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STATE OF SOUTH CAROLINA

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IN THE SUPREME COURT S.C. SUPREME COURT

Certiorari to Charleston County

Deidre L. Jefferson, Circuit Court Judge

2017-000-755

Terrell McCoy, Petitioner,

V.

State of South Carolina, Respondent.

APPENDIX

IV

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ATTORNEY FOR PETITIONER

1 stated -- you have something scratched out there. I was
2 trying to figure out what you was saying right there.
3 Can you read it?

4 A. Yeah. Motel Six, West Ashley during the day.

5 Q. So you was at the Motel Six during the day,
6 correct?

7 A. Yes, sir.

8 Q. And then you said I went to Russelldale that
9 morning and visited friends and left that evening,
10 correct?

11 A. Yes, sir.

12 Q. Then you stated, I went to Taylor Street to
13 visit -- well, to my Aunt Jackie's house to visit my
14 cousin Russell Leno. Is that what your statement says?

15 A. Yes, sir.

16 Q. Can you tell us, what did you do after you left
17 your cousin Russell Leno's?

18 A. I went back to Ms. Williams' house on Delta
19 Street.

20 Q. And who was Ms. Williams?

21 A. A girl that live in the neighborhood.

22 Q. How long did you stay to her house?

23 A. For a little while.

24 Q. And when you left her house, where did you go?

25 A. I think I went over my homeboy Antwan. He live a

1 couple streets up.

2 Q. Who was Antwan?

3 A. A friend of mine from where we grew up together.

4 Q. Do you know his whole name?

5 A. I think it's Antwan Smalls.

6 Q. And you state after you left Carinda's house --
7 after you left Antwan's house, where did you go?

8 A. Let me see --

9 Q. You stated you left Carinda's house.

10 THE COURT: Hold on. Let him answer the
11 question first. If he needs to refresh his memory, he
12 can use that, but I would like you to ask him a question.
13 If he can remember an answer, that's fine. If you can't
14 remember or if he gives a contradictory answer, you can
15 use that to impeach him, but he's welcome to use that to
16 refresh his memory.

17 BY MR. TERRELL McCOY:

18 Q. When you left Carinda's house, where did you go?

19 A. I went to the club.

20 Q. And how long did you stay out to this club?

21 A. Pretty late.

22 Q. And when you left the club, where did you go?

23 A. To my aunt's house.

24 Q. And where is that?

25 A. Remount Road, on Gary Street.

1 Q. You stated in your statement, I spoke to my
2 brother --

3 MR. WETMORE: Objection.

4 THE COURT: Ask him a question first. You
5 can direct his attention to a certain time frame, if you
6 want.

7 MR. WETMORE: I have an objection on two
8 parts. First of all, he is reading the statement.
9 Second of all, it's the point where I believe he's going
10 to introduce self-serving statements.

11 MR. TERRELL McCOY: I'm just asking him
12 questions --

13 THE COURT: Just ask him questions and don't
14 refer to the statement other than to just refresh your
15 memory, but you can ask the question without reading the
16 question off of the statement.

17 BY MR. TERRELL McCOY:

18 Q. Do you remember the time you spoke to your
19 brother? Do you remember when you spoke to your brother?

20 A. I think probably, like, the next day, next couple
21 of days, I believe.

22 Q. Did you see your brother Friday? Was your brother
23 with you on Friday?

24 A. No, sir.

25 Q. And you stated you went to your aunt's house with

1 Demetrius Rivers? Who is Demetrius Rivers?

2 A. That's my girl's cousin.

3 Q. When did you speak to your brother?

4 A. Like -- I think, I believe, like, three days
5 later.

6 Q. Now, you was asked a question, were you at Delta
7 Street during the shooting? What did you tell them?

8 A. No.

9 Q. I'm going to ask you a question, and this is my
10 brother, I'll refer to him -- have me and you ever have
11 any type of physical altercation to whereas I put your
12 life in danger?

13 A. No, sir.

14 Q. Did you ever -- did our whole life, have I ever
15 showed you any type of way of I wanted to hurt you or do
16 something bad to you?

17 A. No, sir. Our mom didn't raise us like that.

18 Q. Would you consider -- how would you consider me as
19 your brother?

20 A. A pretty good one. One that take care of me, love
21 me, watch over me as I was coming up.

22 Q. And you stated that I've never tried to harm you
23 in no type of way, correct?

24 A. Yes, sir.

25 Q. And you was asked by Detective Hill were you at

1 Delta Street during a shooting, and what did you state?

2 A. No, sir.

3 Q. Now, do you remember hearing about a shooting?

4 A. Yes, sir.

5 Q. When did you hear about the shooting?

6 A. I think that was the next -- like, the next
7 morning or afternoon, because a lot of times, you know,
8 when incidents happen, people call people phones who know
9 each other and make sure it ain't you and whatnot, you
10 know.

11 Q. So you wasn't in the area during the time of the
12 shooting?

13 A. No, sir.

14 MR. TERRELL McCOY: Your Honor, I have no
15 further questions.

16 THE COURT: All right. Mr. Wetmore?

17 MR. WETMORE: Thank you, Judge.

18 CROSS-EXAMINATION

19 BY MR. WETMORE:

20 Q. So, Mr. Holcombe, you are wearing obviously
21 clothes from the jail, so you're incarcerated; is that
22 correct?

23 A. Yes, sir.

24 Q. Tell us again what you're locked up for.

25 A. Misprison of a felony.

1 Q. Misprison of a felon?

2 A. Yes, sir.

3 Q. Those charges arise from this case?

4 A. Yes, sir.

5 Q. Are those the only -- is that the only time you've
6 been in trouble?

7 A. No, sir.

8 Q. Have you been charged and convicted before?

9 A. Yes, sir.

10 Q. Were you convicted in December of 2000 for
11 distribution of drugs near a school and possession of
12 crack?

13 A. I believe that were in 2000.

14 Q. 2000, that's right?

15 A. Yes, sir.

16 Q. Got probation?

17 A. Yes, sir.

18 Q. Back out, little bit later in 2000, drug charges,
19 drug paraphernalia charges. Do you remember getting
20 convicted of that?

21 A. I don't know about that one.

22 Q. You don't remember that?

23 A. No, sir.

24 Q. You received a sentence of 30 days time served?
25 You don't remember 30 days in the county?

1 A. No, sir.

2 Q. Let's move down to December of 2002. Do you
3 remember picking up a gun charge, where, once again, you
4 got probation? Do you remember that?

5 A. I believe so.

6 Q. You remember that?

7 A. Yes, sir.

8 Q. Okay. Then a little bit later in 2002, do you
9 remember picking up another distribution of cocaine
10 charge, another pistol charge, and assaulting a police
11 officer while resisting arrest charge? Once again --
12 actually, this time, you got a small prison sentence and
13 then probation to follow. Do you remember that?

14 A. I can't recall it, sir.

15 Q. You can't remember being convicted and getting
16 five years, to serve two years, and then three years of
17 probation?

18 A. Yeah. I remember getting that time, but I don't
19 remember what it was for.

20 Q. You just remember going to prison during that
21 time. The conviction appears to be distribution of
22 cocaine and then a pistol charge, and then assaulting a
23 police officer while resisting arrest. Does that sound
24 like the right answer to you?

25 A. I can't say yes or no.

1 Q. Now, here's another one. This is 2004. Do you
2 remember being convicted of failure to stop for a blue
3 light, hit and run, and driving under suspension? It
4 would have been a North Charleston police department
5 case.

6 Do you remember in 2004 North Charleston police
7 department arrested you and charged you, you were
8 convicted of failure to stop for a blue light, hit and
9 run, and driving under suspension?

10 A. I think it was --

11 Q. It says you received a one year sentence. Do you
12 remember that?

13 A. I think it was failure to stop for a blue light.

14 Q. That's right. Do you remember that?

15 A. Yeah, failure to stop for a blue light. I don't
16 remember the rest you talking about.

17 Q. You don't remember the hit and run conviction or
18 driving under suspension conviction?

19 A. No, sir.

20 Q. But you remember serving the year.

21 A. Yeah.

22 Q. Now, you said that you're in jail for misprison of
23 felony, correct?

24 A. Yes.

25 Q. Do y'all have any pending charges in Charleston?

1 A. Yes, sir.

2 Q. What are those pending charges you have?

3 A. Trafficking.

4 Q. Were you trafficking? Trafficking what?

5 A. Cocaine.

6 Q. So you have that charge pending on you, right?

7 A. Yes.

8 Q. Do you have any other pending charges?

9 A. Motor vehicle theft.

10 Q. Okay. So you have trafficking cocaine charge, you
11 have a motor vehicle theft charge, and you have the
12 misprison of felony charge relating to your involvement
13 in this case.

14 A. Yes.

15 Q. So this is not your first time in a courtroom,
16 huh?

17 A. No, it's not.

18 Q. And are you aware that if you are charged and
19 convicted of perjury, false testimony, you could be
20 facing an additional five years? Are you aware of that?

21 A. No, sir.

22 Q. Are you aware that if you testify falsely under
23 oath and are charged and convicted of perjury, what
24 you're doing here today, you could be facing an
25 additional case that carries up to five years?

1 A. I know that as far as you speaking it to me now.

2 Q. So now you're aware of that?

3 A. Yes.

4 Q. You talked a little bit -- when you're talking
5 about your brother, describe to me, if you would, the
6 nature of your relationship with your brother.

7 A. A good one. My mom raised us to --

8 Q. Are you the younger brother or the older brother?

9 A. The youngest.

10 Q. How much younger are you than the defendant?

11 A. Four years.

12 Q. So you're four years younger than him. How old
13 are you?

14 A. Twenty-five.

15 Q. And y'all came up in the same house?

16 A. Yes, sir. My mama wouldn't have it no other way.

17 Q. That's right. And you spent every day with him.

18 A. Basically.

19 Q. Did he take a role in caring for you?

20 A. Yes.

21 Q. Did he basically act as another caregiver for you
22 in addition to your parents?

23 A. He's been my brother. That what brothers supposed
24 to do.

25 Q. The big brother?

1 A. Yeah. Say, when your mother go to work, you're
2 the only sibling in the house, they take care of you.

3 Q. He took care of you?

4 A. Yeah.

5 Q. Did you take care of him? Did you look after him
6 or were you too little?

7 A. No, he got to take that responsibility.

8 Q. So he took care of you coming up.

9 A. No, our mother did that.

10 Q. Your mother did that. And he also helped care for
11 you?

12 A. Yeah, when needed.

13 Q. You said y'all grew up close, almost raised in the
14 same bed?

15 A. We had two separate beds, yes.

16 Q. You guys were close, though, very close, right?

17 A. Yes. We stayed in the same house. Why wouldn't
18 we be close?

19 Q. Now, you testified today -- I was a little
20 confused at first, but it sounds like at some point on
21 Friday, March 24th, 2006 that you were with some
22 girlfriend at the motel. Do you remember which girl this
23 was?

24 A. Shelly.

25 Q. So her name is Shelly?

1 A. Yes.

2 Q. So this isn't the same girl as we heard from
3 earlier that claimed to be your girlfriend, Carinda?

4 A. I don't have no girlfriend named Carinda.

5 Q. This was some girl named Shelly?

6 A. Yeah.

7 Q. And you were with her at the motel at some point
8 during the day on Friday?

9 A. On Friday.

10 Q. And after you left her, about what time do you
11 think it was when you left her?

12 A. I think late. Which day is Friday, might I ask?

13 Q. Friday is March the 24th, and this murder happened
14 as Friday night rolled over into Saturday morning, early,
15 and I'm asking you, starting Friday lunchtime, where were
16 you then?

17 A. Friday lunchtime? I can't recall it.

18 Q. Okay. Do you remember going to the club up in
19 Goose Creek?

20 A. Yes.

21 Q. Club Good Times?

22 A. Yes. That took place the day of the murder.

23 Q. So you were there the night, later on rolled into
24 the day that the murder happened?

25 A. Yeah, that night I was there. I was there at the

1 club.

2 Q. Now, how late did you stay there?

3 A. Probably around 4:00.

4 Q. 4:00 in the morning?

5 A. Yeah. It been late. I can't say exactly 4:00,
6 but it been late at night. That is around about the time
7 the club closed.

8 Q. That is about the time it closes, 4:00 in the
9 morning?

10 A. Uh-huh.

11 Q. And then after that, what did you do?

12 A. Go to my aunt's house, on Gary Street.

13 Q. Okay. And it's your testimony that you were never
14 around when this murder happened?

15 A. Yes.

16 Q. So you don't know who was involved.

17 A. No, I don't.

18 Q. You don't know who shot Antwan Bryant?

19 A. No, I don't.

20 Q. And you remember making this statement to North
21 Charleston?

22 A. Yes.

23 Q. Is that correct?

24 MR. WETMORE: Just a moment, Your Honor.

25 BY MR. WETMORE:

1 Q. One final thing, Mr. Holcombe. I'm not trying to
2 check you now with two women. I just asked about your
3 relationship with Carinda. Do you know who Carinda
4 Snowden, Carinda Williams is?

5 A. Yes.

6 Q. Because you mentioned in your direct testimony
7 going over to her house.

8 A. Yes.

9 Q. She was just a friend of yours?

10 A. Yeah, everybody be around her house.

11 Q. But you guys weren't involved -- according to you,
12 you didn't consider your relationship to be more than
13 just friends?

14 A. Yes.

15 MR. WETMORE: Nothing further.

16 THE COURT: Redirect?

17 MR. TERRELL McCOY: No.

18 THE COURT: You can step down.

19 THE WITNESS: All right.

20 THE COURT: All right. Call your next
21 witness.

22 MR. TERRELL McCOY: Your Honor, I call Tonia
23 Theus.

24 TONIA THEUS,
25 having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. TERRELL MCCOY:

4 Q. How, you doing, Ms. Theus?

5 A. All right.

6 Q. Could you please tell the jury where you work.

7 A. At Arby's.

8 Q. What do you do at Arby's?

9 A. I'm a manager.

10 Q. I'm going to take you to Saturday, March 25, 2006
11 around 3:30. You was approached by Detective Sergeant
12 Deckard and Detective James Hill. Do you recall that?

13 A. I know I was approached by the police, but I don't
14 know exactly what time it was.

15 Q. When you was approached by the police, why did
16 they approach you?

17 A. When they first came to the house, they didn't
18 exactly tell me what they was there for. They just asked
19 for you, and I had told them that you wasn't there, that
20 you was gone out of town, and they asked to search the
21 house. I let them search the house, and they was just
22 looking around at papers and stuff.

23 Q. Did they have a search warrant when they searched
24 your house?

25 A. No.

1 Q. So you gave them permission to search your house?

2 A. Yeah.

3 Q. What did they ask you? They were just asking --

4 MR. WETMORE: Objection, Your Honor.

5 BY MR. TERRELL McCOY:

6 Q. What did they ask you?

7 MR. WETMORE: Objection. He's asking for
8 hearsay.

9 THE COURT: That would be hearsay, asking
10 what the police asked. You can ask her what she told the
11 police.

12 BY MR. TERRELL McCOY:

13 Q. Can you tell us, what did you tell the police
14 again?

15 A. They asked me -- well, let me see. What I told
16 the police? Okay. I told them Friday I went to work,
17 and I got off about 1:00 something, and I went to Big
18 Lots and McDonald's and came home.

19 Q. Now, you and I have some type of relationship
20 during the time of March 25, 2006, correct?

21 A. Yes.

22 Q. And how long were we dating before March 25, 2006?

23 A. About two years.

24 Q. And can you fairly say -- did y'all live together
25 or is y'all just friends?

1 A. We were intimate.

2 Q. So was there anybody -- so y'all practically go to
3 sleep and wake up together, correct?

4 A. Yeah.

5 Q. Have I ever missed a night sleeping with you?

6 A. Only unless you was out of town.

7 Q. And why would I go out of town?

8 A. To promote your record.

9 Q. Say that again?

10 A. You had a CD going on, and you were promoting your
11 CD.

12 Q. So how many times -- out of -- can you say how
13 many times out -- since we were dating, how many times
14 I've been out of town?

15 MR. WETMORE: Objection, relevance. His
16 travel plans --

17 THE COURT: He can ask the question.

18 THE WITNESS: You went out of town a couple
19 of times, actually.

20 BY MR. TERRELL McCOY:

21 Q. Have you and I ever gone out of town together?

22 A. Yeah.

23 Q. And where have we went -- where did we ever go?

24 A. We went to Atlanta.

25 Q. And what do we do in Atlanta?

1 A. Well, we went to the hurricane relief concert, and
2 then we was -- I don't know the streets' names, but
3 passing out your CDs and stuff to people.

4 Q. So you fairly say that the defendant always goes
5 out of town, correct?

6 A. Yeah.

7 Q. Now, has the defendant ever gone any other places
8 other than Atlanta, that you know of?

9 A. Not that I know. I mean, you have went to other
10 places that -- out of town, but, I mean, other than that,
11 like you went to New York and I know Texas.

12 Q. Can you tell the jury, why did I go to New York?

13 A. Because you were supposed to have a record deal.

14 Q. Can you please say that again.

15 A. You were supposed to get a record deal.

16 Q. And how long -- how long -- what was the time
17 before -- let me rephrase that.

18 When was this during the time -- I mean, when
19 would all this occur before the time of March 24th -- how
20 long apart that was?

21 A. I'm not sure.

22 Q. You're not sure? So you said I never missed a
23 night with you unless I'm out of town, correct?

24 A. Right.

25 Q. Now, on Friday, March 24th, did you see me? Did I

1 spend the night with you, March 24, 2006?

2 A. On March 24th? You drop me off to work Friday
3 morning.

4 Q. Right.

5 A. And when I got off of work, I see you for a little
6 bit, and you said you was going out of town, so I ain't
7 seen you after that.

8 Q. And did you see the defendant pack any type of
9 clothing?

10 A. Yeah, you took some clothes.

11 Q. Can you fairly say how much clothes did he take?

12 A. I can't say.

13 Q. But you saw him pack clothes?

14 A. I seen you pack clothes, but I can't say, like,
15 pants or shoes or shirts.

16 Q. Did you see him with anything, like a packaging --

17 A. I mean, you had boxes of CDs. I mean, you always
18 carried your CDs so --

19 MR. TERRELL McCOY: Your Honor, I have no
20 further questions.

21 THE COURT: All right. Cross?

22 CROSS-EXAMINATION

23 BY MR. WETMORE:

24 Q. Ms. Theus, you didn't mention this, but about 5:30
25 in the morning, 5:45 in the morning on March 25th of

1 2006, were you at 5061 Delta Street where this murder
2 happened?

3 A. No.

4 Q. You weren't there?

5 A. No.

6 Q. So you don't know what happened?

7 A. I don't know what happened.

8 Q. You don't know how the victim was killed?

9 A. No, I don't. Only time when I know what happened
10 was when the police didn't come -- when they came to my
11 house, they didn't tell me what was going on, but soon
12 everybody got the call on my phone and asked me if I seen
13 the news and all that. That is exactly how I found out
14 what happened.

15 Q. So you were not at the scene of the crime when
16 this murder happened, correct?

17 A. No.

18 Q. So you don't know who was there or what happened?

19 A. No, I don't.

20 Q. And that same time period, at about 5:30, 5:45 in
21 the morning, Saturday, March 25th, you indicated you were
22 not with the defendant either?

23 A. No, I wasn't.

24 Q. So you don't know exactly what he was doing, do
25 you?

1 A. No.

2 THE COURT: Finished?

3 MR. WETMORE: Yes, sir.

4 THE COURT: Okay. Redirect?

5 MR. TERRELL McCOY: No, sir.

6 THE COURT: All right. You can step down.

7 Thank you. Do you have another witness?

8 MR. TERRELL McCOY: No, Your Honor. Hold on,
9 Your Honor. All right.

10 THE COURT: All right. I'm going to send
11 y'all out for a couple minutes while we take up some
12 legal matters. Don't begin deliberations or discussions
13 about the case.

14 (In open court, jury not present.)

15 MS. PROCTOR: He has something about a
16 witness he'd like to address with you.

17 THE COURT: What would you like to tell me?

18 MR. TERRELL McCOY: We subpoenaed a James
19 Fowler. He or she is a dispatcher that works for the
20 North Charleston police department, but I found out that
21 there were two J. Fowlers. I don't know how that
22 happened. They got two J. Fowlers that work for the
23 North Charleston police department, so the subpoena went
24 to another J. Fowler, and I needed that witness to
25 testify that a female made the call to the 911 dispatcher

1 because it was said that a male made that call.

2 I want the record to show a female called at
3 5:49 stating that her door got kicked in and not a male,
4 and I needed that testimony. They're saying that person
5 doesn't work for the North Charleston police department
6 no more. They said it's two of them work there, and --
7 but they said she's on leave and they don't want --
8 they're not going to allow her to testify. State is not
9 going to allow her to testify, but I subpoenaed her.

10 THE COURT: Have you been able to subpoena
11 the correct witness?

12 MS. PROCTOR: Let me clear it up.

13 MR. TERRELL McCOY: I think it's only one.

14 MS. PROCTOR: There are two, but we
15 subpoenaed the wrong one. I had asked the state if they
16 would stipulate to the report so we wouldn't need to get
17 her, and the state said even if she came, they are
18 objecting to her testimony anyway because it would be
19 hearsay for what she is having to say.

20 So I wanted to clear that up so we could move
21 on with the case. If they're going to object to her
22 testifying anyway and she's not allowed to, then we don't
23 need to go find her. She's dispatcher.

24 THE COURT: She's a dispatcher? You don't
25 have a 911 tape?

1 MR. TERRELL McCOY: I subpoenaed the 911
2 tape. If you look at the witness list on the bottom, it
3 have the 911 dispatcher tape from March 25, 2006. Now
4 they're saying they don't -- what you tell me? They
5 don't record them? I know they record -- those calls are
6 supposed to be recorded, and I wanted that recorded to
7 bring it up so the jury could hear that recording and
8 hear that a female did call and advise that someone
9 kicked in her door.

10 MS. PROCTOR: We had tried three years ago to
11 find the dispatch tape. We never were able to get the
12 911 tape, and I don't believe the solicitor's office ever
13 had the 911 tape either. All we have are the writings of
14 what was on --

15 MR. TERRELL McCOY: What was said.

16 MS. PROCTOR: What was said during the
17 dispatch, saying a female said the door was kicked in.
18 It's my understanding the state is going to say that was
19 hearsay, right?

20 MR. WETMORE: That's correct, Judge. Ms.
21 Proctor asked if I would stipulate to the information
22 that the dispatch call received, and I said that I
23 wouldn't because it would come from a caller, and to get
24 that evidence in, he would need to put the caller on the
25 stand to say what she saw.

1 I have never heard a 911 tape. I know
2 they're kept for a certain period of time and then
3 they're destroyed. It's all digital, to my
4 understanding, and certainly three years have passed. I
5 don't know if it's there or not, but I don't have it.

6 THE COURT: Have you checked with North
7 Charleston to see if they have it?

8 MR. WETMORE: I have not asked for it, nor
9 have I subpoenaed, no, sir.

10 THE COURT: Have you?

11 MR. TERRELL McCOY: I asked for it.

12 MS. PROCTOR: When there was a previous
13 solicitor in the case, I said were you getting the 911
14 tape? It's coming. There were problems with delay, and
15 by the time, I think, they realized they didn't have it,
16 I think it's been destroyed, because we never could find
17 one.

18 THE COURT: Back when you used to represent
19 him, y'all looked for it?

20 MS. PROCTOR: Yes, and I have gone through my
21 old notes about how many times I had asked Greg Voigt, do
22 you have the 911 tape? Are we going to get the 911 tape?
23 And we thought -- I thought he had it, but what we've
24 got, what he had was the written words off the 911 tape.
25 We still don't know who the person is that called in. We

1 assume it was maybe one of the neighbors.

2 THE COURT: All right. So let me see if I
3 understand this right, Mr. Wetmore. You're objecting to
4 the witness testifying, not to what the contents were,
5 but that it was a male or female voice?

6 MR. PETER McCOY: No, Your Honor. The piece
7 of paper Ms. Proctor showed you was -- it's called a CAD
8 report, or a dispatch report, and they asked if I would
9 stipulate to a female call, advising she heard someone
10 banging on the door, and the door flew up and a black
11 male was C2, which I assume is code for shot. She does
12 not know who he is.

13 And I said I would not stipulate to that
14 information because I don't know who said this. I don't
15 think that person is here to testify to cross-examine, so
16 I couldn't stipulate that that information was correct
17 because I think it would be hearsay.

18 MS. PROCTOR: We weren't saying it was a
19 female called in. We're just saying the sheet of paper
20 that says what the dispatch received --

21 THE COURT: We couldn't bring somebody in
22 just to read what is on that.

23 MR. TERRELL McCOY: I wanted the 911 tape to
24 be heard.

25 THE COURT: I understand, but from what I

1 understand, it doesn't exist. Miss Proctor said back
2 when she used to represent you, her office tried to
3 obtain it, and they were informed it didn't exist. So,
4 again, it's one of those deals where if you had it, I
5 would let you play it probably, but if doesn't exist, I
6 can't create it. Okay?

7 MR. TERRELL McCOY: Yes, sir.

8 THE COURT: Now, do you have any other
9 witnesses that you intend to call?

10 MR. TERRELL McCOY: No, sir.

11 THE COURT: Have you made a decision about
12 whether or not you want to testify?

13 MR. TERRELL McCOY: Yes, sir. I'm not going
14 to testify.

15 THE COURT: Let me go over a couple of things
16 with you, I'm required to go over with you. You
17 understand when you are arrested in this country that you
18 do not have to testify.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You understand that you don't
21 have to prove anything.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. And the state is
24 required to prove your guilt beyond a reasonable doubt.
25 Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Now, you've elected
3 to represent yourself in this case. You had Ms. Proctor
4 assisting you, but, ultimately, it's your decision and
5 your decision alone to testify. Even if she did
6 represent you, it's still your right to testify if you
7 want. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. It is also your right
10 to not testify, if you don't want to, because the state
11 cannot compel you to give evidence against yourself. The
12 Court cannot. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Now, you have done a
15 commendable job of representing yourself. You have the
16 right, if you want to, to get up there. You would be
17 sworn under oath, and you could tell the jury your side
18 of the story if you want to. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you got up there and told your
21 side of the story, then the state would have the right to
22 cross-examine you after you testified. Do you understand
23 that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Now, you could talk

1 to anybody you want to about your decision, but it's
2 ultimately your decision. Have you talked with Ms.
3 Proctor about this back when she used to represent you?

4 MR. TERRELL McCOY: Yes, sir.

5 THE COURT: And did you talk with her about
6 that, you know, while she was assisting you during this
7 trial?

8 MR. TERRELL McCOY: Yes, sir.

9 THE COURT: All right. Do you need any more
10 time that you want to talk with her about it?

11 MR. TERRELL McCOY: No, sir.

12 THE COURT: And you have made a decision that
13 you don't want to testify; is that correct?

14 MR. TERRELL McCOY: Yes, sir.

15 THE COURT: All right. Was anybody forcing
16 you to not testify?

17 MR. TERRELL McCOY: No, sir.

18 THE COURT: Anybody promise you anything so
19 that you don't testify?

20 MR. TERRELL McCOY: No, sir.

21 THE COURT: And this is your decision and
22 your decision alone?

23 MR. TERRELL McCOY: Yes, sir.

24 THE COURT: All right. And when we discuss
25 this with the jury, I'll tell them when I charge them

1 that they're not to hold that against you during their
2 deliberations. Do you understand that?

3 MR. TERRELL McCOY: Yes, sir.

4 THE COURT: All right. Well, I find that
5 your decision to not testify is freely, voluntarily, and
6 intelligently made. So you want to rest your case, your
7 defense?

8 MR. TERRELL McCOY: Yes, sir.

9 THE COURT: Okay. Does the state intend to
10 call any reply or rebuttal?

11 MR. WETMORE: Judge, I have very two quick
12 witnesses on rebuttal. I promise it will be very quick.

13 THE COURT: All right.

14 MR. WETMORE: And one of them is sitting
15 right here and the other one, he's en route, said he
16 would be here in ten minutes, so we can do this witness
17 first if you like and the other witness in ten minutes.

18 THE COURT: I usually don't like to charge
19 the jury after 4:00, so what I'm going to say is I'll let
20 you do that, and I think we'll just do the charge and
21 everything in the morning then.

22 MR. WETMORE: That's fine, Judge.

23 THE COURT: All right. So you got one
24 witness ready?

25 MR. WETMORE: Yes, sir.

1 THE COURT: All right. Bring the jury back
2 in.

3 (In open court, jury present.)

4 THE COURT: All right. Mr. McCoy, do you
5 have any further witnesses that you want to call?

6 MR. TERRELL MCCOY: No, Your Honor. Defense
7 rests.

8 THE COURT: All right. State have any reply
9 or rebuttal?

10 MR. WETMORE: Yes, Your Honor. Just very
11 briefly, state calls Scott Deckard.

12 SCOTT DECKARD,
13 having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WETMORE:

17 Q. How long have you been with North Charleston?

18 A. Sixteen years.

19 Q. Sixteen years. And what is your rank?

20 A. I am a lieutenant. I supervise the investigations
21 section.

22 Q. You're the supervisor of the investigations
23 section of North Charleston police department?

24 A. Yes, sir.

25 Q. Okay. Did you take a part -- did you take a role

1 in investigating the murder case against the defendant?

2 A. Yes, I did.

3 Q. Okay. And at any point did you try -- let's say
4 later in the day this happened, this happened early March
5 25th, as that date progressed, as your investigation
6 progressed, did you attempt to track down the defendant?

7 A. Yes, I did.

8 Q. Now, did you go to his girlfriend's residence, the
9 girl who we just heard from?

10 A. Yes, we did.

11 Q. If you would provide us with what her name is.

12 A. Tonia Theus, T-o-n-i-a, Theus, T-h-e-u-s.

13 Q. So that is the girlfriend. That is her name right
14 there? Is that how you spell it?

15 A. That is how we have it recorded, yes.

16 Q. Obviously, you're trying to locate the
17 defendant --

18 A. That's correct.

19 Q. -- in regards to this murder.

20 A. That is correct.

21 Q. Now, in talking to her, did you learn his mobile
22 phone number?

23 A. Yes. We learned his mobile phone number.

24 Q. Would you please tell me what that number is.

25 A. I have it documented in my report that it's

1 818-8377.

2 Q. To the best of your knowledge, that was using an
3 843 area code?

4 A. Yes, it was.

5 Q. That is the number -- that is her name and her
6 number right there; is that right?

7 A. As I have it documented it is.

8 Q. What time did you talk to her, approximately?
9 What time that Saturday after the murder happened, early
10 that morning?

11 A. I can't be exact with the time. It was sometime
12 that afternoon.

13 Q. Later that afternoon, after -- you said 1:00, 2:00
14 or later?

15 A. It could have been around that time.

16 Q. Did you ever go back and talk to her that
17 Saturday, later on, towards that evening?

18 A. We spoke to her the following day.

19 Q. So you talked to her -- the next day would have
20 been Sunday.

21 A. Correct.

22 Q. And both times you talked to her, where did you
23 talk to her?

24 A. We spoke to her at her residence.

25 Q. At her residence. Where is her residence?

1 A. Her residence is located in the city of North
2 Charleston, 1627 Green Bay Avenue.

3 Q. So during the day this happened, when you talked
4 to her, she was at her house in North Charleston.

5 A. Yes. She was at her house in North Charleston
6 when we contacted her.

7 Q. And then the following day, the Sunday, she was
8 also at her house in North Charleston?

9 A. Yes, she was at her house.

10 MR. WETMORE: I have no further questions.

11 THE COURT: Do you have any questions you
12 want to ask this witness?

13 MR. TERRELL McCOY: No, Your Honor.

14 THE COURT: Okay. You can step down. Thank
15 you.

16 THE WITNESS: Thank you, Your Honor.

17 MR. WETMORE: This next witness here, our
18 last witness, James Ferretti.

19 MR. TERRELL McCOY: Your Honor, may we
20 approach?

21 THE COURT: Yes.

22 (Discussion held at sidebar.)

23 THE COURT: Let me send y'all out for a
24 couple minutes while we discuss this matter. Don't begin
25 deliberations or discussions.

1 (In open court, jury not present.)

2 THE COURT: All right. What do you intend to
3 offer this witness for?

4 MR. WETMORE: I probably should have told you
5 beforehand, but what I intend to offer this witness to
6 state is that the defendant's phone was in his local area
7 when this murder happened, and it began to roam out of
8 his local area after this murder happened. The reason
9 why I think that's important is because the defendant,
10 his last witness, put up his girlfriend, and he said, you
11 know, I stay with you every night I'm in town. And she
12 agreed, Every night you're in town, you're in my bed,
13 okay?

14 He asked her, the night this happened, I
15 wasn't with you, was I? No. She said, you know, I saw
16 you pack a bag. You didn't stay with me that night.

17 And I stayed with you every night that I'm in
18 town, right? Right.

19 So he clearly put out there and insinuated
20 through this witness, and it's exactly why we called this
21 witness, that he wasn't in town because he packed a bag
22 and because he didn't stay with her. The jury is putting
23 that together in the way that he wanted them to, was that
24 he was not in town, and I'm allowed, I believe, Your
25 Honor, to put up evidence that while he may say he wasn't

1 in town, he may infer he wasn't in town, his phone was in
2 town, and if he has any question about whether that phone
3 was his or not his, he can cross-examine, but I believe
4 it's an appropriate witness, Judge, given the testimony
5 we just heard from his girlfriend.

6 THE COURT: Well, how would you establish
7 that he has a telephone?

8 MR. WETMORE: Judge, I just called the
9 witness to the stand who said he contacted the girlfriend
10 who provided the defendant's telephone number. I wrote
11 it down as (843)818-8377. That is the number that they
12 got from his girlfriend as his phone number. And I'm
13 simply going to ask this witness, as the manager of
14 Sprint locally here, to tell me what this phone number
15 was doing.

16 He clearly doesn't know what the defendant
17 was doing, but he can say, well, this phone number was in
18 Charleston when this murder happened and didn't start to
19 roam until after the murder happened, which, Your Honor,
20 I believe is very important for the jury to hear, given
21 that he has insinuated through his girlfriend that he was
22 in town.

23 He said, Every night I'm in town, I stay with
24 you. I packed a bag, and I didn't stay with you that
25 night, so clearly the jury can put two and two together,

1 as he wants them to, that he was not in town. So I
2 introduced his phone number that I have for him through
3 the lieutenant that got him, and then I'm just simply
4 asking this witness, as a manager of Sprint, to tell me
5 where that phone number was during the time of the
6 murder.

7 THE COURT: All right. Mr. McCoy?

8 MR. TERRELL MCCOY: Your Honor, those are not
9 my phone records. Those phone records are under another
10 name, and if he had wanted to introduce that from the
11 phone records when she was up here on the stand
12 testifying, he should have cross-examined her about phone
13 records or asked her if I ever owned a phone under her
14 name. He didn't do that, and I do not have a phone.

15 That phone records he's trying to introduce
16 to this witness is under another name and not under my
17 name, and I object that this evidence is inadmissible
18 under the Fourth Amendment.

19 THE COURT: Mr. Wetmore, who is that phone
20 registered to?

21 MR. WETMORE: His girlfriend.

22 THE COURT: If it's registered to the
23 girlfriend, it doesn't prove it's his phone.

24 MR. WETMORE: The girlfriend gave Lieutenant
25 Deckard this number as his number, and she wasn't roaming

1 because she was right there talking to him, so clearly
2 the phone wasn't in her hands. She gave it as his phone
3 number. And it's registered, I guess, paid for in her
4 name, the account is in her name, but she obviously
5 doesn't have it because they're in North Charleston.
6 She's not roaming after this murder happens.

7 THE COURT: Here is my problem with that:
8 Unless you had the girlfriend get up and testify that
9 yeah, the phone was in her name but she had given it to
10 him, that doesn't prove that he had the phone.

11 MR. WETMORE: Judge, Lieutenant Deckard
12 testified that was the phone number that he received for
13 the defendant.

14 THE COURT: From the girlfriend.

15 MR. WETMORE: From the girlfriend.

16 THE COURT: All right.

17 MR. WETMORE: And, obviously, we have no way
18 of telling whether that is true or not, but we can sort
19 of put the evidence out there, that they received that as
20 his phone number, and in our investigation, we just
21 charted where that phone number went, and the jury can
22 infer from it what they will.

23 THE COURT: The only thing you have proved is
24 that the girlfriend's phone that was registered in the
25 girlfriend's name, and which was in her name and paid for

1 by her, was still in town. Without the girlfriend's
2 testimony coming in and saying that, you know, she didn't
3 have the phone in her possession but she had given it to
4 him or something to tie that in --

5 MR. WETMORE: Judge, she gave that phone
6 number as his phone number, as the way that, you know, he
7 is his contact. And so that is what she provided North
8 Charleston, and she said this is his phone number.

9 Obviously, she was there at her home in North
10 Charleston, and so the evidence is that that is his phone
11 number, according to her, for whatever that is worth, and
12 that that phone number was local at the time of the
13 murder and it began roaming --

14 THE COURT: The girlfriend, you could have
15 asked her that.

16 MR. WETMORE: Asked her about her phone, her
17 phone account?

18 THE COURT: Right, right.

19 MR. WETMORE: Judge, I offered Lieutenant
20 Deckard for that purpose.

21 THE COURT: The girlfriend was on the phone.
22 You could have established -- I mean, she could testify.
23 You could have linked that up.

24 MR. WETMORE: Judge, like I said, the way I
25 linked it, and if it's not appropriate, then I'll sit

1 down, but I chose to link it by calling Deckard. As the
2 investigator, he got the phone, and he was given that as
3 the defendant's phone, and, obviously, that phone was not
4 in the hands of Tonia Theus because she was in North
5 Charleston, and the phone stays in North Charleston until
6 after the murder and then began to roam, and it roamed
7 all down through south Georgia, after the murder
8 happened.

9 And I think that is appropriate, given the
10 fact that he has inferred that he was out of town.

11 THE COURT: If you would have linked it up
12 with the girlfriend, saying that while the account was in
13 her name she had given the phone to him, I would let you
14 do that, but putting it in through the police detective
15 like that still doesn't put the telephone in his hands.

16 So I'm not going to let you offer that. I
17 think that is unduly confusing to the jury, and he
18 didn't -- while they didn't object to the hearsay
19 evidence coming in through the detective there, you had
20 ample opportunity to ask the girlfriend about that, and
21 the phone was an issue she could have -- you could have
22 put it in his hands by asking that when she testified.
23 So I'm going to --

24 MR. WETMORE: I have no further witnesses if
25 you will not allow this.

1 THE COURT: All right. You can step down.
2 What I'll do is send the jury home. We'll have a charge
3 conference in the morning, but I'll talk to you a little
4 bit more about that when I send the jury home.

5 (In open court, jury present.)

6 THE COURT: All right. You may be seated.
7 Thank you. Okay, folks. You have heard all of the
8 evidence now you're going to hear in the trial of this
9 case. We are going to have the arguments and the jury
10 charge tomorrow morning.

11 It's almost 4:00 now, and that usually would
12 take us an hour to an hour and a half, and then you run
13 into the evening and everybody wants to rush home and I
14 want everybody to have -- I don't want you to be rushed.
15 I want everybody to have a fresh mind when you start your
16 deliberations, so I'm going to send you home tonight and
17 ask you to be back in the jury room at 9:30 tomorrow, and
18 we'll have the closing arguments at that time, and I'll
19 charge you on what the law is.

20 Now, this is important. It's very important.
21 Despite the fact that you've heard all the evidence that
22 you're going to hear in the case, it's still not proper
23 for you to begin your deliberations or discussions about
24 the case with each other or with anyone, because while
25 you've heard all the evidence, you still don't know what

1 the law is that you're to apply to the facts as you find
2 them.

3 So you go home tonight. Again, don't read
4 the newspaper, watch the TV, if they have anything on the
5 news. I know I got a request from the TV people today,
6 but I never did see a camera, but I don't know that they
7 won't have some kind of reporting on it. So don't watch
8 TV news. Don't read today's paper or any others that
9 have been out this week that have written any stories
10 about it. Tomorrow morning I expect there will be
11 something about it as well.

12 We made it this far. Just one more day, and
13 you can read newspapers all you want after the case is
14 over with, but don't read the newspaper again tomorrow or
15 this evening. Just go home, get a good night's sleep.
16 Be back in the jury room at 9:30 tomorrow morning, and we
17 will finish the case up tomorrow. I appreciate your
18 patience throughout the day, and we'll see you tomorrow.

19 Thank you.

20 (In open court, jury not present.)

21 THE COURT: Okay. I had handed out to you
22 earlier some jury charges that I have come up with. If
23 you have any that you like me to consider charging the
24 jury on additionally, I will be glad to entertain those.
25 Does the state have any?

1 MR. WETMORE: No, Your Honor.

2 THE COURT: Mr. McCoy, do you have any jury
3 charges that you want?

4 MR. TERRELL MCCOY: I would like to ask that
5 if I get found guilty, charging me under voluntary.

6 MS. PROCTOR: We had a charge at the last
7 trial, voluntary manslaughter, and I just asked him
8 whether he wants that charged or not.

9 THE COURT: I don't believe there is any
10 evidence of voluntary manslaughter. It's either guilty
11 or not guilty of murder. What would be the basis of a
12 voluntary manslaughter charge?

13 MS. PROCTOR: Your Honor, I will give him the
14 law on voluntary.

15 THE COURT: I'll let you talk about that in
16 the morning. You can bring me a charge, if you have any
17 question about that. Does the state have any position on
18 that?

19 MR. WETMORE: At this point, we object to it.
20 I'll certainly talk to Ms. Proctor, and we'll consider
21 it, but at this point I do object.

22 THE COURT: Okay.

23 MR. WETMORE: I agree, I don't think there is
24 a basis for this.

25 THE COURT: Let's meet back tomorrow morning,

1 9:00, and we'll have a final charge conference, and
2 you'll be ready to go at 9:30. Thank you. I appreciate
3 your work.

4 (Recess taken.)

5 (February 6, 2009.)

6 THE COURT: Okay. Let the record reflect
7 Mr. McCoy, the defendant, is in the courtroom.

8 All right. Did y'all have any questions or
9 comments or additions or deletions to the jury charges
10 that I proposed? Anything from the state?

11 MR. WETMORE: No, Your Honor.

12 THE COURT: Mr. McCoy?

13 MR. TERRELL McCOY: Yes, Your Honor. You
14 never gave me a final ruling on the motion in limine that
15 I filed.

16 THE COURT: Yes, I did. You're talking about
17 the 613?

18 MR. TERRELL McCOY: No, the motion in limine
19 I filed when we first processed the trial and the
20 destroying of evidence and state tampering with evidence,
21 the motion in limine --

22 THE COURT: I'm having difficulty
23 understanding what you're saying.

24 MR. TERRELL McCOY: The motion in limine that
25 I filed concerning the police's destroying evidence and

1 tampering with evidence and stuff like that?

2 THE COURT: Well, there was no evidence that
3 they destroyed anything that I ever heard, so your motion
4 is denied. All right. You got anything on the jury
5 charges?

6 MR. TERRELL McCOY: Voluntary manslaughter?

7 THE COURT: Voluntary manslaughter? How
8 would that apply to the facts in this case? Sudden heat
9 of passion or -- while the state never showed any motive,
10 they didn't need to, but I never heard any evidence that
11 the shooting was provoked by anything. So there is no
12 provocation, no evidence that there was sudden heat of
13 passion based on provocation, so what is your spin on the
14 facts that would give rise to that charge?

15 MS. PROCTOR: What it is, is that I had let
16 him see the charge -- I think the state wanted it last
17 time and got it, so I was just telling him this was an
18 option he could ask for, just so he would understand he
19 is covering all his basis on it.

20 THE COURT: Okay. Well, I'll deny your
21 request. All right. Do you have anything else?

22 MR. TERRELL McCOY: No, Your Honor.

23 THE COURT: Okay. Now, let me talk with you
24 a little bit about your closing statement here. As I
25 told you at the beginning of the trial, you could testify

1 or not. You chose not to, and in the opening statement,
2 I told you you can't get up and testify.

3 Same thing in the closing. You can't get up
4 there and decide to put up evidence. You can only
5 comment on the evidence that's in there, so I know you
6 were -- I'm really not exactly sure what your theory of
7 defense is, because you brought up some discrepancies in
8 the police's collection of evidence, but I'm not really
9 sure what you were tying that into, and yesterday you
10 seemed to indicate through your girlfriend witness that
11 you might be trying to lay the groundwork for an alibi,
12 but you never did -- you didn't testify, nor did you put
13 anybody up stating that you were somewhere else.

14 So while you could perhaps argue that based
15 on the girlfriend's evidence testimony that they could
16 infer that you were somewhere else, you cannot get up
17 there and say, I wasn't there.

18 You can't say, I was in Atlanta or I was out
19 of town, because that would be testifying at that point.
20 Do you understand that? You can only say, you heard this
21 person state on the stand, and from that you could infer
22 that I wasn't there.

23 MR. TERRELL McCOY: Yes, sir.

24 THE COURT: But you can't say, I wasn't
25 there. You're not allowed to testify. You know

1 sometimes how I would cut you off a little bit. I let
2 you go a little off, but the case you were arguing with
3 the witness, like Ms. Bunker, I think, or Officer Bunker,
4 you wanted to get her to admit some things. Well, she
5 was there as a fact witness, and the things that you
6 wanted to argue, well, wouldn't a reasonable person have
7 done this, that sort of thing, you can now argue that.
8 You can now argue about the evidence, but you can't put
9 in evidence, and, most importantly, you can't testify now
10 and put in evidence and say, Well, I wasn't there, or, I
11 didn't do this, or I didn't do that.

12 I mean, you just -- you have to talk about
13 the evidence that is in there, and what is a reasonable
14 inference from that evidence. But I don't want to get up
15 and jump up and down, and I know I don't want to have the
16 state in the position of having to jump up and down in
17 the middle of your closing argument, because, typically,
18 when we do these closings and openings, we try to
19 minimize objections in that, and so they don't want to be
20 jumping up and down in the middle of your closing, nor do
21 I want you jumping up and down in the middle of theirs.
22 If you have a valid objection, you object, I'll rule on
23 it, same thing.

24 But to minimize that, I want you to
25 understand you can't now testify and say, I wasn't there,

1 I was in Atlanta, or, I was out of town, or whatever
2 because you did not testify. You can only state, This is
3 what the evidence suggests. Okay?

4 You've been doing a good job about
5 understanding what I'm saying, so I know you're smart
6 enough to figure that out, and you got a little bit of
7 time to think about it. I'm sure Ms. Proctor has talked
8 to you about it, so I don't want to interfere with your
9 closing, but I do want to stress this is not the time now
10 for you to put in evidence. Okay?

11 MR. WETMORE: Judge, before the jury comes
12 in. I think I would also mention, based on your ruling at
13 the end of the day yesterday, I'll go ahead and move to
14 strike Lieutenant Deckard's testimony as irrelevant.

15 THE COURT: Okay. Let the record reflect
16 that officer -- I'm sorry. What was his name again?

17 MR. WETMORE: Deckard.

18 THE COURT: His testimony is stricken.

19 How long do you think you'll need,
20 Mr. Wetmore?

21 MR. WETMORE: Mr. McCoy is actually going to
22 do the closing.

23 THE COURT: Mr. McCoy?

24 MR. PETER MCCOY: Your Honor, I was planning
25 on doing a brief opening on the law, sitting down, and

1 then doing my closing after Mr. McCoy's. I would say 20
2 to 30 minutes.

3 THE COURT: Mr. McCoy, do you have any idea
4 how long you might need? I know it's hard to estimate.

5 MR. TERRELL MCCOY: It's going to be hard to
6 estimate, but probably about 20 minutes.

7 THE COURT: I'll give you about as much time
8 as you need, but at some point, you know, I'll cut you
9 off if I think you're just rambling and going on, but I
10 think you have got yourself focussed very well. The way
11 this works procedurally is because state has the burden
12 of proof, they have to go first. They have to quote,
13 unquote, open on the law. They don't have to say a whole
14 lot, but the big point is that they also get to close.

15 So they will get to talk to the jury twice.
16 You'll only get to talk to the jury once. All right? So
17 Mr. McCoy is going to get up, speak very briefly, then
18 you'll get up, you'll make your argument, however long
19 you need, give it your best shot, then Mr. McCoy will do
20 the final closing, and then I will charge the jury on the
21 law, go over the verdict with them, and then they'll
22 begin their deliberations.

23 Okay? All right. Well, take a few minutes
24 and when the jury all gets here, we'll get going.

25 (Recess taken.)

1 (In open court, jury present.)

2 THE COURT: Welcome back, folks. I want to
3 ask you first, has anybody read the newspaper this
4 morning, seen the newspaper article about the case or any
5 other articles that have been printed so far this week?
6 Okay. Let the report reflect all the jurors have
7 indicated they have not.

8 We're going to now have the closing
9 arguments, and then I will charge you on the law, go over
10 the verdict with you, and then you will retire to begin
11 your deliberations. A couple things that I want to talk
12 to you about are procedural things, mostly. This is, as
13 I said, the closing arguments. You've heard all of the
14 evidence that you're going to hear in this case.
15 Everything you need to consider about this case are
16 things that were presented either through testimony of
17 witnesses or photographs or documents.

18 That's evidence. That is the only thing you
19 are to consider, what was presented in this courtroom, as
20 evidence in this case. Not anything that anybody might
21 have said or you overheard or anything like that is to be
22 considered by you, just what you heard in this courtroom.
23 Now, up to this point, we had the opening statements,
24 which as I told you then, were the lawyers and Mr. McCoy
25 represented himself, previewed the evidence that you

1 heard, and you heard the evidence, now, in the closing
2 arguments, the parties go over the evidence that you
3 heard and try to persuade you to render a verdict in
4 their client's behalf.

5 Now, the state, of course, is represented by
6 two gentleman from the solicitor's office. They, of
7 course, would not be considered witnesses under any
8 circumstances, and I've explained to Mr. McCoy that he is
9 not now testifying when he gets up and speaks before you.
10 He is to be treated the same as any other lawyer, and
11 that is that he is just to review the evidence that is
12 presented in this case.

13 He did not choose to testify, and he has the
14 right to not testify. And as I will talk to you a little
15 bit more in depth in the trial, the fact that he did not
16 choose to testify cannot be considered by you in any way
17 in your deliberations. The state has to prove the case.
18 He does not have to testify against himself, and so he
19 chose not to and you are not to consider that in any way
20 in your deliberations. You are not to hold that against
21 him. Likewise, he cannot get up now and, in essence,
22 testify to you through his closing statement.

23 He is to be treated just like any other
24 lawyer, and so what he says is not to be considered as
25 evidence. He is limited to just the same role as the

1 lawyers are in this case. He can comment on the evidence
2 and argue about any reasonable inferences that can be
3 made from that evidence, but that is what you are to
4 consider he is speaking to you now as an argument by a
5 lawyer or, in this case, by a party. His statements that
6 he is giving to you now are argument only. They are not
7 evidence. And, again, I stress to you the fact he did
8 not testify, it is his constitutional right. You are not
9 to consider that in any way, shape, or form in your
10 deliberations.

11 Now, because the state has the burden of
12 proof, they go first and they, what we call, open on the
13 law. So Mr. McCoy is going to give the closing argument
14 on behalf of the state, and he will get up and speak to
15 you first. His first part is not usually long. They
16 talk about the law a little bit.

17 Then Mr. McCoy, if he chooses, will get up
18 and give a closing statement, and then the state, because
19 they have the burden of proof, gives the right to close.

20 So you will hear from Mr. McCoy two times, at
21 the beginning and at the end, and you will hear from
22 Mr. McCoy just one time, in between the two times
23 Mr. McCoy -- the solicitor, Mr. McCoy speaks.

24 So at this point. I'm going to turn it over
25 to Solicitor McCoy so he can begin his closing statement.

1 MR. PETER MCCOY: Thank you, Your Honor, may
2 it please the Court.

3 Ladies and gentlemen of the jury: I
4 appreciate your time and I appreciate your attention.
5 It's been a long week. It's Friday, and this is about to
6 come to a close. As Judge Young just told you, I'm going
7 to give you a little bit of introduction on the law.
8 What I'm telling you now is called opening of the law.
9 I'm going to tell you what the defendant has been charged
10 with, and I'm going to tell you the burden that we have
11 to prove, the burden of proof we have, what we have to
12 overcome to prove him guilty.

13 As you know, you've been here all week, the
14 defendant is charged with murder. That is a killing of
15 another person with malice aforethought. Now, killing of
16 another is relatively easy to understand, and that is an
17 easy element to understand. I don't have to explain
18 that.

19 Malice, there are two types of malice.
20 Malice can be expressed or it can be implied. Malice can
21 be shown by words or actions, or it can be shown by what
22 that defendant actually does. It can be shown by his
23 intent or what he does in a room or in a crime scene
24 without him saying any words whatsoever.

25 Malice can be defined as evil intentions.

1 It's a wicked heart, is what malice means. Examples of
2 malice is that I threatened to kill you. I tell you I'm
3 going to kill you. Malice can be pulling a trigger, not
4 once, not twice, but five times. Malice can be pointing
5 a gun at people. Malice can be arguing with people and
6 threatening their lives verbally.

7 Now, aforethought might imply some type of
8 pre medication. It doesn't. This does not have to be a
9 premedicated murder. This does not have to be something
10 where the defendant sat and pondered what he was going to
11 do. It does not have to be a situation where he had a
12 chance to cool off, think about it, and plan this murder.

13 He did not have to plan it. Aforethought,
14 there is no time limit that is put on that. All that
15 means is what he intended to do and what he did do and
16 his intentions when he did pull that trigger.

17 Now, I have to prove each one of these
18 elements by the standard we call beyond a reasonable
19 doubt, and Judge Young will fill you in on what a
20 reasonable doubt is. He'll fill you in as soon as we
21 conclude our closing arguments. I'll briefly tell you
22 what reasonable doubt is.

23 Reasonable doubt is a doubt that would cause
24 a reasonable person to hesitate to act. It would cause
25 you to think or hesitate to move forward. Now, Judge

1 Young will tell you there is nothing in this world that
2 is known beyond all doubt. There is nothing in this
3 world that is known beyond all absolute certainty. I
4 have to prove to you reasonable doubt is to firmly
5 convince you, firmly convince you of each one of these
6 elements, each one of the elements I just talked to you
7 about murder.

8 Now, please keep in mind what I've just told
9 you about reasonable doubt, and please keep in mind the
10 elements that I've just explained to you as I come, and I
11 will sit back down and Mr. McCoy will now give his
12 closing argument, but when I come back and do my final
13 closing argument, please keep in mind what I told you,
14 and I ask you to pay attention to each one of those
15 elements and pay attention to the reasonable doubt
16 standard, and you will be firmly convinced that he is
17 guilty of murder.

18 THE COURT: All right. Mr. McCoy?

19 MR. TERRELL MccOY: First of all, I would
20 like to thank each and every one of you for sitting here
21 patiently and listening to the testimony that was given
22 by all the witnesses in this case. Do you know why
23 America is one of the greatest places to live? Because
24 you got the right to stand up and be heard. These laws
25 are guaranteed by our forefathers that protects us in so

1 many ways, and I used one of those rights when I took the
2 initiative to represent myself today.

3 My duty is to prove to you that you should
4 find me not guilty. I want to show you the lies and
5 misconduct committed by witnesses and law enforcement in
6 this case and I have done that. You heard from the first
7 witness, Carinda Williams. She gave three different
8 stories to the police, and during this proceeding, she
9 lied. She stated in her first statement she was asleep,
10 and she heard someone banging on her door really, really
11 hard. Then the door was kicked open.

12 She heard three or four shots. When she
13 exited her bedroom, she saw somebody lying dead on her
14 living room floor. She touched him, getting blood on her
15 hands. You heard when I examined her. She said she
16 grabbed him, then she ran to a bedroom and noticed she
17 couldn't jump out the bedroom window because the
18 headboard blocks that window, so she ran into the other
19 bedroom, raised the window, and jumped out of it, leaving
20 behind bloody fingerprints.

21 Now, you saw the blood on this open window.
22 That is how that blood got on that window. You heard her
23 first statement. She stated that in her first statement.
24 Crime scene Investigator Bunker stated that bloody
25 fingerprints was never tested. She wanted you to believe

1 that they didn't test the blood on that doorway for sweat
2 or fingerprint DNA.

3 Now, we all know CSI detectives went into
4 that bedroom and investigated that blood on that window.
5 Ms. Wooten from the coroner's office, she stated when she
6 observed that window, the curtain with blood was in front
7 of it. The curtain had been removed. If the coroner was
8 aware of the bloody fingerprint, crime scene
9 investigators was aware of it.

10 This is not a big house, two bedroom. I
11 asked Ms. Bunker, and she collected the curtains from the
12 other room and she stated she left it at the crime scene.
13 Why? She never left it. She just didn't report it
14 because it matches the witness's first statement. This
15 is a homicide scene. You don't know what is in that
16 blood, who that blood belongs to. That person could have
17 had AIDS. They just don't leave blood lying around,
18 especially someone's brains.

19 Let me show you how this scene got
20 contaminated. If you look at this picture and look at
21 these two pictures, or look at this one picture, that is
22 the same curtain. Now, in this picture right here, there
23 is no blood noted on this curtain, but on this picture
24 right here, blood is noted on this curtain. It
25 contaminated the scene. That is how the scene got

1 contaminated. That is one of the contaminated evidence.

2 Do you remember me asking Officer Armstead
3 what was under the victim's body when he arrived on the
4 scene? The first thing he stated out of fear, I didn't
5 touch the body. Somebody did. And we know for a fact
6 police officers put that floral curtain under the victim.
7 That floral curtain came from out this bedroom where the
8 raised window was. It's the top part of the curtain.
9 Then you got the curtain itself, and you can buy it like
10 that in stores.

11 They destroyed the curtain itself to cover up
12 that the witness, in fact, run into that bedroom and
13 raised it and jumped out of it, like how she stated in
14 her first statement. That is how I argued those key
15 facts about the window, because it matches her first
16 story. This is not a big house, and you saw how I
17 questioned the crime scene Investigator Bunker and
18 Officer Hallman about that particular bedroom, and they
19 both lied and said they didn't go in that room.

20 Ms. Rae Wooten testified the state crime
21 scene investigator was aware of the bloody fingerprint.
22 Now, Ms. Bunker stated yesterday it was just her and
23 Officer Armstead were the two crime scene investigators.
24 They went into that bedroom because, y'all heard it
25 yesterday, when this woman said that they was aware that

1 she informed them.

2 Why were they so afraid to admit they went
3 into that bedroom? Why? Not that it had been my
4 fingerprint or my brother's fingerprint, they would have
5 tested it quicker than anything. Now you saw the blood
6 on doorway leading to the bedroom. That there is enough
7 clues she ran into both bedrooms. Ms. Bunker lied
8 because she knows that is evidence to prove my innocence.
9 Carinda wanted you to believe my brother kicked the door
10 open. Why didn't she say that in her third statement and
11 why didn't she state that in a previous proceeding? She
12 never stated that.

13 She stated that she held the victim in her
14 arms and brain matter was all over her shirt. Where is
15 the brain matter? There are only blood spatters on that
16 shirt. Now, y'all saw the crime scene. Y'all saw all
17 the blood on the floor. Y'all saw all that blood. Now,
18 if someone was holding this victim in his arms while he
19 was dying, for how long she stated, five, five minutes,
20 ten minutes, perhaps, because she said this person went
21 into this room? She hold that victim for about five, ten
22 minutes in her arms. Why?

23 If you hold a dying guy and he had a gunshot
24 wound to his right jaw, so if you're holding this guy in
25 your arms, why would you only just have this little bit

1 of blood that is on the shirt? No brain matter, no type
2 of thick blood clotting on this shirt. None of that, and
3 you saw pictures. All this blood, all this blood would
4 have been on her shirt.

5 She stated she never saw crack cocaine under
6 his head. If she held him in her arms, she would have
7 saw that crack cocaine under his head. She stated she
8 didn't even see a floral curtain under him and she held
9 him. That means the floral curtain wasn't even there.

10 Carinda stated she didn't see the floral
11 curtain. Officer Armstead said he didn't see the floral
12 curtain, so how did that floral curtain got there?
13 Police officers.

14 She stated that the defendant shot at her and
15 the victim over seven times while she was sitting in this
16 chair. There is no bullet holes nowhere in that wall.
17 There is no bullet holes in that wall. If that was the
18 truth, if she stated she got grazed behind her left ear,
19 that is not possible, and she never went to the hospital,
20 and there are no police reports to match her story.
21 Showed y'all a picture of a graze and how a graze look.
22 It requires medical attention.

23 The victim suffered a graze to his right
24 hand. That is a graze. That type of injury requires
25 medical attention. Why didn't she go to the hospital?

1 Why didn't she report it to the police if she got grazed?
2 Why would she say she don't know who committed this
3 crime? If I was shooting at one of you and you are
4 surveillance, you go to work every day, and if I was to
5 shoot at one of you, you would not go to the police and
6 say, I didn't see a murder. This is how it happened.
7 Everything in her first statement was the truth.

8 You would go to the police and say, This guy
9 shot at me, and I saw him shoot the victim, to get him
10 off the streets. She didn't do that. She is lying.

11 If I shot at Ms. Williams, why didn't she
12 state that in her third statement? Why would she state
13 she didn't know who committed this crime, if she felt
14 like her life was in jeopardy? Her life was never in
15 jeopardy. She lied. She stated we came in her house
16 through the a side door. Ms. Bunker said there wasn't
17 even a side door. She stated Travis was sitting on the
18 couch. On the diagram she said she was sitting on the
19 couch right here. How can that happen when a radio was
20 right here? He was never there. She lied.

21 Now, I'm going to show you why we rely on
22 science and mathematics. Five shell casings were found
23 inside this residence. Every shell casing contains one
24 projectile. Officer Scott Wyant testified and stated he
25 removed four projectiles from the victim's body.

1 Now, two projectiles were found on the floor,
2 and one projectile was in the wall that they couldn't
3 retrieve. So out of those five shell casings, three of
4 them went inside the house. Only two of those shell
5 casings hit the victim inside the house. So she never
6 saw the victim got shot. Her first statement was the
7 truth.

8 And these are projectiles. This is one
9 projectile, this is the second projectile, and this is
10 the third projectile that they couldn't retrieve from out
11 the wall. Five shots, five shell casings were found on
12 the floor. They recovered two from off the floor, one
13 went inside the wall, and four were found in the body.
14 So if five shell casings were found on the floor, that
15 means only two projectiles hit Antwan inside that house.

16 I showed you the picture of the blood smears
17 on the house. There were three shell casings found at
18 5051 Delta Street, outside the residence, and these right
19 here are three shell casings that were found outside. I
20 showed you a picture of blood smears on the house, and
21 that is the same house as 5051 Delta Street where the
22 bullets -- the shell casings were located. Do you see
23 that trimming right there, that line? If you look right
24 here, that same trimming is right there. But this is on
25 the side where the bullets were located.

1 Now, Carinda stated she dated my brother, but
2 she don't even know his last name. She stated his last
3 name was Johnson. Now, you heard his testimony on
4 yesterday, and he stated that his name is Travis
5 Holcombe, and he stated he never dated her. And he
6 stated he was at Motel Six with his girlfriend Shelly.
7 He was asked by the opposing party if he was at 5061
8 Delta Street when Antwan Bryant was killed, and he stated
9 no.

10 I asked him have I ever tried to harm or put
11 him in harm or put his life in danger and he stated no.
12 He wrote a statement letting police officers know that he
13 wasn't there and that me and him never had an altercation
14 that was said to lead to Antwan's killing. There is no
15 motive, no type of robbery. It was never stated that me
16 and Antwan never had any type of altercation. Why would
17 I kill him?

18 You heard from my girlfriend that she helped
19 me pack clothes early Friday. Then I drop her off and
20 left on a trip. When Detective Bunker searched my car,
21 they found clothes and shoes in my vehicle, nothing
22 linking me to the scene. You heard testimony from
23 Carinda that I had a gun in my right hand, but if you
24 look, she stated in a previous proceeding that I had the
25 gun in my left hand. Lies, first left hand, now it's the

1 right hand.

2 She's lying, showing proof she's a constant
3 liar. My argument in this case was that the crime scene
4 was contaminated. The victim body was moved to hide the
5 rearranging -- the victim body was removed to hide the
6 order in which the crime scene was in. Officer Armstead
7 testified those curtains was not under the victim when he
8 arrived, and Mole Clary, the EMT, testified that curtain
9 wasn't under the victim when he arrived. So who could
10 put those curtains there? Who could have?

11 When you do a crime scene, they put around
12 yellow tape so no civilians like you and I could enter
13 this residence, only police officers, so if it wasn't
14 there when the first arriving officer arrived and it
15 wasn't there when the EMT -- 'cause, you know, when you
16 make a call, when you make a dispatch call to the police,
17 you're going to have an officer respond and EMT, EMS,
18 EMT. If it wasn't there when the first arriving officers
19 arrived and the EMT, that means the crime scene
20 investigators put that under there, rearranging the order
21 in which the body was in.

22 So police officers put those curtains under
23 the victim. They moved this body. I showed you -- she
24 stated that in her report, she stated item 1 through 13
25 were contaminated from an earlier scene. Why would she

1 state that in this case? Why, if she was coming from a
2 different scene, why didn't she say from a different
3 scene? She said an earlier scene, because she knew the
4 scene was contaminated. She made a mistake by putting it
5 in my report.

6 I showed you a picture to prove that his body
7 was moved. I showed you this picture, and I also showed
8 you this picture. It was stated that Antwan had a wound
9 in the right jaw, his lower back, his chest area, his
10 buttocks, and his left groin. How did that blood get
11 there? That was where he was -- that was where he was
12 the first time. Look at this picture here. Why is all
13 that blood right there?

14 They rearranged the order of where this crime
15 scene was. He was laying further back. They put his
16 body up. They moved his body up to make it seem like he
17 fell right there, and they put this curtain under him for
18 what reason? I can't tell you. But we know from the
19 knowledge that we have that this blood spill did not come
20 from his back area, because we would see the blood
21 traveling right there.

22 We know that it ain't come from his chest
23 area because there is no stain from this area going to
24 this puddle of blood, and we know it didn't come from his
25 right jaw and we know for sure it didn't come from his

1 left groin or his buttocks.

2 Contaminated scene. I asked her during the
3 last proceeding, I asked her, well, where were you when
4 she asked about the contaminated scene? She said, well,
5 that came from another scene. Before I arrived to this
6 scene, I was at 3975 which is behind 49th Lacrosse. That
7 don't even exist. I used that map to show that she was
8 talking about this neighborhood. This is Lacrosse Road,
9 and this is where the victim was found, in this area,
10 this neighborhood.

11 So when she stated she was at 3975, which is
12 behind Lacrosse, she was talking about the area, the
13 neighborhood. I called 411 information. I said, Do
14 y'all have -- does that sound like a New York --

15 MR. WETMORE: Objection, Your Honor.

16 THE COURT: You can't testify.

17 MR. TERRELL McCOY: Okay. I showed you a
18 picture with the shell casings in the threshold of the
19 door. If this door was closed, like Carinda said, how
20 did this shell casing get in the threshold of the door?
21 You heard me ask Ms. Bunker, I said, is it possible for
22 this shell casing to land in this door if this door was
23 closed? No.

24 So that means the door was opened, kicked
25 open, where Antwan got killed. I'm not the best defense

1 lawyer, but I know truth from falsehood. All the
2 physical evidence matches Carinda's first statement. You
3 also heard Officer Bunker stat they tracked from crime
4 scene to 2215 Margaret Street and located a size 11 Nike
5 shoe. This is the 11 Nike shoe that they tracked from
6 the crime scene. They went to my car, 48 -- either 24 or
7 48 hours later and they collected shoes from my car, and
8 these sizes are eight.

9 So you got a size 11 and a size 8. Why would
10 she collect these shoes if they had no value to her case?
11 She wouldn't have collected them. Why would you collect
12 a piece of paper if it had no evidence? She collected
13 this because it had some type of significance to her
14 case.

15 She collected my shoes out of my car to try
16 to match it with these. No match. They have no gun in
17 evidence to say I killed Antwan Bryant. They found no
18 gunpowder residue on my hands to say I shot a gun. In
19 the beginning of the trial, I stated I'm going to prove
20 my presumption of innocence by every evidence, and I did
21 that. I ask you find me not guilty of murder and give me
22 liberty.

23 Remember, five shell casings were found in
24 the residence. Two projectiles were found on floor, one
25 in the wall that they couldn't retrieve. Officer Scott

1 Wyant removed four projectiles from his body, showing
2 physical evidence. Only two of those bullets out of the
3 five shell casings hit Antwan inside that house. Three
4 shell casings were found down the street, and that is
5 where he first got shot.

6 The crime scene was contaminated. People can
7 lie, but physical evidence don't lie. Carinda didn't
8 witness this murder. She stated police pick her up from
9 Waterfront park 24 hours later after the incident, and
10 instead of them bringing her straight to the North
11 Charleston police department, they pulled over to a
12 garage and they talked to her for an hour and that is
13 when she stated me as the perpetrator.

14 Why would you pull over to a garage? Why
15 didn't they take her back to the North Charleston police
16 department, and why would North Charleston police tell
17 her to meet them downtown? If you already in North
18 Charleston, why would you tell them to meet them -- she's
19 from North Charleston. The North Charleston police
20 department, why would they tell her to meet them downtown
21 and they pull over to a garage? This was not stated in
22 the reports.

23 There was no signs of blood, saying she ran
24 to the neighbor's house. She claims she had all this
25 blood on her. She held the victim and his wounds. Where

1 is the blood? This is the neighbor's house she ran to.
2 Where is the blood? She didn't hear them -- she stated
3 she covered his wounds. Where did the blood go? She
4 never held Antwan. She was so scared when she came out
5 of her room and saw the dead guy, she grabbed him,
6 getting blood on her hands. Then she ran and tried to
7 jump out the window, leaving blood on the doorway and the
8 curtain and the window. She wiped the blood from her
9 shirt.

10 We all saw all the blood in the living room.
11 Brains were on the floor and not on her clothes, not on
12 his clothes. Physical evidence prove she never held
13 Antwan in her arms. The physical evidence proves she
14 didn't witness him getting shoot because she stated he
15 got shot seven times and only five shell casings, five
16 shell casings, were found on the floor. Two projectiles
17 his Antwan, two landed on the floor, one into the wall.

18 Two projectiles hit Antwan, two projectiles
19 landed on the floor, one went in the wall. That is five.
20 Five projectiles was found on the floor. He didn't get
21 shoot five times in that house. He got shot two times in
22 that house, and two times outside that house. Two Ice
23 House beer bottles were found on both sides of the
24 victim. None of them contained my saliva, DNA, or
25 fingerprints. The drug scale that was found didn't have

1 my fingerprints, so I ask you to find the defendant not
2 guilty of murder. Thank you.

3 THE COURT: All right. Solicitor McCoy?

4 MR. PETER MCCOY: Thank you, Your Honor, may
5 it please the Court.

6 March 5, 2006 is a night, is a day, that
7 Carinda Williams will never, will never forget. That is
8 the night Terrell McCoy, Sleezie Boy, murdered Antwan
9 Bryant in her very sight, in her very living room in her
10 house. She held his body riddled with bullets as he
11 breathed his last breath, died in her arms.

12 That night started at Club Good Times in
13 Goose Creek. You've heard testimony from Brandon
14 Cuttino. You've heard testimony from Travis Holcombe.
15 They said they were at Club Good Times. At Club Good
16 Times was Travis, Terrell, Brandon, and the victim,
17 Antwan Bryant. They were in Goose Creek. They left.
18 They came back to North Charleston. They came to Delta
19 Street. They came to hang out. They didn't want the
20 night to end. They were 5051-A Delta Street. They were
21 hanging out outside. Brandon Cuttino told you he had
22 just bought a 12 pack of beer. He had it in his hands.
23 Brandon Cuttino also told you he saw Terrell with a gun
24 at 551-A Delta Street.

25 In an act of complete disrespect to society

1 and an act of complete lawlessness, Terrell McCoy thought
2 it would be a good idea for some reason to pull out his
3 pistol and shoot it three times in the air, one, two,
4 three. Travis Holcombe, you've heard from Travis
5 Holcombe. He knows what it's like to be around crime.
6 He knows what it's like to be around guns. Something
7 isn't right in his head. Something went off. He knew
8 the police would come once this gun went off. He knew
9 that would come. He was angry. This is how the events
10 start to unfold for Antwan Bryant's murder.

11 Travis was upset with his brother. Why would
12 you bring the police over here? Why would you do that?
13 Why would you shoot your gun three times in the air?

14 Terrell's getting talked down to, dressed
15 down by his younger brother in front of others. He
16 doesn't like that disrespect. He doesn't like that one
17 bit from his little brother. The anger starts to build.
18 Anger is building. They leave 5051-A Delta Street. They
19 go two houses down, to go to Carinda Williams' house.
20 Carinda Williams testified her front door isn't even
21 operable. It's latched together. It's tied together
22 about a string. It doesn't even open.

23 She said she's never known any of these guys
24 to ever come through the front door because she doesn't
25 even use the front door. They came to the side door and

1 they came in the house. Carinda Williams is already
2 awake. She was already aware of what was going on. She
3 was woken up because she heard the three gunshots two
4 houses down. She told you that.

5 She heard the gunshots. She hears her back
6 door kick open, and she hears a mess of people run into
7 her living room. Who is there? Who is in the living
8 room? Travis, Terrell, Antwan, Brandon Cuttino. She
9 says she comes into a whirlwind of arguments. Antwan
10 Bryant is sitting down; Brandon Cuttino is sitting down.
11 Travis and Terrell, they're not getting along at all.
12 They're not getting along at all.

13 Travis is still dressing his older brother
14 down in front of others for bringing the police to a
15 situation, for shooting his gun in the air for no reason.
16 He's angry. He's upset. You heard testimony from
17 Ms. Williams when she was in here. She told you, she
18 said, Terrell was acting crazy. He was acting wild in
19 the room. He had his pistol out. He had his pistol in
20 the room. He was pointing his pistol at everybody. He
21 pointed the pistol at Travis. He even pointed the pistol
22 at Ms. Williams.

23 Now, Antwan was trying to calm things down.
24 Carinda was trying to calm things down. Not going to
25 happen. Not going to happen with Terrell McCoy. He's

1 not going to get disrespected like that. He's not going
2 to get dressed down in front of others by his younger
3 brother.

4 He's not going to let that happen. His anger
5 is building. He's angry at what's going on. He's angry
6 at the situation. Still with a gun in his hand, he walks
7 away. He walks over the threshold of the door at 5061
8 Delta Street. He walks away, gun in his hand. There is
9 a brief pause. There is a pause where nobody is really
10 sure what is going on, kind of a quiet time.

11 Brandon Cuttino, you heard from him. People
12 were pulling guns so much and Terrell is pointing a gun
13 so much in that room. He got scared. He left. He was
14 gone. Antwan Bryant leans in front of Carinda, leans in
15 front of Carinda towards an ashtray to put out his
16 cigarette. At that time, Travis says, he says to
17 Terrell, That man right there, Antwan Bryant, is more of
18 a brother to me than you'll ever be.

19 That is what pushed him over the edge. That
20 is what makes him snap. At that moment, he unloads his
21 pistol and he fires. He takes his anger out, not on
22 Travis, but on the one person that he could in that room
23 that was not his brother, and he started shooting. He
24 shot over, over, over, over, and over again. Antwan was
25 shot in the back. He was shot in the jaw. He was shot

1 in his back side, and he was shot in the front part of
2 his lower area right here.

3 Carinda is in complete shock. She was
4 sitting in the chair facing that direction. The body
5 falls on her. Antwan falls on her, and they fall to the
6 ground. Bullets are whizzing by her head.

7 She told you, she said there were five to
8 seven shots fired. I don't know. Can anybody tell if a
9 bullet is being fired on you, if a gun is being unloaded
10 on you, if you're scaring down the barrel of a gun, how
11 many times it was shot? I think self-preservation kicks
12 in, and I think she's trying to get as low as she can and
13 she's trying to avoid being shot at all.

14 She told you, I didn't even know I was shot
15 at all until it was over. And she was shot. She was
16 grazed by one of the bullets. She was hit on the side of
17 her head. She told you where she was struck.

18 Graze wound. After this happens, Terrell
19 McCoy panics. He takes his pistol, right hand, and he
20 pushes open, he forces open that door that is never used,
21 that he has never used. He forces this door open, bashes
22 it open, and he runs out into Delta Street and is gone.
23 Brandon is already gone. Antwan is on the ground;
24 Carinda is holding Antwan.

25 Travis, Carinda's boyfriend, is still in the

1 house. What does he do? What does he do when this
2 happens? He goes over to the body and tries to get
3 something out of it, tries to move things around, tries
4 to take something, panicking. You heard Carinda. He was
5 in a panic. He was tearing through the room. He wanted
6 to make it look like it was a break-in. He wanted to
7 make it look like something else had gone wrong. He runs
8 into the bedroom. We don't know what happened in there.
9 We don't know what happened in the bedroom. Carinda told
10 you she can't see what happened in there, but he ran in
11 there nonetheless. What did he do? We don't know.

12 He storms back out. He says, I'm going to
13 kick in the front door, and I'm going to make it look
14 like it was a robbery attempt. I'm going to make it look
15 like something else happened here. Kicks open the front
16 door, breaks the latch on the actual front door, not the
17 storm glass door, and then he takes off. He's gone.
18 He's into Delta Street as well. Gone. Carinda is left
19 there with a dying body, the dying victim, Antwan Bryant.

20 He can barely talk. He can barely talk. He
21 doesn't know what's going on. Carinda has never seen
22 this guy before in her life. She has never seen him
23 before in her life. She has to hold a complete stranger
24 in her arms as he dies as he takes his last breath on
25 earth. He mumbles, he says some words that probably

1 don't make a whole lot of sense, but what Carinda
2 understood was, Please don't leave me. Please don't
3 leave me.

4 Must be pretty tough to tell a stranger that
5 you don't know you're dying. You're in their arms. The
6 only thing you can say is he just wanted to be with
7 somebody. He wanted to be with somebody as he was
8 passing. Please don't leave me.

9 As soon as he passes away, she will tell you,
10 she knows it's time to go get help. She leaves. She's
11 covered in blood. Her body, her clothes. She leaves.
12 She goes to a neighbor's house. Knocks on the door:
13 Call 911. I just held a dying man in my arms in my house
14 at 5061 Delta Street.

15 A lady in the house hands her a towel to wipe
16 herself off and also was nice enough to give her some
17 clothes to change into. They wait for the police and the
18 police come. At this point Brandon, Travis, and the
19 defendant, Terrell McCoy, they're gone. They're nowhere
20 to be found, nowhere to be found.

21 The crime scene investigation begins. Police
22 start to arrive on the scene. They begin to show up.
23 Officer Armstead comes. He sets crime scene up. He puts
24 the yellow tape around. He starts a crime scene log
25 documenting who comes in, who comes out. Crime scene

1 investigators begin to arrive. The coroner arrives.
2 EMS arrives. Everybody is coming, everybody is there.

3 You heard Officer Armstead on the stand. He
4 was the first one there. He came in. He said he didn't
5 see the curtain underneath the body. He didn't say it
6 was never there. He said he didn't see it.

7 He secures the scene. He told you what he
8 wants to do there is he wants to make sure that nobody
9 else is in the house. He wants to make sure the murderer
10 is in the house. He wants to secure the house, he wants
11 to look around. He wants to make sure he's safe. He
12 wants to make sure the other officers that come are going
13 to be safe as well.

14 Officer Roy came up here and testified for
15 the defense. He was one of the witnesses that they
16 called. He was the second officer on the scene. He came
17 right behind Armstead. He tells you he does remember a
18 curtain being under the body. Armstead and Roy told you
19 they never touched a thing in that house. He never
20 touched any curtains. They didn't touch any evidence.
21 They left everything as is, and it's very important in a
22 murder investigation.

23 Crime scene investigators begin to arrive.
24 Officer Bunker comes to the scene. She takes the stand,
25 and what did she tell you? She said, Hey, my job is to

1 do this. I come in here and I examine the evidence.

2 I lay out photos of the evidence. I lay out
3 placards to mark all the evidence. I do the best I can
4 with what I know what is going on. She came in, she laid
5 down markers for evidence, and she began to take a log of
6 what she found. She began to take photographs of what
7 she found. She told you she's never touched any
8 evidence. She never tampered with anything. Why would
9 she do that?

10 They didn't even have any leads at this
11 point. They didn't know who did it. They had no idea
12 what was going on. Why would she tamper or touch a scene
13 when you don't even know who you're even trying to
14 arrest? It doesn't make any sense, because Officer
15 Bunker didn't touch anything. She didn't move anything;
16 she didn't plant any evidence.

17 She told you she noticed the curtain
18 underneath the body. She told you she didn't know how it
19 got there. She noticed a curtain in the bedroom. She
20 noticed there was a blood smear going into the bedroom.
21 She knows there was blood on the curtain. She told you
22 that. The curtains were not taken into evidence. The
23 blood smear was not tested.

24 Now, she also did a bunch of work besides
25 marking evidence and besides photographing. She was able

1 to use her fingerprint work to try to find some prints in
2 the room and she did. She found some prints on a beer
3 bottle. She found some on the scales. She found some on
4 an outside of a door, and she found some on the inside of
5 the storm glass door, the glass door. The other prints,
6 nothing was able to be found. They were indiscernible
7 prints. They didn't have enough ridge detail. You heard
8 them say that up here. What that means is there is
9 nothing you can use to identify these fingerprints.

10 She lifted the prints from the inside of the
11 storm glass door, secured them, and gave them to Officer
12 Hallman. Officer Hallman came up here a couple days ago,
13 and he told you, he's been around this for a long time.
14 He's been in crime scene for a long time. He is actually
15 in charge of the forensics unit.

16 He came in, took these latent prints. He
17 tested them. He ran some tests on them, and the tests
18 came back to be positive on the inside of the storm glass
19 door, inside of the house, on the door that was never
20 used by anybody, wasn't ever even used by Carinda.

21 Two prints came back to Terrell McCoy and
22 they came back. One print came back to Travis Holcombe,
23 and you heard that from Officer Hallman. I said, Officer
24 Hallman, what is the probability of this being somebody
25 else? Could this be somebody else's fingerprints? Is

1 there any chance of any kind of mismatch?

2 He told you the probability was a 10 with 48
3 zeros behind that. I don't even know what number that
4 is. I have no idea. Investigation begins to unfold.
5 Evidence has been collected.

6 Everything has been taken into evidence.
7 Now, Carinda Williams, let's talk about Carinda. Let's
8 talk about Carinda when she came in to testify. She did
9 not tell the whole truth the first time she came in and
10 talked to police that day. She did not tell the whole
11 truth, but she came in here and she admitted that to you.
12 She came in and told you, I didn't tell the whole truth.
13 Why did she not tell the whole truth? Why did she not do
14 it? She was scared.

15 Number one, she was scared. She saw what the
16 defendant was capable of doing and what he did do. She
17 was scared for her life. If Antwan Bryant could be
18 killed for absolutely no reason whatsoever, in a hail of
19 gunshots, that was in her mind. And he hadn't been
20 arrested yet. He was still out there.

21 And also, she told you, she said, That night
22 I tossed and turned in my bed. I tossed and turned, and
23 I realized, I realized and I thought in my mind, Antwan
24 Bryant was somebody's son, somebody's family member,
25 somebody's brother. I have to do the right thing. I

1 have to go in there and tell them the truth, do the right
2 thing. She went in and she told them, second statement.
3 That was Terrell. Told them it was Terrell. Didn't give
4 the full details.

5 A day later she calls them, and says, I'm
6 giving you the full details. She says, it was Terrell in
7 two statements. She comes back and gives the entire
8 layout, because it was the right thing to do. She
9 admitted her wrong in front of 12 people she doesn't even
10 know. She admitted she did wrong.

11 And I want everybody to please remember when
12 Carinda was on the stand. She didn't falter. She didn't
13 fail, and she pointed out Terrell as the shooter without
14 hesitation, without any hesitation. And you know what?
15 I don't know if you could see it. I could see it. She
16 was still scared. At one point, Mr. McCoy offered to
17 walk up there and show her some evidence. She said,
18 Don't you let him come near me.

19 She is terrified of him, and what she did was
20 she came in here Tuesday morning for three hours, was one
21 of the bravest acts I have ever seen in my time in the
22 solicitor's office, one of the bravest witnesses I have
23 ever seen.

24 THE COURT: Mr. McCoy, you're not allowed to
25 vouch for your witnesses. Just comment on the evidence.

1 MR. PETER McCOY: Let's move on. Let's talk
2 about Brandon Cuttino.

3 He came in, took the stand. You could tell
4 he didn't want to be here. He didn't want to be here at
5 all. What did he tell you though? What did he tell you?
6 He said he was at Club Good Times with all those fellows.
7 He told you he was at 5051, and what is important about
8 this? He was at 5051 with Terrell, and he saw Terrell
9 with a gun, saw him with a gun there.

10 That is about as far as he would go. He said
11 he heard the shots were fired, and he dropped his 12 pack
12 of beer and ran, ran with the rest of the guys, and ran
13 to the side door and came in Carinda's house. He told
14 you as well, he puts Terrell in that house and he also
15 says Terrell had a gun in the house.

16 You're going to have his statement back there
17 with you. You're going to have a statement he gave
18 police back there with you. You're going to have that
19 back there with you, and you can go over what it says
20 back there.

21 Let's talk about another of the state's
22 witnesses that came in here. You heard from a guy from
23 Columbia named Tracy Thrower. He's with SLED, South
24 Carolina Law Enforcement Division. He's a forensic
25 firearms identification tool marking scientist. He came

1 in here, and he told you, he said, Listen, we examined
2 some shell casings, and I looked at a total of eight
3 shell casings. I looked at eight. He has no bias in
4 this case. He has no idea where they came from.

5 He said, Every gun is so unique that it
6 leaves a mark on a shell casing that is unique to every
7 single gun. It can't be left by another gun.

8 He said, what he did was he had the three
9 shell casings collected from Delta Street, 5051, and the
10 five shell casings that were collected from the house.
11 He said those were fired by the same handgun. He said
12 all those shell casings were fired by the same handgun.

13 Start to put the evidence together. Start to
14 think about what you've heard. Who fired the gun
15 outside? Who had the gun outside? Terrell. Who fired
16 the gun inside and had a gun inside and witnesses said
17 had a gun inside? Terrell.

18 Now, let's talk about some of the witnesses
19 that Mr. McCoy has produced, Terrell has produced. He
20 brought his brother in here. His brother didn't say a
21 whole lot. He said, I wasn't at 5061 during the murder,
22 and I didn't see my brother the whole day.

23 That is his brother that came in and
24 testified. That is his brother that came in and
25 testified, that he said looked after him and loved him

1 his entire life.

2 Who else came in? His girlfriend came in to
3 testify. She said she saw him packing some clothes.
4 Packing some clothes to leave or to do whatever. But did
5 she see him or did she know where he was on the day of
6 that murder? No, she didn't. She never said. She
7 didn't know where he was. She had no idea where he was.

8 Now, I want to talk about some of the issues
9 that Mr. McCoy has raised in front of you to create
10 doubt. Number one: The floral curtain underneath the
11 body. Carinda told you that thing was folded up on the
12 sofa, far side of the room, and in a hail of bullets and
13 things going on in that room must have wound up
14 underneath the body somehow.

15 She doesn't know how it ended up there.
16 North Charleston police department didn't put this floral
17 curtain underneath of the victim's body. They wouldn't
18 do that. That doesn't make any sense.

19 Again, he had not developed a suspect yet.
20 So why are they trying to hide or cover up evidence?
21 That doesn't make sense. No curtain was placed
22 underneath the victim's body. It didn't happen. Terrell
23 also stood up here and he told you, he said, Hey, there
24 were five shell casings in that room, five shell casings.
25 Two projectiles located on the floor, and four were

1 pulled out of the body and something was in the wall.

2 That doesn't make sense. That doesn't add
3 up. You heard every one of our witnesses come in here.
4 You even heard his own witness, John Roberts from SLED,
5 come in here and tell you, Listen, projectiles, when they
6 hit things, can splinter and they can fragment and they
7 can bounce off anything, anything hard, and they can move
8 around the room. And I ask you, if four projectiles were
9 pulled out of the victim's body, projectile fragments,
10 you're going to have these back there with you.

11 These came out of Antwan Bryant. These are
12 the projectiles that were inside of his body. You're
13 going to have these back there with you. I urge you to
14 look at these. Are these full projectiles or are these
15 fragments?

16 Two projectiles were found, two full
17 projectiles were found on the floor in the house. And
18 there is something found in the wall which nobody could
19 testify whether that was a full projectile or whether
20 that was a fragment. They don't know because it was an
21 unrecoverable object in the wall.

22 It wasn't there. We've also heard from the
23 defense that he used a K-9. They used a K-9 to track a
24 lead out of this house, and he's made a big deal about
25 the size 11 shoe. Officer Hille got on the stand

1 yesterday and he talked to you about tracking. He told
2 you, he said, I need a direction. I need some clothing
3 or article to give the dog the smell to start the track.
4 I need that. If I don't have that, I'm grasping at
5 straws.

6 He couldn't tell you if he was on a fresh
7 track. He couldn't tell you what he was on when he left
8 5061, but he did tell you this: He told you that he went
9 down a well-trodden path in this neighborhood, in the
10 Russelldale community. It's a path that was highly
11 traveled by people day and night. He told you that they
12 find shoes laying on this path. They find shoes laying
13 all over the place in this neighborhood in the
14 Russelldale community. This shoe has no significance or
15 importance.

16 Also, Terrell has talked to you about a
17 contaminated scene at 5061. Was this scene contaminated?
18 The word contaminated came from Officer Bunker's report.
19 She lists in her report that her placards and the little
20 numbers that she uses to mark evidence, she says in her
21 report that items 1 through 13, placards 1 through 13,
22 were contaminated from another scene, not from this
23 scene.

24 We have gone over this and we have gone over
25 this. She did not want to mix evidence from another

1 scene with this scene. So she didn't use placards 1
2 through 13. She started, she told you, she said 14 is
3 where I started; i.e., 14 means one on this scene.

4 This murder was senseless. This killing was
5 senseless. I ask each one of you to pay attention to the
6 evidence. You're going to have photos back there that
7 are going to show the layout of the room. Listen
8 carefully. Remember carefully what Carinda Williams told
9 you. Remember where she told you everybody was standing,
10 and how it went down, what happened in the room.

11 Look at the pictures. If you don't want to
12 just take her word for it, look at the pictures. The
13 pictures are going to tell her story in its entirety.

14 Now, Mr. McCoy has been in here all week
15 representing himself, and that is his right. That is his
16 right to come in here and represent himself for this
17 case. He has a right to do that, and that is what he has
18 chosen to do. But keep in mind, please keep in mind, in
19 here, all week, he's been Mr. McCoy. On the streets,
20 everywhere else, he's Sleezie Boy. He's known as Sleezie
21 Boy.

22 And this is what he is capable of doing, and
23 this is what he has done. Today is Antwan Bryant's
24 family's day in court. It's Antwan Bryant's day in
25 court. It's his day of justice. I would also go as far

1 to say that it's Carinda Williams' day of justice as
2 well. I ask you to hold Sleezie Boy accountable for his
3 actions on March 25, 2006, hold him accountable for the
4 murder, the senseless killing of Antwan Bryant.

5 THE COURT: All right. Folks, well, you have
6 now heard the arguments by the parties, and I'm going to
7 go over the law with you in this case.

8 Under our constitution and under our laws,
9 only jurors may make findings of facts in cases -- do you
10 need to take a rest room break? Somebody? Okay. Well,
11 we'll take a ten-minute break before I give the charge.
12 Don't begin deliberations or discussions. We'll take a
13 ten-minute break.

14 (Recess taken.)

15 THE COURT: Let the record reflect the
16 defendant is in the courtroom. All right.

17 Bring the jury back in.

18 (In open court, jury present.)

19 THE COURT: Be seated. Okay, folks. You've
20 now heard all the evidence and all the arguments in the
21 case, and so it's my duty now to explain the law as it
22 applies to the facts that you find in this case.

23 Under our constitution and the laws of the
24 state of South Carolina, only you, the jury, can make
25 findings of fact in this case. I'm not permitted to

1 indicate to you how I might feel about the facts, and if
2 I have said or done anything in this case that would
3 indicate to you that I have an opinion concerning the
4 facts in this case, I ask you to please disregard that.
5 This jury must independently weigh the evidence presented
6 in this trial and bass a verdict rendered solely on the
7 basis of the evidence in this case.

8 Now, the same constitution and laws that
9 designate you the finders of fact also make me the
10 instructor of the law. If you have some idea of what the
11 law is or what the law ought to be and it does not agree
12 with you, or agree with what I now tell you, you are
13 obligated under the oath that you took at the beginning
14 of this trial to abandon this preconception on your part
15 and accept and apply the law precisely as I now state to
16 you.

17 I stated at the beginning of trial and I must
18 also emphasize to you the fact that the defendant was
19 arrested, charged, and indicted in this case is not
20 evidence in this case and cannot be considered by you as
21 evidence of guilt in this case, nor does it create any
22 presumption or inference of guilt. This indictment is
23 simply the formal written instrument which contains the
24 charge made against the defendant. Is the formal
25 document by which this case is brought into this court.

1 Again, this indictment charges Mr. McCoy with
2 murder. He has pled not guilty to this indictment, and
3 that plea then casts the burden of proof on the state to
4 prove that the defendant is guilty beyond a reasonable
5 doubt. A person charged with committing a crime in this
6 state is never required to prove himself innocent. It is
7 an important rule of law in this country that the
8 defendant in a criminal trial will always be presumed to
9 be innocent of the crime for which he is indicted, unless
10 and until his guilt has been proven by evidence
11 satisfying you of that guilt beyond a reasonable doubt.

12 The presumption of innocence is not a mere
13 legal theory. It is not just a legal phrase. It is a
14 substantial constitutional right to which every defendant
15 is entitled. This presumption of innocence accompanies
16 the defendant from the time he is charged throughout the
17 trial until you reach a verdict of guilt, based upon the
18 evidence satisfying you of that guilt beyond a reasonable
19 doubt.

20 Now, ladies and gentlemen: I want to
21 emphasize to you the fact that the defendant did not
22 testify in this trial must not be considered by you in
23 any way in your deliberations. A defendant has a
24 constitutional right to remain silent, and the exercise
25 of that constitutional right cannot and must not be held

1 against the defendant. Under your oath as jurors, you
2 are to draw no inference and draw no conclusion
3 whatsoever from the fact that the defendant in this case
4 did not testify. Do not even discuss this fact in the
5 jury room. The defendant is not required to prove
6 anything. The burden of proof remains on the state to
7 prove the defendant's guilt beyond a reasonable doubt.

8 As I have said, the state has the burden of
9 proving guilt beyond a reasonable doubt. Some of you may
10 have served as jurors in a civil case where you were told
11 it was only necessary to prove a fact is more likely true
12 than not true, such as by the greater weight or the
13 preponderance of the evidence. In criminal cases, the
14 state's proof must be more powerful than that. It must
15 be beyond a reasonable doubt.

16 Proof beyond a reasonable doubt is proof that
17 leaves you firmly convinced of the defendant's guilt.
18 There are very few things in this world that we know with
19 absolute certainty, and in criminal cases, the law does
20 not require proof that overcomes every possible doubt.
21 If based on your consideration of the evidence you are
22 firmly convinced that the defendant is guilty of the
23 crime charged, then you must find the defendant guilty.
24 If, on the other hand, you think there is a real
25 possibility that the defendant is not guilty, then you

1 must give the defendant the benefit of the doubt and find
2 him not guilty.

3 Now, there are two types of evidence that are
4 generally presented in a criminal trial. There is direct
5 evidence and there is circumstantial evidence. Direct
6 evidence is the testimony of a person who claims to have
7 an actual knowledge of a fact, such as an eyewitness. It
8 is evidence that immediately establishes the main fact to
9 be true.

10 Circumstantial evidence is proof of a chain
11 of facts and circumstances indicating the existence of
12 the fact. It is evidence which immediately establishes
13 collateral facts from which the main fact may be
14 inferred. Circumstantial evidence is based on inference
15 and not on personal knowledge or observation. The law
16 makes absolutely no distinction between the weight or
17 value to be given to either direct or circumstantial
18 evidence, nor is a greater degree of certainty required
19 of circumstantial evidence than of direct evidence.

20 You should weigh all of the evidence in this
21 case. After weighing all of the evidence in this case,
22 if you are not convinced of the defendant's guilt beyond
23 a reasonable doubt, you must find the defendant not
24 guilty. Necessarily, your job as jurors requires you to
25 determine the credibility of the witnesses who have

1 testified in this case. Credibility simply means
2 believability, and then it becomes your duty as jurors to
3 analyze and evaluate the evidence and determine which
4 evidence convinces you of its truth.

5 In determining the believability of witnesses
6 who testified in this case, you may believe one witness
7 over several witnesses, or several witnesses over one
8 witness. You may believe part of the testimony of a
9 witness and reject the remaining part of that same
10 witness.

11 You may believe the testimony of a witness in
12 its entirety, or you can reject the testimony of a
13 witness in its entirety. You may consider whether any
14 witness has exhibited to you any interest, bias,
15 prejudice, or motive in this case. You may also consider
16 the appearance and manner of a witness while on the
17 witness stand.

18 Now, a person who has a past criminal record
19 is competent to testify during a trial. A past record
20 does not affect the ability of that witness to testify.
21 A past record may only be considered by you, if at all,
22 in determining the witness's believability. Remember,
23 you are the sole judges of the facts in this case and of
24 the believability of any and all of the witnesses.

25 Now, I talked to you a little bit about this

1 during the trial because it came up a couple of times
2 with expert witnesses. As I said then, the rules of
3 evidence ordinarily don't permit witnesses to testify
4 about opinions or conclusions. We do have an exception
5 to this rule that exists for witnesses called expert
6 witnesses. A witness who by education or experience has
7 become an expert in some art, science, profession, or
8 calling may state an opinion as to relevant and material
9 matter in which the witness claims to be an expert and
10 may also state the reasons for the opinion.

11 You should consider any expert opinion
12 received in this case like any other evidence. Give it
13 the weight that you think it deserves. If you decide
14 that the opinion of a witness, an expert witness, is not
15 based on sufficient education or experience or if you
16 conclude that the reasons given to support the opinion
17 are not sound or that the opinion is outweighed by other
18 evidence, you may disregard the opinion entirely.

19 An expert witness's opinion or testimony is
20 not to be given any greater weight than that of any other
21 witnesses simply because the witness is an expert.
22 Further, you're not required to accept an expert's
23 opinion, even though it is not contradicted.

24 Now, as I told you, the indictment in this
25 case charges the defendant with murder in violation of

1 code section 16-3-10 of the South Carolina code of laws.
2 The state must prove beyond a reasonable doubt that the
3 defendant killed another person with malice aforethought.
4 Malice is hatred, ill will, or hostility towards another
5 person. It is the intentional doing of a wrongful act
6 without just cause or excuse and with intent to inflict
7 an injury, or under circumstances that the law will infer
8 an evil intent.

9 Malice aforethought does not require that
10 malice exists for any particular time before the act is
11 committed, but malice must exist in the mind of the
12 defendant just before and at the time the act is
13 committed. Therefore, there must be a combination of
14 previous evil intent and the act. Malice aforethought
15 may be expressed or inferred. These terms express and
16 inferred do not mean different kinds of malice, but
17 merely the manner in which the malice may be shown to
18 exist.

19 Direct or -- excuse me. I misspoke a second.
20 The terms expressed or implied do not mean different
21 types of malice, but merely the manner in which malice
22 may be shown to exist; that is, either by direct evidence
23 or by inference from the facts and circumstances which
24 are proved. Expressed malice is shown where a person
25 speaks words in which expressed hatred or ill will for

1 another or when the person prepared beforehand to do the
2 act which was later accomplished.

3 For example, lying in wait for another person
4 or other acts of preparation going to show that the deed
5 was within the defendant's mind would be expressed
6 malice. Malice, as an essential ingredient of murder,
7 does not necessarily import ill will toward the
8 individual injured, but transfers, rather, a general
9 malignant recklessness of the lives and safety of others
10 or a condition of the mind which shows a heart regardless
11 of social duty and fatally bent on mischief. Malice may
12 be inferred from conduct showing a total disregard for
13 human life.

14 Inferred malice may also arise when the deed
15 is done with a deadly weapon. A deadly weapon is any
16 article, instrument, or substance which is likely to
17 cause death or great bodily harm. Whether an instrument
18 has been used as a deadly weapon depends on the facts or
19 circumstances of each case. The following are examples
20 of instruments which may be deadly weapons: A pistol,
21 shotgun, a rifle, a dirk, a dagger, a knife, slingshot,
22 metal knuckles, razor, gasoline, a fire bomb, Molotov
23 cocktail, lighter fluid. A gun may be a deadly weapon
24 even if it is not operating.

25 I also charge you that mere presence at the

1 scene is not sufficient to prove someone is guilty of a
2 crime. A defendant's presence where a crime is being
3 committed or mere association with the person who commits
4 a crime does not make a defendant an accomplice or an
5 aider or abetter of the person committing the crime. The
6 burden is on the state to prove every element of the
7 crime charged. If you find after reviewing the evidence
8 that the state has proved that the defendant was only
9 present at the scene of the crime and that they have not
10 proved beyond a reasonable doubt any other participation
11 in the crime, then you must find the defendant not
12 guilty.

13 The law is that proof of mere presence at the
14 scene of a crime is not sufficient to find someone
15 guilty. In determining guilt or innocence of the
16 defendant, you cannot consider any possible penalty for
17 the particular crime. The punishment for the crime is a
18 matter for me to determine and should never be considered
19 by you in any way whatsoever in arriving at a fair and
20 impartial verdict as to the guilt or innocence of the
21 defendant.

22 Finally, your verdict must be unanimous.
23 That means all 12 of you must agree on the verdict. Now,
24 Mr. Foreman, I'm going to send back the verdict form --
25 or, excuse me, the indictment with the evidence in a few

1 minutes. On the back page of the indictment, you will
2 see, above where the true bill stamped is by the grand
3 jury foreman, there is a place down here where it is
4 written verdict. There are two possible verdicts, there
5 is guilty and there is not guilty.

6 When the jury has unanimously reached a
7 verdict, you write that verdict below the word verdict
8 there, sign it, date it, and let the bailiffs know you
9 have reached a verdict. Again, this is simply the
10 charging instrument. It is not to be considered by you
11 as evidence.

12 Now, I'm going to send you back to the jury
13 room. Do not begin your deliberations just yet. I
14 have to give the parties the opportunity to say you
15 misspoke or you said something you said you weren't going
16 to say. It's a formality we have to go through. We get
17 the evidence together. I'll send the evidence back with
18 the verdict form or the indictment with the bailiff, and
19 when the bailiff says the judge says you can begin
20 deliberations, then you begin deliberations.

21 This only takes a few minutes, but don't
22 begin deliberations until I send the indictment back
23 along with the word from the bailiff that you can begin
24 deliberations. Thank you very much for your patience,
25 and we'll see you in a minute.

1 (Jury retires to deliberate at 11:12 a.m.)
2 THE COURT: All right. Anything from the
3 state?

4 MR. WETMORE: No, Your Honor.

5 THE COURT: From the defendant?

6 MR. TERRELL McCOY: No, Your Honor.

7 THE COURT: All right. Let's make sure we
8 have the evidence here.

9 (Recess taken.)

10 (In open court, jury not present.)

11 THE COURT: I got two questions and a request
12 to have testimony read back. I want to hear Carinda and
13 Bizzy's testimony. And then the question is: Does he,
14 Sleezie, have a criminal record? And does he own that
15 gun?

16 So I'm going to tell them that there is no
17 evidence in the record of him having a criminal record.
18 It's not into evidence, it's not for them to consider,
19 and also there is no evidence as to who owned the gun for
20 the record.

21 Now, as far as the testimony goes, I'm going
22 to have the court reporter go back into the jury room
23 with them and just play back whatever they want. Hers
24 was like a half day, if they want the whole thing. What
25 we usually tell them is we'll start it where you want to

1 start it, at the beginning, if you want to hear it all,
2 and just tell her to stop and then go on to the next one
3 and play it until they've heard enough and then tell them
4 to stop.

5 Does that work for everybody?

6 MR. PETER McCOY: Yes, sir.

7 MS. PROCTOR: What did you tell them you were
8 going to tell them about the gun?

9 THE COURT: That there was no evidence of
10 about who owned any gun. It says does he own that gun.
11 The gun was not introduced into evidence, nor was there
12 any ownership.

13 MS. PROCTOR: I didn't want them to think the
14 gun because it sounds like we have a gun.

15 THE COURT: They say that gun.

16 MS. PROCTOR: What gun?

17 THE COURT: Obviously, they mean the murder
18 weapon, but that was not in evidence.

19 MS. PROCTOR: Just because there was shots
20 outside and shots inside, and they might think there were
21 two guns, so I didn't want them to say the gun, so --

22 MR. WETMORE: Judge, I think in the same vein
23 you could tell them that there is nothing in evidence as
24 to whether he has a record or does not have a record.

25 MR. TERRELL McCOY: I object. I would like

1 them to know the record. I don't have a record.

2 THE COURT: Bring the jury in.

3 (In open court, jury present.)

4 THE COURT: Okay, folks. You asked two
5 questions, and then you asked to hear back some
6 testimony. The answer to the first question, does
7 Sleezie have a criminal record, and I think it says how
8 many he -- how many was he convicted. I will tell you,
9 there is no evidence of any criminal record on behalf of
10 the defendant. That was not in evidence at all, and does
11 he own that gun, he being, I assume, the defendant,
12 again, Sleezie is how you referred to him in the previous
13 question, and, again, there was no evidence in the record
14 as to who owned any firearms or any guns that were
15 referred to in this testimony, or in the evidence today,
16 or previous days.

17 Now, as to the testimony you want to hear of
18 Carinda and Bizzy, the way I'll do this is I'll send you
19 back in the jury room, and I'm going to send the court
20 reporter back and she has the ability to play that back,
21 the recording of that. Carinda's was, I think, a half a
22 day; Bizzy, I don't remember exactly how long it was, but
23 what I'll do is she'll que it up to the beginning or
24 wherever you tell her you want, play it for as long as
25 you want, and when all 12 jurors indicate you don't want

1 to hear anymore, you let her know. She'll stop, and then
2 she'll go on to the next one.

3 She'll either begin it at the beginning or
4 where you ask her to begin it, play it for as long as you
5 want her to play it, and then she'll stop when all 12
6 indicate you don't want to hear it anymore. Don't ask
7 her any questions and don't do any deliberations in her
8 presence. If you want to talk about anything, just tell
9 her to stop and she'll leave. All right? Thank you.

10 (Recess taken.)

11 THE COURT: I understand we've reached a
12 verdict. Let the record reflect the defendant is in the
13 courtroom. I had the alternates stay back there, and I'm
14 telling them they can bring the alternates in to watch
15 the receiving of the verdict. They can go. We'll wait
16 and see to bring them in, bring the jury in.

17 (In open court, jury present.)

18 THE COURT: Be seated. All right,
19 Mr. Foreman. I understand the jury has reached a
20 verdict; is that correct?

21 THE FOREMAN: Yes, Your Honor.

22 THE COURT: Is it a unanimous verdict?

23 THE FOREMAN: Yes, it is.

24 THE COURT: Will you give it to the bailiff,
25 please. All right.

1 Mr. McCoy, you will stand, please.

2 THE CLERK: Verdict in the case 2006
3 GS-10-4987, in the matter of the state of South Carolina
4 versus Terrell Lynwood McCoy, indictment for murder, the
5 verdict of the jury is guilty, signed Matthew Jackson,
6 foreperson of the jury on February 6, 2009.

7 Ladies and gentlemen of the jury: If this
8 was your verdict, please raise your right hand.

9 THE COURT: All right. Thank you. Let the
10 record reflect all the jurors raised their hands. Do you
11 wish to have the jury polled?

12 MS. PROCTOR: Yes, sir.

13 THE COURT: All right. Poll the jury.

14 (Whereupon, the jury was polled and all
15 jurors indicated their agreement with the verdict.)

16 THE CLERK: Your Honor, the jury has been
17 polled and the verdict stands.

18 THE COURT: All right. Thank you.

19 Well, folks, thank you so much for your
20 service on this jury this week. This has been a long
21 week, I know, for you. It's been an interesting week,
22 definitely a different trial, and we appreciate what
23 service that you have provided. A lot of times folks
24 don't like getting called for jury service, but when they
25 show up, they get picked for a jury, they do what we ask

1 them to do, and that is follow the evidence, listen to
2 it, deliberate, follow the instructions, and render us a
3 verdict.

4 There is no higher public service that I know
5 other than serving in the armed forces for somebody in
6 our country than serving on a jury, so you have done a
7 great public service this week by serving on your jury.
8 It's not my place to comment on the verdict. The law
9 doesn't allow me to, but it does allow me to thank you
10 for your service for what you have done this week,
11 especially showing up on time, listening, paying
12 attention. That is all we can ask of you.

13 At this time you are finished with your jury
14 service, not only for today, but for the week, of course.
15 You're welcome to stay. I'm have sentencing here in just
16 a minute, but if you want to go, I'll give you a second
17 to go ahead and go on out and get your belongings. If
18 you want to stay, you're welcome to it. If you want to
19 go, you're free to go. You want to say? Okay.

20 All right. Mr. McCoy the jury has pronounced
21 you guilty of the crime of murder. There is a sentence
22 of a minimum of 30 years without parole up to life
23 without parole. It is a no parole offense, so whatever
24 sentence I give you, you will serve 85 percent of it at a
25 minimum, up to life without parole. Is there anything

1 you'd like to say before I impose sentencing?

2 MR. TERRELL McCOY: No, Your Honor.

3 THE COURT: Pardon?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: All right. Ms. Proctor, you have
6 not been representing him in this trial, but you have
7 done an outstanding job of providing him assistance, and
8 I know you were representing him up until a very short
9 period of time, so because you have spent a lot of time
10 with him on this trial, I'd be glad to hear anything that
11 you want to say on his behalf at this time.

12 MS. PROCTOR: Thank you, Your Honor.

13 May it please the Court, I started
14 representing Terrell about -- well, three years ago, so I
15 feel like I know him fairly well. There are times that
16 we have butted heads. I think he did a very good job,
17 considering that he just decided to do this last week,
18 and I think he followed all the court rules. I think he
19 took it very seriously. He took the rule books home,
20 back to the jail, and he read them at night, and I think
21 he followed the court rules and did everything that he
22 could.

23 Before this -- I think, as the solicitor told
24 you earlier, he has a drug offense that I think was ten
25 years ago, and since then, he has been doing well. He

1 has a CD out, as his girlfriend told you, and he has been
2 promoting that. His family has been in the courtroom.
3 His grandmother and his aunt just stepped out.

4 Your Honor, know this carries a life
5 sentence. I'm just asking if you would consider the 30
6 years as still 30 years, day for day, and that's all I
7 would like to say at this time, Your Honor.

8 THE COURT: All right. Is there anything
9 from the state before I impose sentence?

10 MR. WETMORE: Judge, would you like me to
11 read his prior record?

12 THE COURT: Go ahead.

13 MR. WETMORE: 1996 assault and battery; 1997,
14 possession of crack, proximity charge, resisting arrest;
15 2000, possession of drug paraphernalia, driving under
16 suspension; 2001, resisting arrest, disorderly conduct;
17 2002, driving without a license.

18 Judge, I don't know if the family wishes to
19 address, Your Honor.

20 THE COURT: Would any member of the victim's
21 family like to say anything?

22 MR. WETMORE: State your name.

23 MS. MACK: I'm Sherry Mack. I would like to
24 say, if Terrell McCoy would study the law the way he
25 study the law of the world, you could save a lot of

1 lives. That's all I have to say.

2 MR. WETMORE: Thank you, Judge.

3 THE COURT: All right. Well, Mr. McCoy, this
4 has been a very interesting week. Murder trials are
5 always different. They involve a loss of life, and that
6 is always a very tragic situation, no matter how it
7 occurs. It especially is tragic when it involves the
8 loss of a person's life, and what also will end up
9 happening in a case like this is you yourself are a
10 relatively young person, and, now obviously, your adult
11 life, as far as being a member of society in any real
12 productive way, in a traditional sense, is gone, because
13 you face a minimum of 30 years, and that is 30 years
14 without parole.

15 You know, I've made myself take some notes
16 over the week about my observations about you in the
17 event you were convicted, and, you know, I told you at
18 the beginning of the week, I thought it was a bad idea
19 for you to represent yourself. I still think it was.
20 Ms. Proctor is an excellent lawyer; however, last week
21 you made that decision, and I know Judge Dennis inquired
22 very carefully about your decision to represent yourself,
23 made sure that you understood the dangers of representing
24 yourself, and you elected to proceed without a lawyer.

25 You did allow Ms. Proctor, who had

1 represented you, of course, up until last week to sit as
2 an aid to you this week, but as I explained to you, I
3 know Judge Dennis spoke to you about it as well, these
4 things move along very, very quickly once you get
5 started, and even under the best of circumstances, with
6 people that have a lot of experience doing this, you miss
7 things. Trial strategies sometimes have to be adapted,
8 and it's a very difficult thing. It's a very enormously
9 stressful thing to be a trial lawyer, and a lot of folks
10 don't opt to do that when they become lawyers because it
11 takes being able to think on your feet. It takes a sharp
12 mind.

13 Having said that, I noted several times I
14 thought you exhibited above average intelligence. You
15 have a very keen mind, and you have very good instincts
16 in the courtroom. Under different circumstances, if you
17 had some education and training, I think you probably
18 would make a fine trial lawyer. The mistakes I saw were
19 merely a matter of tactics and inexperience. You know,
20 you pointed out there were discrepancies in some of the
21 investigation on the scene by the crime inspection folks,
22 but, you know, a lot of times we're talking about people.
23 People make mistakes.

24 Sometimes they don't like to admit they make
25 mistakes, but the bottom line is, I didn't see where you

1 were ever able to tie that into any kind of theory that
2 helps you out. Obviously, the jury agreed that the
3 testimony of the eyewitness was very compelling. I
4 thought it was very, very compelling testimony, and I
5 commented on it at one point in the trial about I thought
6 that was the biggest thing you had to overcome, was
7 Ms. Williams' testimony in that regard, being an
8 eyewitness to the case. That is about as strong direct
9 proof as you could have gotten, absent of it being on
10 videotape, and her testimony was very compelling.

11 What strikes me about this also is that even
12 though you were inexperienced in this, you always showed
13 respect to the Court and to the jury and to the other
14 parties and to your own assistant, Ms. Proctor there, the
15 other lawyers as well. It's amazing the number of times
16 you get people that come in and they don't show the
17 respect that the Court deserves. It's not towards me,
18 but it's toward the office and towards the circumstances
19 that bring us here, and you were always very respectful
20 and I hope you felt the same was reciprocated towards
21 you.

22 You showed a tremendous amount of restraint.
23 I thought, in presenting your case in an orderly manner,
24 and, again, I thought your tactics might have been off
25 somewhat, but, again, I think you were constrained by the

1 fact that the facts were not in your favor on this, and,
2 clearly, the jury had ample proof to show that you were
3 guilty of this crime, and, as I said, I don't comment one
4 way or the other on that, but I think the evidence was
5 certainly there to support the jury's verdict.

6 It strikes me about this, though, that while
7 the state has never required as an element of this crime
8 to show proof of any motive, there was no real motive
9 that I ever saw for why this occurred, and I never got
10 any real sense of why this happened. Even if I believed,
11 as the jury thoroughly did, Ms. Williams' testimony, I
12 don't know why this happened, and it just seems terribly
13 senseless. And sometimes people that are young, younger
14 years, show terribly poor judgment on such things.

15 You know, you're 30 now, I guess. This was
16 three years ago this happened. It's not like you were an
17 18 year-old. From my perspective, you're still kind of
18 young, but the bottom line is this was senseless, and I
19 have no idea why it happened and we lost a member of the
20 community who -- obviously, he was in a bad place and
21 shouldn't have been hanging with you. While you were
22 waving a gun and why shots were fired that evening, maybe
23 it had something to do with drugs. It wasn't really ever
24 clear what went on in that room and why that went on, but
25 that strikes me as a real sense of loss, that this didn't

1 have to occur, and I'm not sure why it occurred.

2 Having said that, I have to try to come up
3 with what I think is an appropriate sentence on this.
4 You know, life without parole is certainly something that
5 I think the facts of the case would fit. We have a
6 terribly senseless crime, violent. In a way, the fact
7 there is, within the way you conducted yourself this
8 week, some hope that if you ever get the chance to get
9 out in society again, there is hope that you could be a
10 productive citizen, but, regardless, it would be an awful
11 long time before you get out there.

12 I don't know how much you read and what you
13 read, but I remember reading a couple weeks ago when we
14 inaugurated a new present, president Obama, there was an
15 article in the New York Times that day on the front page
16 about -- I believe President Obama's campaign theme was
17 the audacity of hope and how that theme played out in a
18 place that traditionally has no hope, and that article
19 was about the prisoners in Angola prison, in Louisiana,
20 where almost 95 percent of the people there are life
21 without parole, either serving life sentences or awaiting
22 death.

23 Those folks, a lot of members of the African
24 American community who were affected and given hope by
25 that day in which our first African American president

1 was sworn in and how that played in, and did they give
2 them hope, and a reporter talked to some of those folks
3 that day and they said that even though they knew they
4 would never be able to be out in society again, they
5 could still conduct themselves as men and with respect
6 and to still hope to accomplish some good in their life.
7 Obviously, they wouldn't be out in society, but they were
8 in a society, and they could still conduct themselves as
9 men and conduct themselves with dignity. I hope that you
10 will find that within yourself to do, because you are
11 going to have to spend a long time in prison.

12 My sentence is I'm going to give you 50
13 years. That is an awful long time. It is far more than
14 the minimum, but it's not life without parole. The way I
15 calculate it, if you're 30 today, you got to serve at
16 least 85 percent. Around 70 or so, if you live that
17 long, I think you deserve to have some opportunity to
18 perhaps walk the street as a free man again, but because
19 of this senseless act that you did, as a young man, you
20 have to pay a very, very deep debt to society.

21 However, over these next decades, I hope you
22 find it within yourself, and I clearly believe that you
23 have it, because of what you have shown this week, I
24 clearly believe you have it within yourself to figure
25 this out and to conduct yourself as a man with dignity.

1 I hope that you find that, find a way to survive over the
2 next few decades. Good luck to you.

3 Folks, I want to thank you again for your
4 service. You are free to go. The clerk's office will
5 send you a check, and if you need anything, an excuse for
6 work or anything, these folks can help get it for you
7 today.

8 Thank you again for your service.

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10 (Whereupon, the proceedings were concluded.)

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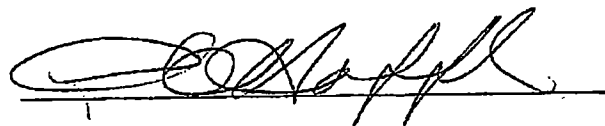
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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the February 2-6, 2009.

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

April 26, 2009

A handwritten signature in cursive script, appearing to read 'A. Haffenden', written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

Plaintiff,

vs.

Terrell Lynwood McCoy,

Defendant.

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

Warrant No(s): F-969254

Charge(s): Murder

MOTION FOR
RECONSIDERATION OF SENTENCE

PLEASE TAKE NOTICE that the above captioned defendant, by and through the undersigned attorney, moves this Honorable Court for a reconsideration of the sentence of Fifty Years, imposed upon the defendant on February 6, 2009 by the Honorable Roger Young, pursuant to the above mentioned charge.

The within motion will be made upon the grounds that the sentence imposed is unnecessarily severe under the circumstances, and upon such other and further grounds as may be hereinafter presented.

Respectfully Submitted,

Lorelle D. Proctor

Lorelle D. Proctor

Standby Attorney

Assistant Public Defender

Attorney for Defendant

Charleston, South Carolina

Dated: 2/12/2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT THIS MOTION TO RECONSIDER SENTENCE WAS SERVED ON THE SOLICITOR FOR THE NINTH JUDICIAL CIRCUIT ON _____, 2009

ATTEST: A TRUE COPY

JULIE J. ARMSTRONG (SEAL)

CLERK, C.S. & P.C.

By *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
TERRELL LYNWOOD MCCOY

AKA: _____

Race: B Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]Address: GREENBAY STREET
NORTH CHARLES, SC 29406DL#: [REDACTED] SID#: SC01073653

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006GS104987A/W#: F969254Date of Offense: 3/25/2006S.C. Code § : 16-03-0010.0020CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: Murder

in violation of § 16-03-0010.0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

Wetmore, Burns

Defendant

Attorney for Defendant

SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 50 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %) _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 133.75

Callahan

Clerk of Court/ Deputy Clerk

Court Reporter: _____

A. Haffenden

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 35-13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE _____

Judge Code: _____

Sentence Date: _____

2/6/9 SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.

TERRELL LYNWOOD MCCOY

AKA:

Race: B Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]Address: GREENBAY STREETNORTH CHARLES, SC 29406DL#: [REDACTED] SID#: SC01073653

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006GS104987A/W#: F969254Date of Offense: 3/25/2006S.C. Code § : 16-03-0010. 0020CDR Code #: 0116Amended
SENTENCE SHEETIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder (30 - LIFE)in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Wetmore, Burns

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 90 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
TOTAL		\$ <u>133.75</u>

Clerk of Court/ Deputy Clerk

Court Reporter: B. Cooley

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: _____

Sentence Date: 3/5/9

SCCA/217 (07/2008)

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

The Honorable Roger M. Young, Presiding Judge

Case No.: 2006-GS-10-4987
Warrant Numbers: F-969254
Charges: Murder

FILED

2009 MAR 11 AM 11:30

JULIE J. ARMSTRONG
CLERK OF COURT

BY

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

TERRELL MCCOY, APPELLANT

NOTICE OF APPEAL

Defendant appeals from the conviction and the sentence of the Honorable Roger M. Young,
Presiding Judge, Ninth Judicial Circuit, dated March 11, 2009.

Lorelle D. Proctor

Lorelle D. Proctor
Standby Attorney for Terrell McCoy
Charleston County Public Defender
O. T. Wallace County Office Building
101 Meeting Street, 5th Floor
Charleston, SC 29401
(843) 958-1850

Other counsel of record are:
Burns Wetmore, Assistant Solicitor
Office of the Solicitor, Ninth Judicial Circuit
O.T. Wallace County Office Building
101 Meeting Street
Charleston, SC 29401
(843) 958-1900

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CLERK, CP, GS & FC.
By *[Signature]*
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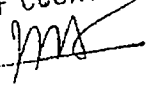
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

FILED

2009 MAR 11 AM 11:30

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

JULIE J. ARMSTRONG
CLERK OF COURT
BY 

The Honorable Roger M. Young, Presiding Judge

Case No.: 2006-GS-10-4987
Warrant Numbers: F-969254
Charges: Murder

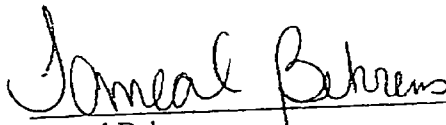
STATE OF SOUTH CAROLINA, RESPONDENT

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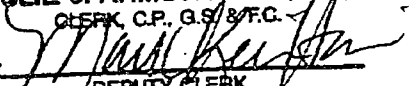
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Burns Wetmore, Assistant Solicitor for Charleston County, by hand delivering a copy of it to the Charleston County Solicitor's Office at 101 Meeting Street, Charleston, South Carolina 29401, on March 11, 2009.



Taneal Behrens
Paralegal for Attorney Lorelle D. Proctor
Charleston County Public Defender
O. T. Wallace County Office Building
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Dated: March 11, 2009.

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BY 
DEPUTY CLERK

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

FILED

2009 MAR 19 PM 4:22

APPEAL FROM CHARLESTON COUNTY, J. ARMSTRONG
Court of General Sessions CLERK OF COURT

BY mk

The Honorable Roger M. Young, Presiding Judge

Case No.: 2006-GS-10-4987
Warrant Numbers: F-969254
Charges: Murder

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

TERRELL LYNWOOD MCCOY, APPELLANT

AMENDED NOTICE OF APPEAL

Defendant appeals from the conviction and the sentence of the Honorable Roger M. Young, Presiding Judge, Ninth Judicial Circuit, dated March 19, 2009.

Lorelle D. Proctor

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Standby Attorney for Terrell Lynwood McCoy
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

FILED

2009 MAR 19 PM 4:22

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

JULIE J. ARMSTRONG
CLERK OF COURT

BY

The Honorable Roger M. Young, Presiding Judge

Case No.: 2006-GS-10-4987
Warrant Numbers: F-969254
Charges: Murder

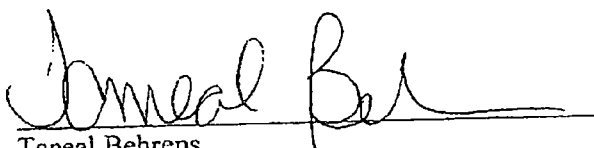
STATE OF SOUTH CAROLINA, RESPONDENT

VS.

TERRELL LYNWOOD MCCOY, APPELLANT

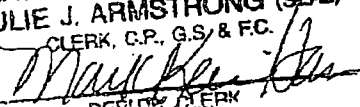
AMENDED PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Burns Wetmore, Assistant Solicitor for Charleston County, by hand delivering a copy of it to the Charleston County Solicitor's Office at 101 Meeting Street, Charleston, South Carolina 29401, on March 19, 2009.



Taneal Behrens
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Dated: 3/19, 2009.

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BY 
REGULAR CLERK

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

The Honorable Roger M. Young, Presiding Judge

Case No.: 2006-GS-10-4987
Warrant Numbers: F-969254
Charges: MURDER

FILED
2009 MAR 31 PM 2:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY *[Signature]*

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

TERRELL LYNWOOD MCCOY, APPELLANT

AMENDED, AMENDED NOTICE OF APPEAL

Defendant appeals from the conviction and the sentence of the Honorable Roger M. Young, Presiding Judge of the Ninth Judicial Circuit, dated February 6, 2009. Defendant's Motion for Reconsideration of Sentence was heard before the Honorable Roger M. Young on March 5, 2009. Defendant now appeals the reconsidered sentence of the Honorable Roger M. Young from March 5, 2009.

Lorelle D. Proctor

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Attorney for Appellant
Charleston County Public Defender
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(843) 958-1850

Other counsel of record are:
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(843) 958-1900

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
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BY *[Signature]*
DEPUTY CLERK

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CLERK, C.P., G.S. & F.C.
BY *[Signature]*
DEPUTY CLERK

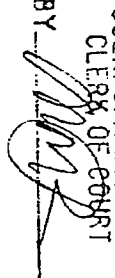
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

The Honorable Roger M. Young, Presiding Judge

Case No.: 2006-GS-10-4987
Warrant Numbers: F-969254
Charges: MURDER

FILED
2009 MAR 31 PM 3:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

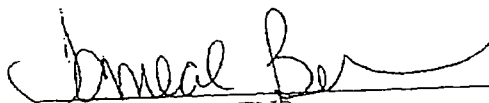
STATE OF SOUTH CAROLINA, RESPONDENT

VS.

TERRELL LYNWOOD MCCOY, APPELLANT

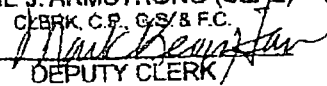
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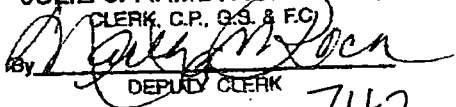
I certify that I have served the Notice of Appeal on Burns Wetmore, Assistant Solicitor for Charleston County, by hand delivering a copy of it to the Charleston County Solicitor's Office at 101 Meeting Street, Charleston, South Carolina 29401, on March 31, 2009.



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Dated: March 31, 2009.

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By 
DEPUTY CLERK

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By 
DEPUTY CLERK

742

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

THE STATE

RESPONDENT

v

TERELL E. MCCOY

APPELLANT

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK

Chief Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Whether the court erred by allowing appellant to represent himself during his murder trial where the record did not establish that appellant was adequately warned of the dangers and disadvantages of self-representation and this record did not establish that appellant made his choice to represent himself with "eyes open" where the colloquy with the court revealed that it was more the court's hope that appellant would not represent himself because a lawyer could do a better job and the record in this case does not reveal a knowing and intelligent waiver?

STATEMENT OF THE CASE

Appellant was indicted by the Charleston County Grand Jury for the offense of murder. R. 121. Appellant's first trial ended in a hung jury. Lorelle Proctor represented appellant during that trial.

A pre-trial hearing was held on January 27, 2009 before the Honorable R. Markley Dennis, Jr. The main issue was appellant's expressed desire to represent himself. Appellant and defense counsel, Lorelle Proctor, appeared at this hearing. Byrnes Wetmore was the assistant solicitor. R. 1. Judge Dennis ruled that appellant would be allowed to represent himself. R. 20, l. 18 – 21, l. 11.

Appellant's case was then called to trial on February 2, 2009, before the Honorable Roger M. Young, Sr., and a jury. Appellant represented himself. Lorelle Proctor was standby counsel. Byrnes Wetmore and Peter McCoy were the assistant solicitors.

At the conclusion of the trial on February 6, 2009, the jury found the appellant guilty of murder. R. 712, ll. 1-6. Judge Dennis sentenced the appellant the fifty years imprisonment. R. 721, ll. 12-13.

This appeal followed.

ARGUMENT

The court erred by allowing appellant to represent himself during his murder trial where the record did not establish that appellant was adequately warned of the dangers and disadvantages of self-representation and this record did not establish that appellant made his choice to represent himself with "eyes open" where the colloquy with the court revealed that it was more the court's hope that appellant would not represent himself because a lawyer could do a better job and the record in this case does not reveal a knowing and intelligent waiver.

Relevant Facts

At the January 27, 2009 hearing before Judge Dennis, the solicitor told the judge that appellant's first murder trial was held on July 15, 2008. Lorelle Proctor represented appellant. "It was a hung jury trial, judge. It's scheduled once again for trial next week. I believe they have a motion to clarify his representation." R. 2, ll. 13-20.

Defense counsel Proctor then verified that appellant had chose to file some motions *pro se* since the first trial ended in a hung jury. R. 2, l. 21 – 3, l. 3. Proctor told the judge that she met with appellant at the jail and told him "he could not be my co-counsel and be part of the trial. He said that he desires to do the trial *pro se*." R. 3, ll. 8-17.

Based on this assertion, Proctor said that morning she "got him some legal pads, took all the clips out of the files, all the pictures that I was given by the state in the case, the motions that we made last time and just some other little odds-ends about trying the case if he decided to go forward by himself." R. ll. 8-25. The judge then told appellant that he had practiced law for twenty-one years and then been a judge for fifteen years. He told appellant that he learned something new about the law everyday. R. 5, l. 9 – 6, l. 8.

Appellant then said he did not have any formal legal training, and that he had never taken a course in evidence. R. 6, ll. 9-15. Appellant asserted he was aware of the some of the rules of evidence. R. 6, l. 21 – 7, l. 21.

The informed appellant of a prior situation where a defendant proceeded *pro se*, he was convicted and sentenced to life imprisonment. "It wasn't pleasurable to the gentleman at the end." Judge told appellant that trials moved quickly and that it was difficult to timely object. The judge also said that it was hard for anyone to be objective about his own case. R. 7, l. 14 – 9, l. 6.

The judge also asked appellant if he thought he was more competent than Proctor. Appellant said that while he did not think he was more competent than Proctor that he had taken a lot of time to "study" his case. Appellant also complained that Proctor had told him after he filed a motion for a speedy trial, "that South Carolina doesn't have a speed [sic] trial [right]. R. 10, l. 18 – 11, l. 15.

Appellant said he did not have a trial until twenty-eight months after he made his motion. The judge responded, "So what." Appellant asserted his rights were "violated." The judge responded, "Well, thank you, sir. You know what? All of that argument gets you just where it is right now. Nowhere." R. 12, ll. 10-20.

The judge then told appellant the jury did not decide legal matters to which the appellant responded: "They don't decide no type of legal matters?" R. 12, ll. 17-22. The judge said: "That's correct. So that's [represent yourself] what you want to do?" Appellant answered: "Yes, sir." R. 12, l. 16 – 13, l. 23.

The judge then told appellant that lawyers had to be objective and that not lose sight of the "big picture" while getting wrapped up in the details of the case. R. 14, l. 3 – 18, l. 8.

The judge also informed appellant that he would lose his right to post-conviction trial issues if he represented himself and that although he would still have the right to appeal that "the appeal issues are so subtle that you can't possibly imagine it." R. 15, l. 24 – 17, l. 9.

The judge then asked the appellant what his strategy was. Appellant did not respond. Judge again asked: "What is your strategy?" The judge said after appellant again did not respond: "Bottomline, it is your call." Appellant said he understood and that he wanted to represent himself. R. 17, l. 15 – 18, l. 12. Proctor then agreed to be appellant's standby counsel. R. 18, l. 13 – 20, l. 12.

The remainder of the hearing consisted of appellant claiming evidence had been destroyed and complaining that he had been denied his right to a speedy trial. R. 22, l. 7 – 28, l. 2. The judge then told appellant "that motion is moot. You've had a trial and now you have a re-trial scheduled for next week." R. 28, ll. 5-7. Appellant then asserted the state only had "seventy days to bring the plaintiff back to court and I was never I was never brought before the court ..." R. 28, ll. 8-20.

As stated, appellant's case was called to trial on February 2, 2009. Judge Young said he knew Judge Dennis had talked to appellant about representing himself, and he said "if I was in your shoes, I wouldn't do it. I wouldn't." The judge stated that he would give appellant "one last chance to change your mind, and Ms. Proctor will represent you if you want." Supp. R. 7, ll. 10-15. Appellant responded "no, sir, I want to represent myself." Supp. R. ll. 16-17.

The judge then told appellant he would not be allowed to "change your mind in the middle of the trial." The judge explained that appellant would have ten strikes during jury selection and that the state had five. R. 7, l. 18 – 10, l. 17.

During *voir dire*, the judge told the jury appellant "is going to represent himself in this trial, which is his right, and so he does not have a lawyer. He will be acting as his own lawyer and he will be sitting at the defense table with this lady, who is sitting over here beside him. This is Lorelle Proctor and she is not going to act as a lawyer in this trial." R. 14, ll. 16-25.

Discussion

The Defendant must be advised he has a right to counsel and be adequately warned of the dangers of self-representation. State v. McLauren, 349 S.C. 488, 493, 494, 563 S.E.2d 346, 348 – 49 (Ct. of App. 2002); Bridwell v. State, 306 S.C. 518, 413 S.E.2d 30 (1992); Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d. 575, 576 (1990). "When an accused manages his own defense, he relinquishes, as a purely practical matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must 'knowingly and intelligently' forego those relinquished benefits." Faretta v. California, 422 U.S. 806, 835 (1975).

Courts have considered following ten factors in determining if an accused had sufficient background to understand the disadvantages of self-representation:

- (1) The accused's age, educational background and physical and mental health;
- (2) Whether the accused was previously involved in criminal trials;
- (3) Whether he knew of the nature of the charge and of the possible penalties;

- (4) Whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case;
- (5) Whether he was attempting to delay or manipulate the proceedings;
- (6) Whether the court appointed stand-by counsel;
- (7) Whether the accused knew he would be required to comply with the rules of procedure at trial;
- (8) Whether he knew of legal challenges he could raise in defense to the charges against him;
- (9) Whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions; and
- (10) Whether the accused's waiver resulted from either coercion or mistreatment.

State v. Cash, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Cl.App. 1992), citing Fitzpatrick v. Wainwright, 800 F.2d 1057 (11th Cir. 1986); Rozier v. Newsome, 926 F.2d 1100 (11th Cir. 1991).

First, there is nothing in the record about appellant's educational background. However, the record at sentencing shows appellant was thirty years old when he was sentenced on February 6, 2009. R. 719, ll. 15 – 18. The record also reveals appellant's first criminal conviction was in 1996 for assault and battery when he would have been seventeen years old. There is no indication in the record if appellant was still in high school at the time or whether he ever finished high school.

Appellant received his second criminal conviction a year later in 1997 for possession of crack cocaine and resisting arrest. Appellant also had a 2001 conviction for resisting arrest and disorderly conduct and a 2002 conviction for driving without a license. R. 715, ll. 13 – 17. Appellant apparently did not have any contact with the criminal justice system from 2003 to 2008. There is no indication in the record of whether these convictions were the result of guilty pleas or criminal trials.

The only criminal trial the record demonstrates appellant was ever involved in was the hung jury on this murder charge in which Lorelle Proctor represented him. Consequently, there is little guidance on the second factor above.

As to factors three through six, the record reveals appellant knew that he was charged with murder and that he knew he faced a life sentence based on what Judge Dennis told him. Although appellant was represented by Proctor before trial, there is no record she indicated to appellant the difficulty of representing himself in this particular case. In fact, what appears on the record shows Proctor certainly did not discourage appellant from representing himself or ever warned him of the dangers inherent in self-representation. There was no indication appellant was attempting to delay or manipulate the proceedings and he was appointed standby counsel.

On factors seven and eight, there were truncated references to the rules of evidence which showed only appellant's very vague familiarity with them and the rules of procedure, appellant had no answer for the court when twice specifically asked what his legal strategy was in this case. It was apparent from the pre-trial hearing before Judge Dennis, that appellant did not understand that even if the state failed to retain evidence for testing that he had to prove it was in bad faith, and that the state's failure to test

evidence only entitled him to a jury argument on the scope of the state's investigation and not legal relief. See, Arizona v. Youngblood, 488 U.S. 51 (1988); Illinois v. Fisher, 540 U.S. 544 (2004).

As to the ninth factor, the judge did inform him that one prior defendant had represented himself before the judge during a murder trial and that he had been convicted and sentenced to life imprisonment. However, the waiver of counsel portion of the pre-trial was not concentrated, it jumped from subject to subject, and it was only eighteen pages long, pages 3-21. Finally, the judge seemed irritated by appellant's off base arguments on his right to a speedy trial and his lack of understanding of the law on preserving evidence. This seemed to deter appellant actively engaging the judge as far as the tenth factor is concerned.

It should be evident when compared to the remand defendant in State v. Cash, 309 S.C. 40, 419 S.E.2d, 811 (Ct.App. 1992) how this record is lacking on the issue of an knowing and intelligent waiver of the right to counsel with a full understanding of the dangers and disadvantages of self-representation.

In Cash the defendant had the equivalent of six years of college. Here, the only evidence was that appellant already had a criminal record for assault and battery at seventeen years of age if and when he was still in high school. However, that evidence appears at sentencing and there is no indication that Judge Dennis took appellant's apparent lack of education into account. Further, the fact he was apparently heavily involved in drugs at a young age given his serious drug convictions should also have been a cause for concern had the judge been aware of it.

Cash had also appeared *pro se* at a hearing on his petition for habeas corpus. This was conversely apparently appellant's first time representing himself.

As stated above, it appears trial counsel did not discourage appellant from representing himself, and there was surely no evidence she warned him of the dangers and disadvantages of such an undertaking.

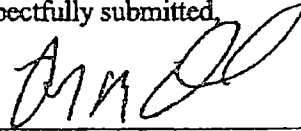
In State v. Bryant, 383 S.C. 410, 680 S.E.2d 11 (Ct.App. 2009), conversely the Court noted that Bryant had also been provided with a *written* probation notice warning acknowledging the dangers of self-representation and specifically stating she understood that a lawyer would be "better able to think of and present defenses to your probation violations." State v. Bryant, 383 S.C. at 417, 680 S.E.2d at 14. A probation revocation hearing is normally a straightforward proceeding. A murder trial falls at the other end of the spectrum. Yet the judge told appellant it was his "bottom line choice" after appellant could not begin to articulate any strategy for his defense, and the hearing clearly revealed appellant had no fundamental understanding of the substantive or procedural criminal law.

This record was insufficient to show appellant understood the dangers and the disadvantages of self-representation, and that he intelligently and knowingly waived his right to counsel with "eyes wide open." Appellant should be granted a new trial. See Wroten v. State, supra.

CONCLUSION

By reason of the foregoing argument, appellant's conviction should be reversed and this case remanded to the Charleston County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

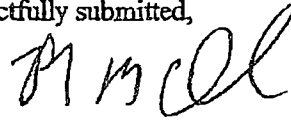
ATTORNEY FOR APPELLANT

This 6th day of July, 2010

CERTIFICATE OF COUNSEL

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

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of July, 2010

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of General Sessions

Roger M. Young, Circuit Court Judge

The State

Respondent

Timothy L. McCoy

Appellant

FINAL BRIEF OF RESPONDENT

HENRY D. McMASTER

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the court erred by allowing appellant to represent himself during his murder trial where the record did not establish that appellant was adequately warned of the dangers and disadvantages of self-representation and this record did not establish that appellant made his choice to represent himself with "eyes open" where the colloquy with the court revealed that it was more the court's hope that appellant would not represent himself because a lawyer could do a better job and the record in this case does not reveal a knowing and intelligent waiver?

(FBOA, p. 3).

RESPONDENT'S STATEMENT OF THE CASE

A Charleston County Grand Jury indicted appellant, Terell L. McCoy, in July 2006, for the murder of Antwan Bryant. (R. p. 122). The State originally called the case to trial on July 15, 2008. Assistant Public Defender Lori Proctor represented appellant. The trial ended in mistrial when the jury could not reach a verdict. (R. p. 2, lines 13-18). The trial was rescheduled after receipt of the transcript from the first trial. (R. p. 20, line 22; Tr. p. 70, lines 18-23). On January 27, 2009, the Honorable R. Markley Dennis heard appellant's motion to relieve Ms. Proctor as counsel and to proceed *pro se*. Judge Dennis granted the motion, and also requested that Ms. Proctor be available in a "stand-by counsel" position. (R. p. 20, line 18 - p. 21, line 11). A second jury trial was held on February 2-6, 2009, before the Honorable Roger M. Young. Appellant represented himself. Ms. Proctor remained with appellant for consultation. The jury convicted appellant as charged. (R. p. 103, lines 2-6). Judge Young sentenced appellant to fifty (50) years imprisonment. (R. p. 110, lines 12-13). On March 5, 2009, Ms. Proctor requested reconsideration of the sentence. Judge Young reduced the sentence to forty (40) years imprisonment. (R. p. 116, lines 3-24). This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

In the early morning hours of March 25, 2006, appellant a/k/a "Sleezie," along with his brother, Travis Holcombe, left Club Good Times to go to Delta Street. Friend Brandon "Bizzy" Cuttino also left the club at the same time and followed the brothers. The brothers stopped by a local gas station and picked up another friend, victim Antwan "Cell Block" Bryant, then continued to Delta Street. Ms. Carinda Snowden Williams' home was located on Delta Street. (R. p. 119 ; p. 48, lines 13-23; p. 71, lines 13-15). Ms. Williams' had been Travis' girlfriend "off and on" over a one year period. (R. p. 46, lines 1-5). Just outside of Ms. William's home, around 5:00 or 5:30 a.m., appellant shot several times into the air. (R. p. 47, lines 1-19; p. 69, lines 2-6; p. 119). According to Brandon Cuttino's statement: "Once Sleezie shot up in the air, everybody started calling him dumb." (R. p. 69, lines 6-8; p. 120). The four ran into Ms. Williams home in an effort to avoid a confrontation with police. (R. p. 69, lines 16-19; p. 51, line 22 - p. 52, line 2). They entered through the side entrance of the home. (R. p. 49, lines 4-6).

Ms. Williams, who had been awakened by the shots and the entry into her home, heard arguing and saw appellant fighting with his brother, Travis. She recalled appellant "was fussing with him about shooting a gun outside, in the air." (R. p. 48, lines 2-12; p. 50, lines 12-19). Appellant had a gun pointed at his brother, Travis. She told Travis he, and his friends, would have to leave, to which Travis responded:

... that they couldn't leave out right then and there because he referred to his brother as something else, which was a curse word, was shooting a gun in the air, and the police would be coming soon. ...

(R. p. 51, line 20 - p. 52, line 1).

When Ms. Williams attempted to get between the fighting brothers, appellant pointed the gun at her head. (R. p. 51, lines 5-12). Ms. Williams further testified:

When he put the gun to my head, Travis pushed him up against the wall. Antwan then got in between them two, and I went and just sat down in one of those chairs...

(R. p. 52, lines 16-18).

According to Ms. Williams Antwan, "got in between them and told them they would need ... to stop fussing and arguing, that it was stupid." (R. p. 53, lines 21-23). Appellant and Travis continued to "exchange words," with Travis "provoking" appellant. (R. p. 54, lines 7-13). Ms. Williams recalled that: "Travis was trying to put Sleezie down. Antwan was just trying to stop them from arguing and stuff, and Travis stated to Sleezie that Antwan is more of a brother than what he is, or would be, and they was just going back and forth." (R. p. 55, lines 7-11). Antwan declared "he loved both of them like brothers and he didn't want to die over stuff that was so stupid..." (R. p. 55, lines 12-14). He then approached appellant, "just talking," but appellant "told him to get out of his face." (R. p. 55, lines 14-15). Antwan turned to use a nearby ashtray, and appellant shot him. Antwan fell on Ms. Williams. Appellant continued shooting. Ms. Williams' estimated approximately five or seven shots. (R. p. 55, line 16- p. 160, line 7). Ms. Williams was also grazed, above her left ear. (R. p. 58, lines 8-15). Appellant then pushed through the front storm door with his left hand, the gun still in his right hand. (R. p. 59, lines 5 - p. 60, line 10). Travis went to the victim and began "taking a lot of stuff."¹ (R. p. 60, line 24 - p. 61, line 20). She was sure

¹ It is unclear what "stuff" Travis took. (R. p. 62, lines 6-9). However, the coroner testified she found what "[a]ppeared to be crack cocaine... under the victim's head." (R. p. 98, lines 20-25). Moreover, digital scales and white powder were recovered from the home. (R. p. 83, lines 1-17). Testing at autopsy confirmed that victim had methamphetamine in his system, along with cocaine, marijuana and alcohol, and metabolized byproducts from same. (R. p. 97, lines 1-11).

Travis must have had blood on his hands as the victim was bleeding profusely. (R. p. 62, lines 3-12). Travis then went to a back bedroom. (R. p. 62, lines 17-19).² Ms. Williams held Antwan. (R. p. 63, lines 1-9). Ms. Williams testified that Travis entered the living room again, and

... kicked in the door. He said he couldn't go to jail. He said he can't believe his brother did this. So he went to the front door, and he put the lock on the front door and he kicked the front door open...

(R. p. 64, lines 19-23).

Ms. Williams testified that Travis wanted the scene to look as if Antwan was shot outside. (R. p. 65, lines 4-6). Ms. Williams' asked Travis to call 911 as she continued to hold Antwan. Travis simply ran away, leaving by the front door. Ms. Williams attempted to leave Antwan to seek help, but he asked her not to leave him. He died in her arms. (R. p. 65, line 19 - p. 67, line 21). Ms. Williams then went to a neighbor, who called 911. (R. p. 68, lines 1-17). Officers arrived shortly thereafter. Officer Armstead testified the victim was dead on scene when he arrived. (R. p. 75, lines 20-25; p. 76, lines 18-20). He also noted that "[t]he door was open, and the door frame had been cracked, and it was forced open." (R. p. 77, lines 3-4). He further noted that Ms. William, whom he found next door, was "visibly shaken, very distraught, crying. She was just real shaken up." (R. p. 78, lines 1-4). Even though the door was open and the frame cracked, Officer Bunker testified that there

² One of appellant's consistent inquiries through the trial had to do with blood on these curtains – curtains that were away from the shooting site in the living room. (R. p. 88, line 16 - p. 90, line 17). When considered in conjunction with Ms. Williams' testimony, there is no inconsistency.

was no "blood trail" leading into the home; rather, all the blood was inside. (R. p. 80, lines 8-11).

Mr. Cuttino testified that he saw appellant with a gun outside the home, and that he recalled seeing appellant with a gun inside the home. (R. p. 70, lines 3-12). He remembered trying to calm appellant down. (R. p. 70, lines 14-20). Though, at trial, he denied saying so, in his statement to investigators, Mr. Cuttino related that appellant was pointing his gun at Travis. (R. p. 72, lines 3-13; R. p. 120). Mr. Cuttino testified that he left after hearing one gunshot in the home. (R. p. 73, lines 16-20). In his statement, he related that he heard several gunshots. (R. p. 74, lines 2-10; R. p. 120).

Investigators recovered five 9mm (5) shells inside the home, and three (3) shells outside the home, at the side entrance. (R. p. 81, line 4 - p. 82, line 24; p. 84, line 20 - p. 345, line 9; p. 86, line 21 - p. 87, line 2). Testing determined the shells were fired by the same gun. (R. p. 91, lines 13-15). Moreover, investigators lifted prints off the interior of the front storm door, two belonging to Travis, and two belonging to appellant. (R. p. 92, lines 11-19).

Dr. Sheil, the forensic pathologist at autopsy, testified the victim had been shot once in the head, three times in the torso/abdomen area, and once in the right hand. There was an entrance wound to the right of the jaw. The bullet split and traveled through victim's body to the chest cavity, one fragment striking the heart and eventually coming to rest in the left side of the chest, and another fragment landing in the right lung. He also had a gunshot to his right side groin area, above the thigh, that traveled through the pelvis and lodged in the left buttock. He was also shot in the back, with the bullet traveling through the abdomen, hitting the kidney, intestines, and liver, exiting at the rib cage. He was also shot in the left

buttock, which traveled through the pelvis and lodged in the outside portion of the right thigh. (R. p. 93, line 14 - p. 96, line 9).

ARGUMENT

The record fully and fairly supports that appellant was advised of the dangers and disadvantages of self-representation and made a knowing and voluntary waiver of his right to counsel.

Relevant Facts:

The State originally called the murder charge in this case to trial on July 15, 2008. Assistant Public Defender Lori Proctor represented appellant. That trial ended in a mistrial when the jury could not reach a verdict. (R. p. 2, lines 13-18). The trial was rescheduled after receipt of the transcript from the first trial (which was provided to both parties). (R. p. 20, line 22; Tr. p. 70, lines 18-23). On January 27, 2009, the Honorable R. Markley Dennis heard appellant's motion to relieve Ms. Proctor as counsel and to proceed *pro se*. Judge Dennis engaged in a lengthy discussion with appellant, referencing court rules and procedures, and advising of the dangers and disadvantages of self-representation. Judge Dennis advised that "the law is not so much what you can read in a book, it's the subtleties and the things that are really connected by just understanding how it all flows," (R. p. 5, lines 17-21); determined that appellant had no formal legal education, or training, but had read the rules of evidence, (R. p. 6, lines 9-18); advised that there are specific rules for specific issues, such as the rule against hearsay, rules dealing with character issues and habit, and emphasizing appellant had no background in dealing with such rules (R. p. 6, line 21 - p. 7, line 6); advised that another defendant insisted upon representing himself, as much as Judge Dennis attempted to dissuade him, and it was not "pleasurable to the defendant in the end," (R. p. 7, line 14- p. 8, line 2); and, advised a defendant cannot be objective about his own case, (R. p. 8, line 8 - p. 9, line 5). Appellant responded, however, that he was ready and could handle his own defense:

I've studied -- I received my trial transcript, I know how to present my evidence and how to present my defenses.

(R. p. 9, lines 9-12).

Judge Dennis was careful to advise appellant that the prior trial was not "a roadmap" and that it may not "come out" the same way. (R. p. 9, lines 19-22). Appellant remained adamant:

No, I'm not saying that it is going to come out like that but *I've got a clear understanding of how the trial -- how trial works*. I am confident that I will be able to represent myself."

(R. p. 9, line 23 - p. 10, line 2)(emphasis added).

When asked why he thought he would be more competent than learned counsel, appellant replied:

I'm not more competent than her but I've been studying my case for three years and I know -- I know that I have rights...

(R. p. 10, lines 8-10).

Appellant argued that his right to a speedy trial had been violated. (R. p. 11, line 16 - p. 12, line 7). Judge Dennis advised that would not be an issue that would be tried before the jury. (R. p. 12, lines 14-23). Appellant, however, remained adamant in his desire to represent himself. (R. p. 12, line 21 - p. 13, line 2). Judge Dennis also asked appellant if he was "under the influence of any medication" to which he responded he was not. (R. p. 13, lines 3-5). Judge Dennis also ensured that appellant realized the trial was to begin the following week. (R. p. 13, lines 9-13). Appellant simply wanted to move on with pre-trial motions. (R. p. 13, lines 17-23). Judge Dennis underscored appellant's myopic approach to his case without the benefit of detached counsel, as evidenced by his insistence that his other motions

be heard. (R. p. 14, line 3 - p. 15, line 5). He also warned that he had observed another defendant who elected to represent himself:

... I watched him look baffled, and I watched him see how quickly it went, and *I watched him fumble the defense under the structure and constriction and construction of our evidence laws*. Then I sentenced him to life in prison because the jury convicted him.

Now, I don't know if it would have made any difference *if he had had a lawyer, but I know that he would have had better representation*, for sure, than what he had. He had forewarning.

(R. p. 15, lines 6-18)(emphasis added).

Judge Dennis further warned appellant that he would be giving up a challenge to his lawyer's representation through a post-conviction relief action. (R. p. 15, line 19 - p. 16, line 7). Appellant countered, "I know, but I understand that I will be able to appeal it." (R. p. 16, lines 8-9). Judge Dennis advised, however, that there are subtleties to issues on appeal, that, again, he was not well versed in, such as making an appropriate objection. (R. p. 16, line 10 - p. 17, line 9). Judge Dennis asked again, understanding that he may be "jeopardizing" any "appeal issues" or "post-conviction relief issues," if he still wished to represent himself, and appellant replied, "Yes, sir." (R. p. 18, lines 13-24).

In ensuring appellant would have the documents he would need in preparation for trial, Judge Dennis asked Ms. Proctor if she could deliver a copy of his file to him. Ms. Proctor replied "[h]e has almost everything" and that she would provide pictures to him, as well. Further, she informed the judge that she had already subpoenaed witnesses for the trial, and would work with him on serving subpoenas on others, if necessary. (R. p. 19, lines 3-12).

Appellant did request for Ms. Proctor to be appointed "standby lawyer." (R. p. 19, lines 16-18). Judge Dennis advised "[t]here is no such thing as standby" and that his asking questions during trial would be an issue, "the court is not going to allow you that much

leeway.” (R. p. 19, lines 19-24). Ms. Proctor agreed to be present during the trial for questions “assuming the court would allow that.” (R. p. 20, lines 1-12). Judge Dennis then ruled:

... Because Mr. McCoy has indicated to me that he has studied and you [Ms. Proctor] related, you’ve indicated that he has, because he has already been through one of his trials, he’s seen the trial, he has the transcript of that trial, and because he has expressed against - - a desire, notwithstanding what I believe that I have indicated to him, I - - I’ve done the best that I can do to give you the best advice that I know. He’s chosen to ignore that and wants to exercise his right to represent himself. So you are relieved from any further representation...

(R. p. 20, line 18 - p. 21, line 4).

Thereafter, appellant argued his motions. (R. p. 21, line 13 - p. 28, line 19). Judge Dennis advised appellant that he had to raise his *in limine* motions at trial. (R. p. 28, line 23 - p. 29, line 5). Judge Dennis was also concerned about appellant being present for jury selection. (R. p. 30, lines 16-24). Ms. Proctor agreed to work out the details, and further agreed:

I will try to get to the jail and explain little procedural things just so that he’ll - - just so that he will know. He was at this last trial, so he will remember how we picked the jury. I’ve given him copies of the voir dire we used if he wants to use that.

(R. p. 30, line 25- p. 31, line 7).

Judge Dennis appealed to her to “please explain” the strikes for appellant to avoid his “find[ing] himself in a mess” and running afoul of the rules and precedent. (R. p. 31, lines 8-16).

The trial judge, Judge Young, briefly revisited the issue when the case was called on February 2, 2009:

I know Judge Dennis did a good job on asking you about this decision and talking to you about the consequences that, you know, if I was in your shoes,

I wouldn't do that. I wouldn't. I'll give you one last chance to change your mind, and Ms. Proctor will represent you, if you want.

(R. p. 35, lines 10-15).

Appellant specifically declined and contended: "I want to represent myself." (R. p. 35, lines 16-17). The record reflects that "stand-by counsel," Ms. Proctor, helped several times during the course of the trial, and that Judge Young did not prevent consultation, and even allowed Ms. Proctor to address the Court directly on appellant's behalf. (See, for example, R. p. 43, lines 10-12; p. 79, lines 5-20). When questioning appellant on whether he wished to testify, the judge noted:

... you have done a commendable job of representing yourself. You have the right, if you want to, to get up there... and.. tell the jury your side of the story if you want to.

(R. p. 101, lines 14-18). Further, the judge advised appellant that he could talk to anyone he wished, and acknowledged Ms. Proctor's role as stand-by counsel:

The Court: And did you talk with her about that, you know, while she was assisting you during this trial?

Mr. Terrell McCoy: Yes, sir.

(R. p. 102, lines 5-8). Appellant also declared he did not need more time, and that the decision not to testify was his. (R. p. 102, lines 9-23). Finally, respondent notes that Ms. Proctor actually argued for appellant during sentencing. (R. p. 104, line 12 - p. 105, line 7). Judge Young noted her assistance throughout trial before requesting her remarks. (R. p. 104, lines 5-11).

After the jury verdict, the trial judge placed some of his observations on appellant's representation on the record:

... I noted several times that you exhibited above average intelligence. You have a very keen mind, and you have very good instincts in the courtroom.

Under different circumstances, if you had some education and training, I think you probably would make a fine trial lawyer. The mistakes I saw were merely a matter of tactics and inexperience. You know, you pointed out there were discrepancies in some of the investigation on the scene by the crime inspection folks, but, you know, a lot of times we're talking about people. People make mistakes....

...
What strikes me about this also is that even though you were inexperienced in this, you always showed respect to the Court and to the jury and to the other parties and to your own assistant, Ms. Proctor there, the other lawyers as well. ...

You showed a tremendous amount of restraint. I thought, in presenting your case in an orderly manner, and, again, I thought your tactics might have been off somewhat, but, again, I think you were constrained by the fact that the facts were not in your favor on this, and, clearly the jury had ample proof to show that you were guilty of this crime...

(R. p. 107, line 13 - p. 109, line 5).

Further, at the hearing on the reconsideration of the sentence, appellant advised the trial judge:

I haven't been in trouble in ten years. I've been striving to do right with my life, going to work and trying to do positive things.

I don't know how this happened, but it wouldn't happen from something I did. My name just got called for something I didn't do. I don't know how, but - - I've been trying my best. If you look at my background, you'll see that I've been a good citizen and I've been trying my best.

I'm 29 years old, and you don't find too many black males my age doing what I was doing, going to work and doing - - doing positive things. I tried to set an example. That's another reason why I represented myself, to show that I have intelligence and I'm not ignorant, and I just wanted the Court to see that, and I just ask the court that you please reconsider my sentence.

(R. p. 114, line 15 - p. 115, line 7).

During the defense presentation, appellant had shown that he was in the music business and that he marketed CDs of his work and went to New York on a record deal. (See R. p. 99, line 7 - p. 100, line 15).

On appeal, appellant submits that “the record did not establish that appellant was adequately warned of the dangers and disadvantages of self-representation,” and the record does not otherwise support a knowing and intelligent waiver of the right to counsel. (FBOA, p. 3).

Discussion:

Though appellant initially submitted, in his issue on appeal, and in his argument heading, that the record does not establish that appellant was adequately warned of the dangers and disadvantages in representing himself at this murder trial, (FBOA, pp. 3 and 5), appellant wholly fails to offer any argument, whatsoever, on why the lengthy discussion between Judge Dennis and appellant did not meet constitutional standards for warnings on the dangers and disadvantages of self-representation. In essence, appellant omits the first step in determining whether the defendant's waiver was knowing and intelligent – whether the warning was sufficient.

It has long been established that a defendant may choose to waive his right to counsel and represent himself, as long as the waiver is “knowingly and intelligently” made. *Faretta v. California*, 422 U.S. 806, 834, 95 S.Ct. 2525 (1975), citing *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019 (1938) (“A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege.”). “Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that ‘he knows what he is doing and his choice is made with eyes open.’” *Id.*, 422 U.S. at 835 (citations omitted). “[I]t is the trial judge’s responsibility to determine whether there is or is not an intelligent and competent

waiver.” *State v. Dixon*, 269 S.C. 107, 236 S.E.2d 419 (1977), citing *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019 (1938). Only “[i]f the trial judge fails to address the disadvantages of appearing *pro se*, as required by the second prong of *Faretta*,” will the reviewing court “look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source.” *Gardner v. State*, 351 S.C. 407, 411, 570 S.E.2d 184, 186 (2002), quoting *Prince v. State*, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990). See also *Stevenson v. State*, 337 S.C. 23, 26, 522 S.E.2d 343, 344 (1999) (noting before reviewing record as a whole that “the plea judge clearly advised petitioner that she had a right to counsel before she pled guilty. However, no one specifically informed petitioner of the dangers and disadvantages of proceeding *pro se*.”); *Salley v. State*, 306 S.C. 213, 215-216, 410 S.E.2d 921, 922 (1991) (“Because the hearing judge posed no specific questions to determine whether petitioner was aware of the dangers of self-representation, we have reviewed the record to ascertain whether petitioner had sufficient background or was apprised of her rights by some other source so as to be aware of the dangers of self-representation.”); *Wroten v. State*, 301 S.C. 293, 294-295, 391 S.E.2d 575, 576 (1990) (“trial judge made no specific inquiry to determine whether petitioner made his choice to proceed *pro se* ‘with eyes open.’ We therefore look to the record”); *Ex parte Jackson*, 381 S.C. 253, 260, 672 S.E.2d 585, 588 (Ct. App. 2009) (“If the trial court fails to address the disadvantages of appearing *pro se*, this Court will examine the record to determine whether the accused had sufficient background or was apprised of his rights by some other source.”); *State v. Bryant*, 383 S.C. 410, 415, 680 S.E.2d 11, 13 (Ct. App. 2009) (“when the trial court fails to expressly make this inquiry, this court will examine the record to determine whether the accused had sufficient background or was apprised of her rights by some other source.”). Here, as

demonstrated above, there was a lengthy discussion between Judge Dennis and appellant, referencing not only the right to counsel, but specifically its value. Judge Dennis cautioned appellant about the intricacies of the rules of evidence, procedures, strategies³, and, again, underscored the value of an objective, learned counselor. Judge Dennis addressed appellant's specific beliefs and concerns as is evident when appellant referenced his transcript from the first trial. Judge Dennis cautioned that even though appellant had been through one trial on the same charge, he could not rely on having the transcript from the prior proceeding to serve as his "roadmap" for representation in the new proceeding. In short, Judge Dennis fully and fairly advised appellant on the dangers and disadvantages of self-representation. Unless appellant shows the discussion was not sufficient, he may not rely on the record to otherwise support (or show the absence of) a knowing and voluntarily waiver. *Compare Gardner*, 351 S.C. at 412, 570 S.E.2d at 186 ("Because of the *absolute failure* of the plea judge to ask Petitioner for a waiver and to apprise him of the dangers of appearing *pro se*, as is required by *Faretta*, this Court must look into the record to determine if Petitioner had sufficient background or was apprised of his rights by some other source.")(emphasis added). Appellant, however, has wholly failed to argue why the lengthy discussion here was inadequate to inform him of the dangers and disadvantages of self-representation. Appellant has abandoned the issue on appeal. *State v. Jones*, 344 S.C. 48, 58, 543 S.E.2d 541, 546

³ Appellant acknowledges that Judge Dennis referenced trial strategy in his discussion; however, he attempts to cast the discussion as one where he failed to respond because he "could not begin to articulate any strategy for his defense...." (FBOA, p. 12). This is directly contradicted by appellant's own assertion that he was ready for trial. (R. p. 10, lines 1-10). Even so, the failure to answer could just as easily be read as appellant did not wish to reveal his strategy in a hearing where the prosecutor was present. It is undeniable, however, that Judge Dennis advised that learned legal counsel would have a strategy, even if it was one appellant did not agree with. (R. p. 17, line 10 - p. 18, p. 6).

(2001) (argument abandoned on appeal when conclusory and without supporting authority); *State v. Howard*, 384 S.C. 212, 217, 682 S.E.2d 42, 45 (Ct. App. 2009), citing *Glasscock, Inc. v. U.S. Fidelity & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct.App. 2001) (“An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.”). Thus, the advice and discussion stand unchallenged.⁴ At any rate, the advice is clearly sufficient.

The United States Supreme Court has determined that there is no constitutionally mandated colloquy that a trial judge must engage in to sufficiently advise a defendant of the dangers of self-representation:

We have described a waiver of counsel as intelligent when the defendant “knows what he is doing and his choice is made with eyes open.” We have not, however, prescribed any formula or script to be read to a defendant who states that he elects to proceed without counsel. The information a defendant must possess in order to make an intelligent election, our decisions indicate, will depend on a range of case-specific factors, including the defendant’s education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding.

Iowa v. Tovar, 541 U.S. 77, 88, 124 S.Ct. 1379 (2004)(citations omitted).

Thus, it is well settled, and accepted, that no particular questions must be asked. See Am.Jur. Crim.Law § 1153 (“Where advice or admonition from the court to the defendant is undertaken to establish a valid waiver by the defendant of the right to the assistance of counsel, no particular cautionary instruction or form is required to ensure the validity of the waiver.”). See also *Dallio v. Spitzer*, 343 F.3d 553, 563 (2nd Cir. 2003)(noting “our court has

⁴ Respondent acknowledges that “[a] notable exception to [the] general rule requiring a contemporaneous objection is found when the record does not reveal a knowing and intelligent waiver of the right to counsel.” *State v. Rocheville*, 310 S.C. 20, 25, 425 S.E.2d 32, 35 (1993). See also *Ex parte Jackson*, 381 S.C. 253, 261, 672 S.E.2d 585, 589 n. 3 (Ct.App. 2009). However, this asserted procedural bar differs because appellate counsel failed to offer the argument in his opening brief.

strongly endorsed *Faretta* warnings as a factor important to the knowing and intelligent waiver of counsel” but “also rejected rigid waiver formulas or scripted procedures”); *United States v. Davis*, 269 F.3d 514, 519 (5th Cir. 2001)(“we require no sacrosanct litany for warning defendants against waiving the right to counsel. Depending on the circumstances of the individual case, the district court must exercise its discretion in determining the precise nature of the warning.”). The Court, however, did provide some guidance in *Tovar* expressing the “pragmatic approach” that “what purpose a lawyer could serve,” and “what assistance he could provide to an accused at” the relevant stage of the trial should be considered to determine the scope of the advice needed. *Tovar*, 541 U.S. at 90. Exact verbiage, though, has never been mandated. *Id.*

Even where a court has devised loose guidelines, such a court specifically sets out that no particular language is necessary. For example, in *United States v. Hayes*, 231 F.3d 1132 (9th Cir. 2000), the Ninth Circuit cautioned before their guidance:

We do not intend to set forth what would be a minimum explanation to meet the “dangers and disadvantages” demands of *Faretta*. Having said this, we believe that the necessary explanation need not be lengthy or pedantic; it should not be as complex and rigid as is now required in the taking of a guilty plea. There is no required formula. For example, and for the sole purpose of giving guidance to the district courts, we believe that the following illustrative discussion comports with *Faretta*’s requirements.

231 F.3d at 1138.

The Court of Appeals then advised that the following language could be used to sufficiently warn a defendant about the dangers of self-representation:

The court will now tell you about some of the dangers and disadvantages of representing yourself. You will have to abide by the same rules in court as lawyers do. Even if you make mistakes, you will be given no special privileges or benefits, and the judge will not help you. The government is represented by a trained, skilled prosecutor who is experienced in criminal law and court procedures. Unlike the prosecutor you will face in this case,

you will be exposed to the dangers and disadvantages of not knowing the complexities of jury selection, what constitutes a permissible opening statement to the jury, what is admissible evidence, what is appropriate direct and cross examination of witnesses, what motions you must make and when to make them during the trial to permit you to make post-trial motions and protect your rights on appeal, and what constitutes appropriate closing argument to the jury.

Id at 1138-1139.

The Court then concluded: “we emphasize that the foregoing formula is not required to be used verbatim.” *Id* at 1139. *See also State v. Watson*, 900 A.2d 702, 710-711 (Me. 2006)(referencing a compilation of other jurisdictions’ general guides and rejecting “a rigid formula for determining whether a defendant was adequately informed of the risks of proceeding to trial without representation”).

If one compares the lengthy, personalized, discussion in the instant case, with the suggested discussion in *Hayes* above, it become abundantly clear that Judge Dennis adequately, and fairly, advised appellant of the dangers and disadvantages of self-representation. *See Tovar*, 541 U.S. at 92, *quoting Johnson*, 304 U.S. at 464 (“the information a defendant must have to waive counsel intelligently will ‘depend, in each case, upon the particular facts and circumstances surrounding that case’”). *See also United States v. Kiderlen*, 569 F.3d 358, 366 (8th Cir. 2009)(“The court adequately warned Kiderlen about the dangers of self-representation during the colloquies on June 26, 2006, and May 7, 2007, by stressing at some length the complex duties of counsel in a criminal trial and recommending that Kiderlen accept representation by a trained attorney.”); *United States v. Mahasin*, 442 F.3d 687, 691-692 (8th Cir. 2006) (“the court asked him a series of questions, including whether he had studied the law or represented himself before. Mahasin stated that he understood the crimes he was charged with and maximum penalties authorized if the jury

found him guilty. Mahasin also stated that he understood that, if he was found guilty, the sentencing guidelines would affect his sentence, and that the rules of evidence governed what could be admitted during the trial. The court also warned Mahasin of the pitfalls of representing himself, stating that “[c]oming to court representing yourself is like going to a hatchet fight without a hatchet.... So, in other words, it's my opinion that a trained lawyer would defend you far better than you could defend yourself.” The court strongly urged Mahasin not to represent himself.”(record cite omitted).

Moreover, in the instant case, Judge Dennis went further to ensure that appellant had copies of his file and photographs necessary for trial, appointed stand-by counsel, and specifically asked stand-by counsel to advise appellant on jury qualification, selection and challenges. Appellant admitted at trial that stand-by counsel did advise him on same. (R. p. 7, lines 19-21).

Respondent further notes that Judge Young again visited the issue of self-representation and appellant confirmed his choice again, and specifically advised, during lengthy pre-trial motions, that he was, in fact, ready for trial. (R. p. 7, lines 10-17; p. 45, lines 6-10). Additionally, as demonstrated above, and contemporaneously noted by Judge Young at the conclusion of the trial, appellant had little difficulty in conducting the defense. And, the record shows appellant consulted liberally with stand-by counsel. In short, the record demonstrates that appellant was able to understand the demands of trial and to avail himself of counsel's aid where he chose to do so. *See Kiderlen*, 569 F.3d at 366 (defendant's “performance at trial and his consultation with standby counsel further demonstrate that he was able to grasp the charges against him, appreciate the consequences of his decision to

proceed *pro se*, and recognize his right to enjoy the assistance of counsel when it was desired.”).

Respondent submits the instant record reflects that Judge Dennis adequately advised appellant of the dangers of self-representation, and appellant made a knowing and voluntarily waiver of his right to counsel. Alternatively, even if Judge Dennis’ advice did not exist, or was held to be inadequate, the record supports that appellant made a knowing and voluntarily waiver.

“While a specific inquiry by the trial judge expressly addressing the disadvantages of a *pro se* defense is preferred, the ultimate test is not the trial judge’s advice but rather the defendant’s understanding.” *Wroten*, 301 S.C. at 294, 391 S.E.2d 575. *See also State v. McLauren*, 349 S.C. 488, 494, 563 S.E.2d 346, 349 (Ct.App. 2002). “In the absence of an inquiry by the judge, courts look to the record to determine if the accused had sufficient background to understand the disadvantages of self-representation.” *State v. Cash*, 309 S.C. 40, 42, 419 S.E.2d 811, 813 (Ct.App. 1992). The normal procedure, where there is insufficient or absent advice on the record, is to remand to the circuit court, “except in extraordinary cases where it is clear that a hearing on remand would serve no useful purpose....” *State v. Cash*, 304 S.C. 223, 225, 403 S.E.2d 632, 634 (1991). *See also In the Interest of Christopher H.*, 359 S.C. 161, 169-170, 596 S.E.2d 500, 505 (Ct.App. 2004)(“Because we find the record clearly reflects that the family court failed to adequately advise Christopher of the right to counsel, failed to make a specific inquiry as to Christopher’s knowledge of the dangers of self-representation, and demonstrated that Christopher has an insufficient background to comprehend the dangers of self-representation, we find that

remanding this case for a factual determination as to whether the waiver was knowing and intelligently made would serve no useful purpose."'). The factors to consider include:

- (1) the accused's age, educational background, and physical and mental health;
- (2) whether the accused was previously involved in criminal trials;
- (3) whether he knew of the nature of the charge and of the possible penalties;
- (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case;
- (5) whether he was attempting to delay or manipulate the proceedings;
- (6) whether the court appointed stand-by counsel;
- (7) whether the accused knew he would be required to comply with the rules of procedure at trial;
- (8) whether he knew of legal challenges he could raise in defense to the charges against him;
- (9) whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions; and
- (10) whether the accused's waiver resulted from either coercion or mistreatment.

State v. Cash, 309 S.C. at 43, 419 S.E.2d at 813.

The record fully supports these factors. Appellant was a mature twenty-nine years old at trial and confirmed to Judge Dennis he was on no medicine that would interfere with his abilities [Factor 1]; he had gone through a full jury trial on the same charges, facing the same penalties, before choosing to represent himself [Factors 2 and 3]; he had been represented by counsel in the prior trial, and, though he chose to represent himself, still requested that same counsel be available for consultation during trial (and she was) [Factors

4 and 6]; there is no indication that appellant simply attempted to delay trial (to the contrary, trial was already set for the week following his motion and he never asked for a delay) [Factor 5]; he confirmed to Judge Dennis that he had read the rules of evidence, and confirmed to Judge Young that stand-by counsel had explained the jury qualification, selection and challenge processes (most telling, he actually argued – occasionally with the assistance of stand-by counsel – motions based upon the rules and precedent, see, for example, R. p. 43, lines 10-12; p. 44, lines 6-11) [Factor 7]; he clearly had a defense outlined, crossed-examined witnesses, and presented his own witnesses [Factor 8]; and the questions between Judge Dennis and appellant, and, for that matter, between Judge Young and appellant, show an intelligent, personalized and thorough conversation about self-representation, its dangers and disadvantages [Factor 9]; and, finally, there is no evidence of coercion or mistreatment [Factor 10]. The record fully supports a knowing and voluntarily waiver. There is no error.

In sum, the record shows that Judge Dennis more than adequately advised appellant of the dangers of self-representation. He additionally discouraged appellant from waiving the valuable right to counsel. Further, when it became apparent that appellant could not be dissuaded from self-representation, Judge Dennis appointed stand-by counsel, ensured appellant had all the materials from counsel's file, and that counsel will advise appellant specifically on jury selection, qualification and challenges. Appellant has failed to show any deficiency and none is readily apparent. Lastly, even if the advice was deficient, the record nonetheless supports a knowing and voluntary waiver. Appellant's argument to the contrary must be rejected.

CONCLUSION

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

Respectfully submitted,

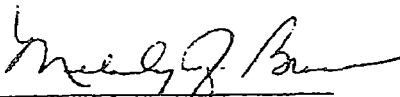
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ATTORNEYS FOR RESPONDENT

July 6, 2010.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Roger M. Young, Circuit Court Judge

The State,

Respondent,

vs.

Terrell L. McCoy,

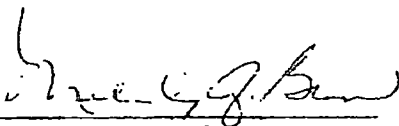
Appellant.

PROOF OF SERVICE

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

Robert M. Dudek, Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

This 6th day of July, 2010.


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ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Roger M. Young, Circuit Court Judge

The State,

Respondent,

vs.

Terrell L. McCoy,

Appellant.

CERTIFICATE OF COUNSEL

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

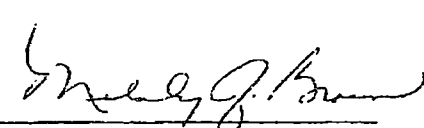
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ATTORNEYS FOR RESPONDENT

July 6, 2010.
Columbia, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Terrell Lynwood McCoy, Appellant.

Appeal From Charleston County
Roger M. Young, Circuit Court Judge

Unpublished Opinion No. 2011-UP-471
Submitted October 1, 2011 – Filed October 26, 2011

AFFIRMED

Chief Appellate Defender Robert M. Dudek, of Columbia,
for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney
General Donald J. Zelenka, Assistant Attorney General
Melody Brown, all of Columbia; and Solicitor Scarlett Anne
Wilson, of Charleston, for Respondent.

PER CURIAM: Terrell L. McCoy appeals his conviction for murder, arguing the circuit court erred in allowing McCoy to represent himself when the record does not show he made a knowing and intelligent waiver of his right to counsel. We affirm. [1]

"It is well-established that an accused may waive the right to counsel and proceed pro se." State v. Roberts, 369 S.C. 580, 583, 632 S.E.2d 871, 873 (2006). "Once the defendant has waived counsel, the [circuit court] has the responsibility to ensure that the accused is informed of the dangers and disadvantages of self-representation, and makes a knowing and intelligent waiver of the right to counsel." State v. Fuller, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999). "Although a specific inquiry by the [circuit court] expressly addressing the disadvantages of a pro se defense is preferred, the ultimate test is not the [circuit court's] advice, but the accused's understanding." State v. Cash, 309 S.C. 40, 42, 419 S.E.2d 811, 813 (Ct.App. 1992).

Here, the circuit court made a specific inquiry about the disadvantages and obstacles inherent in self-representation. The circuit court discussed the subtleties and interplay between the rules of evidence, preservation issues, and trial strategy. The circuit court also emphasized the advantages of an experienced and objective lawyer. Furthermore, the circuit court specifically advised McCoy against waiving his right to counsel and told him that he personally would not represent himself and offered anecdotes to illustrate the dangers of self-representation. McCoy expressed an understanding of how trials work, acknowledged the dangers of self-representation, and repeatedly

represent himself reveals a knowing and intelligent waiver of McCoy's right to counsel. See id. (holding the ultimate test is not the circuit court's advice but the accused's understanding).

AFFIRMED.

FEW, C.J., THOMAS and KONDUROS, JJ., concur.

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

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

TERELL L. MCCOY,

PETITIONER

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

Opinion No. 2011-UP-471

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, petitioner respectfully requests rehearing because this Court may have misapprehended the fact that petitioner did not knowingly and intelligently waive his right to counsel where the record does not establish that petitioner was adequately warned of the dangers and disadvantages of self-representation and where the record does not establish that petitioner made his choice to represent himself with "eyes open" since the colloquy with the court revealed that it was more the *court's hope* that petitioner would not represent himself because a lawyer could do a better job.

This Court is correct that if a defendant states he wants to waive his right to counsel and represent himself that the "[court] has the responsibility to ensure that the accused is informed of the

dangers and disadvantages of self-representation, and makes a knowing and intelligent waiver of the right to counsel.” State v. Fuller, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999). However, this Court respectfully is incorrect in its ruling that petitioner was adequately advised of the dangers and disadvantages of self-representation and that he understood such dangers and disadvantages.

The colloquy between the circuit court judge and petitioner is evidence that the information provided by the judge to petitioner regarding the dangers and disadvantages of self-representation was inadequate. The court informed petitioner of a prior situation where a defendant proceeded *pro se* and was convicted and sentenced to life imprisonment. “It wasn’t pleasurable to the gentleman at the end.” The judge told petitioner that trials moved quickly and that it was difficult to timely object. He also said that it was hard for anyone to be objective about his own case. R. 7, l. 14 – 9, l. 6. He then told petitioner that lawyers had to be objective and not lose sight of the “big picture” while getting wrapped up in the details of the case. R. 14, l. 3 – 18, l. 8.

Additionally, the judge informed petitioner that he would lose his right to post-conviction trial issues if he represented himself and that although he would still have the right to appeal that “the appeal issues are so subtle that you can’t possibly imagine it.” R. 15, l. 24 – 17, l. 9.

In the absence of an adequate inquiry by the circuit judge, courts look to the record to determine if the accused had sufficient background to understand the disadvantages of self-representation. State v. Cash, 309 S.C. 40, 42, 419 S.E.2d 811, 813 (Ct. App. 1992) (citing Bridwell v. State, 306 S.C. 518, 519, 413 S.E.2d 30, 31 (1992)).

Courts have considered the following ten factors in determining if an accused had sufficient background to understand the disadvantages of self-representation:

- (1) The accused’s age, educational background and physical and mental health;
- (2) Whether the accused was previously involved in criminal trials;

- (3) Whether he knew of the nature of the charge and of the possible penalties;
- (4) Whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case;
- (5) Whether he was attempting to delay or manipulate the proceedings;
- (6) Whether the court appointed stand-by counsel;
- (7) Whether the accused knew he would be required to comply with the rules of procedure at trial;
- (8) Whether he knew of legal challenges he could raise in defense to the charges against him;
- (9) Whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions; and
- (10) Whether the accused's waiver resulted from either coercion or mistreatment.

State v. Cash, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct.App. 1992) (citing Fitzpatrick v. Wainwright, 800 F.2d. 1057 (11th Cir. 1986)); Rozier v. Newsome, 926 F.2d 1100 (11th Cir. 1991).

First, there is nothing in the record about petitioner's educational background. However, the record at sentencing shows petitioner was thirty years old when he was sentenced on February 6, 2009. R. 719, ll. 15 – 18. The record also reveals petitioner's first criminal conviction was in 1996 for assault and battery when he would have been seventeen-years-old. There is no indication in the record if petitioner was still in high school at the time or whether he ever finished high school.

Petitioner received his second criminal conviction a year later in 1997 for possession of crack cocaine and resisting arrest. Petitioner also had a 2001 conviction for resisting arrest and disorderly conduct and a 2002 conviction for driving without a license. R. 715, ll. 13 - 17. Petitioner apparently did not have any contact with the criminal justice system from 2003 to 2008. There is no indication in the record of whether these convictions were the result of guilty pleas or criminal trials.

The only criminal trial the record demonstrates petitioner was ever involved in was the hung jury on this murder charge *in which Lorelle Proctor represented him*. Consequently, there is little guidance on the second factor above.

As to factors three through six, the record reveals petitioner knew that he was charged with murder and that he knew he faced a life sentence based on what Judge Dennis told him. Although petitioner was represented by Proctor before trial, there is no record she indicated to petitioner the difficulty of representing himself in this particular case. In fact, what appears on the record shows Proctor certainly *did not discourage petitioner* from representing himself or ever warned him of the dangers inherent in self-representation. That, in and of itself, is highly unusual.

There was no indication petitioner was attempting to delay or manipulate the proceedings and he was appointed standby counsel.

On factors seven and eight, there were truncated references to the rules of evidence which showed only petitioner's very vague familiarity with them and the rules of procedure, petitioner had no answer for the court when specifically asked twice what his legal strategy was in this case. It was apparent from the pre-trial hearing before Judge Dennis, that petitioner did not understand that even if the state failed to retain evidence for testing that he had to prove it was in

bad faith, and that the state's failure to test evidence only entitled him to a jury argument on the scope of the state's investigation and not legal relief. See, Arizona v. Youngblood, 488 U.S. 51 (1988); Illinois v. Fisher, 540 U.S. 544 (2004).

As to the ninth factor, the judge did inform him that one prior defendant had represented himself before the judge during a murder trial and that he had been convicted and sentenced to life imprisonment. However, the waiver of counsel portion of the pre-trial was not concentrated, it jumped from subject to subject, and it was only eighteen pages long, pages 3-21.

Finally, the judge respectfully seemed irritated by petitioner's off base arguments on his right to a speedy trial and his lack of understanding of the law on preserving evidence. This seemed to deter petitioner actively engaging the judge as far as the tenth factor is concerned.

It is evident when compared to the remand defendant in State v. Cash, 309 S.C. 40, 419 S.E.2d, 811 (Ct. App. 1992) how this record is lacking on the issue of an knowing and intelligent waiver of the right to counsel with a full understanding of the dangers and disadvantages of self-representation.

In Cash, the defendant had the equivalent of six years of college. Here, the only evidence was that petitioner already had a criminal record for assault and battery at seventeen-years of age if and when he was still in high school. However, that evidence appears at sentencing and there is no indication that Judge Dennis took petitioner's apparent lack of education into account. Further, the fact he was apparently heavily involved in drugs at a young age given his serious drug convictions should also have been a cause for concern had the judge been aware of it.

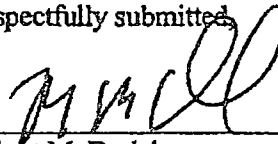
Cash had also appeared *pro se* at a hearing on his petition for habeas corpus. This was conversely apparently petitioner's first time representing himself.

As stated above, it appears trial counsel did not discourage petitioner from representing himself, and there was surely no evidence she warned him of the dangers and disadvantages of such an undertaking.

In State v. Bryant, 383 S.C. 410, 680 S.E.2d 11 (Ct. App. 2009), conversely the Court noted that Bryant had also been provided with a *written* probation notice warning acknowledging the dangers of self-representation and specifically stating she understood that a lawyer would be "better able to think of and present defenses to your probation violations." State v. Bryant, 383 S.C. at 417, 680 S.E.2d at 14. A probation revocation hearing is normally a straightforward proceeding. A murder trial conversely is at the other end of the spectrum. Yet the judge told petitioner it was his "bottom line choice" after petitioner could not begin to articulate any strategy for his defense, and the hearing clearly revealed petitioner had no fundamental understanding of the substantive or procedural criminal law.

Petitioner again submits that this record was insufficient to show petitioner understood the dangers and the disadvantages of self-representation, and that he intelligently and knowingly waived his right to counsel with "eyes wide open." See Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990). Rehearing should respectfully be granted.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

This 10th day of November, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

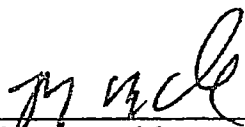
V.

TERELL L. MCCOY,

PETITIONER

CERTIFICATE OF SERVICE

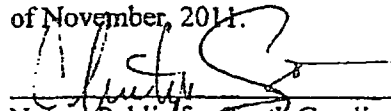
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Melody J. Brown, Esquire, this 10th day of November, 2011.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 10th day
of November, 2011.



(L.S.)
Notary Public for South Carolina

My Commission Expires: May 16, 2021.

10

The South Carolina Court of Appeals

The State,

Respondent,

v.

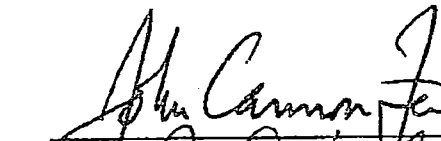
Terrell Lynwood McCoy,

Appellant.

The Honorable Roger M. Young
Charleston County
Trial Court Case No. 2006-GS-10-04987

ORDER DENYING PETITION FOR REHEARING

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.



C. J.


J.


J.

Columbia, South Carolina

FILED

December 19, 2011

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Terrell McCoy # 256070
Full name and prison number (if any) of Applicant.

v.

State of South Carolina.

2013 CP-10 - 1994
IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2013 APR - 4 PM 3:49
JULIE LARSON
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence Charleston County 9th Circuit
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-GS-10-4987
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 6, 2009, 50 years
 - (b) Sentence was the reduce to 40 years on March 5, 2009

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Sentence and Conviction affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 26, 2011 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished opinion No. 2011-LP-471 _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) That my conviction and sentence is in violation of the Constitution (See attached
 (b) documents Continue from page 3, line 10 (a))
 (c) _____

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

- (a) ~~That my conviction and sentence is in violation of the Constitution (See~~
 (b) ~~attached documents Continue from page 3, line 10 (a))~~ I added each fact which
 (c) support each ground with the bases of my allegation on line 10

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

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

- (a) the specific nature thereof:
 i. ~~Petition~~ Petition for Rehearing in the Court of Appeals
 ii. Petition for writ of Certiorari
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Court of Appeals
 ii. South Carolina Supreme Court
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. ~~Pet~~ denied
 ii. denied
 iii. _____

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Continue from page 3, line 10(a)

[a] of the United States and the Constitution or laws of this state.

[b] Subject matter jurisdiction; that the Charleston County of general sessions was without jurisdiction due to the fact that the indictment is fraudulent. Eighteen members of the grand jury were not impaneled and twelve members did not agree in a matter of the fraudulent indictment pursuant to the South Carolina Article V Section 22 and S.C. Code of laws 14-9-210 which mandates that the grand jury must be impaneled under the jurisdiction of the Court ~~of~~ General Session before lawful return of a true-billed indictment can take place. There were also no Court reporter present to either stenographically or by use of an electronic recording device all proceeding except when the grand jury was deliberating or voting pursuant to S.C. Code of laws Section 14-7-1700. All this has violated the ~~applicable~~ **Due process** under the fourteenth Amendment of the United States Constitution. If there were no Court reporter present during this proceeding, then there is no record that the grand jury was impaneled, therefore the Court did not have subject matter jurisdiction to convict and sentence the applicant. (Attached to PCR application is South Carolina Court of Administration document marked as exhibit # 1)

[c] Prosecutorial Misconduct: (1) The Prosecutor failed to correct false testimony given by Detective Angela Bunker concerning the collection of DNA evidence for testing. Detective Bunker testified that blood that was found on two curtains, walls and window at the crime scene could not be collected and sent to SLED for testing was because DNA testing was not as popular or as easily obtained on March 25, 2006. (T.T. page 389-390, 378 and 401) Detective Hallman contradicted Det. Bunker testimony when he testified that DNA evidence collected prior to 2007 usually consisted of rape evidence at a crime scene, or rape scene, or blood swabs at a homicide scene or a assault scene. (T.T. page 468-69) (2) The Prosecutor also presented inconsistent theories which were withheld from the applicant during second trial [see 2nd trial transcript page 162-68 and compare it to Carinda Williams first, second, and third statement. Also compare it to her 1st trial testimony] Carinda Williams recanted her testimony during the second trial. See Brady v. Maryland, 373 U.S. 83 (1963); Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177, 3 L.Ed.2d 1217 (1959) United States v. Agurs, 427 U.S. 97, 103 (1976); Riddle v. Ozmint, 569 S.C. 39, 631 S.E.2d 70 (2006) Giglio v. United States 405 U.S. 150, 153-54 (1972)

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Continue from page 3, line 10(c)

[4] The Prosecutor committed misconduct by vouching for witness Carinda Williams, expressing and implying his personal opinion during the closing argument. All these issues above in Section C, has violated the applicant due process under the the fourteenth Amendment of the United States Constitution.

[D] Police failure to preserve potentially use ful evidence was in bad faith in violation of the fundamental fairness of the due process clause of the United States Constitution. See Arizona v. Young Blood, 488 U.S. 51, 102 L.Ed. 2d 281; Illinois v. Fisher, 540 U.S. 544, 157 L.Ed. 2d 1060; Brady v. Maryland, 373 U.S. 83 (1963)

Police failed to send bloody curtains to sled for testing. Police failed to do a swab on the blood left on a raised window at the crime scene and send it to SLED for testing. This evidence was never preserved by North Charleston Crime Scene forensic detectives. Police also failed to swab ~~on~~ the blood left on the walls at the crime scene. (See crime scene photo's introduce at trial) The test results could have determine if the victim, Antwan Bryant, shot someone at the crime scene. Antwan Bryant hands were tested positive for gun powder residue and round lead particles. Expert witness, John Gray Dodds [SLED], testified at applicant second trial. He stated gun powder residue is found on a person hand who was handling a gun. (T.T. page 562-575)

Angela Bunker testified that crime scene Detectives were not aware of blood left on a raised window in a bedroom at the crime scene (T.T. page 576-78) The Coroner, Rae Wooten testified that the crime scene investigators were aware that blood was left on a raised window, and that she witness Crime Scene Detectives in the bedroom while she was conducting her investigation (T.T. page 526-28) It is not normal police procedures to leave potential evidence at a crime scene, nor is it normal police procedures to not collect blood evidence and test it and preserve it. This botch investigation was done in bad faith.

Also the state prosecutor failed to preserve the 911 tape which was potential evidence that contradicts Carinda Williams testimony and exonerate the applicant. The 911 tape was destroyed. Applicant standby attorney, Lorelle Proctor ~~stated she~~ has requested for the 911 tape three years before the Applicant trial. The state was on notice that the applicant lawyer was trying to get the tape. (T.T. page 631-636) The failure to preserve evidence violates the fundamental fairness of the due process clause incorporated into the fourteenth Amendment of the U.S. Constitution.

[E] Due Process violation. Malice Instruction. The malice charge given by the trial

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Continue from page 3, line 10(c)

Judge in the applicant case is similar to the malice charge given in Yates v. Evatt, 500 U.S. 391, 111 S.Ct. 1884, 114 L.Ed. 2d 432 (1999). The trial judge instructed ~~the jury on~~ two mandatory presumptions of malice. First, the jury was instructed that malice may be inferred from the willful, deliberate, and intentional doing of an unlawful act without just cause or legal excuses. Next, the jury was instructed: That malice can be inferred as a deadly weapon.

The United States Supreme Court has held both of these presumption to be unconstitutionally shifting of the burden of proof from the prosecution to the defendant. Yates v. Aiken, 484 U.S. 211, 108 S.Ct. 534, 98 L.Ed. 2d 546 (1988). In Aiken, they reaffirmed the rule of Sandstrom v. Montana, 422 U.S. 510, 99 S.Ct. 2450, 61 L.Ed. 2d 39 (1979) (quoting Mullaney v. Wilbur, 421 U.S. 684, 44 L.Ed. 2d 508).

The applicant submits that the trial judge's malice charge instruction prejudice applicant cause to a fair trial and that the malice instruction unfairly injected into the contaminated jury panel was not a harmless error. See (Constitution Article V § 21 judges shall not charge juries in respect to matters of fact, but shall declare the law)

Consistent with Rose v. Clark, 478 U.S. 570, 582, 106 S.Ct. 3101, 3108, 92 L.Ed. 2d 460 (1986) the applicant argues, and trial record would support, that beyond a reasonable doubt the error complained of did contribute to the verdict obtained. "Chapman v. California, 386 U.S. 18, 97 S.Ct. 824, 17 L.Ed. 2d 432 (1967). This analysis was recently clarified and reviewed at length in Yates v. Evatts, 500 U.S. 391, 111 S.Ct. 1884, 114 L.Ed. 2d 432 (1991). (Yates III)

The Rose v. Clark, held that the harmless error analysis of the malice charge will track as closely as possible the analytic framework set forth by Justice Souter writing for the Court in Yates III.

Therefore, the states prosecution having failed to show malice or afore thought on applicant behalf not only show that trial benches unconstitutional burden shifting instruction on malice was an error but further show that the state prosecution has failed to carry their burden of proof in proving "Malice" in the murder on the applicants behalf nor have the state prosecution proved that the applicant had any type of afore thought of committing and/or any type of Unlawful act, therefore the applicant is entitled by law to the grant of a new trial. See Arnold v.

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Continue from page 3 line 10 (c)

State, 420 S.E.2d 834 (S.C. 1984).

The applicant further brings this cause of action under the plain error doctrine of Wainwright vs. Sykes, 433 U.S. 72, 87, 97 S. Ct. 2491-2506-07, where the Court held that only when the Petitioner show cause for default and actual prejudice, as a result of the alleged violation of federal law or demonstrate that failure to consider the claim will result in a fundamental miscarriage of justice, may then the federal courts may consider the claims.

However, the requirement of Exhaustion of remedies is no jurisdictional, because the state court are fully empowered to adjudicate federal and constitutional right in the very instant the state court find them violated, it is essentially a matter of federalism and comity of the states to correct federal and constitutional violation. The state court should have afforded the very first opportunity to correct any violation of federal and constitutional and violation unless there is no corrective available due process or circumstance exist that renders the process ineffective to protect the applicant (prisoner). See Deckworth vs. Sarano 454 U.S. 1, 102 S. Ct. 18, 70 L. Ed. 2d 1 (1981).

[F] Ineffective Assistance of Appellate Counsel;

(1) The failure to raise issue that the trial judge erred by not instructing the jury with Voluntary Man Slaughter when there was evidence supporting the requested charge. The applicant requested the charge during trial and the trial judge failed to give the lesser included offense (T.T. page 654) The issue raised at trial and denied by trial judge was reversible error on direct appeal. Appellate Counsel performance violated applicant Sixth and Fourteenth Amendment right to the United States Constitution, See Southerland v. State, 524 S.E.2d 833 (S.C. 1999)

(2) Appellate Counsel failed to raised whether trial judge erred in not finding a Batson violation during the jury selection. The applicant, a black male, objected to the prosecutor use of peremptory challenges to strike black men and women from jurors. The trial judge held a hearing at the sidebar while the jurors were present in the courtroom. The prosecutor gave pretextual reason for dismissing black jurors. (T.T. page 39-44) The applicant represented himself and was not present during the clarification and qualification process. Applicant was never provided with the background information of jurors impaneled, so therefore he was not adequately able to show that similarly

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Continue from page 3, line 10 (f)(2)

Situated members of another race was seated, and rebut the prosecutor race neutral explanation for striking black jury members from the panel. See Batson v. Kentucky, 476 U.S. 59, 106 S.Ct. 1712, 90 L.Ed. 2d 69 (1986); Powers v. Ohio, 499 U.S. 400, 111 S.Ct. 1364, 113 L.Ed. 2d 411 (1991); J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127, 114 S.Ct. 1419, 128 L.Ed. 2d 89 (1994).

In this case, the prosecutor, a white american, struck five black members serving on the juror panel. The prosecutor stated, "He struck juror 225 because throughout the process he's been very reluctant to serve. He indicated he was single, and he indicated that he was from North Charleston, All those reasons combined gave me some fear of - - North Charleston being where this happened, all those factors combined." (T.T. page 43)

When the prosecutor stated "North Charleston being where this happened, all those factors combined" show discrimination towards the juror because where he choose to live. There was no change of venue motion filed in this case, So therefore most of the jurors impaneled live in Charleston and North Charleston area. This issue was also preserved for Appellate Review. The issue raised at trial and denied by the trial judge was reversible error.

Appellate Counsel performance violated the applicant sixth and fourteenth amendment to the the United State Constitution (See Duncan v. Louisiana and State v. Tomlin)

[3] Appellate Counsel failed to raise the issue whether trial judge erred in denying the applicant motion to dismiss indictment for state violation of his speedy trial right when the issue was raised at trial and ruled on. (T.T. page 67-80) The applicant argue he was not given a trial from March 27, 2006 until July 14, 2008. He asserted his right to speedy trial on December 29, 2006 (See Motion for Speedy trial attached to PCR application as exhibit # 2) During the Course of time, evidence was lost and destroyed. The 911 tape was destroyed (see T.T. page 631-636) Witness Mitchell Wilson and Sierra Williams were lost (T.T. 9-13, 545-550) The applicant was deprived of life, limb and liberty. Applicant was detained 28) twenty-eight months before he was given a trial. This disrupted the applicant life and family life. The applicant had a job as chief Executive officer of a small business (music studio) in which he ended up losing his license. The applicant has two children he couldn't provide for and his children were exposed to News paper coverage and News media coverage of him being charge with Murder. The applicant was given a \$500,000 bail which was extre-

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Continue from page 3, line 10(f)(3)

mely high in violation of the Eighth Amendment of the United States Constitution. The applicant was indigent and his family were poor black people so he was unable to afford a lawyer or post bail. The applicant remained detained in Charleston County Detention Center until his conviction. The applicant was treated as if he was guilty, when the law states that all detainees are innocent until proven guilty. There were no hearings held on the applicant speedy trial motion. (See the state reason for delay. T.T. Page 70)

This issue was preserved for Appellate Review. This issue raised at trial and denied by trial judge was reversible error. Appellate Counsel performance violated applicant Sixth and fourteenth amendment right to the United States Constitution. See Barko v. Wingo, 467 U.S. 514, 521 (1972); State v. Robinson (S.C. App. 1999) 335 S.C. 620, 518 S.E.2d 269

[4] Appellate Counsel failed to raise the issue whether or not the trial judge erred in ruling the state witness identification of applicant was not unduly suggestive. (T.T. page 84-111) Carinda Williams were allowed to identify the applicant in court at his second trial after she had seen him during the first trial. Carinda Williams was shown a single show up of the applicant, with the words Charleston County Sheriff office written on the top page. Carinda Williams alleges she was shown a six photo mugshot of the applicant on March 25, 2006 and identify the applicant running down the street after Antwan Bryant was killed. Her testimony is not reliable because in her first statement given on March 25, 2006, she stated she did not witness who shot and killed Antwan Bryant. During the identification hearing she stated she did not see any pictures on March 25, 2006. (T.T. page 94 line 5, 6)

In Carinda Statement, she stated she has a boy friend name Travis Johnson. (Attached to the applicant PCR application is Carinda Williams first statement marked as Exhibit 3) Carinda then states during the identification that she knew the applicant from being her boy friend brother (T.T. page 90)

During the course of trial the applicant brother, Travis Holcombe, who is not Travis Johnson, testifies he does not have a girl friend name Carinda Williams and that his girl friend name is Shelly. (T.T. 621-22) The prosecutor believed this testimony be-

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Continue from Page 3, line (f)(4)

cause Travis Holcombe was not charge with perjury after being warned by the prosecutor if he testified falsely he will be charge with perjury. (T.T. 61-620.)

During the identification hearing ~~applicant~~ ^{applicant} was not given a fair chance to prove the identification of him was Unduly suggestive and tainted. After many hours of investigating the homicide, North Charleston Police Department came in contact with Carinda Williams a second time hours later on March 25, 2006, and she gave a second statement. Her second statement was consistent with her first statement except for she stated in her second statement, she identify someone running down the street with a black hoodie over his head and it looked like her friend brother "Sleeze Boy". (See attached to application, Carinda Williams second statement marked as exhibit 4.)

Nowhere in Carinda Williams statement did she state she witness a homicide on March 25, 2006. Carinda Williams gave a third statement on March 26, 2006 at 2:42 p.m. In her third statement, she allege the applicant is the shooter. She was then shown a single photo show up of the applicant. This identification ~~was~~ was given (33) thirty three hours after the victim was killed. There is no photographic admonition affidavit signed by Carinda Williams and North Charleston policemen in ~~the record~~ ^{the record} to show proof she identified the applicant in a six photo lineup. Stovall v. Denno, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967) A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification.

An in-court identification of an accused is inadmissible if a suggestive out of court identification procedure created a very substantial likelihood of irreparable mis-identification. Manson v. Brathwaite, ~~432 U.S. 98~~ 432 U.S. 98 (1977); citing Simmons v. United States, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968); State v. Steward, 275 S.C. 447, 272 S.E.2d 628 (1980) See Neil v. Biggers, 409 U.S. 315 (1972)

If the Court will analyze the identification hearing, it will see that the in-court identification of applicant was tainted by the Solicitor (T.T. page 94-95) Solicitor Burns Wetmore asked Carinda Williams the following questions:

(1) Q. The second time you talked to North Charleston Police Department, when did that take place?

(2) A. It was the same time, right after the first time.

(3) Q. So just shortly after the first statement, you gave them a second statement?

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Continue from page 3, line 10 (f) (4)

(4) A. Some hours had went pass the second time.

(5) Q. It was that same day?

(6) A. Yes Sir.

(7) Q. And you gave them a second statement?

(8) A. Yes

(9) Q. And in that statement, did you identify the defendant?

(10) A. Yes, i did.

The Solicitor never asked Carinda Williams did she identify the defendant as the shooter in the second statement. This is how the identification phase was tainted. As stated earlier, Carinda never stated she witnessed a ~~will~~ murder in her second statement given to the police on March 25, 2006 at 12:30 P.M. The Solicitor then continued to ask these questions.

(11) Q. Do You remember telling them that the guy that did it was your boyfriends brother?

(12) A. Yes i do.

(13) Q. Do You remember telling them that his street name is Skeeze Boy?"

(14) A. Yes

This phase was unduly suggestive. Carinda Williams stated she identified the applicant as "Skeeze Boy". The applicant name is Terrell McCoy. The state did not prove the applicant was Skeeze Boy during the identification hearing and the trial. The name Skeeze Boy is not in NCIC back ground record, there was no way North Charleston Police Department could have gotten the applicant mugshot in NCIC on March 25, 26 of 2006. Also Carinda Williams identified the applicant as Skeeze AKA Willie D (T.T. page 88, 98, and 103) (Single person show ups are particularly disfavored in the law, Stovall, 388 U.S. at 302, 87 S.Ct. 1967) (practice for the purpose of identification, and not as part of a line up, has been widely condemned; See also State v. Johnson, 311 S.C. 132, 134, 427 S.E. 2d 718, 719 Ct. App. 1983; single person showups are particularly disfavored in the law.)

The trial judge did not apply the Biggers factors to the identification hearing to determine if the identification was reliable. This issue was preserved for Appellate Review. The issue raised at trial and denied by trial judge was reversible error. Appellate Counsel performance violated applicant sixth and fourteenth Amendment right to the United States Constitution.

[5] Appellate Counsel failed to raise the issue whether trial judge erred by allowing Brandon Luttino

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Continue from page 3, line 10 (f)(5)

Statement into evidence, when the issue was preserved for appellate review. The Applicant made a timely objection to the admission of Brandon Cuttins Statements. (TT page 248-55) The issue raised at trial and denied by trial judge was reversible error. Appellate Counsel performance violated applicant Sixth and fourteenth Amendment right to the United States Constitution.

[6] Appellate Counsel failed to raise whether trial judge erred by denying applicant motion to dismiss indictment on grounds that exculpatory evidence was withheld before trial and that evidence was tampered with. (T.T. page 283-318, 459-60) The issue raised at trial and denied by trial judge was reversible error. Appellate Counsel performance violated applicant Sixth and fourteenth Amendment right to the United States Constitution.

[7] Appellate Counsel failed to raise the issue whether the trial judge erred by denying applicant motion to allow Unavailable witness, Cierra witness, Statement into evidence. (T.T. page 545-550) The applicant made a proffer of what the witness would testify to if she was available. The applicant standby attorney also stated on record that the Unavailable witness no longer lived at the address. See Steadman, 216 S.C. 579, 59 S.E. 2d 168, Cert denied, 340 U.S. 850, 71 S.Ct. 623, (1956). The trial judge denied applicant motion. The issue raised at trial and denied by trial judge was reversible error. Appellate Counsel performance violated applicant Sixth and fourteenth Amendment right to the United States Constitution.

[8] Appellate Counsel ~~failed to~~ raise the issue whether the trial judge erred by ruling that the applicant cannot comment on the destruction of evidence during his opening statement. Where there was proof, evidence was destroyed. The destruction of potential evidence such as 911 tape, blood DNA, curtains was the applicant defense. The judge denied the applicant a fair trial by not allowing the applicant to present his opening statement in accordance with his defense, but allowed the prosecutor to make a opening statement that the applicant is guilty of murder and his presumption of the case. (T.T. page 78) This denied the applicant a fair trial. This issue raised at trial and denied by trial judge was reversible error.

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Continue from page 3, line (f)(8)

Appellate Counsel performance violated applicant sixth and fourteenth rights to the the United States Constitution.

[9] Appellate Counsel failed to raise the issue whether Judge Young abuse his discretion by not warning the witness, Detective Angela Bunker, about committing perjury at trial when the applicant raised the issue outside the presence of the jury.

(T.T page 588) Judge Young stated "What you can do is when the trial is over, get a copy of the transcript and ask the solicitor to bring charges. Ultimately, they are the ones to do that. You can take it up after trial." The judge failed to warn the witness about committing perjury, and there were no curative instruction given. This issue was preserved for Appellate Review. Appellate Counsel performance violated applicant sixth and fourteenth Amendment right to the United States Constitution.

[G] Ineffective Assistance of Trial Counsel

[1] Trial Counsel gave the applicant erroneous legal advice leading to the applicant self-representation.

[2] Trial Counsel failed to object to Deidra Jefferson declaring a hung jury during the applicant first trial when the jury could not decide whether the applicant was innocent or guilty. The jury had only been deliberating for only six hours.

[3] Trial Counsel failed to send applicant to have a mental health evaluation after requested by Deidra Jefferson (Judge) that the ~~applicant~~ ^{applicant} may suffer from Bipolar.

[H] Double Jeopardy. Applicant is incarcerated wrongfully under the double jeopardy clause. Applicant was placed in jeopardy twice for the same offense. During the first trial the jury was impaneled, and heard the prosecutor case. The prosecutor failed to prove his case beyond a reasonable doubt. During the second trial, a jury was impaneled and the applicant was once again placed in jeopardy. This is a violation of the fifth and fourteenth Amendment of the United States Constitution.

[I] Newly DISCOVERY Evidence

[1] Applicant was evaluated by mental health counsel at SCDC and it's been discovered that the applicant suffers from mental illnesses such as bipolar, depression. Applicant did not finish school, his mother suffers from mental illnesses and has been arrested when applic-

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Continue from page 3, line (I)(1)

ant was young. Applicant bipolar made him ~~that~~ made the wrong decisions and to represent self along with trial counsel coercion. Applicant ~~did not~~ could not discover he suffer mental health problems before trial because he had not the funds to pay for mental health evaluation and Counsel did not send Applicant to be evaluated by a mental health counselor even though he stand accused for murder.

[J] Actual Innocence

[K] And the issue that are so raised within side the instant application are proper for post conviction relief proceeding, See Roche v. California, 342 U.S. 165, 72 S. Ct. 205, 96 L.E. 2d 183 (1952); Thompson vs. Louisville, 362 U.S. 199, 41 L.Ed. 2d 654 (1960)

The applicant further bring this cause of action under violations of state and federal trial right, Article 5-17 amended to Article 5-21 of the South Carolina Constitution.

The applicant further brings the cause of action under the plain error doctrine of Wainwright v. Sykes, 433 U.S. 72, 87, 97 S.Ct. 2497-2506-87, 531 L.Ed. 2d 594, where the Court held that only when the petitioner show cause for default and actual prejudice, as a result of the alleged violation of federal law or demonstrate that failure to consider the claim will result in a fundamental miscarriage of justice, may then the federal courts may consider the claims. "Coleman v. Thompson, 501 U.S. 722, 750 (1991)

A petitioner can also show miscarriage of justice to overcome an independent and adequate state procedural bar. Coleman, 502 U.S. at 750. In order to demonstrate a miscarriage of justice, petitioner must show he is actually innocent. Actual innocence is defined as factual innocence, not legal innocence. Bousley v. United States, 523 U.S. 614, 622 (1988). To prove actual innocence, the applicant must establish that the errors he complain of probably resulted in the conviction of an innocent person.

Pursuant to S.C. Code Ann 17-27-80, and rule 52(a) of the SCR Civ. P. must grant or deny relief by issuing a written order containing the facts and conclusions of law to each and every allegation / claims raised within side this instant PCR brief and / or application. See Pruitt v. State, S.C. 423 S.E. 2d 127 (1992); McCaig v. State, S.C. 408 S.E. 2d 241 (1992) and SNM v. State

★ The applicant also believes he has additional claims for Post Conviction Relief, but does not yet have collateral counsel, access to the discovery process, or funds for expert services to investigate the claims.

- iv. _____
- (d) the date of each such disposition:
- i. December 19, 2011
- ii. March 6, 2013
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. denied
- ii. denied
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

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

- (a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

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

No. Appellate Counsel did not raise any of the claims that I have listed in 10(f)(1)-(9) due to his ineffective performance. All other issues are PCR issues.

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes / NO
- (c) your sentencing? yes / NO
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

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

- (a) the name and address of each attorney who represented you:
- Lorelle Proctor, Wallace Bldg, 101 Meeting St, 5th Floor, Chas. SC, 29401
 - Robert Dudek, Division of Appellate Defense, P.O. Box 11589, Cole SC, 29211
 - Peter Brown, 749 Johnnie Dodds Blvd, Suite A, Mt. Pleasant, SC, 29467
- (b) the proceedings at which each such attorney represented you:
- 1st trial, Standby attorney in my second trial
 - Appellate Court / Court of Appeals
 - arraignment / Preliminary hearing

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

A New trial or Sentence and Conviction vacated

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

NO

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Terrell R. May

SWORN to and subscribed before me this 21st
day of March, 2013.

Patricia Buchanan (L.S.)
Notary Public

My Commission Expires: 4-26-2020

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

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Terrell Mcay
Applicant

SWORN or affirmed to and subscribed before me this
21st day of March, 2013.
Patricia Buchanan
Notary Public

My Commission Expires: 4-26-2020



Exhibit 1

South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

ROSALYN FRIERSON
DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-0289

March 29, 2012

Terrell McCoy, #256070
PCI C-Y-8
430 Oaklawn Rd.
Pelzer, SC 29669

Dear Mr. McCoy:

This is in response to your letter regarding your request for a transcript from Grand Jury proceedings. You are writing to tell me that you have been requesting the transcript since February 2009 and have documented proof. You are citing Rule 607, which refers to the five-year time period for court reporters to retain their records.

The issue that we're dealing with here is the fact that you are requesting a transcript **from Grand Jury proceedings**. This is to advise you again that there is no court reporter assigned to record Grand Jury proceedings, and therefore, there is no transcript available.

I am sorry for the misunderstanding. However, unfortunately, we are unable to assist you further.

Respectfully,


Desiree Allen
Court Reporter Manager

State of South Carolina)

VS)

Terrell L. McCoy)

Defendant Pro Se

Warrant/CASE NO: F-969254

Motion for Fast And Speedy
~~FILED~~ Pursuant To the U.S.
Constitution Sixth Amendment
2006 DEC 29 PM 4:12

JULIE J. ARMSTRONG
CLERK OF COURT

Exhibit #
2

Comes Now The Defendant, Pro SE, Terrell L. McCoy acting as
Chief-in-Council as granted in S.C. Code of Laws #17-23-60

Makes before this honor able Court for a fast and speedy
trial as it is the Defendants right.

1. Venue is proper as the defendant was arrested in this
County.

Having Read The Motion it is Set forth that (180) one hundred and
eighty days as stated in

F.R.C.P 31b.(A)(6)(1)(2) for the Solicitor of this state to bring
and deliver to court for a trial,

Failure shall be deemed grounds for Double Jeopardy -

Sworn and Subscribed before me

ON the 20th day of December 2006

at 3 not Key

Notary Public of South Carolina

My Commission expires on My Commission Expires March 28, 2008

Respectively
Submitted

Terrell L. McCoy

Defendant Pro SE

The Right of Trial by Jury shall be preserved inviolate. Any person charged
with an offense shall enjoy the Right to a speedy and public trial by an impartial
Jury; to be fully informed of the nature and cause of the accusation; to be
confronted with the witness against him; to have compulsory process
for obtaining witnesses in his favor, and to be fully heard in his defense
by himself or by his counsel or by both.

together and track where the call was made, and get the 911
caller name. This is why it was important that the Dispatcher was
subpoena for trial

CAD Operations Report

Exhibit #3

CITY OF NORTH CHARLESTON

Call Number

2006036162

Printed

04/05/2006 11:16 AM

Call Detail Information

Call Number	Class	Taker	Pos	Call Owner	Status	Date - Time Received	In			
2006036162	P	JFO	2		C	Sat 03/25/2006 05:46:38	0			
Complaint	Ten Code	Priority	ESN	Disp Zone	IRA	How Received				
C10	C10	1		004		35				
Incident Location	Apart/ Suite	Floor/Bldg	Incident City							
5061 DELTA ST			NORTH CHARLESTON							
Caller Name	Fire Run Zone	Fire Grade	EMS Run Zone	Telephone	Tower ID	Jurisdiction				
	35			843		CONC				
Tract	Weapons									
☐ Images	☐ BOLO	☐ Warrant	☐ Medical	☐ Hazard	☐ Fire Plan	☒ Previous	☐ Subject Req			
Alt Time	Call Recd	Xmit	Dispatch	Enroute	On Scene	Departed	Arrived	Comp	Alarm Code	Unit
00:00:00	05:46:38	05:48:04	05:48:16	05:48:36	05:50:58	08:22:52	08:25:44	13:27:39		169

Narrative

[03/25/2006 07:37:41 : TDANIELE]
168 44 2215 MARGARET DR

[03/25/2006 06:48:14 : WHISENAA]
56 ADVD WILL FIND SOMEONE ELSE TO RESPOND

[03/25/2006 06:43:36 : WHISENAA]
ATTEMPTED TO CALL 140 AT HOME--NEG ANS....PAGED HIM AGAIN

[03/25/2006 06:41:24 : WHISENAA]
COUNTY 122 ADVD 1008

[03/25/2006 06:40:08 : WHISENAA]
COUNTY 122 1054 RIVERS/MALL X3 BM WITH HOODIE IN THE BACK SEAT CREAM COLORED CROWN
VIC SC 339SWT

[03/25/2006 06:37:44 : WHISENAA]
56 COPIED PAGE REF TO K9 CALL OUT

[03/25/2006 06:34:12 : WHISENAA]
82 ADVD TO CALL OUT K9 REF TO RUNNING A TRACK

[03/25/2006 06:31:52 : WHISENAA]
14 ADVD ALL UNITS GOING TO SPECIAL OPS 2 REF TO THIS

[03/25/2006 06:16:59 : WHISENAA]
RAYE WITH THE CORONER'S OFFICE CALLED IN ADVD SHE WOULD CALL 58 ON HIS CELL

[03/25/2006 06:12:06 : YOEMANF]
CHAPLIN NOTIFIED

[03/25/2006 06:09:36 : WHISENAA]

CITY OF NORTH CHARLESTON

Call Number

2006036162

Printed 04/05/2006 11:16 AM

CORONER OFFICE NOTIFIED

[03/25/2006 06:09:00 : WHISENAA]
82 ADVD TO NOTIFY CHAPLAIN AND CORONER

[03/25/2006 06:08:09 : WHISENAA]
NORTH STANDARD NOTIFICATIONS

[03/25/2006 06:07:51 : YOEMANF]
NORTH AREA AND YELLOW CAB ADV NEG

[03/25/2006 06:04:20 : WHISENAA]
14 COPIED VIA 1021

[03/25/2006 06:03:37 : YOEMANF]
POSS SECOND VICTIM NOTIFY HOSP AND CAB CO

[03/25/2006 06:03:05 : WHISENAA]
242 ADVD EMS 1023

[03/25/2006 05:59:30 : WHISENAA]
2 BMS BLK HOODIES ONE RAN DOWN DELTA TWDS RIVERS THE OTHER RAN THRU A YARD

[03/25/2006 05:59:27 : YOEMANF]
2 BM BLK HOODIES 1 RAN DOWN DELTA POSS TWDS RIVERS SECOND CUT THRU A YARD

[03/25/2006 05:58:52 : WHISENAA]
74 COPIED...ADV HE WOULD GIVE 186 A-1021

[03/25/2006 05:54:26 : WHISENAA]
58 REQD ON SCENE DET SUPV

[03/25/2006 05:53:39 : WHISENAA]
NORTH S15 MEETING A 1033

[03/25/2006 05:53:14 : WHISENAA]
169 ADVD HAS PLENTY OF GUN SHELLS

[03/25/2006 05:52:44 : WHISENAA]
186 COPIED 1043

[03/25/2006 05:52:24 : WHISENAA]
SUBJ 1007

[03/25/2006 05:52:10 : YOEMANF]
C2 TO HEAD

[03/25/2006 05:52:08 : WHISENAA]
C2 TO THE HEAD

[03/25/2006 05:51:40 : YOEMANF]
EMS 76

[03/25/2006 05:51:37 : JFOWLER]
EMS 76

CITY OF NORTH CHARLESTON

Call Number 2006038162

Printed 04/05/2006 11:16 AM

[03/25/2006 05:51:36 : WHISENAA]
55 COPIED AND 24 COPIED

[03/25/2006 05:51:01 : YOEMANF]
NORTH 1033

[03/25/2006 05:49:49 : WHISENAA]
242 C7

[03/25/2006 05:49:14 : JFOWLER]
FEMALE CALLED ADV HEARD SOMEONE BANGING ON THE DOOR AND THE DOOR FLEW OPEN AND A
BM WAS C2D SHE DOES NOT KNOW WHO HE IS

[03/25/2006 05:49:00 : WHISENAA]
58 COPIED

[03/25/2006 05:48:04 : JFOWLER]
Cross streets: REBECCA ST//WILLIS DR

NBH:RUSSELDALE
FEMALE IS 1023 AT THE NEIGHBORS ADVISING SHOTS FIRED AND POSS SOMEONE IS C2D AT HER
RESID

Press Release Notes

Location Comment

Department/RMS OCA Numbers

Department	OCA Number	RMS Jurisdiction
NCPD	2006010576	SC0100800

Call Dispositions

Date - Time	Disposition
2006/03/25 13:29:07	WRITTEN REPORT TAKEN

Call Complaints

Date - Time	Complaint	Action By
3/25/2006 05:59:53	1087	JFOWLER

CITY OF NORTH CHARLESTON

Call Number 2006036162

Printed 04/05/2006 11:16 AM

Call Log

Unit	Status	Date - Time	Dept	Type	Comments	Officers	Odometer
169	DIS	3/25/2006 05:48:16	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	ROY	0.0
242	DIS	3/25/2006 05:48:17	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	ARMSTEAD, D	0.0
169	ENR	3/25/2006 05:48:36	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	ROY	0.0
242	ENR	3/25/2006 05:48:37	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	ARMSTEAD, D	0.0
228	ENR	3/25/2006 05:48:45	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	WEBB	0.0
186	ENR	3/25/2006 05:50:04	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	BUNKER,	0.0
82	ENR	3/25/2006 05:50:41	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	THOMAS	0.0
169	ONS	3/25/2006 05:50:58	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	ROY	0.0
242	ONS	3/25/2006 05:51:00	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	ARMSTEAD, D	0.0
217	ONS	3/25/2006 05:51:20	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	WILSON	0.0
228	ONS	3/25/2006 05:52:30	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	WEBB	0.0
82	ONS	3/25/2006 05:53:24	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	THOMAS	0.0
186	ONS	3/25/2006 05:55:06	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	BUNKER,	0.0
58	ONS	3/25/2006 06:02:12	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	HARDEE, SGT	0.0
14	ENR	3/25/2006 06:04:24	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	TETANICH	0.0
74	ENR	3/25/2006 06:08:00	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	HALLMAN	0.0
7	DIS	3/25/2006 06:11:45	NCPD	SHE	5061 DELTA ST, NORTH CHARLESTON	KINARD	0.0
7	ENR	3/25/2006 06:11:48	NCPD	SHE	5061 DELTA ST, NORTH CHARLESTON	KINARD	0.0
14	ONS	3/25/2006 06:13:12	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	TETANICH	0.0
14	ONS	3/25/2006 06:13:14	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	TETANICH	0.0
22	DIS	3/25/2006 06:15:07	NCPD	SHE	5061 DELTA ST, NORTH CHARLESTON	BOLLINGER	0.0
22	ENR	3/25/2006 06:15:09	NCPD	SHE	5061 DELTA ST, NORTH CHARLESTON	BOLLINGER	0.0
178	DIS	3/25/2006 06:18:34	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	PATRICK, S	0.0
160	DIS	3/25/2006 06:18:43	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	ELMORE	0.0
152	DIS	3/25/2006 06:18:54	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	HILL	0.0
74	ONS	3/25/2006 06:20:55	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	HALLMAN	0.0
178	ENR	3/25/2006 06:22:25	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	PATRICK, S	0.0
7	ONS	3/25/2006 06:27:01	NCPD	SHE	5061 DELTA ST, NORTH CHARLESTON	KINARD	0.0
7	ONS	3/25/2006 06:27:02	NCPD	SHE	5061 DELTA ST, NORTH CHARLESTON	KINARD	0.0

CITY OF NORTH CHARLESTON

Call Number

2006036162

Printed 04/05/2006 11:16 AM

Unit	Dept	DIS	ENR	ONS	LEF	ARR	BUS	REM	COM
14	NCPD		06:04:24	06:13:12				09:46:11	
140	NCPD	06:43:49		07:27:56				06:48:27	
152	NCPD	06:18:54	06:48:50						13:27:39
160	NCPD	06:18:43	06:50:41		08:22:52	08:25:44			13:27:39
168	NCPD		06:51:47	07:04:12					13:27:39
169	NCPD	05:48:16	05:48:36	05:50:58				07:45:07	
173	NCPD			07:40:33				08:44:18	
178	NCPD	06:18:34	06:22:25	06:57:28				09:40:18	
186	NCPD		05:50:04	05:55:06					13:27:39
217	NCPD			05:51:20				07:46:22	
22	NCPD	06:15:07	06:15:09	06:38:18					13:27:39
228	NCPD		05:48:45	05:52:30				06:31:59	
237	NCPD			07:40:31				11:32:33	
242	NCPD	05:48:17	05:48:37	05:51:00					13:27:39
49	NCPD		06:27:12	06:41:52					13:27:39
58	NCPD			06:02:12				08:14:25	
7	NCPD	06:11:45	06:11:48	06:27:01				10:00:24	
74	NCPD		06:08:00	06:20:55					13:27:39
82	NCPD		05:50:41	05:53:24				07:17:35	

Category: Last Name: First Name: Middle Name: Suffix:
 Race: Sex: Ethnic: Height: Weight: Age: DOB: DIN:
 Business Name: Description:

Call Subject Statistics

Question

Answer

1 A. No.

2 THE COURT: Finished?

3 MR. WETMORE: Yes, sir.

4 THE COURT: Okay. Redirect?

5 MR. TERRELL McCOY: No, sir.

6 THE COURT: All right. You can step down.

7 Thank you. Do you have another witness?

8 MR. TERRELL McCOY: No, Your Honor. Hold on,
9 Your Honor. All right.

10 THE COURT: All right. I'm going to send
11 y'all out for a couple minutes while we take up some
12 legal matters. Don't begin deliberations or discussions
13 about the case.

14 (In open court, jury not present.)

15 MS. PROCTOR: He has something about a
16 witness he'd like to address with you.

17 THE COURT: What would you like to tell me?

18 MR. TERRELL McCOY: We subpoenaed a James
19 Fowler. He or she is a dispatcher that works for the
20 North Charleston police department, but I found out that
21 there were two J. Fowlers. I don't know how that
22 happened. They got two J. Fowlers that work for the
23 North Charleston police department, so the subpoena went
24 to another J. Fowler, and I needed that witness to
25 testify that a female made the call to the 911 dispatcher

1 because it was said that a male made that call.

2 I want the record to show a female called at
3 5:49 stating that her door got kicked in and not a male,
4 and I needed that testimony. They're saying that person
5 doesn't work for the North Charleston police department
6 no more. They said it's two of them work there, and --
7 but they said she's on leave and they don't want --
8 they're not going to allow her to testify. State is not
9 going to allow her to testify, but I subpoenaed her.

10 THE COURT: Have you been able to subpoena
11 the correct witness?

12 MS. PROCTOR: Let me clear it up.

13 MR. TERRELL McCOY: I think it's only one.

14 MS. PROCTOR: There are two, but we
15 subpoenaed the wrong one. I had asked the state if they
16 would stipulate to the report so we wouldn't need to get
17 her, and the state said even if she came, they are
18 objecting to her testimony anyway because it would be
19 hearsay for what she is having to say. ~~NO EXCITED LIFE~~
20 So I wanted to clear that up so we could move ~~PRESENT SENSE IMPRESSION~~

21 on with the case. If they're going to object to her
22 testifying anyway and she's not allowed to, then we don't
23 need to go find her. She's dispatch.

24 THE COURT: She's a dispatcher? You don't
25 have a 911 tape?

violation

803 (1)(2)(3)

Speedy trial?

This evidence is necessary to impeach witness

1 MR. TERRELL MCCOY: I subpoenaed the 911
2 tape. If you look at the witness list on the bottom, it
3 have the 911 dispatcher tape from March 25, 2006. Now
4 they're saying they don't -- what you tell me? They
5 don't record them? I know they record -- those calls are
6 supposed to be recorded, and I wanted that recorded to
7 bring it up so the jury could hear that recording and
8 hear that a female did call and advise that someone
9 kicked in her door.

10 MS. PROCTOR: We had tried three years ago to
11 find the dispatch tape. We never were able to get the
12 911 tape, and I don't believe the solicitor's office ever
13 had the 911 tape either. All we have are the writings of
14 what was on --

15 MR. TERRELL MCCOY: What was said.

16 MS. PROCTOR: What was said during the
17 dispatch, saying a female said the door was kicked in.
18 It's my understanding the state is going to say that was
19 hearsay, right?

20 MR. WETMORE: That's correct, Judge. Ms.
21 Proctor asked if I would stipulate to the information
22 that the dispatch call received, and I said that I
23 wouldn't because it would come from a caller, and to get
24 that evidence in, he would need to put the caller on the
25 stand to say what she saw.

Speedy Trial Violation

1 I have never heard a 911 tape. I know
 2 they're kept for a certain period of time and then
 3 they're destroyed. It's all digital, to my
 4 understanding, and certainly three years have passed. I
 5 don't know if it's there or not, but I don't have it.

6 THE COURT: Have you checked with North
 7 Charleston to see if they have it?

8 MR. WETMORE: I have not asked for it, nor
 9 have I subpoenaed, no, sir.

10 THE COURT: Have you?

11 MR. TERRELL McCOY: I asked for it.

12 MS. PROCTOR: When there was a previous
 13 solicitor in the case, I said were you getting the 911
 14 tape? It's coming. There were problems with delay, and
 15 by the time, I think, they realized they didn't have it,
 16 I think it's been destroyed, because we never could find
 17 one.

18 THE COURT: Back when you used to represent
 19 him, y'all looked for it?

20 MS. PROCTOR: Yes, and I have gone through my
 21 old notes about how many times I had asked Greg Voigt, do
 22 you have the 911 tape? Are we going to get the 911 tape?
 23 And we thought -- I thought he had it, but what we've
 24 got, what he had was the written words off the 911 tape.
 25 We still don't know who the person is that called in. We

The 911 tape would provide a name of the person who called the
 police.

1 assume it was maybe one of the neighbors.

2 THE COURT: All right. So let me see if I
3 understand this right, Mr. Wetmore. You're objecting to
4 the witness testifying, not to what the contents were,
5 but that it was a male or female voice?

6 MR. PETER McCOY: No, Your Honor. The piece
7 of paper Ms. Proctor showed you was -- it's called a CAD
8 report, or a dispatch report, and they asked if I would
9 stipulate to a female call, advising she heard someone
10 banging on the door, and the door flew up and a black
11 male was C2, which I assume is code for shot. She does
12 not know who he is.

13 And I said I would not stipulate to that
14 information because I don't know who said this. I don't
15 think that person is here to testify to cross-examine, so
16 I couldn't stipulate that that information was correct
17 because I think it would be hearsay.

18 MS. PROCTOR: We weren't saying it was a
19 female called in. We're just saying the sheet of paper
20 that says what the dispatch received --

21 THE COURT: We couldn't bring somebody in
22 just to read what is on that.

23 MR. TERRELL McCOY: I wanted the 911 tape to
24 be heard.

25 THE COURT: I understand, but from what I

PAGE

1 OF 1

COMPLAINT #

20060100576

NORTH CHARLESTON POLICE DEPARTMENT WITNESS STATEMENT

Exhibit #4

STATEMENT OF Carinda Williams DATE OF BIRTH [REDACTED] AGE 29

HOME ADDRESS _____ PH. _____

EMPLOYER Police BUS. ADDRESS _____THIS STATEMENT IS IN REFERENCE TO MURDER

WHICH OCCURS AT _____ ON OR ABOUT _____

AT APPROXIMATELY _____ HOURS, IN NORTH CHARLESTON, SOUTH CAROLINA.

THIS STATEMENT IS GIVEN 3/25/06 (DATE) AT 12:30 pm (TIME), AT _____NCPD

(LOCATION)

THIS STATEMENT IS BEING WRITTEN by Det. Elmore
WITH MY PERMISSION.

EARLIER THIS MORNING DET. ELMORE TOOK MY STATEMENT
AND I WAS NOT COMPLETELY HONEST. I TOLD DET. ELMORE
THAT I SAW A GUY IN A BLACK HOODIE RUNNING AWAY FROM
THE AREA WHEN I LOOKED OUT MY HOUSE. THE GUY THAT
WAS RUNNING AWAY FROM THE AREA IS MY FRIEND'S BROTHER.
HIS STREET NAME IS ~~STEEZIE~~ STEEZIE BOY. THE HOODIE WAS
NOT ON HIS HEAD AND I COULD SEE HIM RUNNING. I WAS
AFRAID TO TELL THIS INFORMATION TO DET. ELMORE BECAUSE
STEEZIE'S BOY'S BROTHER (TRAVIS) HAS THE KEY TO MY HOUSE.

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I
HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

WITNESS: Det. Keith P. [Signature]

WITNESS: _____

SIGNATURE: Carinda Williams

878

Exhibit # 4

PAGE 1 OF 2

NCPD 017

COMPLAINT # 2006010576

NORTH CHARLESTON POLICE DEPARTMENT WITNESS STATEMENT

STATEMENT OF Carinda Williams ^{aka} Snowlet DATE OF BIRTH [REDACTED] AGE 29

HOME ADDRESS _____

EMPLOYER _____ BUS. ADDRESS _____

THIS STATEMENT IS IN REFERENCE TO MURDER

WHICH OCCURS AT _____ ON OR ABOUT _____

AT APPROXIMATELY _____ HOURS, IN NORTH CHARLESTON, SOUTH CAROLINA.

THIS STATEMENT IS GIVEN 3/25/06 (DATE) AT N.C.P.D. (TIME), AT _____ (LOCATION)

THIS STATEMENT IS BEING WRITTEN BY DET. ELMORE WITH MY PERMISSION.

TONIGHT AT AROUND 12:30AM I WAS IN BED AND TRAVIS JOHNSON ^{BOYFRIEND} MY (MY FRIEND) FRIEND CAME INTO MY BED ROOM. TRAVIS HAD A KEY TO MY HOUSE. HE ASKED ME IF I WAS SLEEPING I SAID NO I'M WATCHING TV. HE TOLD THAT HE WAS JUST LETTING ME KNOW THAT HE WAS COMING BACK TONIGHT AND THAT HE WAS LEAVING. I TOLD HIM WHAT EVER IF YOU COME BACK, YOU COME BACK, IF YOU DON'T, YOU DON'T. TRAVIS CLOSED THE DOOR TO MY BED ROOM AND I HEARD THE TOILET FLUSH A FEW MINUTES LATER. I FELL ASLEEP AROUND 2:00 AM. I WAS AWOKEN BY A FEW GUNS MAYBE TWO. I GUESS. IT DIDN'T BOTHER ME BECAUSE THEY ARE ALWAYS SHOOTING AROUND THAT AREA. I WENT BACK TO SLEEP.

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

WITNESS: Det. Keith P. [Signature]

WITNESS: _____ SIGNATURE: Carinda Williams

829

SOME TIME LATER I HEARD SOME GUYS ARGUING IN MY BACK YARD. IT SOUND LIKE IT WAS MORE THAN TWO VOICES ARGUING. ABOUT 10-15 MINUTES LATER I HEARD SOMEONE BANGING AT MY FRONT DOOR REALLY REALLY HARD. THEN I HEARD A LOUD BOOM AT THE FRONT DOOR LIKE SOMEONE KICKING THE DOOR. THAT'S WHEN I HEARD LIKE 3-4 GUNSHOTS. I WAS STILL IN BED SO I JUMPED UP AND CAME OUT OF MY ROOM. I SAW THIS GUY JUST LYING IN MY LIVING ROOM. MY FRONT DOOR WAS OPEN, I RAN OVER TO THE GUY AND GRABBED HIM. I ASKED HIM WHAT HAD HAPPENED TO HIM AND HE STARTED CHOKING. HE WAS CHOKING AND BLEEDING REALLY BAD AND I FREAKED OUT. I RAN BACK INTO MY ROOM. I OPENED THE WINDOW TO JUMP OUT BUT THEN I STOPPED. I DIDN'T KNOW WHAT TO DO. I RAN OUT THE FRONT DOOR OF MY HOUSE AND SAW A GUY WITH A BLACK HEAVY RUMMING TOWARDS RIVERS AVE FROM REBERA ST. I RAN OVER TO JEROME ROBINSON HOUSE AND TOLD HIM ABOUT THE GUY IN MY HOUSE. JEROME CALLED THE COPS. COCA THE GIRL THAT LIVE NEXT TO JEROME SAID THAT SHE SAW THREE GUYS RUNNING AFTER THE GUN SHOTS.

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

WITNESS:

Det. Keith P. El

WITNESS:

SIGNATURE:

Cameo A. Miller

830

STATE OF SOUTH CAROLINA
County of Charleston

Terrell McCoy, #256070

V.

State of South Carolina

IN THE COURT OF COMMON PLEAS

CASE NO. 2013-CP-10-1994

MOTION TO AMEND

FILED
2013 APR 10 AM 11:28
JULIE J. ARMSTRONG
CLERK OF COURT

RE: Terrell McCoy, 256070 V. State of South Carolina
CASE NO.

I, Terrell McCoy, would like to Amend to my PCR Application under the Section that state the following. Section 10 (I) page 3 on form 5 I amend as follows: Trial Judge violated my due process under the Fourteenth Amendment by not allowing me, the applicant, to challenge the VOIR DIRE Portion of the Jury phase. This denied me the right to self representation. The trial judge denied the applicant the opportunity to challenge the jury panel when requested. Instead, the trial judge to Applicant to speak to standby attorney, who was only present for advice, or if Applicant decided he wanted to assert his right to trial Counsel. (see Trial Transcript pg. 28) The Applicant wanted to challenge the fact that the jury panel consist of majority females and the state key witness was a female. Also, the jury panel consist of police officers, relatives to police officers, family members to judges and lawyers. There were family members of North Charleston Police Department, seated on the jury and found the applicant guilty of murder. TT. page 18-28

(1)

There were also seated on the ~~juror~~ Juror, was Barbara Smalls, Juror Number 246. She stated she was the Cousin of a Judge who who worked for the 9th Judicial Circuit. The only black american Judge who worked the 9th Circuit, is Deidra Jefferson. Judge Jefferson was the Judge who heard the applicant 1st trial that ended in a Hung Jury.

This Amendment Comes pursuant to SCRCivil Procedure Rule 15 (a) before a responsive pleading is served upon the applicant. I also move to leave the application ~~open~~ in order to Amend any more issues I find relevant to my collateral attack and one bite of the Apple. Graham v. State, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008); 000m v. State, 337 S.C. 256, 523 S.E.2d 753 (1999)

April 3, 2013

Senell McCoy
R.I. Cox #4
4300 Oaklawn Rd
Pelzer SC, 29669

STATE OF South CAROLINA)
County of Charleston)

Terrell McCoy, 256070)

v.)
State of South Carolina)

IN THE COURT OF COMMON
PLEAS
C/NO. 2013-P-10-1994

Certificate of Service

FILED
2013 APR 10 AM 11:28
JULIE J. ARMSTRONG
CLERK OF COURT

I, Terrell McCoy, hereby certify that I personally placed a Motion to Amend into a prepaid stamped envelope to be mail US postal mail on April 3, 2013 to the following address:

Julie J. Armstrong
Court of Common Pleas
100 Broad Street, Suite 106
Charleston, SC 29401

/s/ Terrell McCoy
PCJ Clerk
430 Oaklawn Rd
Pelzer SC, 29669

3rd day of April 2013

STATE OF SOUTH CAROLINA
County of ~~Charleston~~

Terrell McCoy, 256070
PCI Co Xe 4

430 Oaklawn Rd

Pelzer SC, 29669

April 3, 2013

RE: Amended PCR Application

Dear Clerk of Court:

Enclosed Please find the Applicant Amended PCR Application to be attached to the original Application filed in this Court. Please forward a copy to the Attorney General office along with the Applicant original PCR application. Can you please send me a copy of the Certificate of Service with the Amended PCR application as proof of service upon you.

Thank you

Terrell McCoy 256070

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Terrell McCoy)
Plaintiff(s))

Vs.)

State of South Carolina)
Defendant(s))

IN THE COURT OF (Select one)

☒ COMMON PLEAS ☐ FAMILY COURT

CASE NO: 2013-CP-10-1994

APPOINTMENT OF COUNSEL

☒ ORDER

☐ AMENDED ORDER

FILED
2013 APR 16 AM 11:34
JULIE J ARMSTRONG
CLERK OF COURT
BY

TYPE OF CASE/PROCEEDING: (Check one)

- | | |
|--|--|
| ☒ Post-Conviction Relief (PCR)/Habeas Case | ☐ Adoption |
| ☐ Sexual Violent Predator Case (SVP) | ☐ Custody and/or Visitation |
| ☐ Minor Name Change | ☐ Juvenile |
| ☐ Abuse and Neglect | ☐ Other |

It appears that Terrell McCoy, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one)

- ☒ Counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- ☐ Counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- ☐ Counsel was previously appointed by the court but has indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- ☐ Court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- ☐ Other:

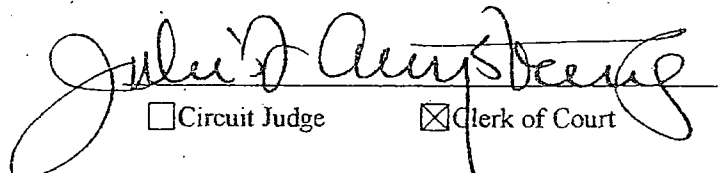
Therefore, it is ordered that Rodney Davis, is hereby appointed as (Select one)

☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 16th DAY OF APRIL, 2013.


☐ Circuit Judge ☒ Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.



ALAN WILSON
ATTORNEY GENERAL

April 11, 2013

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

RE: Terrell McCoy, #256070 v. State of South Carolina
2013-CP-10-1994

Dear Ms. Armstrong:

The above-referenced individual has filed an Application for Post-Conviction Relief (PCR) in the Circuit Court and needs to have an attorney appointed to represent him. If you will appoint an attorney and let me know his/her name, I will send him or her a copy of our file in this matter.

Trial counsel listed on the applicant's PCR Application "Peter Brown, Lorelle Proctor and Robert Dudek"

If you have any questions with regard to this matter, please let me know.

Yours very truly,

Anne Henley, Legal Assistant for
Ashleigh R. Wilson, Assistant Attorney General

/ah

cc: The Honorable Stephanie P. McDonald, Ninth Circuit Administrative Judge

COUNTY OF Charleston

CASE NO.: 2013-CP-10-1994

Terrell L. McCoy
#256070 Plaintiff,
vs.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

State of South Carolina
Defendant.

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Ex parte, Terrell L. McCoy, 256070

Petitioner,

v.

STATE OF SOUTH CAROLINA

RESPONDENTS.

IN THE COURT OF COMMON PLEAS
Civil action NO. 2013-CP-10-1994

1 Petition for Grand Jury Impanel-
1 ment documents, Solicitors pet-
1 ition, Supporting materials, im-
1 paneling judges order, as well
1 as all grand jury transcripts, rec-
1 ords, minutes and witnesses
1 Pursuant to State of South Carolina
1 v. Terrell L. McCoy, Indictment NO.
1 2006-GS-10-04987

1 Rule 65 Motion / ORDER

To: Chief Administrative Judge,

The above petitioner, Terrell L. McCoy, hereby move the Court with a writ
Pursuant to SCRPC Rule 65, for a complete copy of the grand jury materials
in the above-captioned indictment; to include impanelment documents, Sol-
licitor petition, Supporting materials and impaneling judges order, as well
as all grand jury transcripts, records, minutes, witnesses, etc. The Petitioner
is aware that the grand jury deliberation and Voting may not be disclosed
and remains Secret forever.

The South Carolina Supreme Court has ruled, in Evans v. State, 611 S.E. 2d 510, 363
S.C. 495 (2005) that such documents may be released prior to a defendant trial
upon timely request or to an applicant in a PCR proceeding. This ruling has
not been overruled. The petitioner has recently filed his first application for Post
Conviction Relief on April 4, 2013.

Prior to the petitioner filing a ex parte writ for a order to receive the above doc-
uments, he has written numerous request to the Charleston County Clerk of Court requ-
esting the above documents. The Petitioner has attempted to receive the documents since 2009.

FILED
2013 MAY 14 AM 10:16
JULIE J. POSTONG
CLERK OF COURT

1 R

The Petitioner has also written the South Carolina office of Court Administration for the above documents and also the name of the Court reporter who has stenographically recorded the grand jury proceeding. The Director of the South Carolina Office of Court Administration, Rosalyn Frierson, forwarded the Petitioner request to the Clerk of Court with the directions for the Clerk of Court to assist the Petitioner in the matter. The Clerk of Court never responded.

Wherefore, the petitioner now moves the Chief Administrative Judge with a ~~ex parte~~ writ to grant this petition and order the clerk of Court to release all grand jury materials generated in the case of State v. Terrell L. McCoy, in accordance with the Post Conviction Relief proceeding as mandated by the South Carolina Supreme Court in Evans v. State. Supra.

☒ the Petition for Grand Jury materials to be released to the PCR applicant. Petitioner is hereby granted. ~~✗~~

☐ the Petition for Grand Jury materials to be released to the PCR applicant. Petitioner is hereby not granted.

5/12, 2013
date

LS
CHIEF Administrative Judge

* This is limited to the impounding Documents only for the term of the Grand Jury during which the Petitioner was indicted. Py

FILED
MAY 14 AM 10:16
JULIE J. MOSESTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Terrell Lynwood McCoy
Plaintiff,

vs.

State of South Carolina
Defendant.

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT

CASE NO. 2013 CP- 10- 1994

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/ ☐ NO			
SECTION II: Motion/Order Type			
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☐ Defendant		Date submitted	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Terrell Lynwood McCoy
Applicant,

VS.

State of South Carolina
Respondents

IN THE COURT OF COMMON PLEA

For the 9th Judicial Circuit

Civil action NO: 2013-CP-10-1994

Declaration for entry of Default

FILED
2013 AUG 13 PM 12:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY [Signature]

Terrell L. McCoy, hereby declare, I am the applicant herein. The applicant PCR application was filed on April 4, 2013.

The Clerk of Court files and record herein show that the respondents were served by Charleston County Clerk of Court with a copy of Applicant's PCR application. More than 90 days have elapsed since the date on which the respondents were served with a copy of applicant's PCR application. The respondents have failed to answer or otherwise defend as to applicant's PCR application or serve a copy of any answer or defense which it might have had, upon affiant or any other applicant herein. The respondents are not in the military service and are not infants or incompetents.

I declare under penalty of perjury that the foregoing is true and correct.

Sworn and Subscribed before me this 31st

day of July 2013

Nancy Muehler
Notary public

151 Terrell McCoy
C-X-9/PCI
430 Oaklawn rd.
Pelzer, SC 29669

My Commission Expires 1-23-2023

Terrell L. McCoy, 256070
PCI C.O.X. 9
430 Oaklawn rd
Peker, SC, 29669

August 8, 2013

Julie J. Armstrong
Clerk of Court, C.P. & G.S.
Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401-2258

FILED
2013 AUG 13 PM 12:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

McCoy v. State of South Carolina
Civil action No. 2013-CP-10-1994

Dear Clerk of Court,

Enclosed please find the applicant's motion Default, pursuant to SCRPC Rules, to be filed in the Clerk of Court Court of Common Pleas. I have also enclosed a Certificate of Service evidencing service upon you. Thank. *Terrell McCoy*

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
Terrell McCoy
Applicant

v.
State of South Carolina
Respondent

IN THE COURT OF COMMON PLEAS
FOR the Ninth Circuit.
Civil action # 2013-CP-10-1994

CERTIFICATE OF SERVICE

I, Terrell McCoy, hereby certify, that on August 8, 2013, I personally placed a handwritten copy of Declaration for Entry of Default inside U.S. postal Stamp Envelope to be mailed to the following addresses:

(1) Julie J. Armstrong
Clerk of Court, C.P. & G.S.
Charleston County
100 Broad Street, 106
Charleston, SC 29401-2258

(2) S.C. Attorney General's office
P.O. Box 11549
Columbia, SC 29211

Terrell McCoy
PCI C.O.X. 9
430 Oaklawn rd
Peker, SC 29669

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Terrell L. McCoy, 256070
Applicant,

v.

State of South Carolina
Respondent.

IN THE COURT OF COMMON PLEAS
NINTH CIRCUIT JUDICIAL COURT
Civil action no. : 2013-CP-10-1994

AMENDED PCR APPLICATION
SCRCP RULE 15(a)
FILED

AUG 29 2013
JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

I, Terrell Lynwood McCoy, would like to amend my PCR Application under the Section that state the following : Section 10 (L) page 3 on form 5, I amend as follows :

L. Appellant Counsel is ineffective for failing to raise the issue whether trial judge erred by not letting the 911 dispatcher testify at trial or by not letting the jury hear the original CAD dispatchers report pursuant to SCRE rule 1001 (1), (3) and rule 901(b), (3), (6), 803(6)

The Solicitor, Burns Wetmore stated on record they are objecting to the dispatcher's testimony because it would be hearsay for what she is having to say. (Trial Transcript page 631-636) The trial judge ruled in the state's favor, so therefore the applicant was not able to use the dispatcher's report or call the dispatcher to testify. The original CAD dispatcher's report would have been admissible pursuant to SCRE Rule 401, 1001, (1)(3), 1002, 1004 and 1005.

The evidence was relevant because whoever dialed 911, gave a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter pursuant to SCRE RULE 803(1)(2)

Evidence presented at trial would show that Carinda Snowden did not make the 911 Call. She testified at trial that her next door neighbor, a male, called 911. (See T.T. page 170) But the CAD dispatcher's report reveals that at 5:46 a.m., a female called 911 and advised heard someone banging on the door and the door flew open and a BM was C2D she does not know who he is. (See dispatcher's report attached mark as Exhibit # 1) The 911 caller could not be Subpoena for trial because the identity of the Caller was Suppress by police officers. (See Exhibit # 1).

If the CAD dispatcher's report or 911 dispatcher's testimony was admitted into evidence, it would have rebutted the state witness, Carinda Snowden, testimony. It has already been proven by a preponderous of evidence that Carinda Snowden is not reliable due to the fact she gave (3) Contradictory statements and her first trial testimony contradicts her second testimony.

For these reasons it was necessary for the jury to hear the original CAD report, the dispatcher's testimony or the 911 tape recording. There the applicant would have learned the identity of the 911 Caller and he would have been able to Subpoena the Caller to testify to what she witness. The applicant's due process right under the state Constitution and the United States Constitution was violated.

M. Bad Faith - This part continues from 10(d). Police failure to preserve potentially useful evidence was in bad faith in violation of the "fundamental fairness" of the due process of the United States Constitution. If the 911 tape was not destroyed, the applicant would have been able to identify the person who made 911 Call and Subpoena that person to testify at his trial pursuant to SCRE Rule 803(1) This is prejudicial because this testimony could have exonerated the applicant, because it contradicts an Untruthful witness testimony. See Arizona v. Young Blood, 488 U.S. 51, 102 L.Ed. 2d 281; Illinois v. Fisher, 540 U.S. 544; Brady v. Maryland, 373 U.S. 83 (1963); United States v. Valenzuela Bernal, 458 U.S. 858, 867, 102 S.Ct. 3440, 3446, 73 L.Ed.2d 1193 (1982), Lisenba v. California, 314 U.S. 219, 236. This is a violation of the applicant's due process.

N. Prosecutorial Misconduct: The State failed to disclosed that a magistrate judge had signed a warrant to arrest Carind Snowden in connection with the applicant Criminal Case. [see Second trial transcript page 197-200] If disclosed before trial, the applicant could have used the evidence to impeach the State's witness. The applicant also could have learned whether or not the Warrant was dismiss for Carinda Snowden testimony against him. Brady v. Maryland, 373 U.S. 83 (1963) For these reasons the applicant is being held unlawfully in violation of the State Constitution and the United States Constitution.

O. Ineffective Assistance of Counsel: Trial Counsel failed to subpoena the 911 dispatcher, Jenie Fowler, ~~in~~ at trial. During the applicant's self-representation hearing, held on January 27, 2009, Judge Dennis ordered that trial counsel last administrative act would be to subpoena witnesses for the applicant. [see January 27, 2009 hearing transcript page 19 line 3-15; 29 line 11-24] AT Trial, trial Counsel lied to the trial Judge and stated that it was two people name J. Fowler, employed with North Charleston Police Department and therefore they subpoena the wrong person. [see Second trial Transcript page 632 Line 10-19. This is not true. Not only is trial counsel ineffective, but Jenie Fowler is in Contempt for not appearing to trial. The Subpoena was delivered to NCPD on January 28, 2009, [see Copy of Subpoena attached to amended application mark as Exhibit # 2] See SCRCP Rule 45 which apply to criminal cases.

On August 2, 2013, Beth Woodall, Legal Department for the City of North Charleston employee, answered the applicant's Freedom of Information Act request, and clarified that there were only one J. Fowler, Jenie Fowler, employed at North Charleston police Department during February 2, 2009. [see FOIA document mark as Exhibit # 3] Beth Woodall also supplied the applicant with NCPD active list of police officers for the month of February 2009. [see active list of police officers mark as Exhibit # 4-5] This violated the applicant's sixth and fourteenth Amendment right under the United States Constitution. See Washington v. Texas, 388 U.S. 14, 19 (1967)

P. Prosecutorial Misconduct: The prosecutor used perjured testimony to con-

Vict the applicant. In the first trial, Carinda Snowden was asked by the Prosecutor what hand did the applicant have the gun in when he allegedly shot the Victim. She replied the gun was in the applicant's left hand. [First trial transcript page 33]

In the Second trial, the prosecutor coach Carinda Snowden testimony. In the Second trial she stated the applicant had the gun in his right hand. [Second TT page 213-214] The prosecutor failed to correct her testimony knowing it to be false. The Prosecutor knew the applicant could not have left behind right hand fingerprints, on the front glass door, if the gun was in the applicant's right hand. [Compare First Trial Transcript page 33 to Second T.T. page 214] [Also See Second T.T. page —] The prosecutor used inconsistent theories to convict the applicant.

Also, Applicant's first trial ended in a hung jury. The Jurors could not decide the applicant's innocence or guilt due to the discrepancies in the State case. The Prosecutor also offered new evidence in which was never disclosed to the applicant. During the applicant's second trial, Carinda Snowden testified that Travis kick open her front door to make the crime scene look as if someone kick her door open. [See Second TT page 162-167; 193-94; 217, 227 and 233. Compare to first TT page 15-74]

During the Second trial, the applicant argued his motion to Compel discovery before the Honorable Roger Young. Roger Young ordered that the prosecutor turn over evidence in which the state may have [see Motion to Compel discovery attached as Exhibit #6 and Second T.T. page 47 and 61] The applicant was unable to properly defend against this new evidence. See Brady v. Maryland

The prosecutor also offered new evidence that Travis took something off the victim as he laid supine on the front living room floor. This evidence was never disclosed to the applicant. Carinda Snowden never stated this occurred during the first trial, nor did she state this in her first, Second and third statement. If this evidence had been disclosed to the applicant prior to trial, the applicant could have properly prepared a defense. This is prejudicial because the timing of the shooting, the time Carinda Snowden allege Travis went into the victims pockets, the time she allege Travis entered one of the bedrooms, the time she allege Travis entered the livingroom and kick open the front door, and then flee the scene before police arrived on the scene is crucial evidence and the applicant could have shown discrepancies in the timing if he had known of this evidence.

The autopsy report show that the victim, Antwan Bryant, was found dead at 5:45 a.m. [See Autopsy document attached to Amended PCR Application mark as Exhibit # 7]

The 911 call was made at 5:46 a.m. [See 911 dispatcher Exhibit # 1]

The first officer arrived at the scene at 5:50 a.m. [See Second T.T. page 284]

Carinda Snowden testified at the applicant's trial that police arrived a couple minutes after the shooting. [Second TT page 172]

Officer Armstead testified that Antwan Bryant was dead when he arrived at the scene at 5:50 a.m. [Second TT page ~~284~~ 284]

If the new testimony, (evidence) had been disclosed before trial, the applicant could have argued, the five minutes between Antwan Bryant's death and the first officers arrival at the scene, to the jury for them to make a inference whether or not Travis could have done all ~~the~~ what Carinda Snowden described in (5) five minutes and not have been discovered by cops. Also evidence that Travis was never charge with Accessory after the fact, for his allege conduct, by police officers. The Solicitor never moved to indict Travis Holcombe for accessory was clear proof Carinda Snowden testimony was not reliable or credible.

The Prosecutor used inconsistent theories in order to convict the applicant. The United States Supreme Court has stated that the Due Process Clause of the Fourteenth Amendment imposes on state duties consistent with their Sovereign obligation to ensure "that justice shall be done" in all criminal prosecution. Cone v. Bell, 129 S.Ct. 1769 (2009) (quoting Berger v. United States, 295 U.S. 78 (1935) See United States v. Agurs, 427 U.S. 97, 103.

[A] Conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury" (foot notes omitted).

Q. The applicant was force to stand trial. The prosecutor failed to give the applicant a offer plea offer for a lesser included offense. This violated the applicant Eighth Amendment, under the Equal Protection Clause, and his Fourteenth Amendment of the U.S. Constitution.

R. Bad Faith on part of the Coroner and detectives. There is evidence of a blood left on the bedroom window in the house where Antwan Bryant was murdered. [See Coroner's report attached to Amended Complaint mark as Exhibit # 8]

The Coroner also testified that there was blood left in one of the rooms at the Crime Scene. [See Second T.T page 526] This evidence was never collected and sent to SLED for testing. This evidence was never preserve and WAS destroyed. At Trial, Detective Angela Bunker testified that she was unaware of the blood left on a raise window inside the bedroom at the Crime Scene, so therefore the evidence was never disclosed. Collected and sent to SLED for testing. [See Second T.T pages 392-95]

RAE WOOTEN, the Coroner, testified that ~~detect~~ detectives were inside the bedroom when she took a picture of the blood that was on a raise window inside the bedroom at the Crime Scene. [See Second T.T. pages 526-28]

Angela Bunker was then called on the stand a second time, by the applicant, and was ask were she or any Detectives in the room where the Coroner found the evidence and she stated she wasn't aware of the blood that was left on a raised window inside the bedroom. [See T.T. page 576] [Also see diagram of 5061 delta street the state used mark as Exhibit # 9 as a clear sketch of the inside of Carinda Snowden home where Anthony Bryant was murdered] Even IF Detective Angela Bunker testimony is to be considered true, and the Coroner RAE Wooten failed to disclosed the blood on the raised window in the bedroom at the Crime Scene, her act was in bad faith because Coroners have a duty to gather evidence at the Scene of a Crime and preserve it for trial; However he may not withhold it from investigating officers. 1975-76 OPP atty Gen, No 4483, p 342.

ALSO 17-7-20 does provide for a Coroner to "go to the body and examine witnesses ... (and) ... take their testimony in writing ..." Therefore, in the absence of Cooperation with law enforcement, as a Coroner, you would be authorized to Complete your own investigation Separately. See The Honorable Sue R. Townsend 1994 S.C. OP. Atty Gen, 1994 S.C. OP. Atty: Gen. No. 2, 1994 WL 50409 (S.C.A.G)

Not only did the Coroner, Rae Wooten failed to collect evidence and preserve it, Detective Angela Bunker and NEPD acted in bad faith for failing to fully investigate the homicide. Angela Bunker has failed to collect evidence blood evidence left on the curtains, walls, and the bedroom. [See Original PCR application Form 5 10(d).] This violated the fundamental Fairness of the due Process Clause of the United States Constitution.

8-21-13

15/ Terrell McCoy
TERRELL MCCOY
PCI Co. X-9
430 Oaklawn rd
Pulker, SC 29669
PCR Applicant

Sworn or affirmed to and subscribed before me this
21st day of August, 2013.

Nancy M. Nighan
Notary Public
MY COMMISSION EXPIRES: 1-23-2027

page 6 of 6

848

State of South Carolina
County of Charleston

IN THE COURT OF COMMON PLEAS
NINTH CIRCUIT JUDICIAL COURT
CIVIL action NO.: 2013-CP-10-1994

Terrell L. McCoy, 256070
Applicant,

CERTIFICATE OF SERVICE

v.

State of South Carolina
Respondent,

2013 AUG 29 AM 11:58
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

pub

I, Terrell McCoy, Hereby declare that on August 23, 2013, I personally placed a Complete Copy of my Amended PCR Application, Exhibits, Motion to dismiss and Speedy trial Motion inside a legal envelope to be mailed Certified U.S. Postal Mail to the following address:

SC. Attorney General's Office

P.O. BOX 11549

Columbia, SC 29211

/s/ Terrell McCoy
PCI C.X. 9
430 Oaklawn rd
Pelzer, SC 29669

23rd day of August, 2013

dispatcher can track where the call was made, and get the call
caller name. This is why it was important that the Dispatcher was
Subpoena for trial.

CAD Operations Report

Exhibit

CITY OF NORTH CHARLESTON

Call Number

2006036162

Printed

04/05/2006 11:16 AM

Call Detail Information

Call Number	2006036162	Class	P	Taker	JFO	Pos	2	Call Owner		Status	C	Date - Time Received	Sat 03/25/2006 05:46:38	In	0
Complaint	C10	Ten Code	C10	Priority	1	ESN		Disp Zone	004	IRA		How Received	35		
Incident Location	5061 DELTA ST	Apart/Suite		Floor/Bldg		Incident City	NORTH CHARLESTON								
Caller Name		Fire Run Zone	35	Fire Grade		EMS Run Zone		Telephone	843	Tower ID		Jurisdiction	CONC		
Tract		Weapons													
☐ Images ☐ BOLO ☐ Warrant ☐ Medical ☐ Hazard ☐ Fire Plan ☒ Previous ☐ Subject Req															
Alt Time	Call Rec'd	Xmit	Dispatch	Enroute	On Scene	Departed	Arrived	Comp	Alarm Code	Unit					
00:00:00	05:46:38	05:48:04	05:48:16	05:48:36	05:50:58	08:22:52	08:25:44	13:27:39		169					

Narrative

[03/25/2006 07:37:41 : TDANIELE]
168 44 2215 MARGARET DR

[03/25/2006 06:48:14 : WHISENAA]
56 ADVD WILL FIND SOMEONE ELSE TO RESPOND

[03/25/2006 06:43:36 : WHISENAA]
ATTEMPTED TO CALL 140 AT HOME--NEG ANS....PAGED HIM AGAIN

[03/25/2006 06:41:24 : WHISENAA]
COUNTY 122 ADVD 1008

[03/25/2006 06:40:08 : WHISENAA]
COUNTY 122 1054 RIVERS/MALL X3 BM WITH HOODIE IN THE BACK SEAT CREAM COLORED CROWN
VIC SC 339SWT

[03/25/2006 06:37:44 : WHISENAA]
56 COPIED PAGE REF TO K9 CALL OUT

[03/25/2006 06:34:12 : WHISENAA]
82 ADVD TO CALL OUT K9 REF TO RUNNING A TRACK

[03/25/2006 06:31:52 : WHISENAA]
14 ADVD ALL UNITS GOING TO SPECIAL OPS 2 REF TO THIS

[03/25/2006 06:16:59 : WHISENAA]
RAYE WITH THE CORONER'S OFFICE CALLED IN ADVD SHE WOULD CALL 58 ON HIS CELL

[03/25/2006 06:12:06 : YOEMANF]
CHAPLIN NOTIFIED

[03/25/2006 06:09:36 : WHISENAA]

CITY OF NORTH CHARLESTON

Call Number

2006036162

Printed

04/05/2006 11:16 AM

CORONER OFFICE NOTIFIED

[03/25/2006 06:09:00 : WHISENAA]
82 ADVD TO NOTIFY CHAPLAIN AND CORONER

[03/25/2006 06:08:09 : WHISENAA]
NORTH STANDARD NOTIFICATIONS

[03/25/2006 06:07:51 : YOEMANF]
NORTH AREA AND YELLOW CAB ADV NEG

[03/25/2006 06:04:20 : WHISENAA]
14 COPIED VIA 1021

[03/25/2006 06:03:37 : YOEMANF]
POSS SECOND VICTIM NOTIFY HOSP AND CAB CO

[03/25/2006 06:03:05 : WHISENAA]
242 ADVD EMS 1023

[03/25/2006 05:59:30 : WHISENAA]
2 BMS BLK HOODIES ONE RAN DOWN DELTA TWDS RIVERS THE OTHER RAN THRU A YARD

[03/25/2006 05:59:27 : YOEMANF]
2 BM BLK HOODIES 1 RAN DOWN DELTA POSS TWDS RIVERS SECOND CUT THRU A YARD

[03/25/2006 05:56:52 : WHISENAA]
74 COPIED...ADVD HE WOULD GIVE 186 A 1021

[03/25/2006 05:54:26 : WHISENAA]
58 REQD ON SCENE DET SUPV

[03/25/2006 05:53:39 : WHISENAA]
NORTH S15 MEETING A 1033

[03/25/2006 05:53:14 : WHISENAA]
169 ADVD HAS PLENTY OF GUN SHELLS

[03/25/2006 05:52:44 : WHISENAA]
186 COPIED 1043

[03/25/2006 05:52:24 : WHISENAA]
SUBJ 1007

[03/25/2006 05:52:10 : YOEMANF]
C2 TO HEAD

[03/25/2006 05:52:08 : WHISENAA]
C2 TO THE HEAD

[03/25/2006 05:51:40 : YOEMANF]
EMS 76

[03/25/2006 05:51:37 : JFOWLER]
EMS 76

CITY OF NORTH CHARLESTON

Call Number

2006036162

Printed

04/05/2006 11:16 AM

[03/25/2006 05:51:36 : WHISENAA]
55 COPIED AND 24 COPIED

[03/25/2006 05:51:01 : YOEMANF]
NORTH 1033

[03/25/2006 05:49:49 : WHISENAA]
242 C7

[03/25/2006 05:49:14 : JFOWLER]
FEMALE CALLED ADV HEARD SOMEONE BANGING ON THE DOOR AND THE DOOR FLEW OPEN AND A
BM WAS C2D SHE DOES NOT KNOW WHO HE IS

[03/25/2006 05:49:00 : WHISENAA]
58 COPIED

[03/25/2006 05:48:04 : JFOWLER]
Cross streets: REBECCA ST//WILLIS DR

NBH:RUSSELDALE
FEMALE IS 1023 AT THE NEIGHBORS ADVISING SHOTS FIRED AND POSS SOMEONE IS C2D AT HER
RESID

Press Release Notes

Location Comment

Department/RMS OCA Numbers

Department	OCA Number	RMS Jurisdiction
NCPD	2006010576	SC0100800

Call Dispositions

Date - Time	Disposition
2006/03/25 13:29:07	WRITTEN REPORT TAKEN

Call Complaints

Date - Time	Complaint	Action By
3/25/2006 05:59:53	1087	JFOWLER

CITY OF NORTH CHARLESTON

Call Number

2006036162

Printed

04/05/2006 11:16 AM

Call Log

Unit	Status	Date - Time	Dept	Type	Comments	Officers	Odometer
169	DIS	3/25/2006 05:48:16	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	ROY	0.0
242	DIS	3/25/2006 05:48:17	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	ARMSTEAD, D	0.0
169	ENR	3/25/2006 05:48:36	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	ROY	0.0
242	ENR	3/25/2006 05:48:37	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	ARMSTEAD, D	0.0
228	ENR	3/25/2006 05:48:45	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	WEBB	0.0
186	ENR	3/25/2006 05:50:04	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	BUNKER,	0.0
82	ENR	3/25/2006 05:50:41	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	THOMAS	0.0
169	ONS	3/25/2006 05:50:58	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	ROY	0.0
242	ONS	3/25/2006 05:51:00	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	ARMSTEAD, D	0.0
217	ONS	3/25/2006 05:51:20	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	WILSON	0.0
228	ONS	3/25/2006 05:52:30	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	WEBB	0.0
82	ONS	3/25/2006 05:53:24	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	THOMAS	0.0
186	ONS	3/25/2006 05:55:06	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	BUNKER,	0.0
58	ONS	3/25/2006 06:02:12	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	HARDEE, SGT	0.0
14	ENR	3/25/2006 06:04:24	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	TETANICH	0.0
74	ENR	3/25/2006 06:08:00	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	HALLMAN	0.0
7	DIS	3/25/2006 06:11:45	NCPD	SHE	5061 DELTA ST, NORTH CHARLESTON	KINARD	0.0
7	ENR	3/25/2006 06:11:48	NCPD	SHE	5061 DELTA ST, NORTH CHARLESTON	KINARD	0.0
14	ONS	3/25/2006 06:13:12	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	TETANICH	0.0
14	ONS	3/25/2006 06:13:14	NCPD	POL	5061 DELTA ST, NORTH CHARLESTON	TETANICH	0.0
22	DIS	3/25/2006 06:15:07	NCPD	SHE	5061 DELTA ST, NORTH CHARLESTON	BOLLINGER	0.0
22	ENR	3/25/2006 06:15:09	NCPD	SHE	5061 DELTA ST, NORTH CHARLESTON	BOLLINGER	0.0
178	DIS	3/25/2006 06:18:34	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	PATRICK, S	0.0
160	DIS	3/25/2006 06:18:43	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	ELMORE	0.0
152	DIS	3/25/2006 06:18:54	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	HILL	0.0
74	ONS	3/25/2006 06:20:55	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	HALLMAN	0.0
178	ENR	3/25/2006 06:22:25	NCPD	FRE	5061 DELTA ST, NORTH CHARLESTON	PATRICK, S	0.0
7	ONS	3/25/2006 06:27:01	NCPD	SHE	5061 DELTA ST, NORTH CHARLESTON	KINARD	0.0
7	ONS	3/25/2006 06:27:02	NCPD	SHE	5061 DELTA ST, NORTH CHARLESTON	KINARD	0.0

CITY OF NORTH CHARLESTON

Call Number 2006036162

Printed 04/05/2006 11:16 AM

Unit	Dept	DIS	ENR	ONS	LEF	ARR	BUS	REM	COM
14	NCPD		06:04:24	06:13:12				09:46:11	
140	NCPD	06:43:49		07:27:56				06:48:27	
152	NCPD	06:18:54	06:48:50						13:27:39
160	NCPD	06:18:43	06:50:41		08:22:52	08:25:44			13:27:39
168	NCPD		06:51:47	07:04:12					13:27:39
169	NCPD	05:48:16	05:48:36	05:50:58				07:45:07	
173	NCPD			07:40:33				08:44:18	
178	NCPD	06:18:34	06:22:25	06:57:28				09:40:18	
186	NCPD		05:50:04	05:55:06					13:27:39
217	NCPD			05:51:20				07:46:22	
22	NCPD	06:15:07	06:15:09	06:38:18					13:27:39
228	NCPD		05:48:45	05:52:30				06:31:59	
237	NCPD			07:40:31				11:32:33	
242	NCPD	05:48:17	05:48:37	05:51:00					13:27:39
49	NCPD		06:27:12	06:41:52					13:27:39
58	NCPD			06:02:12				08:14:25	
7	NCPD	06:11:45	06:11:48	06:27:01				10:00:24	
74	NCPD		06:08:00	06:20:55					13:27:39
82	NCPD		05:50:41	05:53:24				07:17:35	

Category: Last Name First Name Middle Name Suffix
 Race Sex Ethnic Height Weight Age DOB OLN
 Business Name Description

Call Subject Statistics

Question

Answer

SUBPOENA IN A CRIMINAL CASE

Exhibit # 2

SOUTH CAROLINA GENERAL SESSION COURT		COUNTY: CHARLESTON	
THE STATE OF SOUTH CAROLINA		CASE NO. 2006-GS-10- 4987	
v. Terrell McCoy		SUBPOENA FOR ☒ PERSON ☒ DOCUMENT(S) OR OBJECT(S)	
TO: Pfc. J. Fowler N. Charleston P. D. 4900 Lacross Rd., N. Charleston, S. C. 29405 554-5700			
PLACE		COURTROOM TBA GENERAL SESSIONS	
CHARLESTON COUNTY JUDICIAL CENTER 100 BROAD STREET CHARLESTON, SOUTH CAROLINA 29401		DATE AND TIME: Week of February 2, 2009 09:00am And all subsequent dates until case is disposed of.	
YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).			
LIST DOCUMENT(S) or OBJECT(S) Upon receipt of this subpoena, please call Inv. Verdell Young, 958-1866 (DL) or 509-7557 (Cell), leaving a contact number where you could be reached. Case Number: 2006010576 * PLEASE NOTE: TELEPHONE STANDBY - In order to inconvenience you as little as possible, please call the Public Defender's Office (843 958-1850) at 9:00am and 1:00pm on the date stated above, and each day thereafter, until this case is called for trial for further information as to the time when you are needed in court for your testimony.			
UPON ARRIVAL ON COURT DATE, REPORT TO THE PUBLIC DEFENDER'S OFFICE			
This subpoena shall remain in effect until you are granted to depart by the court or by an officer acting on behalf of the court.			
CLERK OF COURT		DATE	
<i>Julie J. Armstrong</i>		January 28, 2009	
(BY) DEPUTY			
<i>Ronald J. Beyer</i>			
This subpoena is issued upon application of the ☐ SOLICITOR ☒ DEFENDANT		ATTORNEY'S NAME AND ADDRESS Prose Terrell McCoy Lorrell Proctor ASSISTANT PUBLIC DEFENDER CHARLESTON COUNTY PUBLIC DEFENDER'S OFFICE O.T. Wallace County Office Building 101 Meeting Street, 5 th Floor Charleston, South Carolina 29401-2214 (843) 958-1850	

Exhibit #3

August 2, 2013

Terrell McCoy, #256070
PCI C X 9
430 Oaklawn Road
Pelzer, SC 29669

Re: FOIA

Dear Mr. McCoy,

I am in receipt of your second FOIA request regarding the identification of a North Charleston Police Officer named James or J. Fowler. The documents I previously sent to you indicated that there was no active officer named Fowler in 2009. However, in speaking with a clerk from Human Relations, I learned that dispatchers have a different classification. While they technically fall under the North Charleston Police Department, they are considered civilian employees. We did have a female dispatcher named Jenie Fowler who was employed in 2009. She did not appear in the first search because that search was for police officers only and did not include any civilian employees. I hope this information is helpful to you. Ms. Fowler is no longer an employee of the North Charleston Police Department. She is currently employed by Charleston County in the Consolidated Dispatch Center.

Sincerely yours,



Beth Woodall
Legal Department

TBW/hs

City of North Charleston
Active Law Enforcement Officers
February 2009

Exhibit 4

Employee Name
ADAMS BRIAN R
AIKEN II MICHAEL W
ALLEN BRANDON S
ALLEN DARRYL L
AMON ROBERT J
ARMSTEAD ARTHUR D
ARNETTE KELLY S
ARROYO CHRISTOPHER D
ASARO KIMBERLY J
ASARO MICHAEL A
BAILEY DANIEL S
BAILEY JR ROBERT F
BARFIELD WILLIAM J
BARRUS BRUCE A
BAUER RANDALL F
BAUER SEAN R
BAZZLE JR LOUIS
BEACHAM DANNY R
BELL JASON B
BENNETT JR THOMAS E
BLAIR TIMOTHY J
BOLLINGER II DAVID W
BOONE WALTER G
BORDALLO CINDY
BOUSQUET LISA M
BOWMAN DANIEL L
BOYLAN KEITH J
BRAZELTON GWENDOLYN P
BRAZIL LARRY M
BROWN JR HAROLD N
BROWN TIMOTHY
BULLARD JR CHARLES E
BUMEDER SHARON S
BUNKER WILLIAM M
BURDETTE JOSHUA O
BURGESS I REGINALD L
BURNEM JONATHAN L
BURNEM KELLY A
BUSKIRK VICTOR D
BUTLER CHRISTOPHER T
CAMP JAMES M
CATO RYAN M
CERONE JOSHUA J
CERONE TIREKA L
CHAMBERS BRIDGET A
CHAMPION III CHARLES N
CHEATLE DAVID S

City of North Charleston
Active Law Enforcement Officers
February 2009

Exhibit # 5

CLARK DAVID W
CLAYTON II DENVER L
COBB DARIN A
COKER ROBERT A
CONNELLY BRIAN G
COOK MICHAEL C
COOPER MICHAEL D
CORDRAY KAREN R
COX SUSAN A
CRAVEN DANIEL T
CUMBEE JR MELVIN R
CUMMINS LUCAS G
DALTON JEREMY W
DANDRIDGE JASON T
DANIELE ANTHONY J
DASHNAW PAUL D
DEAN DEANGELO L
DEAN II BILLY R
DEATON ANDREW G
DECKARD THOMAS S
DECORTE JASON L
DESHEERS JEROME N
DILDINE SHANNON E
DIPAULO ANTHONY C
DOXEY JR ANTHONY M
DRIGGERS TAMARA D
ELMER ANGELA S
ELMORE KEITH P
EVANS JR MARK L
EVANS STEVEN M
FAISON OLENTIAL J
FLEMING DAVID L
FOGLE JUSTIN B
FORSYTHE JASON K
FORTE RYAN N
FOSTER JAMEL C

County of Charleston
State of South Carolina

-v-

4th Judicial Circuit
Warrant No. 01 F969254
Charge: Murder

EXHIBIT #6

Terrell Lynwood McCoy
Defendant

2009 JAN 15

JULIE
CLERK OF COURT

FILED
To Compell Evidence Pursuant to
SC Rules of Criminal Procedure - Rule 5 and 6

I, Terrell McCoy the Defendant request that the Solicitor produce or otherwise make available to the Defense all document of evidence recovered, and sent off to SLED for DNA Testing. I NEED ALL SLED REPORTS, of ALL DNA Testing pursuant to case # 2006010576. Defendant also request that the Solicitor produce all Favorable evidence, subject to disclosure pursuant to Brady v Maryland, 373 U.S. 83 (1963) and its progeny, Like for instance, The Contaminated evidence exhibit(s) 1-13, That was withheld during the 1st trial, and all evidence collected at the crime scene. Marriage License Reports of Cerenda Snowden and Her Criminal Background History. Further more, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, Defendant objects to the Introduction of a Chemist's or Analyst's report without such person being personally present at trial. Defendant also request the appearance in Court of person within the chain of custody of all physical evidence.

This motion is made for Urgent, because Trial is scheduled for Feb 2nd 2009, and defense need time to study all document and prepare a defense.

This is the 2nd Request, The Defendant requested the Solicitor to produce evidence favorable to the Defendant subject to disclosure pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.

Date:

1-10-09

Respectfully Submitted,

Terrell L. McCoy

Terrell L. McCoy

Self Representative Litigant

I hereby Certify that this Motion to Compell Evidence was served on the Solicitor for the Ninth Judicial Circuit on 1/10/09

COPY

Page: 1 of 23

Patient: BRYANT, ANTWAN O
Med Rec: 32506AUT
DOB: 12/22/1982 Age: 23 years
Sex: Male Race: Black
ACCESSION: FA-08-00189
Date Received: 3/25/2006
Date Collected: 3/25/2006

Forensic Autopsy - Final Report

CASE HISTORY

According to the coroner, the decedent was a 23-year-old black male who was found dead in the early morning (around 5:45 a.m.) of March 25, 2006, by a woman who had been asleep in the bedroom of the same house. He was lying on his left side on the living room floor, with multiple gunshots to the head, chest, and pelvis; a large pool of blood was around his head. The woman had heard yelling and banging, which had apparently awakened her; when she went to investigate, she found this man, who she had reportedly "seen a few times" but who was otherwise unknown to her. According to the police, the residence was a known drug house, and a volley of gunshots had occurred earlier, two doors down from the house in which the decedent was found. Nine-mm shell casings were discovered at the other house, as well as at the scene. Five shell casings were at the scene, as were as two projectiles, one of which was on the floor against the wall, and one of which had apparently passed through the sofa before landing on the floor. The police noted that the decedent had a wound (possibly defensive) to his right hand. A drug scale was wrapped in a bloody jacket near the decedent in the living room. The woman stated that she had run to the neighbor's to call the police, and the police had arrived at the scene at approximately 5:50 a.m. on March 25, 2006. The decedent had not been identified prior to the autopsy (but identity was determined during the autopsy).

A complete medicolegal investigation was authorized by the Charleston County Chief Deputy Coroner, Ms. Rae Wooten, and was performed at the Medical University of South Carolina on March 25, 2006.

Department of Pathology and Laboratory Medicine
Forensic Pathology

Chair: Janice M. Lage, M.D.

Director: Kimberly A. Collins, M.D.

Forensic Pathology Phone: 843-792-3500

Forensic Pathology Fax: 843-792-3537

RULE 5

Charleston County Coroner's Office
Coroner's Report

Exhibit #8

Case#: 2006200010

Type of Death: HOMICIDE

DOD: March 25, 2006

On Saturday, March 25, 2006 that the Charleston County Coroner's Office was notified by EMS and subsequently North Charleston Police of a shooting death on Delta Street in North Charleston, SC. I responded to the incident location where I met with law enforcement officers who reported that the initial investigation indicated that a female resident of the residence reported hearing a fight outside shortly before her front door was kicked in and she heard gunshots. She found a black male lying unresponsive on the living room floor and called 911. I observed the body of a black male lying on his right side on the living room floor with blood spatter widely distributed in the room. He was dressed in red and white athletic shoes, white socks, black and red nylon pants and jacket with a white tee-shirt underneath. He wore a gold colored bracelet on his left wrist and had gold colored earring in his ears. There was a large amount of clotting blood under his head and it was obvious that he had a gunshot wound to the right groin, the left buttock, the chest, the right lower back and the right jaw area. He also had a large wound to the back of the right hand. When the body was moved a piece of plastic was noted under the head which was found to contain what appeared to be crack cocaine. There was a jacket noted on a nearby sofa which reportedly belonged to the decedent and I was told that prior to my arrival there had been a scale sitting on top of it. In the bedroom of the residence there was blood noted on the curtains in front of an open window leading into the backyard in addition to some blood smear on the doorway.

After the body and the scene were photographed and an a preliminary examination completed the body was transported by Carolina Funeral Services to MUSC for autopsy and the forensic pathologist was provided with pertinent information. An autopsy was performed which revealed that the decedent died as a result of multiple gunshot wounds and the manner was ruled homicide.

The decedent was fingerprinted at the scene and identified as Antwan Bryant, 23 years of age and following identification notification was made to his mother, Sherry Mack. Following autopsy the body was released to North Area Funeral Home at the request of the family.

On Monday, March 27, 2006 Terrell McCoy turned himself into North Charleston Police in regard to the shooting death and he was charged with murder.

Rae H. Wooten, Chief Deputy Coroner

RULE 5