SC 29305

Dear Mr. Brough:

Enclosed is correspondence received from Mr. Damon Jones. Since he indicates that you represented him in this matter, this letter is being forwarded to you.

Sincerely,

Daniel E. Shearouse

Enclosure

cc: Mr. Damon Jones, #250332
4460 Broad River Road
Columbia, SC 29210

Exhibit 5

Exhibit #



The Law Offices Of Christopher D. Brough



184 N. Daniel Morgan Ave.
Spartanburg, SC 29306

Telephone (864) 585-3088
Fax (864) 585-0068

March 15, 2006

Mr. Damon Jones
SCDC # 250322
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Jones:

I am in receipt of your letter dated February 13, 2006, requesting additional materials and documents, including Atiba Long's statement, the coroner's report, gun residue analysis datasheets, swabbings, and ballistics report. I have enclosed copies all of real time transcripts of the witnesses that testified that I received in trial from the court reporter. I have also included Atiba Long's statement (I only have 1 written statement from Atiba Long although he made a verbal statement to Investigator Boyd and I have enclosed Investigator Boyd's supplemental incident report). I have enclosed SLED Agent Dan DeFreese's report on ballistic tests, investigative notes from the Coroner's Office, the autopsy report of Sigida Long by Dr. Wren, the entire case jacket for the gun shot residue tests performed, and the Supplemental Report of Officer Talanges regarding his forensic data collection including swabbings (please note that I do not have any analysis reports for swabbings taken). I hope that this information helps you. Please note that the Office of Appellate Defense now represents you on your appeal, as I no longer represent you in this case. Please note that if you want copies of the videocassettes in your case, I will be happy to release them to your sister Pamela Foster if you wish me to do so. I only ask that you provide 5 blank videocassettes so that I may make the copies.

Sincerely

Christopher D. Brough

Exhibit 6

Along with this letter Chris Brough did in fact send me Exculpatory New evidence that I did not have, which was Talanges reports, proving that he withheld evidence

DAMON JONES, #250332
BRCI MONT 127
4460 BROAD RIVER RD.
COLUMBIA, S.C. 29210

APRIL 4, 2006

ESQ. TREY GOWDY (SOLICITOR)
180 MAGNOLIA STREET, 3rd. FLR.
SPARTANBURG, S.C. 29306

RE : PRODUCTION OF RULE (5) DISCOVERY PACKET
STATE OF S.C. V. D. JONES C/A#05-CS-42-3771

DEAR MR. GOWDY,

Your office has been contacted regarding the above matter due to the fact that I have not yet received my Motion of Discovery Packet from your office. S.C.R. CRIM. PROC. RULE 5. BRADY V. MARYLAND 373 U.S. 83, 83 S.Ct. 1194 (1963). I have been left with no other alternative than but to contact you requesting to receive my "MOTION OF DISCOVERY" and all relevant materials therein my case.

Please provide me with the proper information needed in order for me to disposition of receiving my "MOTION OF DISCOVERY" packet.

Thank You, for your assistance in this matter.

SWORN BEFORE ME THIS 11 DAY
OF April 2006.
S.C. NOTARY [Signature]
COMM. EXPIRES March 17, 2016

[Signature]
MR. DAMON JONES

EXHIBIT # 17



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

April 17, 2006

Damion Jacquise Jones # 250332
Broad River Correctional
Institution
4460 Broad River Road
Columbia, SC 29210

Re: The State v. Jones, Damion Jacquise

Dear Mr. Jones:

This is in response to your Writ of Mandamus concerning the above entitled case on appeal.

Because you are represented by the South Carolina Office of Appellate Defense, any document you wish to be considered by the Court must be submitted through that office. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998). Therefore, no action will be taken on your pro se motion.

You may contact the Office of Appellate Defense at 1205 Pendleton Street, Suite 306, Columbia, South Carolina, 29201. The telephone number for that office is 803-734-1330.

Very truly yours,

Kenneth A. Richstad
CLERK

KAR/nb

cc: Acting Chief Attorney Joseph L. Savitz, III
Assistant Deputy Attorney General Salley W. Elliott

Exhibit # 8

June 12, 2007

Case # 05-GS-42-3371

Warrant H682321

Damon J Jones # 250332

BRCI MO-176

4460 Broad River Rd

Columbia, SC 29210

Dear MRS Mary C Perry, FOIA

I am requesting additional documents that are at Shed along with the ^{#1} tooth and ^{#2} finger print analysis reports. I am requesting both of the ^{#3} gun shot residue data sheets from both test that were done on Sigda long, the stickie tabs and the swabs. Also all ^{#4} supplemental reports, ^{#5} investigative reports, ^{#6} Atibalangs 1st Statement and all documents at the Spartanburg Police Dept that are in connection with my case. I need ^{#7} The Autopsy report & ^{#8} X RAYS ^{#9} Autopsy photos and all documents at the Spartanburg Co Coroners office in connection with my case I need.

I Thank you for
Your Assistance in this
Matter.

Sincerely,

Damon Jones

Exhibit #9

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

July 31, 2007

Damon Jones, #250332
Broad River C.I. / MO-127
4460 Broad River Rd.
Columbia, SC 29210

RE: Freedom of Information Act Request

Dear Mr. Jones:

This letter is to confirm that we are in receipt of your money order in the amount of \$27.50. Please find enclosed the information available to you under the Freedom of Information Act. Additional information may be available from the Spartanburg Public Safety Department.

Thank you for your patience. If you have any questions, or if I can be of service to you in the future, please do not hesitate to contact me at (803) 896-7013.

Sincerely,

M.C. Perry

Mary C. Perry

FOIA/Subpoena Compliance Coordinator

MCP/dls/FOI#2007-447



Exhibit #

Exhibit 10

An Accredited Law Enforcement Agency.

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

707

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

August 20, 2007

Mr. Damon Jones, #250332
BRCI / MO-176
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Jones:

I am in receipt of your latest of numerous letters to my office, in which you state you received useless, "meaningless" information. Please be advised that I do not know what is useful to you or anyone else when I answer a FOIA request. Your request was forwarded to our laboratory department and the information was gathered by them and provided to me. As far as the autopsy report and any autopsy photos, you will need to request them from the Spartanburg County Coroner's Office. (They are not in our possession.) Any investigative reports, supplemental reports and "any and all documents at the Spartanburg City Police Department" will need to be requested from the Spartanburg Department of Public Safety. (They also are not in our possession.) As far as your complaint for having to pay \$27.50, please be advised that I gave you a break on the charges by not charging you for the actual total number of pages. Also, the laboratory departments involved in your case reported it took them over an hour and a half to research and copy their files. (This would have amounted to \$30.00.) I only charged you a half hour (\$10) for the research and copying time.

Sincerely,

M. C. Perry

Mary C. Perry
FOIA/Subpoena Compliance Coordinator

mcp/FOI#2007-447

Exhibit 11



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

MR. DAMON JONES, #250332 BRCI
MONT.#127 , 4460 BROAD RIV. RD.
COLUMBIA, S.C. 29210

DATE FILED : April 11, 2006

S.C. COURT OFFICE OF APPELLATE DEFENSE
ESQUIRE, JOSEPH I. SAVITZ
1205 PENDLETON STREET , ROOM#306
COLUMBIA, S.C. 29201

RE : ENCLOSED "WRIT OF MANDAMUS"

DEAR CHIEF ATTORNEY MR. SAVITZ;

Your office has been contacted regarding the above matter. Due to the fact that no attorney from your office has yet been appointed to represent me in my case presently awaiting to be reviewed by the S.C. Court of Appeals , I have forwarded this letter to your office for assistance and direct response.

I request for you to please file the enclosed "WRIT OF MANDAMUS" in the Court of Appeals and/or hold the enclosures and forward them to the attorney that will be appointed to represent me in my case.

Your attention and assistance in this matter is well appreciated. Please do not hesitate to contact me if you have any further questions.

Respectfully :

SWORN BEFORE ME THIS 11 DAY
OF April 2006.

NOTARY: Jonathan Reid
COMM. EXPIRES: March 17, 2016

Damon Jones
MR. DAMON JONES

RECEIVED

APR 13 2006

SC Court of Appeals

Exhibit #12

Exhibit 13

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

MR. DAMON JONES, #250332
APPELLANT;

PETITIONER,

VS.

RESPONDENTS,

THE STATE OF SOUTH CAROLINA,
PLAINTIFFS.

CASE NO# 05-GS-42-3771

APPELLANTS MOTION FOR BRADY & OTHER FAVORA
BLE MATERIALS AND INCORPORATED MEMORANDUM
OF LAW S.C. RULES CRIM. PROC. RULE (5)

NOW COMES THE APPELLANT (DEFENDANT) DAMON JONES, SCDC
NO.#250332, in the above captioned case. The appellant is
presently a inmate incarcerated in the South Carolina Dept.
of Corrections serving a Life Sentence from a unlawful sentence
and conviction imposed upon him by a jury and a judge in the
Spartanburg County Court of General Sessions on the date of
November 30, 2005.

The appellant (defendant) request for this court to grant
him the right to receive and review the Rule (5) documents
that were deprived him in the Court of General Sessions before,
during, and after his trial. The appellant contends that he
needs to review the documents enclosed within the possession
of the Spartanburg County Solicitor and the S.C. Attorney
General Officials files and records in order to enable him

to present his case properly in this court.

1. Under the united states Supreme Court decision in Brady v. Maryland, 373 US 83, 83 S.Ct. 1194, (1963), the Solicitor and the State of South Carolina has an obligation to produce all Brady materials for the defendant well in advance of the scheduled trial date (which did not occur) in the defendant case, and which is needed to occur at this present;

2. Defendant claims under Brady, and its progeny as well as the language and spirit of Giglio v. United States, 405 US 150, 92 S.Ct. 763 (1972); United States V. Tashman, 478 F.2d 129 (5th. Cir. 1973); that he is entitled to any and all records memoranda, and documents, as well as a statement of the ~~Clark~~ County Solicitor and all appropriate state and federal and local law enforcement agencies as to :

(a) Any written statements, recorded statements made by the defendant, or copies thereof, within the possession, custody, or control of the prosecution, the existence of which is known, to the attorney for the prosecution and/or the State of South Carolina;

(b) The substance of any oral statement which the prosecution intended to use and/or did use into the offering of the evidence at the trial made by the defendant, whether before or after arrest, in response to interrogation by any person then known to the defendant to be a prosecution agent;

(c) All books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody, or control of the prosecution and which are material to the defense, or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant;

(d) All results or reports of physical or mental examinations, and of scientific test or experiments , or copies thereof, which are within the possession , custody, or control of the prosecution, the existence of which is known , or by the exercise of due diligence may become known , to the attorney for the prosecution , and which are materials to the preparation of the defense or are intended and/or was used by the prosecution during the proceedings of the Petitioners case at trial.

~~The Appellant (Petitioner) moves, that any Report of~~
Chemical Analysis and any Certified or Sworn Statement establishing a chain a physical custody or control of evidence , as provided for the Rules (6) (a) and 6(B), S.C. Rules of Criminal Procedures, be made available to the Appellant for review and preparation of his case under Appellate review by this honorable Court.

For the purposes of this Motion, the Appellant asserts that any item requested throughout this Motion is for the preparation and presentment of a proper brief to be filed in the Appellant (Defendants) case in the S.C. Court of Appeals

Appellant Sayeth Not.

BY MY HAND:

DAMON JONES, #250332

4460 BROAD RIV. RD.
COLUMBIA, S.C. 29210

SWORN BEFORE ME THIS 11 DAY

OF April 2006

S.C. NOTARY Jonathan Penn

COMM. EXPIRES: March 17, 2016

CC: RETAINED.

Exhibit

**SCCID**

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

June 2, 2006

Mr. Damon J. Jones #250332
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Your case

Dear Mr. Jones:

I received your letter on May 23, 2006. I have reviewed the information from Juror Number 70 on being "coerced" into voting with the majority to convict you. However, I am not sure what you asking about a writ of mandamus. A writ of mandamus is a document to make a lower level official do with some act that he is obligated to do by law. There cannot be any discretion involved in the object of a writ of mandamus. A writ of mandamus is also an extraordinary writ and very seldom used motion since it is almost never applicable. Regardless, if you want to give me some more information on where you think this writ applies, to whom, and why, I will certainly give it some thought.

Sincerely,

Robert M. Dudek
Assistant Appellate Defender

RMD/mwl

Exhibit # 14

**SCCID**

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

July 3, 2007

Mr. Damon Jones #250332
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Your case

Dear Mr. Jones:

Thank you for your recent letter. I do not have Rule 5 or other trial level documents that you are referring to in your letter. The only matters pertinent to an appeal are the trial transcript and any exhibits introduced during a trial or hearing. If they are outside that narrow scope, they are not relevant to the appeal and I do not have them. Please call me collect if you have any more questions.

Sincerely,

Robert M. Dudek
Deputy Chief Attorney for Capital Appeals

RMD/mwl

Exhibit #15

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

CLAY T. ALLEN
CIRCUIT PUBLIC DEFENDER366 NORTH CHURCH STREET
SUITE 3000
SPARTANBURG SC 29303

TELEPHONE (864) 596-2561

FAX (864) 596-2284

November 20, 2009

Mr. Damon Jones
SCDC # 250332
McCormick Correctional Institution
Route 2, Box 100
McCormick, South Carolina 29899

Re: State v. Damon Jones

Dear Mr. Jones:

In response to your letter to me dated October 26, 2009, and postmarked November 9, 2009, please be advised that Christopher Brough, the attorney who represented you at your trial, still has your complete file. I have spoken with Mr. Brough about your request, and he has asked me to forward your letter to him. Therefore, by copy of this letter, I am forwarding to Mr. Brough a copy of your letter to me, and I am asking him to provide you copies of all of the items of the file to which you are entitled.

Sincerely,

A handwritten signature of Clay T. Allen in black ink.
Clay T. Allen
Circuit Public Defender

CTA:

cc: Christopher Brough, Esquire

Exhibit # 16



The Brough Law Firm



Christopher D. Brough
175 Magnolia Street, Suite 202
Spartanburg, SC 29306

Phone: 864-585-3088
Fax: 864-585-3058
www.broughlaw.com

March 17, 2011

Mr. Damon Jones SCDC ID#250332
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Dear Mr. Jones:

It is my understanding that you have filed a post-conviction relief. I have enclosed a copy of your file with the exception of the compact discs and video tapes. The Department of Corrections will not allow you to have CDs or tapes in your possession. Furthermore, I have released a copy of your entire file to your attorney that is handling your PCR. Should you need any further assistance, please feel free to contact me.

Sincerely,

Christopher D. Brough
Attorney At Law

Exhibit # 17

716 FR: MR. DAMON JONES # 250332 BRCI MONT. A. # 127

Exhibit 18.

4460 Broad River Rd., Columbia, S.C. 29210

MAY 17, 2006

FREEDOM OF INFORMATION ACT SERVICES DIV.

Spartanburg County Coroner's Office
SPARTANBURG, S.C. 29303

RE : PRODUCTION OF RECORDS LISTED IN OFFICE FILES

CRIMINAL CASE NO. # GS-23-3371

STATE OF SOUTH CAROLINA V. DAMON JONES

DEAR FREEDOM OF INFORMATION OFFICE FOR All Documents

Your office has been contacted regarding the above referenced matter. I am a "Appellant" in the above captioned case, and I am writing requesting to receive your assistance in receiving my records and files listed in your office. The coroner in the case at hand was Jim Burnett, Brad Wall all case records & files should be listed under his name.

Pursuant to the U.S.C.A. 1st. & 14th. Amendment the above records and files are hereby respectfully requested from your office for my review in judicial appellate process of my criminal conviction and sentence on the date of Dec 1, 2005.

Your attention and assistance in this matter is well appreciated, do not hesitate to contact me if you have any future question's. "Forma' Pau'per'ios affixed for your review.

RESPECTFULLY :

Damon Jones
MR. DAMON JONES

Sworn Before Me this
DAY OF 18th May 2006.

Elizabeth W. Smith
COMM. BY July 29, 2007

F * O * I * A *

FREEDOM OF INFORMATION REQUEST

I MR. DAMON JONES, # 250332, HEREBY MAKE THIS REQUEST
IN THE FILING AND PROCESS OF THE ENCLOSED F*O*I*A* =FREEDOM
OF INFORMATION ACT PROCESS. IT IS DUE TO MY POVERTY THAT I AM
UNABLE TO PAY THE ADVANCED FEE'S IF ANY FOR THE PROCESS OF THIS
REQUEST.

RESPECTFULLY SUBMITTED:

Damon Jones
MR. DAMON JONES

SWORN BEFORE ME THIS 18th DAY
OF May 2006.
Elizabeth Turner
COMM. EXPIRES: July 29 2007

Exhibit 18

State of South Carolina



Spartanburg County Court House
180 Magnolia Street
Spartanburg, S.C. 29306
Phone (864) 596-2575
Fax (864) 596-2386

Cherokee County Court House
Floyd Baker Blvd
Gaffney, S.C. 29340
Phone (864) 487-2576
Fax (864) 487-2753

BARRY J. BARNETTE

Solicitor, Seventh Judicial Circuit

December 18, 2012

Reed Teague, Esquire
The Ward Law Firm
Post Office Box 5663
Spartanburg, South Carolina 29304

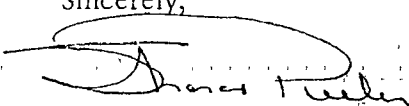
RE: Damon Jones
PCR

Dear Mr. Teague:

Attached please find a CD that contains the information you reviewed in our office on Thursday, December 13, 2012, as well as a description list of same.

If you should need anything further, please do not hesitate to contact me.

Sincerely,



Sharon O. Peeler
7th Judicial Circuit

sop

Enclosures:

cc: Suzanne White
Office of the Attorney General

Exhibit 19

State v. Damion Jones

Disc Contents

Waiver-Atiba Long

Appeal Paperwork

Atiba Long Statement

Autopsy Report

Coroner's Case File

Defense Requested Jury Instructions

Evidence Sheets

Evidence Sheets 2

Mignon Williams Statement

Mignon Williams-Subpoena

Motions from Defendant

Photos

Preliminary Hearing paperwork

R Porter Subpoena

Rule 5

Sigida Long Rap Sheet 1 pg

Sketch

SLED Reports

SLED Reports 2

SLED Reports 3

SLED Reports 4 & GSR

States Exhibit List

State's Voir Dire

Subpoenas 1

Subpoenas 2

Subpoena List

Supplemental Report

Witness List

Exhibit 19.

THE WARD LAW FIRM, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 5663
SPARTANBURG, SOUTH CAROLINA 29304

JAMES W. HUDGENS
GENE ADAMS
H. SPENCER KING
ROBERT E. DAVIS*
JASON M. IMHOFF
JOHN E. ROGERS, II*
REED TEAGUE
CHAD M. GRAHAM

RUFUS M. WARD (1908-1988)
L. PAUL BARNES (1931-1986)

233 SOUTH PINE STREET
SPARTANBURG, S.C. 29302

FAX NO (864) 585-3090
E-mail: rteague@wardfirm.com

*ALSO MEMBER NORTH CAROLINA BAR

Direct No 864-591-2340

December 18, 2012

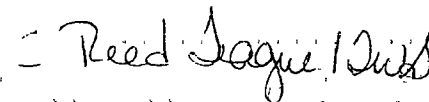
Mr. Damon Jones #250332
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

RE: **Damon Jones v. State of South Carolina**
CA No.: 2010-CP-42-06623

Dear Mr. Jones:

Enclosed please find copies of the documents provided by the Solicitor. I will contact you next week to discuss.

Sincerely,



C. Reed Teague

Enclosures

Exhibit 20

Exhibits 1 - 21

721

Proving I have been
trying to obtain all the
evidence in my case
for over 8 years

JRD LAW FIRM, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 5663
BURG, SOUTH CAROLINA 29304

RUFUS M. WARD (1908-1988)
L. PAUL BARNES (1931-1986)

233 SOUTH PINE STREET
SPARTANBURG, S.C. 29302

JASON M. IMHOFF
JOHN E. ROGERS, II*
REED TEAGUE
CHAD M. GRAHAM

*ALSO MEMBER NORTH CAROLINA BAR

FAX NO (864) 585-3090
E-mail: rteague@wardfirm.com

Direct No. 864-591-2340

January 11, 2013

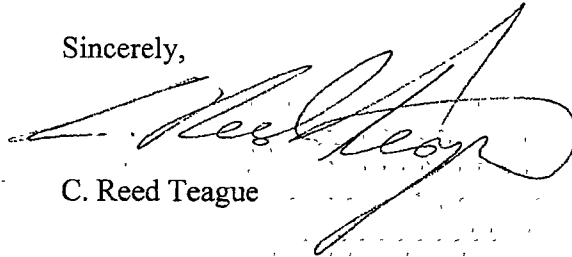
Mr. Damon Jones #250332
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

RE: Damon Jones v. State of South Carolina
CA No.: 2010-CP-42-06623

Dear Mr. Jones:

Per your request, enclosed please find copies of the documents provided by Chris Brough.

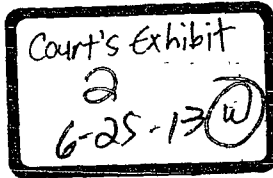
Sincerely,



C. Reed Teague

Enclosures

Exhibit 21



04-20-2005 0052

VOLUNTARY STATEMENT

PAGE 2 OF 3

CASE NUMBER

2-771-15

NAME: Atiba Keita Long

The following is a statement taken from Atiba Long on 2-25-05. This statement was taken at City Hall and it was written by Inv. C.A. Boyd.

Around 6:30pm. I was in front of my mother's house, on Seay Street. I was dropping my brother, Sigida off. Sigida got out of the car and he went to talk to one of Damien's uncles. Sigida went and knocked on the front of the Foster residence. Damien and another guy were out front on the street near a car. Sigida walked back leaving and he had words with a guy who was wearing glasses (I don't know his name, but he is the other witness in the other room talking to a detective).

I don't know who threw the first punch, but my brother and Damien got into a little scuffle. My brother was at the car and the other guy was sitting in the car. I saw people moving around in the car. I was walking around to the car to see what was going on. The guy pulled out a gun and my brother backed up. I don't know what type it was, all I know the guy had a handgun. I heard the shot and my brother fell. I was standing behind him when he was hit. When I walked up, Damien

Witness: _____

Signature of Subject: Atiba Long

04-20-2005 0053

VOLUNTARY STATEMENT

PAGE 3 OF 3

CASE NUMBER

2-771-05

NAME: Atiba Keita Long

turned the gun and pointed it face level at me. He acted like he was going to shoot me. I told my mother to call the police.

Damien ran into the house with his waders and put the gun up. He came back out and sat on the front porch. He said that my brother tried to carjack him; this is not true because my brother didn't have a gun.

Two years ago, Damien put sugar in my gas tank and a report was filed. Since this we have experience problems with him but I never thought it would come to this.

I have read this statement which consist of three pages; and I was allowed to make the needed changes. I also received a copy of this statement.

A. S. Boyd

Atiba Keita Long

Signature of person giving voluntary statement

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Damon Jones, #350332,	)	2010-CP-42-6623
aka Damian Jones	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 15, 2011, and amended application filed March 9, 2012. The Respondent made its Return on or about February 16, 2012. An evidentiary hearing into the matter was convened on June 25, 2013, and concluded on June 26, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by C. Reed Teague, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Sandra McGraw, Officer Ila Simmons of SLED, Atiba Long, Mignon Williams, Solicitor Barry J. Barnette, Officer Robert Talanges, and Christopher D. Brough, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, the trial transcript, and exhibits presented during the hearing.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Applicant was

indicted at the August 2005 term of the Spartanburg County Grand Jury for murder (2005-GS-42-3371). Christopher D. Brough, Esquire, represented the Applicant. On November 30, 2005, the Applicant was convicted of the charge by a jury. The Honorable Paul M. Burch sentenced the Applicant to confinement for life without parole.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Jones, Op. No. 2008-UP-424 (filed July 23, 2008). A Petition for Rehearing was filed by the Applicant and denied by the Court on September 23, 2008. The Applicant then filed a Petition for Writ of Certiorari to the South Carolina Supreme Court, which was granted on December 2, 2009. The South Carolina Supreme Court affirmed the decision of the Court of Appeals. State v. Jones, Memo. Op. No. 2010-MO-020 (filed August 23, 2010). A Petition for Rehearing was filed by the Applicant and denied by the Court on September 22, 2010. The Remittitur was returned on September 22, 2010.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons (listed as numbered in application):

Issue #1

- Prosecution and Counsel made concerted effort to withhold exculpatory evidence from Applicant (Atiba Long's first written statement, blood analysis report, fingerprint analysis report, signed coroner's report, all Spartanburg Police Department investigative and supplemental reports), violating Applicant's due process right.

Issue #2

- Prosecution and Counsel violated Applicant's due process rights when "aiding state's witness, Atiba Long, in construction of a second written statement which is falsified evidence," and Applicant was in possession of second written statement only.

Issue #3

- Prosecution argued that the evidence indicated that the victim had been shot at a 45 degree angle while kneeling behind Applicant's car, while

Applicant was standing on a brick wall in his grandmother's yard, but there was blood on the driver's side roof of Applicant's car, which makes this argument impossible. Counsel failed to object to this testimony and false evidence.

Issue #4

- Prosecution and Counsel worked in concert to ensure Applicant's conviction when Prosecution argued there was no blood at the driver's side door, but photos taken by Officer Talanges indicate that there were blood smears on the driver's side of Applicant's car.

Issue #5

- Counsel failed to introduce and argue Sigida Long's lengthy criminal record.

Issue #6

- Counsel failed to enter and argue Mignon Williams' written and verbal statement for impeachment purposes.

Issue #7

- Counsel failed to inform Applicant that the jury sent four notes to the court and failed to ensure that Applicant was present or waived his right to be present when the notes were received and read.

Issue #8

- Trial court abused its discretion and violated Applicant's due process rights when it failed to give modified version of the Allen charge to an obviously deadlocked jury.

Issue #9

- Counsel failed to request a mistrial or request that the jury be sent home to reconvene the following day, where the jury had been deliberating for more than six hours.

Issue #10

- Juror #86 committed juror misconduct when she failed to reveal during voir dire that she was a victim of a violent crime, which would have led to Counsel striking her from the jury.

Issue #11

- Prosecution "failed miserably to prove its murder case, despite all of the conspiring with the defense counsel to withhold, falsify and alter evidence."

Issue #12

- Court reporter Mike Watts inaccurately recorded Applicant's trial for murder where there are numerous inaccuracies and fabricated testimony.

Issue #13

- Trial counsel had a conflict of interest and mishandled Applicant's case, leading Applicant to believe that Counsel was conspiring with the Prosecution to secure Applicant's conviction.

The Applicant informed this Court that he was proceeding on the allegations as detailed in the amended application filed March 9, 2012, and as represented above, but voluntarily abandoned issues #7, 8, 9, 11, and 12. The Applicant also orally amended the application to include an allegation of ineffective assistance of appellate counsel for failure to make a motion to stay the appeal and remand to the circuit court for a hearing on the juror misconduct issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(c), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Issue #1

- Prosecution and Counsel made concerted effort to withhold exculpatory evidence from Applicant (Atiba Long's first written statement, blood analysis report, fingerprint analysis report, signed coroner's report, all Spartanburg Police Department investigative and supplemental reports), violating Applicant's due process right.

Applicant claimed that the prosecution and Counsel made a concerted effort to withhold documents from him, including those listed above. However, Applicant acknowledged that although he did not have the documents, he did not know if Counsel had them in his possession. In support of this claim, Applicant entered into evidence Exhibit #4, Officer Talanges' supplemental report; Exhibit #5, a photo of the car entered as Exhibit #13 at trial; and Exhibit #6, Lt. Lamb's supplemental report. Applicant also entered the latent print analysis as Exhibit #9, the coroner's report as Exhibit #10, and the SLED reports as Exhibit #11. The State objected to the introduction of Applicant's personal notes regarding various issues as evidence and the objection was sustained.

As to claims that the Prosecution or Counsel withheld exculpatory information from the Applicant, this Court finds that the Applicant has failed to meet his burden of proof. This Court found the testimony of Counsel and Solicitor Barnette to be more credible than Applicant's testimony. In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

This Court finds that the Applicant's Brady rights were not violated. This Court finds that Counsel was aware of and had received the blood analysis report, fingerprint analysis report, signed coroner's report, as well as all investigative and supplemental reports by the Spartanburg Sheriff's Office. This Court finds that there was no second statement of Mr. Atiba Long and Applicant received the only written statement Long provided the police. Furthermore, the reports entered into evidence which Applicant claimed to have been withheld from him contained no material, exculpatory evidence that would have changed the result of the proceeding. Therefore, this allegation is dismissed.

Issue #2

- Prosecution and Counsel violated Applicant's due process rights when "aiding state's witness, Atiba Long, in construction of a second written statement which is falsified evidence," and Applicant was in possession of second written statement only.

Atiba Long, the victim's brother, testified that he gave a written statement to police as a witness to the shooting. He testified that he did not recall ever giving a second or different

statement and never made any changes to the initial statement he gave to police. Both Solicitor Barnette and Counsel testified that there was not a second statement by Mr. Long to their knowledge. The Applicant entered Atiba Long's written statement into evidence as Exhibit #11.

This Court finds that the Applicant has failed to meet his burden of proof as to this claim. This Court finds the testimony of Mr. Long, Solicitor Barnette, and Counsel to be credible on this issue. There is nothing to support the Applicant's claim that the victim's brother provided police with a second statement and the testimony provided directly contradicts that claim. Therefore, this claim is denied and dismissed.

Issue #3

- Prosecution argued that the evidence indicated that the victim had been shot at a 45 degree angle while kneeling behind Applicant's car, while Applicant was standing on a brick wall in his grandmother's yard, but there was blood on the driver's side roof of Applicant's car, which makes this argument impossible. Counsel failed to object to this testimony and false evidence.

The Applicant argued that Counsel failed to object to testimony and evidence presented by the prosecution regarding the angle of the gunshot and the position of both the Applicant and victim at the time of the shooting. This Court finds that the Applicant has failed to meet his burden of proof as to this claim. As the record reflects, Counsel cross-examined Dr. Wren regarding his testimony of a 45 degree angle and pointed out the fact that this measurement was simply an estimate. (Tr. p. 141). Counsel testified that he did not hire anyone to analyze the angle of the gunshot and does not know if someone could have been hired to make that determination. However, Counsel testified that he thought that he called that testimony into question when Dr. Wren admitted during cross-examination that he used no measuring device to make his determination.

The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant did not proffer any questions counsel allegedly failed to ask, and did not present any testimony showing the witnesses' answers at trial would have been different in response to different questions or because of objections. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense.

This Court finds that the Applicant failed to present any specific evidence or testimony that was legally objectionable, rather, Applicant appears to want Counsel to object generally to the prosecution's case. This Court finds that Counsel utilized cross-examination of Dr. Wren, as well as testimony from the defense expert, to draw attention to the alleged inaccuracies of the measurements and State's position. Therefore, this claim is denied and dismissed.

Issue #4

- Prosecution and Counsel worked in concert to ensure Applicant's conviction when Prosecution argued there was no blood at the driver's side door, but photos taken by Officer Talanges indicate that there were blood smears on the driver's side of Applicant's car.

Solicitor Barry Barnette testified that he prosecuted the case along with Assistant Solicitor Jennifer Jordan. Barnette testified that he received and reviewed all reports from the investigation. Barnette testified that he did review Officer Talanges' report that indicated there was a drop of blood on the roof of the car on the driver's side and no blood splatter inside the vehicle. Barnette testified that he does not usually enter a black and white photocopy of a photo, but will enter the actual picture of the crime scene into evidence, so the photo which was entered

at trial of the car, would have been a color copy. Following his review of Applicant's Exhibit #5, Barnette testified that he could not make a determination if the spot seen on the photo is blood. Barnette testified that the victim was found lying at the back of the Buick with a large amount of blood as a result of his head wound. Barnette also testified that Officer Talanges testified that there was no blood found in the car. (Tr. p. 81) (emphasis added).

Officer Robert Talanges testified that he responded to the location and was responsible for photographing the scene and collecting all of the evidence at the scene. Talanges testified that his only analysis experience was in latent print analysis, so all other evidence would have been sent to SLED for analysis. Talanges testified that he submits whatever information to SLED that the investigator wants him to submit, which sometimes includes submitting a victim's clothing for gunshot residue analysis. Talanges testified that he completed his report following the investigation. Following his review of Exhibit #5, Talanges testified that he saw the spot on the top of the car, but could not state whether it was blood or not. Further, Talanges testified that he made a diagram referencing dots on the windshield of the car, hood, and roof of the car. The Applicant introduced Exhibit #12, the diagram produced by Talanges; Exhibit #13, the evidence sheet indicating there was no blood found on the back of the car; and Exhibit #14, a photo of the victim at the back of the car. Additionally, Talanges testified that he has expertise in latent prints, but not crime scene reconstruction. Talanges testified that he has never been qualified as an expert in crime scene reconstruction and cannot testify as to the possible location of the shooting versus where the body was found.

Counsel testified that he was aware of the fact that the investigative report indicated droplets of blood on the car at the front, but did not believe that information was necessary for trial because of Jeff Hollifield, the defense expert in gunshot residue. Counsel testified that

Hollifield's testimony regarding possible gunshot residue on the victim's hands supported the defense that he was in close proximity to the Applicant at the time of the shooting, especially in light of the fact that the victim did not have a gun. Counsel testified that a couple of droplets of blood could be splatter from the shooting and did not necessarily support the claim of self-defense. Counsel testified that he believed the important facts were that the victim approached the Applicant and that forensic evidence indicated that the victim and Applicant were in close proximity. Counsel testified that he did not cross-examine Talanges about blood found on the Applicant's shoe because he did not want Talanges to try and explain it away.

Further, Counsel testified that the photos of the car, including Exhibit #5, did not really show blood on the car, so it was difficult to cross-examine Talanges about any blood found on the car. Counsel testified that he felt the point was more that the altercation occurred at the car, not necessarily whether it occurred at the front or back of the car.

Again, this Court finds the testimony of Solicitor Barnette, Officer Talanges, and Counsel to be more credible than the testimony of Applicant. In so much as the Applicant is alleging a Brady violation, this Court finds that the Applicant failed to meet his burden of proof. As evidenced by the introduction of Exhibit #5, the photo of the front of the car and the small drop on the roof of the car was entered at trial and presented to the jury. Because there is no indication that any evidence was withheld by the Prosecution, this claim is denied and dismissed.

As to the claim that Counsel acted in concert with the prosecution to not draw the jury's attention to this alleged drop of blood, this Court finds that the Applicant has also failed to meet his burden of proof. First, this Court finds no evidence that Counsel was attempting to assist the prosecution in the presentation of their case. Second, where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective

assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Counsel articulated valid strategic reasons for not focusing on the small spots on the vehicle. The Applicant has not shown that counsel was deficient in that choice of tactics. Therefore, this claim is denied and dismissed.

Issue #5

- Counsel failed to introduce and argue Sigida Long's lengthy criminal record.

The Applicant claims that Counsel was ineffective for failing to enter the victim's criminal record into evidence at trial. In support of this claim, Applicant moved to introduce the victim's, Sigida Long, criminal record at this hearing. This Court sustained the State's objection to that evidence, but allowed Applicant's Counsel to proffer the criminal record.

The Applicant testified that he had previously been threatened and assaulted by the victim and his brother and thought that if Counsel had attempted to enter into evidence the victim's criminal record, it would support Applicant's claim of self-defense. Counsel testified that he felt that the prior threats made by the victim to the Applicant were sufficiently presented to the jury through the Applicant's testimony. (Tr. p. 181, lines 11-25; p. 182, lines 1-16, lines 20-25; p. 183, lines 1-6). As a rule, "[e]vidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion," including the character traits of the victim. Rule 404(a)(2), SCRE.

This Court finds that the Applicant has failed to meet his burden of proof as to this claim. This Court finds that Counsel presented the alleged altercations with the victim and the Applicant to the jury through the Applicant's testimony and any prior criminal record of the

victim would not have been admissible to support Applicant's defense. Therefore, this claim is denied and dismissed.

Issue #6

- Counsel failed to enter and argue Mignon Williams' written and verbal statement for impeachment purposes.

Applicant testified that Counsel was ineffective for failing to impeach Mignon Williams, neighbor and witness to the shooting, with her prior written statement to police. Ms. Williams testified that she provided the police with a written statement and testified at trial. Ms. Williams acknowledged that her statement mentions a second person who was with her at the time of the shooting; however, she testified that the other witness' back was to the shooting. Ms. Williams testified that no one ever contacted her for the name of the other woman. Applicant entered Ms. Williams' written statement into evidence as Exhibit #7.

Counsel testified that Mignon Williams testified that the Applicant was in the yard of the home when he shot the victim. Counsel testified that he felt he sufficiently cross-examined Williams about her ability to accurately perceive everything. Counsel testified that he did not ask her about the distance between victim and Applicant because Solicitor Barnette had already asked that question on direct and she indicated that the distance was the same distance between her and Solicitor Barnette at that time in the courtroom, which was not helpful for the defense. Counsel testified that he did make contact with the additional witness mentioned by Ms. Williams, but that witness indicated that she did not see anything.

This Court finds that the Applicant failed to meet his burden of proof as to this claim. As Rule 613, SCRE, indicates, the only time extrinsic evidence of a prior inconsistent statement by a witness is admissible, is if the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and does not admit that he has

made the prior inconsistent statement. Rule 613, SCRE. Applicant failed to provide any specific instances of testimony inconsistent with the statement. As the transcript reflects, Ms. Williams did not testify inconsistently with her written statement to police. (Tr. p. 123-132). Therefore, this Court finds that Counsel could not have introduced her written statement as evidence at trial and is not ineffective for failing to attempt to do so.

As to any allegation that Counsel was ineffective for failing to call the woman mentioned in Ms. Williams' statement as a witness, this Court finds that the Applicant has failed to meet his burden of proof. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

Although the Applicant had Ms. Williams present to testify, her testimony offered no additional information and provided nothing that was not already testified to at trial. Furthermore, although the Applicant alleged that Counsel failed to contact the other woman with Ms. Williams, Counsel testified that he did speak with that witness. This Court finds both Ms. Williams' and Counsel's testimony credible as to this issue. Counsel testified that the witness indicated that she had seen nothing and would not have been helpful at trial. Therefore, this

Court finds that the Applicant has failed to meet his burden of proof as to this claim and it is denied and dismissed.

Issue #10

- Juror #86 committed juror misconduct when she failed to reveal during voir dire that she was a victim of a violent crime, which would have led to Counsel striking her from the jury.

The Applicant alleged that his right to a fair trial was violated because juror Sandra McGraw failed to disclose the fact that she had been a victim of a violent crime during jury voir dire. Provided a claim of juror misconduct is timely raised, "a new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information; and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenge." McCoy v. State, 401 S.C. 363, 371, 737 S.E.2d 623, 627 (2013).

This allegation was based upon a letter written by another juror following the jury trial. Respondent objected to any testimony regarding statements allegedly said during jury deliberations based upon Rule 606, SCRE, and hearsay. For the purposes of determining if any testimony could be presented in support of this claim, this Court took testimony initially from Ms. Sandra McGraw, juror #86 from trial. Richard Kershner and Investigator Smith were present, under subpoena, and prepared to testify if necessary and Robert Dudek was prepared to testify via telephone.

McGraw testified that she did not recall a jury voir dire question regarding whether or not she had ever been a victim of a violent crime. However, McGraw testified that she had never said in the jury room that her ex-husband had held a .357 to her head and did not consider herself to have been a victim of a violent crime. Following her testimony, this Court held that the Applicant could not proceed with its claim of juror misconduct because any other testimony to

support this allegation would be purely hearsay. The South Carolina Supreme Court has held that "a defendant must demonstrate prejudice from jury misconduct in order to be entitled to a new trial" on those grounds. Shumpert v. State, 378 S.C. 62, 67, 661 S.E.2d 369, 371 (2008). Because this Court finds Ms. McGraw's testimony to be credible, this Court found that the Applicant failed to meet his burden of proof as to this claim and it is denied and dismissed.

The Applicant then, to preserve for appellate purposes, proffered the Investigator Skip Smith, who intended to testify that he approached Ms. McGraw about the incident of her telling the jurors that her ex-husband held a .357 to her head and she refused to sign an affidavit. Investigator Smith also intended to testify that he approached Ms. McGraw upon the request of Robert Dudek, the attorney representing Applicant on appeal. The Applicant also proffered the intended testimony of Richard Kershner, the juror who allegedly overheard the remark about the .357 being held to McGraw's head. In support of these claims, the Applicant proffered the following exhibits: Exhibit #1 – affidavit from Richard Kershner, Exhibit #2 – current affidavit from Investigator Smith, and Exhibit #3 – affidavit from Smith dated July 23, 2008.

Issue #13

- Trial counsel had a conflict of interest and mishandled Applicant's case, leading Applicant to believe that Counsel was conspiring with the Prosecution to secure Applicant's conviction.

In support of his claim that Counsel was ineffective for failing to address the distance between the victim and Applicant at the time of the shooting and in support of his claim that Counsel operated under a conflict of interest, Applicant called Officer Ila Simmons of SLED to testify over the State's objection. Simmons, who also testified at trial, testified that she analyzed two gunshot residue kits that were submitted to her at SLED, for the Applicant and the victim. However, she was not provided with the clothing of the victim, the gun used in the shooting or rounds of ammunition used in the shooting. Simmons testified that had she been provided with

those items, she could have completed an analysis to try and determine the distance from the shooter to the victim. The analysis looks for gun powder on the victim's clothing. Simmons testified that at the trial, she testified that the victim was within five feet of the shooter. However, on cross-examination, Simmons testified that had she completed the analysis of the victim's clothing, she could have determined the distance within three to four feet, but could not have determined an exact distance.

Officer Robert Talanges testified that he responded to the location and was responsible for photographing the scene and collecting all of the evidence at the scene. Talanges testified that his only analysis experience was in latent print analysis, so all other evidence would have been sent to SLED for analysis. Talanges testified that he submits whatever information to SLED that the investigator wants him to submit, which sometimes includes submitting a victim's clothing for gunshot residue analysis.

Counsel testified that he did not ask an expert to conduct any testing on the victim's clothing because it could have possibly hurt their case if it indicated the distance was further away than Applicant claimed. Counsel also testified that the expert could not have provided an exact distance and the only difference might have been one or two feet.

This Court finds that although Officers Simmons and Talanges, as well as Counsel, are credible, the Applicant has failed to meet his burden of proof as to this claim. As testified by Officer Simmons, the exact distance could not have been determined even with additional examination of the victim's clothing. There was no evidence or testimony presented that convinced this Court that had this analysis been done and testimony been presented, the outcome of the proceedings would have changed. Therefore, this claim is denied and dismissed.

Counsel also testified that he was appointed in 2005 to represent the Applicant. Counsel testified that he shared all discovery materials with the Applicant, including any discovery materials that were received directly prior to trial. Counsel testified that the witnesses gave many different stories, including the defense's witnesses.

Counsel testified that he drafted a specific jury instruction for self-defense. Counsel testified that he did discuss a possible plea to voluntary manslaughter with the Applicant. Counsel testified that he tried to point out the lack of credibility of various witnesses during his closing argument. Counsel testified that there was nothing to support any claim that the victim's body had been moved before the police arrived. Counsel testified that he did not consider the statement made by the State during the closing to be improper and did not think that there was any basis for objection. (Tr. p. 274)

The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

As to any allegations of Counsel operating under a conflict of interest, this Court finds that the Applicant has failed to meet his burden of proof. There was no evidence presented that supported the claim that Counsel was not zealously advocating for Applicant and instead, was supporting the prosecution's theory and actively working to thwart Applicant's defense. Instead, Counsel testified as to the work he did in support of Applicant's defense, including research,

interviewing witnesses, utilizing expert testimony, and much more. Therefore, this Court finds that this claim is denied and dismissed.

Summary

This Court finds in regards to the allegations of ineffective assistance of counsel, prosecutorial misconduct or a conflict of interest, the Applicant's testimony is not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra.

CONCLUSION

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

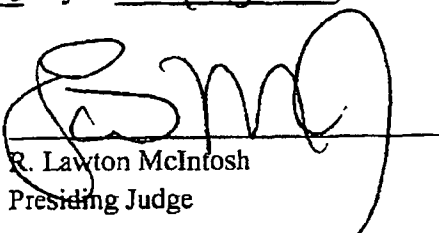
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 26 day of Feb, 2014.


R. Lawton McIntosh
Presiding Judge

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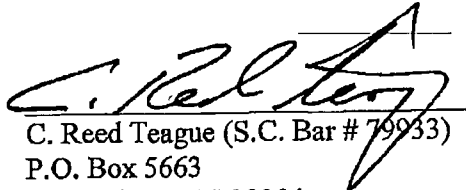
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
Damon Jones,	)	
	)	
	)	MOTION TO RECONSIDER
Applicant,	)	
	)	
vs.	)	
	)	
State of South Carolina,	)	C.A. NO.: 2010-CP-42-6623
	)	
	)	
Defendant.	)	

You will please take notice that the Applicant, Damon Jones will move before this Court at such time and place as counsel may be heard requesting that the Court alter and/or amend its February 26, 2014 Order Dismissing Applicant's Application for Post-Conviction Relief asserted against Defendant, State of South Carolina (see: Exhibit "1" Order of Dismissal dated February 26, 2014 and filed March 4, 2014). The February 26, 2014 Order was received by the Applicant's counsel on March 18, 2014 by service from the Spartanburg Clerk of Court. Applicant further received an emailed copy of the Order from counsel for the Defendant on March 14, 2014. Applicant's Motion is made pursuant to The South Carolina Rules of Civil Procedure, Rule 59(e).

This Motion is further based upon South Carolina Rules of Civil Procedure 59(e) and 26 and supported by the pleadings filed in this case, affidavits filed or to be filed, a brief to be filed, testimony, evidence, and the common and statutory law of the State of South Carolina, and any other matters which will be brought to the attention of the Court.

CLERK OF COURT
SPARTANBURG, S.C.
2014 MAR 26
M. D. PEACOCK
CLERK

THE WARD LAW FIRM, P.A.
Attorneys for Applicant, Damon Jones



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March 18, 2014

CLERK OF COURT
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2014 MAR 19 2:26:43
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Damon Jones,)

Applicant,)

vs.)

State of South Carolina,)

Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

**APPLICANT'S MEMORANDUM IN SUPPORT
OF HIS MOTION TO ALTER AND/OR AMEND
JUDGMENT****C.A. NO.: 2010-CP-42-6623**

Applicant's Post-Conviction Relief Hearing was held before Your Honor June 25-26, 2013 in Spartanburg County. On February 26, 2014, the Court issued an Order of Dismissal. Upon receiving the Order, the Applicant timely filed a Motion to Alter and/or Amend Judgment pursuant to the South Carolina Rules of Civil Procedure, Rule 59(e).

Attached to this submission is a document prepared by the Applicant, Damon Jones. At his request, I am providing a copy to the Court. This Memorandum will address other issues not addressed in Mr. Jones' submission.

Not only does Mr. Jones ask the Court to Alter/Amend the Order of Dismissal, but further requests that the Court reconsider its prior ruling and grant Mr. Jones a new trial.

FACTS

The Applicant, Damon Jones was convicted of murdering Sigida Long. Following the conviction, an appeal was filed and dismissed. Upon dismissal of the appeal, the Applicant filed an Application for post-conviction relief which was denied by order of this Court.

ARGUMENT

The Applicant would like for the Court to reconsider its prior order and grant Mr. Jones a new trial. However, if the Court is not inclined to reverse the prior order, the Applicant would like for the Court to Amend the prior order to clarify several issues.

I. Ineffective Assistance of Counsel

While incorporating all prior arguments submitted to the Court, this Memorandum addresses an important issue concerning trial counsel's failure to refute the state's argument concerning where the fatal shot was fired.

"A PCR applicant claiming trial counsel rendered ineffective assistance must demonstrate that (1) counsel's representation fell below an objective standard of reasonableness and (2) but for counsel's error, there is a reasonable probability that the outcome of the proceeding would have been different." *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005).

The Court is fully aware of the facts at issue in this case. This section will address the facts which the Applicant believes should be considered when addressing the motion at hand.

The body of the decedent Sigida Long was located at the back bumper of Mr. Jones' vehicle. All of the reports and testimony substantiate this statement. The State argued during the trial and specifically in closing arguments that Sigida Long was crouched down at the back of the vehicle and Mr. Jones was standing in the yard on a wall located above the victim when the fatal shot was fired.

Mr. Jones testified at trial that he was at the door of his car in an altercation with Mr. Long when the fatal shot was fired. The two stories are contradicting and were very important in this case. If the jury bought the prosecution's argument, there was no way that Jones' claim of self-defense would stand. However, if trial counsel could have established that in fact the shot

was fired while the two gentlemen were at the front of the vehicle, Mr. Jones' plea of self-defense was very viable.

Reports prepared by Lt. Lamb and Inv. Talanges provided that droplets of blood and blood smears were located on the front windshield and roof of the vehicle located at the driver's side door. In fact, a diagram, which Mr. Jones alleges he never received, shows droplets of blood on the car and in the vicinity of the driver's side door. The same reports and diagrams provide no evidence of blood located near the rear of the vehicle or on the bumper of the vehicle (the area wherein the State argued that the fatal shot occurred). The reports and diagrams were presented at the post-conviction hearing. Mr. Jones submits that he was not aware of the reports at the time of trial.

Trial counsel for Damon Jones never presented the noted evidence of blood droplets located at the front of the vehicle to the jury. Further, he never informed the jury that no evidence of blood splatter was located on the back of the vehicle.

Had trial counsel provided the information of blood at the front of the vehicle to the jury via testimony of the officers or the experts, this evidence would have refuted the State's claim concerning the location of the fatal shot and the proximity of the individuals when the shot was fired. Based upon the State's theory of the case argued to the jury, no reasonable attorney would omit said testimony and had the omission not occurred, the outcome of this trial would have been different.

II. Clarification and Amendments

This section will address specific parts of the Order which the Applicant believes should be amended.¹

¹ The Applicant has submitted a memorandum to the Court which he requested be provided to the Court addressing other issues with the Order.

1. Page 6, Paragraph 2

"Furthermore, the reports entered into evidence which Applicant claimed to have been withheld from him contained no material, exculpatory evidence that would have changed the result of the proceeding." The Applicant requests that this line be omitted from the Order as the information contained in the supplemental reports of Lt. Lamb and Officer Talanges is material and exculpatory.

2. Failure to Include Orally Amended Issue

At the onset of the Hearing, counsel orally amended the Application to include a claim of insufficient assistance of appellant counsel Robert Dudek. The oral amendment asserted that Dudek's assistance was errant in failing to stay the appeal and remand to the trial court for a post-trial motion concerning after discovered evidence. Dudek was aware of the tainted jury issue but did not remand for a decision from the trial court. The applicant asks that this issue be addressed in the Order.

3. Page 8, Paragraph 1

"The Applicant did not proffer any questions counsel allegedly failed to ask...." The Applicant asked numerous times why trial counsel failed to ask certain questions of Officer Talanges, and Mignon Williams and why he failed to call certain witnesses and ask questions concerning the investigation of the case and location of blood at the scene of the crime. The Order should be amended to remove any indication that the Applicant did not provide questions to counsel that were not addressed at trial.

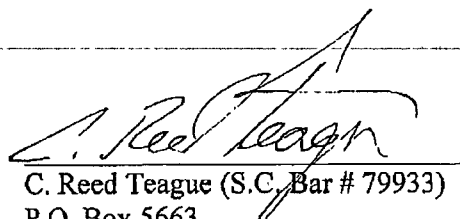
4. Page 9, Paragraph 2

The Order fails to address Lt. Lamb's Report that indicates additional evidence of blood on the vehicle.

CONCLUSION

For the reasons stated herein, the Applicant requests that the Court reconsider its prior Order and grant the Applicant a new trial. In the alternative, Applicant requests that the prior Order be Amended to address all issues.

THE WARD LAW FIRM, P.A.
Attorneys for Applicant, Damon Jones

A handwritten signature in black ink, appearing to read "C. Reed Teague", is written over a horizontal line.

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May 21, 2014

59(e) Motion to Reconsider Hearing Arguments

Issue #1

Applicant testified that there was a concerted effort between defense counsel and prosecution to withhold evidence. Applicant testified that Robert Talanges Supplemental Report was withheld by defense and that he did not receive it until 2006 from counsel. Applicant also testified that the fingerprint, DNA Analysis results, Atiba Long's first written statement was withheld also. Applicant entered into evidence 21 exhibits that the court did not consider writing everyone from Chief Justice Jean Toal to SLED trying to obtain all the evidence. Applicant did receive the fingerprint analysis results and the Coroner's Report . in February, 2013 and introduced them at the PCR hearing. Applicant attempted to enter as an exhibit two of defense counsel's personal notes that proves that he been had all the evidence, one, the Coroner's Report that states on this one note received additional discovery 11-18-05 Coroner's Report. The second note at the bottom has second statement-second attorney totally different changes proves that counsel was conspiring with the State. Attorney General objected to these exhibit, court sustained. See tr. 3, 264, lines 6-10. Counsel closing argument that states " the DNA and fingerprint analysis results we don't have them they are ^{not} in evidence". This Court found that counsel did receive all evidence from the prosecution and shared all copies with Applicant, citing U.S. v. Taylor, 956 F.Supp. 622 (DSC 1999), when a voluminous array of exculpatory evidence is

withheld dismissal is warranted when prosecutor continues to withhold. Applicant's case is unprecedented where the defense conspires with prosecutor. Applicant still does not have Atiba Long's first written statement, the DNA analysis results. Nor does he know what the results are for the second GSR kit that was done on deceased. See tr. 1, 97. Had the defense not conspired with prosecution to withhold evidence which were calculated egregious tactics, extremely prejudicial and violated Applicant's due process rights which resulted in a wrongful conviction the outcome would have been different.

Issue #2

Applicant testified at his PCR hearing that he was read a different statement, which would have been State's witness Atiba Long's first statement by Alexandria Wolf at his April, 2005 preliminary hearing. Applicant remembers this portion of statement that reads "I did not see the shot I heard a pop". Atiba Long testified at the PCR hearing and read the last few lines into the record from his statement which is also an exhibit which states "I was allowed to make the needed changes", this manifest this was the second statement. When asked did he ever made another statement Atiba Long conveniently "could not recall" the overwhelming evidence is against the State. Barnette and Brough testified that to their knowledge there was not two statements. Again Applicant attempted to introduce defense personal, office notes as exhibits that "second statement - second attorney totally different changes" proving that he knew of the existence of this statement and that he aided in its construction by withholding this document and failing to question' State's witness at trial with this falsified document, the court sustained the State's objection. Citing Pyle v. Kansas, 317 U.S. 213 (1942) and Riddle v. Ozmint that a conviction can not stand from knowing use of perjured and false testimony. Had both attorneys not aided Atiba Long in making a second written statement, which falsified evidence and allowing him to present perjured testimony and withholding this document which is extremely prejudicial violating Applicant's due process the outcome would have been different.

Issue #3

The State reworded this issue as in the original and the amended applications at no time did this issue state the prosecution argued that the evidence introduced indicated deceased was shot at 45 degree angle behind Applicant's car. correct wording is; The prosecution falsely argued the deceased was shot at a 45 degree angle while kneeling down behind Applicant's car while Applicant was standing on 20 inch wall in his grandmother's yard, however, there was blood evidence on the driver side roof of Applicant's car, which makes the argument impossible.

First and foremost, the State incorporates this argument in with "Issue 4", we bring clarification to this fact. Prosecutor Barnette testified at the PCR hearing that he received and reviewed all evidence in this case, which includes reports, evidence collection sheets, diagrams that indicated blood evidence in 4 areas driver's side of Applicant's car. Talanges testified that he was in charge of documenting, photographing and sending items off to SLED for analysis. Talanges testified to blood that was found on the Applicant's roof that it was " " centimeters in diameter. Talanges testified about his expertise in latent prints. Applicant attempted to question Talanges about the actual location and position deceased was in at the time he was shot. The State objected to Talanges being qualified as an expert in crime scene reconstruction, the court sustained SCRCP 71.(1)e as the burden of proof is on the Applicant to prove by a

preponderance of evidence. Counsel testified that he was aware of the fact that the reports indicated blood evidence in four areas of the car which was, the driver side hood, windshield, roof and the driver's door. This is precisely why counsel did not question Dr. Wren about blood/DNA evidence for it would have hurt the State's case and chances of obtaining a conviction. Barnette read into the record Talanges' report about the large drop of blood on the driver side roof and evidence collection sheet where it was swabbed for DNA the diagram of the computer scetch that shows and proves the dots were actually blood. Barnette could not come up with a logical, legal reason for his argument at trial or disprove my argument that he committed misconduct or the Attorney General. Defense counsel testified he did not hire anyone to measure the angle of the bullets' path and didn't know if anyone could have been hired and that Dr. Wren did not use a measuring device and he felt he called his testimony into question. In Robert Talanges' report during the autopsy a measuring device was in fact used, it states the trajectory rod was inserted in deceased head and trajectory path was located, see Talanges' report. Defense stated there was no evidence that suggest deceased body was moved or dragged to the back of Applicant's car. The autopsy report in its brief history states the body was possibly dragged from its original location. The report from Talanges and Lt. Lamb along with autopsy manifest scrapes of the forehead, back of hands of the decedent, this could only happen when he fell after being shot and dragged to

the back of Applicant's car. See tr. 275, that they took the jury out to view the 20 inch wall that both attorneys falsely argued Applicant was standing on to support their highly improper argument, citing Berger v. U.S. 78, 55. Had the defense counsel not conspired wit the State to argue false evidence that deceased was shot at 45 degree angle behind Applicant's car which was extremely prejudicial and argued the blood spatter on the car the outcome would have been different.

Issue #4

The final order has reworded this issue and failed to address this issue. As in the original and amended application the correct wording of this issue is: Prosecution was in concert with defense counsel when Prosecutor intentionally, digitally removed blood smears from the driver side door of Applicant's car, again the State incorporated Issue #3 in with issue #4 we bring clarification to this.

This was the most blaringly obvious and egregious act by the prosecution and allowed by defense counsel. Prosecutor Barnette testified and read into the record his cross-examination of the Applicant, tr. 2, 201-202, about if the struggle happened at the driver side, why is there no blood on the driver side door. See tr. 3, 274 and t. 3, 278. In his closing again if it happened at the doorway why is there no blood on driver door. Barnette read Lt. Lamb's report which was an exhibit by Applicant into the record which states "the driver side door had blood smears on it". Barnette testified that he was aware that the door was swabbed for DNA. A color copy of the driver side door of Applicant's car was an exhibit and showed no blood smears on the driver side door of this car and a black and white marked as State's exhibit 13 from trial was an exhibit as well. Citing Miller v. Pate, 875 S.Ct. 785 (1967). Note the photos were taken at the scene by Talanges using a digital camera, see his report and all photos were down loaded into a photo computer where they

were image edited/photo shopped the blood smears off of the driver side door by the Prosecutor. Barnette testified he did not know how the blood was removed. Counsel testified that he did not think there was a basis for an objection or that the Solicitor did anything improper (P. 274). Counsel testified that he did not question Talanges about blood on the top left shoe of Applicant because he did not want Talanges to try and explain it away.

Counsel Brough also testified that the blood/DNA evidence was not necessary for trial. Counsel testified he did not ask their expert to conduct a proximity test because, if it came back further than what Applicant testified to, it could have hurt his case. Ila Simmons whom works for SLED and analyzed the original GSR kits in this case, stated that she could have did a proximity test but no one mailed the item for analysis. The court questioned Ila Simmons of SLED about the shelf life for GSR analysis on clothing items. Ila Simmons testified if it is packaged properly and under good conditions it can still be tested. Applicant fears after 9-years that the items would not render any beneficial results in light of the profound egregious acts and junk science used in this case. Had the blood smears not been digitally edited out, which is tampering with evidence, fraud upon the court to the highest degree and violation of Rule 3.4(a) and (b) and crime in most states had the State not entered , argued and allowed by defense violating Applicant's due process rights which was extremely prejudicial and the outcome would have been different.

Issue #6

Mignon Williams testified at the PCR hearing that her reason for being outside was she was talking with a friend the night of the incident. Mignon testified that her friend did not see the shooting because her back was toward the incident. Ms. Williams testified her friend heard the commotion, She testified that her friend immediately left after the shooting. Ms. Williams testified no one ever questioned or contacted her for the name of her friend.

Williams testified she did not remember the name of her friend. Counsel testified that Williams placed the Applicant in the yard on the 20 inch wall at the time of the shooting. Counsel testified he did not question Williams about distance because the Solicitor had already asked that question on direct exam so that would not have been helpful to defense. See tr. 3, 272, the Solicitor's closing. Counsel testified that he contacted and interviewed this witness alleged to have been outside with Mignon William, but she did not see anything. See tr. 1, 129, 23-25, defense supports the very idea that Mignon William was outside with this mystery friend but never questioned her on her name or whereabouts.

Counsel read Mignon's trial testimony vs. her written statement and was asked if they were different, he agreed that they were different. Citing Roberts v. State, 602 S.E.2d 768 (2004). Williams written statement is also a PCR exhibit that

states "she does not know who the man was that shot". Ms. Williams's reason for being outside was, she was talking with this mystery friend whom she could not give a name to. Simply does not exist because Mignon Williams herself was not outside that night supported by her written statement. We also wish to bring clarity to the fact that Applicant never stated in his original or amended application that counsel was ineffective for failing to call and contact this mystery friend as a witness. Applicant never made this an issue and you can not call and contact that which does not exist. Furthermore, if this person were real she would be a state witness. Counsel was ineffective when he failed to impeach Mignon Williams with her written statement which states "I don't know who the man was that shot" or bring to reality of the fact that her mystery friend was not real. This testimony held a lot of weight with the jury and was extremely prejudicial. Had defense not failed to impeach state witness with her written statement and question her about this mystery friend that does not exist the outcome would have been different.

Issue #13

This order conveniently misapplies the facts at issue and did not properly address it. Applicant testified at PCR that he was not satisfied with counsel's representation. Applicant testified that his legitimate complaint came from counsel conspiring with the State and failure to disclose all of the evidence in his case. This prompted the Applicant to write the Spartanburg Administrative Judge, Chief Justice Jean Toal and the South Carolina Supreme Court Disciplinary Counsel and for counsel to relieve himself from the Applicant's case. These exhibits were introduced at PCR hearing. Applicant testified that counsel was trying to get the Applicant to plead and if does not the prosecutor is going to argue the deceased was shot execution style, at point blank range at a 45 degree angle. Applicant stated he was not pleading.

Defense counsel testified that the witnesses gave many different stories, including the defense witnesses. So we don't know who to believe. Antagonistically counsel testified who ever heard of someone writing the disciplinary counsel on someone for trying to rush someone into a speedy trial. Counsel also testified that Mr. Jones don't seem to think he has done anything wrong. Rule 1.7 on conflict of interest states if a conflict arises after representation a lawyer must withdraw. Citing in Matter of Galmore, 530 S.E.2d 378 (2000). Obviously counsel was displeased with Applicant due to the fact that Applicant had written counsel's superiors complaining about the way counsel was intentionally mishandling his case and that he wanted him off his case. It is also manifest that counsel's aim and purpose for staying on Applicant's case was to ensure the State a conviction. Citing Tower v. Glover, 467 U.S. 914 (1984).

Concluded

Unlike Brady v. Maryland, U.S. v. Taylor, Riddle v. Ozmint, Pyle v. Kansas, Miller v. Pate and Roberts v. State, in this this case the defense lawyer worked in concert with the Solicitor to withhold a voluminous array of critical, exculpatory evidence from Applicant. The Solicitor was allowed to present and argue an abundance of fabricated, perjured evidence and testimony. South Carolina Professional Conduct Rules 3.4 states "falsifying and altering evidence is a criminal offense".

The Solicitor Barry Barnette committed a criminal offense and the defense counsel aided him in this offense to ensure Applicant's conviction. The complete discovery material, Applicant has yet to obtain all the evidence, it continues to be withheld by the defense lawyer and or Solicitor and or possibly destroyed in bad faith. The junk science that is used in this case is extremely bad. Wise men have stated and I quote, "Justice delayed is justice denied" and "justice is the joy of freedom". Well Mr. Jones continues to suffer great injustice, shocking to the universal sense of justice. There should be no question as to what type of ruling should come down today. In light of this unprecedented conspiracy to convict the United States and State *Constitutions that occurred in this case. The South Carolina Supreme Court has recently taken a strong stand against unethical behaviors by prosecutors and that they are no longer turning a blind eye to improper conduct and that everyone is on notice. Applicant request the Court Your Honor for an immediate ruling to

dismiss the charge of murder with prejudice today. Applicant also ask that Attorney General endorse this request to dismiss charge.

As your solemn oath of office according to United State Constitution is to see that justice is done not to secure a conviction esp and unlawful one.

State of South Carolina

County of Spartanburg

In the Court of Common Pleas

Damon Jones,

Applicant,

-VS-

State of South Carolina,

Respondent.

2010-CP-42-6623

May 22, 2014

Transcript of Record

BEFORE:

The Honorable R. Lawton McIntosh, Judge

APPEARANCES:

Reed Taylor, Esquire
Attorney for the Applicant

Suzanne H. White, Esquire
Attorney for the State

Renee H. Tollison
Circuit Court Reporter

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EXHIBITS

No	DESCRIPTION	ID	EV
	<i>No exhibits were presented during the hearing</i>		

1 **May 22, 2014**

2 (WHEREUPON, court convened with all parties present,
3 and the following proceedings were had commencing at
4 approximately 2:23 p.m.)

5 THE COURT: Just one second. Let me look at
6 the motion, please.

7 (Pause)

8 THE COURT: All right. I'll be glad to hear
9 from you.

10 MR. TAYLOR: Thank you, Your Honor. Reed
11 Taylor ---

12 THE COURT: Thank you for coming from
13 Spartanburg, by the way.

14 MR. TAYLOR: Thanks for fitting us in today,
15 Your Honor.

16 THE COURT: Sure.

17 MR. TAYLOR: Reed Taylor here on behalf of
18 Damon Jones, the Applicant in this matter, a 59-E motion
19 from a hearing that we had over in Spartanburg County.
20 Your Honor, I had emailed some briefs. I clocked them in
21 Spartanburg. I'm assuming that Your Honor got a copy,
22 but I have an extra copy of you need it.

23 THE COURT: I have the motion and what is
24 captioned Applicant's Memorandum in Support of his Motion
25 to Alter and/or Amend Judgment.

1 MR. TAYLOR: Yes, Your Honor.

2 THE COURT: Yeah, I've read those.

3 MR. TAYLOR: And in addition, my client
4 requested that I submit a memo that he prepared. And I
5 submitted that to the Court for the Court to have for its
6 benefit. And I would like to orally address several
7 issues.

8 First off, basically on a reconsideration rather to
9 an amendment of the order. First of all, the main issue
10 on reconsideration is the blood found at the front of the
11 vehicle. If Your Honor recalls, there was testimony --
12 there were reports that blood was located near the
13 driver's-side door of the vehicle, which is where Mr.
14 Jones says an altercation occurred and the fatal shot was
15 fired, and that it did not occur at the back of the car
16 where the solicitor argued to the jury most of the trial.
17 And so counsel, trial counsel, did not present evidence
18 via testimony or documentation to the jury that there was
19 blood, indications of blood, on the roof of the car by
20 the driver's-side door, that there was indications in Dr.
21 -- I mean -- not Dr. Lamb -- Lieutenant Lamb's report
22 that there were blood smears on the driver's-side door
23 and that there was also a diagram prepared by Officer
24 Tulames indicating blood droplets on the front windshield
25 and on the front hood.

1 The reason that I believe it was so important, and
2 that trial counsel did not meet his burden by failing to
3 present that, is that where the solicitor argued to the
4 jury Mr. Jones was on the wall in the yard and while Mr.
5 Long was at the back of the car and squatting down and
6 shot him at that position. Those reports have no blood
7 on the bumper on the back of the car or on -- anywhere on
8 the back of the car.

9 So the standard in a criminal case is so high for
10 the State, for the Defense counsel to not present that
11 blood located at the front of the car where Mr. Jones
12 says the altercation occurred and not present the jury
13 the information that there's no blood located on the back
14 of the car, I think was very -- was pure error on his
15 part to not present that to the jury. And it definitely
16 would have changed the outcome of the trial, in my
17 opinion.

18 Your Honor, on page 202 of the trial transcript, Mr.
19 Jones is being cross-examined by Mr. Barnett. And he's
20 going into this, now, you shot from that wall in the
21 yard, didn't you? And Mr. Jones says, no, that --
22 basically says either I don't remember or that's not
23 where it happened. And then he goes on to explain that
24 it occurred at the front of the car. So had Mr. Brough
25 (phonic) presented this evidence, it would have bolstered

1 Mr. Jones' testimony that where the altercation occurred
2 was at the front of the car, which would have bolstered
3 his entire case that this was self-defense in this case.

4 Additionally, in closing argument on page 272 and
5 278 of the trial transcript, the solicitor argues to the
6 jury that there's no blood near the front of the car and
7 that the altercation occurred at the back of the car. To
8 me, not providing that evidence was very -- Mr. Brough's
9 not providing that evidence was very detrimental to Mr.
10 Jones' case, and it prevented him from receiving all --
11 from the jury receiving all the evidence that could have
12 bolstered what he was saying, and I think would have
13 changed the jury's actual outcome.

14 Additionally, I would like to pass forward just the
15 autopsy report. And it says in there ...

16 Do you mind if I approach, Your Honor?

17 THE COURT: No, sir, not at all.

18 MR. TAYLOR: Okay. It says in there, he
19 proximately -- and this is referring to Mr. Long -- was
20 dragged a short distance from the actual place of the
21 incident. And that was Mr. Jones' -- one of his
22 statements was that it actually occurred at the door of
23 the car and he was dragged. And the autopsy report
24 actually states that there's a possibility based on the
25 scars that he was dragged from the place where the

1 incident actually occurred. And that information was
2 never presented to the jury by Mr. Brough.

3 Your Honor, the two reports that I referred to is an
4 Officer Lamb's report, one dated -- I'm pretty sure
5 they're both into evidence in the case. But 5/4/2005
6 there's a supplemental report indicating blood droplets.
7 That's actually Tulame's report. And then if Your Honor

8 would bear with me one second. A February 26, 2005,
9 report where Mr. -- Officer Lamb indicates, I observed
10 droplets of what appeared to be blood on the left side of
11 the vehicle on the windshield. There's also several
12 smear marks on the windshield and driver's-side door.

13 Your Honor, we believe on that issue, by failing to
14 present that evidence to the jury, that trial counsel was
15 deficient. And we would ask that the Court reconsider
16 its previous order and grant Mr. Jones a new trial on
17 that issue.

18 Now, as to several other issues, if Your Honor
19 doesn't want to -- is not inclined to reverse the prior
20 order, we would like for the Court to -- Mr. Jones asked
21 that I address several issues within the order, the first
22 being that it's his claim that he never received a DNA
23 analysis report and didn't receive a supplemental report
24 from Office Tulames which indicates blood on the top of
25 the car until after the trial. And he believes that --

1 it says in there that he did receive all the evidence,
2 but it's his opinion -- it's his statement that he did
3 not receive that report until after the trial occurred.

4 Issue four in the order does not address the blood
5 smears that are noted in Officer Lamb's report. And Mr.
6 Jones requested that the blood smears on the door be
7 included within the report and not just the droplet of
8 blood that's included on the top of the car.

9 And in addition, he -- Mr. Jones is requesting as to
10 the conflict of interest issue that is in number thirteen
11 within the order, he believes that Mr. Brough did not
12 provide him with this evidence as to the Tulames' report
13 and would like for the order to be altered and amended on
14 that issue.

15 One other issue that I had that was in my memorandum
16 to the Court, number two. I actually looked at the wrong
17 -- one of the orders that came back and forth between us.
18 And the oral amendment is actually in the original order,
19 so I'm not asking for you to amend on that issue.

20 Number one on page four, it states that,
21 furthermore, the reports entered into evidence which
22 Applicant claims to have been withheld from him contained
23 no material or exculpatory evidence which would change
24 the results of the proceedings. However, Mr. Jones has
25 made the claim that he did not received Officer Tulames'

1 supplemental report. And if he didn't receive that
2 report, then that would have been a material -- there was
3 information in there that was material to his case.

4 THE COURT: Well, didn't trial counsel testify
5 at the PCR hearing that he provided all discovery
6 materials to his client?

7 MR. TAYLOR: I'm sorry, sir. I can't hear you.

8 MS. WHITE: I'm sorry. I can't hear you.

9 THE COURT: I'm sorry. Didn't -- these
10 acoustics in here are terrible. Didn't trial counsel
11 testify at the PCR hearing that he provided all discovery
12 materials to the Applicant?

13 MR. TAYLOR: I believe that's right.

14 MS. WHITE: Yes, Your Honor.

15 THE COURT: Okay. Thank you. Go ahead.

16 MR. TAYLOR: Thank you. As to number three, it
17 states that the Applicant did not proffer any questions
18 counsel allegedly failed to ask. Your Honor, I don't
19 have a copy -- never received -- I didn't get a copy of
20 the transcript from that hearing. But it's my
21 recollection that I presented numerous questions to Mr.
22 Brough that he did not ask of Officer Tulames, of one of
23 the witnesses, being Williams, one of the other
24 officers. I can't recall off-the-top-of-my-head. So I
25 would ask that that line -- if the Court is inclined to

1 change anything in the order, that that be amended,
2 because I believe there were questions that I asked why
3 he did not ask that of those witnesses.

4 THE COURT: Let me stop you right there. Do
5 you agree with that statement?

6 MS. WHITE: No, Your Honor. The reference that
7 he is talking about has to do with issue three on page
8 eight of nineteen in the order.

9 THE COURT: Okay. I just wanted to check.
10 Okay.

11 MS. WHITE: Okay.

12 THE COURT: All right. Go ahead.

13 MR. TAYLOR: And the final issue on the alter
14 or amend is on page nine of the order. It doesn't
15 mention Lieutenant Lamb's report and the evidence of
16 blood smears. And I just ask that that be included. And
17 that's our motion at this time. Thank you.

18 THE COURT: Okay. Thank you.

19 MS. WHITE: Thank you, Your Honor.

20 THE COURT: Yes, ma'am?

21 MS. WHITE: The State would obviously ask that
22 you maintain the order as it is written. In regards to
23 reconsideration, the testimony was presented that the
24 Defense had knowledge of the supplemental report, the
25 diagram that showed potential droplets of blood on the

1 front of the car. But yet, there was also photos of the
2 victim lying on the road with a substantial amount of
3 blood at the back of the car. Whether or not he was
4 dragged a portion or whether or not he was a couple of
5 feet closer, there was still no evidence of self-defense
6 in regards to Mr. Jones' being in substantial risk of
7 harm at that point. And so I think that that is the main
8 point, that the evidence would be minimal and that it was
9 not going to effect the outcome of the trial. I believe
10 counsel testified that he had very strategic reasons for
11 not going into that with Officer Tulames.

12 He also did cross-examine Dr. Woodard about the
13 actual entry wound and the angle that he alleged to try
14 to attack the issue of the State saying that it occurred
15 more at the back of the car versus Mr. Jones at the
16 front. And I will note that Mr. Jones' testimony
17 included that he had the door open when Mr. Long was
18 shot. And that is where Solicitor Barnett references the
19 fact that there is no blood inside the car because there
20 are no blood spots on the inside of the door or the
21 frame.

22 In regards to the actual portions that he's asked to
23 be amended, I think that the order correctly reflects
24 Your Honor's ruling and the fact that although he says
25 that the evidence withheld from him contained no material

1 -- or contained material exculpatory evidence, first, we
2 have the testimony from counsel that states he did not
3 withhold the evidence, that he had it available. And
4 further, I don't think that -- while it may be material,
5 it's not exculpatory to him. So it would not be a
6 violation.

7 In regards to the section that says the Applicant
8 did not proffer any questions, that sentence is actually
9 in an area talking about the forty-five degree angle,
10 whether or not counsel was ineffective for failing to
11 deal with that. And I think specifically there were no
12 questions indicated that would have shown that any
13 answers at trial would have been any different had
14 counsel asked those particular questions. And I think
15 that's what's germane to this situation.

16 And then in regards to Lieutenant Lamb's report that
17 additional blood evidence was on the vehicle, I do note
18 that it just says that there were drops of blood on the
19 driver's-side door, no blood splatter inside the vehicle.
20 But I would say that we also entered into evidence, I
21 believe, the diagram and the report which also referenced
22 that. So I'll leave it in Your Honor's discretion if you
23 want some adjustment to that.

24 THE COURT: Any reply?

25 MR. TAYLOR: No, Your Honor.

1 THE COURT: All right. Thank you. I have all
2 these documents y'all have given to me. I'm going to
3 read them before I make a decision, and I'll have my law
4 clerk let you know what it is.

5 MS. WHITE: And Your Honor, if I could just put
6 on the record one -- the State does have a slight
7 objection to the Applicant's memorandum being submitted.

8 Since he is represented by counsel at this point, we
9 think that it would be improper to accept that as a
10 substantive filing and rather just accept counsel's.

11 THE COURT: I've got you. All right. Noted
12 for the record.

13 MS. WHITE: Thank you.

14 THE COURT: All right. Thank you.

15 MR. TAYLOR: Thank you, Your Honor. Thank you
16 for fitting us in today.

17 THE COURT: Yes, sir.

18 (WHEREUPON, the hearing ended at approximately 2:40
19 p.m.)

20 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Seventh Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Spartanburg County, South
9 Carolina, on the 22nd day of May 2014.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 August 11, 2014

15

16 *S/ Renee H Tollison*

17

18

Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Damon Jones, #750332,
aka Damian Jones

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-6623

ORDER

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JUN -2 AM 9:01
M. HOPE BLACKLEY

This matter comes before the Court by way of Applicant's Motion for Reconsideration pursuant to Rule 59(e), SCRPC. The Respondent made its Return to this response on April 1, 2014.

The Order of Dismissal in this matter was signed by me on February 26, 2014. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's response and objections, this Court is not persuaded to alter or amend the judgment.

~~This Court further finds that oral argument would not aid in the reconsideration of the original~~

RUB after hearing oral argument,
~~judgment.~~ Therefore, this Court finds that the Order of Dismissal, which was signed on February

26, 2014, shall stand as it was written.

AND IT IS SO ORDERED this 29 day of May, 2014.

[Signature]
R. Lawton McIntosh
Presiding Judge

[Signature] South Carolina

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
R. Lawton McIntosh, Circuit Court Judge

DAMON JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2014-001291

PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether petitioner's case should be remanded for a full hearing on his claim that Juror #86 committed juror misconduct when she failed to reveal during voir dire that she was a victim of a violent crime, which would have led to counsel striking her from the jury?

STATEMENT

Petitioner was convicted of murder after a jury trial held before the Honorable Paul M. Burch on November 29 – 30, 2005, in Spartanburg County. He was sentenced to life imprisonment without parole. Christopher D. Brough, Esquire, was trial counsel. Barry Barnette, Esquire, and Jennifer Jordan, Esquire, were the assistant solicitors. (App. p. 1 – p. 327).

Petitioner appealed his conviction and it was affirmed by the Court of Appeals on July 23, 2008. State v. Jones, Op.No. 2008-UP-424. (App. p. 330 – p. 394). A petition for rehearing was filed and was denied on September 23, 2008. (App. p. 395 – p. 401). A petition for writ of certiorari was filed with the South Carolina Supreme Court and it was granted on December 2, 2009. (App. p. 402 – p. 417). The Court affirmed the decision of the Court of Appeals on August 23, 2010. State v. Jones, Memo. Op.No. 2010-MO-020. (App. p. 459 – p. 461).

Petitioner filed an application for post-conviction relief on December 15, 2011, and an amended application on March 9, 2012. Respondent filed a return dated February 16, 2012. (App. p. 462 – p. 499). An evidentiary hearing was held on June 25 – 26, 2013, before the Honorable R. Lawton McIntosh. Petitioner was present and was represented by C. Reed Teague, Esquire. Respondent was represented by Suzanne H. White, Assistant Attorney General. Petitioner testified at the hearing and he presented the testimony of Sandra McGraw, Ila Simmons, Atiba Keita Long, Mignon Williams, Barry Barnette, Robert Talanges, and trial counsel, Christopher Brough. (App. p. 500 – p. 651). On February 26, 2014, Judge McIntosh issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 724 – p. 742). A motion to alter or amend was filed on March 18, 2014. A memorandum in support of the motion was filed on May

21, 2014. (App. p. 743 – p. 762). A hearing was held on the motion on May 22, 2014. The motion was denied on May 29, 2014. (App. p. 763 – p. 777).

This petition follows.

ARGUMENT

Petitioner's case should be remanded for a full hearing on his claim that Juror #86 committed juror misconduct when she failed to reveal during voir dire that she was a victim of a violent crime, which would have led to counsel striking her from the jury.

During jury voir dire, the prospective jurors were asked, "Anybody on the panel ever been the victim of a violent crime or had a close personal friend or a family member that's been the victim?" (App. p. 25, line 11 – 13). Juror #86 did not respond.

At the PCR evidentiary hearing, an affidavit was submitted from Vaughn Kershner who was on the jury at petitioner's trial. He overheard Juror #86, Sandra McGraw, tell another juror that her former husband had pointed a gun to her head and she knew how that felt. Kershner felt that the comment invited a verdict on an emotional basis. He learned later that Ms. McGraw did not answer the voir dire question about anyone being the victim of a violent crime. (App. p. 652 – p. 653).

An affidavit by Calvin Smith, a private investigator, was introduced into evidence. He interviewed Mr. Kershner and confirmed what Juror #86 had said about a gun being pointed to her head. He said he understood that defense counsel would have struck the juror if he had known she had been the victim of a violent crime. (App. p. 654). He explained that he had spoken to Juror #86 and she denied saying anything about a gun in the jury room, but she admitted her ex-husband had pointed a .357 Magnum at her with a cocked hammer and that she feared for her life. (App. p. 655). In a subsequent affidavit, Investigator Smith said Juror #86 told him she did not mention anything about a gun being pointed at her in the jury room. And her husband said she would not sign an affidavit. (App. p. 657 – p. 658).

At the evidentiary hearing, Juror #86 was called to testify. She was asked during jury voir dire if she recalled a question that said, Have you ever been the victim of a violent crime? She said

she did not recall that. Then she was asked if she recalled stating that her ex-husband at one point placed a .357 Magnum to her head? She said, No. She explained that she did say during deliberations that one time she had to take a gun away from her ex-husband, that he was saying he was gonna kill himself and she talked him into handing it over to her. The PCR judge then found on the basis of that testimony, they were not going to go any further on the subject. He did allow counsel to make a proffer. Counsel went on to proffer basically what was in the affidavits that were mentioned above, along with what their testimony would be. The affidavits were made court exhibits. (App. p. 516, line 1 – p. 523, line 5). Counsel wanted to recall Juror #86 and confront her with her prior statements, but that was not allowed. (App. p. 521, lines 16 – 25). He also objected to not being allowed to have private investigator Smith and Juror Kershner testify. (App. p. 523, lines 11 – 18).

In the order of dismissal, the PCR judge noted that the respondent had objected to any testimony regarding statements allegedly said during jury deliberation based upon Rule 606, SCRE, and hearsay. The PCR judge also ruled any other testimony would be hearsay. (App. p. 737 – p. 738). The PCR judge's findings were in error.

In McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013), the Court held that a claim of juror misconduct should not be summarily dismissed and a full hearing on the issue should be held, "which allows the factual circumstances to be more fully developed." A "new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information; and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." 401 S.C. at 371 – 372, 737 S.E.2d at 627 – 628.

“All criminal defendants have the right to a trial by an impartial jury.” State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001). Intentional concealment by a juror on voir dire prejudiced a defendant’s right to exercise a peremptory challenge. State v. Woods, supra. When extraneous influence is alleged, juror testimony may be used as a basis for impeaching a jury verdict. State v. Hunter, 320 S.C. 85, 463 S.E.2d 314 (1995). Both juror testimony and affidavits are admissible to prove an allegation of extraneous information or influence under Rule 606(b), SCRE. State v. Franklin, 341 S.C. 555, 534 S.E.2d 766 (2000).

The PCR judge should have held a full hearing under McCoy v. State with consideration of all the affidavits and the testimony of the private investigator and Mr. Kershner. It is interesting to note that in the affidavit submitted by the private investigator, Juror #86 did admit to him that her ex-husband had pointed and held a .357 Magnum with the hammer cocked back at her and she feared for her life. She, however, did not remember saying it in the jury room (App. p. 655). But, how else would Mr. Kershner ever know about this incident unless she did say this in the jury room?

CONCLUSION

Petitioner's case should be remanded for a full hearing on the issue of juror misconduct.

Respectfully submitted,

A handwritten signature in cursive script, reading "Robert M. Pachak", is written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of November, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
R. Lawton McIntosh, Circuit Court Judge

DAMON JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of November, 2014.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day
of November, 2014.

Palal McKee (L.S.)
Notary Public for South Carolina

My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2014-001291

Damon Jones, ... Petitioner,

v.

State of South Carolina, ... Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

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QUESTION PRESENTED

Did the lower court properly rule on the Petitioner's presentation of testimony regarding an alleged juror misconduct issue, when the juror testified and denied any alleged statements regarding her experience as a victim of a violent crime during an evidentiary hearing?

STATEMENT OF THE CASE

The Petitioner is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Petitioner was indicted at the August 2005 term of the Spartanburg County Grand Jury for murder (2005-GS-42-3371). Christopher D. Brough, Esquire, represented the Petitioner. On November 30, 2005, the Petitioner was convicted of the charge by a jury. The Honorable Paul M. Burch sentenced the Petitioner to confinement for life without parole.

A timely Notice of Appeal was filed on Petitioner's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. State v. Jones, Op. No. 2008-UP-424 (filed July 23, 2008). A Petition for Rehearing was filed by the Petitioner and denied by the Court on September 23, 2008. The Petitioner then filed a Petition for Writ of Certiorari to the South Carolina Supreme Court, which was granted on December 2, 2009. The South Carolina Supreme Court affirmed the decision of the Court of Appeals. State v. Jones, Memo. Op. No. 2010-MO-020 (filed August 23, 2010). A Petition for Rehearing was filed by the Petitioner and denied by the Court on September 22, 2010. The Remittitur was returned on September 22, 2010. ∩

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 15, 2011, and amended application filed March 9, 2012. The Respondent made its Return on or about February 16, 2012. An evidentiary hearing into the matter was convened on June 25, 2013, and concluded on June 26, 2013, at the Spartanburg County Courthouse. The Petitioner was present at the hearing and was represented by C. Reed Teague, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

Following an evidentiary hearing, the Honorable R. Lawton McIntosh denied the application by written Order dated February 26, 2014. A timely Motion for Reconsideration and Memorandum in Support of the Motion was filed by Petitioner. The State filed a Return to the Motion. A hearing was held on May 22, 2014, and an Order dismissing the Motion for Reconsideration was signed on May 29, 2014. A timely Notice of Appeal was filed on Petitioner's behalf and a Petition for Writ of Certiorari was submitted. This Return to the Petition for Writ of Certiorari follows.

STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

- I. **The lower court properly ruled on the Petitioner’s presentation of testimony regarding an alleged juror misconduct issue, when the juror testified and denied any alleged statements regarding her experience as a victim of a violent crime during an evidentiary hearing.**

On December 1, 2005, following a trial by jury, Petitioner was found guilty of murder and sentenced to life without parole. (App. p. 311; p. 326). In an amendment and at the PCR hearing, Petitioner alleged a juror, #86 and later identified as Sandra McGraw, committed juror misconduct when she failed to reveal during voir dire that she was a victim of a violent crime, which would have led to Counsel striking her from the jury. (App. p. 506, lines 22-24; p. 507). Petitioner based this allegation on a letter trial counsel received from a juror in the case, Mr. Richard Kershner, following the verdict along with Mr. Kershner’s subsequent affidavit and the affidavits of Investigator Skip Smith. Petitioner now alleges that the PCR court erred in denying this claim without a full evidentiary hearing and asks this Court to remand the matter to the circuit court for a hearing on the juror misconduct allegation.

This Court held that “evaluating the merits of a juror misconduct claim is a fact-intensive inquiry, which is most appropriately conducted after a hearing.” McCoy v. State, 401 S.C. 363,

371-72, 737 S.E.2d 623, 628 (2013). As noted, a hearing “allows the factual circumstances to be more fully developed.” *Id.*

Respondent submits that an evidentiary hearing on the allegation of juror misconduct was held during the full evidentiary hearing for Petitioner’s post-conviction relief application; however, following the Petitioner’s presentation of testimony, the lower court properly denied the claim of juror misconduct. (App. p. 738). The lower court took testimony initially from Ms. Sandra McGraw, juror #86 from Petitioner’s trial. Ms. McGraw testified that she recalled serving as a juror in 2005 at Petitioner’s trial. (App. p. 516). McGraw testified that she did not specifically recall a question during voir dire regarding if someone had been the victim of a violent crime. (App. p. 517-18). McGraw denied ever stating during deliberations that her ex-husband or husband at one point placed a .357 Magnum to her head. (App. p. 518, lines 6-9). However, McGraw did testify that she recalled statements she made regarding her ex-husband and a .357 Magnum. (App. p. 518). McGraw testified that she informed the other jurors that she had at one time been afraid of guns because she had to take a gun away from her ex-husband when he was threatening to kill himself. (App. p. 518, lines 17-25; p. 519, line 1).

Respondent objected to the presentation of any testimony or evidence regarding statements allegedly said by jurors during jury deliberations based upon Rule 606, SCRE. (App. p. 510-511). Specifically, based upon the well-established rule that a juror may not testify, nor may a juror affidavit be admitted as evidence, as to “any matter or statement occurring during the course of the jury’s deliberations . . . except . . . whether extraneous prejudicial information was improperly brought to the jury’s attention or whether any outside influence was improperly brought to bear upon any juror.” 606(b), SCRE.

Following McGraw's testimony and Petitioner's objection to not being allowed to present additional testimony or evidence, the lower court properly found that the letter from Mr. Kershner and affidavit were inadmissible and did not allow testimony from either Kershner or Smith. (App. p. 522, lines 9-10; p. 523, lines 12-15). Petitioner was allowed to proffer the affidavits of Investigator Skip Smith and Richard Kershner, the juror who allegedly overheard the remark about the .357 being held to McGraw's head. (App. p. 522-524). Additionally, in the Order of Dismissal, the lower court found McGraw's testimony credible and found the Petitioner failed to meet his burden of proof as to the allegation. (App. p. 738).

Provided a claim of juror misconduct is timely raised, "a new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information; and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenge." McCoy at S.C. 371, S.E.2d 627. Not only was a hearing on this issue held for Petitioner, but Petitioner failed to meet his burden of proof. There was no admissible testimony or evidence to support the allegation that Ms. McGraw intentionally concealed information which would have supported a challenge for cause.

Analogous to this case is the ruling from the South Carolina Court of Appeals in Lynch v. Carolina Self Storage Centers, Inc., 409 S.C. 146, 760 S.E.2d 111 (Ct. App. 2014). In Lynch, the Court of Appeals affirmed the lower court's decision to deny a post-trial motion for new trial based upon an allegation of juror misconduct when the only evidence in support of the allegation was an affidavit which "did not 'give rise to allegations of external misconduct' because it did not allege the jury received evidence or influence from outside sources." Lynch at S.C. 158, S.E.2d 118. In fact, The Court of Appeals held that in order for a hearing on the allegation of juror misconduct to be held, "[t]he party contending that misconduct occurred must make a

threshold showing that there was in fact an improper outside influence or extraneous prejudicial information.” Id. Just as the lower court found in Petitioner’s case, the Court of Appeals affirmed the court’s finding that another juror’s affidavit was inadmissible under Rule 606(b), and because Lynch presented no other evidence of juror misconduct during deliberations and therefore, no further inquiry was needed. Id.; See also State v. Franklin, 341 S.C. 555, 562, 534 S.E.2d 716, 720 (Ct.App.2000) (stating “the integrity of the jury system is jeopardized any time a court finds it necessary to intrude into the internal deliberation process”).

There is probative evidence to support the lower court’s ruling and this denial of post-conviction relief should be affirmed and the case should not be remanded to the circuit court for additional hearings.

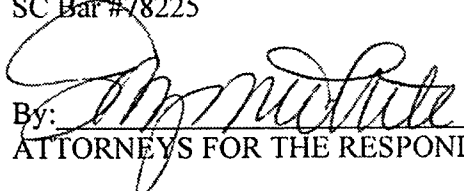
CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR Court’s ruling. Should this Court grant Certiorari, the Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON
Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General
SC Bar #78225

By: 

ATTORNEYS FOR THE RESPONDENT

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April 2, 2015

STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari to Spartanburg County
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2014-001291

DAMON JONES,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Return to Petition for Writ of
Certiorari, has been served upon opposing counsel by mailing two (2) copies in the United
States mail, postage prepaid:

Robert M. Pachak, Esquire
SC Commission of Indigent Defense
Appellate Defense
Post Office Box 11589
Columbia, SC 29211

This 2nd day of April, 2015



ASHLEY HAWORTH
LEGAL ASSISTANT

The Supreme Court of South Carolina

Damon Jones, Petitioner,

v.

State of South Carolina, Respondent.

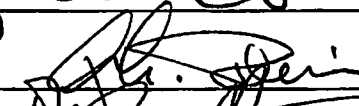
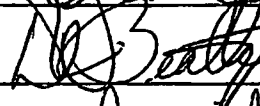
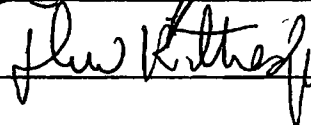
Appellate Case No. 2014-001291

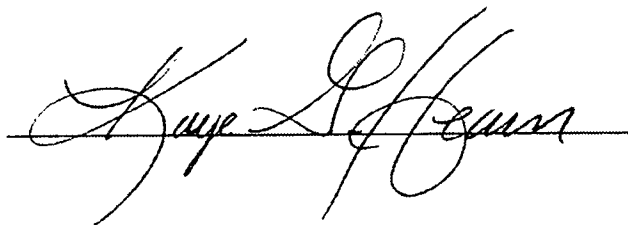
Lower Court Case No. 2010-CP-42-6623

ORDER

This matter is before the Court on a petition for a writ of certiorari. Petitioner claims he was denied the opportunity to present his claim of juror misconduct because the circuit court judge limited his examination of the juror and erred in finding other testimony on the issue was inadmissible. We agree that petitioner was entitled to further examination of the juror and the ruling on the admissibility of other evidence was premature. However, we note evidence of statements made during the jury's deliberations are inadmissible. *See* Rule 606(b), SCRE.

Accordingly, we grant the petition, dispense with further briefing, and remand to the circuit court to allow petitioner the opportunity to present evidence in support of his claim of juror misconduct, in accordance with the South Carolina Rules of Evidence and South Carolina Rules of Civil Procedure.

	_____ C.J.
	_____ J.
	_____ J.
	_____ J.

 J.

Columbia, South Carolina

September 3, 2015

cc:

Suzanne H. White, Esquire (Alicia Olive, Esquire)

Robert M. Pachak, Esquire

Damon Jacquise Jones #250332

~~The Honorable R. Lawton McIntosh~~

The Honorable M. Hope Blackley

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) COMMON PLEAS
3 COUNTY OF SPARTANBURG) OF THE SEVENTH
4) JUDICIAL CIRCUIT
5)
6 DAMON JACQUISE JONES,)
7)
8 Petitioner,) TRANSCRIPT OF RECORD
9) 2010-CP-42-06623
10 vs.)
11)
12 STATE OF SOUTH CAROLINA,)
13)
14 Respondent.)
15)
16 -----

11 November 9, 2016
12 Spartanburg, South Carolina

14 B E F O R E:

15 HONORABLE FRANK R. ADDY, Judge.

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

18 RODNEY W. RICHEY, ESQUIRE
19 For The Petitioner

20 ALICIA A. OLIVE, ESQUIRE
21 For Respondent

22 Julie A. Ashbrook,
23 Circuit Court Reporter
24 Seventh Judicial Circuit
25

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EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

1 DAMON JACQUISE JONES VS. STATE OF SOUTH CAROLINA

2 THE COURT: Okay. I believe that we're gonna go
3 on the record. This is, I believe, the case of Damon
4 Jones, the petitioner, versus the State of South
5 Carolina. And the underlying lower court case that the
6 Court is addressing today involves 10-CP-42-6623.

7 The Court realizes that this matter went before
8 the Supreme Court of South Carolina. They remanded it
9 back to the trial court for further evidentiary hearings
10 on the issue of jury misconduct. On a side bar with
11 counsel the Court learned that one of the witnesses that
12 was subpoenaed today is a deputy or an officer who
13 apparently is ill. Additionally, the State implied
14 today that they may request some additional time for
15 various purposes on this case.

16 In an effort to accommodate the jurors who are
17 present today who are going to be called shortly, what
18 the Court is inclined to do is to go ahead and move
19 forward and take their testimony, create a record of
20 what they have to say on the issue of alleged juror
21 misconduct, and then the Court will simply stay these
22 proceedings. We will reconvene at another time which is
23 mutually convenient to all concerned and take any
24 additional testimony that's warranted, okay?

25 So that's kind of how I wanted to proceed since

1 those jurors have already been inconvenienced in the
2 sense that they had to go to trial on this case and
3 apparently have appeared a couple other times. So I
4 would like to go ahead and get their testimony instead
5 of delaying this again in the hopes that the officer can
6 be present and the jurors can be present. We might run
7 up into the exact same situation again with one of the
8 individuals being sick.

9 At this point, Mr. Richey, if you want to call
10 four your first witness, sir.

11 MR. RICHEY: I call Ms. McGraw.

12 THE COURT: Do you swear or affirm the testimony
13 you're about to give is the truth?

14 THE WITNESS: I do.

15 THE COURT: Have a seat, please. And please
16 state your name, ma'am.

17 THE WITNESS: Sandra McGraw.

18 THE COURT: And M-C-G-R-A-W?

19 THE WITNESS: Yes.

20 THE COURT: Thank you.

21 SANDRA MCGRAW,
22 having been sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. RICHEY:

25 Q. Ma'am, you were a juror on a trial with

1 Mr. Jones; is that correct?

2 A. Correct.

3 Q. And do you know was that in December of 2005?

4 A. I guess. I'm not sure.

5 Q. Long time ago?

6 A. Yeah, it's been ten years or so.

7 Q. And you testified in these proceedings once
8 before; isn't that correct?

9 A. Yes.

10 Q. And the issue is during the jury voir dire part
11 of the trial, you understand that's the part of the
12 trial when the judge asked you questions?

13 A. Yes.

14 Q. Okay. And do you recall you were asked a
15 question about whether you've been a victim of a violent
16 crime, you or your family have been a victim of any type
17 of crime?

18 A. I remember asking -- answering the questions and
19 if that was asked then, yes, I answered it and I would
20 have said no because I didn't consider I had been.

21 Q. And you are aware since this trial there's been
22 an issue made where you in fact were a victim of some
23 violent act of an ex-spouse?

24 A. Someone has said that, that I was, yes.

25 Q. And you don't recall telling any other juror that

1 you had a gun pointed to you?

2 A. I did not say I had a gun pointed to me.

3 Q. And so you are denying that you in fact had any
4 type of violent incident that occurred to you by any
5 other perpetrator, by anybody else?

6 A. No, I have not.

7 Q. So is your testimony that you answered that
8 question completely truthful?

9 A. Yes.

10 Q. Do you recall talking to an investigator named
11 Calvin Skip Smith?

12 A. I remember someone coming out and calling
13 constantly, coming to my door, taking -- coming in and
14 asking questions and then coming back by trying to get
15 me to sign papers that I had not read, yes. I did not
16 know what his name was.

17 Q. Okay. This gentleman tried to get a statement of
18 something. You don't recall what it was, but he tried
19 to get you to sign something? Was it a statement?

20 A. He came back with papers and asked me to sign
21 them and I said I will not sign anything I have not read
22 and so I did not sign them.

23 Q. And was it -- do you know whether he was the
24 gentleman that served you with a subpoena from two
25 hearings ago or last hearing? Two hearings ago.

1 A. If I am correct, the first man was not the second
2 time. The second time was someone else.

3 Q. Okay.

4 MR. RICHEY: One moment, Your Honor, please.

5 THE COURT: Yes, sir.

6 BY MR. RICHEY:

7 Q. Ma'am, do you recall testimony about your husband
8 that you recall saying that your husband tried to
9 accidentally kill himself? Do you remember that?

10 A. Yes. He on numerous occasions would fake an
11 overdose or like he was gonna cut his wrist or -- and
12 usually -- this one time he had a gun and he said he was
13 going to kill himself, but I had gone through this many
14 times and I didn't really take it serious.

15 But I walked him away from the house because I
16 wasn't even aware that the gun was loaded. That's the
17 kind of thing he did. So I walked him away from the
18 house and talked him into giving the gun to me.

19 Q. And did you bring that up during the -- at any
20 time during the jury deliberations? Was that a
21 conversation at any point in time?

22 A. Yes. Because a juror asked to see the evidence.
23 Evidence was brought in and the woman at the end of the
24 table wouldn't take it, so it was handed to me and it
25 was a gun. And I held the gun and she said I don't want

1 to touch it. I said, well I'm not afraid of guns. I
2 used to be but -- and I brought up the incident that I
3 had talked my husband into giving -- my ex-husband into
4 giving me a gun that he was threatening to kill himself
5 with.

6 Q. Okay. Thank you, ma'am. Answer any questions
7 the attorney general has for you.

8 THE WITNESS: Okay.

9 THE COURT: Ms. Olive.

10 CROSS-EXAMINATION

11 BY MS. OLIVE:

12 Q. Good afternoon, Ms. McGraw. Thank you for being
13 here today. I know this has been a long drawn out
14 process. You said you stated that you explained to
15 another juror that you were not afraid of guns because
16 of this incident that had occurred with your husband?

17 A. Well, not specifically because of that incident,
18 but because I wasn't afraid of them and I knew his
19 character I was not afraid to talk him into giving me
20 the gun. I wasn't afraid to handle a gun.

21 Q. And would was that statement just made to that
22 one juror?

23 A. No. Everyone in the room. There were several
24 men that were talking about guns, different kinds of
25 guns, and it was made not to a specific juror but the

1 lady that wouldn't take the gun, the man beside me,
2 anyone that was listening could have heard me say that.

3 Q. And you stated before that when the judge asked
4 the question whether anyone had -- any of the jurors had
5 been a victim of a violent crime, you stated you would
6 have said no because you did not consider yourself to be
7 a victim of a violent crime?

8 A. Exactly.

9 Q. And in this incident with your husband you
10 stated -- and I apologize, I'm sure it was a -- it
11 sounds like you had some problems. I apologize for the
12 indelicate nature of the question, but he was
13 attempting, or at least indicating that he wished to
14 kill himself?

15 A. Yes. Any time he thought he could get the
16 attention he wanted or I don't know. He had been in
17 Vietnam. He had a lot of issues with that. He could
18 change just anything, watching a movie, anything. So,
19 yes, he had problems from Vietnam and because of that I
20 could watch and tell his changes. And I knew when he
21 was depressed or he was -- I don't know. It's -- I'm
22 not saying he did it for attention. Maybe he had
23 problems dealing with Vietnam. I don't know, but...

24 Q. But, again, you do not feel that you were a
25 victim of a violent crime?

1 A. No.

2 Q. And so in not responding to that question, that
3 was because you did not consider yourself to be a victim
4 of a violent crime?

5 A. Exactly.

6 Q. Thank you, that's all the questions I have.

7 MR. RICHEY: I have just one.

8 THE COURT: Go ahead.

9 REDIRECT EXAMINATION

10 BY MR. RICHEY:

11 Q. Ma'am, if that gun was pointed at you, would you
12 consider that being a violent crime if it was pointed at
13 you?

14 A. If he had been pointing at me and threatening to
15 shoot me of course I would have considered it a violent
16 crime, but he wasn't.

17 Q. Okay. Thank you, ma'am.

18 THE COURT: All right.

19 RECROSS-EXAMINATION

20 BY MS. OLIVE:

21 Q. Just a clarification of this incident. He was
22 not charged with anything --

23 A. No.

24 Q. -- related to this incident, right?

25 A. No.

1 Q. Thank you.

2 THE COURT: All right. That was going to be the
3 question I asked. Very good, ma'am, thank you. You can
4 step down and you are free to go.

5 (Whereupon, witness leaves witness stand and
6 courtroom.)

7 Call your next witness.

8 MR. RICHEY: We call Mr. Kershner.

9 THE COURT: Just raise your right hand. Thank
10 you. Do you swear or affirm the testimony you're about
11 to give is the truth?

12 THE WITNESS: Yes.

13 THE COURT: Have a seat and please give us your
14 name, please.

15 THE WITNESS: Richard Vaughn Kershner.

16 THE COURT: And K-I-R ---

17 THE WITNESS: K-E-R-S-H-N-E-R.

18 THE COURT: Thank you Mr. Kershner.

19 RICHARD VAUGHN KERSHNER,
20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. RICHEY:

23 Q. Thank you, sir. Were you on the same 2005 jury
24 with Ms. McGraw on Mr. Jones' jury trial?

25 A. Yes. That was exactly 11 years ago this month,

1 the latter part of the month.

2 Q. And you were a juror on that case?

3 A. Correct.

4 Q. And after the trial did you take any action about
5 the case? After the trial was over did you contact
6 anybody?

7 A. Yes, I did.

8 Q. And who did you contact?

9 A. About a week following the trial I contacted the
10 defense attorney, Chris Brough.

11 Q. Okay. And why did you contact him?

12 A. Basically over the behavior of the jury.

13 Q. Okay. And what was that?

14 A. Quite a number of things. There was refusal to
15 deliberate. We had one person stand up and say his mind
16 was made up.

17 MS. OLIVE: Your Honor, I'm still going to object
18 at this point to hearsay regarding the deliberations
19 that took place in the jury room.

20 THE COURT: Okay.

21 MR. RICHEY: I can rephrase the question.

22 THE COURT: I'm sorry?

23 MR. RICHEY: I can rephrase the question.

24 THE COURT: All right, rephrase the question.

25 Under 606 I don't think you can talk about or we can't

1 elicit testimony about what was said in the jury room.
2 I think that's off limits, but try and rephrase to get
3 where you're going.

4 BY MR. RICHEY:

5 Q. Okay. You were in the courtroom when Ms. McGraw
6 testified, correct? When the previous juror ---

7 A. Today?

8 Q. Yes. You were in the courtroom?

9 A. Correct. Sitting in the back.

10 Q. And you heard the testimony where she said she
11 never said that her ex-husband pointed a gun at her.
12 Were you here for that?

13 A. I was here for that testimony.

14 Q. Did you hear her say that her husband pointed a
15 firearm at her?

16 A. Yes.

17 Q. And did she say that he did in a domestic
18 violence situation?

19 A. Yes.

20 Q. And because you heard her say that, did that
21 raise concerns to you about her properly answering the
22 voir dire or the question the judge asked her?

23 A. Yes.

24 Q. And was that -- was that part of the thing that
25 you sent to the attorneys? Is that part of the stuff

1 that you sent?

2 A. Correct.

3 Q. And is there any question in your mind that she
4 did not say that? Is there any question in your mind
5 that she did say that, that she was a victim of her
6 husband pointing a gun at her? Are you confident that
7 you heard her say that?

8 A. Yes. I am confident that she made that statement
9 of having her ex-husband point a gun at her.

10 Q. Okay.

11 A. And that took place in the jury room.

12 Q. And that's what -- that was one thing that raised
13 a red flag for you?

14 A. One of the things, yes, sir.

15 Q. Thank you, sir. Answer any questions the
16 attorney general has for you.

17 THE COURT: Ms. Olive.

18 CROSS-EXAMINATION

19 BY MS. OLIVE:

20 Q. Good afternoon Mr. Kershner. I believe you
21 mentioned you wrote Mr. Brough, Chris Brough, a letter
22 following the trial.

23 A. Chris Brough, yes.

24 Q. Okay. Do you recall the date of that letter?

25 A. I believe I did post it on December 7th.

1 Q. Okay.

2 A. And sent it on December 8th.

3 Q. Do you recall the date of Mr. Jones' conviction?

4 A. It was late November, 2005. I don't remember the
5 exact date. It was, I believe it was the week -- I
6 would -- if I had to say, I would say around
7 November 30th.

8 Q. Okay. If this ---

9 A. Give or take a day.

10 Q. If this concerned you so much, why did you not
11 immediately bring it to someone's attention?

12 A. Well as I stated in the letter, I wanted to wait
13 a week so that I would defuse any self emotion or
14 prejudice or anything like that. I certainly thought
15 about it, and I wanted to make sure I had all my
16 thoughts and emotions in check.

17 Q. Were you upset about the sentence that Mr. Jones
18 received?

19 A. I can't see I'm upset at it, but I don't believe
20 it was a fair and justice decision, I don't think.

21 Q. Did that affect your decision to write this
22 letter to his attorney?

23 A. I believe it was a factor. Not the only factor,
24 but a factor.

25 Q. And you've heard Ms. McGraw's testimony earlier

1 today that she never said that her husband was pointing
2 a gun at her?

3 A. Correct.

4 Q. And she said that he did not in fact point a gun
5 at her?

6 A. That's not what she said in the jury room. In
7 the jury room she said she was aware of these
8 situations, that her ex-husband pointed a gun at her,
9 and she knows how they feel, quote/unquote.

10 Q. So it's not -- it -- given that you disagree with
11 the amount of time that Mr. Jones received on his
12 sentence, it's not possible that you could be
13 misremembering the statement that Ms. McGraw made?

14 A. Absolutely not.

15 Q. But, again, you failed to raise this to anyone at
16 the time?

17 A. I wouldn't say failed. Those are your words. My
18 words are I deliberated for a week, made sure I had all
19 my facts together. Kind of like writing a term paper.
20 You don't sit down and write one the very day.

21 Q. Why would you not have -- but you didn't raise
22 this -- you could have raised this before you all even
23 reached a decision, right?

24 A. If we go into that letter, you'll see where we
25 were absolutely pressured to make a decision that

1 Thursday evening after all day in court. We had a judge
2 that wanted to go home to the lower part of the state, I
3 believe. Everybody in the jury wanted to go home and
4 end it. And to give you an indication of that, we had
5 12 jurors and we had one and only one person stay for
6 the sentencing, which was another 10 or 15 minutes.

7 MS. OLIVE: May I approach the witness?

8 THE WITNESS: I'd also like to make one other
9 statement. I had already lost a whole week of work.
10 And I worked in Charlotte, North Carolina. Was on
11 assignment and I was not going to take another week off
12 work when I could write the letter the following
13 weekend. I actually started gathering the thoughts the
14 weekend after the decision and wrote the letter the
15 following weekend. But I had to be in Charlotte. I had
16 already missed quite a bit of work.

17 MR. RICHEY: Judge, I'm going to interject here
18 with this letter. This letter has a lot of information
19 in it and counsel raised an objection when I was going
20 to this letter. I'm gonna object to her going in it
21 beyond the issues that we have raised here because I
22 believe if she's going to open the door to this letter
23 than the whole composition should come in. There's a
24 lot of things in it, so I'm going to object to it.

25 THE COURT: All right. Are you only going to

1 allude to the part that he was talking about involving
2 the prior witness, or how were you planning on
3 addressing the letter or dealing with it?

4 MS. OLIVE: Your Honor, I don't ---

5 THE COURT: Is the record already part of the
6 record in this case? Or is the letter already a part of
7 the record in this case or is it not?

8 MS. OLIVE: No, Your Honor. Well -- Your Honor,
9 if I'm not mistaken, it was included with the motion to
10 remand the case to Circuit Court back in 2005. Whether
11 it's part of Your Honor's record I'm not certain.

12 THE COURT: Okay. Well, proceed as you feel
13 best. Understanding that if we go beyond the scope of
14 this, that might open the door to a lot more coming in,
15 but you can proceed how you feel is appropriate, Ms.
16 Olive.

17 MS. OLIVE: Your Honor, I'm gonna -- for now I'm
18 just going to refrain from going into it.

19 THE COURT: Fair enough.

20 MS. OLIVE: Beg the Court's indulgence for a
21 moment.

22 THE COURT: Yes, ma'am.

23 MS. OLIVE: Your Honor, that's all the questions
24 I have.

25 THE COURT: Anything on redirect?

1 MR. RICHEY: No questions.

2 THE COURT: Sir, pleasure to meet you. You may
3 step down. You're free to go.

4 THE WITNESS: Thank you. Sir, am I free to go?

5 THE COURT: You are.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you.

8 (Whereupon, witness leaves witness stand and
9 courtroom.)

10 MR. RICHEY: Your Honor, we call Mr. Brough,
11 Christopher Brough.

12 THE COURT: Swear or affirm the testimony you're
13 about to give is the truth?

14 THE WITNESS: I do.

15 THE COURT: Have a seat, please.

16 CHRISTOPHER BROUGH,
17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. RICHEY:

20 Q. Please state your name, please.

21 A. Christopher Brough.

22 Q. And do you recall representing Damon Jones?

23 A. Yes, sir.

24 Q. And the issue -- how did this issue about the
25 juror get to you? Did it get to you from Mr. Kershner,

1 the previous witness?

2 A. After Mr. Jones' trial and conviction I had
3 appealed his sentence to the Court of Appeals, filed an
4 appeal. At the time I had been appointed on his case
5 and I filed it, I believe, on December the 6th. After
6 that I received a letter that Mr. Kershner had referred
7 to.

8 Upon receiving that letter, I went ahead and I
9 filed a motion to remand the case back to Circuit Court
10 in order to have a motion for a new trial to the helm of
11 his case given that I felt that there were allegations
12 in that letter that constituted jury misconduct that
13 should warrant him getting a new trial in the case.

14 The Court of Appeals received my motion. And I
15 have something that was stamped in on the 14th of
16 December, 2005. I subsequently received a letter from
17 the Court of Appeals, indicating to me that I was no
18 longer the attorney of record, that the office of
19 appellate defense was the attorney of record and that
20 they needed to make that motion and not me.

21 Subsequent to that, I did speak with Bob Dudek at
22 appellate defense, gave him some information about the
23 letter, what had occurred. He had -- I had -- he and I
24 had discussed whether or not getting a private
25 investigator involved would be a good idea. I

1 recommended that he potentially use a Calvin Skip Smith
2 as a private investigator, who at the time was a private
3 investigator, now is employed back with the sheriff's
4 office.

5 My understanding is that he was going to make a
6 decision going forward as to whether or not to pursue
7 some of the appellate issues in and of themselves or to
8 deal with making a motion to have the case and the
9 appeal stayed and have the case remanded back down and
10 have the motion for a new trial heard. In a subsequent
11 conversation with him, he did indicate that they were
12 going to deal with the appellate issues first and they
13 could always deal with the juror issues on PCR. I don't
14 know that I would have done it that way, but that's what
15 had occurred at that point.

16 Q. So he did not attempt to remand it at all?

17 A. No, sir. They went -- they did hire, my
18 understanding, they did hire Mr. Smith and he did do an
19 investigation. And that he spoke -- my understanding is
20 he spoke with the female juror that testified earlier.
21 And I have some understandings of what took place at
22 those conversations, but I don't know that I would be
23 the appropriate person to testify to that.

24 Q. Okay. Well, let me ask you this. If you had
25 known this information about this juror, would you have

1 struck her?

2 A. I absolutely would have struck her. I don't
3 believe that after, despite any abilities or self-belief
4 that people have, that they can be fair. I tend to
5 believe that a person's experience could shape their
6 perception of events, and that if you have had a gun
7 pointed at you or if you had been threatened in any way,
8 shape or form with a firearm or some sort of violence
9 that you are much more likely to empathize with the
10 victim and the victim's family in the case and want to
11 thereby go and convict the person charged in the current
12 case. And so absolutely the answer is yes I would have
13 struck her.

14 Q. So would you consider that a violent crime or act
15 irregardless of a conviction?

16 A. I did. I think it would be objectively
17 unreasonable to fail to answer that question in the
18 affirmative if you had had a gun pointed at you and you
19 were dealing with a gun situation. It sounds like with
20 someone that was going through -- I mean, I don't want
21 to put words in anyone's mouth, but it sound a lot like
22 posttraumatic stress disorder. And it sounds like there
23 was a number of encounters with her ex-husband and a
24 firearm. I think absolutely that should have been
25 disclosed to the Court.

1 Q. Thank you. Answer any questions the attorney
2 general or the Court have for you.

3 CROSS-EXAMINATION

4 BY MS. OLIVE:

5 Q. But your opinion on that is based on the fact
6 that -- you heard her testimony today that she said she
7 never had a gun pointed at her, right?

8 A. I did hear that testimony, that is correct.

9 Q. Okay. So your testimony that you would have had
10 her struck is on the basis that you're assuming that
11 she's lying to the case and that the gun was actually
12 pointed at her, correct?

13 A. Well if you're going to ask me that question, my
14 answer is as follows: Not only would it be based upon
15 what Mr. Kershner indicated it had happened, but that I
16 also had information related to me by Investigator Smith
17 at the time that she had indicated that to him,
18 subsequently retracting as not ever making that
19 statement when she found out it was a private
20 investigator. So if that's your question to me that's
21 my answer.

22 Q. But that's just based on what somebody else told
23 you, right?

24 A. Again, I was not a party to that conversation.

25 MS. OLIVE: Thank you. That's all the questions

1 I have.

2 THE COURT: All right, sir. Thank you very much.
3 If you have nothing else for the afternoon you're free
4 to go.

5 THE WITNESS: I'm not free to go.

6 THE COURT: See you this afternoon.

7 THE WITNESS: Yes, sir.

8 (Whereupon, witness leaves witness stand.)

9 THE COURT: Mr. Richey?

10 MR. RICHEY: I call Mr. Jones.

11 THE COURT: Come on up, sir. Raise your right
12 hand, please, Mr. Jones. (Complies.)

13 Do you swear or affirm the testimony you're about
14 to give is the truth?

15 THE WITNESS: It is.

16 DAMON JACQUISE JONES,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. RICHEY:

20 Q. Mr. Jones, you have been in here hearing this
21 testimony about this juror. At the time of your trial
22 were you aware that this juror could or could not have
23 had a gun pointed at her? Were you aware of any of
24 that?

25 A. I had no knowledge of it. No, I did not.

1 Q. And if you had any knowledge of that would you
2 have asked your attorney to strike her?

3 A. Absolutely I would have.

4 Q. Even if she were -- even if the husband was not
5 convicted of any crime, would you still ask for her to
6 be struck?

7 A. Absolutely.

8 Q. Okay. And did appellate counsel or the trial
9 counsel, anybody contact you about this issue?

10 A. Afterwards.

11 Q. Who contacted you?

12 A. Christopher Brough.

13 Q. Did you hear anything from the appellate
14 attorney?

15 A. Regarding?

16 Q. This issue.

17 A. Well, I mean -- no. No, I did not.

18 Q. Okay. Do you know if any motion was filed by any
19 appellate counsel to remanded this back to the ---

20 A. It did not happen.

21 Q. Okay, thank you. Answer any questions the
22 attorney general has.

23 MS. OLIVE: I have no questions.

24 THE COURT: Sir, you can step down.

25 MR. RICHEY: Thank you, that's all, Your Honor,

1 other than the investigator, Mr. Smith.

2 THE COURT: Other than who?

3 MR. RICHEY: Mr. Smith, the deputy.

4 THE COURT: All right. The record will remain
5 open. And if you all want to, I believe that I have a
6 fairly light week in Abbeville County next week. That
7 just occurred to me. I'm more than happy if Mr. Smith
8 and you all are available sometime next week. I doubt
9 his testimony would take more than 15 minutes if that.
10 And just so that we can move forward and this can remain
11 fresh in everyone's memory, if you all want to look at
12 trying to find 15 minutes next week and pop over to
13 Abbeville, I'll be more than happy to make myself
14 available at you all's disposal and obviously Mr.
15 Smith's disposal.

16 And if that's too fast for you attorney general,
17 I'll be somewhere the week after that and somewhere the
18 week after that. So we can figure it out, okay? I'm
19 just throwing that out for your consideration.

20 MS. OLIVE: Thank you, Your Honor.

21 MR. RICHEY: Thank you, Your Honor.

22 THE COURT: We'll be at ease until around five or
23 ten minutes after two. We still have five cases to go.

24 (Whereupon, hearing concluded at 1:05 p.m.)

25 --- THIS ENDS REQUESTED TRANSCRIPT ---

1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings and evidence introduced
8 in the hearing and/or trial of the captioned case,
9 relative to appeal, in the Court of Common Pleas for
10 Spartanburg County, South Carolina, on the 9th day of
11 November, 2016.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16
17
18

19 s/ Julie A. Ashbrook
20 Julie A. Ashbrook
21 Circuit Court Reporter
22 Seventh Judicial Circuit
23
24
25

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-42-6623

Damon JonesState of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: COURT

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

2016-DEC-15 PM 2:32

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on November 9, 2016. Applicant was present with counsel. Having reviewed the pleadings, considered the applicable law, and reflected upon the testimony at trial, the Court denies Applicant's request for post-conviction relief.

This PCR initially came before Judge Lawton McIntosh for a hearing on June 25, 2013. Judge McIntosh denied Applicant relief in an order dated February 26, 2014; on pages 14-15 of that order, Judge McIntosh addressed an issue concerning alleged juror misconduct and found that Rule 606, SCRE prohibited additional testimony concerning this issue. A timely motion for reconsideration was filed, and after a hearing on May 22, 2014 and by order dated May 29, 2014, Judge McIntosh declined to alter or amend his prior order. An appeal was taken (Appellate Case No. 2014-001291), and ultimately, in an order dated September 3, 2015, the Supreme Court remanded this matter to the circuit court so that additional testimony could be taken on the issue of juror misconduct.

On November 9, 2016 this court reconvened and received the testimony of Sandra McGraw, Kevin V. Kershner, and trial counsel Christopher Brough. Another witness, Calvin "Skip" Smith was unavailable due to physical illness, so the court adjourned the hearing and left the record open so that his testimony could be taken at a later date. Subsequently, the court was set to reconvene on this matter on December 9, 2016 and allow Mr. Smith to testify via Skype. However, prior to the hearing, the court had a conference call with Mr. Richey and Ms. Olive in which Mr. Richey informed the court that Mr. Smith was now not communicating with him and was not being cooperative. Mr. Richey also represented to the court that Mr. Smith had

2M

previously stated that he had no independent recollection of the events contained in Mr. Smith's affidavits of July 18, 2008 and July 23, 2008, but that if he were called to testify, he would essentially testify that what is reflected in the affidavits must be accurate because he would not have otherwise attested to those facts. After discussion with counsel, and based upon Mr. Richey's representation that Mr. Smith's live testimony would not provide any additional information which is not already reflected in Mr. Smith's affidavits, the parties and the court agreed that the court would proceed to rule on this matter based upon the record developed to date.

In assessing the credibility of Ms. McGraw, Judge McIntosh specifically found her testimony to be credible, and this judge wholeheartedly concurs in Judge McIntosh's assessment. Ms. McGraw testified that she did have an incident with her husband several years ago which involved his attempting suicide. She also denied that she had been a victim of a violent crime.

Having considered the testimony of Mr. Kershner and assessed his credibility, the court concludes that his testimony closely resembles the affidavit advanced in *Shumpert*, and the court finds that this juror most likely contacted trial counsel after the verdict because he was suffering from a bad case of "buyer's remorse." *Shumpert v. State*, 378 S.C. 62, 68, 661 S.E.2d 369, 372 (2008). Mr. Kershner was simply less credible than Ms. McGraw. Therefore, this judge concurs with Judge McIntosh's finding that his testimony is prohibited by Rule 606. Clearly, Mr. Kershner testified about overhearing Ms. McGraw's supposed discussions with another unknown juror. Accordingly, even if his testimony was not prohibited by Rule 606, the court finds that Mr. Kershner was motivated primarily by his discomfort with the jury's decision to convict Applicant.

The court has considered the information contained in Mr. Smith's affidavits. The affidavit of July 18, 2008 does state that Ms. McGraw said her former spouse did once point a gun at her, but she did not recall mentioning this fact in the jury room. Again, the court finds that Rule 606 (b) bars admission of evidence concerning what was discussed in the jury room, and even assuming that this evidence or Mr. Kershner's testimony were admissible, this evidence is clearly insufficient to implicate the fundamental fairness of the underlying trial. *State v. Hunter*, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995).

Furthermore, the court has had a chance to review the trial court's voir dire; this court notes that the trial court did not give any specific examples of what constitutes a "violent crime" when it questioned the jury pool (See Trial Transcript, p. 25). Of course, in legal vernacular a "violent crime" is specifically defined in Section 16-1-60. In common lexicon, however, what the average person would say constitutes a violent crime likely differs widely from person to person. Although Ms. McGraw did say that she would personally consider someone pointing a gun at someone else to constitute a violent crime, the court finds that the trial court's failure to explain in greater detail what it meant by "violent crime" may have contributed to some confusion on the part of Ms. McGraw at the time the question was asked. The court also notes that no other jurors responded to the court when this question was asked. Indeed, Ms. McGraw previously testified that she did not specifically recall the trial judge even asking if any juror had been the victim of a violent crime (PCR Transcript, p. 18, line 25 - p. 19, line 2). In short, assuming for the moment that Ms. McGraw's ex-husband may have pointed a gun at her at some point in the past, her failure to disclose this information during voir dire was clearly inadvertent and unintentional. Her subsequent hesitation to have contact with Mr. Smith, as recounted in the

830 July 23, 2008 affidavit, was probably due to her concern that she was in some sort of legal trouble because of all this.

This judge also wishes to note that jurors are commonly told that they should use and apply their life experiences in making their decision. Rightfully, the individual life experiences of jurors collectively aide in a jury's fact finding process, and our legal system fully acknowledges and encourages juries to bring their life experiences and common sense with them when they are seated in the jury box. To the extent the trial court did not sufficient explain what it meant by "violent crime," Ms. McGraw's failure to respond to the question was reasonable and clearly inadvertent. To the extent the testimony of Ms. McGraw, Mr. Kershner, and Mr. Smith violates Rule 606, this court concurs with Judge McIntosh and finds that testimony inadmissible to impeach Applicant's verdict. Additionally, even if admissible under Rule 606, Applicant has not demonstrated sufficient prejudice to warrant a new trial. State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999).

Accordingly, Applicant's request for relief on ground 10 of his PCR is denied. In all other respects, the PCR court's orders of February 26, 2014 and May 29, 2014 are unchanged by this order.

Because the purpose of the remand was to receive the additional evidence described above, and because this court concurs in Judge McIntosh's prior findings, this form order shall constitute the court's final order for purposes of appeal, and no formal order is being requested by the court.

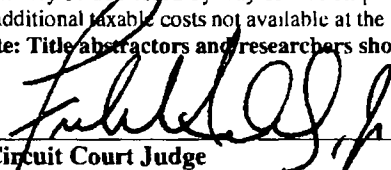
ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2159
Judge Code

Dec. 12, 2016
Date

For Clerk of Court Office Use Only

This judgment was entered on the 15th day of Dec., 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 15th day of Dec., 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Rodney W. Richey, Esq.

Assistant Attorney General Alicia Olive

831

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

M. H. Blackley

Alexandra Miller, Esq.

2016 DEC 15 PM 2:32

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
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M. Hope Blackley
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Damon Jones

CASE # 2010CP42-6623

Applicant

250332

CERTIFICATE OF SERVICE

VS
Steele

Respondent

I certify that, on this date, I served a copy of the

F-4

In this action dated 12-12-2016 on

12-15-16

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Orshay Hawthorth
Alivia Oliver
Rodney Richey

2016 DEC 15 PM 2:32
FILED

12-15-16
(Date)

Carrie Skiff
(Signature)