

VOLUME II of II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Marion County

S.C. SUPREME COURT

Honorable Michael G. Nettles, Circuit Court Judge

EDWARD W. STACKHOUSE JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002169

APPENDIX

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EDWARD STACKHOUSE - DIRECT BY MR. WALLER

1 -- we did touch bases a little bit on the autopsy report and,
2 at the time, I believed -- I thought maybe Sharon could have
3 gotten hit while I was swinging.

4 So I tried to explain to Scott maybe that Sharon could
5 have sustained her injury from me swinging the knife,
6 according to the way the autopsy report was, but after
7 examining the autopsy report, I saw that that was
8 scientifically impossible because the parts that she named,
9 none of those parts are lined straight up in a row. So she
10 couldn't have got hit the way the autopsy -- I mean the
11 pathologist said she did when I checked the charts.

12 I also wondered why they didn't have a chart presented
13 in court to show, you know, the organs or the parts that was
14 hit by the knife. So I --

15 Q: Okay. And let me just be clear. Let me just clarify so
16 that the judge understands. You're not challenging how your
17 wife died?

18 A: No. No.

19 Q: Okay. You think that there should've been a challenge
20 to the credibility of the pathologist?

21 A: That's right. I think he -- he should have -- if he had
22 investigated, he -- he could have discredited her with the --
23 the wound path.

24 Q: Okay.

25 A: Uh-huh.

EDWARD STACKHOUSE - DIRECT BY MR. WALLER

1 Q: And that would have gone to just the overall case?

2 A: You know, as far as --

3 Q: To the credibility of the case?

4 A: Yeah. As far as -- because it wasn't no need to
5 challenge the manner of death because another autopsy would
6 have had to have been done.

7 Q: Okay. All right. Mr. Stackhouse, you mentioned earlier
8 that one of the things missing from your Rule 5 was a
9 statement of the -- the other victim in this case, Daquan?

10 A: Yes. Daquan -- he made a statement -- well, first can I
11 -- can I start with the solicitor opening up that Daquan

12 B. and William Brock saw me going past -- going to the
13 kitchen and coming back from the kitchen and going into their
14 mother's room. That was never mentioned. It wasn't in my
15 written statement. I didn't know anything about it.

16 So I was wondering why Mr. Scott didn't object to the
17 opening statement as well, and that was day one. Okay? Day
18 two -- I mean day three, Daquan gets up on the stand and my
19 lawyer cross-examined him according, you know, to that part
20 of the statement and he said that was the first time Daquan
21 had ever stated that.

22 So my question was, well, if Daquan never said that and
23 he said he wrote it and it was never -- he never told
24 anybody, well, how did the solicitor know to open up with it
25 on day one if it was never said and the first time it was

EDWARD STACKHOUSE - DIRECT BY MR. WALLER

1 mentioned on day three.

2 Q: So there were things that were not disclosed to the
3 defense?

4 A: That's correct.

5 Q: About his statement or the contents of his statement
6 that you never had?

7 A: That's right.

8 Q: Okay. And there were things that were testified to at
9 trial that were inconsistent with his statement as well?

10 A: That's right.

11 Q: Okay. And you believe that your attorney should've
12 objected to those?

13 A: I believe he should have objected and it should have
14 been a more adequate cross-examination as far as the witness
15 is concerned.

16 Q: Okay. Is there anything else you think was left out of
17 the discovery that you received?

18 A: Out of my motion of discovery, no. The main things I
19 was concerned with, like I said, was the photographs --

20 Q: Okay.

21 A: -- for me to inspect. And if -- if Mr. Floyd has showed
22 me the photographs, maybe I could've helped him, you know,
23 assist him a little bit better.

24 And I do have one more concern is there was a lot of
25 times where Mr. Floyd -- he just missed, you know, his chance

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1 to impeach as far as the police officers.

2 There was Mr. Alfred, one of the officer's name was
3 Alfred. He said he walked in, there was a long-bladed
4 butcher knife in front of the couch. He said he picked it up
5 and he maintained it because it posed a threat to him and
6 anybody else coming behind him. So one of the first things
7 he done was he put that in an evidence bag and he maintained
8 it the whole time.

9 Well, Chief Bethea -- well, he's chief now. He said he
10 came on the scene eleven officers later and the knife was --
11 it was on the floor. And I felt like Mr. Floyd could've
12 impeached -- used one to impeach the other, but how did the
13 knife get back on the floor?

14 We have no pictures of the knife. You said this is my
15 knife. My DNA is not on the knife, but it's just my wife and
16 my son's DNA, which we all know that DNA is transferable.

17 And there was -- even Ms. Gorham, she said she never saw
18 the knife. She said she only received a swab from the knife
19 when they swabbed the knife down. And there was a time I
20 thought he should object to her when Ed Clements said, well,
21 that was all the DNA on the knife and she said, yes, and I
22 believe at that time he should've objected because she never
23 saw the knife. She only received the swab.

24 Q: Okay. I want to go back to something you mentioned
25 earlier. You said that your theory was self-defense and

EDWARD STACKHOUSE - DIRECT BY MR. WALLER

1 that's what you -- that's what you believed --

2 A: Right.

3 Q: -- was the -- was the case?

4 A: Right.

5 Q: Did you and Mr. Floyd ever discuss raising self-defense?

6 A: We -- we went over it, but I don't think we really
7 talked strategy. I just -- I just don't remember us really
8 going into -- I mean if he did, I don't recall it right at
9 this moment. I don't recall him coming up with much trial
10 strategy. Like I said, he only came to see me twice.

11 Q: Okay.

12 A: That I can remember.

13 Q: Self-defense was raised or was presented to the jury,
14 charged by the judge to the jury; is that right?

15 A: Yes. And that was thanks to the -- the judge's clerk.
16 She argued.

17 Q: Okay. You mentioned the toxicology report earlier.

18 Okay. Did you and Mr. Floyd ever discuss any history of
19 violence or any history of depression that your wife may have
20 had?

21 A: No.

22 Q: Okay. It was never discussed by y'all?

23 A: No. And far as the toxicology report, the judge gave
24 instructions on the toxicology report, the toxicology as
25 well. He instructed the jury that they could consider the --

EDWARD STACKHOUSE - DIRECT BY MR. WALLER

1 the intoxication of the victim, and for some reason Mr. Floyd
2 did not put up a defense as far as that. He didn't introduce
3 the toxicology report or subpoena the toxicologist.

4 Q: Okay. Mr. Stackhouse, I've asked you all the questions
5 that I have for you.

6 A: Uh-huh.

7 Q: Can you think of anything I have left out that the judge
8 needs to be aware of Mr. Floyd's representation of you?

9 A: Excuse me?

10 Q: Is there anything you think I've left out that the judge
11 needs to be aware of, any other issues that you think I've
12 missed?

13 A: I believe you crossed it, but Mr. Clements had vouched
14 or bolstered Daquan -- I mean the witness's testimony. He
15 misled the jury. He told the jury that they were -- there's
16 nothing to show that they were lying because they're not
17 lying, they told the truth, and that was misleading because
18 we had statements that were inconsistent, as well as, like I
19 said, the bedroom picture. The jury was led to believe that
20 everything that they was told was the truth.

21 And also, he failed to impeach, like I said, the police
22 department. Chief Davis stated during the Jackson v. Denno
23 hearing that the only thing I had asked him was did anybody
24 survive, and they asked him did he ask any more questions.
25 He said no, there were no additional questions.

EDWARD STACKHOUSE - DIRECT BY MR. WALLER

1 During trial before the jury, he said there was another
2 question. He asked me was it Sharon Stackhouse. I guess he
3 was trying to put out there is if I knew I had stabbed my
4 wife.

5 Q: Mr. Stackhouse, maybe I didn't ask a very good question,
6 and I apologize. Is there anything that occurred between you
7 and Mr. Floyd, conversations or anything like that, that the
8 judge needs to be aware of?

9 A: No. I believe I got it on record as far as --

10 Q: Okay.

11 MR. WALLER: All right. I don't have any further
12 questions for you. Please answer any questions Ms.
13 McCallister has.

14 THE APPLICANT: Okay. Oh, can I also get on record too
15 that Mr. Clements repeatedly gave his opinion as far as what
16 he believed happened, and I thought he should've objected to
17 that as well.

18 MR. WALLER: Thank you, Mr. Stackhouse.

19 THE COURT: Cross-examination, Ms. McCallister?

20 MS. MCCALLISTER: Your Honor, I don't think I have any
21 questions for this witness.

22 THE COURT: You may step down.

23 You may call your next witness.

24 MR. WALLER: Your Honor, the applicant would call Scott
25 Floyd. I think we --

1 THE COURT: I'll tell you what. We're going to take a
2 recess, and we'll be back at one o'clock and we'll stand at
3 ease until then.

4 MR. WALLER: Thank you, Your Honor.

5 (WHEREUPON, there was a break in the proceedings from
6 11:22 a.m. until 1:02 p.m., after which the proceedings
7 resumed as follows.)

8 THE COURT: Good afternoon, everybody. All right. You
9 may call your next witness.

10 MR. WALLER: Your Honor, I beg the Court's indulgence
11 just one second.

12 THE COURT: Yes.

13 MR. WALLER: Your Honor, I would call Scott Floyd.

14 THE COURT: All right. Mr. Floyd, please come forward
15 and place your left hand on the Bible and raise your right
16 hand as the clerk administers the oath.

17 MR. WALLER: Your Honor, before I would call Mr. Floyd,
18 I would offer, I think without objection, Applicant's Number
19 1. It's a series of letters that was testified to written by
20 Mr. Stackhouse to Mr. Floyd and back.

21 THE COURT: Any objection?

22 MS. MCCALLISTER: Without objection, Your Honor.

23 THE COURT: All right. They're into evidence.

24 (WHEREUPON, Applicant's Exhibit Number 1, letters, was
25 admitted into evidence.)

SCOTT FLOYD - DIRECT BY MR. WALLER

1 THE CLERK: Do you swear the testimony you give in this
2 case will be the truth, the whole truth, and nothing but the
3 truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Please be seated and state your name for the
6 record.

7 THE WITNESS: My name is Scott Floyd.

8 SCOTT FLOYD, being first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. WALLER:

12 Q: Good afternoon, Mr. Floyd. How are you today?

13 A: I'm fine. I hope you are.

14 Q: Yes, sir. Mr. Floyd, how did you come to represent
15 Edward Stackhouse?

16 A: My office was appointed to represent him.

17 Q: Okay. Do you recall if you were his first attorney?

18 A: I don't recall.

19 Q: Okay. Do you -- do you recall when you first met
20 Edward?

21 A: Yeah. I mean I remember going to the jail to -- to meet
22 with him.

23 Q: Okay. When you were first appointed to represent him,
24 was he charged with all of the offenses that he ultimately
25 went to trial for?

SCOTT FLOYD - DIRECT BY MR. WALLER

1 A: I don't remember if there were any direct counts on the
2 indictment or not. I don't know. I don't remember the
3 specific warrants.

4 Q: Okay. What's your understanding of the allegations of
5 the State against Mr. Stackhouse?

6 A: Murder, I think attempted murder, possession of a weapon
7 during the commission of a violent crime.

8 Q: Factually, what was -- what was the State's allegations?

9 A: Oh. Briefly, I mean they alleged that he used a knife
10 and stabbed two victims, one of whom died and the other had
11 to be treated for injuries.

12 Q: Okay. When you met with Mr. Stackhouse, did y'all have
13 an opportunity to discuss any potential defenses?

14 A: Yes.

15 Q: Do you remember what y'all came up with?

16 A: I mean Edward had given a statement or Mr. Stackhouse
17 had given a statement to Mullins Police Department, and what
18 he told me was pretty much consistent with that statement.

19 Q: Okay. Have you had a chance to review your file prior
20 to coming here today?

21 A: I glanced at it. I didn't -- I didn't read the whole
22 thing.

23 Q: Do you have it here with you today?

24 A: It's up in my -- down in my office.

25 Q: Okay. When you and Mr. Stackhouse were preparing for

SCOTT FLOYD - DIRECT BY MR. WALLER

1 trial, do you recall any discussions that y'all had?

2 A: I mean I remember discussing what happened.

3 Q: Okay. Did any of those turn into any potential defenses
4 that you might have?

5 A: Basically, that it was an accident. He -- he said that
6 he and the female victim were arguing -- okay? -- in a room
7 and that her son, who was -- I can't remember how old he was,
8 but he was fairly young. I mean he was -- I don't remember
9 if he was a teenager yet or if he was 12, 13, 14, somewhere
10 in there, I guess. But he ran in and jumped on his back and
11 he fell on the floor. There was a knife laying there.

12 Somehow or another, he picked it up and was just kind of
13 flailing his arms. And during that process, two people got
14 stabbed.

15 Q: Okay.

16 A: In other words, he didn't intentionally stab them.

17 Q: Okay. What, if any, investigation did you do into, I
18 guess, the victim, the female victim in the case, as far as
19 what -- what they had been doing the night before or just any
20 of her background?

21 A: If I recall, he told me that, I think, both of them had
22 been drinking and, I think, to my recollection, he said so in
23 his statement.

24 Q: Okay.

25 A: I mean --

SCOTT FLOYD - DIRECT BY MR. WALLER

1 Q: As y'all got ready for trial, what -- what did your
2 preparation look like? What did you do to prepare for the
3 trial?

4 A: Well, obviously, I talked to Mr. Stackhouse. I read
5 through the, you know, discovery. Of course, you know, I
6 would have done that more than one time, I'm sure. That sort
7 of thing and watched the statement that he gave, which --
8 which was on video.

9 Q: Okay.

10 A: And audio. And then there was a -- I think there was a
11 CD from the -- the housing area that showed, like, a -- I
12 think it was black-and-white, if I recall.

13 Q: Surveillance video?

14 A: Surveillance, yeah.

15 Q: Okay.

16 A: Yeah.

17 Q: Did you have an opportunity to view that prior to the
18 trial?

19 A: Yes.

20 Q: Okay. Did you have a chance to review it with Mr.
21 Stackhouse?

22 A: Yes. We -- I know we watched the statement together,
23 and it seems like that the surveillance video -- we had some
24 sort of technical issue with that because it was on a -- I
25 used a laptop to go -- to show him the -- his statement. And

SCOTT FLOYD - DIRECT BY MR. WALLER

1 it seems like the first time when I went and tried to plug in
2 the surveillance video, it seems like it was not formatted
3 properly. I do remember having a problem with that.

4 Q: Okay.

5 A: In the -- the PCs in the office, when you put it into
6 the hard drive, it --

7 Q: It just works?

8 A: It worked, but in the laptop, it did not. But I do
9 remember having that issue with him, and I can't -- you know,
10 I don't remember. I know I talked to him about it and,
11 basically, what it showed was him leaving the -- the area.

12 Q: Okay. And I know it has been some time.

13 A: Right.

14 Q: I understand it's almost six years.

15 A: Yeah. And I just can't -- I can't specifically
16 remember, you know, what we did about it afterwards.

17 Q: Okay. Did you have an opportunity to go over any of the
18 medical testing or forensic testing that had been done in the
19 investigation?

20 A: I received reports on the -- I guess whatever SLED did.
21 You know, I got it, and then, of course, I think there was an
22 autopsy report --

23 Q: Okay.

24 A: -- that I got.

25 Q: Did you have an opportunity to go over with Edward, Mr.

SCOTT FLOYD - DIRECT BY MR. WALLER

1 Stackhouse, the statements of other victims or other
2 witnesses?

3 A: I'm sure I did, yes.

4 Q: Okay. Do you recall specifically any other preparation
5 that you did leading up to walking into court to start the
6 trial?

7 A: I don't recall any of it.

8 Q: Okay. Do you have a copy of the transcript?

9 A: There's one right there.

10 Q: All right.

11 MR. WALLER: Your Honor, may I approach the witness?

12 THE COURT: Sure.

13 BY MR. WALLER:

14 Q: All right. Mr. Floyd, do you -- you testified a minute
15 ago that you recall there was DNA testing done?

16 A: Uh-huh.

17 Q: Do you recall if you ever spoke with the DNA expert from
18 SLED?

19 A: No.

20 Q: Okay. Do you recall if there was any touch DNA tested
21 or anything like that?

22 A: No.

23 Q: Okay. If I can get you to turn to page 92 for me?

24 A: Uh-huh.

25 Q: And just -- I'm not sure how your copy is numbered.

SCOTT FLOYD - DIRECT BY MR. WALLER

1 It's 92 of the transcript, not necessarily the record on
2 appeal. I think there's a bit of a discrepancy.

3 A: Okay. I'm on page 92.

4 Q: Does it start at the very top with the personal DNA
5 profile?

6 A: Yes.

7 Q: All right. That's where we need to be. Further down
8 the page beginning at line 16, this is the direct examination
9 of the DNA expert. The solicitor asks a question about touch
10 DNA?

11 A: Uh-huh.

12 Q: And then kind of leaves it alone?

13 A: Right.

14 Q: You don't ask any cross-examination questions. Was
15 there a --

16 A: Correct.

17 Q: Was there a strategy behind not questioning the expert
18 as to the lack of presence or presence of Mr. Stackhouse's
19 DNA?

20 A: Well, Mr. Stackhouse made a statement, which was
21 introduced in the State's case, if I recall, and basically it
22 consisted of what I just told you earlier about what he had
23 said happened. I think it was pretty consistent, and so I
24 mean he admitted that he had a knife in his hand and that he,
25 in fact, unintentionally stabbed two people.

SCOTT FLOYD - DIRECT BY MR. WALLER

1 Q: Okay.

2 A: So I mean --

3 Q: Did you and Mr. Stackhouse ever have a conversation
4 about a particular knife or that there was a discrepancy
5 amongst two different knives?

6 A: Well, when the trial was actually going on, they
7 introduced the knife into evidence. He said to me rather
8 loudly that that's not the knife. Yes.

9 Q: Okay. Did y'all ever discuss that prior to the
10 introduction?

11 A: No.

12 Q: Okay. If I could get you to turn to page -- I'm sorry
13 I'm going to jump around a little bit -- 349.

14 A: Uh-huh.

15 THE COURT: Was there a DNA result that connected him to
16 the knife?

17 MR. WALLER: Not on the knife that was tested, Your
18 Honor. It was positive for both victims' -- both victims'
19 DNA, but not --

20 THE COURT: Okay.

21 MR. WALLER: -- so far as I figured it out.

22 BY MR. WALLER:

23 A: Okay. I'm on page 349, and line 1 says hands, question
24 mark.

25 Q: Yes, sir.

SCOTT FLOYD - DIRECT BY MR. WALLER

1 A: Okay.

2 Q: Did you -- this was the ending of the cross-examination
3 of the -- the surviving victim --

4 A: Okay.

5 Q: -- Mr. Daquan B. .

6 A: Uh-huh.

7 Q: You testified earlier that you had an opportunity to
8 review the statement given to law enforcement prior to his
9 testimony?

10 A: Uh-huh.

11 Q: Was there a strategy behind not impeaching him with that
12 testimony or that prior statement? The inconsistencies?

13 A: Uh-huh. You know, the -- I remember that the -- I
14 remember him testifying, Mr. Brock, and I -- and the other
15 child apparently did too.

16 Q: Correct.

17 A: I don't remember much about the other child's, you know,
18 testimony, but during their testimony, of course, they were
19 recounting, you know, seeing their mother stabbed. And, of
20 course, Daquan -- I guess he's the one who was actually
21 injured, I think. He was recounting that incident and, you
22 know, they were very young and it came across as very
23 traumatic. You could see in the way the jury was reacting
24 and, frankly, I didn't want to beat them up and be overly
25 aggressive with them. I mean I didn't think it was going to

SCOTT FLOYD - DIRECT BY MR. WALLER

1 do --

2 Q: Even if --

3 A: -- a lot of good.

4 Q: -- there were significant inconsistencies in their

5 statements?

6 A: Well, I mean I don't remember exactly what I asked them

7 about or what the statements even say, to be honest with you.

8 So whatever it is in the transcript is what it is.

9 Q: Okay.

10 A: But . . .

11 Q: On that same page beginning at line 9 --

12 A: Uh-huh.

13 Q: -- continuing through line 11, did you have any reason

14 for not objecting to the solicitor's comments of, son, I'm so

15 sorry you had to be here, directed to Mr. Brock?

16 A: Huh-uh. No.

17 Q: Okay. If I can get you to back up in the transcript

18 just a little bit to page 331? This is William Brock.

19 A: Uh-huh.

20 Q: And I'll ask you the same question. Was there a trial

21 strategy behind not impeaching William Brock with his prior

22 statement?

23 A: It would be the same, I mean.

24 Q: Okay. Mr. William Brock testified -- testified that he

25 saw Mr. Stackhouse retrieve the knife. His statement was not

SCOTT FLOYD - DIRECT BY MR. WALLER

1 that he had ever seen a knife or that there was no knife?

2 A: Uh-huh.

3 Q: That inconsistency still -- your answer remains the
4 same?

5 A: Yes. I don't recall specifically what he said, but
6 whatever is in the transcript I'm sure is correct.

7 Q: Okay. Did you have any concerns that the new -- the
8 differences in their testimony had not been disclosed to you
9 prior to the trial?

10 A: If I recall, I got written statements, I think, from
11 both of them.

12 Q: Okay. The additional information or the different
13 information from their written statements, was that ever
14 disclosed to you?

15 A: When you say different information, you mean what they
16 actually testified to?

17 Q: Correct.

18 A: Before they testified?

19 Q: Yes.

20 A: No. I mean --

21 Q: Okay. Did -- did you file Rule 5 and Brady motions in
22 this case or did someone in your office?

23 A: Sure.

24 Q: Okay. Did it ask for the substance of the witness
25 statements?

SCOTT FLOYD - DIRECT BY MR. WALLER

1 A: Well, they sent me the actual statements that they had.

2 I'm assuming they sent me every statement that they had.

3 Q: All right. Do you recall the testimony of the paramedic
4 in this case?

5 A: No.

6 Q: The surviving victim was airlifted. Do you recall that?

7 A: Yes.

8 Q: Okay. If I can get you to turn to page 164?

9 A: Uh-huh.

10 Q: Now, let me ask it like this. Adam Rogers was the name
11 of the paramedic. He was never qualified as an expert in
12 anything. Based on your experience and your review, what --
13 what is a paramedic -- what level of expert testimony is a
14 paramedic able to give?

15 A: Well, I mean I think they can say, obviously, what they
16 observed and what they saw, but as far as giving a -- I guess
17 a medical opinion, they wouldn't be qualified to do that.

18 Q: Okay. Did you have any -- any concerns with comments
19 made? Page 164 beginning in line 18 and going through the
20 end of the page, do you have any concerns with the answer by
21 Mr. Rogers there?

22 A: Well, apparently, I didn't because I didn't object to
23 it.

24 Q: Okay.

25 A: I just read it. Uh-huh.

SCOTT FLOYD - DIRECT BY MR. WALLER

1 Q: Okay.

2 A: Yeah.

3 Q: Was there -- was there any strategy that you recall in
4 not objecting to that?

5 A: I mean I don't think he said anything that was not
6 consistent with the pathology report that she died from a
7 stab wound.

8 THE COURT: Why don't you -- why don't somebody tell me
9 what -- what the -- what was said?

10 MR. WALLER: Certainly, Your Honor.

11 And, Mr. Floyd, I believe this is the -- I apologize.

12 Judge, he -- just to read it into the record, beginning
13 on line 18 of page 164, the answer is:

14 As you see the stab wound, it appears to look not
15 as small as far as the outer appearance, but actually
16 what happens when it goes through, you have internal
17 organs and internal vessels and once it strikes, the
18 abdomen is very huge so it can hold a lot of blood. But
19 when it struck her, it hit her -- it most likely hit the
20 heart and major blood vessel and, when it did, it caused
21 rapid bleeding and the middle of the -- the heart to
22 pump, continuing onto the next page.

23 BY MR. WALLER:

24 Q: Mr. Floyd, if I can get you to turn over to page 167?

25 A: Uh-huh. Okay.

SCOTT FLOYD - DIRECT BY MR. WALLER

1 Q: And essentially, beginning on line 19 there, is that
2 kind of the same?

3 MS. MCCALLISTER: What page are you on?

4 MR. WALLER: 167.

5 BY MR. WALLER:

6 A: Okay.

7 Q: And continuing onto the next page through line 7, I
8 believe.

9 A: Okay.

10 Q: Did you have any concern over what appears to be a
11 medical diagnosis made?

12 A: No. I mean I didn't lodge any objections to it.

13 Q: Okay.

14 MR. WALLER: And, Your Honor, for the record, the
15 question on line 19 is tell us about the injury to the neck.

16 The answer beginning on line 20 is:

17 The neck area of the stab wound appeared to be
18 downward in motion. With the neck, you have vertebrae,
19 which is the cervical area which is located back here.
20 Any damage to a vertebrae and C1, cervical one or
21 cervical two, can cause paralysis of the entire body.
22 It also can make you quit breathing.

23 So we were concerned about that. So any movement,
24 if he had any damage to his neck, if he would've moved
25 his neck or anything, you run the risk of then having

SCOTT FLOYD - DIRECT BY MR. WALLER

1 cervical damage with a child being paralyzed for the
2 rest of his life or the child could have quit breathing
3 due to cervical fracture and death is imminent after
4 that.

5 BY MR. WALLER:

6 Q: All right. Mr. Floyd, do you recall any issues during
7 the solicitor's closing argument that would have caused you
8 to object?

9 A: I don't recall anything specifically, but . . .

10 Q: Okay.

11 MR. WALLER: I beg the Court's indulgence, please.

12 THE COURT: Yes.

13 MR. WALLER: Nothing further. Please answer any
14 questions Ms. McCallister may have.

15 THE COURT: Ms. McCallister, cross-examination.

16 MS. MCCALLISTER: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. MCCALLISTER:

19 Q: Mr. Floyd, do you recall -- I think you -- you testified
20 that you were -- you were appointed on this case. Do you
21 recall how long before this trial took place that you were
22 appointed?

23 A: I don't remember. I think it was probably a year or so
24 at least before, but I'm not positive about that.

25 Q: Okay. Was it enough time for you to be prepared to try

SCOTT FLOYD - CROSS BY MS. MCCALLISTER

1 the case?

2 A: Yes, ma'am.

3 Q: Okay. And do you recall a number of times that you met
4 with Mr. Stackhouse?

5 A: I don't remember exactly, but --

6 Q: Do you recall if it was more than two?

7 A: Oh, yes. I met with him more than two times.

8 Q: Okay. And you testified a little bit earlier about this
9 issue of the surveillance video. You were able to view that
10 video back at the office; correct?

11 A: Right. For some reason, I guess the way it was
12 formatted, it did not work on the laptop.

13 Q: Okay.

14 A: It did work in the tower on the desktop that we had at
15 the office, but not on the laptop, which is what I took to
16 see him with, you know, with the laptop.

17 Q: So you were able to view it and you knew the contents of
18 that video prior to trial?

19 A: Right.

20 Q: Did you discuss what was on the video with Mr.
21 Stackhouse?

22 A: I mean if I remember, it just showed him leaving the --
23 the housing area.

24 Q: Okay.

25 A: He may have been on a bike. I'm not sure, but --

SCOTT FLOYD - CROSS BY MS. MCCALLISTER

1 Q: Okay.

2 A: I can't remember if he was walking or on a bike, but in
3 any event, that's basically what it showed, I mean.

4 Q: Okay.

5 A: Which didn't surprise me because I mean he had told me
6 he was there. So I mean I would've expected that he was
7 going to leave.

8 Q: Okay.

9 A: But . . .

10 Q: And did you consider that video to be an important piece
11 of evidence for the State or the defense either?

12 A: Given his statement that he gave, not really.

13 Q: Okay.

14 A: No.

15 Q: So he -- he put himself there at the scene as well?

16 A: Correct.

17 Q: Okay. And he -- he put himself there with the knife
18 swinging it around?

19 A: Correct.

20 Q: To -- in the statement to law enforcement; correct?

21 A: Correct.

22 Q: And to you?

23 A: Correct.

24 Q: When you were investigating the case, that was his story
25 of what happened to you?

SCOTT FLOYD - CROSS BY MS. MCCALLISTER

1 A: Yes.

2 Q: Okay. So you talked about the issue of the touch DNA
3 and the DNA expert there. Was the issue of him holding the
4 knife an element that you were contesting in your defense?

5 A: No.

6 Q: Did he ever say someone else was holding the knife?

7 A: No.

8 Q: So was the issue of DNA relevant to your defense in your
9 opinion?

10 A: No.

11 Q: Okay. And you said that he -- when the State went to
12 introduce the knife as evidence, he said kind of loudly
13 that's not the knife. That was the first time that he had
14 said it wasn't the knife?

15 A: Correct.

16 Q: Did you have pictures or something of the knife prior to
17 that that you had showed to him?

18 A: Whatever pictures were in the Rule 5, and I'm sure they
19 took pictures of the knife. I don't -- I don't remember the
20 actual picture.

21 Q: Okay.

22 A: But whatever I had in that, he saw it.

23 Q: Okay. And what did you do when he said that wasn't the
24 knife? Do you recall?

25 A: I asked him to not speak so loudly. I do remember that.

SCOTT FLOYD - CROSS BY MS. MCCALLISTER

1 Q: Okay.

2 A: But I mean at that point, I just, you know, didn't
3 really respond to him.

4 Q: Okay.

5 A: Other than to tell him to quiet down.

6 Q: Did you have any reason to believe that it wasn't the
7 knife?

8 A: No.

9 Q: Were there any chain of custody issues with maintaining
10 the evidence that you saw?

11 A: No. Not that I recall.

12 Q: Okay. And you -- you testified that you had -- you were
13 given the actual written statements of the two other boys,
14 the two victims who testified?

15 A: I think so, yes.

16 Q: Okay.

17 A: I mean I seem to recall having those.

18 Q: And you reviewed those prior to trial with Mr.
19 Stackhouse?

20 A: Correct.

21 Q: Okay. And do you recall whether or not you did actually
22 cross-examine Daquan on the inconsistencies?

23 A: I mean I remember asking him questions about the
24 statement. I don't remember specifically what I asked him,
25 but --

SCOTT FLOYD - CROSS BY MS. MCCALLISTER

1 Q: Okay.

2 A: -- it's in the transcript, I suppose.

3 Q: Okay.

4 THE COURT: While she's looking at that, there's no
5 question that the DNA of both of the victims was on the knife
6 that was introduced into evidence?

7 THE WITNESS: That was the testimony.

8 BY MS. MCCALLISTER:

9 Q: You were asked about -- about the paramedic's testimony
10 and concern over whether maybe he was offering a medical
11 diagnosis. Was anything that he testified to inconsistent
12 with what you knew about the cause of death and what the
13 other evidence showed in the case?

14 A: No.

15 Q: Okay. Was the cause of death at issue in the case?

16 A: No.

17 Q: Okay. Was the way that the other victim was injured or
18 those injuries, was that at issue in the case?

19 A: No.

20 Q: Okay.

21 MS. MCCALLISTER: I beg the Court's indulgence.

22 BY MS. MCCALLISTER:

23 Q: You reviewed the autopsy report and the pathologist
24 reports with Mr. Stackhouse; is that correct?

25 A: I'm sure I did. I mean I went over the Rule 5s with

SCOTT FLOYD - CROSS BY MS. MCCALLISTER

1 him.

2 Q: Okay. And the issue of a toxicology report, do you
3 recall discussing that with Mr. Stackhouse?

4 A: I don't specifically recall that.

5 Q: Okay. In terms of the victim and any possible
6 intoxication, was that presented to you as a possible defense
7 for this incident?

8 A: You know, it seems I recall that -- that he mentioned it
9 in his statement. When I say he, I mean Mr. Stackhouse.

10 Q: Uh-huh.

11 A: It was played in the courtroom. I believe he said that
12 they had been drinking.

13 Q: Okay.

14 A: So I mean it was in evidence that they had both been
15 drinking, I believe.

16 Q: Okay. But in terms of her being intoxicated and coming
17 after him or --

18 A: Right.

19 Q: -- anything like that, he didn't -- did he raise that to
20 you as a defense?

21 A: No.

22 Q: Okay. Did you see any reason or a way to have
23 challenged the credibility of the pathologist in this case
24 and the autopsy?

25 A: No.

SCOTT FLOYD - CROSS BY MS. MCCALLISTER

1 Q: Okay. And so your -- would you characterize your
2 defense as a defense of self-defense in this case?

3 A: I mean it was accident.

4 Q: Accident?

5 A: Right.

6 Q: Okay. And there was -- there was some testimony at
7 least that there was an argument that maybe turned physical;
8 is that correct?

9 A: Some testimony, yes.

10 Q: Okay. In terms of the -- the statements and the
11 statements potentially being inconsistent with the boys, I
12 think Mr. Waller was asking you if the State had turned over
13 the testimony, did they tell you that the testimony was going
14 to be different at trial, and I think you answered no; is
15 that right?

16 A: No.

17 Q: So the boys got on the stand and said something slightly
18 different from -- or different from what their statements
19 said and that was the first time that you knew about it. Is
20 that unusual to you?

21 A: I mean it's certainly not unheard of.

22 Q: Okay.

23 A: No, it's not unusual for somebody to say something
24 different from what they said before.

25 Q: Okay. And did -- did that give you any reason to

SCOTT FLOYD - CROSS BY MS. MCCALLISTER

1 believe that the State was somehow withholding evidence from
2 you or doing anything impermissible?

3 A: No.

4 Q: Okay.

5 MS. MCCALLISTER: I think that's all the questions I
6 have, Your Honor.

7 THE COURT: Yes, sir?

8 MR. WALLER: Just briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. WALLER:

11 Q: Mr. Floyd, self-defense was charged to the jury?

12 A: It was.

13 Q: And you are certainly aware that the jury can consider
14 intoxication of a victim for self-defense?

15 A: Correct.

16 Q: You're also aware that the jury can consider prior
17 instances of violence by a victim?

18 A: Uh-huh. Yes.

19 Q: Did you and Mr. Stackhouse have any conversations about
20 either of those two things?

21 A: As I said, he did relay to me that both of them had been
22 drinking the night that this happened. As far as prior
23 instances of violence, I don't recall that.

24 Q: Okay.

25 MR. WALLER: Nothing further. Thank you.

1 THE COURT: All right. You may step down.

2 THE WITNESS: Thank you.

3 THE COURT: Any objection to this witness being excused?

4 MS. MCCALLISTER: Not as it relates to this case, Your
5 Honor, but I think he's -- we've got one more.

6 THE COURT: All right. All right. Anything further,
7 Mr. Waller?

8 MR. WALLER: Nothing further from the applicant as far
9 as evidence, Your Honor.

10 In light of Mr. Floyd's testimony, I would make a motion
11 to amend the pleadings for the purposes of the record to
12 include an allegation of ineffective assistance for failure
13 to prepare a self-defense or to raise self-defense.

14 Mr. Floyd testified that that was not -- not something
15 they raised despite it being charged to the jury. Just for
16 the purposes of the record, I'll make the motion.

17 THE COURT: Very good. All right. I will allow that
18 amendment.

19 Would you like to be heard on that, Ms. McCallister?

20 MS. MCCALLISTER: Your Honor, I mean you've said you
21 were going to allow the amendment. I may just ask for just a
22 moment to speak to Mr. Floyd before I -- before I decide to
23 call a witness in my case or not.

24 THE COURT: Okay. Good. Where did he go?

25 MS. MCCALLISTER: That's a good question. May we step

SCOTT FLOYD - DIRECT BY MS. MCCALLISTER

1 out here, Your Honor?

2 THE COURT: Yes.

3 (WHEREUPON, there was a pause in the proceedings, after
4 which the proceedings resumed as follows.)

5 THE COURT: Ms. McCallister, you're recognized.

6 MS. MCCALLISTER: Thank you, Your Honor. I would call
7 Mr. Floyd back to the stand just briefly.

8 THE COURT: Mr. Floyd, I'll remind you that you're still
9 under oath.

10 SCOTT FLOYD, being previously
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. MCCALLISTER:

14 Q: Mr. Floyd, in terms of why you decided not to raise
15 self-defense as a defense at trial, can you explain the
16 thought process that went into that?

17 A: Uh-huh. Well, Mr. Stackhouse related to me essentially
18 the same facts that he related to the police department when
19 he gave his statement, which, once again, he claimed that he
20 picked up a knife and was flailing his arms and that he
21 unintentionally stabbed two people.

22 He never related to me that he was attacked, that either
23 of the victims were armed, that they -- that he felt
24 threatened or in fear for his own safety or health, or that
25 he was unable to, you know, exit the room.

SCOTT FLOYD - DIRECT BY MS. MCCALLISTER

1 I mean I -- you know, I did not specifically request a
2 self-defense charge. The judge on his own charged murder,
3 voluntary manslaughter, involuntary manslaughter, self-
4 defense, and I think he charged accident as well. He charged
5 it on his own. I didn't request it.

6 Q: Okay. And -- and you didn't object to the charge once
7 he said that he was going to --

8 A: No, I didn't object to it.

9 Q: Okay.

10 A: Because I didn't think -- it certainly wouldn't hurt him
11 for it to be charged.

12 Q: Okay.

13 A: But . . .

14 Q: So the reason that you -- the only reason you didn't ask
15 for it is that you didn't feel that Mr. Stackhouse's
16 explanation of the incident was that he was claiming self-
17 defense in his explanation to you?

18 A: No.

19 Q: And in your view of the evidence, that independent of
20 whatever he told you, was there any independent evidence to
21 suggest that it was self-defense?

22 A: No.

23 MS. MCCALLISTER: That's all the questions I have, Your
24 Honor.

25 MR. WALLER: Just briefly, Your Honor.

SCOTT FLOYD - CROSS BY MR. WALLER

CROSS-EXAMINATION

1
2 BY MR. WALLER:

3 Q: Mr. Floyd, you've testified a few minutes ago that Mr.
4 Stackhouse's statement was that the teenager, the surviving
5 victim, jumped on him during the altercation with his wife?

6 A: Uh-huh.

7 Q: Okay. That was your understanding of it?

8 A: Correct.

9 Q: Okay. So he was in an altercation with one person and
10 was jumped on top of by someone else?

11 A: Correct.

12 MR. WALLER: Nothing further.

13 THE COURT: Very good. You may step down.

14 All right. Mr. Waller, if you could, we're going to go
15 through -- you know, you listed, I think, maybe twelve
16 different allegations. I'm going to ask you, if you could,
17 to reiterate those and why you believe the testimony supports
18 those allegations of deficiency, and I'm going to -- we're
19 going to do it one at a time.

20 I'm going to allow you to say that and then I'm going to
21 allow your response, and we'll go back and forth. This is
22 going to be an interesting different closing argument.
23 That's the way I want to do it.

24 MR. WALLER: Thank you, Your Honor.

25 THE COURT: There's so many of them.

1 MR. WALLER: Thank you, Your Honor.

2 THE COURT: We'll do it that way.

3 MR. WALLER: I wish I had put numbers by these instead
4 of letters.

5 THE COURT: All right. Very good.

6 MR. WALLER: It would make it easier.

7 Your Honor, the first one I raised was that counsel was
8 ineffective for failure to properly cross-examine the DNA
9 expert to the presence of touch DNA.

10 Your Honor, Mr. Floyd didn't -- didn't conduct any
11 cross-examination at all to that expert. I asked him on
12 direct exam when I called him as a witness. He never spoke
13 with the DNA expert. He testified that there was consistency
14 between Mr. Stackhouse's statement and what was -- what was
15 presented at trial.

16 However, Mr. Stackhouse testifies that there was a
17 discrepancy with the knife and that that was -- despite what
18 the State said and despite how Mrs. Stackhouse may have been
19 killed, that there was a different knife. And certainly,
20 that discrepancy, I think, would lend to further development,
21 at least an investigation in pretrial and some cross-
22 examination during --

23 THE COURT: What --

24 MR. WALLER: -- the trial.

25 THE COURT: What would be the appropriate way to handle

1 that? Because it was only at trial that he revealed that
2 that was not the knife. What -- what should Mr. Floyd have
3 done at that point when you've got DNA of the victims on the
4 knife? And he said that he did, in fact, have a knife and
5 was flailing it around?

6 MR. WALLER: Your Honor --

7 THE COURT: There's no -- there's no question about
8 chain of custody of the knife. What would be the best way to
9 handle that?

10 MR. WALLER: Your Honor, I think that particularly
11 dealing with the knife that was presented, both parties
12 testified -- both parties to this action testified that there
13 was a DNA report done. They had that testing.

14 Solicitor Clements asks questions about touch DNA and
15 then -- and then moves on. I think my argument mostly is
16 that there should have been cross-examination as to the lack
17 of presence of Mr. Stackhouse's DNA.

18 THE COURT: Very good. All right. Let's move on.
19 That's number one. All right.

20 MS. MCCALLISTER: Do you want to hear from me or do you
21 want to move on?

22 THE COURT: Yes. I'll be glad to hear from you.

23 MS. MCCALLISTER: Thank you, Your Honor.

24 I think Mr. Floyd testified pretty clearly why he chose
25 not to pursue this issue. That there was no -- that it

1 really just wasn't a contested issue. The blood of the
2 victims was on the knife, but there was no -- they weren't
3 contesting the fact that -- that Mr. Stackhouse did have a
4 knife and he did stab the victims. He testified that he
5 didn't see any way to challenge whether or not that was the
6 knife. There were no issues with the chain of custody.

7 THE COURT: Very good. All right.

8 Mr. Waller, number two?

9 MR. WALLER: Your Honor, we raised that counsel was
10 ineffective for failure to impeach the victim with
11 inconsistent statements.

12 Your Honor, the statement -- the testimony at trial was
13 that the young man grabbed Mr. Stackhouse's hands in whatever
14 attempt, but he grabbed his hands to attempt to restrain him.
15 That is inconsistent with the statement that was given that
16 the young man had hit Mr. Stackhouse before the knife was
17 being swung. I think that part was consistent, but there was
18 inconsistencies as to what the young man had -- what his role
19 was initially.

20 THE COURT: All right.

21 MR. WALLER: And those were not pursued but Mr. Floyd.

22 THE COURT: Okay. So you're saying that he should have
23 developed the fact that there were -- that the victim hit
24 him?

25 MR. WALLER: Your Honor, I think it's a -- it's a long

1 way to go if somebody jumps on your back versus they were
2 trying to -- to restrain your hands from attacking someone
3 else.

4 THE COURT: Right. Okay. Let's hear what Ms.
5 McCallister has to say about that.

6 MS. MCCALLISTER: Your Honor, I'm looking to find a
7 transcript cite, but I believe the transcript reflects that
8 Mr. Stackhouse does question the victims on the
9 inconsistencies in the statements.

10 THE COURT: Are you talking about Mr. Floyd?

11 MS. MCCALLISTER: I'm sorry. Yes. Mr. Floyd does
12 question the victim, at least the victim who was actually
13 stabbed, Daquan, was cross-examined on the differences
14 between his written statement that was turned over in
15 discovery and what he testified to on the stand. I think
16 that starts on page 352 of the transcript, Your Honor.

17 THE COURT: Okay. Number three?

18 MR. WALLER: And, Your Honor, I will concede that he
19 mentions that there are discrepancies, but he's not going
20 into the details of the statement.

21 THE COURT: Very good. All right. Number three?

22 MR. WALLER: Number three is an allegation that counsel
23 was ineffective for failure to impeach the other testifying
24 witness, William Brock, with his inconsistent statement.

25 Your Honor, in this, there is -- there's no impeachment

1 as it -- as it applies to him. This young man testified that
2 he watched Mr. Stackhouse go into the kitchen and retrieve a
3 knife. His statement previously had been that there was no
4 knife in his hands. So it's highly inconsistent there.

5 THE COURT: All right. Ms. McCallister?

6 MS. MCCALLISTER: Thank you, Your Honor. I think --
7 well, initially, in terms of what the statements are and
8 whether they are inconsistent or not, the statement -- the
9 statement hasn't been introduced here today. So what exactly
10 the inconsistencies are in the statement I think is -- is
11 important, and that was not introduced here.

12 But also, I mean Mr. Floyd testified in terms of his
13 handling of both boys that he felt like it was not -- it was
14 not a good trial strategy to be aggressive with them on
15 cross-examination, to go after them hard. He said that they
16 were -- they appeared to be traumatized and he felt like the
17 jury was reacting to them.

18 So I think he explained why he did that, and he -- as I
19 stated before, Daquan, the older boy -- he did -- he did do
20 the cross-examination on that statement. So there was -- it
21 was presented to the jury and I believe highlighted in
22 closing. I can find that cite for you too --

23 THE COURT: All right.

24 MS. MCCALLISTER: -- that the statements were
25 inconsistent.

1 THE COURT: Number -- number four, Mr. Weller?

2 MR. WALLER: Your Honor, number four relates back to
3 both of those statements. It's an allegation that counsel
4 was ineffective for failure to object to and to move to
5 suppress the new testimony of the witnesses not disclosed in
6 the discovery.

7 Mr. Floyd testified that he filed or someone from his
8 office if he didn't get the case initially had filed --

9 THE COURT: Mr. Waller, one of the things you're -- I
10 think if I understand your allegation is that he -- the State
11 turned over all of the statements, like -- like they always
12 do. They take a statement that's either written down or
13 recorded and everything they had they gave to Scott -- Mr.
14 Floyd, and he went over it with the defendant.

15 But you're saying that the State should have anticipated
16 that the testimony at trial would've been different than
17 those statements?

18 MR. WALLER: Your Honor, I'm saying that the State was
19 aware that the testimony was going to be different.
20 Solicitor Clements mentioned it in his closing -- excuse me
21 -- in his opening statement to the jury that -- that the
22 statements -- or that what they would testify to -- and he
23 listed that. That was different than what the statements
24 were.

25 THE COURT: Okay. That gets back to what Rule 5

1 requires. As a general rule, you aren't required to give the
2 substance of the testimony of witnesses unless there is a
3 written statement. Isn't that correct?

4 MR. WALLER: I believe so, Your Honor.

5 THE COURT: And essentially, you're not required to give
6 the substance of a written statement until after they
7 testify, but quite often they do for judicial economy.

8 And you think that what you're saying is there's an
9 obligation for the solicitor to summarize how their testimony
10 -- if they anticipate their testimony is going to be
11 different here today, they need to give a summary of that to
12 the defense lawyer?

13 MR. WALLER: Your Honor, I believe -- and I just blanked
14 on the case -- that if the solicitor is aware of differing
15 testimony or differing statements that have been given,
16 multiple or inconsistent, that they are -- they are required
17 to make that known to the defense.

18 THE COURT: Well, certainly, if they have two written
19 statements and one is different than the other, they've got
20 to give both of them to you because that's exculpatory.

21 MR. WALLER: I don't believe that it has to be written,
22 Your Honor. I believe that the case is Real v. Ozment [ph],
23 if I remember a search.

24 THE COURT: All right.

25 MR. WALLER: And I don't have the cite.

1 THE COURT: Let's see what Ms. McCallister has to say
2 about that?

3 MS. MCCALLISTER: Your Honor, I mean I think that he's
4 asking for the State to be somewhat clairvoyant. I mean
5 there's no --

6 THE COURT: I think what he's saying is that it's clear
7 that he knew that it was going to be different because he
8 said in his opening statement is what he's saying.

9 MS. MCCALLISTER: And I was trying to find that, Your
10 Honor.

11 THE COURT: And that was not made clear in the testimony
12 until what Mr. Waller said here today.

13 MS. MCCALLISTER: Can you tell me the cite on that?

14 (WHEREUPON, counsel conferred off the record, after
15 which the proceedings resumed as follows.)

16 MR. WALLER: And, Your Honor, in the transcript that
17 we're looking at, it begins on page 67, and I believe the --
18 the portion at issue -- and I'll certainly let Ms.
19 McCallister address this -- continues onto page 68.

20 MS. MCCALLISTER: Okay. I think I understand now, Your
21 Honor. The solicitor does in his opening statement say that
22 the boys will say that they saw Mr. Stackhouse go into the
23 kitchen, and that is -- I gave you the cite earlier on page
24 352. That is what -- that that is the inconsistency that Mr.
25 Floyd questioned the boy about between --

1 THE COURT: So he did impeach him about that?

2 MS. MCCALLISTER: He did impeach him with that and he
3 questioned him about that in terms of the difference between
4 his written statement and what he testified to.

5 THE COURT: And what you're saying is that it wouldn't
6 make any difference if he knew about it two months ahead of
7 time or as the testimony came forward because he knew that it
8 was different and he called the jury's attention to the fact
9 there was a discrepancy?

10 MS. MCCALLISTER: He did. And I believe he highlighted
11 it. He highlighted the discrepancies in his closing
12 statement as well, Your Honor, and until they get up there
13 and testify in front of the jury, he doesn't know if there's
14 going to be a discrepancy or not for sure. He doesn't know
15 what the boys are going to say.

16 THE COURT: Right. Very good.

17 All right. Number five, Mr. Waller?

18 MR. WALLER: Your Honor, number five was that counsel
19 was ineffective for failure to object to the testimony of
20 Adam Rogers, the paramedic, as outside the scope of a
21 layman's testimony.

22 Your Honor, I asked questions about multiple passages,
23 both on page 164 and page 169 of the transcript. Mr. Rogers
24 was never qualified as an expert in paramedic or lifesaving
25 or anything. Your Honor, I don't believe that he is able to

1 give diagnosis-type testimony and particularly with the
2 testimony regarding the young man, who was -- survived and
3 was treated for injuries.

4 THE COURT: All right.

5 MR. WALLER: I don't believe that it was proper for him
6 to be able to testify to those things without having been so
7 qualified. And he may have been.

8 THE COURT: All right.

9 MR. WALLER: But it was never -- it was never presented.

10 THE COURT: All right. Ms. McCallister, I assume that
11 you're going to say that the cause of death was not in
12 question, it was consistent with the autopsy, which was
13 already admissible, and that -- and that there was really no
14 question as to cause the death; is that right?

15 MS. MCCALLISTER: Yes, Your Honor. And I would just add
16 I think what Mr. Waller is talking about in terms of the
17 injuries to the victim, the question was tell me about the
18 injury to the neck. So the solicitor was asking him to
19 describe what he saw, and I think that his answer is
20 describing what he saw and what he was concerned about in
21 terms of giving the treatment to the victim, which I think he
22 is qualified to testify to.

23 THE COURT: All right. Number six?

24 MR. WALLER: Your Honor, number six was that counsel was
25 ineffective for failure to object to and move to suppress the

1 testimony or new testimony of Kenny Davis.

2 Your Honor, when Mr. Stackhouse was first detained, he
3 asked a question of law enforcement did anybody survive, and
4 that was, I believe, disclosed. It was testified to during
5 the Jackson v. Denno hearing prior to the trial beginning.

6 Then when it came time for Ofc. Davis to testify, he
7 said that Mr. Stackhouse asked if anybody survived and then
8 followed that up with was it Sharon that was killed or was it
9 Sharon.

10 Your Honor, I think that the -- there was ample time,
11 both pretrial and at the hearing, for the State to disclose a
12 statement made by a party in this case, the defendant. Your
13 Honor, it was additional testimony that should have been
14 disclosed.

15 THE COURT: Ms. McCallister?

16 MS. MCCALLISTER: Thank you, Your Honor.

17 Your Honor, in the Jackson v. Denno hearing, Chief Davis
18 does testify that he -- he mirandized Mr. Stackhouse. That
19 he did ask did anyone survive or something along those lines.

20 THE COURT: You say the defendant asked did anybody
21 survive?

22 MS. MCCALLISTER: Yes. The defendant asked did anybody
23 survive, and Mr. Waller is correct. The record does reflect
24 that in the Jackson v. Denno, he did not -- did not talk
25 about the second part of that, was it Sharon.

1 However, Mr. -- Mr. Floyd cross-examined --

2 THE COURT: Was it Sharon? You mean was it Sharon that
3 died?

4 MS. MCCALLISTER: I think that was -- I don't think that
5 was -- it just was was it Sharon is the statement I believe
6 that -- I think Chief Davis testifies Mr. Stackhouse asks did
7 anyone survive and he gives an answer sort of like one is in
8 serious trouble and one is in the hospital or something like
9 that, and then Mr. Stackhouse says was it Sharon.

10 And now I've lost where I was going.

11 Oh, Your Honor, Mr. Floyd did cross-examine all of the
12 officers. There were multiple, multiple officers on the
13 scene when Mr. Stackhouse was arrested who testified that
14 they heard Mr. Davis give the Miranda warnings and heard
15 maybe parts of that conversation. Mr. Floyd does cross-
16 examine about did you -- you know, the first arresting
17 officer, you don't know what he told Mr. Stackhouse before
18 you got on the scene, do you, and the officers answered no.

19 So I think Mr. Floyd does -- the questioning overall
20 addresses that issue. In the Jackson v. Denno, it was
21 disclosed that he made a statement asking about did anyone
22 survive, asking about what was going on after he had been --

23 THE COURT: Which is to some extent inculpatory because
24 he knows who was -- who was there and who the --

25 MS. MCCALLISTER: Correct.

1 THE COURT: -- victims were?

2 MS. MCCALLISTER: Correct. And it was done after he was
3 mirandized and even after Chief Davis warned him again you've
4 been mirandized, you know, are you sure you want to say
5 anything, and then he says these things.

6 THE COURT: All right.

7 MS. MCCALLISTER: So the circumstances were testified to
8 in the Jackson v. Denno hearing.

9 THE COURT: Very good. Number seven, Mr. Waller?

10 MR. WALLER: Your Honor, I believe I skipped one
11 actually.

12 THE COURT: All right.

13 MR. WALLER: We can number it number seven, but I want
14 to make sure I cover everything.

15 Your Honor, we raised an allegation that counsel was
16 ineffective for failure to object to impermissible vouching
17 of the witness by the solicitor.

18 Your Honor, that takes place on page 393, lines 13
19 through 15. Your Honor, the solicitor simply says that the
20 -- that the jury can believe the two young men's testimony.
21 I don't think that's --

22 THE COURT: He said what now?

23 MR. WALLER: That the jury can believe the two young
24 men's testimony as being true.

25 THE COURT: He didn't say I believe them.

1 MR. WALLER: He did not say he believed them, Your
2 Honor.

3 THE COURT: I think that's kind of what a jury argument
4 is supposed to be about is telling the jury they can believe
5 one or many or none.

6 MR. WALLER: Well -- and, Your Honor, I would ask you to
7 -- to consider the argument as a whole on that issue. And
8 again, Your Honor, that's page 393, lines 13 through 15. The
9 --

10 THE COURT: What do you have to say about that, Ms. --
11 oh, I'm sorry. I didn't mean to interrupt.

12 MR. WALLER: Well, I was just going to say, Your Honor,
13 that the comments that we're talking about says they don't
14 have anything to show -- meaning the defense, they don't have
15 anything to show that says they are lying, meaning the two
16 boys, because they're not lying. They told you the truth.
17 Now y'all bring back a verdict that speaks the truth.

18 So those are the comments.

19 THE COURT: To some extent, he -- he is saying that they
20 were telling the truth?

21 MR. WALLER: Yes, sir. I believe so. And that the
22 defense doesn't have to say anything that they're not.

23 THE COURT: Did he say that?

24 MR. WALLER: Yes, Your Honor. And they don't have
25 anything that says they're lying because they're not lying.

1 I mean the first "they" he's using is talking about the
2 defense.

3 THE COURT: Oh, okay.

4 Go ahead, Ms. McCallister.

5 MS. MCCALLISTER: Well, Your Honor, I think the
6 solicitor is entitled to comment. You know, the issue of the
7 boy's credibility was an issue at trial. The State -- they
8 did have something to show that they were lying because they
9 had the -- or saying something different because they had the
10 different statements.

11 And -- and Mr. Floyd cross-examined the boys on that and
12 so I think the solicitor is entitled to comment on his view
13 of the evidence and his view of, you know, the boys telling
14 the truth. I -- I don't love some of that language, Your
15 Honor, but I think he's -- I think that was -- an issue of
16 credibility was raised at the trial and Mr. -- Mr. Floyd
17 addresses it in his closing argument as well, the
18 inconsistencies in the statements.

19 THE COURT: All right. Number eight?

20 MR. WALLER: And, Your Honor, since we're -- I'm going
21 to skip another one and I'll come back to it just because
22 we're right there in the closing arguments.

23 Your Honor, we raised an allegation that counsel was
24 ineffective for failure to object to other impermissible
25 comments made during the State's closing argument.

1 Mr. Floyd said he didn't have anything to object to.
2 Your Honor, page 383, lines 10 through 15, the solicitor says
3 what don't I believe. I don't believe that it's voluntary
4 manslaughter. I don't believe that it was the heat of
5 passion. I don't believe it was with sufficient legal
6 provocation. I believe it was murder. I believe it was
7 malice aforethought, and y'all might say, Ed, why? And then
8 he continues on with his closing argument.

9 THE COURT: What do you have to say about that, Ms.
10 McCallister?

11 MS. MCCALLISTER: Your Honor, I'm just -- I'm looking
12 back over this -- over Mr. Floyd's testimony. I think he was
13 asked --

14 THE COURT: These are really questions of law. I don't
15 believe that it's murder, I don't believe that it's voluntary
16 manslaughter really isn't going to the credibility of
17 witnesses. It's more of an argument. Would you say that
18 would be appropriate?

19 MS. MCCALLISTER: Well, yes. And I think that's what I
20 was trying to say in my last piece. I -- Mr. -- Mr. Waller
21 did ask him did you see any issues to object to during the
22 closing and he said he didn't recall any specifically, but,
23 Your Honor, I think I would make the same argument that this
24 is -- he's making a credibility argument in terms of the --

25 THE COURT: I'm not real sure that's credibility. He's

1 saying I don't believe it's murder, I don't believe it's
2 voluntariness -- I mean involuntary manslaughter. I don't
3 believe it was heat of passion. He's making an argument that
4 it's murder and not really talking about credibility of
5 witnesses or anything. Is that correct?

6 MS. MCCALLISTER: Yes. In this -- in this -- on page
7 383, you're right. He is not mentioning the credibility of
8 -- of witnesses. He's going through the different --

9 THE COURT: It's probably appropriate for a lawyer to
10 argue whether it's murder versus voluntary manslaughter.

11 MS. MCCALLISTER: Right. Because the judge ended up
12 charging multiple lesser-included. And so he has to --

13 THE COURT: Arguing for murder?

14 MS. MCCALLISTER: Right.

15 THE COURT: Okay. I think I understand your objection,
16 and you've made your point very clear on that.

17 All right. Number nine?

18 MR. WALLER: Your Honor, an allegation that counsel was
19 ineffective for failing to object and move for a mistrial for
20 the improper comments made by the State at the conclusion of
21 the direct examination of Daquan B.

22 Your Honor, it takes place on page 349. It's simply the
23 solicitor to Mr. B. . It says, son, I apologize for you or
24 I'm sorry you have to be here. I think that's impermissible
25 for the jury to hear or to say in front of the jury.

1 THE COURT: What do you have to say about that, Ms.
2 McCallister?

3 MS. MCCALLISTER: Well, Your Honor, I mean Mr. Floyd
4 then in the next line says I'm sorry you have to be here as
5 well. So I don't think that there's any kind of issue there.

6 I mean Mr. Floyd has explained that he felt like the
7 boys needed to be treated carefully, and it was obvious that
8 they were traumatized. There's no question that their mother
9 is dead and that she was stabbed and that she was stabbed by
10 Mr. Stackhouse. I don't think we're getting into anything --
11 there's not a whole lot --

12 THE COURT: What you're saying is it wasn't really all
13 that inflammatory?

14 MS. MCCALLISTER: Right. It's not all that inflammatory
15 given the situation, given the ages of the boys and the
16 circumstances and the issues that were contested at trial.

17 And I think especially when, you know, Mr. Floyd says --
18 says the same thing the next -- you know, the next sentence.
19 Then it's both sides are expressing their -- you know, that
20 they're sorry that the boys have to be here.

21 THE COURT: All right. Number ten, Mr. Waller?

22 MR. WALLER: Your Honor, we raised an allegation that
23 counsel was ineffective for failure to conduct complete
24 investigation into the facts and circumstances surrounding
25 applicant's arrest, including his possession of a knife at

1 the time of his arrest.

2 Your Honor, the testimony is very different in this --
3 for this allegation. Mr. Stackhouse testified that he told
4 Mr. Floyd that the knife found at the scene was not his. Mr.
5 Floyd was aware of it. Mr. Floyd testified that the first he
6 ever heard of it was at the trial.

7 I certainly think the -- I certainly think that's
8 something Mr. Floyd would have needed to investigate. I'll
9 leave it at that.

10 THE COURT: All right. Ms. McCallister?

11 MS. MCCALLISTER: Your Honor, I --

12 THE COURT: It almost sounds like it's two different
13 things. We've got one issue with the knife that was
14 testified to -- or the defendant testified or blurted out at
15 trial that wasn't the knife in my hand. That's one issue.
16 Then I think Mr. Waller is saying there's another issue with
17 regard to whether or not the defendant actually had a weapon
18 before the whole incident took place.

19 MS. MCCALLISTER: And that last issue, I don't recall
20 any testimony about that, Your Honor. I don't recall Mr.
21 Stackhouse testifying that that -- that he -- that he did
22 have a knife at the time.

23 THE COURT: He did or did not have a knife?

24 MS. MCCALLISTER: Yeah. He didn't -- I don't think he
25 offered any testimony as to that issue, Your Honor, and I

1 think Mr. Floyd has explained himself as far as, you know,
2 the comment during trial about that's not the knife and how
3 -- how and why he handled that issue.

4 THE COURT: All right. Number eleven, Mr. Waller?

5 MR. WALLER: Your Honor, we raised that counsel was
6 ineffective for failing to provide applicant with a copy of
7 discovery in a medium that he was able to review while
8 detained.

9 Mr. Stackhouse testified that certainly with the video
10 containing someone who he was able to identify, however that
11 law enforcement was not able to identify, would have been
12 helpful in his defense. He testified that Mr. Floyd provided
13 him with a disk, which he was not able to view either in the
14 detention center or have personal viewing while he was at
15 SCDC.

16 Your Honor, Applicant's Exhibit 1 is correspondence back
17 and forth between Mr. Floyd and Mr. Stackhouse after the
18 trial with Mr. Stackhouse still trying to get a complete copy
19 of his discovery. I don't think he ever had a complete copy
20 of it.

21 THE COURT: All right. Ms. McCallister?

22 MS. MCCALLISTER: Your Honor, as far as the issue of the
23 discovery, Mr. Floyd testified that they met several times,
24 that they went over the various reports that were available.

25 You know, he did acknowledge that there was perhaps some

1 kind of issue with the video, but he viewed the video. He
2 discussed the video with Mr. Stackhouse and that there --
3 that the video was really not important in any way. It
4 wasn't -- it didn't help him or hurt him. He admitted to
5 being on the scene, and it didn't -- it didn't show --

6 THE COURT: I think there was some mention by Mr.
7 Stackhouse that there was somebody on the video that Mr.
8 Floyd could not identify and perhaps he could. What you're
9 saying is that there never was a contention that he was not
10 at the scene and that he did not do the stabbing?

11 MS. MCCALLISTER: Right. And that there -- there was
12 never a contention that someone else did --

13 THE COURT: Right.

14 MS. MCCALLISTER: -- you know, that might explain why
15 this other person was on the video, Your Honor, and I believe
16 -- I don't have the cite at my fingertips, but I believe
17 there is some examination or cross-examination about this
18 when the video is played at court that maybe identifies or
19 suggests that the other person was actually Daquan, the
20 victim.

21 THE COURT: Number twelve? Is this the last one, Mr.
22 Waller?

23 MR. WALLER: This is, Your Honor. If I could address
24 one more point about that last one though?

25 THE COURT: All right.

1 MR. WALLER: I neglected to mention, Your Honor, Mr.
2 Stackhouse also testified that there were some pictures that
3 he was not provided and that him being able to view the
4 pictures would have enabled him to help Mr. Floyd to show
5 that some of the things that the two -- the surviving victim
6 and the other witness testified to have seen was not
7 physically possible just from vantage points. So I think
8 that was --

9 THE COURT: All right.

10 MR. WALLER: -- in addition to that.

11 THE COURT: All right.

12 MR. WALLER: Your Honor, the last one -- well, Your
13 Honor, at the beginning of our case, we presented an
14 allegation that counsel was ineffective for failure to
15 investigate applicant's statement to law enforcement.

16 Your Honor, nothing -- we didn't present any testimony
17 on that. I would withdraw that one at this time.

18 THE COURT: Very good.

19 MR. WALLER: However, at the close of the case, I did
20 make a motion to amend the pleadings to raise an allegation
21 of ineffective assistance of counsel for failure to prepare
22 self-defense, Your Honor.

23 THE COURT: How -- how would you present self-defense
24 when he maintained when he spoke to the police officers that
25 it was an accidental-type thing, he was flailing his arms

1 around, and he maintained that throughout?

2 MR. WALLER: Your Honor, my understanding is that he
3 maintained that he was being attacked throughout.

4 THE COURT: All right.

5 MR. WALLER: And he grabbed a knife and was flailing his
6 arms around to get everybody off of him. And, Your Honor,
7 certainly, while it may lend an accident defense, I think it
8 very more clearly lends itself to a self-defense.

9 Mr. Stackhouse testified that he was certainly aware of
10 a toxicology report being done. Mr. Floyd testified that
11 intoxication of the victim can be considered by the jury, as
12 well as, you know, prior acts of violence by -- by the
13 victim.

14 Your Honor, I don't think any of those were developed
15 because Mr. Floyd just didn't consider it. I think that a
16 teenager jumping on -- jumping on your back while you're in
17 the middle of an altercation certainly leads to -- it gives
18 the starting point for a self-defense.

19 THE COURT: All right. Ms. McCallister?

20 MS. MCCALLISTER: Thank you. Your Honor, I think Mr.
21 Floyd explained his reasoning for why he chose not to present
22 self-defense as a defense. That -- that there was no
23 suggestion by Mr. Stackhouse that either of the victims were
24 armed. He never said he felt threatened or feared for his
25 safety or that he couldn't leave -- leave the room.

1 I believe in the transcript, Your Honor, there is some
2 testimony. There -- you know, there is some testimony about
3 -- about that, about how the fight started or how the
4 incident started. There's some evidence to back up the
5 statements that there were no other weapons found. So
6 neither of the other victims or in the apartment were found
7 with weapons.

8 So I think Mr. Floyd has explained that. In any event,
9 Your Honor, the charge was given to the jury. So the jury
10 was allowed to consider that as part of the case --

11 THE COURT: Very good.

12 MS. MCCALLISTER: -- in any event.

13 THE COURT: Anything further, Mr. Waller?

14 MR. WALLER: Nothing further, Your Honor.

15 THE COURT: All right. What is your cell phone number,
16 Mr. Waller?

17 MR. WALLER: Put it on the record, Your Honor?

18 THE COURT: Yeah.

19 MR. WALLER: All right. [REDACTED].

20 THE COURT: Are you some sort of top-secret spy that
21 can't give a cell phone number?

22 MR. WALLER: I don't know.

23 THE COURT: All right.

24 MR. WALLER: It depends on where the call is coming
25 from.

1 THE COURT: All right. People don't even have land
2 lines anymore. It used to be everybody in the whole world
3 had their name in the phone book.

4 But at any rate, I'm -- what I want to do for Mr.
5 Stackhouse is review these letters, review the transcript,
6 review his return and my notes, and I want to -- rather than
7 making a ruling here today, I want to ruminate on it a little
8 bit and think about it.

9 It's a very important case and y'all aren't going to be
10 here when I make up my mind. So it would probably be best if
11 I call y'all, get both of you on the phone, and give my
12 ruling and give directions on how to draft the order and who
13 is to draft the order.

14 So that is my purpose for getting your phone number, and
15 I already have hers. It's been put on the record, by the
16 way.

17 MR. WALLER: Thank you, Your Honor.

18 THE COURT: All right. Anything further from anybody?

19 MR. WALLER: Nothing from the applicant.

20 (WHEREUPON, the proceedings ended at 2:14 p.m.)

21

22 --- END REQUESTED TRANSCRIPT ---

23

24

25

1	State of South Carolina	)	
2		)	Certificate
3	County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 84, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Marion County, South Carolina, held in Florence, South Carolina, on the 30th day of January, 2018.

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

17 s/Krystal J. Smith

18 Court Reporter

20	Florence, South Carolina
----	--------------------------

21 April 25, 2019

Broad River Correctional Institution

4460 Broad River Road Columbia, S.C. 29210

561 F 2

Christy M. Gray

CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

January 2, 2014

Scott P. Floyd
12th Circuit Public Defender
Marion County Office



Dear Mr. Floyd

I have received the documents you forwarded to Mr. Dudek, along with a letter from him dated on December 2, 2013, however these are not the documents I have requested in my letter to Ms. Sloan, which you stated you acknowledged in your letter address to me, dated on November 4, 2013. Mr. Dudek stated in his letter you did send one CD, but before he can send a copy of it he need to know whether the prison will allow me to have it. I was told by the mail room clerks here, as soon as they receive the documents they would send me a (DTR) order to report. Once I sign the necessary papers showing that I received the documents, someone from the chapel will pick up the material and take it back to the Chapel, for me to view or inspect. This includes video discs. Mr. Floyd if you can recall, when you came to visit me one afternoon while I was being detain at the Marion County Jail, you showed me three separate discs. You said the discs consist of pictures of the crime scene, the surveillance video, and my video interview. You told me before trial you would let me view what was on the discs

But you never did. I'm now asking you to forward those items along with the coroner's report. (Please include both the redacted version of my video interview and the original version. Thank you for your time.

Very truly yours

Edward Stackhouse

Edward W. Stackhouse #296243

Broad River Correctional Institution

4460 Broad River Road

Columbia S.C. 29210

SWORN TO AND BEFORE ME THIS

8th DAY 01 January 2014

Susan H. Frye (L.S.)

MY COMMISSION EXPIRES:

My Commission Expires
March 5, 2015

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BOOK PAGE

Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

BROAD RIVER CORRECTIONAL INSTITUTION
4460 BROAD RIVER ROAD
COLUMBIA S.C. 29210

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Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

JULY 13, 2015

THE SUPREME COURT OF SOUTH CAROLINA
OFFICE OF DISCIPLINARY COUNSEL

RE: LAWYER SCOTT POSTON FLOYD ESQUIRE
MARION COUNTY PUBLIC DEFENDER

TO: THIS OFFICE

I HAVE REPEATEDLY ASK MR. FLOYD FOR THE
ITEMS LISTED BELOW, WHICH HE REFUSED TO
SEND THEM TO ME. I NEED THESE ITEMS TO
BE PRESENTED FOR MY POST CONVICTION HEARING.
THESE ITEMS WERE NOT IN MY RULE 5 MOTION OF
DISCOVERY.

ITEMS

1. ALL PHOTOS INCLUDING THOSE WHICH WERE NOT
IN THE STATES EXHIBITS.
2. SURVEILLANCE VIDEO
3. VIDEO OF INTERVIEW BOTH COPIES (ORIGINAL AND
REDACTED VERSION.
4. CORONERS REPORT

I'M ASKING THAT YOU PLEASE ASSIST ME ON
THIS MATTER. MY PCR APPLICATION HAS BEEN
FILED NOW FOR 16 MONTHS, AND I HAVE NOT

HEARD ANYTHING FROM AN ATTORNEY OR THE
ATTORNEY GENERAL'S OFFICE. IF POSSIBLE I'M
ASKING THAT YOU PLEASE ASSIST ME ON THIS
MATTER AS WELL. I HAVE INCLUDED COPIES OF
LETTERS TO SUPPORT MY CLAIM. THANK YOU
SO MUCH FOR YOUR TIME.

VERY TRULY YOURS
Edward W. Stackhouse
EDWARD W. STACKHOUSE 296243

on the 13th day of July, 2015
Susan H. Dye

My Commission Expires
March 5, 2018

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Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

TWELFTH CIRCUIT PUBLIC DEFENDER**Marion County Office**

221 North Main Street, Marion, South Carolina 29571

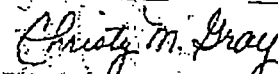
843-423-3303 ~ Fax 843-423-3382

August 19, 2015

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PAGE

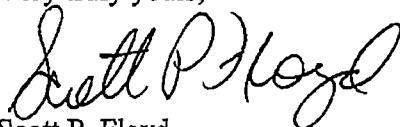

CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

Edward W. Stackhouse, #296243
BROAD RIVER C.I.
4460 Broad River Road
Columbia, S. C. 29210

Dear Mr. Stackhouse:

I am enclosing herein three (3) CDs/DVDs which contain your original interview with Mullins Police Department, the surveillance video and photographs of the crime scene. I am also enclosing a copy of the Autopsy Report. We are not retaining copies of the CDs/DVDs that we have enclosed.

Very truly yours,



Scott P. Floyd
Chief Public Defender
12th Judicial Circuit

SPF/ms
enclosures

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Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

EDWARD STACKHOUSE

296243

BROAD RIVER CORRECTIONAL INSTITUTION

4460 BROAD RIVER ROAD

COLUMBIA S.C. 29210

APRIL 12, 2015

SHERRY RHODES / CLERK OF COURT

P.O. BOX 295

MARION COUNTY 29571

DEAR CLERK

MY PCR APPLICATION HAS BEEN FILED SINCE
MARCH 11, 2014. I HAVE NOT HEARD ANYTHING
FROM THE ATTORNEY GENERAL OFFICE AS FAR AS
AN ATTORNEY FOR MY CASE. WOULD YOU PLEASE
ASSIST ME WITH THIS MATTER. THANK YOU FOR
YOUR TIME.

SINCERELY

Edward W. Stackhouse

EDWARD W. STACKHOUSE

SWORN TO AND BEFORE ME THIS
13th DAY OF April 2015

Jessie H. Frye

MY COMMISSION EXPIRES

cc/copy \$254.

My Commission Expires
March 5, 2018

2014-CP-33-00192

2011-GS-33-00061



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 2, 2013

Mr. Edward W. Stackhouse, Jr. #296243
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Stackhouse:

Enclosed are a copy of the various documents and exhibits from Mr. Floyd that you requested. A CD was also sent but before we send you a copy of it we need to know whether the prison will allow you to have it.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/brr

Enclosure

TWELFTH CIRCUIT PUBLIC DEFENDER

MARION COUNTY OFFICE

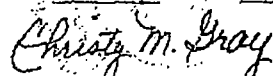
221 North Main Street, Marion, SC 29571

(843) 423-3303 Fax: (843) 423-3382

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November 4, 2013


CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

Edward W. Stackhouse, #296243
BROAD RIVER C. I.
4460 Broad River Road
Columbia, S. C. 29210

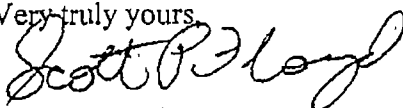
Dear Mr. Stackhouse:

Acknowledgement is hereby made of your letter to Ms. Sloan dated
October 25, 2013.

It is my understanding that the Department of Corrections does not allow
inmates to have in their possession video discs.

We forwarded all the necessary documents to the Office of Indigent Defense
who, as you are aware, is handling your appeal.

Very truly yours,



Scott P. Floyd
12th Circuit Public Defender

ms/

Broad River Correctional Institution

OCTOBER 25, 2013

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Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

Mollie Sloan
Legal Assistant
12TH Circuit Public Defender
Marion County Office

Dear Ms. Sloan

Would you please send me a copy of these items,
all of the photos, including those which are not in
the States Exhibits, Surveillance Video #34, exhibit #36
(Video of interview) both copies (Original and redacted version)
and coroner report. I have not received any of these
items. Thank you for your time.

Very truly yours,

Edward W. Stackhouse

Edward W. Stackhouse #296243

Broad River Correctional Institution
4460 Broad River Road
Columbia, S.C. 29210

SWORN TO AND BEFORE ME THIS
29TH DAY OF October 2013

Susan H. Frye U.S.

My Commission Expires
11.3.13

MY COMMISSION EXPIRES: _____

STATE OF SOUTH CAROLINA
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Edward W. Stackhouse, #296243,

C.A. No. 2014-CP-33-0192

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED
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HARRIS COUNTY SC
CLERK

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Edward W. Stackhouse (Applicant) on March 11, 2014. Applicant, through counsel, filed amendments on January 25, 2015. Respondent made its return on July 7, 2016. An evidentiary hearing on the matter was convened on January 30, 2018, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Lindsey A. McCallister, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf. Scott Floyd, Esquire, Applicant's original trial counsel, testified for the State. The Court had before it the trial transcript, the Marion County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's application with amendments, Respondent's return, and Applicant's appellate records.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Marion County Clerk of Court's orders of commitment. Applicant was indicted at the February 2011 term of the Marion County Grand Jury for murder (2011-GS-33-0061), attempted murder (2011-GS-33-0061), assault and battery of a high and aggravated nature (2011-GS-33-0061), and

possession of a weapon during commission of a violent crime (2011-GS-33-0061). Applicant was represented by Scott Floyd, Esquire. Solicitor E.L. Clements, III, Esquire, prosecuted the case on behalf of the State. Applicant was tried on May 15, 2012, before the Honorable William H. Seals, Jr. and a jury. The jury found Applicant guilty of murder, assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime. Applicant was acquitted of the attempted murder charge. On May 17, 2012, Judge Seals sentenced Applicant to life imprisonment without parole for murder, twenty years' imprisonment for assault and battery of a high and aggravated nature to be served consecutively, and five years' imprisonment for possession of a weapon during a violent crime, to be served concurrent to the other sentences.

Counsel filed a Notice of Appeal was filed on Applicant's behalf, and an appeal was perfected pursuant to Anders v. California, 386 U.S. 738 (1967), by Applicant's appellate counsel, Robert Dudek, Esquire, of the South Carolina Office of Indigent Defense – Appellate Defense Division. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Stackhouse, Op. No. 2014-UP-051 (Filed February 5, 2014). The remittitur was issued February 24, 2014.

SUMMARY OF FACTS ADDUCED AT TRIAL

On September 17, 2010, Officer Ken Alford of the Mullins Police Department responded to a call at Meadow Park Apartments where Applicant; his wife, Sharon Stackhouse; and her two sons lived. Tr. pp. 95-96. When Alford arrived at the apartment he was met by a young boy who was bleeding from a wound to the head. Tr. p. 96. The boy began screaming, "Please help my mama" at Alford repeatedly. Tr. p. 97. Alford gave the boy some basic first aid, then approached the apartment. Tr. p. 97.

Officer Alford testified he "could see a large knife with a wooden handle laying in front of the couch on the floor" from outside. Tr. p. 97. He entered the apartment with another police officer, and they saw a cell phone broken into "a bunch of pieces" on the hallway floor. Tr. pp. 97-98. In the back bedroom, Alford discovered the body of "a small-stature black lady" with "blood on the left side of her body." Tr. p. 101. According to Alford, "it seemed it like she had on more than just one set of clothing." Tr. p. 101. The woman was not moving or breathing. Tr. p. 101. Alford took possession of the knife until the evidence technician from SLED arrived on the scene to collect it. Tr. p. 107.

Officer Alford then testified he left the apartment to wait on paramedics, and as he began writing a crime scene log, a second young boy came running up to the scene screaming. Tr. pp. 101-04. Officer Alford testified the boy said, "He hurt my mother, he hurt my mother," and when he saw the officers putting up crime scene tape, the boy started screaming, "Edward Stackhouse killed my mama." Tr. p. 105. Alford got a description of Stackhouse from the boy and put it out over the radio. Tr. pp. 105-06. According to Alford, the boy told him Stackhouse was wearing jean shorts, a white shirt, and white Air Jordan shoes with a red logo on the side. Tr. p. 106.

Timothy Harrellson, the first paramedic on the scene, testified he quickly checked both the injured boy and the woman inside, and upon determining the woman was deceased, focused his efforts on treating the child. Tr. p. 117. Harrellson testified the boy was in critical condition with a serious, large laceration to the right side of his head and neck. Tr. p. 118. Harrellson testified the boy was bleeding profusely, so medics called for helicopter to transport him to the closest trauma center. Tr. p. 120.

Adam Rogers, the EMS supervisor for Marion County, also responded to the 911 dispatch on September 17. Tr. p. 158. Rogers testified he went to confirm the female victim was deceased

and notice a large amount of blood next to the body on the bed, with a single stab wound on the left side of the chest below her armpit. Tr. p. 160. Rogers explained, based on the location of the wound, the knife likely hit the victim's heart and lung, causing rapid blood loss and death. Tr. pp. 164-66. After confirming the female victim was deceased, Rogers went outside to administer first aid to the young boy. Tr. p. 166. According to Rogers, the boy had "an obvious puncture stab wound to the right flank and also a stab wound to the back of the neck." Tr. p. 166. Rogers testified he was concerned about the location of both wounds, but particularly the wound to the abdomen, so he called for a helicopter to transport the boy to the hospital trauma center. Tr. pp. 167-70. Rogers testified he considered the boy's injuries to be life-threatening. Tr. pp. 170-71.

Officer Mark Collins, with the Marion County Sherriff's Office, testified he received a call from his boss on September 17 informing him the Mullins Police Department needed assistance and directing him to go to the Mullins police station. Tr. p. 135. Collins testified, as he was driving through town, he passed a black male wearing a light-color shirt and jeans on a red and white bicycle. Tr. p. 136. Almost simultaneously, Collins received another call advising him the Mullins Police Department was looking for a suspect fitting that description, so Collins turned around, located the man, and asked to speak with him. Tr. p. 136. The man confirmed he was Edward Stackhouse, and Mullins Police Chief Kenneth Davis arrived at the scene, placed the man under arrest, and read his Miranda rights. Tr. p. 137.

Chief Davis testified the only question he asked Applicant at the time of his arrest was whether Applicant needed medical attention. Tr. pp. 288-89. However, according to Davis, Applicant said he had a question, and after being reminded anything he said could be used against him should he decide to speak, Applicant asked Davis, "Did anyone survive?" Tr. pp. 293-94. Chief Davis testified, at that time, Applicant had not been told anything about why he was being

arrested other than that police wanted to speak with him about an incident that had occurred "down the street" earlier that morning. Tr. p. 294. When Chief Davis responded "it didn't look good for one of the parties," Applicant asked if it was "Sharon." Tr. pp. 295. Chief Davis testified the exchange "struck him," and he had never been asked a question like that in his time as a law enforcement officer. Tr. p. 295.

Chief Davis further testified he ordered one of his officers to take Applicant to a waiting room in the police station and prohibited anyone from question Applicant. Tr. p. 296. Chief Davis testified Applicant was fed, given something to drink, and a change of clothes while officers gathered some resources and started putting together a case file. Tr. pp. 296-99. A few hours later, Chief Davis and Captain Michael Bethea interviewed Applicant on camera in Bethea's office at the station.¹ Tr. pp. 299-300. Chief Davis testified Bethea again read Applicant the Miranda warnings, and Davis himself asked Applicant if he understood and if Applicant wanted to speak with them. Tr. pp. 300-01. Applicant agreed to talk to the officers and gave a statement over the course of approximately one hour, all of which was recorded and a redacted version played for the jury. Tr. p. 301.

Davis testified Applicant told him the fight with Sharon began when Applicant was on the phone, and she thought he was talking to another woman. Davis recalled Applicant told him "an argument that ensued from that, and he indicated to us that they fought down the hallway. They wound up in the bedroom and. . . he was knocked to the floor by Daquan [the victim's oldest son], and [Applicant] indicated that when he fell to the floor he came upon a knife and. . . he switched hands with the knife and he came up defending himself, he said 'slashing,' because. . . he was scared they might hurt him." Tr. pp. 302-03. Applicant never admitted he stabbed Sharon, but he

¹ Captain Bethea also testified and confirmed Chief Davis's testimony. Tr. pp. 190-99.

demonstrated on the videotape how he attempted to defend himself by swinging the knife. Tr. p. 303. According to Davis, Applicant said he eventually realized something was wrong because she stopped fighting him. Applicant further told Davis that Daquan, "came in and knocked him down during the confrontation. . . and he was scared that Daquan and Sharon might hurt him and. . . he figured he hit Daquan or had hurt Daquan or nicked Daquan. . . because Quan jumped back and said, 'Ow.'" Tr. pp. 304. According to Davis, he asked Applicant multiple times if either victim had a weapon, and Applicant admitted neither did. Tr. p. 304. However, Applicant claimed his wife had stabbed him once before and had hit him with a hammer or threatened to hit him with a hammer on a prior occasion. Tr. p. 316.

Daquan, the male victim and Applicant's oldest stepson, testified he was fifteen years old at the time the incident took place. Tr. pp. 336-37. Daquan testified on the day of the incident he heard "a lot of noise bumping against the wall, and I looked up out of the corner of my eye and I seen [sic] [Applicant] come back from the kitchen with a knife. And my momma called me. So I got up, me and my brother, I went in there. [The brother] went out the door. I seen [sic] [Applicant] stabbing her right in the abdomen right here. So I grabbed his hands. . . and that's when I guess he cut me. . . ." Tr. pp. 338-39. Daquan testified when he grabbed Applicant's hands, Applicant turned toward him, grabbed his head and cut his neck, then stabbed him in the right side. Tr. pp. 341-42. According to Daquan, Applicant then turned around and walked away down the hallway, took his bike from the living room, and left the apartment. Tr. p. 343. Daquan denied either he or his mother had a weapon at the time of the attack. Tr. pp. 348-49. On cross-examination, Daquan admitted he did not tell police, in his statement given a few days after the attack, that he had seen Applicant coming from the kitchen with the knife in hand. Tr. p. 352. He also agreed his statement indicated

he witnessed the stabbing, but actually he had only entered the room once the knife was already in the victim's body. Tr. pp. 357-58.

William, Daquan's younger brother, was fourteen years old at the time of the stabbing. Tr. p. 324. He testified he and Daquan were asleep in their room when they heard "a large noise," like things were "crashing and falling hitting the floor." Tr. p. 325. They heard their mother calling for Daquan, so they both got up and ran toward her bedroom. Tr. p. 325. William testified he stopped at the doorway and then immediately left to go get help. Tr. p. 325. According to William, when he looked into the bedroom, he saw Daquan and Applicant "tussling," and Applicant had something in his hands, but William could not tell what the object was. Tr. pp. 325-26. William testified Daquan and Applicant were standing up, and he never saw either of them on the floor. Tr. p. 326.

The pathologist who performed the autopsy, Dr. Ellen Riemer, testified Sharon died from a single stab wound to the chest. Tr. p. 259. She further testified "[t]his was a non-survivable injury because there were too many essential vital structures that were severely damaged including the heart and both lungs and the aortic pump. There's no way that anybody would have been able to recover from that even if there was an expert team of surgeons at the scene." Tr. pp. 259-60. According to Dr. Riemer, there were no other wounds, defensive or otherwise, on Sharon's body. Tr. p. 258.

Mary Boehm, a DNA analyst with SLED,² testified she took swabs from the knife to be tested for blood and compared them to known samples from Applicant, Sharon, and Daquan. Tr. pp. 83-84. Boehm testified there was DNA from two different people on the knife; she confirmed Sharon's blood was on the knife and Daquan could not be excluded as the other contributor, but

² Agent Boehm was qualified without objection as an expert in DNA and serology. Tr. p. 81.

Applicant's DNA was not present. Tr. pp. 84-85. Boehm also tested cuttings from Applicant's t-shirt, which returned with a mixture of DNA from Applicant, Sharon, and Daquan. Tr. pp. 85, 88.

The judge charged the jury on the law of murder, self-defense, voluntary manslaughter, and involuntary manslaughter in Sharon's death. He also charged attempted murder, assault and battery of a high and aggravated nature, and other lesser-included assault offenses as to Daquan's injuries. Tr. pp. 409-23.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to impeach witnesses"
 - b. "Counsel failed to object and impeach witnesses"
2. Prosecutorial Misconduct

Through counsel, Applicant filed amended allegations on January 25, 2017, alleging as follows:

1. As to representation rendered by Scott P. Floyd, Esquire:
 - a. Counsel was ineffective for failing to properly cross-examine DNA expert to [sic] the presence of touch DNA;
 - b. Counsel was ineffective for failure to impeach victim with inconsistent statement;
 - c. Counsel was ineffective for failure to impeach [William] with inconsistent statement;
 - d. Counsel was ineffective for failure to object to, and move to suppress, new testimony of witnesses not disclosed in discovery, as the failure to disclose the substance of the testimony constitutes a discovery violation;
 - e. Counsel was ineffective for failure to object to impermissible vouching for witness by solicitor;
 - f. Counsel was ineffective for failure to object to testimony of Adam Rogers as outside the scope of layman testimony;
 - g. Counsel was ineffective for failure to object to, and move to suppress, testimony of Kenny Davis. The complete content of statements made by Applicant to Officer Davis were not disclosed in discovery, nor were they testified to during the Jackson v. Deno hearing;

- h. Counsel was ineffective for failure to object to, and move for a mistrial, [due] to the improper comments made by the State at the conclusion of the direct examination of [Daquan];
- i. Counsel was ineffective for failure to object to impermissible comments made during the State's closing argument;
- j. Counsel was ineffective for failing to conduct a complete investigation into the facts and circumstances surrounding Applicant's arrest, including his possession of a knife at the time of his arrest;
- k. Counsel was ineffective for failure to allow Applicant to view surveillance video prior to its introduction at trial;
- l. Counsel was ineffective for failing to provide Applicant with a copy of discovery in a medium that Applicant was able to view while detained;
- m. Counsel was ineffective for failure to ensure Applicant had a complete understanding of the constitutional rights that Applicant was waiving by pleading guilty;
- n. Counsel was ineffective for failing to conduct a complete investigation into the facts and circumstances surrounding Applicant's statements to law enforcement for a potential defense as a result of coercion by law enforcement.

At the commencement of the evidentiary hearing, counsel for Applicant indicated he would be proceeding only on the claims contained in the January 25th amendment, with the exception of the allegations contained in section (m) of the amendment, which were included as a scrivener's error. Additionally, at the close his case, Applicant moved to amend his application to include an allegation Counsel was ineffective for failing to raise self-defense. This Court finds Applicant abandoned all allegations raised in his original application but not addressed at the evidentiary hearing, and those allegations are hereby denied and dismissed.

SUMMARY OF TESTIMONY

Applicant testified Counsel was appointed to his case about a year after his arrest, after several other attorneys were relieved. According to Applicant, these charges arose when he got into a fight with his wife, her son tackled him to the ground, and Applicant was able to pick up a knife from the floor and began stabbing. Applicant testified Counsel became his attorney approximately

a year before trial, and in that time, he and Counsel met twice. According to Applicant, Counsel did not have much discovery at their first meeting, including the victim's toxicology report, which Applicant requested because he expected it to show alcohol in the victim's system. Applicant testified Counsel had also not yet received Daquan's statement, and he told Counsel he wanted to see both of these things. Applicant further testified Counsel came back to see him a second time and had his statement, along with three discs of pictures and the surveillance video, but Applicant was unable to see what was on the discs because there was no way to view them from the jail. Applicant testified the video showed a third person, whom Applicant could have identified, but he never saw the video prior to it being played at trial. He also testified the pictures showed Daquan could not have seen the hallway from where he said he did. Applicant testified Counsel did not introduce the toxicology report or subpoena toxicologist for trial. However, Applicant did not offer the pictures, the video, or the toxicology report or testimony into evidence at the hearing.

Applicant further testified he and Counsel did not discuss the elements of the crimes charged, the possible penalties, defenses or trial strategy. Applicant testified he gave Counsel information regarding potential helpful witnesses, and he did not know what the defense theory was. Applicant also testified he and Counsel did not discuss any of the medical evidence or testing, he did receive the DNA reports. Applicant testified he had questions regarding the serology and touch DNA, but Counsel did not cross-examine the SLED analyst on whether Applicant had touched the knife. Applicant also testified he thought Counsel should have challenged the pathologist's credibility regarding the wound path. As noted above, however, Applicant did not present any expert witness evidence or testimony as to the pathology, serology, or touch DNA issues.

Applicant testified he thought Counsel should have objected to the Solicitor's opening

statement in which he said the boys saw Applicant going down the hallway toward the bedroom because that detail was not disclosed to the defense until Daquan testified. Applicant also testified Counsel should have cross examined the boys more thoroughly, and Counsel missed opportunities to point out inconsistencies in the testimony of police officers. Applicant testified Counsel failed to object to the Solicitor's comments bolstering the boys' testimony in closing. Finally, Applicant testified his theory of the case was self-defense, and although he and Counsel went over it briefly, he did not believe Counsel had a particular trial strategy. Applicant testified they never discussed the victim's history of violence or mental health issues.

Counsel testified he was appointed to Applicant's case approximately a year before trial, and they met several times – more than twice, as testified to by Applicant. Counsel testified he went to the jail to meet with Applicant, and Applicant told him a similar scenario to what he described in his statement the day of his arrest. According to Counsel, the defense and trial strategy was accident or an unintentional stabbing. Counsel testified Applicant alleged he and Sharon were arguing in the bedroom when Daquan came in, jumped on Applicant's back, and knocked Applicant to the ground; while on the ground, Applicant picked up a knife and began flailing his arms, unintentionally stabbing his wife. Counsel testified Applicant told him they had both been drinking at the time, but he did not recall being told about a history of violence.

Counsel testified he prepared for trial by talking about the case with Applicant, reviewing discovery multiple times, and watching the videos of Applicant's statement and the surveillance footage from the apartment complex. Counsel agreed with Applicant that the surveillance video was unable to be played at the jail, and he could not recall how he handled the issue. Counsel testified he also reviewed the autopsy report and the statements of the other victims and witnesses.

Counsel testified he did not recall if spoke with a DNA expert about this case, and he

explained he did not cross-examine the State's witness about touch DNA because Applicant admitted he had touched the knife and swung it around, so it was irrelevant. Further, Counsel testified Applicant told him that wasn't the knife when the State moved to admit it at trial, but Applicant had never mentioned that before trial. Counsel further testified he reviewed both boys' statements, and he cross-examined them on the differences between the statements and their trial testimony. Counsel testified he did not know before trial that their testimony had changed. In any event, Counsel explained he did not want to question the boys aggressively because they were young, had been traumatized, and were clearly sympathetic witnesses, and the jury was visibly reacting to their testimony. Counsel testified he did not object to the Solicitor's comment apologizing to Daquan for having to testify because he saw no need. Additionally, Counsel testified he did not object to Rogers' testimony because Rogers could testify to what he saw and observed, nothing Rogers said was inconsistent with the pathology report, nor was it ever in doubt the victim died from a stab wound. Counsel testified Rogers' testimony did not concern him.

Finally, Counsel testified the jury was charged on the law of self-defense, although Counsel did not raise self-defense or request the charge himself. Counsel testified he did not present self-defense because Applicant's story did not support it; Applicant claimed he picked up the knife, was flailing around, and unintentionally stabbed the victims. Counsel further explained Applicant never claimed Sharon had attacked him, neither victim was armed, and Applicant never told Counsel he feared for his safety or tried to leave the room. Further, Counsel testified there was no independent evidence to suggest this occurred in self-defense. Counsel testified, nonetheless, the judge decided to charge self-defense, involuntary and voluntary manslaughter, and accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 300 S.C. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

A. Failure to cross-examine DNA expert on the presence of touch DNA on knife

“Counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” Strickland, 466 U.S. at 690. There is a strong presumption that counsel’s decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). “Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). Trial counsel’s strategy is reviewed under “an objective standard of reasonableness.” Magazine v. State, 361 S.C. 610, 617, 606 S.E.2d 761, 764 (2004). “[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include ‘which jurors to accept or strike, which witnesses should be called on the defendant’s behalf, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness should be cross-

examined.” Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (citing Sexton v. French, 163 F.3d 874, 885 (4th Cir.1998)) (emphasis added).

In this case, Counsel explained his decision not to cross-examine the DNA expert because Applicant never denied touching the knife or stabbing the victims. This Court has reviewed the transcript, and the record reflects Applicant’s DNA was not found on the knife, which neither proves nor disproves accident, so her testimony did not contradict the defense theory. Tr. pp. 84-85. Further, the transcript reflects the State established a complete chain of custody for the knife, so there was no basis for Counsel to object or challenge the testimony as to the knife itself or tests performed on it.³ Tr. pp. 230-31. Therefore, this Court finds no deficiency in Counsel’s handling of the cross-examination of Agent Boehm, the DNA and serology testing, or the chain of custody for the knife because there was no factual dispute between the State and the defense on these issues. This allegation is therefore denied and dismissed.

B. Failure to Impeach Daquan and William Using Prior Statements

As noted in section A above, “when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith, 386 S.C. at 567, 689 S.E.2d at 632 (citing Caprood, 338 S.C. at 110, 525 S.E.2d at 517). Trial counsel’s strategy is reviewed under “an objective standard of reasonableness.” Magazine, 361 S.C. at 617, 606 S.E.2d at 764. “[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include ‘which jurors to accept or strike, which witnesses should be called on the defendant’s behalf, what evidence should be introduced, whether to object to the admission of evidence, *[and] whether and how a witness should be*

³ The knife was tested for fingerprints, but none were recovered. Agent Dinh, of SLED, testified that was not unusual due to the nature of latent fingerprints. Tr. pp. 232-33.

cross-examined.” Abney, 408 S.C. at 48, 757 S.E.2d at 547 (citing Sexton, 163 F.3d at 885) (emphasis added).

The purpose of cross-examination at trial is “to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness.” State v. Gillian, 360 S.C. 433, 451, 602 S.E.2d 62, 71 (Ct. App. 2004) aff’d as modified, 373 S.C. 601, 646 S.E.2d 872 (2007) (citing Delaware v. Van Arsdall, 475 U.S. 673 (1986)). Applicant testified the pictures of the scene showed Daquan could not have seen what he claimed, but Applicant did not introduce those pictures into evidence at the hearing. See, e.g., Mozee v. United States, 963 A.2d 151, 165 (D.C. 2009) (“Ineffective assistance of counsel complaints sometimes allege the failure to adequately follow-up cross-examination answers with more detailed questions further examining those answers. But a successful ineffective assistance complaint requires more than speculation that additional information would have had an impact on the outcome of the case.”); see also Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (In order to prevail on a claim of ineffective assistance of counsel, the South Carolina Supreme Court has repeatedly held a PCR applicant *must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.) (emphasis added). In this case, Applicant has offered only speculation that further or more rigorous cross-examination of Daquan and William would have changed the outcome of his case.

Additionally, the record reflects Counsel cross-examined both Daquan and William in detail about their statements and pointed out numerous inconsistencies, particularly between Daquan’s statement and his trial testimony. Tr. pp. 352, 358, 398. Counsel also explained he felt

his cross-examination of the boys needed to be handled in a particular way due to their age and because they had been traumatized and were eliciting emotional reactions from the jury. Further, because the discrepancies identified by Applicant relate only to impeachment, and Counsel did in fact impeach the witnesses with their prior statements, this Court finds no discovery violation. See Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) ("Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.") (citing United States v. Bagley, 473 U.S. 667 (1985)). This Court finds Counsel articulated a reasonable strategy to explain the decisions he made at trial, and therefore, this Court finds no deficiency in his handling of the cross-examination and impeachment of Daquan and William. This allegation is therefore denied and dismissed.

C. Failure to Object to Testimony of Adam Rogers (EMT)

Rule 701, SCRE, explains lay witness testimony "in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training. "Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions." Watson v. Ford Motor Co., 389 S.C. 434, 445-46, 699 S.E.2d 169,

175 (2010). Any alleged error in qualifying a witness as an expert is subject to a harmless error analysis. See State v. Douglas, 380 S.C. 499, 503, 671 S.E.2d 606, 608-09 (2009) ("However, although Herod did not need to be so qualified in this case, we nonetheless affirm the result. . . because Douglas suffered no prejudice either as a result of Herod's testimony or by her qualification as an expert.").

This Court finds Applicant has failed to prove he was prejudiced by any deficiency in Counsel's handling of Rogers' testimony. See Strickland, 466 U.S. at 691, 104. ("An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment."). Further, Counsel testified he did not object to Rogers' testimony because Rogers could testify to what he saw and observed, nothing Rogers said was inconsistent with the pathology report, nor was it ever in doubt the victim died from a stab wound. Counsel testified Rogers' testimony did not concern him. This Court finds, while Rogers' testimony may have been objectionable as outside the scope of testimony permitted by a lay witness, there was no dispute as to the cause of the victim's death, and Rogers' testimony was wholly consistent with that of Dr. Reimer, the pathologist, who was qualified as an expert witness. Because Rogers' testimony is immaterial to any issue in dispute, this Court finds it had no effect on the outcome of the trial. Accordingly, Applicant's allegation is denied and dismissed with prejudice.

D. Failure to move to suppress Applicant's statement to Chief Davis

It is axiomatic that a defendant in a criminal case is entitled to an independent evidentiary hearing to determine the voluntariness of any statements made by the defendant before the admission of such statements in front of the jury at trial. Jackson v. Denno, 378 U.S. 368 (1964). Such a hearing was held in Applicant's case prior to trial, and the judge ruled Applicant's

statements were given voluntarily after receipt of the appropriate Miranda warnings, and the statements were submitted to the jury. Tr. p. 61. This Court finds Applicant has not presented any evidence his statements were involuntary, and therefore, this allegation is denied and dismissed. See, e.g., Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (“In order to prevail on a claim of ineffectiveness. . . the South Carolina Supreme Court has repeatedly held a PCR applicant *must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice. . . .”).

E. Failure to object to vouching and impermissible comments in State’s closing argument and failure to object to State’s improper comments upon conclusion of Daquan’s direct examination

The State’s closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). Furthermore, a prosecutor cannot vouch for a witness’ credibility. State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001). A prosecutor improperly vouches for a witness’ credibility and places the government’s prestige behind a witness by making explicit personal assurances, or indicating that information not presented to the jury supports the testimony. Id. However, “[a] solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony. Improper comments do not require reversal if they are not prejudicial to the defendant, and the [applicant] has the burden of proving he did not receive a fair trial because of the alleged improper argument.” Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004) (citing Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002)). “[I]t ‘is not enough that the prosecutors’ remarks were undesirable or even universally condemned.’ The relevant question is whether the prosecutors’ comments ‘so

infected the trial with unfairness as to make the resulting conviction a denial of due process.” Darden v. Wainwright, 477 U.S. 168, 181 (1986) (citing Donnelly v. DeChristoforo, 416 U.S. 637 (1974)).

In this case, Applicant alleges Counsel should have objected to the Solicitor’s comments in closing that the defense had no evidence to show the boys were lying “because they’re not lying” as improper vouching. See Tr. p. 393. Applicant further alleges Counsel should have objected to the portion of the solicitor’s argument where he told the jury, “I don’t believe this was voluntary manslaughter.” See Tr. p. 383. Finally, Applicant alleges Counsel should have objected and moved for a mistrial after the Solicitor, at the conclusion of Daquan’s direct examination, told him, “Son, I’m so sorry you had to be here today.” See Tr. p. 349.

This Court has reviewed the closing argument in full, as well as the challenged testimony from Daquan’s direct examination, and finds any deficiency by Counsel was harmless. While the comment regarding the boys’ testimony was potentially objectionable as burden-shifting; in the context of the entire closing argument, it appears to this Court the Solicitor was making a legitimate factual argument as to who was telling the truth. As to the Solicitor’s comment regarding voluntary manslaughter versus murder, the judge charged the jury on various lesser-included offenses, and the State was entitled to make an argument applying the facts of the case to the law, which the Solicitor did here. Similarly, this Court finds any deficiency in Counsel’s failure to object to the State’s comments to Daquan at the conclusion of his direct examination was harmless. Counsel offered a similar condolence to Daquan before beginning his cross-examination, and Daquan was an especially sympathetic witness. Accordingly, the Court finds Applicant has failed to prove any prejudice from Counsel’s failure to object, and these allegations are denied and dismissed.

F. Failure to provide discovery in an accessible format and to allow Applicant to view surveillance video prior to trial

While the State has an obligation to turn over evidence in compliance with Brady⁴ and Rule 5, SCRCrP, evidence does not have to be disclosed to a defendant personally. Hyman v. State, 397 S.C. 35, 46, 723 S.E.2d 375, 380 (2012), overruled on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Furthermore, simply because an applicant is unable or not permitted to personally view evidence does not mean his counsel is ineffective. Id. at 47, 723 S.E.2d at 381. Defense counsel is obligated to inform his client what evidence the State has against him, and, in this case, Counsel testified he met with Applicant and reviewed discovery with him on several occasions. This Court finds Counsel's testimony credible on this issue. Further, this Court finds Applicant was aware of the existence of the surveillance video, but, although Applicant testified there was a person on the video he could have identified had he seen it prior to trial, this issue was irrelevant to Applicant's defense or the State's case. As both Counsel and Applicant testified at the hearing, Applicant never denied stabbing the victim, and there was no suggestion of third-party guilt; instead, Applicant's defense was that the stabbing was accidental. Therefore, the identity of the third party on the tape is wholly irrelevant to any fact in issue at Applicant's trial. Even if Counsel was deficient for not ensuring Applicant had a chance to see the tape prior to trial, Applicant was not prejudiced by such failure. Therefore, this allegation is denied and dismissed.

G. Failure to argue self-defense

A self-defense charge is not required unless it is supported by the evidence. State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994). To establish self-defense in South Carolina, four elements must be present: (1) the defendant must be without fault in bringing on

⁴ Brady v. Maryland, 373 U.S. 83 (1963).

the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger. State v. Slater, 373 S.C. 66, 69-70, 644 S.E.2d 50, 52 (2007).

In this case, it is undisputed that Applicant's version of events is that he picked up the knife from the floor of the bedroom, began swinging and flailing around, and stabbed or cut the victims in the process. Counsel testified this is the story Applicant told him when they met to discuss the case, and it was the same version he gave the Mullins police officers in his statement. Applicant's own testimony at the evidentiary hearing recited these same facts. Counsel also explained he argued the defense of accident, rather than self-defense because in his opinion, these facts do not support a self-defense case. Counsel further testified Applicant never told him he was in fear of his life. In any event, the trial judge chose to give the self-defense charge to the jury, so Applicant still received the benefit of the charge. This Court finds Counsel's strategy was reasonable, and accordingly, Applicant's allegation is denied and dismissed.

H. All other allegations

As to any and all allegations which were raised in the original application or the amendment and not specifically addressed in this Order, this Court finds that the applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds that the

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S.C. SUPREME COURT

applicant waived such allegations and failed to meet his burden of proof regarding them.

Specifically, this Court finds Applicant waived the allegation as to a guilty plea, as this was a scrivener's error in the amendment. Therefore, any and all allegations not specifically addressed in this Order are hereby denied and dismissed.

CONCLUSION

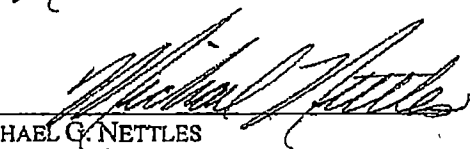
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 6 day of Nov, 2018.


MICHAEL G. NETTLES
Presiding Judge
Twelfth Judicial Circuit

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WITNESSES

MICHALE BETHEA Mullins Police Department

E. L CLEMENTS, III

ARREST WARRANT NUMBER

1052561 1052559 1052560

ACTION OF GRAND JURY

True Bill

Michael Watson

Foreperson of Grand Jury

Date: 02-17-2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-33-0061

The State of South Carolina

County of

MARION

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2011

THE STATE

vs.

EDWARD W STACKHOUSE, JR

Indictment for

MURDER;

ATTEMPTED MURDER;

POSSESSION OF A WEAPON DURING
VIOLENT CRIME

FILED

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BOOK

PAGE

CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION)

INDICTMENT FOR
 MURDER
 ATTEMPTED MURDER
 POSSESSION OF A WEAPON DURING VIOLENT
 CRIME

At a Court of General Sessions, convened on FEBRUARY 17, 2011 the Grand Jurors of MARION County present upon their oath:

COUNT ONE- MURDER

That Edward W Stackhouse, Jr. did in Marion County, on or about September 17, 2010, willfully, feloniously, and intentionally kill the victim, Sharon Stackhouse, with malice aforethought, either express or implied, by means of stabbing, and the victim did die as a proximate result thereof on or about September 17, 2010 in Marion County, in violation of Section 16-03-0010, 20 S. C. Code of Laws, 1976, as amended.

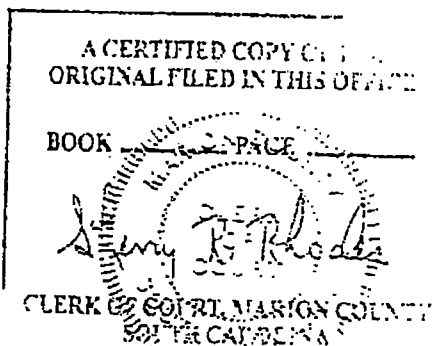
COUNT TWO- ATTEMPTED MURDER

That Edward W. Stackhouse, Jr. did in Marion County, on or about September 17, 2010, with malice aforethought attempt to murder one, Daquan B. , age 16, by stabbing him with a knife or other sharp object and causing lacerations to his person, and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

COUNT THREE - POSSESSION OF A WEAPON DURING VIOLENT CRIME

That Edward W Stackhouse, Jr did in Marion County, on or about September 17, 2010. possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR