

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

William H. Seals Jr., Circuit Court Judge

Appellate Case No. 2020-000560

Sincere J. Owens,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX
(AMENDED/REDACTED)

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1 the evidence will show that Keith "Showtime" Williams had
 2 been threatening Sincere for a long time. That he had, in
 3 the past, pulled a gun on Sincere and that he had threatened
 4 him with serious bodily harm, that he was angry in
 5 approaching Mr. Owens, and that Mr. Owens grabbed -- that
 6 Sincere grabbed a gun and fired, not looking, just to
 7 protect himself.

8 And that in an unusual set of facts, I believe the
 9 evidence will show that the bullet angle, a pathologist will
 10 testify to this. Normally, if you're firing at somebody
 11 straight on, normally, you would expect the bullet angle to
 12 be down. I believe the evidence will show that the bullet
 13 angle was up. As it is consistent with a ricochet or
 14 something where it was not an intentional killing.

15 In any event, listen carefully to all of the evidence
 16 that comes from that stand and consider not just the act,
 17 but also the intent. Some killings are, sadly, justified;
 18 and some are accidents, and there was no intent to kill at
 19 all. The judge will inform you of the law, but consider
 20 carefully the facts that come from that stand.

21 THE COURT: Mr. Thornton, call your first witness.

22 DEP. SOL. THORNTON: Thank you, Judge. The State calls
 23 Richard Sheffield to the stand.

24 MADAME CLERK: Please come forward and be sworn, Mr.
 25 Sheffield.

1 (WHEREUPON, Mr. Richard Sheffield is duly sworn.)

2 MADAME CLERK: Please have a seat on the witness stand
3 and state your full name for the record.

4 MR. SCHEFFIELD: Richard Sheffield.

5 DIRECT EXAMINATION

6 BY DEP. SOL. THORNTON:

7 Q Mr. Sheffield, who do you work for, sir?

8 A Colleton County Fire and Rescue.

9 Q And did you work for Colleton County Fire and Rescue on
10 or about April the 22nd of 2009?

11 A Yes, sir.

12 Q All right. Did you respond out to any particular calls
13 that day on Francis Street?

14 A I did. I responded to ---

15 Q Okay. I'm sorry, go ahead.

16 A I responded to a reported gunshot wound.

17 Q Okay. And was that in the area of 211 Francis Street?

18 A I believe so.

19 Q All right. What county is that in?

20 A It's in the county of Colleton.

21 Q All right. So it's here in Colleton County?

22 A Yes, sir.

23 Q All right. What did you find when you responded out to
24 that address?

25 A I found a male patient lying face down on a dirt alley

1 THE COURT: All right.

2 DEP. SOL. THORNTON: The State calls Mark McCune, Your
3 Honor. He is coming in right now.

4 MADAME CLERK: Please come forward and be sworn. Place
5 your left hand on the Bible and raise your right.

6 (WHEREUPON, Mr. Mark McCune is duly sworn.)

7 MADAME CLERK: Please have a seat on the witness stand
8 and state your full name for the record.

9 MR. MCCUNE: Mark McCune, Mark Allen McCune.

10 DIRECT EXAMINATION

11 BY DEP. SOL. THORNTON:

12 Q Mr. McCune, how are you today?

13 A Doing alright.

14 Q Mr. McCune, where do you live?

15 A I stay at [REDACTED] Drive.

16 Q All right. Do you know the man seated at that table
17 right there next to Dave Mathews?

18 A Yes, sir.

19 Q Who is that?

20 A I call him Jamal.

21 Q All right. Is that Sincere Jamal Owens?

22 A Yes.

23 Q Do you remember seeing him on April the 22nd of 2009?

24 A Yes.

25 Q All right, sir. And where were you at when you saw

- 1 him?
- 2 A I was coming down Francis Street.
- 3 Q Coming down Francis Street. Is there anybody in
4 particular's house you were closest to?
- 5 A My cousin, Annie Claire's house, right down the street.
- 6 Q All right. Annie Claire, what's her last name?
- 7 A Glover.
- 8 Q Annie Claire Glover. And who lives -- do you know
9 anybody who lives pretty close to Ms. Glover?
- 10 A Uh ---
- 11 Q Let me ask that ---
- 12 A Well, I know several people.
- 13 Q You know a lot of people?
- 14 A Yeah, in that neighborhood.
- 15 Q All right. Let me be more specific, do you know who
16 Keith Williams is?
- 17 A Showtime.
- 18 Q Yes, sir. Do you know who that is?
- 19 A Yes.
- 20 Q All right. Does he live close to Ms. Annie Claire
21 Glover?
- 22 A Yes.
- 23 Q All right. Did you see him on that day? When I say
24 "him," I mean Keith Williams, or if you call him Showtime.
25 Did you see him the same day you saw Sincere Owens?

- 1 A Yeah, I was coming down the street. He just got off
2 from work.
- 3 Q "He" being who? Keith Williams just got off from work?
- 4 A Yeah, Showtime.
- 5 Q And how do you know that? How do you know he just got
6 off from work?
- 7 A Because I feeds the dogs every day, you know. I rakes
8 the yards and feeds his dog every day.
- 9 Q So you do work for him around his house?
- 10 A Yeah.
- 11 Q All right. And does he wear anything in particular
12 when he goes to work?
- 13 A He had on an orange, one of those construction-like ---
- 14 Q Like a safety vest?
- 15 A Yeah. Yeah.
- 16 Q And did you see him come home from work?
- 17 A I seen him when he pulled in the yard. I was coming
18 down the street. I seen -- he had just got out and check
19 his mailbox.
- 20 Q All right. What did you see after he pulled in to
21 check his mailbox?
- 22 A Well, before he came home, you know, I seen Sincere
23 coming from out his yard, you know. I guess he wanted to go
24 talk to him about something, but ---
- 25 Q All right. Hang on. Slow down for me for a second.

1 You saw Sincere Owens, the defendant in this case, come out
2 of Keith Williams' yard?

3 A Yeah. I was coming down the street.

4 Q All right. And did Sincere say anything to you?

5 A He just said, "What's up", you know, and then got back
6 in the truck.

7 Q All right. And what kind of truck was it?

8 A It was a black truck.

9 Q A black truck. Was it a pickup truck or like a SUV
10 type vehicle?

11 A Something like a Blazer.

12 Q Like a Blazer, okay. So he gets back into a black
13 Blazer. What happens after that?

14 A Keith came to check his mailbox and me and one of my
15 friends was walking down the street, and Sincere was already
16 in the truck, and he came to check his mailbox. He was like,
17 "You come to do my yard?"

18 Q Now, when you say "he," you're talking right now is
19 Keith Williams?

20 A Yes.

21 Q And he asked you if you were doing his yards?

22 A Yeah, because I come to do his yards, because I do his
23 yard every day at 4:00 when he get off. So as we was
24 walking down the street, one of my friends told Sincere, and
25 he had done got in the truck. He said ---

1 MR. MATHEWS: Objection, Your Honor, that's hearsay.

2 THE COURT: Sustained.

3 Q Mr. McCune, don't talk about what anybody told you
4 unless you heard something.

5 A No, I'm not saying anybody told me.

6 Q Okay. You can't talk about what you heard or what
7 somebody else may have heard; that's hearsay. Just tell me
8 what you saw after Mr. Williams came home, checked his
9 mailbox, what did you see after that?

10 A Sincere got out the car. He came and said something
11 about -- they must have had confusement or something about
12 his mother or something, and Show was like -- Keith was
13 like, "What you say? What you say?" you know, and after
14 that, you know, all I seen was a gun and he said ---

15 Q All right. Who had the gun?

16 A Sincere.

17 Q Okay. And he wasn't trying to shoot him or nothing,
18 you know. He pulls the gun and he was like, "Man, I should
19 --" and then he stopped. He didn't finish his statement.
20 He was like -- and Keith was like, "Oh, so you got a gun?
21 You got a gun?" and he started walking off and Sincere
22 fired three times at the ground, you know, trying to scare
23 him. And he ran and he must be got hit in the back.

24 DEP. SOL. THORNTON: Court's indulgence, Your Honor, one
25 moment.

1 THE COURT: Yes, sir.

2 Q Now, Mr. McCune, I'm going to ask you a question. Do
3 you remember talking to a Sgt. Warren?

4 A Yes.

5 Q Do you remember what you told him?

6 A Yes.

7 Q Is it your testimony today that you just told this jury
8 the same thing that you told the Sergeant?

9 A Yes.

10 Q All right. So your testimony, now, is that this was an
11 accidental shooting? That he just shot at the ground to try
12 and scare him?

13 A Yeah, the first shot was at the ground, and then, you
14 know, he just kind of like aimed, like he was shooting, but
15 he was still shooting at the ground. He was still shooting
16 -- not towards like trying to shoot him, but he was shooting
17 at the ground.

18 Q And your testimony right now is that that is what you
19 told Sgt. Warren on that day?

20 A Yeah.

21 Q Do you remember talking to a detective at the scene,
22 Jean Reid?

23 A I believe so.

24 Q Is that what you told her?

25 A Is it a lady?

1 Q Yes, it's a lady.

2 A Yeah, that he was shooting at him at the -- you know,
3 he wasn't pointing at him. He was shooting at the ground.

4 Q And that's what your testimony is?

5 A Yeah.

6 Q All right. So on April 22nd of 2009, that afternoon,
7 you didn't tell her that Mr. Williams was walking -- that
8 you were walking down the street when this incident
9 occurred?

10 A Yes, I did.

11 Q That the lone suspect was Jamal Owens?

12 A Uh-huh (affirmative).

13 Q That you observed a black Chevy Blazer with dark tinted
14 windows fire several rounds out of his window at Keith
15 Williams?

16 A No, I didn't say he fired out the car. He was standing
17 outside his car. Everybody was in the middle of the road.

18 Q So did he shoot at Keith Williams or did he shoot at
19 the ground?

20 A He was shooting towards him, but he was shooting at the
21 ground.

22 Q But that's not what you told the detective, is it?

23 A That's what I told her. He was shooting at him,
24 shooting at him.

25 Q At any time prior to you sitting in that chair today

1 did you say to the detectives, or to me, or anybody in my
2 office that he shot at the ground? Did those words come out
3 of your mouth in any of your interviews before you just took
4 this stand? Think real hard, now.

5 A I believe so.

6 Q You believe so or you did?

7 A I believe so.

8 Q So if we get a tape ---

9 THE COURT: All right. Mr. Thornton, let him answer
10 your question.

11 DEP. SOL. THORNTON: Yes, sir.

12 Q Did you say that in your interview with Det. Warren?

13 A No.

14 Q No, you didn't did you?

15 A No.

16 DEP. SOL. THORNTON: I have no further questions.

17 THE COURT: Cross-examination?

18 MR. MATHEWS: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. MATHEWS:

21 Q Mr. McCune, did Keith used to carry -- did you know
22 Keith, or Showtime, to sometimes carry weapons?

23 A He used to, but after he got on probation, he got rid
24 of them.

25 Q All right. And was it pretty well known that Keith

1 had threatened -- that Showtime had threatened Jamal?

2 A Oh, I didn't have no sense about that.

3 Q Didn't know about that?

4 A No, I didn't know nothing about that.

5 Q All right.

6 MR. MATHEWS: One moment, Your Honor.

7 (BRIEF PAUSE IN THE COURTROOM.)

8 MR. MATHEWS: Nothing further, Your Honor.

9 THE COURT: Any redirect?

10 DEP. SOL. THORNTON: None, Judge.

11 THE COURT: Sir, you may step down. Thank you. Mr.

12 Thornton, would you and Mr. Mathews approach, please?

13 (WHEREUPON, a bench conference is held off the record
14 and out of the hearing of the jury.)

15 THE COURT: Ladies and gentlemen, at this time, we're
16 going to take our morning break. We've been going at it a
17 little over an hour. The next witness will be here in a few
18 minutes. I'm going to allow you to go to your jury room at
19 this time to take a break. Once again, I would instruct you
20 not to discuss this case at all. I will bring you back out
21 here shortly and we will proceed with the trial. Thank you
22 very much.

23 (10:40 A.M., WHEREUPON, the jury exits the courtroom
24 and the following is held on the record.)

25 THE COURT: Anything from the State?

1 MR. MATHEWS: No questions, Your Honor.

2 THE COURT: All right. Ma'am, you may step down.

3 Thank you.

4 DEP. SOL. THORNTON: I'd ask that she be excused, also.

5 MR. MATHEWS: Without objection, Your Honor.

6 THE COURT: Thank you. Ma'am, you're excused with
7 regards to your responsibilities under this subpoena.

8 DEP. SOL. THORNTON: Thank you, Judge. We'd call
9 Shante Glover.

10 MADAME CLERK: Please come forward and be sworn. Place
11 your left hand on the Bible and raise your right.

12 (WHEREUPON, Ms. Shante Glover is duly sworn.)

13 MADAME CLERK: Please have a seat on the witness stand
14 and state your full name for the record.

15 MS. GLOVER: Shante Glover.

16 DIRECT EXAMINATION

17 BY DEP. SOL. THORNTON:

18 Q Ms. Glover, where do you live?

19 A [REDACTED] Apartment [REDACTED]

20 Q All right. Ms. Glover, there is some testimony earlier
21 in this Court, do you know the defendant, Sincere Jamal
22 Owens?

23 A Yes, sir.

24 Q All right. Do you, in fact, have a child in common
25 with him?

- 1 A Yes, sir.
- 2 Q And did you also know the decedent, Keith Williams?
- 3 A Yes, sir.
- 4 Q All right. So the victim in this case, Keith Williams,
5 do you have a child in common with him as well?
- 6 A Yes, sir.
- 7 Q All right. Do you remember about all of the events
8 that occurred on April the 22nd of 2009 when Keith Williams
9 was killed? Do you remember that day?
- 10 A Yes, sir.
- 11 Q All right. Do you have a vehicle, ma'am, or did you
12 have one at that time?
- 13 A Yes, sir.
- 14 Q What is it?
- 15 A A '95 Blazer.
- 16 Q All right. What color is it?
- 17 A Black.
- 18 Q And did you let anybody borrow the truck, or that
19 Blazer, that day?
- 20 A Yes.
- 21 Q Who?
- 22 A Sincere Owens.
- 23 Q All right. So at the time this occurred, were you --
24 and forgive me for not knowing some of the words that folks
25 call it, were you seeing Jamal or dating Jamal? I mean,

1 were y'all together at that point?

2 A Yes, sir.

3 Q All right. So it's not unusual for him to have your
4 vehicle?

5 A No. He always had it.

6 Q Okay. So on the day of April 22nd, 2009, Jamal Owens
7 is driving your black Blazer; is that right?

8 A Yes, sir.

9 Q And did you ask him to do anything in particular that
10 day?

11 A I told him that I might need him to go get my kids.

12 Q All right. And I will ask you, and as I ask you these
13 questions, remember don't say anything that somebody else
14 told you, because that's hearsay; just what you saw or what
15 you said, okay?

16 A Uh-huh (affirmative).

17 Q All right. So you asked Mr. Owens to go out and pick
18 up your children; is that right?

19 A I told him I might need him to.

20 Q All right. At some point, did you tell him to go pick
21 the kids up?

22 A Later on.

23 Q Okay. Where would your kids have been when he went to
24 pick them up?

25 A After I wanted him to?

1 Q Yes, ma'am. Where were they? Where did you send him
2 to get the kids is what I'm asking.

3 A After when I talked to him the second time, I needed
4 him to go get the kids; he had to go get them from my
5 grandma's house.

6 Q Okay. And who is your grandmother?

7 A Annie Glover.

8 Q And is that the Annie Glover that we've heard about
9 here today that lives on Francis Street?

10 A Yes, sir.

11 Q Okay. And does she live a few houses down from Keith
12 Williams, where he lived at the time before he was killed?

13 A Yes, sir.

14 Q Now, there's been a lot of testimony about this; it's
15 no secret that there was some issues between Mr. Williams
16 and Mr. Owens; is that correct?

17 A Yes, sir.

18 Q Now, on that particular day, you had some type of
19 disagreement with Mr. Williams, hadn't you?

20 A Yes, sir.

21 Q Okay. And is that what prompted you to go tell Jamal
22 to go get the kids?

23 A Yes.

24 Q Okay. Ma'am, at some point after Keith Williams was
25 killed, did you give officers consent to search your Jimmy,

1 or Blazer -- I'm sorry, I keep calling it a Jimmy; but your
2 black Blazer?

3 A They never asked me, no.

4 Q Okay.

5 DEP. SOL. THORNTON: Your Honor, Court's indulgence one
6 moment.

7 (BRIEF PAUSE IN THE COURTROOM.)

8 DEP. SOL. THORNTON: Your Honor, may I approach?

9 THE COURT: Yes, sir.

10 Q Ma'am, I'm going to hand you a document. I just need
11 for you to review that and see if it refreshes your memory?

12 A (WITNESS REVIEWS DOCUMENT.)

13 Q Ma'am, is that your signature at the bottom of that
14 page?

15 A Uh-huh (affirmative).

16 Q Okay. Does it appear that you gave them consent to
17 look in your vehicle?

18 A Yes.

19 Q All right. Thank you very much. I realize that it's
20 been over a year ago and you may not remember everything.
21 Were you around them when they searched your vehicle?

22 A No, sir.

23 Q All right. Did you have anything in the vehicle in the
24 way of a firearm? What I mean is did you have a gun in the
25 Blazer?

1 A Yes, sir.

2 Q And do you think that you would recognize it by the
3 serial number if you saw it?

4 A I don't think so.

5 Q Okay. But you did keep a gun in the car; is that
6 right?

7 A Uh-huh (affirmative).

8 Q Where did you keep it?

9 A In the glove compartment.

10 Q How long had you kept that gun in there?

11 A Since I was going to work at 11.

12 Q You work nights?

13 A I had to be there at 12.

14 Q Twelve in the daytime or twelve at night?

15 A In the day.

16 Q Okay. Were you at your grandmother's when Keith was
17 shot and killed?

18 A No, I was at work.

19 Q Okay. So you weren't able to see anything as far as
20 what happened with the shooting?

21 A No, sir.

22 Q The only thing you would know about it is what you
23 heard from word on the street or other people or whatever;
24 is that right?

25 A Yes, sir.

1 Q All right. What was the argument with Keith Williams
 2 about that day? Did it involve getting your kids or did you
 3 ask him to go get your kids?

4 A He saw Sincere drop me off at work and after Sincere
 5 left, he came in and he was like, "I hope you got somebody
 6 to go get your kids."

7 Q And remember, don't talk about what somebody else said;
 8 but is it safe to say that he wasn't happy when he saw you
 9 with Sincere?

10 A Uh-huh (affirmative).

11 Q All right. And y'all had an argument at that point
 12 about going to pick up the kids?

13 A Yeah.

14 Q Is that when you sent Sincere to go get the kids?

15 A That's when I called him and told him I might need him
 16 to -- well, I needed him to go get my kids at that time.
 17 And he told me that him and Quame was out of town and for me
 18 to get somebody to go get them.

19 Q I'm sorry. They were out of town?

20 A They was somewhere.

21 Q Okay. Did he tell you that -- were they in your truck
 22 when they did that?

23 A Yes.

24 Q Did they bother to tell you that beforehand?

25 A I mean, that was like -- that was like 12:30, maybe 30

1 minutes after I got to work. After me and Keith got done
2 arguing.

3 Q Okay. At some point, though, you sent Mr. Owens over
4 to your grandmother's house, correct?

5 A Uh-huh (affirmative).

6 Q All right. And other than that, ma'am, that's the only
7 thing that you know yourself that you saw?

8 A I sent him to get my kids.

9 Q Ma'am, I'm going to hand you a stack of photographs
10 that's been marked, so far for identification, as State's
11 Exhibit Number Two. Would you look at those and see if you
12 can identify any of those objects? To be more specific,
13 what's in any of those pictures?

14 A My truck, my license plate, my glove compartment.

15 Q Do you recognize what looks like a picture of a
16 building?

17 A No.

18 Q You don't recognize that?

19 A No.

20 Q Thank you, ma'am, very much. But they are photographs
21 of your truck, your license plate tag and your glove box?

22 A Uh-huh (affirmative).

23 Q If you look real closely, do you see your gun in the
24 glove box? And if you need to look at it again, I'll let
25 you. Do you need to see it?

1 A Uh-huh (affirmative).

2 Q Would you look and see if that's a top part of the gun
3 in the glove box?

4 A Yeah, that's what it look like.

5 Q All right. Thank you, ma'am. I don't have anything
6 further, Ms. Glover. Please answer any questions that Mr.
7 Mathews has for you.

8 THE COURT: Mr. Mathews, cross-examination.

9 MR. MATHEWS: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. MATHEWS:

12 Q Shante, this is very difficult for you, isn't it?

13 A Yes, sir.

14 Q You've got a baby by Jamal and you've got a baby by
15 Show?

16 A Uh-huh (affirmative).

17 Q Did your -- let's start with something easy. Did the
18 glove box in your Blazer, did that sometimes have a hard
19 time staying closed? Was the latch kind of messed up?

20 A A little.

21 Q All right. But Sincere, he knew that you kept a gun in
22 there?

23 A Yeah.

24 Q Okay. Did you -- you've been knowing Keith -- Keith
25 was your first love, right? Showtime?

1 A He was my first relationship.

2 Q I gotcha. I'm sorry, your first relationship. Did he
3 have a stretch where he carried a gun?

4 A Yes, sir.

5 Q Did you see that gun?

6 A Yes, sir.

7 Q How many times?

8 A A lot of times.

9 Q Okay. Did you know about his reputation for whether he
10 was a violent guy or a peaceful guy?

11 A I mean, he had an attitude, uh-huh (affirmative).

12 Q Okay. Did he send you texts threatening Jamal?

13 A He sent a text -- he always, I mean, since me and
14 Sincere got back together, he was just upset about it;
15 period.

16 Q Did he say he was gonna -- pardon my language, but did
17 he say he was gonna "F" Jamal up when he saw him?

18 A Yes, sir.

19 Q Okay. And Jamal, this is -- how long had that been
20 going on?

21 A Times when me and Sincere saw him at the gas station or
22 Sincere told me he came to Druid Hills one time or if he saw
23 us, he'd talk trash; that was him. Tell Sincere don't
24 bother him up. That was just Show.

25 Q Okay. And now, you had -- when was the last time you

1 had talked to Jamal on the day that Show was killed? When
2 was the last time before you found out that Show was dead?
3 How much earlier than that was the earliest you talked to --
4 how much earlier than that had you most recently talked to
5 Jamal?

6 A It was around 12:30 or 1:00 when he told me to find
7 somebody to pick them up because he was going to Summerville
8 and they might not get back in time.

9 Q Okay. And when did you find out that Show had been
10 shot?

11 A Right after he left my job, cursing me out, mad.

12 Q Okay. How much time was that between? Half hour,
13 hour?

14 A It was like 15 minutes.

15 Q Okay. I'm talking about when was the last time -- now,
16 Show showed up to your work?

17 A Uh-huh (affirmative).

18 Q And he was cussing and raising -- raising hell?

19 A Uh-huh (affirmative).

20 Q And very angry?

21 A Uh-huh (affirmative).

22 Q And he left out of there angry?

23 A Uh-huh (affirmative).

24 Q And fifteen minutes after that, you found out that Show
25 was dead?

1 A Yeah, 10 or 15 minutes.

2 Q Ten or fifteen minutes; not long at all?

3 A Uh-huh (affirmative).

4 Q He left mad and then a very short time after that, you
5 found out he was dead? You called your grandmother and she
6 told you?

7 A I had a customer, and I had to do that customer, and
8 then I called my grandmother to tell her that he just came,
9 because he is so quick to go over there and tell her first,
10 because, you know, she was like a moma to him.

11 Q Okay. Now, from the time that Show left from your
12 work, from that time, did you talk to -- when's the next
13 time you talked to Jamal? Did you talk to him between that
14 time, the time that Show left there, you didn't talk to him
15 until after this had happened, did you?

16 A I didn't talk to Jamal until afterwards. He wasn't
17 picking up his phone. When I saw Jamal, I talked to him.

18 Q Okay. You talked to him earlier in the day and said to
19 go pick up my kids?

20 A Uh-huh (affirmative).

21 Q And then Show comes up to your work and starts raising
22 hell?

23 A Yeah.

24 Q And then the next person you talked to was your
25 grandmother?

1 A I didn't get to talk to her, I talked to my little
2 cousin and he say my grandmoma ---

3 DEP. SOL. THORNTON: Objection, Your Honor; hearsay.

4 Q Yeah, don't say -- I'm not interested in what they told
5 you other than from the time that Show left out of there,
6 you didn't talk to Jamal until sometime after all of this?

7 A Uh-huh (affirmative).

8 Q All right.

9 MR. MATHEWS: May I have a moment, Your Honor?

10 THE COURT: Yes, sir.

11 MR. MATHEWS: I don't have anything further, Your
12 Honor.

13 THE COURT: Any redirect?

14 DEP. SOL. THORNTON: None, Your Honor. I ask that she
15 be excused.

16 THE COURT: Ma'am, you may step down. Any objection by
17 the defendant?

18 MR. MATHEWS: No, sir.

19 THE COURT: You are relieved from your responsibilities
20 under subpoena. Call your next witness.

21 THE COURT: Tavera Edwards.

22 MADAME CLERK: Please come forward and be sworn.

23 (WHEREUPON, Det. Edwards is duly sworn.)

24 MADAME CLERK: Please have a seat on the witness stand
25 and state your full name for the record.

1 A Yes, sir. I pulled up to my child's grandmother's
2 house to pick up my baby and they told me the kids were
3 still at the daycare. So I started walking back to my baby
4 mother's truck when somebody said, "Look." He was walking
5 from his house on Francis Street towards the truck,
6 reaching. Then, he pulled out a black gun and started --
7 and told me to run. I was shooting and ran. I didn't know
8 where I was shooting at. I didn't know what he could have
9 did to me. I just ran and shot. Showtime was the one with
10 the gun.

11 Q All right, sir. Now, I'm going to hand you what's been
12 marked for identification as State's Exhibit Number Three
13 and ask if you can identify this, sir.

14 A Yes, sir. It's the videotaped interview of Mr. Owens.

15 Q And did you verify that tape at my request today?

16 A Yes, sir.

17 Q And after reviewing that tape, has it been altered or
18 changed in any way?

19 A No, sir.

20 Q All right, sir. Now, it's my understanding after
21 viewing that tape, along with you and Mr. Mathews, that
22 there are two occasions when family members are allowed into
23 the room to sit with Mr. Owens; is that correct?

24 A Yes, sir.

25 Q All right. During those times, you were not

1 ground. He did not intend for this to happen. He didn't
2 intend for anybody to be hurt. If you believe that he went
3 there looking for problems, then he probably -- you look at
4 that sudden heat of passion, okay, that's voluntary
5 manslaughter, but he didn't go there looking for anything.

6 And based on what a reasonable person would look at,
7 and what he had to deal with, somebody that is so angry he
8 is trying to fight the people that are trying to help him at
9 the end. I'm not sure what else somebody would do. If he
10 hadn't have done that, for all he knew at the time, it might
11 have been him.

12 I hope you've listened carefully to all the evidence,
13 because that is what counts. And it's about intent. It's
14 about what is reasonable for somebody situated in the
15 position that Mr. Owens was, that Jamal was situated in.
16 That's what matters. And when you do, I think you will find
17 that the State has not proven an intent, certainly not a
18 premeditated intent as murder requires, certainly not.
19 Sudden heat of passion, he didn't intend to kill anybody.
20 He was trying to defend himself. And if that is the case,
21 if that's the case, then he should go about the business of
22 being a daddy again. I hope you consider this carefully,
23 and when you do, I hope you find Sincere Jamal Owens not
24 guilty of anything. Thank you.

25

JURY CHARGE

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THE COURT: Ladies and gentlemen of the jury, it is now my duty as a trial judge under the constitution of this state to charge and instruct you on the laws applicable to this case. It is your duty as jurors to accept and apply the law as I will now state it to you. Furthermore, it is your exclusive duty to decide all of the issues of fact in this case and determine the effect, value and weight and truth of the evidence.

Both the State and the defendant have a right to expect that you will carefully consider and evaluate the evidence and apply the law to this case so that at the end, both the State of South Carolina and the defendant will receive a fair and impartial trial. I want you to understand that when I use the word, defendant, I refer to Mr. Sincere Jamal Owens.

Furthermore, it's important to understand that the indictments in this case allege two different offenses against the defendant. The charges are murder and possession of a weapon during the commission of a violent crime. To these charges, the defendant has entered a plea of not guilty. This plea of not guilty places the burden of proof on the State to prove the guilt of the defendant to you, the jury, beyond a reasonable doubt.

I remind you that the fact that the defendant was

1 arrested, charged, and indicted in this case is not evidence
2 in this case, and cannot be considered by you as evidence of
3 guilt in this case, nor does it created any presumption or
4 inference of guilt. These documents are simply the formal
5 written instruments which contain the charges made against
6 the defendant. They are the final documents by which this
7 case is brought into this court. Each indictment charges a
8 separate and distinct offense. You must decide each
9 indictment separately on the evidence and the law applicable
10 to it uninfluenced by your decision as to any other
11 indictment.

12 The defendant may be convicted or acquitted on any or
13 all of the offenses charged. You will be asked to write a
14 separate verdict of guilty or not guilty for each
15 indictment. But it's vital to understand that the defendant
16 is presumed under the law to be innocent of these charges.

17 It is a fundamental rule of our law that a defendant,
18 irrespective of the seriousness of the charge against him,
19 is always presumed innocent of the crimes for which he is
20 charged unless and until his guilt has been proved by
21 evidence that satisfies you, the jury, beyond a reasonable
22 doubt.

23 The presumption of innocence is not a mere legal theory
24 or a legal phrase. The presumption of innocence is very
25 important and you need to understand that this presumption

1 accompanies the defendant from the time of his arrest and
 2 appearance in this court and continues with the defendant
 3 even after you retire to the jury room to deliberate.

4 In other words, the defendant receives the benefit of
 5 the presumption of innocence until the very end of the trial
 6 when you, the jury, will deliberate upon the evidence and
 7 decide whether the State has proven guilt beyond a
 8 reasonable doubt.

9 Proof beyond a reasonable doubt is proof that leaves
 10 you firmly convinced of a defendant's guilt. There are very
 11 few things in this world that we know with absolute
 12 certainty. So even in criminal cases, the law does not
 13 require proof that overcomes every possible doubt.

14 However, if based on your consideration of the
 15 evidence, you are firmly convinced that the defendant is
 16 guilty of the crime charged, you must find him guilty. If
 17 on the other hand, you think there is a real possibility
 18 that he is not guilty, you must give him the benefit of the
 19 doubt and find him not guilty.

20 Please understand that reasonable doubt may arise from
 21 evidence which has been presented in the case or it may
 22 arise from a lack of evidence in the case. It is your
 23 responsibility to determine whether or not reasonable doubt
 24 exists as to the guilt of this defendant.

25 I charge you that the defendant is entitled to every

1 reasonable doubt arising in the whole case or arising in any
2 defense asserted by the defendant. If, upon any issues of
3 fact essential to conviction and a verdict of guilty, you
4 have a reasonable doubt as to how that issue should be
5 resolved, it would be your duty to resolve that reasonable
6 doubt in favor of the defendant.

7 Thus, in summary, it's important to understand that a
8 defendant is not required to prove his innocence. Instead,
9 the State is required by law to prove every essential
10 element of the offenses charged by the defendant by evidence
11 which satisfies you of his guilt beyond a reasonable doubt.
12 Only then can you convict the defendant and find him guilty.

13 Ladies and gentlemen, there are two types of evidence
14 which are generally presented during a trial, direct
15 evidence and circumstantial evidence. Direct evidence is
16 the testimony of a person who claims to have actual
17 knowledge of a fact, such as an eyewitness. It is evidence
18 which immediately establishes the main fact to be proved.
19 Circumstantial evidence is proof of a chain of facts and
20 circumstances indicating the existence of a fact. It is
21 evidence which immediately establishes collateral facts from
22 which the main fact may be inferred.

23 Circumstantial evidence is based on inference and not
24 on personal knowledge or observation. The law makes
25 absolutely no distinction between the weight or value to be

1 given to either direct or circumstantial evidence nor is a
2 greater degree of certainty required of circumstantial
3 evidence than of direct evidence. You should weigh all of
4 the evidence in the case. If, after weighing all of the
5 evidence, you are not convinced of the guilt of the
6 defendant beyond a reasonable doubt, you must find the
7 defendant not guilty.

8 Now, I further instruct you that the fact that the
9 defendant in this trial and in the trial of a criminal case
10 did not testify on his own behalf is not a factor to be
11 considered by you in any way in your deliberations and in
12 your consideration on the question of the guilt or innocence
13 of the defendant.

14 In this regard, the defendant has the constitutional
15 right to remain silent and the exercise of this right must
16 not be considered by you in your deliberations. The fact
17 that the defendant did not testify should not even be
18 discussed in the jury room.

19 The burden of proof, as I have stated to you, is on the
20 State. The defendant has no obligation to prove his
21 innocence. The burden of proof remains with the State to
22 prove the defendant's guilt beyond a reasonable doubt and
23 the fact that a defendant did not testify is not a factor to
24 be considered by you at all. When you consider the whole
25 case, if you have a reasonable doubt as to the guilt or the

1 innocence of a defendant, then he is entitled to that
 2 reasonable doubt and would be entitled to a verdict of not
 3 guilty.

4 However, if upon considering the whole case, you find
 5 the State has proved by evidence which satisfies you of the
 6 guilt of the defendant beyond a reasonable doubt, then it
 7 would be equally your duty to convict the defendant and find
 8 him guilty.

9 Now, during this trial, you and I have had separate
 10 duties to perform. As the trial judge, it is my
 11 responsibility to preside over this trial and I also have
 12 the duty to rule upon the admissibility of the evidence
 13 offered during the process of this trial. In that regard,
 14 you are to consider only the competent evidence before you
 15 and you are to disregard from your mind any testimony
 16 ordered stricken from the record of this case during the
 17 progress of this trial if there was any. And you are to
 18 consider only the testimony which has been presented from
 19 this witness stand together with any exhibits admitted into
 20 the record of this case and any stipulations of counsel made
 21 into the record if there were any.

22 Furthermore, I have the additional duty to charge you
 23 on the applicable law of this case and in that regard, I am
 24 the sole judge of the law of this case. It is your duty,
 25 ladies and gentlemen, to accept and apply the law as I state

1 it to you. If you have any preconceived ideas as to what
2 the law is or what the law ought to be and it does not agree
3 with what I tell you the law is, you are obligated under
4 your oath to abandon these preconceptions because you are
5 sworn to accept the law precisely as I am going to state it
6 to you.

7 In this trial, you are the sole and exclusive judge of
8 the facts and I am the judge of the law. Do not infer that
9 I have any opinions about the facts in this case from
10 anything I have said during the course of this trial in
11 ruling upon the admissibility of evidence or otherwise or
12 from anything that I now say during the course of this
13 charge to you.

14 In this regard, the law simply does not permit me to
15 have an opinion about the facts. As jurors, it is your duty
16 alone to determine the effect, value, weight, and truth of
17 the evidence presented during the course of this trial.

18 In determining what the facts of this case are, you
19 must judge the credibility, which simply means the
20 believability of the witnesses, and the value and the weight
21 to be given to their testimony. You alone must decide the
22 force, effect and truth of the testimony. In making this
23 decision, there are many things you may and should take into
24 consideration, such as the appearance and manner of the
25 witness on the stand. A characteristic often referred to as

1 the demeanor of the witness.

2 Was the witness forthright or hesitant? Was the
3 witness's testimony consistent or did it contain
4 discrepancies? What was the ability of the witness to know
5 the facts about which he or she testified? Did the witness
6 have a cause or reason to be biased and prejudiced in favor
7 of the testimony that he or she gave?

8 Was the testimony of the witness corroborated or made
9 stronger by other testimony in evidence or was it made
10 weaker or impeached by such other testimony in evidence?

11 Ladies and gentlemen, you heard the testimony of expert
12 witnesses. The Rules of Evidence ordinarily do not permit
13 witnesses to testify to opinions or conclusions. An
14 exception to this rule exists for witnesses that we call
15 expert witnesses. A witness, who by education and
16 experience has become an expert in some art, science,
17 profession or calling, may state an opinion as to relevant
18 and material matter in which the witness claims to be an
19 expert and may also state the reasons for the opinion.

20 You should consider any expert opinion received in
21 evidence in this case, and like any other evidence, give it
22 the weight that you think it deserves. If you decide that
23 the opinion of an expert witness is not based on sufficient
24 education and experience, or if you conclude that the
25 reasons given in support of the opinion are not sound or

1 that the opinion is outweighed by other evidence, you may
2 disregard the opinion entirely.

3 An expert witness's testimony is to be given no greater
4 weight than that of other witnesses simply because the
5 witness is an expert. Further, you are not required to
6 accept an expert's opinion even though it is not
7 contradicted. Also, ladies and gentlemen, members of the
8 jury, please understand that the testimony of a police
9 officer is not entitled to more weight than that of any
10 other witness.

11 You are the sole judges of the credibility of a witness
12 and you are not to give more weight to a police officer's
13 testimony solely because he or she is a police officer.
14 Rather, you should judge an officer's testimony by the same
15 standards that you apply to all other witnesses.

16 As jurors, please understand that you have the right to
17 believe a small portion of a witness's testimony and discard
18 the larger, or vice-versa. You may believe all of the
19 witness's testimony or none. You may believe the testimony
20 of a single witness against that of many witnesses or the
21 other way around.

22 Ladies and gentlemen, a statement was alleged to have
23 been made by the defendant and has been admitted into
24 evidence in this case. While the Court has determined that
25 the statement is admissible, I instruct you that you make

1 the ultimate decision of whether or not the defendant made
2 the statement. If the defendant did make the statement, you
3 must determine if the statement was made by the defendant
4 voluntarily and of his own free will. This means that the
5 statement was not caused by pressure, force, fear, threats,
6 coercion or intimidation, or by hope or a promise of
7 leniency or a reward of any kind.

8 In determining whether the statement was voluntary, you
9 should consider both the characteristics of the defendant
10 and the details of the questioning. Some of the factors
11 that you must consider are the age of the defendant, the
12 defendant's education, or lack of education. The
13 defendant's mental ability or capacity. The defendant's IQ
14 or intelligence. The defendant's background and
15 environment. The place and length of detention. The nature
16 of the questioning and the advice, or lack thereof, to the
17 defendant of his constitutional rights, including, but not
18 limited to, the right to remain silent.

19 That any statement could be used against him in a court
20 of law. The right to have a lawyer present. That if he
21 could not afford a lawyer, a lawyer would be appointed to
22 represent him without any cost, and that he could stop
23 making the statement at any time. You must carefully
24 consider all of the surrounding circumstances before you
25 give any weight to an alleged statement.

1 The State has the burden of proving beyond a reasonable
2 doubt that the alleged statement was voluntary. If you
3 determine it was, you may give the statement any further
4 consideration that you deem proper. You must decide what
5 weight, if any, should be given to the alleged statement.
6 If you determine the alleged statement was not a free and
7 voluntary statement of the defendant, you should not
8 consider the statement at all.

9 In exercising your mental processes and attempting to
10 decide the truth, the law simply requires that you exercise
11 your good judgment, your common sense, your sense of logic
12 and reason, and your experiences in life. You then apply
13 these attributes to the evidence and apply the law as I now
14 state it to you, and thus arrive at a verdict.

15 In order to establish criminal liability, criminal
16 intent is required. For example, mental state is required
17 to be proved by the State for a particular crime might be
18 purpose, intent, knowledge, recklessness, or criminal
19 negligence. Criminal intent must be proven by the State
20 beyond a reasonable doubt. Criminal intent is always a
21 matter that must be determined by the jury from the
22 circumstances surrounding the situation.

23 There is no way to prove intent to a mathematical
24 certainty. There is no way medical science can dissect a
25 person's brain and determine what the person had in mind. So

1 the law says that criminal intent may be inferred from the
2 circumstances shown to have existed. This is how you make a
3 determination of whether or not the element requiring intent
4 was present.

5 It is not necessary to establish intent by direct and
6 positive evidence, but intent may be established by
7 inference in the same way as any other fact, by taking into
8 consideration the acts of the parties and all of the facts
9 and circumstances of the case. Criminal intent is a mental
10 state, a conscious wrongdoing. It is up to you to determine
11 what the defendant intended to do, based upon the
12 circumstances shown to have existed.

13 Criminal intent can arise from action or a failure to
14 act. It may arise from negligence, recklessness, or an
15 indifference to duty or to consequences that has been
16 considered by the law to be the equivalent to criminal
17 intent.

18 When a defendant is charged with murder, the State must
19 prove beyond a reasonable doubt that the defendant killed
20 another with malice aforethought. Malice is hatred, ill-
21 will, or hostility towards another person. It is the
22 intentional doing of a wrongful act without just cause or
23 excuse and with an intent to inflict an injury or under
24 circumstances that would infer an evil intent.

25 Malice aforethought does not require that malice exist

1 for any particular time before the act is committed, but
 2 malice must exist in the mind of the defendant just before
 3 and at the time of the act.

4 Therefore, there must be a combination of the previous
 5 evil intent and the act. Malice aforethought must be
 6 expressed or inferred. These terms, express and inferred,
 7 do not mean different kinds of malice, but merely the manner
 8 in which malice may be shown to exist. That is either by
 9 direct evidence or by inference from the facts and
 10 circumstances which are proved.

11 Express malice is shown when a person speaks words
 12 which express hatred or ill-will for another, or when a
 13 person prepared beforehand to do the act, which was later
 14 accomplished. Malice may be inferred from conduct showing a
 15 total disregard for human life. If you find, ladies and
 16 gentlemen, that the State has failed to prove beyond a
 17 reasonable doubt that the defendant committed murder, you
 18 may consider whether the State has proved beyond a
 19 reasonable doubt that the defendant committed voluntary
 20 manslaughter.

21 To prove voluntary manslaughter, the State must prove
 22 beyond a reasonable doubt that the defendant took the life
 23 of another in the sudden heat of passion based on sufficient
 24 legal provocation. Both heat of passion and sufficient
 25 legal provocation must be present at the time of the killing

1 to constitute voluntary manslaughter. Sudden heat of
 2 passion, may, for a time, affect a person's self control and
 3 temporarily disturb a person's reasoning. The sudden heat
 4 of passion must be the type that would make an ordinary
 5 person unable to coolly reflect on his actions and would
 6 produce an uncontrollable impulse to do violence.

7 Sufficient legal provocation must be the type that
 8 would make a person of ordinary reason and caution become
 9 enraged and to lose control temporarily. The provocation
 10 needed for voluntary manslaughter must come from some act of
 11 or related to the victim. Words alone, however vulgar or
 12 insulting, are not enough to be legal provocation. Where
 13 death is caused by the use of a deadly weapon, the words
 14 must be accompanied by some overt threatening act, which
 15 could have produced the heat of passion. The exercise of a
 16 legal right, no matter how offensive it is to another, is
 17 never sufficient legal provocation for voluntary
 18 manslaughter. If a heat of passion had cooled or if there
 19 was enough time between the provocation, if any, and the
 20 killing for the passion of a reasonable person to cool, the
 21 killing would not be voluntary manslaughter.

22 In deciding whether a reasonable person would have had
 23 enough time to cool off, you should consider all the
 24 circumstances surrounding the killing. You may consider the
 25 nature of the provocation, if any. The defendant's mental

1 and physical state and the circumstances and relationship
2 between the parties.

3 The defendant is also charged with possession of a
4 weapon during the commission of a violent crime. The State
5 must prove beyond a reasonable doubt that the defendant was
6 in possession of a firearm or visibly displayed what
7 appeared to be a firearm during the commission of a violent
8 crime.

9 A firearm means any machine gun, automatic rifle,
10 revolver, pistol, or any weapon, which will as designed to,
11 or may be readily converted to expel a projectile. In order
12 to find the defendant guilty of possession of a weapon
13 during the commission of a violent crime, you must first
14 find the defendant guilty of either committing a violent
15 crime or attempting to commit a violent crime. Murder and
16 voluntary manslaughter are violent crimes.

17 The defendant has raised a defense of self defense.
18 Self defense is a complete defense and if it is established,
19 you must find the defendant not guilty. The State has the
20 burden of disproving self defense by proof beyond a
21 reasonable doubt.

22 If you have a reasonable doubt of a defendant's guilt
23 after considering all of the evidence, including the
24 evidence of self defense, then you must find the defendant
25 not guilty.

1 On the other hand, if you have no reasonable doubt of a
 2 defendant's guilt after considering all of the evidence,
 3 including the evidence of self defense, then you must find
 4 the defendant guilty. The following elements are required
 5 to establish self defense.

6 First, the defendant must be without fault in bringing
 7 on the difficulty. If the defendant's conduct was the type
 8 which was reasonably calculated, reasonably calculated to
 9 and did provoke a deadly assault, the defendant would be at
 10 fault in bringing on the difficulty and would not be
 11 entitled to an acquittal based on self defense.

12 The second element of self defense is that the
 13 defendant was actually in imminent danger of death or
 14 serious bodily injury or that the defendant actually
 15 believed he was in imminent danger of death or serious
 16 bodily injury.

17 If the defendant was actually in imminent danger, it
 18 must be shown that the circumstances would have warranted a
 19 person of ordinary firmness and courage to strike the fatal
 20 blow to prevent death or serious bodily injury. If the
 21 defendant believed he was in imminent danger of death or
 22 serious bodily injury, it must be shown that a reasonably
 23 prudent person of ordinary firmness and courage would have
 24 had the same belief.

25 In deciding whether the defendant was actually or

1 believed he was in imminent death or serious bodily injury,
 2 you should consider all of the facts and circumstances
 3 surrounding the crime, including the physical condition and
 4 characteristics of the defendant and the victim.

5 The defendant does not have to show that he was
 6 actually in danger. It is enough if the defendant believed
 7 he was in imminent danger, and a reasonably prudent person
 8 of ordinary firmness and courage would have had the same
 9 belief.

10 The defendant has the right to act on appearances, even
 11 though the defendant's beliefs may have been mistaken. It
 12 is for you to decide whether the defendant's fear or
 13 immediate danger of death or serious bodily injury was
 14 reasonable and would have been felt by an ordinary person in
 15 the same situation.

16 Words accompanied by hostile acts may, depending on the
 17 circumstances, establish self defense. Evidence of prior
 18 difficulty between the defendant and the victim may be
 19 considered in deciding whether a threat existed, whether the
 20 defendant had a reason to believe that a threat existed, and
 21 how serious that threat was.

22 The reputation of the victim as a violent person may be
 23 considered in deciding whether there was a need for force,
 24 whether the defendant had reason to believe there was a need
 25 for force, and whether deadly force was reasonably

1 necessary.

2 Threats made by the victim may be considered in
3 determining whether the defendant was or actually believed
4 he was in imminent danger.

5 The final element of self defense is that the defendant
6 had no other probably way to avoid the danger of death or
7 serious bodily injury than to act as the defendant did in
8 this particular instance.

9 Now, the defendant had no duty to retreat if by doing
10 so the danger of being killed or suffering serious bodily
11 injury would increase. A person cannot be required to make
12 an exact calculation as to the degree or amount of force
13 which may be needed to avoid death or serious bodily harm.

14 Therefore, in self defense, the defendant has the right
15 to use the force needed to avoid death or serious bodily
16 harm. The force used in self defense does not have to be
17 limited to the degree or amount of force used by the victim.
18 The defendant has the right to use so much force as appeared
19 to be necessary for complete self protection in which a
20 person of ordinary reason and firmness would have believed
21 to be needed to prevent death or serious bodily harm.

22 If the defendant is justified in defending himself or
23 others and in firing the first shot, then the defendant is
24 also justified in continuing to shoot until it is apparent
25 that the danger of death or serious bodily injury is

1 completely ended.

2 Now, ladies and gentlemen, I am now drawing near to the
3 end of my charge and I want you to clearly understand that
4 you are not partisans or advocates for the State of South
5 Carolina or this defendant. You do not serve as jurors to
6 reward your friends or punish your enemies. In this regard,
7 you have been selected by both the State and the defendant
8 to be fair and impartial jurors.

9 It is your duty by your joint deliberations to
10 determine the truth in this case, giving to the defendant
11 the benefit of every reasonable doubt on each and every
12 issue, then to the facts which you determine to be true, you
13 should take and apply the law which has been given to you by
14 this Court, and thus arrive at a verdict which speaks the
15 truth in this case.

16 The word verdict, which has a Latin derivative means a
17 true saying. Thus, when you have accomplished these
18 responsibilities, you will have satisfied your oath as
19 jurors. You will have discharged your duty to this Court.

20 Now, Mr. Foreman, I am going to be sending back a
21 verdict form to the jury room. When you, the jury, arrive
22 at a verdict as to the charges in this case, you will write
23 your verdict on the form. If the State has failed to prove
24 the guilt of this defendant beyond a reasonable doubt, your
25 verdict will be two words, not guilty.

1 Likewise, if the State has proved the guilt of the
2 defendant beyond a reasonable doubt, your verdict will be
3 one word, guilty.

4 Mr. Foreman, once a decision has been made, I will ask
5 that you check whichever choice is the verdict of this jury.
6 The verdict that you render in this case, ladies and
7 gentlemen, must be the verdict of each and every juror. It
8 must be your unanimous verdict. All twelve jurors must
9 agree on the verdict which you authorize the foreman to
10 write for the jury.

11 Mr. Foreman and other members of the jury, I want you
12 to further understand that the order in which the choices of
13 the verdict appear on the verdict form are not suggestive of
14 any verdict on the part of this Court.

15 The verdict in this case is to be determined by you,
16 the jury, not the Court. Furthermore, please understand
17 that even though I have given the verdict form to the
18 foreman, it is not his verdict alone, it is the verdict of
19 all twelve of you. And I emphasize again, it must be
20 unanimous.

21 At this time, ladies and gentlemen, I will ask you to
22 retire to the jury room, but do not begin your deliberations
23 until you are told to do so. The law requires that I now
24 consult with the attorneys to make sure that I have not left
25 anything out of these instructions. After I have checked

1 with the attorneys, the bailiff will bring in the items of
2 evidence and instruct you to begin your deliberations.

3 Also, should you have any questions during your
4 deliberations, you must put them in writing and sent them to
5 me by the bailiff. The court bailiff should be immediately
6 outside the jury room for purposes such as this and for
7 security of the jurors. Once you have reached your verdict,
8 please knock on the jury room door and ask the bailiff to
9 advise the Court that you have reached a verdict and we will
10 return you to the courtroom as promptly as possible.

11 Thank you, ladies and gentlemen, you may now retire to
12 the jury room at this time. Please do not begin your
13 deliberations until you are told to do so.

14 (WHEREUPON, the jury exits the courtroom and the
15 following is held on the record.)

16 THE COURT: Any objection to the charge by the State?

17 DEP. SOL. THORNTON: No, sir.

18 THE COURT: By the defense?

19 MR. MATHEWS: No, Your Honor.

20 THE COURT: Is that door closed?

21 BAILIFF: Yes, sir.

22 THE COURT: I started to instruct the jury on this
23 before they left. We can handle it either way y'all want
24 to. I would rather not send the weapon back there. If they
25 want to see the weapon, they can come back out here and look

1 at it. Any objection by the State on that?

2 DEP. SOL. THORNTON: Judge, we can handle that one or
3 two ways. I'm not going to object, either way you want to
4 handle it. My suggestion would be if we send the weapon
5 back, there's only -- the live rounds are in the box so that
6 you could separate out any rounds. The only thing that I
7 would say, and I certainly agree, you should not send back
8 live ammunition with the pistol; but you could send the
9 pistol back and keep the live rounds in here and then there
10 is no danger. It is an important piece of evidence. I'm
11 not going to object based on whatever the Court decides.

12 THE COURT: Mr. Mathews?

13 MR. MATHEWS: I have no objection.

14 THE COURT: Well, I don't mind sending the weapon
15 back. I absolutely don't want any live ammunition going
16 back there, so I'm going to do that. Without objection by
17 the State.

18 Now, the other thing is, I showed you all a verdict
19 form back in chambers and I would just ask that both of
20 y'all come forward. I made a change on here. Come on up
21 here.

22 (Attorneys approach the bench. Whereupon, a bench
23 conference takes place out of the hearing of the courtroom.)

24 THE COURT: All right. If you all will look at the
25 evidence and let's gather that together and get it back.

1 MR. MATHEWS: And Your Honor, if you would just note my
2 renewed -- at the conclusion of my ---

3 THE COURT: Absolutely.

4 MR. MATHEWS: We would move for a directed verdict,
5 which I assume has been denied.

6 THE COURT: Right. Back in chambers, before we came
7 back out here and brought the jury in, I instructed Mr.
8 Mathews, after he informed me that his client was not going
9 to testify, as a matter of convenience of the parties, I
10 told him that after he rested, we would move directly into
11 closing arguments and that I would allow him after closing
12 arguments and my charge, to renew his motion for directed
13 verdict, which once again, is respectfully denied, Mr.
14 Mathews.

15 MR. MATHEWS: Thank you, Your Honor.

16 DEP. SOL. THORNTON: Your Honor, I don't see any point
17 in sending the videotape back, because they can't play it
18 anyway. If they did want it, we would have to monitor it.
19 So I won't send that back unless Mr. Mathews has an
20 objection. Four and five were not introduced into evidence.

21 MR. MATHEWS: Well, send the videotape back. They have
22 to bring it with them, I guess, when they come back, but it
23 is in evidence, and that way, they can know that it's there
24 if they want to look at it.

25 DEP. SOL. THORNTON: The State has no objection, Your

1 Honor.

2 THE COURT: Okay.

3 DEP. SOL. THORNTON: Your Honor, the State is now
4 satisfied that all the evidence has been collected and is
5 ready to go back to the jury.

6 THE COURT: And I submit the verdict form, without
7 objection by the State or the defense. All right, sir, if
8 you would, pull the alternate out. Her name is Ms. Wendy
9 Lee, and bring her back in here.

10 BAILIFF: Yes, sir.

11 THE COURT: Give that, along with the verdict form, to
12 the jury and tell them that they can begin deliberations.
13 Get that alternate, Ms. Wendy Lee, out of there first,
14 before you tell them to begin.

15 Any other matters at this time, with regards to this
16 case, from the State?

17 DEP. SOL. THORNTON: None from the State, Judge.

18 THE COURT: From the defense?

19 MR. MATHEWS: None from the defense, Your Honor.

20 THE COURT: All right.

21 (2:30 P.M., WHEREUPON, the verdict form, along with the
22 exhibits, are taken back to the jury for deliberation.)

23 THE COURT: We're going to stand at ease for about 15
24 minutes and then we can turn to non-jury matters.

25 (WHEREUPON, a brief recess is taken and non-jury

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Colleton)
)
Sincere Owens 342813)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS
15-CF-15-662

APPLICATION FOR
 POST-CONVICTION RELIEF

2015 JUN 19 PM 3:57
 PATRICIA C. GRAHRT
 COLLETON COUNTY
 COMMON PLEAS

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Corr Ins
2. Name and location of Court which imposed sentence Colleton County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009GS-1500305
 - (b) 2009GS-1500306

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) _____

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes _____

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. Court of Appeals _____

ii. Motion of Reconsideration _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Dismissed _____

ii. Denied _____

iii. _____

(c) the date of each such result:

i. Nov. 30, 14 _____

ii. Dec Nov. 13, 2017 _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Ineffective Assistance of Counsel (attached)
 - (b) _____
 - (c) _____
- 11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) See (attached)
 - (b) _____
 - (c) _____
- 12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? _____
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 - (d) any other petitions, motions or applications in this or any other Court? _____
- 13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 - (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

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

- (a) _____
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. David Michel - [redacted] Charleston S.C. [redacted]
 - ii. Katherine H. Hudgins S.C. Commission on Indigent Defense P.O. Box [redacted] Coler, S.C. [redacted]
 - iii. David Matthews - Deputy Public Defender [redacted] [redacted] Walkerboro, SC [redacted]

- (b) the proceedings at which each such attorney represented you:
 - i. Final Reconsideration
 - ii. Direct Appeal
 - iii. Trial

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

Vacation of Sentence or New Trial

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

No

STATE OF SOUTH CAROLINA)
County of Colleton)

VERIFICATION

I, Sincere Owens, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Sincere Owens

SWORN to and subscribed before me this 16th day of June, 2015.

Ludhean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

I, Sincere Owens, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Sincere Owens
Applicant

SWORN or affirmed to and subscribed before me this
16th day of June, 2015.

Luchean Bryant
Notary Public

My Commission Expires: May 26, 2020

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2015 JUN 19 PM 3:57

Ineffective Claims

Issue 1. Trial Counsel was ineffective for not taking pictures to sufficiently illustrate the House and Crime Scene.

Petitioner argues Trial Counsel was ineffective for not taking pictures to sufficiently illustrate the House and Crime Scene. Counsel should of taken pictures to show the Jury the actual distance between Glover's house and the Victim. This would of showed the Jury, the distance victim came, and that I did not come from his house. At trial state produced evidence that Petitioner was seen running from victim's house after shots were fired. The pictures would have shown state's witness was lying. Also would have showed where the Shell Casings were actually found. The pictures Counsel relied on where state's exhibits and was insufficient and inaccurate, they only where pictures of the ground and illustrated none of the Crime Scene.

Issue 2. Trial Counsel failed to properly Cross Examine, witnesses,

At trial State elicited testimony from Campbell stating that defendant tried to give her a gun. At this point the State rested on Direct and Trial Counsel did not Cross Examine Campbell to make clear the pretense of why defendant ask her to hold the Gun, or was it before or after the Shooting etc.... By not Cross-examining this witness he didn't paint a clear picture to the Jury, thus leaving the Jury with the inference the State wanted them to have. Counsel didn't clarify how far she lived from the victim as well, Trial Counsel failed to get ~~to~~ Shante Glover to specify the Content of the Text Messages sent by Victim (Verbatim). She also testified that Victim had been threatening petitioner for awhile (Trial Tr. pg. 122 L. 1-25) Trial Counsel should have Cross Examined her and gotten her to reveal what was exactly said by victim and exactly how long victim had been threatening ~~to~~ to kill petitioner. Trial Counsel was also ineffective for not effectively Cross-examining the Video. At trial pg. 167 L. 3-14 Trial Counsel tells Judge it was Somethings on the Video that needed to be Cross-examined. "Trial Tr. pg. 167 L. 9-16" The Judge then Responded "I mean, I did not, and would not prohibit you from doing so had you desired." Trial Tr. pg. 167 L. 15-25"

Issue 3. Trial Counsel failed to investigate

Trial Counsel failed to get a copy of Text history of Victim and Shante Glover to show how long victim was threatening to kill petitioner and what victim actually said. Trial Counsel also failed to call a witness Quame, Quame was the driver and petitioner was the passenger, he would of testified to, that he seen victim reach into his pants Grabbing for a Gun. Trial Counsel also failed to investigate Elizabeth Kinard, she could of been used as a character witness against the victim at the ~~Penalty~~ Sentencing phase of my trial she testified that victim was very, very disrespectful to me many times. This information could have been used as character evidence against victim.

Issue 4. Trial Counsel was ineffective for not introducing victim's Rap Sheet.

This would of shown victim had a violent history and there was a need for force.

Issue 5. Trial Counsel failed to call 2 witnesses or present evidence to support the charge of Self-Defense.

Trial Counsel sole defense was Self-defense and Trial Counsel presented no evidence to support Self-Defense under the law of Self defense Counsel must introduce at trial some evidence to support it.

Issue 6. Trial Counsel gave erroneous advice in advising petitioner not to testify for the sole purpose of having the last argument.

At trial Counsel told petitioner not to testify because he wanted the last argument, Petitioner asserts this was erroneous advice, Petitioner wanted to testify and explain that it was Self-defense. Petitioner asserts that Trial Counsel erroneously advised him not to testify so he could have the last argument.

Issue 7. Trial Counsel failed to ask for a Continuance or a Mistrial because he didn't have time to interview Anita Rowe

The day of trial the State brought two New Witnesses to testify, we never knew the State was going to call these Witnesses and State has a obligation to make Counsel aware of any new developments before trial. Trial Counsel failed to object to this Brady Violation and ask for a Continuance or a Mistrial.

Issue 8. Trial Counsel was ineffective for not objecting to Vol. Manslaughter Charge being given to the Jury.

At trial the Judge gave a Vol. Manslaughter Charge to the Jury and Trial Counsel should of objected. There was no evidence to support the Voluntary Manslaughter Charge. Voluntary Manslaughter is when one is acting in a sudden heat of passion, there was no evidence of sudden heat of passion. The instruction to the Jury should of been Self-Defense or Murder. The evidence did not support the Charge of Voluntary Manslaughter, and Counsel should of objected to this Jury instructions.

Issue 9. Trial Counsel was ineffective for not consulting with defendant on important decisions and to keep the defendant informed of important developments in the course of prosecution, T

Trial Counsel did not discuss the significance of a Voluntary Manslaughter Jury Instruction to petitioner. Had Counsel explained the elements of Voluntary Manslaughter to defendant petitioner would had told him not to have that Charge given to the Jury because it did not apply. There was no Sudden heat of passion element, I was protecting myself it was Self-Defense

Issue 10. Trial Counsel should of requested a Stand your Ground Jury Instruction.

Trial Counsel was ineffective for not Requesting a Stand your Ground Jury Instruction to be given to the Jury

RECEIVED

JUN 16 2015

MAIL ROOM

LIEBER C.I

COUNTY OF Colleton
 STATE VS.
Sincere Jamal Owens
 AKA:
 Race: A Sex: M Age: 23
 DOB: [REDACTED] SSN: [REDACTED]
 Address: [REDACTED] Highway
 City, State, Zip: [REDACTED] SC
 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2009-65-15-0306
 A/W#: I-862239
 Date of Offense: 4/22/2009
 S.C. Code §: 16-23-0490
 CDR Code #: 0549

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Possession of a weapon during the Commission of a Violent Crime

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Career Criminal, Western SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: I862238
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 5/11/09
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ Substance Abuse Counseling
 § 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund
 § 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

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

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

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

§ 44-53-450(C) (Conditional Discharge) \$350 \$ _____

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk Patricia C. Grant
 Court Reporter: Rebecca Hill
 SCCA/217 (06/2010)

Presiding Judge P. [Signature]
 Judge Code: 21601
 Sentence Date: 7-15-10

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

INDICTMENT

2009-GS-15-0306

At a Court of General Sessions, convened on June 25, 2009, the Grand Jurors of Colleton County present upon their oath:

**Weapons / Poss. weapon during violent crime. If not also sentenced to life
without parole or death**

That in Colleton County, South Carolina, on or about April 22, 2009, the Defendant, Sincere Jamal Owens, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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



Isaac M. Stone, III, Solicitor

WITNESSES

C. Warren, WPD

Bridges

DOCKET NO. 2009-GS-15-0306

The State of South Carolina
County of Colleton

COURT OF GENERAL SESSIONS

June Term 2009

THE STATE

vs.

Sincere Jamal Owens

ARREST WARRANT NUMBER

1862239

April 23, 2009

ACTION OF GRAND JURY

TRUE BILL

Melina H. Kinard

Foreperson of Grand Jury

no. 6-25-09

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

Indictment for

Weapons / Poss. weapon during violent crime,
if not also sentenced to life without parole or
death

SC Code: 16-23-0490

CDR Code:0549

COLLETON COUNTY
GENERAL SESSIONS COURT
2009 JUN 26 AM 8:13

[Handwritten signature]

ARREST WARRANT

I-862239

STATE OF SOUTH CAROLINA

County/ Municipality of WALTERBORO

THE STATE against

OWENS SINCERE JAMAAL

Address: WALTERBORO, SC

Sex: M Race: B Height: 5'9" Weight: 153 DL State: SC DL #: DOB: Agency ORI#:

Prosecuting Agency: Prosecuting Officer: SGT CHRIS WARREN Offense: WEAPONS/POS DUR COMM VIOL CRIME Offense Code: G0549 Code/Ordinance Sec. 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.) Date

RETURN

A copy of this arrest warrant was delivered to defendant OWENS SINCERE JAMAAL

On 04/23/09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

B. RAY WOODARD WALTERBORO, SC

STATE OF SOUTH CAROLINA County/ Municipality of WALTERBORO

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SCCA 61B

Personally appeared before me the affiant SGT CHRIS WARREN who being duly sworn deposes and says that defendant OWENS SINCERE JAMAAL did within this county and state on violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of WALTERBORO) in the following particulars:

DESCRIPTION OF OFFENSE: WEAPONS/POS DUR COMM VIOL CRIME 16-23-0490

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

Signature of Affiant: Christopher R Warren

STATE OF SOUTH CAROLINA County/ Municipality of WALTERBORO

Affiant's Address: WALTERBORO, SC Affiant's Telephone:

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on defendant OWENS SINCERE JAMAAL

did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of WALTERBORO) as set forth below:

DESCRIPTION OF OFFENSE: WEAPONS/POS DUR COMM VIOL CRIME 16-23-0490

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on APRIL 23, 2009

Signature of Issuing Judge (L.S.) Judge Code: 6680

B. RAY WOODARD

Judge's Address: WALTERBORO, SC Judge's Telephone: (843) 549-6559

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

BAIL set by

Judge: _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge: _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge: _____

on _____

by _____

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

COLLETON COUNTY
GENERAL SESSIONS COURT
2009 APR 30 PM 4: 32

Approved P.D.
as Attorney General 7-19-10

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT (Amended)

2009-GS-15-0305

At a Court of General Sessions, convened on June 25, 2009, the Grand Jurors of Colleton County present upon their oath:

Murder / Murder

That In Colleton County on or about April 22, 2009, with malice aforethought, Sincere Jamal Owens did kill and murder Keith Williams by means of shooting the victim with a handgun, and that Keith Williams did die as a proximate result thereof in flight on a paramedic helicopter while enroute to MUSC on April 22, 2009; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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



Isaac M. Stone, III, Solicitor

69

WITNESSES

C. Warren, WPD

DOCKET NO. 2009-GS-15-0305

(Amended)

The State of South Carolina
County of Colleton

COURT OF GENERAL SESSIONS

June Term 2009

ARREST WARRANT NUMBER

1862238

THE STATE

vs.

Sincere Jamal Owens

April 23, 2009

ACTION OF GRAND JURY

TRUE BILL

Melina H. Kinard

Foreperson of Grand Jury

Date: 10-29-09

VERDICT

Not Guilty

Voluntary Manslaughter
Guilty

Foreperson of Petit Jury

Date:

INDICT

Indictment for
Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code: 0116

COLLETON COUNTY
GENERAL SESSIONS COURT
2009 OCT 29 PM 4: 18

Handwritten signature

COUNTY OF Colleton
 STATE VS.
Sincere Jamal Owens
 AKA:
 Race: B Sex: M Age: 23
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED] Highway
 City, State, Zip: Walterboro, SC
 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2009-bS-15-305
 A/W#: I862238
 Date of Offense: 4/22/2009
 S.C. Code §: 16-3-10
 CDR Code #: 0116

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
 TO: Voluntary Manslaughter

CONVICTED OF or PLEADS

in violation of § 16-3-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Career Criminal, Western SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 27 days/months/years or under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 511 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:
 Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other:

Condition Discharge. § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge *D. C. [Signature]*
 Judge Code: 2160
 Sentence Date: 7-15-10

Clerk of Court/ Deputy Clerk *Patricia C. Grant*
 Court Reporter: *Rebecca Hill*

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT

2009-GS-15-0305

At a Court of General Sessions, convened on June 25, 2009, the Grand Jurors of Colleton County present upon their oath:

Murder / Murder

That in Colleton County on or about April 22, 2009, with malice aforethought, Sincere Jamal Owens did kill and murder Keith Williams by means of shooting the victim with a handgun, and that Keith Williams did die in Colleton County as a proximate result thereof on April 22, 2009; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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



Isaac M. Stone, III, Solicitor

6
WITNESSES

C. Warren, WPD

Bridget

ARREST WARRANT NUMBER

1602238

April 23, 2009

ACTION OF GRAND JURY

TRUE BILL

Melina M. Kinard

Foreperson of Grand Jury

Date: 6-25-09

INDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009-GS-15-0305

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

June Term 2009

THE STATE

vs.

Sincere Jamal Owens

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020

CDR Code:0116

COLLETON COUNTY
GENERAL SESSIONS COURT
2009 JUN 26 AM 8:13

From M... ..

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF COLLETON) INDICTMENT NOS: 2009-GS-15-0305
) 2009-GS-15-0306
 State of South Carolina,)
)
 -vs-) **VERDICT**
)
 Sincere Jamal Owens,)
)
 Defendant.)
 _____)

1. As to the charge of Murder, we the Jury unanimously find the Defendant,

Sincere Jamal Owens:

Not Guilty Guilty

(If you find the Defendant Guilty of Murder, you do not need to answer the question of Guilty or Not Guilty as to the lesser included offense of Voluntary Manslaughter. Please proceed to Item # 3 on the following page. However, if you find the Defendant Not Guilty of Murder, please proceed to Item # 2 and deliberate as to the lesser included offense of Voluntary Manslaughter.)

2. As to the charge of Voluntary Manslaughter, we the Jury unanimously find the

Defendant, Sincere Jamal Owens:

Not Guilty Guilty

(Please proceed to the next page)

3. As to the charge of Possession of a Weapon during the Commission of, or attempt to Commit, a Violent Crime, we the Jury unanimously find the Defendant, Sincere

Jamal Owens:

Not Guilty

Guilty

Dated: 9-15-10

Bruce Mangis
FOREPERSON

(Please let the Bailiff know when you have completed this form)

BAIL set by

Judge: _____
on _____
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held by

Judge: _____
on _____
Defense Attorney: _____
Decision: _____

DISPOSITION before

Judge: _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pro., etc.)
Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
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Telephone: _____

CODEFENDANTS

Appointed P.O.
7/19/10

COLLETON COUNTY
GENERAL SESSIONS COURT
2009 APR 30 PM 4:32

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Sincere Owens, #342813,

Case No.: 2015-CP-15-0662

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on June 19, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. In June 2009, the Colleton County Grand Jury indicted Applicant for murder (2009-GS-15-0305) and possession of a weapon during a violent crime (2009-GS-15-0306). The charges resulted from an April 2009 incident in which Applicant drove to Victim's home and fatally shot him in the left buttock, causing him to bleed to death. Tr. p. 105, ll. 12-23. David S. Matthews, Esquire, of the Fourteenth Circuit Public Defender's Office, represented Applicant at trial. Deputy Solicitor Sean P. Thornton prosecuted the case. On September 13, 2010, Applicant proceeded to a jury trial before the Honorable D. Craig Brown. The jury found Applicant not guilty of murder, but guilty of the lesser-included offense of voluntary manslaughter and guilty of possession of a weapon during a violent crime. On September 15, 2010, Judge Brown sentenced Applicant to imprisonment for twenty-seven years voluntary manslaughter and five years for possession of a weapon during a violent crime, to be served consecutively.

Applicant filed a motion to reconsider the sentence. A hearing on the motion was first convened on May 29, 2012, before Judge Brown, who found it appropriate to recuse himself from the matter. A subsequent hearing was held on November 13, 2012, before the Honorable Perry M. Buckner, III. At the November 2012 hearing, David L. Michel, Esquire, represented Applicant. Judge Buckner found no legal reason to disturb the discretion of the trial judge and respectfully denied the motion for reconsideration.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins perfected the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal and granted counsel's motion to be relieved on November 5, 2014. State v. Owens, Op. No. 2014-UP-374 (Ct. App. 2014). The remittitur was returned to the circuit court on November 21, 2014.

Attached to this Return and incorporated by reference are the records of the Colleton County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

- I. Ineffective assistance of counsel
 - a. "Not taking pictures to sufficiently illustrate the house and crime scene."
 - b. "Failed to properly cross-examine witnesses."
 - c. "Failed to investigate."
 - d. "Not introducing victim's rap sheet."
 - e. "Failed to call witnesses or present evidence to support the charge of self-defense."
 - f. "Trial Counsel gave erroneous advice in advising Applicant not to testify for the sole purpose of having the last argument."

- g. "Failed to ask for a continuance or a mistrial because he didn't have time to interview Anita Rowe."
- h. "Not objecting to voluntary manslaughter charge being given to jury."
- i. "Not consulting with Applicant on important decisions and to keep Applicant informed of important developments in the case of prosecution."
- j. "Trial Counsel should have requested a 'stand your ground' grand jury instruction."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at

118, 386 S.E.2d at 625. 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.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

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

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General

By: *Christian Saville*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box [REDACTED]
Columbia, SC 29211
Telephone: [REDACTED]

10/24, 2018

Sincere Jamal Owens v State
Post-Conviction Relief Hearing
April 1, 2019

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PROCEEDINGS

MR. LIMBAUGH: May it please the Court?

THE COURT: Yes, sir.

MR. LIMBAUGH: This is Mr. Sincere Owens, case number 2015-CP-15-0662. Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. In June 2009 the Colleton County Grand Jury indicted Applicant for murder and possession of a weapon during a violent crime.

The charges resulted from an April 2009 incident in which Applicant drove to victim's home and fatally shot him in the left buttock causing him to bleed to death. David S. Matthews, Esquire of the Fourteenth Circuit Public Defender's Office represented Applicant at trial. Deputy Solicitor Sean P. Thornton prosecuted the case.

On September 13, 2010 Applicant proceeded to a jury trial before the Honorable D. Craig Brown. The jury found Applicant not guilty of murder but guilty of the lesser included offense of voluntary manslaughter and guilty of possession of a weapon during a violent crime.

On September 15, 2010 Judge Brown sentenced Applicant to imprisonment for twenty-seven years for voluntary manslaughter and five years for possession of a weapon during a violent crime to be served consecutively.

Sincere Jamal Owens v State
Post-Conviction Relief Hearing
April 1, 2019

1 Applicant filed a motion to reconsider the sentence. A
2 hearing on the motion was first convened on May 29th,
3 2012 before Judge Brown who found it appropriate to
4 recuse himself from the matter. A subsequent hearing was
5 held on November 13, 2012 before the Honorable Perry M.
6 Buckner, III.

7 At the November 2012 hearing ---

8 THE COURT REPORTER: --- I'm sorry; will you slow
9 down just a little.

10 MR. LIMBAUGH: Yes, sorry. At the November 2012
11 hearing David L. Michel, Esquire represented Applicant.
12 Judge Buckner found no legal reason to disturb the
13 discretion of the trial judge and respectfully denied the
14 motion for reconsideration.

15 Applicant filed a timely notice of appeal.
16 Appellate Defender Katherine H. Hudgins perfected the
17 appeal pursuant to Anders v California. The South
18 Carolina Court of Appeals dismissed Applicant's appeal
19 and granted counsel's motion to be relieved on November
20 5, 2014. The remittitur was returned to the Circuit
21 Court on November 21, 2014.

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

25 Ineffective assistance of counsel:

Sincere Jamal Owens v State
Post-Conviction Relief Hearing
April 1, 2019

1 Not taking pictures to sufficiently illustrate the
2 house and crime scene;
3 Failed to properly cross-examine witnesses;
4 Failed to investigate;
5 Not introducing victim's rap sheet;
6 Failed to call witnesses or present evidence to
7 support the Charge of self-defense;
8 Trial counsel gave erroneous advice in advising
9 Applicant not to testify for the sole purpose of having
10 the last argument;
11 Failed to ask for a continuance or a mistrial
12 because he didn't have time to interview Anita Rowe;
13 Not objecting to voluntary manslaughter Charge being
14 given to jury;
15 Not consulting with Applicant on important decisions
16 and to keep Applicant informed of other important
17 developments in the case of prosecution;
18 Trial counsel should have requested a stand your
19 ground Charge instruction.
20 Your Honor, since the Applicant was ultimately
21 convicted of the lesser included and murder would be on
22 the table if you were to grant his PCR the State would
23 ask that you advise him prior to proceeding.
24 THE COURT: All right. And Mr. Newman have you
25 explained to your client what he possibly could stand to

Sincere Jamal Owens v State
Post-Conviction Relief Hearing
April 1, 2019

1 gain by this PCR and lose?

2 MR. NEWMAN: Yes sir, I have. Also I disagree with
3 the State as murder would be on there. The own trial
4 court had the jury make two findings; guilty or not
5 guilty of murder and guilty or not guilty of voluntary
6 manslaughter ---

7 THE COURT: --- that's right ---

8 MR. NEWMAN: --- not guilty was entered on the
9 murder so I think even if this case were overturned
10 jeopardy would preclude that Charge. And I've explained
11 that to Mr. Owens.

12 [Whereupon, Mr. Newman confers with Mr. Owens]

13 MR. NEWMAN: He wishes to go forward with the
14 hearing, Your Honor.

15 THE COURT: All right. I'm ready when you are.

16 MR. NEWMAN: Yes, sir.

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Sincere Jamal Owens v State
Post-Conviction Relief-Sincere Owens-Direct Examination by Mr. Newman
April 1, 2019

1 MR. NEWMAN: The first witness we would call is Mr.
2 Sincere Owens.
3 [Whereupon, Mr. Owens comes forward]
4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]
6 CLERK OF COURT: Please be seated.
7 - - - - -
8 SINCERE OWENS,
9 Having been first duly sworn,
10 Was examined and testified as follows:
11 DIRECT EXAMINATION
12 BY MR. NEWMAN:
13 Q. Good morning, Mr. Owens.
14 A. Good morning.
15 Q. Prior to this conviction what criminal record did
16 you have?
17 A. None.
18 Q. You had no criminal record, is that correct?
19 A. Yes, sir.
20 Q. Okay. And was -- Mr. Matthews was your trial
21 lawyer?
22 A. Yes, sir.
23 Q. Okay. And did he understand and did y'all discuss
24 the fact that if you took the stand the State would have
25 no criminal record with which to try and impeach or

Sincere Jamal Owens v State
Post-Conviction Relief-Sincere Owens-Direct Examination by Mr. Newman
April 1, 2019

1 cross-examine you on?

2 A. Yes, sir.

3 Q. Okay. In discussing your case with Mr. Matthews did
4 he ever discuss with you that under the facts of this
5 case or ask you whether you wanted to proceed with what's
6 called a stand your ground or an immunity hearing?

7 A. No, sir.

8 Q. Okay. At that time did you understand what an
9 immunity hearing was?

10 A. No, sir.

11 Q. Okay. Have you since come to learn what a stand
12 your ground or an immunity hearing is?

13 A. Not really.

14 Q. Okay. Now Mr. Matthews defended your case on either
15 a theory of self-defense or accident. Did you discuss
16 either of those theories of defense with Mr. Matthews?

17 A. Yes, sir.

18 Q. Okay. And is there a reason why you did not testify
19 in this case?

20 A. I mean at the point I didn't really understand what
21 was going on. And what he told me he was like if I
22 didn't get on the stand it would be a better chance for
23 him to have the last argument in fighting the case.

24 Q. Okay. But there was at least one witness in the
25 case that says you were not trying to shoot the decedent

Sincere Jamal Owens v State
Post-Conviction Relief-Sincere Owens-Direct Examination by Mr. Newman
April 1, 2019

- 1 Mr. Williams.
- 2 A. Yes, sir.
- 3 Q. All right. What would you have testified to had you
4 taken the stand?
- 5 A. That is was an accident and it wasn't intentionally
6 with no malice at all.
- 7 Q. All right. And in fact the witness testified you
8 were actually shooting into the ground; is that correct?
- 9 A. Yes, sir. I was like trying to keep him away from
10 me coming towards me.
- 11 Q. Okay. And you were not able to explain that to a
12 jury?
- 13 A. Yes, sir.
- 14 Q. All right. Did you ask Mr. Matthews to ask the
15 Court or the jury to give a voluntary manslaughter
16 Charge?
- 17 A. No, sir.
- 18 Q. Okay. Did Mr. Matthews ever ask for an involuntary
19 manslaughter Charge?
- 20 A. No, sir.
- 21 Q. Did he ever ask the jury to be charged on the
22 defense of accident?
- 23 A. No, sir.
- 24 Q. Were those things that you wanted him to do?
- 25 A. I mean ---

Sincere Jamal Owens v State
Post-Conviction Relief-Sincere Owens-Direct Examination by Mr. Newman
April 1, 2019

1 Q. --- or did you not understand at the time ---
2 A. --- I didn't understand. My understanding was we
3 were going to trial for self-defense and he didn't put up
4 any self-defense defense at all.
5 Q. Do you know if Mr. Matthews or his investigator or
6 an investigator took any photographs of the crime scene
7 or visited the scene of the alleged crime?
8 A. No sir, they didn't at all. I had it done where the
9 photos were taken or the investigator but he didn't take
10 any at all or he didn't show me any.
11 Q. Okay. And at your trial there was actually an issue
12 of where the decedent, Mr. Williams, was or was not; is
13 that correct?
14 A. Say that one more time.
15 Q. What I'm saying is there was an issue as to where
16 Mr. Williams was; is that correct? The State's theory
17 was that he was either at his house or coming back to his
18 house.
19 A. Yes, sir.
20 Q. Okay. But factually that's not what happened; is
21 that true?
22 A. Right. Correct.
23 Q. All right. And do you recall during your trial, and
24 I'll reference this with Mr. Matthews, but of a witness
25 Mark McCune testifying?

Sincere Jamal Owens v State
Post-Conviction Relief-Sincere Owens-Direct Examination by Mr. Newman
April 1, 2019

1 A. Yes, sir.

2 Q. All right. And I'll get into this more with Mr.
3 Matthews but do you know whether or not you received the
4 correct instruction as to the law of self-defense?

5 A. I know I didn't. Of what I know now I know I
6 didn't.

7 Q. Okay. Because the Court charged that you would have
8 had a duty to retreat; is that correct?

9 A. Say that again.

10 Q. One of the elements of self-defense was if you could
11 do so safely you would have had a duty to retreat before
12 firing.

13 A. Yes, sir.

14 Q. All right. And as you testified there was no
15 immunity hearing and the Jury Charge given was not the
16 Jury Charge of stand your ground; is that correct?

17 A. Yes, sir. Correct.

18 Q. Okay. And back then not being familiar with the
19 system and not being a lawyer you did not know these
20 things, correct?

21 A. Correct.

22 MR. NEWMAN: Judge, as to Mr. Owens that's
23 basically all I have. I would ask if needed that I be
24 able to recall him.

25 THE COURT: Sure. Let me hear from the State.

Sincere Jamal Owens v State
Post-Conviction Relief-Sincere Owens-Cross-Examination by Mr. Limbaugh
April 1, 2019

1 MR. LIMBAUGH: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. LIMBAUGH:

4 Q. Good morning, Mr. Owens.

5 A. Good morning.

6 Q. So did Mr. Matthews go over the discovery with you
7 in this case?

8 A. Um...

9 Q. Basically the evidence against you?

10 A. Yes.

11 Q. Did he discuss, I think you testified to it, your
12 strategy for going to trial?

13 A. Yes.

14 Q. Okay.

15 MR. LIMBAUGH: A moment's indulgence, Your Honor.

16 [Whereupon, Mr. Limbaugh reviews documents]

17 Q. [Mr. Limbaugh] Did he discuss with you you not
18 testifying so you could have the last argument to the
19 jury?

20 A. Yes.

21 Q. Okay.

22 MR. LIMBAUGH: That's all I have for this witness,
23 Your Honor.

24 THE COURT: All right. Any redirect?

25 MR. NEWMAN: No, sir.

Sincere Jamal Owens v State
Post-Conviction Relief-Sincere Owens-Cross-Examination by Mr. Limbaugh
April 1, 2019

1 THE COURT: All right. You may step down. Thank
2 you.
3 [Whereupon, the witness is excused and exits the
4 witness stand]
5 THE COURT: You may call your next witness.
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Sincere Jamal Owens v State
Post-Conviction Relief-David Matthews-Direct Examination by Mr. Newman
April 1, 2019

1 MR. NEWMAN: I'd call attorney David Matthews.
2 [Whereupon, Mr. Matthews comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 - - - - -
6 DAVID MATTHEWS,
7 Having been first duly sworn,
8 Was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. NEWMAN:

11 Q. Good morning, Mr. Matthews.

12 A. Mr. Newman.

13 Q. You and I have had about this case an opportunity to
14 talk a few times about this; is that correct?

15 A. That's correct.

16 Q. All right. And I know it's an unpleasant position
17 to be in and I certainly mean nothing degrading by you if
18 I ask you certain questions.

19 A. We all have our time.

20 Q. I understand that. And I'm actually going to be a
21 witness here in a few minutes myself so.

22 In this case you look like you had two twin theories
23 going on, one of self-defense and the other possibly an
24 accident. Can you explain what your theory of defense
25 was in this case?

Sincere Jamal Owens v State
Post-Conviction Relief-David Matthews-Direct Examination by Mr. Newman
April 1, 2019

- 1 A. It wasn't accident. Perhaps that's something I
2 should have looked at better. This to me looked the most
3 probable outcome at trial looked to me to be voluntary
4 manslaughter and that's sort of what I went with. It may
5 well have been a mistake; I guess that's up to the Judge.
- 6 Q. Okay. And as to the elements of a voluntary
7 manslaughter you had developed that the decedent had
8 disrespected Mr. Owens' mother at some time in the past.
- 9 A. Sometime that day earlier.
- 10 Q. Sometime earlier that day?
- 11 A. Yes.
- 12 Q. But not during the altercation?
- 13 A. No, she was at work at Subway.
- 14 Q. Okay. So you did not object to a voluntary
15 manslaughter Charge being given to the jury?
- 16 A. I did not.
- 17 Q. All right. And is there a reason why you did not?
- 18 A. I thought that was what -- I didn't see -- because
19 he was shot in the -- because the victim was shot in the
20 behind ---
- 21 Q. --- in the buttocks ---
- 22 A. --- in the buttocks self-defense didn't look viable
23 to me. I mean it was -- perhaps it should have been but
24 it didn't. That was the problem I had was where he was
25 shot. I argued I think ricochet or something like that.

Sincere Jamal Owens v State
Post-Conviction Relief-David Matthews-Direct Examination by Mr. Newman
April 1, 2019

1 But I talked to several witnesses and stuff and it just,
2 it looked like a voluntary manslaughter case to me.
3 That's what I was trying.

4 Q. Okay. And would you agree or not agree, and I'm
5 going to show you highlighted on page 94 and 95 of the
6 transcript --

7 MR. NEWMAN: If I may approach the witness, Your
8 Honor?

9 A. I've actually got a copy.

10 Q. [Mr. Newman] Or do you? Oh, very good.

11 A. I think I do; I brought with me.

12 [Whereupon, the witness reviews his documents]

13 A. No, I don't. Yes please, show me what you've got.

14 MR. NEWMAN: If I may approach the witness, Your
15 Honor. And I'm sorry; I've got to get a hip replaced.

16 THE COURT: That's fine; take your time.

17 [Whereupon, Mr. Newman provides document to the
18 witness]

19 Q. [Mr. Newman] If you will look down here
20 [indicates].

21 A. Okay.

22 Q. And on page 94 and 95 the State is actually
23 examining a witness named Mr. Martin McCune, M-C-C-U-N-E?

24 A. Right.

25 Q. Okay. And do you recall Mr. McCune testifying?

Sincere Jamal Owens v State
Post-Conviction Relief-David Matthews-Direct Examination by Mr. Newman
April 1, 2019

1 A. I've seen here that he did.

2 Q. Yes, I know it's been a while.

3 A. He's a regular. Martin McCune he's a regular.

4 Q. I understand that. But the Solicitor actually

5 elicited testimony from Mr. McCune that he wasn't trying

6 to hit him; that he was firing at the ground. Is that

7 correct?

8 A. That's what it says, yeah.

9 Q. And then if you will look over to the highlighted

10 copy ---

11 A. --- right ---

12 Q. --- he reiterates that and says that he wasn't like

13 trying to aim it at him. He was kind of making a

14 threatening gesture and firing at the ground; is that

15 correct?

16 A. That's what he says.

17 Q. Okay. And he says basically that he was not

18 intending to shoot the decedent.

19 A. It says line 13: Yeah, first shot was at the ground

20 and then you know he just kind of aimed like he was

21 shooting but he was still shooting at the ground. He was

22 shooting not towards trying to shoot him but shooting at

23 the ground.

24 Q. Okay. And based on that would that not be for lack

25 of a better term a reckless act?

Sincere Jamal Owens v State
Post-Conviction Relief-David Matthews-Direct Examination by Mr. Newman
April 1, 2019

1 A. Probably should have asked for a Charge on
2 involuntary manslaughter. That looks like that might
3 have given rise to that and I didn't ask for it.

4 Q. All right. Would you agree that those facts would
5 allow you a Charge or allow you to make the argument?

6 A. I think that's up to the Judge. I think I should
7 have raised it whether or not -- you should always ask
8 for something if there is any chance. And if there is
9 some chance at all then I should have asked for it.

10 Q. Okay. Did you have any strategic reason for not
11 asking for a Charge on involuntary manslaughter?

12 A. No.

13 Q. Now in developing your case you did not ask for an
14 immunity hearing; is that correct?

15 A. That's correct.

16 Q. Was there a strategic reason for not doing so?

17 A. I didn't think about it. I don't think it was as
18 big a deal then as it is now but it was on the books. I
19 mean it's certainly something if I had looked for I could
20 have found.

21 I've recently been asking for it almost as
22 frequently as a Jackson Denno hearing. I ask for it
23 frequently now. I did not at the time and I should have.

24 Q. Okay. And that would have been a hearing on the
25 record where you could have gotten witness testimony

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April 1, 2019

1 locked in?

2 A. Right.

3 Q. You could have seen how the witnesses would testify
4 and what they would testify to?

5 A. Right. And with no harm because if you lose the
6 jury doesn't hear it and all that sort of stuff so
7 certainly. I was unaware of it. It's something that I
8 don't think people were doing.

9 It wasn't something that people were talking about
10 but it was on the books. So it wasn't something
11 generally discussed. I wish I had asked for it and I
12 didn't; I should have.

13 Q. Okay. And do you believe that would have assisted
14 you in developing your theory on whether self-defense,
15 accident or reckless homicide?

16 A. It would have helped me understand the entire case
17 whatever I had. So it's something now routinely if there
18 is any chance of it I ask for it now. I just did not at
19 the time.

20 Like I said I wasn't aware of it. I don't know how
21 familiar the general legal community was of it but I know
22 that it was on the books and it would have helped; could
23 have.

24 Q. Okay. And that, and I know these are legal
25 arguments I guess, but would you agree that a involuntary

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1 manslaughter if he were convicted on that that carries
2 substantially less time than voluntary ---

3 A. --- that's up to five, which is a whole lot better
4 than up to 30.

5 Q. Yes, sir. I also notice and this will be about the
6 last thing I have for you on the Judge's Charge on self-
7 defense is there any reason why you didn't ask for the
8 stand your ground Charge on self-defense rather than the
9 duty to retreat Charge?

10 A. Because like I said this was something that was on
11 the books but people weren't really talking about it.
12 Stand your ground now is very big topic and it has been
13 for a few years now.

14 But at the time it wasn't something that -- you know
15 you go to seminars every year, go to the Public Defender
16 seminar every year, take lots of CLE's and all that sort
17 of stuff and it just wasn't something that people were
18 talking about. They should have been but it wasn't
19 something that people were talking about then.

20 Q. But, those were available to you at the time?

21 A. It was on the books, yes.

22 Q. Along with that there were a number of statements
23 and a recording I believe that lasted about 40 minutes,
24 an interview with Mr. Owens that was played in front of
25 the jury.

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1 A. I have no -- sure, yes.

2 Q. I mean he made statements to the police; correct?

3 A. If you could show me? Like I said it has been quite
4 a while and like I said that might have also factored in
5 if he made statements that were not -- if they were
6 consistent with what he would have testified to then I
7 wouldn't have needed to put him on the stand or miss last
8 argument or whatever.

9 Q. Okay. And that's what I wanted to ask you about.
10 Had you had a stand your ground immunity hearing outside
11 the presence of the jury Mr. Owens would have been able
12 to testify at that; correct?

13 A. Absolutely. There is no down side in that other
14 than if he said something inconsistent. I mean stand
15 your ground I think -- like I said at this point I'm
16 looking at it the same as I do a voluntariness hearing or
17 an identify hearing Neil v Biggers or Jackson Denno or
18 whatever.

19 At this point this is how I'm looking at it but it's
20 -- I've now done a few of them. At that point I didn't
21 know anybody that had done one so I -- and I hadn't been
22 hearing the talk. But yes, I should have done it; I wish
23 I had.

24 Q. Okay. And that testimony would have allowed you Mr.
25 Owens to testify outside the presence of the jury but on

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1 cross-examination certainly the State could use the
2 statements against him but you could likewise.

3 A. Right ---

4 Q. --- in cross-examining the investigator?

5 A. That's right.

6 MR. NEWMAN: Judge, if I may confer one moment with
7 Mr. Owens? I believe I'm about done.

8 THE COURT: All right.

9 MR. NEWMAN: Thank you.

10 [Whereupon, Mr. Newman confers with Mr. Owens]

11 Q. [Mr. Newman] Thank you, Mr. Matthews.

12 MR. NEWMAN: Your Honor, I don't have any further
13 questions.

14 THE COURT: All right. Cross?

15 MR. LIMBAUGH: Thank you, Your Honor.
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Post-Conviction Relief-David Matthews-Cross-Examination by Mr. Limbaugh
April 1, 2019

1 CROSS-EXAMINATION

2 BY MR. LIMBAUGH:

3 Q. Good morning, Mr. Matthews.

4 A. Good morning.

5 Q. So you say you didn't object to the involuntary
6 manslaughter Charge; is that correct?

7 A. Right.

8 Q. And there was some testimony that he wasn't trying
9 to shoot him that he was shooting at the ground; is that
10 what you recall?

11 A. That's correct.

12 Q. Would you say that pointing a gun in someone's
13 general direction and firing a shot could that be
14 perceived by a jury as an intentional act?

15 A. Yes.

16 Q. You also talked -- there was a lot of talk about
17 these immunity hearings. And I believe your testimony
18 was that not many people were doing them at the time?

19 A. I wasn't. The statute was on the books and people
20 should have been doing them I think but they -- I didn't
21 know until sometime maybe a year or so after that I
22 hadn't heard of anybody doing them; it wasn't a thing.

23 You know it should have been. I mean it's a statute
24 that is on the books and we're supposed to see what's on
25 the books. But I didn't know anybody that had done any

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1 at that point and I had not done any at that point.

2 Q. So it wasn't common practice to your knowledge to be
3 doing those?

4 A. No, it was not common practice.

5 Q. Okay.

6 MR. LIMBAUGH: A moment's indulgence, Your Honor.

7 [Whereupon, Mr. Limbaugh reviews documents]

8 Q. [Mr. Limbaugh] Kind of along the same lines about
9 asking for the duty to retreat Charge verse the stand
10 your ground was it kind of the same deal with that?

11 A. Exactly the same as that.

12 Q. So people to you knowledge it wasn't common practice
13 to be asking for the stand your ground instead of the ---

14 A. --- at the point I mean if a statute on the books
15 and I should know it; we should all know whatever is on
16 the books.

17 But I just -- it wasn't one of the things that we
18 talked about. It was not something that -- so I didn't
19 know it was a tool that I had available to me.

20 Q. Okay. Did -- strike that. Is there anything that
21 you know of that would have potentially come out in these
22 immunity hearings that would have changed the result of
23 the trial?

24 A. No. I mean I don't know of anything that would have
25 been different but that's the thing. I mean if you --

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1 no, I don't know that anything would have been different.

2 Q. Did you do an investigation in this case?

3 A. Yes.

4 Q. Okay. Did you share you investigation of the
5 discovery with Mr. Owens?

6 A. Yes.

7 Q. Did you discuss your trial strategy with Mr. Owens?

8 A. Yes.

9 Q. Okay. Did you discuss with him his right to
10 testify?

11 A. Yes.

12 Q. What was his decision on that matter?

13 A. I mean I'm sure -- I'm not looking at the transcript
14 but typically the Court asks do you wish to testify and
15 all that sort of stuff and I don't -- I assume that was
16 done.

17 I'm not looking at the transcript. I got the wrong
18 file so I'm not looking at the transcripts on that. But,
19 you know along with my I would have advised him -- if I
20 had advised him to testify he would have testified.

21 That's one thing that could have been -- I could
22 have gauged what kind of witness he actually made at a
23 stand your ground hearing. But, it would have been a
24 decision -- it would have been his decision but with my
25 input.

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April 1, 2019

1 MR. LIMBAUGH: That's all I have of this witness,
2 Your Honor.

3 THE COURT: All right. Redirect.

4 MR. NEWMAN: Yes sir, just briefly.

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Sincere Jamal Owens v State
Post-Conviction Relief-David Matthews-Redirect Examination by Mr. Newman
April 1, 2019

1 REDIRECT EXAMINATION

2 BY MR. NEWMAN:

3 Q. I think you were in the courtroom when Mr. Owens
4 testified. Do you have any reason to dispute that at the
5 time of this trial that he did not have any criminal
6 record with which the State could impeach him?

7 A. I know that I had represented him in something
8 prior, drug charge or sometime just prior to that. I can
9 take a look and find out what the result of it was on my
10 phone if you would like. Or if you don't care I won't.

11 But I know I've represented him before. I don't
12 know whether I had gotten it dismissed. I know we hadn't
13 tried a case but I know that I had represented him on a
14 drug case before.

15 Q. Okay. I guess my question was you don't have any
16 reason to dispute his testimony if he testified under
17 oath that ---

18 A. --- I can look it up. Like I said I don't -- I mean
19 as far as whether I would dispute it people have dim
20 memories about things and there is no point in guessing
21 if I can know. If you like I'll look it up.

22 Q. I'll leave that up to the Court if they want to take
23 the time. I really don't need it.

24 A. I know I had represented him before. I don't know
25 whether it was dismissed or whether it was a plea or what

Sincere Jamal Owens v State
Post-Conviction Relief-David Matthews-Redirect Examination by Mr. Newman
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1 but I know I had represented him because when I pull his
2 name up two cases come up.

3 Q. Okay. And the Attorney General asked you about if
4 you were pointing a gun in a general direction and
5 shooting the jury can infer I guess intent for a murder
6 charge and you answered that it could.

7 A. I think so. I mean if you're pointing a gun in
8 somebody's direction and you pull the trigger that's --
9 but -- and involuntary manslaughter that you know you
10 should always ask and I didn't as far as that goes ---

11 Q. --- that's what I was asking ---

12 A. --- yes, you should always ask. Whether I agree
13 that it is or not really doesn't matter. It matters
14 whether or not I think pointing -- it doesn't matter what
15 I think. You should always ask and I didn't.

16 Q. Okay. You do agree that Mr. McCune gave you the
17 ammunition to ask for that Charge when he said he wasn't
18 intending to hit him?

19 A. Figuratively speaking?

20 Q. I'm sorry?

21 A. The ammunition. Did he give me something to work
22 with in that general -- if you think that not pulling a
23 trigger and pointing in somebody's general direction can
24 be an accident then certainly he gave me the testimony
25 that would have supported that.

Sincere Jamal Owens v State
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1 Q. Okay. That's what I wanted to make sure because he
2 said he was not intending to hit him; correct?

3 A. That's what his testimony was.

4 Q. Okay. Thank you.

5 THE COURT: All right. Recross?

6 MR. LIMBAUGH: Just one, Your Honor.

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Post-Conviction Relief-David Matthews-Recross Examination by Mr. Limbaugh
April 1, 2019

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RECROSS EXAMINATION

BY MR. LIMBAUGH:

Q. Would this be the typical type of circumstance where you would ask for an accident Charge?

A. You should always ask. As far as whether it is typical I mean I don't know. Typically, some of that is a matter of distancing yourself from it.

And it doesn't seem like it's something -- I look at it as if you're pointing at somebody and you're pulling the trigger and pointing a gun in their general direction to me that doesn't look like an accident.

But I've been wrong before. You should always ask as far as that goes and I didn't. It doesn't look to me like an accident but it doesn't really matter what it looks like to me; I should still have asked.

MR. LIMBAUGH: That's all I have, Your Honor.

THE COURT: All right. You may step down. Thank you.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. NEWMAN: If it pleases the Court, Your Honor that would be the Applicant's case.

THE COURT: All right. Any witnesses for the State?

MR. LIMBAUGH: None for the State, Your Honor.

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Post-Conviction Relief-Closing Argument by Mr. Newman
April 1, 2019

1 CLOSING ARGUMENT

2 THE COURT: Any arguments you would like to make;
3 just briefly?

4 MR. NEWMAN: Briefly, Your Honor. I think the
5 Court has seen the focus. There are a number of issues
6 that Mr. Owens does raise that are in the petition that I
7 think very clearly with the testimony of the witness, and
8 I'm assuming the transcript is part of the record but I
9 don't know that, that if the Court examines the actual
10 evidence elicited by the State on direct examination that
11 it was -- that the witness testified that he was just
12 trying to hit the ground and trying to scare him.

13 The first shot was at the ground and then he kind of
14 like aimed like he was shooting but he was still shooting
15 at the ground not trying to hit anybody. On that, Your
16 Honor we do believe that Mr. Owens was prejudiced. Trial
17 counsel said he had no strategy for not asking for an
18 involuntary manslaughter Charge versus a voluntary
19 manslaughter Charge, which quite frankly the facts of the
20 case really didn't support a voluntary manslaughter
21 Charge.

22 It definitely didn't support a Jury Charge that the
23 jury obviously found him not guilty on that. However, we
24 do believe that counsel erred in not asking for that
25 Charge. And what we were trying to show is that had an

Sincere Jamal Owens v State
Post-Conviction Relief-Closing Argument by Mr. Newman
April 1, 2019

1 immunity hearing been done counsel would have been much
2 better prepared to deal with these issues, to listen to
3 these issues, to give Mr. Owens to be able to testify at
4 that hearing and have transcripts of that testimony.

5 So what we thing without doing that is certainly
6 prejudiced Mr. Owens and put Mr. Matthews in the position
7 where is he's kind of going to have to go on the fly as
8 to what he could get a Charge on either accident or
9 voluntary manslaughter or both.

10 And we do believe that there were sufficient facts
11 in the record where a Judge would be compelled to get an
12 involuntary manslaughter charge. Pointing the gun at the
13 ground is a reckless act. Probably firing a weapon in
14 the city limits would have been an unlawful act but
15 without the intent.

16 Certainly the jury did not find any malice
17 aforethought as the intent. So they would have had to
18 convict on a sudden heat of passion. There was certainly
19 evidence out there that Mr. Owens was merely attempting
20 to scare the decedent and had no intentions to hit him.
21 That would be an act that would be involuntary
22 manslaughter.

23 And Your Honor, that's kind of what we wanted to
24 focus on. Thank you, sir.

25 THE COURT: Let me hear from the State.

Sincere Jamal Owens v State
Post-Conviction Relief-Closing Argument by Mr. Limbaugh
April 1, 2019

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CLOSING ARGUMENT

BY MR. LIMBAUGH:

Thank you, Your Honor. The State would contend that we're not entirely sure what the Judge would have ruled on if Mr. Matthews had asked for an involuntary manslaughter Charge. There is evidence that obviously the gun was pointed in his direction and shot. The shot was relatively high on the body. If it goes to the foot you could possibly see it but that's a jury question.

The State would also contend that on Mr. Matthew's testimony in accordance with Cherry the deficiency prong is based on the reasonableness under prevailing professional norms. Mr. Matthews testified on the immunity hearing that it existed but that nobody he knew off the top of his head was doing that at the time and it was not common place for that being done.

The same thing with the asking for the stand your ground Charge verses the retreat Charge. And that is the standard under prevailing professional norms. And yes, it might have been on the books but he was not aware of it and nobody he knows was doing it. And that would not be the prevailing professional norm, Your Honor.

We also can't know if Mr. Owens was actually prejudiced by these things. There was significant evidence in the transcript and during the trial the jury

Sincere Jamal Owens v State
Post-Conviction Relief-Closing Argument by Mr. Limbaugh
April 1, 2019

1 did not find him guilty of the murder but did for the
2 voluntary manslaughter. And I do not believe or the
3 State does not believe Mr. Matthews was deficient in his
4 performance in this case.

5 THE COURT: All right. I'll take it under
6 advisement and let you know something this week ---

7 MR. NEWMAN: --- may I just reply briefly to one
8 thing?

9 THE COURT: Sure.

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Sincere Jamal Owens v State
Post-Conviction Relief-Closing Argument Reply by Mr. Newman
April 1, 2019

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CLOSING ARGUMENT REPLY

BY MR. NEWMAN:

As to the prejudicial Charge the Attorney General did mention well we don't know whether the Judge would have charged it or not charged it. What we do know is if it had been asked for and overruled it would have been able to have been reviewed as an appellate issue. And of course as you know if you don't ask for it and it's not ruled on the Appellate Court can't go back and say well maybe the Judge should have charged that but that issue was never raised.

THE COURT: But the Judge has the discretion to Charge it if he thinks it's appropriate under the circumstances doesn't he?

MR. NEWMAN: And that's what I'm saying Your Honor that ---

THE COURT: --- even if he's asked or not. Even if he's not asked if he thought it was appropriate he could have charged it, couldn't he? I'm just asking.

MR. NEWMAN: Well, I guess my point on that is the issue was not raised and therefore Mr. Owens doesn't get a review on whether there should have been an involuntary manslaughter Charge. That's what we also think prejudice came in. Thank you, Your Honor.

THE COURT: Do you want to respond to that?

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Post-Conviction Relief-Closing Argument Response by Mr. Limbaugh
April 1, 2019

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CLOSING ARGUMENT RESPONSE

BY MR. LIMBAUGH:

Just I agree with Your Honor that the Court always has the discretion if they see the facts presented in a case to include Charges that they see fit so.

THE COURT: All right. I'll let you know something this week.

MR. LIMBAUGH: Thank you, Your Honor.

THE COURT: Thank you.

MR. NEWMAN: Thank you, Your Honor.

*****END OF TRANSCRIPT OF RECORD*****

Sincere Jamal Owens v State
Certificate of the Court Reporter
April 1, 2019

C E R T I F I C A T E

1
2 I, the undersigned, Joyce C. Rueger, Official
3 Circuit Court Reporter for the Ninth Judicial Circuit of
4 the State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete Transcript of
6 Record of the proceedings had and evidence introduced in
7 the trial of the captioned case, relative to appeal, in
8 the Court of Common Pleas for Beaufort County, South
9 Carolina on the 1st day of April, 2019.

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

12
13 July 27, 2019

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17 _____
18 Joyce C. Rueger, CVR-M
19 Court Reporter
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Jared Newman

From: Seals, William Law Clerk (Christopher Kinon) <wsealslc@sccourts.org>
Sent: Thursday, April 4, 2019 12:32 PM
To: Benjamin Limbaugh; jnewman@jnewmanlaw.com; leslie.sarji@ [REDACTED];
jimbrownlaw@ [REDACTED]; ashley@macvance [REDACTED]
Subject: 14th Circuit PCRs Week of 4-1-19

Counselors,

After careful and considerate deliberation, and based upon the record before the Court in its entirety, Judge Seals hereby denies all PCR Applications heard this week in Beaufort County. Mr. Limbaugh, Judge Seals requests you prepare an Order to that effect for each case for his signature. Please send these Orders to Judge Seals' chambers along with a SASE so a signed copy of the Order may be returned to you for filing. I hope everyone has a good afternoon.

Best,

Chris Kinon
Law Clerk to the Honorable William H. Seals, Jr.
Circuit Court Judge, At-Large, Seat 6
[REDACTED]
Marion, South Carolina [REDACTED]
Ph: (843) [REDACTED] | Cell: (843) [REDACTED] | Fax: (843) [REDACTED]

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ALAN WILSON  
ATTORNEY GENERAL

December 31, 2019

Jared Sullivan Newman, Esquire  
Jared S. Newman, P.A.  
PO Box 515  
Port Royal, SC 29935

**Re: Sincere Jamaal Owens, #342813 v. State of South Carolina**  
**2015-CP-15-0662**

Dear Mr. Newman:

Enclosed is a copy of the filed **Order of Dismissal** the above-captioned case signed by The Honorable William H. Seals Jr., and filed with the Colleton County Clerk of Court.

Sincerely,

Sara E. Dunton  
Assistant Attorney General

SEG/kmw  
Enclosure(s)

STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Sincere Owens, #342813,

Case No.: 2015-CP-15-0662

Applicant,

**ORDER OF DISMISSAL**

v.

State of South Carolina,

Respondent.

COLLETON COUNTY  
SEVENTH JUDICIAL CIRCUIT  
Common Pleas Court  
2015 OCT 18 PM 3:17

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. In June 2009, the Colleton County Grand Jury indicted Applicant for murder (2009-GS-15-0305) and possession of a weapon during a violent crime (2009-GS-15-0306). The charges resulted from an April 2009 incident in which Applicant drove to Victim's home and fatally shot him in the left buttock, causing him to bleed to death. Tr. p. 105, ll. 12-23. David S. Matthews, Esquire, of the Fourteenth Circuit Public Defender's Office, represented Applicant at trial. Deputy Solicitor Sean P. Thornton prosecuted the case. On September 13, 2010, Applicant proceeded to a jury trial before the Honorable D. Craig Brown. The jury found Applicant not guilty of murder, but guilty of the lesser-included offense of voluntary manslaughter and guilty of possession of a weapon during a violent crime. On September 15, 2010, Judge Brown sentenced Applicant to imprisonment for twenty-seven years voluntary manslaughter and five years for possession of a weapon during a violent crime, to be served consecutively. Applicant filed a motion to reconsider the sentence. A hearing on the motion was first convened on May 29, 2012, before Judge Brown, who found it appropriate to recuse himself from the matter. A subsequent hearing was held on November 13, 2012, before the Honorable Perry M. Buckner, III. At the November 2012 hearing, David L. Michel, Esquire,

represented Applicant. Judge Buckner found no legal reason to disturb the discretion of the trial judge and respectfully denied the motion for reconsideration.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins perfected the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal and granted counsel's motion to be relieved on November 5, 2014. State v. Owens, Op. No. 2014-UP-374 (Ct. App. 2014). The remittitur was returned to the circuit court on November 21, 2014.

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

1. Ineffective assistance of counsel
  - a. "Not taking pictures to sufficiently illustrate the house and crime scene."
  - b. "Failed to properly cross-examine witnesses."
  - c. "Failed to investigate."
  - d. "Not introducing victim's rap sheet."
  - e. "Failed to call witnesses or present evidence to support the charge of self-defense."
  - f. "Trial Counsel gave erroneous advice in advising Applicant not to testify for the sole purpose of having the last argument."
  - g. "Failed to ask for a continuance or a mistrial because he didn't have time to interview Anita Rowe."
  - h. "Not objecting to voluntary manslaughter charge being given to jury."
  - i. "Not consulting with Applicant on important decisions and to keep Applicant informed of important developments in the case of prosecution."
  - j. "Trial Counsel should have requested a 'stand your ground' grand jury instruction."

*Summary of Testimony*

Applicant testified that he did not have a criminal record. Applicant testified that he discussed testifying with counsel and that he did not have a criminal record that could be used to impeach him. Applicant testified that counsel did not discuss Stand Your Ground or a possible immunity hearing with Applicant. Applicant testified that he was not aware what an immunity

hearing was. Applicant testified that counsel did review with him the possibilities of self-defense and accident being presented. Applicant testified that counsel advised him not to testify so that they could have last argument. Applicant testified that a witness he wanted to testify would have testified that the incident was an accident. Applicant testified that he would have testified that he did not mean to shoot the victim, but that he was actually aiming at the ground in an attempt to scare him. Applicant testified that he did not ask counsel to request a voluntary manslaughter charge be presented to the jury. Applicant testified that they did not present a case for self-defense. Applicant testified that he does not think that counsel did any investigation in this case. Applicant testified that he did not get proper advice on the law of self-defense. On cross-examination, Applicant testified that counsel discussed testifying, trial strategy, and the evidence with him.

Counsel testified that he did not believe that the facts of the case supported a charge on accident. Counsel testified that the most probably outcome from the facts presented during the trial would have been a conviction for voluntary manslaughter. Counsel testified that he did not see facts supporting proper provocation. Counsel testified that he did not object to the charge of voluntary manslaughter because there were facts presented during the trial that could support that charge. Counsel testified that pursuing self-defense was not viable because the victim was ultimately shot in the buttock, indicating that he was turned away from Applicant at the time of the shooting. Counsel testified that he might should have requested an involuntary manslaughter charge, but was not sure if the judge would grant the request. Counsel testified that he did not request an immunity hearing and that he was unaware of many people requesting them at the time. Counsel testified that he likely should have requested the hearing and that he does it almost every time now. Counsel testified that he asked for a charge on the duty to retreat.

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*Findings of Facts and Conclusions of Law*

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, William Brunson. Each allegation is addressed fully below.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a "reasonably competent attorney." " 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286, 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins, 539 U.S. at 526-527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an

inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687; Harrington, 562 U.S. 86.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689-690. Even under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt

might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Applicant's allegation is addressed fully below:

***Failure to Properly Cross-Examine Witnesses***

Applicant alleges that trial counsel was deficient for failing to properly cross-examine State's witnesses. There was little testimony elicited at the evidentiary hearing concerning this allegation, however, counsel felt that he thoroughly cross-examined the witnesses. The trial transcript also indicates that counsel did indeed cross-examine the witnesses. Applicant has failed to show how additional cross-examine was necessary or how it would have affected the outcome of the proceeding. Therefore, this Court finds that Applicant has failed to show how he was prejudiced by the alleged deficiency. This Court finds that counsel was not ineffective in regards to this allegation and it is therefore dismissed.

***Failure to Investigate***

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Thus, "[a] criminal defense attorney has the duty to conduct a

reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions....” Strickland, 466 U.S. at 691, 104 S.Ct. 2052. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.” Id. at 690, 104 S.Ct. 2052. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014).

Counsel testified at the evidentiary hearing that he conducted thorough research in this case and was prepared for trial. Counsel and Applicant both testified that they reviewed the discovery in the case in preparation for the trial. Applicant's testimony at the evidentiary hearing did not provide insight into any relevant matter in which he would have liked counsel to investigate. Therefore, this Court finds that counsel properly investigated the facts of this case and was prepared for trial. This Court finds that counsel was not deficient and Applicant has failed to meet his burden in regards to this allegation.

#### ***Failure to Call Witness***

To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise

introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

Applicant alleges that counsel was deficient for failing to call a witness that would testify in support of a claim of self-defense. Applicant testified that a witness to the incident would have testified that Applicant was acting in self-defense. Applicant failed to produce the witness at the evidentiary hearing and therefore did not elicit the favorable testimony to be considered by this Court. Applicant has the burden to produce the witness and without the testimony of the witness this Court is asked to consider mere speculation. Therefore, this Court finds that counsel was not deficient for failing to call this witness and Applicant has failed to meet his burden.

*Advising Applicant not to Testify to Have Last Argument*

"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). “[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.’ What motions to file and ‘whether to put on evidence so as to preserve the final word in closing argument’ are also strategic and tactical decisions to be made by trial counsel.” Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (internal citations omitted). 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).

Counsel testified that he advised Applicant that it would be in his best interest to not testify so that they could have the last argument to the jury. Counsel testified that he felt that having the last argument to the jury was important and that it was part of his strategy. This Court finds that counsel has articulated a valid trial strategy for wanting to have the last argument to the jury. This Court notes that the decision whether or not to put forth evidence so as to preserve final word in closing argument is a tactical decision to be made by counsel. This Court finds that Applicant has failed to meet his burden and that counsel was not ineffective in regards to this allegation.

***Failure to Object to Voluntary Manslaughter Charge***

Applicant alleges that counsel was deficient for failing to object to the voluntary manslaughter charge that was requested. Applicant testified that he did not ask counsel to request a voluntary manslaughter charge and did not want the charge given to the jury. Counsel testified

that the most probable outcome of the trial was that Applicant was going to be convicted of voluntary manslaughter. Counsel testified that he did not object to the manslaughter charge being given. It is within the Court's discretion as to what to charge the jury, as long as there is evidence in the record to support the charge. Counsel also felt that charging lesser included offenses was helpful to his client and would be beneficial overall. Counsel also testified that he did not request a charge on involuntary manslaughter because he did not believe there was evidence enough for the judge to grant the request. Therefore, this Court finds that Applicant has failed to meet his burden and that counsel was not deficient in failing to object to jury being charged on voluntary manslaughter. This allegation is dismissed.

***Failure to Discuss Case with Applicant***

Applicant alleges that counsel was deficient for failing to discuss the case with him and keep him up to date on any developments. Applicant testified that counsel discussed with him his right to testify and the strategy behind him not testifying. Applicant testified that counsel discussed the potential for self-defense or accident as possible defenses in this case. Counsel testified that he discussed Applicant's right to testify with him and the strategy behind him not testifying at trial. Counsel testified that he discussed his trial strategy with Applicant and kept him in the loop as to how he was going to represent him. Counsel testified that he reviewed and discussed all of the evidence in the case with Applicant prior to trial. This Court finds that Applicant has failed to meet his burden and that Counsel was not deficient as to this allegation. Therefore, this Court dismisses this allegation.

***Failure to Request "Stand Your Ground" Hearing***

Applicant alleges that counsel was deficient for failing to request a Stand Your Ground hearing prior to trial to determine if Applicant was immune or if self-defense was a viable

defense. Applicant testified that counsel did not discuss with him stand your ground or anything concerning potential immunity. Applicant testified that counsel did discuss with him the potential for putting forth self-defense. Applicant testified that they did not present any evidence to support self-defense at trial. Counsel testified that self-defense was not a viable defense because the victim was shot in the buttock. Counsel testified that there was also no contemporaneous provocation to support a claim of self-defense. Counsel testified that he did not request an immunity hearing and that they were not common practice at this time. Counsel testified that he requests immunity hearings all the time now and is not sure he was aware of them at the time. Counsel testified that he requested a charge on the duty to retreat. This Court finds that counsel had sufficient reason to not request a hearing in this case. This Court finds that Applicant has failed to meet his burden and that counsel was not deficient as it relates to this allegation. Therefore, this Court dismisses this allegation.

**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 October, 2019.



WILLIAM H. SEALS JR.  
Presiding Judge  
Fourteenth Judicial Circuit

STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON  
IN THE COURT OF COMMON PLEAS

Sincere Jamaal Owens, #342813

Applicant,

v.

State of South Carolina,

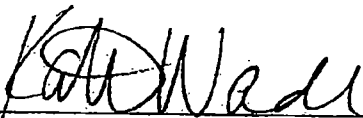
Respondent.

CERTIFICATE OF SERVICE

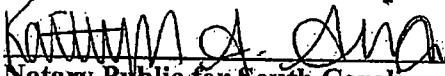
The undersigned hereby certifies that a true copy of the **Order of Dismissal** have been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

Jared Sullivan Newman, Esquire  
Jared S. Newman, P.A.  
PO Box 515  
Port Royal, SC 29935

This 31<sup>st</sup> day of December, 2019.

  
\_\_\_\_\_  
Katie Wade  
Legal Assistant for Respondent

SWORN to before me this 31<sup>st</sup> day of December, 2019.

  
\_\_\_\_\_  
Notary Public for South Carolina.  
My Commission Expires: 10/1/2025

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF COLLETON )  
 )  
 Sincere Owens, )  
 )  
 Applicant, )  
 )  
 -vs- )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 )

IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-15-00662

**NOTICE OF MOTION AND  
 MOTION TO ALTER OR AMEND  
 THE JUDGMENT UNDER RULE 59(e)**

2019 OCT 28 PM 1:18

COLLETON COUNTY  
 COMMON PLEAS COURT

TO: The HONORABLE WILLIAM H. SEALS, PRESIDING JUDGE and The OFFICE OF  
 The SOUTH CAROLINA ATTORNEY GENERAL, and ASSISTANT ATTORNEY  
 GENERAL BENJAMIN LIMBAUGH:

YOU WILL PLEASE TAKE NOTICE THAT the Applicant will move before the Court in  
 ten (10) days, or as soon thereafter as the matter may be heard at the Colleton County Courthouse  
 or other place designated by the PCR Judge, for an Order Altering and/or Amending the Court's  
 Judgment. The grounds for such Motion are set forth in the attached Memorandum. You are invited  
 to attend and participate.



S/ Jared Sullivan Newman  
 Jared Sullivan Newman, PA  
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 Port Royal, SC 29935  
 (843) 522-1313 Fax: (843) 522-0421  
 E/M: jnewman@jnewmanlaw.com  
 Attorney for the Applicant  
 SC Bar No.: 12930

Port Royal, South Carolina  
 October 25, 2019.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF COLLETON )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Sincere Owens, )  
 )  
Applicant, )

Case No.: 2015-CP-15-00662

-vs-

State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

**MOTION TO ALTER OR AMEND  
THE JUDGMENT UNDER RULE 59(e)**

2019 OCT 29 PM 1:18

COLLETON COUNTY  
COMMON PLEAS COURT

The Applicant requests that this Honorable Court alter and/or amend the Judgment dismissing the Applicant's Post Conviction Relief Application and prayer for relief. Applicant's specific claim is that his trial counsel failed to request an Involuntary Manslaughter charge based upon the facts adduced by the State at the jury trial, entitling the Applicant to a new trial.

On page three (3) of the Court's Order, the Court makes a factual finding that, "[trial] Counsel testified the he might should have requested an involuntary manslaughter charge, but was not sure if the trial judge would grant the request." Further, on page eleven (11), the Court ruled that, "[c]ounsel also testified that he did not request a charge on involuntary manslaughter because he did not believe there was evidence enough for the [trial] judge to grant the request." Based on these findings of fact, this Court ruled that the Applicant failed to meet his burden of proof that his trial counsel was deficient and that the deficiency, if any, did not prejudice the Applicant.

The Applicant is informed and believes, that the PCR Court misperceived the actual evidence presented by the Applicant at the PCR trial. Trial counsel for the Applicant conceded that

he should have requested a jury charge on involuntary manslaughter based on the evidence adduced at the jury trial. At the Applicant's jury trial, the State elicited testimony from an eyewitness, Martin McCune. McCune testified that the Applicant, "wasn't trying to hit him [decedent]." According to McCune, Mr. Owens was not firing at the decedent, but rather, "was firing at the ground."

Applicant's trial counsel, Mr. Matthews, testified as follows, taken from Page 17 (PRC Trial Transcript):

Q. --- he reiterates that and says that he wasn't like  
12 trying to aim it at him [decedent]. He was kind of making a  
13 threatening gesture and firing at the ground; is that  
14 correct?

15 A. That's what he says. [McCune].

16 Q. Okay. And he [McCune] says basically that he [Owens] was not  
17 intending to shoot the decedent.

18 A. It says line 13: Yeah, first shot was at the ground  
19 and then you know he just kind of aimed like he was  
20 shooting but he was still shooting at the ground. He was  
21 shooting not towards trying to shoot him but shooting at  
22 the ground.

23 Q. Okay. And based on that would that not be for lack  
24 of a better term a reckless act?

Page 18 (PCR Trial Transcript):

A. [I] Probably should have asked for a Charge on  
1 involuntary manslaughter. That looks like that might  
2 have given rise to that and I didn't ask for it.

3 Q. All right. Would you agree that those facts would  
4 allow you a Charge or allow you to make the argument?

5 A. I think that's up to the Judge. I think I should  
6 have raised it whether or not -- you should always ask  
7 for something if there is any chance. And if there is  
8 some chance at all then I should have asked for it.

9 Q. Okay. Did you have any strategic reason for not  
10 asking for a Charge on involuntary manslaughter?

11 A. No.

Further, the Applicant testified at the PCR hearing that he wanted to testify, especially regarding Mr. McCune's testimony that he [Applicant] was not trying to aim the gun at the decedent, but at the ground to scare him off. Applicant testified in the PCR hearing, that his jury trial testimony would have been as follows: ( Transcript of PCR Hearing at Page 9):

Q. All right. What would you have testified to had you  
3 taken the stand?

4 A. That is was an accident and it wasn't intentionally  
5 with no malice at all.

6 Q. All right. And in fact the witness testified you  
7 were actually shooting into the ground; is that correct?

8 A. Yes, sir. I was like trying to keep him away from  
9 me coming towards me.

10 Q. Okay. And you were not able to explain that to a  
11 jury?

12 A. Yes, sir.

After this point the Court asked undersigned counsel whether the decision to charge involuntary manslaughter was in the Court's discretion. The Court did not address the evidence

presented at the jury trial which would have entitled the defense to a jury charge on involuntary manslaughter. "If there is any evidence to warrant a jury instruction, a trial court **must**, upon request, give the instruction." *State v. Smith*, 391 S.C. 408, 412, 706, S.E.2d 12, 14 (2011)(Emphasis added). "[A] trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence, presented at trial." *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993).

The Applicant's trial counsel testified that he **should have** asked for an involuntary manslaughter instruction, **but failed to do so**. Trial counsel admitted that he had no strategic reason for not requesting the jury instruction. "When the evidence shows that the defendant was lawfully armed in self-defense (the Applicant had no prior criminal record and was in a place he was entitled to be when threatened by the decedent) at the time of the shooting and the defendant recklessly handled the loaded gun," that evidence supports a submission of a charge of involuntary manslaughter. *State v. Light*, 378 S.C. 641, 650, 664 S.E.2d 465, 470 (2008). *See, also, State v. Rivera*, 389 S.C. 399, 404-405, 699 S.E.2d 157, 159-160 (2010); *Tisdale v. State*, 378 S.C. 122, 125-126, 662 S.E.2d 410, 412 (2008); *State v. Burris*, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999).

"Recklessness is a state of mind in which the actor is aware of his or her conduct, yet consciously disregards a risk which his or her conduct is creating." *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2008). The evidence in this case, at trial, was that the Applicant was firing at the ground to scare off the decedent's initial hostilities. The trial jury found the Applicant "Not Guilty" of murder. That finding proves conclusively that the Applicant acted without "malice aforethought," in the shooting of the decedent. Trial counsel conceded that he failed to request a jury instruction of involuntary manslaughter, which prevented any appellate review on that issue.

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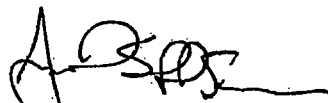
Mr. McCune's testimony provided an evidentiary basis for an involuntary manslaughter jury instruction. The Applicant was severely prejudiced by trial counsel's admitted failure to request the involuntary manslaughter jury instruction. Involuntary manslaughter carries a maximum of five (5) years in prison and has no statutory minimum. *See, Section 16-3-60, S.C. Code of Laws*, as amended (West 2011). The Applicant was sentenced to twenty-seven (27) years on the Voluntary Manslaughter charge, with a consecutive five (5) years for Possession of a Firearm in the Commission of a Violent Crime. Voluntary Manslaughter is classified as a "violent crime." *See, S.C. Code of Laws, Section 16-1-60*. Violent crimes are "no parole" crimes, wherein the offender must complete a minimum of eighty-five (85%) of the sentence. Involuntary manslaughter is not a crime of violence, capped at five (5) years, and "maxes out" at fifty-one (51%) of the sentence, assuming good behavior. If convicted of Involuntary Manslaughter, a "non-violent" offense, the Applicant could not be convicted of the additional firearm charge.

Trial counsel failed to preserve the Applicant's, "involuntary manslaughter issue for appeal because he never argued the evidence from trial entitled Petitioner to such a charge." *State v. Wigington*, 375 S.C. 25, 35-36, 649 S.E.2d 185, 190 (2007). This failure to request a charge raised by the trial evidence conclusively shows that trial counsel was deficient and that deficiency prejudiced the Applicant. *Id.*; *See also, Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). The Applicant's trial counsel conceded to and admitted that he failed protect the Applicant's trial rights and appellate rights. Because of the disparate sentencing schemes of Voluntary Manslaughter and Involuntary Manslaughter, there can be no question but that the Applicant was severely prejudiced by his trial counsel's admitted failures. The

Applicant, Sincere Owens, suffers to this day because of his trial counsel failure to recognize the evidence warranted a jury charge on Involuntary Manslaughter.

WHEREFORE, the Applicant, Sincere Owens, prays that this Honorable Court alter and/or amends its' finding of facts and judgment, pursuant to South Carolina Rule of Civil Procedure, Rule 59(e), to properly address the findings of fact and conclusions of law.

Respectfully Submitted,



S/ Jared Sullivan Newman

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Attorney for the Applicant  
SC Bar No.: 12930

Port Royal, South Carolina  
October 25, 2019.

STATE OF SOUTH CAROLINA )  
 COUNTY OF COLLETON )  
 )  
 Sincere Owens, #342813, )  
 )  
 Applicant, )  
 )  
 v. )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-15-0662

**RETURN TO APPLICANT'S MOTION  
 TO ALTER OR AMEND JUDGEMENT  
 UNDER RULE 59 (e)**

Respondent, by and through undersigned counsel, making its Return to Applicant's "Motion to Alter or Amend Judgment Under Rule 59(e), SCRPC," would respectfully show unto this Court:

**I.**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. In June 2009, the Colleton County Grand Jury indicted Applicant for murder (2009-GS-15-0305) and possession of a weapon during a violent crime (2009-GS-15-0306). The charges resulted from an April 2009 incident in which Applicant drove to Victim's home and fatally shot him in the left buttock, causing him to bleed to death. Tr. p. 105, ll. 12-23. David S. Matthews, Esquire, of the Fourteenth Circuit Public Defender's Office, represented Applicant at trial. Deputy Solicitor Sean P. Thornton prosecuted the case. On September 13, 2010, Applicant proceeded to a jury trial before the Honorable D. Craig Brown. The jury found Applicant not guilty of murder, but guilty of the lesser-included offense of voluntary manslaughter and guilty of possession of a weapon during a violent crime. On September 15, 2010, Judge Brown sentenced Applicant to

imprisonment for twenty-seven years voluntary manslaughter and five years for possession of a weapon during a violent crime, to be served consecutively. Applicant filed a motion to reconsider the sentence. A hearing on the motion was first convened on May 29, 2012, before Judge Brown, who found it appropriate to recuse himself from the matter. A subsequent hearing was held on November 13, 2012, before the Honorable Perry M. Buckner, III. At the November 2012 hearing, David L. Michel, Esquire, represented Applicant. Judge Buckner found no legal reason to disturb the discretion of the trial judge and respectfully denied the motion for reconsideration.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins perfected the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal and granted counsel's motion to be relieved on November 5, 2014. State v. Owens, Op. No. 2014-UP-374 (Ct. App. 2014). The remittitur was returned to the circuit court on November 21, 2014.

**II.**

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

- 1. Ineffective assistance of counsel
  - a. "Not taking pictures to sufficiently illustrate the house and crime scene."
  - b. "Failed to properly cross-examine witnesses."
  - c. "Failed to investigate."
  - d. "Not introducing victim's rap sheet."
  - e. "Failed to call witnesses or present evidence to support the charge of self-defense."
  - f. "Trial Counsel gave erroneous advice in advising Applicant not to testify for the sole purpose of having the last argument."
  - g. "Failed to ask for a continuance or a mistrial because he didn't have time to interview Anita Rowe."
  - h. "Not objecting to voluntary manslaughter charge being given to jury."
  - i. "Not consulting with Applicant on important decisions and to keep Applicant informed of important developments in the case of prosecution."

- j. "Trial Counsel should have requested a 'stand your ground' grand jury instruction."

An evidentiary hearing into the matter was convened on April 1, 2019, at the Beaufort County Courthouse. Applicant was present at the hearing and was represented by Jared Newman, Esquire. Respondent was represented by Assistant Attorney General Benjamin Limbaugh of the South Carolina Attorney General's Office. After hearing all the testimony presented at the evidentiary hearing, as well as arguments from both parties, this Court issued an order of dismissal on October 18, 2019, denying and dismissing the application with prejudice.

Subsequently, on October 28, 2019, Applicant, through his counsel, submitted a "Motion to Alter or Amend Judgment Pursuant To Rule 59(e), SCRPC" and a subsequent supplement on January 7, 2019. This Return follows.

### III.

In his "Motion to Alter or Amend Judgment Under Rule 59(e), SCRPC," Applicant asserts trial counsel was deficient by failing to request an Involuntary Manslaughter charge based upon the facts adduced by the State at the jury trial. Applicant contends counsel should have requested the charge due to the trial testimony of witness McCune that Applicant was firing at the ground and was not trying to hit the victim. Applicant further relies on the testimony of counsel at the evidentiary hearing that he should have requested the charge. In the supplement, Applicant moved to allege more specifically that trial counsel's failure to request the Involuntary Manslaughter jury charge based on the evidence was deficient. Applicant further contends that the State did not object to this line of questioning during the evidentiary hearing, did not request a continuance, claimed no prejudice, fully participated in cross-examination, and addressed the issue in closing argument.

Respondent submits this Court's order of dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. §17-27-80 (1976) and Rule 52(a) SCRCF. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits the Court fully enumerated its reasoning in the order, including citations. Respondent submits Applicant's motion does not provide any insight not already considered by this Court when making its ruling. Respondent does not disagree with Applicant's assertions concerning the State's involvement with the testimony elicited during the evidentiary, however, the State did not address the issue as a formal allegation and did not object due to no motion by Applicant to include this issue as an allegation for the Court's consideration. Frequently, through testimony during an evidentiary hearing, evidence comes forth that brings to light new potential issues or allegations. Typically, the State will elicit further testimony concerning the issue during the hearing and will make a timely objection when and if the Applicant moves to conform to the evidence presented. The State did not object as Applicant never moved to include this issue as an allegation for the Court's consideration. Respondent contends the Court addressed all of the allegations properly raised in the application and during the evidentiary hearing and Applicant's "Motion to Alter or Amend Judgment Under Rule 59(e), SCRCF" should be denied. As each properly raised allegation was addressed fully in the order, Respondent submits Applicant's assertions are without merit.

**IV.**

**WHEREFORE, having made its Return to the motion, the State requests the relief requested in the motion be denied and that said motion be dismissed.**

**Respectfully submitted,**

**ALAN WILSON  
Attorney General**

**W. JEFFREY YOUNG  
Chief Deputy Attorney General**

**MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General**

**BENJAMIN LIMBAUGH  
Assistant Attorney General**

**Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737**

**January 13, 2020**



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF COLLETON )  
 )  
 Sincere Owens, )  
 )  
 Applicant, )  
 )  
 -vs- )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 )

IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-15-00662

**SUPPLEMENT TO THE APPLICANT'S  
 MOTION TO ALTER OR AMEND  
 THE JUDGMENT UNDER RULE 59(e)**

COLLETON COUNTY  
 COMMON PLEAS COURT  
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On October 28<sup>th</sup> 2019, the Applicant filed and served a Rule 59(e) Motion requesting the Court to reconsider and/or make specific findings of fact and law in its' Order written by the Attorney General. On December 3<sup>rd</sup> 2019, the State informally responded via e-mail that the Applicant did not amend his pleadings to include a claim of ineffective assistance of counsel for failing to request an Involuntary Manslaughter charge despite ample evidence raised at the trial to warrant such a charge.<sup>1</sup> The Respondent (State) was requested by the Court on December 4<sup>th</sup> 2019 to respond to the Applicant's Rule 59(e) Motion, "within a timely manner," and requested the PCR transcript of the April 1<sup>st</sup> 2019 hearing.<sup>2</sup> To date (January 7<sup>th</sup> 2020) the State has not responded to the Applicant's Motion or the Court.

The State informally responded to the Applicant's Rule 59(e) Motion to alter or amend and

<sup>1</sup>

To date, the State has failed to respond to the Applicant's Motion or the Court's request.

<sup>2</sup>

The Respondent attached the PCR transcript to the e-mail sending the Supplement to the Respondent's Rule 59(e) Motion to the Court and A.G. The Respondent has mailed the Colleton County Clerk of Court this Supplement for filing and will provide the State and Court with the File-Stamped copy upon receipt.

to make more definite and specific findings of fact and conclusions of law, solely on procedural grounds. The State's informal email did not respond to any substantive issues raised in the Applicant's Motion.

The State seems to contend that, as to the issue of trial counsel's failure to request a jury charge on Involuntary Manslaughter, the Application did not contain this issue, nor did the Applicant move to amend his application to include such a claim. The Applicant did raise the jury charge issue in his PCR Application for consenting to the Voluntary Manslaughter jury charge. At the PCR hearing the Applicant's trial counsel testified that the Voluntary Manslaughter was available despite the fact that no temporal provocation existed between the Applicant and the decedent, nor was there any evidence at trial that the Applicant acted in a sudden heat and passion when firing the pistol and the ground.<sup>3</sup>

At the hearing trial counsel was questioned about not objecting to the Voluntary Manslaughter jury charge and examination was focused on trial counsel's failure to request and Involuntary Manslaughter jury charge. Trial counsel admitted he failed to recognize the Involuntary Manslaughter evidence, failed to request such a jury charge and had no strategic reasons for not objecting to a Voluntary Manslaughter jury charge and no reason for not requesting an Involuntary Manslaughter jury charge notwithstanding evidence in the trial record which supported such a jury charge. The State did not object to the line of questioning and participated in the cross-examination of the Applicant's trial counsel and addressed these issues in his closing arguments to the PCR

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Evidence from the forensic pathologist was introduced that a projectile struck the decedent in the buttocks and had a slight upward trajectory. This forensic evidence was consistent with Mr. McCune's trial testimony that the Applicant shot at the ground and that the decedent was probably struck by a ricochet.

Court.

**I. AMENDMENT OF PLEADINGS TO CONFORM TO PROOF:**

“Motions to conform to proof made be made upon motion of any party at any time, *even after judgment.*” Ball v. Canadian Am. Express Co., 314 S.C. 272,275, 442 S.E.2d 620, 622 (S.C. Ct. App. 1994)(Emphasis added). To the extent necessary, the Applicant moves to Amend his Application to allege more specifically the trial counsel’s failure to request the Involuntary Manslaughter jury charge based upon the evidence introduced (by the State no less) at the Applicant’s jury trial, pursuant to Rule 15(b) of the S.C. Rules of Civil Proc. There is no doubt that this issue was tried by consent, addressed and argued during the Applicant’s PCR hearing. The State did not object to this line of questioning, did not request a continuance, claimed no prejudice during the hearing and fully participated in cross-examination and closing argument at to the Involuntary Manslaughter evidence and deficiencies of trial counsel.

Rule 15(b) “intended to promote the objective of deciding cases on their merits rather than in terms of the relative pleading skills of counsel.” Pool v. Pool, 329 S.C. 324, 494 S.E.2d 820 (S.C. 1997)(Quoting with approval from 6A Federal Practice & Procedure §1491). “The focal inquiry in allowing amendment of pleadings is whether doing so will prejudice the opposing party.” Id. See also, Soil & Material Eng’rs, Inc. v. Folly Assocs., 293 S.C. 498,501, 361 S.E.2d 779, 78` (S.C. Ct. App. 1987). The State has not claimed, and cannot now claim that it was prejudice or unfairly surprised by the Applicant’s evidence of ineffective assistance of trial counsel at the PCR hearing for not requesting an Involuntary Manslaughter jury charge.<sup>4</sup> The burden of proof on establishing

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It is clearly evident that the trial jury rejected the State’s theory that the Applicant acted with “malice” toward the decedent, because the jury specifically found the Applicant “not guilty” of

prejudice is on the party opposing the Motion to Amend. Foggie v. CSX Transportation, Inc., 315 S.C. 17,23, 431 S.E.2d 587, 590 (S.C. 1993).

“Ordinarily, amendments to conform to proof should be liberally allowed.” Ball, 442 S.E.2d at 622. The prejudice Rule 15 envisions is a lack of notice, and a “lack of opportunity to refute it.” Folly Assocs., 361 S.E.2d at 501. Therefore, without the opposing party’s proof of prejudice, Rule 15 has a “bias in favor granting amendments.” “Unless there is a substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial.” Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 369 S.E.2d 156 (S.C. Ct. App. 1988).

**II. PREJUDICE TO THE APPLICANT:**

The Applicant would be prejudiced if the Court did not grant him leave to Amend his Application to conform to the evidence and what was actually tried by consent. As trial counsel conceded at the PCR hearing he maybe should have objected to the Voluntary Manslaughter jury charge. Trial counsel testified that he did not see any facts supporting “provocation” as to the Voluntary Manslaughter charge. There was no evidence of “sudden heat and passion” whatsoever in the trial record. The Applicant was convicted of a charge that was not supported by the evidence adduced at the trial. Applicant was further prejudice by the fact, as admitted by trial counsel at the PCR hearing, that the Applicant was barred from appealing from the incorrect jury charge.

In the Court’s Order denying PCR relief, the Court stated that, “[c]ounsel testified that he might should have requested an involuntary manslaughter charge, but was not sure if the judge would grant the request.” See, Court’s Order at p. 3. The Applicant’s trial counsel admitted that he

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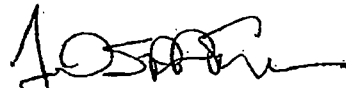
Murder on the verdict form.

should have requested the Involuntary Manslaughter jury charge based upon the facts adduced at the trial. Trial counsel conceded that he should requested the charge, even if it would have been denied to preserve that Applicant's appeal rights as to this issue. Trial counsel also conceded that he had no strategic reasons for failing to request the Involuntary Manslaughter jury charge.

**Prejudice and disparity of sentence:** The Applicant was convicted of Voluntary Manslaughter, where there was no basis for such a jury charge. He received a Twenty-Seven (27) year sentence. Involuntary Manslaughter only carries Five (5) years maximum. Further, there can be no conviction for Possession of a Firearm During the Commission of a Violent Crime, as Involuntary Manslaughter is not a crime of violence. The Applicant received an additional Five (5) on that charge to run consecutively.

WHEREFORE, the Applicant prays to reconsider the Court's original Order denying his PCR Application. In the alternative, the Applicant requests this Court to make definitive and specific findings of fact and law according to the evidence presented at the PCR hearing.

Respectively Submitted,

  
Jared Sullivan Newman

Jared Sullivan Newman, PA  
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Attorney for the Applicant  
SC Bar No.: 12930

Port Royal, South Carolina

January 7<sup>th</sup> 2020.

Sincere Owens, #342813

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: William H. Seals, Jr

Attorney for :  Plaintiff  Defendant  
 or  
 Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court: See Below.

**ORDER INFORMATION**

This order  ends  does not end the case.  
 Additional Information for the Clerk : \_\_\_\_\_

| INFORMATION FOR THE JUDGMENT INDEX                                                                                                                                                                           |                                          |                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                          |                                                             |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|                                                                                                                                                                                                              |                                          | \$                                                          |
|                                                                                                                                                                                                              |                                          | \$                                                          |
|                                                                                                                                                                                                              |                                          | \$                                                          |
| If applicable, describe the property, including tax map information and address, referenced in the order:                                                                                                    |                                          |                                                             |

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COLLETON COUNTY  
COMMON PLEAS COURT

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]  
Circuit Court Judge

2157  
Judge Code

3/6/2020  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:** \_\_\_\_\_

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This matter comes before the Court on Applicant's Motion to Alter or Amend Judgment Under Rule 59(e). After careful and deliberate re-consideration of the arguments made at the evidentiary hearing, the Court's Order denying and dismissing the application with prejudice, the Motion to Alter or Amend Judgment, all evidence presented, case law, and the State's Return to Applicant's Motion, the Court is hereby denying Applicant's Motion to Alter or Amend Judgment Under Rule 59(e).



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

William H. Seals, Jr.  
Judge

103 North Main Street  
Marion, SC 29571  
Phone: (843) 423-0446  
Fax: (843) 423-0536  
wsealsj@sccourts.org

March 4, 2020

Enclosed please find a Form 4 Order Denying PCR Applicant's Motion to Reconsider, pursuant to SCRCF Rule 59. If you need any additional information to file this Order, please contact us at (843) 423-0446.

Thank you,

Hunter Holland  
Law Clerk to the Honorable William H. Seals, Jr.

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

William H. Seals Jr., Circuit Court Judge

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Case No. 2015-CP-15-00662

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Sincere J. Owens,

Petitioner,

v.

State of South Carolina,

Respondent.

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CERTIFICATE OF COUNSEL

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Undersign counsel hereby certifies that the Appendix contains all material proposed to be included by any party and not any other material pursuant to Rules 210 and 243 (SCACR).

S/ Jared Sullivan Newman

Jared Sullivan Newman  
1508 Paris Avenue  
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Attorney for Petitioner