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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Maite Murphy, Circuit Court Judge

ERICA BUTTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001337

APPENDIX

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INDICTMENT AND SENTENCING SHEET203

STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON 2010-GS-10-4123

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
) -vs-
) August 25, 2011
ERICA BUTTS,) Charleston, South Carolina
) Defendant.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

A P P E A R A N C E S:

Elizabeth Gordon, Assistant Solicitor
Attorney for the State

Lisa Gay, Esquire
Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 (August 25, 2011.)

2 THE COURT: Ms. Butts, you're here today
3 charged with homicide by child abuse. You could get up
4 to 20 years in prison for that or get 20 to life. Twenty
5 years minimum; life without parole is the maximum. I'm
6 told that you want to enter an Alford plea to this; is
7 that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Under Alford, you're
10 maintaining that you are innocent of this charge.
11 However, you have gone over the evidence with your lawyer
12 and believe that it is in your best interest to plead
13 today and hope that the Court will take that into
14 consideration when sentencing you.

15 So you want to maintain you're innocent but
16 still enter a plea today to homicide by child abuse?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You understand that this has some
19 consequences, namely that the criminal justice system
20 treats it as a conviction, so for all practical purposes,
21 you still will have a conviction.

22 Secondly, this is a strike offense, and it is
23 of the two-strike offense type. We have two types of
24 strike offenses where you get so many convictions and you
25 go to jail for the rest of your life without the

1 possibility of getting out? Well, we have two-strike
2 offenses and three-strike offenses. Two-strike offenses
3 are called most serious; three-strike offenses are called
4 serious. This is of the two-strike type, so after today,
5 you will now have a strike against you, and if you ever
6 get convicted of another strike offense, you will go to
7 jail for the rest of your life without the possibility of
8 getting out.

9 Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you still want to plead?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: This also has some consequences,
14 this being a no parole offense, so whatever sentence the
15 Court ultimately gives you, you're not eligible for
16 parole. You have to do at least 85 percent because you
17 can earn 15 percent of it off for good behavior, so just
18 to use a figure of, you know, 20 years, if you got that,
19 you would still have to do, roughly, what, 17 and a half,
20 somewhere in that neighborhood, but you're not eligible
21 for parole after sentencing.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You still want to enter a plea?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, you have the right to a jury
2 trial, and you give up your right to a jury trial when
3 you enter this plea. If you want a trial, all you have
4 to do is stop me and let me know. We'll arrange that for
5 you.

6 The State then has to present enough evidence
7 to convince 12 jurors that you're guilty beyond a
8 reasonable doubt. All 12 have to agree you're guilty in
9 order to convict you, and, if convicted, you have the
10 right to appeal. You can challenge the State's evidence,
11 put up evidence of your own, testify if you want, and if
12 you don't want to testify, the judge will instruct the
13 jury not to hold that against you while they are
14 deliberating.

15 Do you understand those rights?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you want to give up all of
18 those rights and enter this plea?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you under the influence of
21 drugs or alcohol today?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you need more time with your
24 lawyer?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you satisfied with her
2 representation?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, an Alford plea, you're
5 basically giving up your right to a jury trial, as I
6 said. Part of that process is, you know, you can do
7 things like ask the Court to suppress evidence. You can
8 ask the Court to -- you can testify and tell your side of
9 the story to the jury and tell them why you didn't do it
10 or whatever went on, talk to the jury, give them your
11 side of the story.

12 You don't want to do that?

13 THE DEFENDANT: No, sir.

14 THE COURT: You don't want to try to have
15 your lawyer suppress any evidence?

16 THE DEFENDANT: No, sir.

17 THE COURT: You don't want to -- I don't know
18 what kind of evidence you might have or any possible
19 defenses, but you don't want to explore having a defense
20 put up by your lawyer?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. These are all things
23 you give up when you do that, when you enter this plea.
24 But you're basically doing this because you think you
25 would be convicted if you went to trial, even though

1 you're telling me you didn't do it, right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. This is your choice
4 and your choice alone?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Has anybody promised you anything
7 or threatened you to get you to enter this plea?

8 THE DEFENDANT: No.

9 THE COURT: How old are you?

10 THE DEFENDANT: Twenty-five.

11 THE COURT: How far did you get in school?

12 THE DEFENDANT: Twelfth grade.

13 THE COURT: Do you work?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you married?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you have children?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right. Does she understand
20 what she's doing, Ms. Gay?

21 MS. GAY: Yes, sir. We've extensively gone
22 over the case and the defenses.

23 THE COURT: Do you agree with her decision?

24 MS. GAY: Yes, sir.

25 THE COURT: Well, I find that her plea is

1 freely, voluntarily, and intelligently made. What would
2 the State like to tell me?

3 MS. GORDON: May it please the Court, Your
4 Honor: This is the codefendant of Shanita Cunningham who
5 pled in front of you earlier this afternoon. Again, for
6 the record, the MINOR in this case, MINOR [REDACTED]
7 was the godchild of Erica Butts. She was down here
8 visiting from Michigan with her godparents.

9 The child arrived on October the 22nd of
10 2009. By November the 3rd of 2009, a 911 call was placed
11 by this defendant's mother. When EMS arrived, the
12 history they were given was that the child had fallen out
13 of a chair. The rectal temperature for the child was
14 82.9 degrees. She was cold and rigor mortis had already
15 set in. When they did an examination of the body, they
16 found the child to have been beaten, basically, from head
17 to toe. There were -- only the soles of her feet and her
18 underarms were spared.

19 She had contusions and burns, bruises,
20 swelling about her entire body. The cause of death was
21 multiple blunt force trauma. The injuries were of
22 varying stages of healing, indicating from the
23 pathologist's opinion they had occurred approximately
24 within two weeks, which exactly fits in with this
25 timeline that this victim had been visiting with the

1 defendant and codefendant. The defendant gave a
2 statement she had whipped the child for urinating on the
3 floor earlier that day.

4 THE COURT: All right. Well, I'm going to
5 find that there is a substantial factual basis for the
6 plea. We will defer sentencing to a later date when the
7 representative from the victim's family can be available,
8 and you can present any mitigation at that time.

9 MS. GAY: You're going to place --

10 THE COURT: I put on there any circuit judge
11 can impose sentencing.

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(Whereupon, the proceedings were concluded.)

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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 25th of August 2011.

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

January 15, 2013

Circuit Court Reporter

1 STATE OF SOUTH CAROLINA }
 2 COUNTY OF CHARLESTON } COURT OF GENERAL SESSIONS

3
 4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
 5 PLAINTIFF,) OF
 6 vs.) RECORD
 7 SHANITA CUNNINGHAM AND ERICA)
 8 BUTTS,) 2013-GS-10-4127
 9 DEFENDANTS.)

10 November 3rd, 2011
 11 Charleston, South Carolina

12 B E F O R E :

13 THE HONORABLE DEADRA L. JEFFERSON, Judge.

14 A P P E A R A N C E S :

15 ELIZABETH GORDON
 16 ASSISTANT SOLICITOR
 17 Attorney for the State.

18 CASSANDRA WOOSLEY
 19 ESQ.
 Attorney for the Defendant Cunningham

20 LISA GAY
 21 ESQ.
 Attorney for the Defendant Butts

22
 23 HENRY YOUNG
 24 Circuit Court Reporter

25 Transcribed by Pamela E. Green, Circuit Court Reporter

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(There were no exhibits marked during this hearing.)

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P R O C E E D I N G S

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3 THE COURT: All right. Ready to proceed, Ms. Gordon,
4 Ms. Woosley, and Ms. Gay?

5 SOLICITOR GORDON: Yes, Your Honor. They had to be
6 maintained separately in the jail.

7 THE COURT: So, do you want me to do them separately?

8 SOLICITOR GORDON: I think the sentencing needs to
9 be handled separately. I can do just one recitation of the
10 facts.

11 THE COURT: Are they---

12 MS. GAY: It is up to you, Your Honor. My client has
13 asked that she be allowed to be sentenced separately. But I
14 don't know that the other---

15 THE COURT: What is the underlying reason for that
16 rationale?

17 MS. GAY: My client is very meek and she may
18 fall apart. She may not be able to get through the plea.

19 THE COURT: She's already pled guilty.

20 MS. GAY: I know. I understand that, but she asked if
21 it could be done that way, and I do understand it may not be
22 something that you want to do, but---

23 THE COURT: I just prefer to do it -- I have read some
24 of -- I have read what Ms. Woosley submitted to the Court,
25 her client's version of the event, and I would like to hear

1 it together because I need to make sure that the sentencing
2 is commensurate, and it works to a disadvantage to do it
3 separately.

4 MS. GAY: One thing I would say---

5 THE COURT: Now, if there are some safety concerns or
6 something, I think I have enough deputies to take care of
7 that.

8 MS. GAY: I don't think that's the issue. The only
9 thing is when Ms. Gordon told me there had been an
10 evaluation done of the co-defendant, I have not been given a
11 copy of that nor have I given the co-defendant's attorney a
12 copy of my evaluation. You had mentioned that the
13 psychological evaluation had something to do with the
14 rendition of the events.

15 THE COURT: I did not say that. You're
16 misunderstanding what I said. What I said was I have gotten
17 a package from Ms. Woosley that gives me a fairly broad
18 summary of the event as alleged acknowledging that is her
19 version.

20 MS. GAY: I don't know, I don't know what that is.

21 THE COURT: I don't think you're entitled to have it.
22 It is not exculpatory to your client.

23 MS. WOOSLEY: I think she provided a package to the
24 Court to review prior.

25 MS. GAY: I did this morning, Your Honor.

1 THE COURT: Well, I'll read everything you submitted to
2 me, but I don't think she's entitled to get what you gave
3 me, and I don't think you're entitled to get what she gave
4 me, but I'm sure I'm going to hear it. I'm sure everybody
5 is going to tell me what happened.

6 MS. GAY: I understand. And I did not get the
7 evaluation from Doctor Webb until this morning.

8 THE COURT: That's fine. I'm going to take the time to
9 read it. I will read it myself. I will read it when I have
10 the opportunity to, but I would prefer to do it all at one
11 time.

12 MS. GAY: I understand, Your Honor.

13 THE COURT: We need Erica Mae Butts and Shanita
14 Cunningham.

15 (WHEREUPON, the defendants enter the courtroom at this
16 time.)

17 THE COURT: This is the State of South Carolina
18 versus Erica Mae Butts, 2010-GS-10-4123, and the State of
19 South Carolina versus Shanita Cunningham, 2010-GS-10-4127.
20 Both individuals pled guilty before Judge Young on August
21 25th of 2011 to the offense of homicide by child abuse. The
22 plea was qualified and accepted by Judge Young, but sentence
23 was deferred.

24 Ms. Gordon represents the State. Ms. Cassandra Woosley
25 represents Ms. Cunningham, and Ms. Lisa Gay represents Erica

1 Mae Butts.

2 Now, why was sentencing deferred?

3 SOLICITOR GORDON: Your Honor, Ms. Butts and Ms.
4 Cunningham were both scheduled for a trial docket in early
5 september. They indicated that they wanted to plead. The
6 family was in Michigan. So, as to---

7 THE COURT: The victim's family?

8 SOLICITOR GORDON: The victim's family was in Michigan.
9 We did have a plea and -- so the family would not have to
10 come for a trial, and because we had additional out-of-state
11 witnesses who were going to have to come for trial, we went
12 ahead and did the plea sort of right after they said they
13 would do it, within a couple days. That didn't give the
14 family time to get here.

15 THE COURT: Are you saying it was deferred so the
16 family could be present?

17 SOLICITOR GORDON: That's correct, Your Honor.

18 THE COURT: Okay. Since the plea has been qualified
19 and accepted, if the State would provide the Court with a
20 summary of the facts, then I will be glad to hear from any
21 of those present that wish to be heard on behalf of the
22 family, and then, after that, I will hear mitigation for Ms.
23 Cunningham, which is Ms. Woosley, and then Ms. Butts from
24 Ms. Gay.

25 SOLICITOR GORDON: Thank you, Your Honor.

1 If it please the Court, Your Honor.

2 The defendant and the co-defendant had been basically
3 babysitting the MINOR, [REDACTED] MINOR [REDACTED] She was three
4 years old at the time. She had come down to Charleston on
5 October 22nd of 2009 with Shanita Cunningham from Detroit.

6 THE COURT: And what is -- tell me again the date they
7 came.

8 SOLICITOR GORDON: They arrived in Charleston on
9 19 -- October 22nd of 2009.

10 THE COURT: And Ms. Cunningham?

11 SOLICITOR GORDON: She came with Ms. Cunningham.

12 THE COURT: What was her relationship with Ms.
13 Cunningham?

14 SOLICITOR GORDON: The MINOR's mother and Erica
15 Butts had been lifelong friends. Erica and Shanita were a
16 couple and had been for several years. The MINOR was
17 coming for visitation, the MINOR, the three year old.

18 THE COURT: When you say visitation, what kind?

19 SOLICITOR GORDON: She was just coming for a visit
20 with her mother's friend and Erica and Shanita had a child,
21 [REDACTED] CHILD [REDACTED] which was actually Shanita's child. [REDACTED] kind of
22 considered [REDACTED] CHILD like a sister and so she looked forward to
23 seeing [REDACTED] CHILD who she really loved. She came for a visit
24 and planned to stay for maybe a month or so.

25 On November the 3rd of 2009 there was a 9-1-1 call.

1 That call was placed by Erica Butts' mother.

2 when EMS arrived they found the child to have bruises,
3 marks, scars, cuts, contusions all over her body, some
4 fresh, some old. At the time of EMS' arrival the child had
5 a rectal temperature of 82.9 degrees. She had expired long
6 before 9-1-1 was ever called.

7 As the investigation continued it was learned that both
8 Shanita and Erica had been spanking the child, since she
9 arrived, for numerous occasions of peeing on the floor.

10 Your Honor, I passed up a CD from the autopsy. The
11 autopsy indicates that this child was beaten. She was
12 beaten to death. There was not a place on her body that was
13 spared, absent the soles of her feet. She had a gash to the
14 back of her leg to which Ms. Cunningham admits to
15 inflicting, but saying she didn't even realize she had done
16 it.

17 The State contended if you are beating a child to the
18 point you don't even realize you caused that, that there is
19 no telling what else you could have been doing to that
20 child.

21 Your Honor, they did a search warrant of the home.
22 There was blood that matched [MINOR] on the walls and on
23 the couch. There were numerous broken hangers found in the
24 bathroom and in the closets, and if you have read even
25 Shanita's statement, and according to Erica, these two

1 basically watched while the three year old girl died.

2 She was unresponsive. Her eyes were closed. They
3 could not awaken her, and instead of calling for help or
4 seeking medical attention for her, they tried to protect
5 themselves and did nothing. It wasn't until Erica was
6 apparently freaking out and she called her mother, and when
7 her mother came over, her mother said they had to call
8 9-1-1.

9 Your Honor, based on that, we would ask for the maximum
10 sentence.

11 The victim's family is here and I think they would like
12 to speak, and they have provided me with just some
13 photographs of the child from just -- just to show what a
14 beautiful child she was.

15 Your Honor, I failed to mention one thing.
16 When EMS arrived Ms. Cunningham was gone. She had fled.
17 She had stated to police, when the police were calling her
18 and telling her to come back, she had stated she was leaving
19 with **CHILD**. She was on her way to Michigan. As it turns
20 out she had never left. So, she was just not complying with
21 the police requests and commands to come back. Telephone
22 records indicated she had never left Charleston. She was in
23 a hotel in Ladson. She has since admitted to that. She was
24 not out-of-state, but she did lie to police and say she was
25 already halfway to Michigan, and she was in Ohio.

1 Your Honor, if I may also submit, the pathologist
2 indicated these injuries did not occur at one time. This
3 was a culmination of a continual beating. The estimation
4 was about two weeks, which just happened to coincide with
5 the exact amount of time this child had been in Shanita and
6 Erica's care.

7 THE COURT: I will be glad to hear anything further
8 from the State.

9 SOLICITOR GORDON: Your Honor, the family has come from
10 Michigan. I think there are three family members who would
11 like to speak on behalf of [REDACTED] MINOR.

12 THE COURT: Certainly. I would be glad to hear from
13 them, and if they would tell us their names for the record
14 and spell their last names for the benefit of the court
15 reporter.

16 TOYI LESTER: My name is Toyi, T-O-Y-I, last name
17 Lester.

18 In 2007 I was diagnosed with uterine carcinoma and
19 everybody that knows me knows that I love children, and it
20 was my dream to start a family. MINOR [REDACTED] would share her
21 most precious questions -- we were shopping buddies, did our
22 nails together. She loved to get her hair done. She loved
23 to look good. We were just -- she was so special and we
24 were amazed at how smart she was.

25 I could teach her something and she could remember it

1 the next time I seen her, and I would be doing my homework
2 at my laptop. She would pick up my book and pick up a
3 pencil and paper and say "I'm doing my homework, too."

4 A therapist taught me to write a letter to help me deal
5 with my grief. so, I share this with you today.

6 MINOR [REDACTED] I told you that you were special and that
7 some day everyone would know your name. Never in a million
8 years would I have thought it would be for something like
9 this.

10 I enrolled you in Detroit Winthrop Academy because of
11 your love for music. There you were with your leotards and
12 tights looking so pretty. You got into class and looked
13 around and immediately made friends. Everybody was always
14 drawn to you.

15 Once the instructor started teaching and the music
16 started you started to dance on your own. It was such a
17 funny sight. We did not expect you to take over the class
18 and the only thing your mom could do was laugh. She was
19 always over the top.

20 So, what I want to say to the Court today is that I was
21 cheated, her mom was cheated, her dad was cheated, everybody
22 was cheated, the whole world was cheated of an extraordinary
23 individual and I would like the maximum sentence imposed.

24 THE COURT: Thank you, ma'am.

25 LANITA NICHOLSON: My name is Lanita Nicholson. I'm

1 Toyi's mother.

2 THE COURT: Yes, ma'am.

3 LANITA NICHOLSON: when we first met MINOR [REDACTED] she was
4 in a diaper, and we immediately fell in love with her. She
5 got into our hearts. She would walk by our house, pull out
6 her little pistol from the diaper and go pow, pow. I knew
7 from that day forward she was somebody to be reckoned with.

8 we took MINOR [REDACTED] and Ieshia and Toyi home. They were
9 there for over a year and we were so close.

10 MINOR [REDACTED] became my special precious little girl. We
11 cooked together. We ate together. When I did my homework
12 she would say do it Nana, then we can play afterward.

13 Homework, Nana, do your homework.

14 It was always something with her. We shared a love for
15 cookies and the night before she left that was our little
16 special treat. When I arrived home she was already getting
17 her hair braided for her trip here to South Carolina and
18 this was not her first visit here. She came to visit
19 Shanita and Erica twice before.

20 The year before she had been, and she stayed for about
21 a week, she had a good time with CHILD [REDACTED] Earlier in the
22 year, 2009, about March, she was there visiting with them
23 for about two weeks. I talked to MINOR on the phone
24 every other day.

25 When she visited this time it was different and I could

1 feel something wasn't right. I used to think everyday,
2 saying how come someone won't let me talk to MINOR I
3 called the number. No one would answer. I would leave a
4 message. No one would return my call. I used to think
5 every day somebody needs to let me speak to MINOR I
6 haven't spoken to her. In the past I spoke to MINOR
7 every day, and sometimes more than once a day, and I
8 couldn't understand why I couldn't speak with her this time.

9 It was a great loss to us. MINOR and Ieshia, on
10 several occasions, had established mommy and daughter day.
11 They would go out, just the two of them. They would go
12 sometimes where there was a playground where she would play
13 and ride and they would talk.

14 MINOR was such a special and unique person that
15 wherever she went she got people's attention. The former
16 mayor of Detroit, on one occasion when they were having mom
17 and daughter day at a restaurant, was so infatuated with
18 her, her conversation she was having with her mom that she
19 ended up taking a picture sitting on his lap and it was like
20 that everywhere she went.

21 My neighbors, sometimes she would be outside in the
22 summer playing in the pool and they would play Marco Polo.
23 My neighbor would say whose voice is that. She would play
24 with my other neighbors up the street, their children, with
25 adults. She wasn't afraid of anything, and I want to

1 mention that too she had a dog, her own, cat. The girl got
2 the cat for MINOR when she was -- a cat named Dash.
3 Everywhere she went -- before she got Dash, there was Sky.
4 Sky was a Terrier. No Fear Sky was about eight weeks old
5 when she came.

6 MINOR was instrumental in helping us train her.
7 Sometimes, when they would come downstairs for breakfast, I
8 would say MINOR stop kissing that dog. She would be at
9 the kennel, once again, kissing Sky. When I would turn my
10 back she would let Sky out. She would then sit on Sky and
11 feed her.

12 Today I can tell you Sky is the mildest tempered dog
13 ever, a Bull Terrier. They have a bad reputation. She was
14 very instrumental in Sky being as gentle as she is, and she
15 loves children and, and she is such a great loss. Sky had
16 puppies and MINOR wasn't there.

17 My daughter-in-law was pregnant and she had the baby.
18 MINOR didn't get to see her because she delivered two
19 months early. She was in ICU. She knew she was coming, but
20 she never got to see her because she didn't get to come
21 home.

22 MINOR was ours. Christopher came. She didn't get
23 to see Christopher. He was in ICU. He was born in [REDACTED]
24 and he stayed there. MINOR had come here. So she never
25 got to meet him. She knew these babies were coming, and she

1 would tell me a baby is coming. I can't wait to meet the
2 baby. But she never got to see them.

3 My daughter's wedding was derailed. MINOR [redacted] was a
4 participant. My daughter's wedding didn't take place. It
5 was rescheduled, but MINOR [redacted] was buried in the dress that
6 she was going to walk down the aisle in my daughter's
7 wedding, and we went to the funeral home. I held her hand
8 as my niece braided her hair on her lifeless body.

9 When she left us she was fine, so full of life, so
10 happy, just enjoyed living, just loved people. No matter
11 where she went she never met a stranger. Everybody loved
12 her and I know she touched so many people.

13 My neighbors, all they want to know -- they had a
14 candle light vigil on the side of the house. My neighbor's
15 children, grandchildren were so touched. They took their
16 piggy bank and they brought it over and said can we help
17 [MINOR [redacted]]

18 I want you to do something for MINOR [redacted] now, impose the
19 maximum sentence, and may I mention, Your Honor, that
20 MINOR [redacted] loved Erica. Ieshia loved Erica. She trusted her
21 implicitly with [MINOR [redacted]] I said, "Ieshia, MINOR [redacted] doesn't
22 want to go visit this time." She said she'll be okay, but
23 that's not what we got, and I want you to know when [MINOR
24 left us she was sound in mind and in body. When she first
25 came to our home she had a severe case, psoriasis. I worked

1 with her and worked with her. Her skin was beautiful.
2 Everywhere we went she was beautiful. We went to auto shows
3 and she had on my hat. You couldn't even see her hair. She
4 had on a big jacket. I had on a hat and a jacket, but some
5 lady that was a model said who is that little girl. Her
6 face, she said she could be in pictures. She could be a
7 model. Look at her face. It's perfect in shape and form.

8 I informed Ieshia later what she said. I gave her the
9 woman's card. Nothing came of it because MINOR [REDACTED] did come
10 and visit and we didn't get her back. We sent her alive and
11 well and she returned to us in a box.

12 I would please ask you impose the maximum.

13 Thank you for hearing me.

14 THE COURT: Anyone else?

15 SOLICITOR GORDON: We have one more.

16 Ieshia.

17 IESHIA RICHARDSON: My name is Ieshia Richardson. I
18 was MINOR [REDACTED] mother.

19 MINOR [REDACTED] had such caring---

20 MS. GAY: Your Honor, could she sit down?

21 IESHIA RICHARDSON: I know in life terrible things
22 happen, but MINOR [REDACTED] didn't deserve anything she got.
23 Nobody deserves what she received.

24 I can't believe that the situation finally happened
25 this way. I'm sorry for MINOR [REDACTED] I'm sorry I have to deal

1 with this. I'm sorry for their parents who have to deal
2 with it. Everybody involved. Not just me.

3 I loved MINOR [REDACTED] with all my heart. I will never
4 forget her, and all I have left of her is clothing, shoes,
5 toys, and a lock of her hair. I wake up every day hoping
6 this is just a nightmare, that I'm going in the next room
7 and my daughter is going to be in there playing or on the
8 phone, anything. Just not this. I wouldn't wish this pain
9 on anyone.

10 But MINOR [REDACTED] deserves for justice to be served. She
11 was killed at the hands of two people who I trusted, who she
12 trusted, who she loved very much, and she didn't return.

13 All I ask is that justice be served on her today, that
14 she finally can seriously rest in peace, and there may be --
15 just maybe I can breathe a breath of fresh air without
16 crying.

17 I wake up in tears. I go to sleep in tears because the
18 best part of me is not here. All I have left is the hollow
19 shell. I'm past being sad about this. I am angry. I am
20 very, very angry. I'm consumed with anger and all types of
21 emotions that I can't express nor understand. I just seek
22 peace of mind. I need peace of mind and MINOR [REDACTED] gave me
23 that, if only for three years.

24 Your Honor, please, please, please, I agree that the
25 maximum sentence should be imposed and I'm sorry that that

1 is the way I feel, and I know this is going to be hard on
2 me. It is going to be hard on everybody.

3 SOLICITOR GORDON: Your Honor, I think that is all the
4 family that is going to speak. I would like to add, you
5 know, sometimes we get homicide by child abuse cases where
6 the child usually has a head injury when someone has lost
7 their temper one time and the child got struck or hit and it
8 turns out to be a fatal blow.

9 This case is different. This wasn't lose their temper
10 one afternoon. This was repeated conduct over two weeks. I
11 mean they literally beat the child to death and then sat
12 around and did nothing. So, every day that they beat that
13 child was another conscience decision to choose their life
14 over MINOR [REDACTED] and we would ask you to take that into
15 consideration.

16 THE COURT: Is there any indication as to why, what
17 precipitated these beatings?

18 SOLICITOR GORDON: The only information we have is just
19 from the defendants themselves saying that she peed on the
20 floor and she was getting beaten for having an accident.
21 She was three. She was potty trained, Your Honor, which I
22 have spoken to the pathologist. The child at the end, I
23 don't know when this injury occurred because they could not
24 date it specifically, but she had such an injury and you
25 could see it in one of the autopsy photographs, right above

1 her pelvis, that it's possible that she had lost control of
2 her bladder because of the beating, and so their own
3 beatings precipitated additional beatings.

4 THE COURT: Is there any indication the other child in
5 the home had any problems?

6 SOLICITOR GORDON: The other child in the home gave a
7 forensic interview of what she heard happen in the house.

8 THE COURT: How old was she?

9 SOLICITOR GORDON: That child, I believe, was seven at
10 the time.

11 MS. WOOSLEY: She was eight, Your Honor.

12 SOLICITOR GORDON: I apologize. She did not have
13 physical injuries, Your Honor. MINOR was, for whatever
14 reason, the target.

15 THE COURT: She indicated she had observed or heard
16 some of what was going on?

17 SOLICITOR GORDON: Yes, Your Honor.

18 THE COURT: Was she able to repeat that?

19 SOLICITOR GORDON: She was able to repeat that, and she
20 was there, her mother left with her, but she was there as
21 MINOR died. She talked about MINOR not opening her
22 eyes. She was able to view them try to awaken her. So that
23 child actually had to watch as her best friend, who she
24 thought of as a sister, died.

25 THE COURT: Were there other family members who didn't

1 wish to address the Court?

2 SOLICITOR GORDON: That's correct. We have other
3 family members here.

4 THE COURT: Does the State have a position on
5 sentencing?

6 SOLICITOR GORDON: Your Honor, the State would ask for
7 the maximum sentence to be imposed. I'm sorry. We have
8 other family members who want to speak.

9 THE COURT: Yes, sir.

10 MICHAEL TEE: My name is Michael Tee.

11 THE COURT: Spell your last name.

12 MICHAEL TEE: T-E-E.

13 THE COURT: Thank you, Mr. Tee.

14 MICHAEL TEE: I am MINOR uncle, and I never got a
15 chance to meet her until the funeral.

16 I got a call from my mother and father in Miami, and we
17 were at our business that night. We closed, closed early
18 because it was just unbelievable. The Richardson family and
19 Tee family, we ask for the maximum. That is what we ask.

20 SOLICITOR GORDON: Your Honor, Detective Williams, who
21 was the lead detective, may also want to speak.

22 THE COURT: Certainly. Oh, I'm sorry,
23 Ma'am, I apologize.

24 CASSANDRA WILLIAMS: Good morning, Your Honor.

25 Two years ago today a three year old was seen lifeless

1 in the hospital bed. Her body wasn't soiled, but it was
2 covered in scars. Each scar tells a story of how she was
3 beaten, whipped without love, without compassion in every
4 disregard.

5 With that being said, those pictures, those reports you
6 may read, they don't compare to what we saw. I hope that
7 you give the maximum that the Court will allow to these two
8 people.

9 THE COURT: Ma'am, tell us your full name.

10 CASSANDRA WILLIAMS: Cassandra Williams.

11 THE COURT: Thank you.

12 SOLICITOR GORDON: Just so the record will reflect,
13 Detective Tiffany Snapp, who also worked on the case, is
14 present in the courtroom today.

15 Summerville Police Department worked very hard on this
16 case and they have been involved throughout the process.

17 THE COURT: Anything further?

18 SOLICITOR GORDON: That's all, Your Honor.

19 THE COURT: If you all will give me one moment to read
20 what has been submitted by Ms. Gay, and then I will hear
21 from both, from Ms. Woosley and then I will hear from Ms.
22 Gay.

23 Any objection from the State?

24 SOLICITOR GORDON: No objection.

25 MS. GAY: No.

1 MS. WOOSLEY: No, Your Honor.

2 THE COURT: This is going to take me maybe about ten
3 minutes.

4 Okay?

5 (Pause.)

6 THE COURT: All right. Ms. Gay, Ms. Woosley, I will be
7 glad to hear from you.

8 MS. WOOSLEY: Thank you, Your Honor.

9 May it please the Court.

10 shanita Cunningham has told me she is very sorry for
11 what happened to MINOR [REDACTED] in this case. I just want to go
12 through some housekeeping matters to put on the record.

13 THE COURT: Sure.

14 MS. WOOSLEY: Ms. Cunningham asked me about an Alford
15 plea in this case. I told her an Alford plea, there is some
16 benefit. There was some benefit to pleading straight up to
17 the charge of child abuse. I told her I did not think an
18 Alford plea was appropriate in this case with all the facts
19 in the case.

20 THE COURT: Did you also explain to her the Court still
21 treats it as a guilty plea?

22 The question still would require her to admit her
23 guilt?

24 MS. WOOSLEY: Also I told her the minimum sentence
25 cannot be suspended. I just wanted to put that on the

1 record. I had explained that to Ms. Cunningham.

2 THE COURT: That has always been the Court's posture.

3 MS. WOOSLEY: Correct. I just wanted Ms. Cunningham to
4 hear me tell the judge that as well.

5 Judge, Ms. Cunningham was 23 at the time of this when
6 MINOR | came to visit with her. During the course of
7 preparing for a trial in this case we had decided that we
8 wanted to plead guilty and Shanita does admit to some of her
9 guilt in this case.

10 We also signed an agreement with the State saying that
11 Shanita would testify against her co-defendant, Erica Butts,
12 at trial, and she would be very valuable to the State.
13 Although Shanita does admit her involvement in [MINOR |
14 death, we believe she is less culpable. When she was
15 arrested she was arrested under the aiding and abetting part
16 of the statute and subsequently was indicted for the
17 principal part of the statute as well.

18 Shanita Cunningham would have been very valuable in
19 that Erica Butts' DNA was found on duct tape. Ms.
20 Cunningham would have been prepared to testify about Erica
21 putting tape about her face.

22 Additionally, when I spoke with the pathologist, she
23 told me she could not determine how long the wounds had been
24 on the body. The State said two weeks. It could have been
25 anywhere.

1 THE COURT: Well, I think, from the Court's experience,
2 having seen the autopsy photos, the child came to South
3 Carolina with no bruises.

4 MS. WOOSLEY: Certainly there were many old bruises and
5 there were many fresh bruises. We agree with that. We just
6 do not know exactly the day they arrived, that two week
7 period that MINOR [REDACTED] had been in Charleston.

8 THE COURT: I'm sorry. Repeat that. I didn't
9 understand the last thing.

10 MS. WOOSLEY: MINOR [REDACTED] had been in Charleston for
11 exactly two weeks, and we're not agreeing that the beating
12 started the very first day that MINOR came to Charleston.
13 We do admit, throughout the course of MINOR being in
14 Charleston, that both Erica and Shanita would hit her for
15 urinating on the floor. Shanita never knew that the
16 injuries were life threatening. There were multiple
17 injuries in this case, and she does understand that -- she
18 understands that the lack of healthcare is under the statute
19 as well. She is admitting her guilt.

20 Shanita Cunningham, as a child, she was physically and
21 sexually abused. She was beaten by her stepfather with a
22 belt and switch, dog leashes from the age, age of four to
23 ten. When she got between eleven and twelve she would still
24 get beat with a switch. She also got hit with the hands
25 more.

1 At twelve years old, because of all the physical
2 violence in her life, she had to go into placement because
3 she kept trying to run away from home because she wanted to
4 run away from the violence. She was in placement, and while
5 she was in placement, her mom and her step-dad separated.
6 So once she got out of placement, her and her mom began to
7 have a good relationship with one another.

8 As you can see in the report, the doctor who evaluated
9 Ms. Cunningham said her experiences as a young adult
10 affected her growing up. It is not, in my culture or many
11 cultures -- excuse me. Let me rephrase that.

12 In her culture, she was hit and nothing severely
13 happened to her. You had to follow what you were born with
14 and one hitting, corporal punishment, is allowed to a
15 certain point and it got out of hand in this case and we
16 admit that.

17 Shanita never knew that the injuries were life
18 threatening in this case. When [MINOR] was sleeping and
19 she did not wake up, Shanita did try to do CPR to [MINOR]
20 to get her to wake up. They did not know that she was
21 passing away.

22 In addition to that, she has her young daughter, [CHILD]
23 who is now ten years old. [CHILD] has never been -- DSS has
24 never been involved in [CHILD] upbringing. [CHILD] would
25 really like to see her mother home with her.

1 She was at the home when this happened. She does say
2 that she knows that her mom never meant to injure MINOR
3 CHILD also says that she sometimes -- she never experienced
4 any physical violence herself, and if she did get hit on the
5 hand, it never hurt. It never left markings.

6 Shanita has been around children her entire life. She
7 has always been a babysitter. She has always been loving
8 and caring.

9 I have submitted Dr. Holcovich's report, her statement,
10 Erica's statement, and the letters from CHILD and her
11 mother, and I won't go into them because you have already
12 read them.

13 Your Honor, Shanita is 25 years old. She has
14 a daughter that doesn't have a father in her life. Her
15 daughter is living with her mother right now in Michigan.
16 Her mom tried to be here today, but her brother couldn't get
17 off work. So they could not make the trip down from
18 Michigan.

19 We would ask the court to impose a mandatory minimum
20 sentence of twenty years in this case. Shanita Cunningham
21 did not realize what -- that the injuries were causing
22 MINOR to pass away. Shanita was cooperative with the
23 State and would have been cooperative at a trial against
24 Erica Butts. She is very sorry for what she has done, and
25 I'm not sure if she would like to address the Court or not,

1 but she has written a letter. she would like to read it for
2 the Court.

3 THE COURT: Certainly. You may proceed.

4 SHANITA CUNNINGHAM: I would like to first express that
5 I -- how sorry I am any of this ever happened. She trusted
6 me and I failed.

7 There is not a day that goes by I don't wish I could go
8 back and change everything. I understand I'm here before
9 this Court for a decision. I take full responsibility. You
10 need to know none of this was intentional. I want to
11 apologize to my mother as well as my daughter completely for
12 you-all's anguish and heartache. This has affected many
13 lives and to all those people I want to apologize.

14 Your Honor, I beg for your mercy. I will never
15 purposely or maliciously hurt anyone. I have always tried
16 to be a great mother and help all kids. I have been taking
17 care of children since I was twelve and have always been one
18 who kids come to to have a fun, safe time.

19 I want to somehow remedy this as soon as I may. One
20 day soon I'm praying I'm able to obtain a degree and, once
21 again, be someone who is helping and contributing to my
22 family. Again, I sincerely apologize to each and
23 every individual affected by this.

24 MS. WOOSLEY: And lastly, Your Honor, just to get an
25 idea, shanita did get pregnant with **CHILD** in the ninth grade

1 and she continued to graduate from high school with her
2 daughter. She also went to school for cosmetology, for
3 massage therapy.

4 Excuse me, Your Honor.

5 She has been productive and she's gone through some
6 struggles. A lot of people, a lot of my clients, if they
7 are pregnant, in the ninth grade, it is very hard to finish
8 school. She did have the determination and will to finish
9 high school and continue her education.

10 Again, we would ask the Court for the minimum
11 sentence of twenty years.

12 THE COURT: Ms. Gay:

13 MS. GAY: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 MS. GAY: This is just such an unfortunate day. There
16 is just no way -- we took a ten minute break and people
17 would come up to me, it is just so hard to be here, it is
18 hard to be in this spot, hard to be in any of this process.

19 Erica is here with her family. Her mother, who is the
20 one who left the courtroom earlier and came back, she would
21 like to address the Court at some point. Your Honor, she
22 has other family with her here.

23 Erica is a really mild person. Meek may be the best
24 way to describe her. She is -- the family are astonished
25 that she's here today in this situation. Never would

1 anybody have thought that she would ever have done anything
2 to a child, allowed anything to happen to a child that would
3 lead to the child's death. It was beyond anything that
4 anybody who knew her could imagine.

5 she loves the MINOR's mother. She loves the
6 MINOR. She's best friends. She was given the job of
7 taking care of the child and felt that, you know, the child
8 would be safe in her home. She was actually the guardian of
9 **CHILD** during the period of time that her co-defendant could
10 not be with the child. So, she was the primary caregiver of
11 that little child and there is just nothing that would have
12 prepared anybody for this situation.

13 One thing I have handed up this morning which I know
14 you read, two things, was the report from MUSC, which
15 obviously we discussed when she entered her plea, because
16 when you see a client like this, you just -- you
17 immediately, from my twenty years of doing it, go is there
18 some organic problem, is it a mental health problem, you
19 know, what can be going on?

20 so I had her evaluated by MUSC where they found she was
21 not only competent, but also criminally responsible and that
22 report is provided to the Court. And then I just wasn't
23 comfortable with -- I felt like, from talking to her mother
24 and from talking to several of her friends and getting
25 e-mails and statements that I have provided to Doctor Wade,

1 Your Honor, about the history of this couple, this defendant
2 and co-defendant, my client and the co-defendant, I just
3 wasn't comfortable that I had done everything I'm supposed
4 to do, because, as a defense attorney, we're supposed to find
5 defenses. We're supposed to help a client find some kind of
6 way to justify, might be the right word, something that had
7 happened like this.

8 So everything that I was told was that her family does
9 not like their relationship together, and that her family
10 had tried for years to have her, I guess, break up with Ms.
11 Cunningham and break that relationship. I think part of the
12 problem is the entire time that they were involved **CHILD** has
13 always been involved and she has grown very, very attached
14 to Ms. Cunningham's daughter, **CHILD** and sees her as her own
15 child, and she, over the years, they have had violence
16 between the two of them, as Doctor Wade's report said.

17 He reported an abusive dysfunctional relationship with
18 Shanita Cunningham, who is controlling and aggressive, and
19 he also said her reports of numerous individuals, which he
20 cites in the reports, Ms. Cunningham often was physically
21 aggressive in her behaviors toward Ms. Butts, who
22 remained fearful.

23 Now, in my practice I tried very hard to expand on that
24 to see if my client would open up to me about some stuff
25 that maybe I could provide to the psychologist to help her

1 create maybe a Battered Woman Syndrome defense. Erica would
2 never do that. She would never tell me anything bad about
3 Ms. Cunningham. She loves her and has loved her for years,
4 and what happened in that house that day, whether they both
5 just -- I think what the worst part is there is no specific
6 incident that led to death. I mean, as the coroner
7 reported, it was a history of, you know, bad beatings that
8 resulted in a little tiny child being, her immune system
9 being diminished as she was being beat, but there is no
10 specific incident that you can say Erica, can you tell me
11 what happened two hours before, three hours before that
12 would have led to this child dying.

13 There was the situation where she fell in the bathtub
14 or something. There was blood in the bathtub, but it is
15 very possible that there was this big bruise on the back of
16 her head and Erica described it as a fall in the bathtub,
17 and then there was an area on the back of her leg, which I
18 know you have seen pictures, which was horrible looking and
19 Ms. Cunningham has admitted, at some point, she administered
20 a beating that led to some bad injury, and I believe that,
21 after that point, they both say that they treated it with
22 alcohol, which I think made the skin just, you know,
23 degenerate or something because---

24 THE COURT: I can't imagine you would use
25 alcohol. It must have been excruciating.

1 MS. GAY: They tell me -- I think what ended up
2 ultimately happening, it may very well be that situation
3 really diminished the child's immune system. I'm not making
4 any excuses for what went on in that household in the eleven
5 days. She has never denied that she was there, that she
6 participated, but the problem is that she can't give me, as
7 her defense attorney, a specific beating that would have led
8 to something that looks like what is in the pictures, and
9 that is the truth, and I have sent her to two different
10 psychiatrists and psychologists trying to see if there is
11 something that I'm missing, some kind of version of the
12 facts that I'm missing, and she has admitted her
13 responsibility.

14 She's pled guilty. She's here today to beg for mercy,
15 but she's so mild and so meek and normally not this type
16 person at all that it is just really difficult, it is
17 difficult for me and her family, but she's here not saying
18 anything. She never turned on anybody else. She never said
19 she did this, this, and this, it is really her fault. She
20 never said that and she never did that. She's here to
21 accept responsibility for her own life and her own acts and
22 I'm sure she would like to address the Court and I know her
23 family would.

24 THE COURT: Absolutely.

25 MS. GAY: But I would just ask you to please know that

1 nothing in her life -- I think Ms. Cunningham has had some
2 violent situations that have occurred in her life before,
3 but nothing in Erica's life would indicate that anything
4 like this would have ever been -- I mean the MINOR's mother
5 would have believed that Erica would have taken care of her
6 child, and it is just so unfortunate, Your Honor, and such a
7 hard day, and we just ask you please to consider the minimum
8 sentence.

9 She's only 25 years old, and that is a very, very long
10 prison sentence and she knows that and she knows where she's
11 going and she knows why and we would just ask you to please
12 consider the possibility of being merciful in this
13 situation.

14 I know her mother was one of the witnesses, I guess you
15 could say, in this case. Her mother is the one who actually
16 called 9-1-1, and her mother has spoken directly to Ms.
17 Gordon at the Solicitor's Office because she was interviewed
18 as a part of this case, and she told me, during the break,
19 that she was very concerned because Ms. Gordon was talking
20 to her obviously because she's a State's witness and my
21 client's mother, whose name is LaDonna Butts, openly told
22 her as much as she could tell her about the situation, and
23 she said that Ms. Gordon told her that she would ask for
24 twenty years.

25 Now, whether she did or didn't or whether she's

1 changing that or not, but that was something today in the
2 courtroom that her mother was very upset about.

3 I think that the only thing I would say, in conclusion,
4 Your Honor, is that whatever happened in the house after the
5 child began to get sick and ultimately died, neither of
6 these two people were prepared to deal with. They did not
7 have the skills, they did not have the maturity to know what
8 they were supposed to do, and then they called her mother
9 and, you know, she came and said okay, this is what we need
10 to do, and as the solicitor stated, my client has
11 consistently been very remorseful, very upset. I think she
12 referred to it as completely freaking out about the
13 situation, unable to -- unsure what to do because Ms.
14 Cunningham was on probation from another state, and so that
15 was, I think, one of the problems with the EMS, with calling
16 9-1-1, and, ultimately, not to put blame in any other place,
17 but she did leave and take her child and left because she
18 didn't want to interact with the police, and so I think that
19 was one of the issues that was presented when the child was
20 sick because she has some kind of problem with that and was
21 not supposed to be in this state.

22 And so I would ask---

23 THE COURT: You didn't tell me if either of them had
24 any prior record. That is a valid point she raises.

25 SOLICITOR GORDON: Your Honor, Ms. Butts does not

1 have a prior record.

2 Shanita Cunningham did have a prior forgery.

3 THE COURT: Okay.

4 SOLICITOR GORDON: An adult record.

5 THE COURT: From what state?

6 SOLICITOR GORDON: The probation was in Michigan at
7 some point, but I feel like it was from Indiana.

8 MS. WOOSLEY: Indiana, and if I may address the Court
9 after Ms. Gay, one more time.

10 THE COURT: All right. Ms. Gay, I apologize.

11 MS. GAY: I was just saying I think that was one of the
12 factors that was going through all their heads when they
13 were deciding whether they should call 9-1-1 or not call
14 9-1-1. Then, as I said, they called her mother who said all
15 right, 9-1-1 is going to be called and Shanita left.

16 Ms. Butts does want to address the Court.

17 THE COURT: Yes, ma'am.

18 LADONNA BUTTS: I'm LaDonna Butts, I'm Erica's mother.

19 THE COURT: Yes.

20 LADONNA BUTTS: I just want to say, first of all, I
21 know what the family is going through and I'm sorry that you
22 all have to deal with this.

23 MS. GAY: And one thing I would like to say, she had
24 two daughters killed in a car accident in 2001 I believe it
25 was?

1 LADONNA BUTTS: Yes.

2 MS. GAY: They were small children and they were
3 siblings of Ms. Butts. So when she says I know what you're
4 going through in terms of losing a child, she had lost two
5 children of her own and I just had forgotten to mention
6 that, Your Honor.

7 THE COURT: Yes, ma'am.

8 LADONNA BUTTS: And I honestly know how she feels, and
9 I just want to say that I feel that my daughter was in a
10 messed up relationship. Before this incident I had talked
11 to Erica for six months, until the day she called me,
12 because I knew me talking to her and dealing with her made
13 her relationship bad and the consequences to her would be
14 bad.

15 So I tried to stay away so she wouldn't have to deal
16 with the consequences from Shanita and Ieshia and her having
17 been friends since they were kids and they grew up in the
18 same neighborhood and Erica was there when [MINOR] was
19 born. Erica has been in [MINOR] life for three years,
20 constantly, not one month out of a year, but whenever she --
21 she had just moved to here for a year and whenever she was
22 in Detroit she kept [MINOR] and I know in my heart that
23 Erica would not do anything to hurt [MINOR] and I just ask
24 you please don't send my child to jail for the rest of her
25 life and I know she didn't mean for this to happen.

1 THE COURT: Anyone else?

2 JESSICA BELL: Erica, no matter what anybody think
3 about you, we love you and you know that. You sent her down
4 here for Erica to take care of her, but everybody -- the
5 evidence is showing something, but nobody really knows what
6 happened. Like they paint the picture that she's a monster,
7 she is not. This is my sister.

8 When my mom was gone, my sister was there. She dropped
9 out of school. She raised us and not one of them years when
10 she was getting up, putting us to school, she never put
11 hands on us. She would never hurt a child. She know how we
12 feel. She wouldn't do that to MINOR She know how it
13 feel to lose a child, lose kids. She wouldn't even hurt a
14 child.

15 So I'm asking, Your Honor, please don't take my sister
16 away for the rest of her life because I already lost two and
17 I just beg that you please give her any type sentence or
18 anything. We're so sorry. That's all I can say for you
19 all.

20 Thank you.

21 THE COURT: Yes, ma'am.

22 Tell us your name for the record.

23 JESSICA BELL: Jessica Bell, B-E-L-L.

24 THE COURT: Anyone else?

25 MS. GAY: No, Your Honor.

1 THE COURT: Yes, ma'am.

2 MS. WOOSLEY: Your Honor, just briefly.

3 The reason why Shanita left that day, she told me Ms.
4 Butts told her to take [CHILD] from the home so DSS wouldn't
5 take [CHILD] right away. She wanted to get [CHILD] to her
6 grandmother, to her mom. That is why she left the home that
7 day.

8 She wasn't trying to avoid the police. She was just
9 looking after the safety of [CHILD] and Abigail Walsh told
10 her, she contacted Abigail Walsh in the beginning and she
11 told her not to turn herself in until a warrant was issued
12 for her arrest. When the warrant was issued she went to the
13 police station and turned herself in.

14 SOLICITOR GORDON: Your Honor, in addition to Ms.
15 Cunningham's forgery, she also, in '06, had a misdemeanor
16 assault out of Michigan, Detroit, Michigan.

17 MS. WOOSLEY: That was dismissed.

18 SOLICITOR GORDON: It is not indicated here, but I
19 don't have a certified conviction for it.

20 Your Honor, regarding the plea agreement that Ms.
21 Cunningham signed right before as we were getting ready for
22 trial, both defense attorneys said I think my girl will
23 turn, I think my girl will turn. In the end, I sent them
24 both the same, if they wanted to enter that kind of plea
25 agreement, to testify, but they both pled guilty the same

1 day.

2 So the State never actually entered into an agreement
3 with them and Ms. Cunningham didn't provide any cooperation
4 with the State. The statement she gave to her defense
5 attorney was turned over to us when it was turned over to
6 you.

7 THE COURT: So you're saying that any representation
8 that somehow this, in any way, affected the State's decision
9 on prosecution, there wasn't anything you perceived would be
10 beneficial to you?

11 SOLICITOR GORDON: Your Honor, she never, she never did
12 cooperate. So I don't know what she might have said. But
13 she never did cooperate with us. At some point I was
14 contacted from both attorneys saying I think my client will
15 cooperate. We were prepared to go forward with neither of
16 them. We didn't require either of them to go forward and
17 there were no offers on the table.

18 THE COURT: And are you saying they both pled guilty?
19 So it is really -- you don't know if anything
20 appreciable would have resulted because both of them pled
21 guilty on the same day?

22 SOLICITOR GORDON: Correct.

23 THE COURT: And they both were willing to testify
24 against each other?

25 So you---

1 SOLICITOR GORDON: Exactly.

2 MS. WOOSLEY: And it is my understanding, Your Honor,
3 just to be clear, that Ms. Gordon had been talking to Ms.
4 Butts about it because she's a witness in the case, and I
5 told her that Shanita, that day, was going to enter into an
6 agreement to testify against Erica Butts at trial. After
7 that, then through phone calls, conversations recorded at
8 the jail, after that is when I believe Erica Butts decided
9 to plead guilty to the charge, after she realized that
10 Shanita Cunningham was willing to testify, and Ms. Butts
11 contacted Shanita's mom in Detroit and had phone call
12 conversations.

13 So I'm not sure if that enticed Erica Butts to plead
14 guilty to the charge. I know that Shanita Cunningham pled
15 prior to Erica Butts and we thought there was going to be a
16 trial.

17 THE COURT: They pled on the same day, didn't they?

18 MS. WOOSLEY: Yes, one before the other. We were
19 prepared to bring Shanita Cunningham that Monday to the
20 solicitor's office to discuss this case, and I had spoken
21 about that with Ms. Gordon, and I'm not sure if Ms. Butts
22 would have pled guilty but for Shanita Cunningham.

23 MS. GAY: Your Honor, of course, that requires me to
24 say something else. My client has been in the county jail
25 with Ms. Cunningham two years.

1 THE COURT: That was my other question.

2 MS. GAY: They are segregated, but during the course of
3 the two years there has been, you know, various types of
4 communication between the two of them. Right before what
5 her attorney is discussing, my client and I have documented
6 this from other witnesses and people at the jail, my client
7 started feeling very intimidated by her co-defendant, and
8 she contacted me and her mother and said all this is going
9 on, and, of course, it was all because of the fact that the
10 case was coming up and we needed a resolution.

11 My client was feeling as if she was being informed,
12 hey, I'm going to go after you, this type thing. My client
13 has never done that. That has not been her approach in this
14 situation at all. She then said to me what do I do, how do
15 I handle this.

16 I notified some people at the jail. We did some things
17 and I had also been talking to Ms. Gordon about a proffer or
18 sitting down and talking to them, but that just didn't
19 happen, and it didn't need to happen in this case. She
20 eventually informed us she didn't offer anything different
21 if any of us talked to them anyway. So we made the
22 decision---

23 THE COURT: In other words, she didn't need them to
24 prove her case. So if they did it they did it at their own
25 peril.

1 MS. GAY: And the case became ready to be resolved and
2 decisions were made, but there is not, you know, as I said,
3 I have offered my client several opportunities just, you
4 know, spill out all these bad things about Ms. Cunningham,
5 mainly just because she could, under the circumstances of
6 providing people for her to talk to, and she has never
7 chosen to do that. She has chosen to say specifically, you
8 know, we both disciplined her, yes we argued, but we argued
9 because we both have reasons to be upset, but yet,
10 personality wise, I think it is objective, I have a meek
11 personality client, and the co-defendant is much more
12 aggressive, objectively from things that have happened in
13 her life and her history, and I think that has played out in
14 other statements that have been given to me by their family
15 members and friends.

16 THE COURT: Anything -- I saw you talk---

17 MS. WOOSLEY: Your Honor, I think Ms. Cunningham wants
18 me to make sure that you know, on the day of [MINOR ■]
19 passing, Erica Butts admitted to the police officers that
20 she whipped MINOR ■ on two separate occasions, each time
21 with a belt. During this time Shanita was not present. She
22 was at wal-Mart picking up Neosporin, gauze, and I think I
23 have receipts of that.

24 But Ms. Cunningham wanted me to tell you that. I told
25 her it was provided in the report, the statements I gave,

1 but she wanted me to put that on the record.

2 MS. GAY: The only thing I would like to say, Ms. Butts
3 has not had an opportunity to address the court.

4 THE COURT: Absolutely.

5 MS. GAY: I have done all the talking.

6 THE COURT: If she would like to speak she most
7 certainly can.

8 Yes ma'am.

9 MS. GAY: You have to speak up loud.

10 ERICA BUTTS: It's been a hard two years for me for the
11 fact I have known Ieshia so long and her being my best
12 friend, not only my best friend, but MINOR was her only
13 child and to go through something like this, to lose her
14 only child -- I really didn't know that she was hurt. If I
15 had I would have done something, and this is hard to deal
16 with because me and Ieshia grew up together.

17 We have talked about certain things that I never told
18 my mother about. Ieshia was the first person I told I got
19 raped when I was small. I never told anybody. Not even my
20 mama. She was the person I confided in.

21 Ieshia use to come to my house when she was having
22 problems with her mother and stay with me. She was
23 basically taking care of her at the age of fourteen,
24 fifteen.

25 Not only that, I was at the hospital when MINOR was

1 born. I was with her. I sat there and watched her go into
2 labor. I watched her go down to two centimeters. I watched
3 her go back up to three centimeters. I was there when she
4 had MINOR ■

5 To lose her, it was like losing my little sisters all
6 over again, and it is hard for me to get over a lot of
7 things. I just feel like I let her down. I feel like I let
8 my mama down, even though I hadn't talked to her in so long.
9 I let my sister down and my little brother. That is all the
10 family I have right now, and to go to prison for the rest of
11 my life, I don't know how I can handle that.

12 On that day I was responsible, but I didn't mean to
13 kill her. Never. That is not me. I just think about this.
14 I think about her situation every day for the last two years
15 and if there's any way I could go back and change that and
16 bring her back, change some things or know something was
17 wrong sooner, I would have done that. I can't and I have to
18 live with that for the rest of my life.

19 It is on my conscience. I let my best friend down is
20 on my conscience. It was her only child. It was like
21 losing my child. I just ask you to please just be as
22 lenient so I still would have some time to rebuild a
23 relationship with my best friend, rebuild the relationship
24 with my mother.

25 I'm sorry. I will always love you, no matter what. I

1 just want to tell you I'm so sorry.

2 THE COURT: Anything further from the State?

3 SOLICITOR GORDON: Nothing from the State, Your Honor.

4 THE COURT: Anything further from the defense?

5 MS. WOOSLEY: No, Your Honor.

6 THE COURT: Anything further, Ms. Gay?

7 MS. GAY: No, Your Honor.

8 THE COURT: I have listened very intently to the
9 argument of the State as well as the mitigation presented by
10 both Ms. Gay and Ms. Woosley, the statements of the people
11 present, that being the victim's family, as well as Ms.
12 Cunningham's family is not here, but Miss Butts' family, and
13 I have had the ability to review all the documents that were
14 presented to the Court, that being the sentencing memoranda
15 that Ms. Woosley provided as well as the attachments, that
16 being the police reports, and also the other statements.

17 Without belaboring it, you know, all the attachments
18 you have submitted and those, of course, will, you have
19 already filed it with the file, be made a part of the
20 court's record, and also, Ms. Gay, the items that were
21 submitted by Ms. Gay, those being the evaluation for
22 criminal responsibility and the report provided by Doctor
23 Wade, and I assume you're going to file those and make those
24 a part of the record as well.

25 MS. GAY: Yes, ma'am.

1 THE COURT: I have also had the ability to review the
2 funeral program of the minor deceased in a bookmark, a
3 collage of pictures that the family provided for the Court's
4 benefit so that I could see what she looked like prior to
5 her dying. I was going to say expiration, her passing, but
6 about the reality is her death, and I have to be transparent
7 for a moment.

8 I have never had anything affect me as profoundly as
9 the pictures I viewed of this child, and as my mentor would
10 often say, things have to fit together, that the thing about
11 doing what we do for a living, we're the only objective
12 person listening to it. So we listen to all parts of it and
13 it all has to fit, and, of course, it is the defense
14 attorney's job to present things in the best light for their
15 client, mitigation and otherwise.

16 What I'm hearing simply doesn't fit. What doesn't fit
17 is what I saw in those pictures. That child was
18 systematically beaten to death. There is no flowery way for
19 me to say that.

20 I have tried capital cases. I have seen the most
21 graphic of photographs in my life, and I have never seen any
22 more graphic than that. She literally was beat to death,
23 and it did not happen one day. It did not happen two days.
24 It happened systematically over a course of time, and Ms.
25 Gordon did not mislead the Court when she said there was not

1 one part of that child's body that was not touched except
2 the soles of her feet, and while I knew, prior to hearing
3 what you all presented to me, I think there was one dominant
4 member of this relationship. I knew there was a dominant
5 component to the relationship, and I knew there was a, for
6 lack of a better word, a subservient member in the
7 relationship, but, nonetheless, both are equally culpable.

8 One had to commit it and one had to watch it and not
9 stop it and everyday there was an opportunity to stop it.
10 Everyday there was an opportunity to save this child's life,
11 and normally, where there are young defendants in a case and
12 there is a death that occurred, I generally look at the life
13 expectancy of the child or the person whose life has passed
14 and take into consideration any mitigation that is
15 appropriate, and, in this instance, her life expectancy
16 outlives the life expectancy of the individuals who are
17 culpable for her death.

18 So, when you look at that type of analysis, the bottom
19 line becomes in this case that a child's life was taken
20 needlessly and over what?

21 I'm convinced, after looking at the autopsy photos, she
22 no longer had control of her bladder and I don't know what
23 precipitated a child going from being potty trained
24 to doing that behavior she was involved in. It was
25 something that happened in the environment that causes a

1 child to go from one behavior it learns to another behavior.

2 She just started wetting the floor. There is something
3 in that dynamic that happened that is disconcerting, and I
4 have no doubt that -- I have no reason to believe that Ms.
5 Cunningham's child, CHILD was physically abused in any way.
6 But certainly what she was exposed to during the course of
7 that two weeks or during the course of even this
8 relationship, it was dysfunctional at best and harmful to
9 her and contrary to her best interest.

10 Based on what has been presented to the Court, the
11 profoundness of what I have had to review in terms of the
12 egregious nature of what was perpetrated upon this child's
13 young life, it is appropriate that they both -- and, again,
14 the Court notes, for the record, irregardless of who struck
15 the last blow, irregardless of what ultimately caused her
16 death, what has become profoundly clear to this Court, their
17 best interest rose above that of that child and that they
18 were equally culpable irregardless of who actually threw the
19 last blow.

20 It is clear from what has been presented to the
21 Court it was a culmination of a course of acts. It wasn't
22 just one instance, but just the severity of the bruising in
23 her body tells me the significance of the blows that were
24 leveled to her on what was a continual basis, and what is
25 most striking is that you could, and, again, I'm used to

1 advocates embellishing, but, in this instance, Ms. Gordon
2 did not, the severity of the blows to that child's legs, and
3 to say you did not recognize what had been done, to ignore
4 what must have been excruciating sounds that came from that
5 child on a daily basis is more than just disconcerting to
6 this Court, and, as such, the Court finds it appropriate
7 that each be sentenced to the State Department of
8 Corrections for a period of life.

9 You will get credit for any of the time you served.

10

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12 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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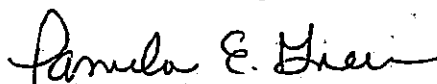
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Charleston County, South Carolina, on the 3rd day of November, 2011, as reported by Henry Young and transcribed by myself to the best of my ability.,

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

January 27th, 2015



PAMELA E. GREEN, Court Reporter

FORM 5

2014-CP-10-2518

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

County of Richland

Erica Butts #348484

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
APR 17 11:57
CLERK OF COURT

INSTRUCTIONS READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and 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 Camille Grippin Graham Correctional Institution 4450 Broad River Rd Columbia, S.C 29210
2. Name and location of Court which imposed sentence Charleston County General Sessions 100 Broad St Charleston, S.C 29401
3. Name(s) of co-defendant(s) (if any) Shanita Cunningham
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-BS-10-09123
 - (b) N/A

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 3, 2009 Life Sentence w/s Parole
 - (b) N/A
 - (c) N/A

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty NO
 - (c) after a plea of nolo contendere NO

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

- 8. If you answered Yes @ (7), list:
 - (a) the name of each Court to which you appealed:
 - i. S.C Courts of Appeal
 - ii. S.C Supreme Court
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Denied
 - ii. Dismissal
 - iii. _____
 - (c) the date of each such result:
 - i. December 23, 2013
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. 2013-000218 S.C.A.C.R Rule 221
 - ii. 2014-000172 S.C.A.C.R Rule 221
 - iii. _____

- 9. If you answered No @ (7), state your reasons for not so appealing:
 - (a) N/A
 - (b) N/A

(c) N/A

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

- (a) Guilty Plea Agreement violated
- (b) Ineffective Assistance of counsel
- (c) Denied Due Process of Law.

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

- (a) Pursuant to F.R.C.P Rule 11, Guilty Plea must be signed
- (b) 1st Amendment U.S.C.A. counsel submitted Defective Appeal
- (c) 14 Amendment, U.S.C.A. S.C Code Ann Law Chapter 13, 21 of Title 21

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? Yes

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. Direct Appeal of Guilty Plea
 - ii. Motion to Appeal Denial of Direct Appeal
 - iii. N/A
 - iv. N/A

(b) the name and location of the Court in which each was filed:

- i. S.C Court of Appeal P.O Box Cola, S.C
- ii. S.C Supreme Court P.O BOX 11330 Cola, S.C 29211
- iii. N/A
- iv. N/A

- (c) the disposition thereof:
 - i. Denied
 - ii. Dismissed
 - iii. N/A
 - iv. N/A

- (d) the date of each such disposition:
 - i. December 23, 2013
 - ii. January 8, 2014
 - iii. N/A
 - iv. N/A

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. 2013-000218
 - ii. 2014-000172
 - iii. N/A
 - iv. N/A

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?
N/D

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. N/A
 - iii. N/A

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) 16th Amendment U.S.C.A. Ineffective Assistance.
- (b) Chapter 13 Title 21 of 24
- (c) After discovered evidence

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (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. Melissa Gray P.O. Box 2144
Mt Pleasant, S.C. 29465
- ii. " "
- iii. _____

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

- i. Guilty Plea Bench trial General Sessions Ct
Direct Appeal of the Guilty Plea
- ii. _____
- iii. _____

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

Modification In Sentence / Time Serve / Parole Every Year
Modification In Sentence / Youthful Offender Act.
Fast & Speedy trial with 120-days after receipt of P. CR Claim

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

NO
N/A

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, Emilia Burt 4-11-14, 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.

Emilia Burt

SWORN to and subscribed before me this 11th day of April 2014.

Jim W. Gold (L.S.)
Notary Public

My Commission Expires 5/24/16

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

I, Erica Butts 4-11-14, 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.

Erica Butts
Applicant

SWORN or affirmed to and subscribed before me this

11 day of April, 2014

Jana W. Gold
Notary Public

My Commission Expires: 5-24-16

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

AFFIDAVIT OR SERVICE

ERICA BUTTS #348484

-v-

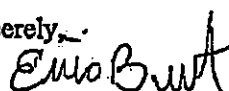
THE STATE OF SOUTH CAROLINA

FILED
2014 APR 17 11:11:58
STATE CLERK OF COURT

I declare under penalty of perjury, that I have submitted the following documents
along with P.C.R. Claim in support of my case.

1. Appellant Brief to the S.C Courts of Appeals
2. Motion to Appeal to the S.C Supreme Court.
3. Notice of Dismissal from S.C Supreme Court of Appeals
4. Notice of Dismissal from S.C Supreme Court
5. Motion for a Fast & Speedy Trial; Motion to Alter the Judgment Fed R.C.P 59@ Motion to re-open state's evidence F.R.C.P. 16; Brief of Law memorandum of law brief.

Sincerely,



Erica Butts
April 8, 2014

SWORN TO AND SUBSCRIBE BEFORE ME
ON THIS 8TH DAY OF APRIL 2014
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

Vivian R. Padgett
MY COMMISSION EXPIRES 8-25-2015

Exhibit A

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	2014-CP-00-0172
ERICA BUTTS #348484	MOTION FOR A FAST & SPEEDY
-V-	TRIAL, PURSUANT TO 18. U.S.C.A
THE STATE OF SOUTH CAROLINA	3162(A)

The (Applicant) files this motion for a FAST & Speedy Trial, pursuant to 18 U.S.C.A. 3162 (A). She motion for this fast & Speedy Trial is based on After Discovered Evidence. Violation of the (Applicant's State and Federal Civil Protected Rights, Guaranteed to her by the United States Constitutional Law. (Applicant was deprived of a Right to appear for her pre-trial Grand Jury hearing, pre-limenary hearing, and Discovered Documents; and Guilty Plea Contract Agreement.

Sincerely,



Erica Butts
April 8, 2014

SWORN TO AND SUBSCRIBE BEFORE ME
ON THIS 8TH DAY OF APRIL 2014
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

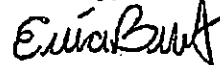
Vivian R. Padgett
MY COMMISSION EXPIRES 8-25-2015

Exhibit B

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	2014 CP 00 0172
	THE (APPLICANT) FILES THIS
ERICA BUTTS #348484	MOTION PURSUANT TO FEDERAL
-V-	RULE C.P RULE 59@ TO ALTER THE
THE STATE OF SOUTH CAROLINA	JUDGMENT

The (Applicant) files this motion, Pursuant to Federal Rule C.P. Rule 59@, to alter the judgment in the above captioned case... The (Applicant's) demands or (Judge) of the courts of common Plea's to Re-open the Guilty-Plea contract., which induced her guilty plea; which will also reveal the Guilty plea was (INVALID). Enter on Theory of (20) year cap, through her Mother & Defense Attorney. Gay's conversation with Solicitor's unkept Plea Deal.

Sincerely,



Erica Butts
April 8, 2014

SWORN TO AND SUBSCRIBE BEFORE ME
ON THIS 8TH DAY OF APRIL 2014
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

Verba R. Padgett
MY COMMISSION EXPIRES 8-25-2015

Exhibit C

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
~~2014-CP-00-0172~~

ERICA BUTTS #348484

MOTION TO BE RE-OPEN THE
 STATE'S EVIDENCE PURSUANT
 TO FEDERAL R.C.P RULE 16

-V-

THE STATE OF SOUTH CAROLINA

The (Applicant) files this motion, Pursuant to Federal Rule C.P. (Rule 16) to Re-open the State's evidence, as well as, the alledge Plea Agreement which was not entered in as evidence to show cause that the Guilty plea was indeed Freely and voluntarily giving. The Guilty Plea contract, must be signed by Solicitor, Attorney, and Defendant, prior to Bench Trial, S.C.R. Crimp Rule 11.

Sincerely,

Erica Butts

Erica Butts
 April 8, 2014

SWORN TO AND SUBSCRIBE BEFORE ME
 ON THIS 8TH DAY OF APRIL 2014
 NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

Walter R. Padgett
 MY COMMISSION EXPIRES 8-20-2015

Exhibit D

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

~~2014-CP-00-0172~~

THE STATE OF SOUTH CAROLINA

ERICA BUTTS #348484

TABLE OF AUTHORITIES

5TH Amendment U.S.C.A/Guilty Plea Invalid
 6th Amendment U.S.C.A/ Ineffective Assistance of Counsel
 14th Amendment U.S.C.A/ Denied Due Process of Law
 Chapter 13 and 21 of Title 24 (1/4 Parole Eligibility
 18. U.S.C.A 1503, 1503,1506/;(Rule 11 S.C.R. Crimp.)
 United States-v-Avellino; 136 F.3d. 249, 255 (2nd Cir 1998)
 Gibson-v-States, 334. S.C. 515, 514, S.E. 2d. 320. (1999)
 Cherry-v-State, 300 S.C. 115, 119, 386. S.E. 2d, 624,626. (1989)
 Weathers-v-State, 319 S.C. 59. 459. S.E. 2d, 838 (1995)
 Jackson's-v-State, 329. S.C. 345, 495. S.E. 2d. 768,773 (1998)
 Thompson-v-State, 340, S.C..112, 531 S.E. 2d. 294 (2000)
 Strickland-v-Washington, 466 U.S. 668 (1984), Id at 685; Id at. 688
 Hawden-v-State, 278 S.C. 610. 299 .S.E. 2d. 854 (1983)

Exhibit D

State of South Carolina
County of Charleston

Erica Butts #348484
-VS-

The State of South Carolina

In the Court of Common Pleas
~~2014-CP-00-0172~~

The Applicant Submits this,
MEMORANDUMS BRIEF
in support of her (P.C.R. claim)
Exhibit D

The applicant submits this Brief on the merits of her (P.C.R. claim).

(Ground 1) Ineffective Assistance of counsel. Defense counsel for the (applicant) representation fell below the realms of professional conduct. The (applicant) was prejudiced by the ineffective performance of (Trial-counsel's) presentation of her case in conjunction with (Trial-counsel's) ineffective assistance on the merits of her Direct Appeal in the Supreme Court. Trial counsel submitted an ineffective Appeal Brief, as well as, failure to raise any statutory or constitutional errors and legal technical errors for the (applicant's) Defense.

Trial-counsel who also had been ordered to get back on the (applicant's) case by the Supreme Court; after the (applicant) had filed a (P.C.R Claim). She (applicant) was not informed about a Direct Appeal Defense Counsel (Ms. Melissa Gay) informed her to file a (P.C.R.Claim); consequently to that issue (Defense Counsel) was culpable negligent when she (coerced and persuaded the (applicant) to Enter-A-Guilty-Plea) based on theory that she the applicant will receive a 20 year cap sentence. Breach of Guilty Plea Deal. If Defense counsel, would've gone to Trial multiple offense charges could've charged the Jury to sentence the (applicant) Pursuant to Chapter 13 21 of Title 24 to grant her a parole date every year charges could've also been applied under Battered Women Syndrome because of (applicant's) childhood also under S.C Code Ann Law. Involuntary Toxication Statute (17-20-30). The (applicant) was under the influence of marijuana alcohol and other substances. The (applicant) did not voluntarily or freely abused the child to bring on her death. It was unintentionally done. The (applicant) admitted her guilty and sought a Plea Deal, which was falsely entered in by the Solicitor and Defense Attorney.

Exhibit D

Page 2

Id. At 688, Supreme Court Ruled in Washington-v- Strickland, that attorney is said to have rendered deficient performance, Id at 685.

(Ground 2) Pursuant to Rule 11 S.C.R.C.P. the effectiveness of a Guilty Plea. Procedure paragraph @ Plea Agreement, Procedure. The attorney for the government and the attorney, for the Defendant of the Defendant's when entering or acting Pro Se may engage in discussion, with a view towards reaching an agreement that, upon the entering, of a Plea. Of guilty or nolo contendere, to a charge offense or to a lesser or related offense, the Attorney, for the government will do any of the following. (A) Move for dismissal of other charges. (B) makes a recommendation or agrees not to oppose the defendant's request, for a PARTICULAR SENTENCE, with the understanding that such recommendation or request shall not be binding upon the court: or (C) Agree that a specific sentence is the appropriate disposition of the case. Note that the court-mean Judge to hear the case cannot and shall not be a party to the Guilty Plea Agreement, before the case is heard; (Paragraph 2:) Notice of such Agreement If a plea agreement has been reached by the parties the court shall, on the record, require that the (DISCLOSURE) of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered.

If the agreement is of the type specified in subdivision (e) (1) (a) or (c). The court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the pre-sentenced report. If the agreement is of the type specified in subdivision @ (1) (B), the court shall inform the (Defendant) that if the court does not accept the recommendation or request the defendant nevertheless has no right to withdraw his plea. (3) Acceptance of a Plea Agreement if the court accepts the plea agreement, the court shall inform the (Defendant) that it will embody in the judgment and sentence the disposition,

Exhibit D
Page 3

Provided for in the plea agreement. (4) Rejection of a Plea agreement if the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the (Defendant) personally in open court or on a showing of good cause in camera that the court is not bound by the plea agreement, afford the (Defendant) the opportunity to then (withdraw) his plea and advise the (Defendant) that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable, to the (Defendant) than that contemplated by the plea agreement. (5) Time of Plea Agreement Procedure: except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court. Quoting-Thompson-v-State 340. S.C. 112,531. S.E.2d 294 (2000). The Supreme Court Ruled: counsel may be ineffective for failure to move, for withdrawal of a guilty plea, where the Government, fails to fulfill its promises under the Guilty Plea see also ID. At, 321 S.C. at 558-59, 471. S.E.2d or 148-49 see also Id. At 333. S.C. at 688, 511. S.E. 2D at 402 Id at. 333 S.C. at. 689, 511 S.E. 2d. At. 403.

Quoting --Gibson-v-State, 334 S.C. 515, 514. S.E. 2d. 320. The Supreme Court ruled that Gibson's plea was rendered involuntary, Id. At. 334. S.C. at 523,514 S.E. 2d, at 324. The Government's obligation to make such disclosure (of Brady material) is pertinent, not only to an accused; preparation for trial, but also to his determination of whether or not to plead guilty. The (applicant) states that her (Guilty-Plea-Agreement) was part of the (Discovery Evidence) and that it was the (key-Element) of her Plea of guilty; However, the (Applicant) did not know that the (Guilty-Plea contract agreement) had to be signed by the Solicitor, Attorney for her, and by herself. What the Defense Attorney did do was deceive the (Applicant) and the court to make it appear, that the Guilty Plea was made voluntary absent any form of a Negotiated-Plea-Agreement.

Exhibit D
Erica Butts #348484
Page 4

Which is in violation of her 6th and 14th Amendment U.S.C.A attorney, is required to use the Bill of Rights to protect his client. The Doctrine of Attorney's client privilege is one of the most strongest Iron-clad bars, known to the constitution, that cannot be broken, except if client, asked attorney to commit a crime.

Quoting: Cherry-v-State; The Supreme Court held that counsel was ineffective and held that Guilty Plea was the direct and approximate cause of attorney's coercion (defendant) to Plea Guilty. Guilty Plea was invalid... Quoting, Jackson-v-State. 329 S.C. 345, 495, S.E. 2d. 768, 773, (1998).

The Guilty Plea Agreement-Contract was not signed by Solicitor, Attorney or the (Applicant) in this case at bar, but was accept throughout conversation with Attorney and Solicitor concealed the Plea Agreement form the court, Quoting. United States-v-Avellino, 136 F.3d. 249. 255. (2nd cir 1998). The (Applicant) states that attorney's conduct was also in violation of 18 U.S.C.A 1503, 1505, 1506, to deceive the court, concerning the Guilty Plea. Government violated the (Applicant's) 14th Amendment Rights U.S.C.A to a fair Trial which is in violation of her Federal Civil Protected Rights, which is guaranteed to her by the U.S. Constitution.

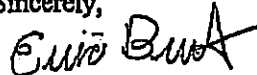
Final Conclusion and closing argument.

Defense Attorney Melissa Gay. acted in bad character. Ms. Gay's conduct fell below the realm of professional misconduct. Ms. Gay's action is and was the approximate cause of the (Applicant's) receiving a life sentence, in addition with the Defective appeal brief in which Ms. Gay submitted to the S.C court of Appeal.

Exhibit D
Erica Butts #348484
Page 5

Ms. Gay had also failed to submit a Direct Appeal the (Applicant) file a P.C.R. which was suspended by Supreme to Petition the court for a rehearing on the merits of after discovered evidence pursuant to SCACR Rule 21b; consequently, to Ms. Gay's failure to file a Writ of Certiorari to the S.C Supreme of Ms. Gay's Acts, prejudice the (Applicant) Guilty Plea Trial and appeal. Quoting, Washington-V- U.S and Attorney Gay was ordered to file appeal then she failed to file a notice for rehearing.

Sincerely,



Erica Butts
April 8, 2014

SWORN TO AND SUBSCRIBE BEFORE ME
ON THIS 8TH DAY OF APRIL 2014
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

Verba K Padgett
MY COMMISSION EXPIRES 8-25-2015

IN THE SOUTH CAROLINA SUPREME COURT

ERICA BUTTS #348484

-V-

THE STATE OF SOUTH CAROLINA

STATEMENT OF THE CASE

The Appellant's Plead Guilty to Homicide by Child Abuse. Appellant plead guilty on advice of attorney and family member.

Appellant's guilty plea was enter on theory that, she would only receive 20 years for the crime.

The Appellant discovered after trial that, she did not sign a Plea Agreement Deal therefore her guilty plea, would appear to be freely giving. The appellant states that she would not have plead guilty knowing that she would receive a life sentence. The appellant state's that she has mitigating factors of evidence that contributed to her crime, and other applicable charges could've been presented for her defense. The appellant was under the influence of Prescription drugs, and marijuana she was intoxicated at the time crime occurred.

Respectfully Submitted,

Erica Butts

Erica Butts
January 15, 2014

24

SWORN TO AND SUBSCRIBE BEFORE ME
ON THIS 15TH DAY OF January 2014
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

Vickie R. Dodson
MY COMMISSION EXPIRES August 25, 2015

Exhibit A

IN THE SOUTH CAROLINA SUPREME COURT

ERICA BUTTS #348484

VS

THE STATE OF SOUTH CAROLINA

Appeal No: 2013-00218
 Notice of Intent to Appeal; Pursuant
 To S.C.A.C.R Rule 203(b)(1)
 Proof of Service

The Appellant files this Notice of Intent to Appeal the order of Dismissal of her direct Appeal. Order of dismissal December 23, 2013, Pursuant to 203 (d)(1)(B)(IV) .S.C.A.C.R. Rule 221 (b) by the South Carolina Courts of Appeal, presiding Judge the Honorable Judge J.W. Curton.

The Appellant received notice on January 10, 2014. Defense Attorney Ms. Gay sent letter of Dismissal on January 6, 2014.

Respectfully Submitted,

Erica Butts
 Erica Butts
 January 15, 2014
 24

SWORN TO AND SUBSCRIBE BEFORE ME
 ON THIS 15TH DAY OF January 2014
 NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA.

Victoria K. Padgett
 MY COMMISSION EXPIRES August 25, 2015

Cc: Attorney Gen
 S.C Court of Appeals
 S.C Supreme Court

Exhibit B

IN THE SOUTH CAROLINA SUPREME COURT

ERICA BUTTS #348484

VS

THE STATE OF SOUTH CAROLINA

Appeal No: 2013-00218
 Motion to Alter the Judgment
 Pursuant to federal Rule C.P. Rule 59@
 Affidavit of Service

The Appellant files this Motion to Alter the Judgment of the lower courts.

Ground (1) S.C Courts of Appeals Judgment is in valid. When a State stature codifies with a federal C.P.R it becomes valid.

(2) The Appellant was deprived of due process of law appellate defense counsel and trial counsel, did submit a defective appeal brief, to prevent the appellant from over turning her conviction.

(3) The Appellant was prejudice by Appellate counsel in ineffective, for failing to raise an arguable brief on merits of her appeal.

Respectfully Submitted,

Erica Butts

Erica Butts
 January 16, 2014

24

SWORN TO AND SUBSCRIBE BEFORE ME
 ON THIS 16TH DAY OF January 2014
 NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

Victoria R. Padgett
 MY COMMISSION EXPIRES August 25, 2015

Exhibit C

IN THE SOUTH CAROLINA SUPREME COURT

ERICA BUTTS #348484 -V- THE STATE OF SOUTH CAROLINA

6th Amendment U.S.C.A
14th Amendment U.S.C.A

ISSUE RAISE FOR REVIEW

1. Whether Appellate Defense Counsel Prejudiced the Appellant's Appeal, by submitting a defective appeal Brief
2. Whether Appellate Defense Counsel limined out of Court, the Guilty Plea Contract
3. Whether Appellate Defense Counsel Prejudiced the Appellant's Appeal. When he failed to submit copies of the written Exhibits, Introduced at trial waiver of jury trial, pre-trial evidence, written Guilty Plea.
4. Whether Appellate Defense Counsel, Prejudice the Appellant's Appeal when he failed to file a motion Pursuant to S.C.A.C.R Rule 211 (b) to amend the record and Pleadings on the merit of perfecting the Appeal.
5. Whether Appellate Defense Counsel deprived the Appellant of Due Process of law, by failing to accure copies of all motions, exhibits reflecting the guilty plea contract agreement or consent to Plead Guilty. There is no physical proof that the Guilty Plea was freely giving there must be written proof, Pursuant to Rule 11. of S.C.R.C.P Rule 11, A.B.C. (1-2-3 paragraph 4)

Respectfully Submitted,


Erica Butts
January 16, 2014SWORN TO AND SUBSCRIBE BEFORE ME
ON THIS 15TH DAY OF January 2014
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES
August 25, 2015

Exhibit C

IN THE SOUTH CAROLINA SUPREME COURT

ERICA BUTTS #348484

VS

THE STATE OF SOUTH CAROLINA

APPELLANTS BRIEF ON
ISSUES RAISE14TH AMENDMENT U.S.C.A.6TH AMENDMENT INEFFECTIVE ASST.

APPELLATE COUNSEL

The Appellant raise issue of the 14th Amendment U.S.C.A Denial of Due Process of Law in lieu of the 6th Amendment U.S.C.A. Ineffective Assistant of Appellate counsel.

Appellate counsel was deficient for failing to raise and issue and whether the Appellant was prejudiced from the failure to raise the issue.

Appellate counsel may also be ineffective for failing to make a record sufficient for review.

Appellate counsel submitted a Defective appeal brief in conjunction; with concealing evidence of a material fact relating to the Guilty Plea was based on the concept of Attorney Gay, as well as mother. The Appellant plead guilty not knowing that she would receive the maximum amount of time, a life sentence arising from a guilty plea is observed. What would be the purpose of pleading guilty, when she could've gone to trial as well as, to have Jury Instructions on changes of Involuntary Intoxicant Defense (S.C. Code Ann Law) (20-10-30); Also chapter 13 Title of 24. Pursuant to C.D.V. Act, to allow the Appellant to have a Parole date after serving ¼ of her prison term. Quoting case laws of precedent.

Pursuant to article III S 17 Act 83 trial Judge is required to sentence a defendant under the Statute's of his crime, yet not to be overly excessive in sentencing. The Appellant can show that trial judge issued a sentence without a careless regards to her guilty plea. This is to say that even if the appellant had gone to Jury Trial judge's sentence would've been identical to this sentence; However The Appellant was entitled to a modification to her sentence, pursuant to chapter 13 Title 21 of 24 because her crime related to a household member although she was not the Biological-Mother the deceased lived in her apartment in her care; Therefore she appellant was entitled to have a parole date after serving ¼ of her sentence appellate defense counsel was ineffective when he failed to raise that issue. Quoting EZELL-V-STATE, 345 .S.C.312, 548 S.E. 2d, 852. (2001) In EZELL-V-STATE the Supreme Court found that the appropriate remedy for ineffective assistance of Appellate counsel was and is a New Trial. Quoting STRICKLAND -V- WASHINGTON. 466 U.S. 668 (1984). The Supreme Court ruled that when an attorney fails to meet these standards, the appellate attorney is said to have rendered deficient performance or Id. At 685; Id at. 688. Quoting. SOUTHERLAND-V-STATES 337 S.C. 610, 524 S.E. 2D, 833. (1999) The Supreme Court Ruled, in assessing a claim of ineffective assistance of Appellate-counsel, courts apply the STRICKLAND test to determine, if appellate counsel was, deficient for failing to raise an issue and whether the defendant was prejudice, from the failure to raise the issue. Quoting, SMITH-V-ROBBINS 528. U.S. 259, 288, 120 S. Ct. 746, 765, 145 l. Ed. 2d. 756(2000)

Exhibit C

IN THE SOUTH CAROLINA SUPREME COURT

ERICA BUTTS #348484 - VS- THE STATE OF SOUTH CAROLINA

In SMITH-V-ROBBINS, The Supreme court ruled that appellate counsel may render ineffective assistance for failure to present an issue on appeal Quoting; VICKY-V-STATE, 258, S.C. 33. 186 S.E. 2d. 827 (1972) when trial court failure to put on record as the burden of proof, as in written documents, of exhibits or memorandums or motions enter in lieu of the Guilty Plea, prior to the Guilty Plea Trial; pursuant to S.C.R. crimp Rule 11, there must be written proof of guilty pleas entered in agreement by the solicitor defense attorney, and defendant.

They all must sign affidavit, to the guilty plea. QUOTING-PITTMAN-V-STATE, 337. S.C. 597, 524. S.E. 2d, 623

The Supreme Court of South Carolina Ruled, that The Supreme Court requires a defendant entering a guilty plea be made aware of the nature of the constitutional rights, and crucial elements on the offense, the maximum and minimum penalty, in order to secure the defendants are fully aware of their constitutional rights in which he is waiving. Quoting-JUDGE-V-STATE, The Supreme Court held that counsel may be ineffective for failing to reject a guilty plea offer. In the appellant's case the trial counsel was ineffective, for failing to object to a life sentence in exchange, for the appellant's Guilty Plea, she appellant was prejudice by counsel failure to withdraw Guilty Plea, Quoting THOMPSON-V-STATE, 340, S.C. 112, 531 S.E. 2d. 294 (2000) counsel may be ineffective for, failure to move, for withdrawal of a Guilty Plea, where the Government fails to fulfill its promises under the Guilty Plea. Quoting. S.C.A .C.R Rule 11. Guilty Plea deals must be signed by solicitor, counsel and defendants in order, for the Guilty Plea to be valid.

The Appellant petitions this court to reverse the lower courts Ruling pursuant to F.R.C.P. Rule 59@ and grant a new trial.

Respectfully,



Erica Butts
January 18, 2014
24

SWORN TO AND SUBSCRIBE BEFORE ME
ON THIS 15TH DAY OF January 2014
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

Vickie K Padgett
MY COMMISSION EXPIRES August 25, 2015

Exhibit C

THE STATE OF SOUTH CAROLINA IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
S.C. COURT OF APPEALS
J.W. CURTON P.J.
2013-00218 APPEAL NO:

NOTICE OF INTENT TO APPEAL
PURSUANT TO S.C.A.C.R. 203(1)
AFFIDAVIT OF SERVICE

ERICA BUTTS #348484 APPELLANT

VS

THE STATE OF SOUTH CAROLINA RESPONDENT

The Appellant hereby certifies under penalty of perjury that a true copy of the notice of Intent to Appeal has been served upon opposing counsel, Attorney Gen at P.O Box 11549, Columbia, S.C 29211; on this 15th day of January 2014

Respectfully Submitted,



Erica Butts
January 15, 2014



SWORN TO AND SUBSCRIBE BEFORE ME
ON THIS 15TH DAY OF January 2014
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

Vihear R. Padgett
MY COMMISSION EXPIRES August 25, 2015

Cc: S.C Court of Appeals
S.C. Supreme Court

STATE OF SOUTH CAROLINA
 IN THE SOUTH CAROLINA COURT OF APPEAL
 APPEAL FROM CHARLESTON COUNTY
 HONORABLE DEADRE L. JEFFERSON
 INDICTMENT NO: 2010-GS-10-4182

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

ERICA BUTTS, APPELLANT

CERTIFICATE OF SERVICE

The Appellant hereby certify under penalty of perjury that, a true copy of the notice of Intent of Appeal has been served upon opposing counsel, throughout the U. S Mail on this 6th Day of November 2013, at his office Solicitor. 101 Meeting Street 5th Floor Charleston, SC 29401.

Sincerely,

Erica Butts

SWORN TO AND DESCRIBE BEFORE ME
 ON THIS 6th DAY OF NOVEMBER 2013
 NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

 MY COMMISSION EXPIRES _____

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA COURT OF APPEAL

INDICTMENT NO:2010-GS-10-4182
APPELLANT NO:2013-000218
MOTION TO AMEND THE
RECORD AND PLEADINGS
PURSUANT TO S.C.A.C.R.
RULE 211 b S.C.R.A.P

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

ERICA BUTTS, APPELLANT

The Appellant Files this motion to Amend and to Supplement the Record and Pleadings.

The Appellant raise the following Issues:

1. Ineffective Assistant of Counsel, 6th Amendment U.S.C.A in conjunction with 14th amendment. U.S.C.A. Denied due process of law guaranteed to her by the United States constitutional Amendments.
2. Breach of Guilty Plea Agreement.

Sincerely,

Erica Butts

SWORN TO AND DESCRIBE BEFORE ME
ON THIS 6TH DAY OF NOVEMBER 2013
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES _____

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA COURT OF APPEAL

INDICTMENT NO:2010-GS-10-4182
APPELLANT NO:2013-000218
MOTION TO ALTER THE JUDGEMENT
PURSUANT TO FEDERAL R.C.P
RULE 59A; F.R.C.P. RULE 60

STATE OF SOUTH CAROLINA, RESPONDENT
VS.
ERICA BUTTS, APPELLANT

The Appellant files this motion to alter the Judgment. Pursuant to Fed. R.C.P. Rule 59
@:Federal Rule C.P Rule 60.

The Appellant can show that she was deprived of her State and Federal Civil Protective
Rights to adequate representation, in the preparation and the Presentation of her Defense.

Defense Counsel's breach of the Attorney and Client Doctrine was violated. Counsel
failed to use the Bill of Rights to Protect and represent her client to the best of her ability,
Counsel was deficient in her performance to the fact, that such as falls within the realms of
Prejudice, and a grossly manifestation of denial of Due Process of Law. The United States
Supreme Court held that breach of Plea Agreement or if Defendant plead guilty on advice of
counsel and the government breaks its promise, then the Guilty plea, would've been made under
false Pretense absent a Plea Agreement being signed by the Defendant, Counsel and Prosecution.

Sincerely,

Erica Butts

SWORN TO AND DESCRIBE BEFORE ME
ON THIS 6th DAY OF NOVEMBER 2013
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES _____

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA COURT OF APPEAL

INDICTMENT NO:2010-GS-10-4182
APPELLANT NO:2013-000218
A GUILTY PLEA CONTRACT
EXHIBIT B

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

ERICA BUTTS, APPELLANT

The Appellant submits the Guilty Plea Contract as fact finding and mitigating evidence of fact of the Guilty Plea being made in violation of Due Process of Law.

The Appellant's Guilty Plea was based on Defense Counsel, Solicitor in acting over the case, with mother as third party to enhance the Guilty Plea; However, the agreement wasn't in writing, It was based on a promise of here say evidence, Pursuant to F.R.C.P. Rule 801 a and enter in open court as evidence to show that the Guilty Plea was agreed upon by all parties, as well as, with the Guilty Plea being signed, dated, and stamp with the clerk of courts official letter head and seal in lieu of it being in Discovery evidence. Absence of Guilty Plea in the Discovery evidence used at trial, would be of a fact, that the Guilty Plea was coerced.

Sincerely,

Erica Butts

SWORN TO AND DESCRIBE BEFORE ME
ON THIS 6th DAY OF NOVEMBER 2013
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES _____

The Supreme Court of South Carolina

The State, Respondent,

v.

Erica Butts, Petitioner.

Appellate Case No. 2014-000172

Lower Court Case No. 2010-GS-10-04123

ORDER

By order dated December 23, 2014, the South Carolina Court of Appeals dismissed the appeal in this matter. When no petition for rehearing or reinstatement was received, the Court of Appeals sent the remittitur on January 8, 2014.¹

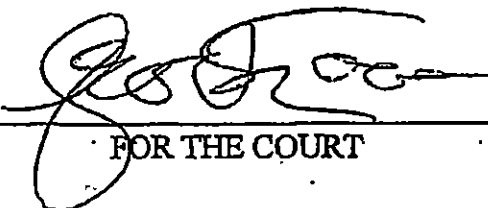
Petitioner has now filed a notice of appeal and motion to alter or amend. Since a decision of the Court of Appeals is reviewed by serving and filing a petition for a writ of certiorari, these documents have been construed as a petition for a writ of certiorari.

Under Rule 242(a) of the South Carolina Appellate Court Rules (SCACR), this Court will only review a final decision of the Court of Appeals, and a decision is not final for the purposes of review until a petition for rehearing or reinstatement has been acted on by the Court of Appeals. Rule 242(c), SCACR. Since no petition for rehearing or reinstatement has been ruled on by the Court of Appeals in this matter, there is no final decision for this Court to review.

Further, when no petition for rehearing or reinstatement was received by the Court of Appeals, the Court of Appeals properly sent the remittitur. Rule 221, SCACR. When the remittitur is properly sent, appellate jurisdiction ends and no further motion or petition can be considered. *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007).

¹ Before the Court of Appeals, the Appellate Case Number was 2013-000218.

Accordingly, the petition for a writ of certiorari is dismissed.


C.J.
FOR THE COURT

Columbia, South Carolina

February 4, 2014

cc: Melissa White Gay, Esquire
Robert Michael Dudek, Esquire
Salley W. Elliott, Esquire
The Honorable Jenny Abbott Kitchings
The Honorable Julie J. Armstrong

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA COURT OF APPEAL

INDICTMENT NO:2010-GS-10-4182
APPELLANT NO:2013-000218

STATE OF SOUTH CAROLINA, RESPONDENT
VS.
ERICA BUTTS, APPELLANT

AFFIDAVIT OF SERVICE

I Erica Butts declare under penalty of perjury that I have served the attorney General's office, with a motion to amend or supplemental of Record and Pleadings Pursuant to S.C.R.A.P. Rule 211 b.

Sincerely,

Erica Butts

SWORN TO AND DESCRIBE BEFORE ME
ON THIS 6th DAY OF NOVEMBER 2013
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES _____

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA COURT OF APPEAL
INDICTMENT NO: 2010-GS-10-4182

THE APPELLANT'S BRIEF
EXHIBIT A
November 6, 2013

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

ERICA BUTTS, APPELLANT

GROUND (1) The Appellant States that counsel was Ineffective in her Representation and Presentation of her case. The Appellant states that she was prejudice by counsel's legal advice on the merits of entering her Guilty Plea... the Guilty Plea was based on a Promise of 20 years. This Brief is as follows

The counsel was Ineffective for Failing to have the Guilty Plea Agreement signed and enter as evidence of proof, that the solicitor made an agreement to a cap sentence of (20) years in exchange for the Guilty Plea.. Quoting case Law. Sherry-V-State, 300, S.C. 115;386,5,E. 2d. 624. In- Cherry-V-State,

The Supreme Court held that counsel's conduct was below the Realm of Professional conduct and that the Petitioner was Prejudice by counsel's performance.

GROUND (2) LIMINE (Guilty Plea Agreement) Quoting-GIBSON-V-STATE, The Supreme Court, held that Gibson, Guilty Plea was Involuntary, because the Prosecution failed to Informed Applicant and his counsel, than an (Eye-Witness) changed her story after being brought to the crime scene and confronted about the obstructed.. The Appellant states that she

was prejudice by the counsel's failure to Informed the Court on the onset and during her closing argument's that a Plea Agreement was established by both parties, on a 20 year Plea Agreement.

What the counsel on agreement with the solicitor did was entered a GAG ORDER to conceal the PLEA AGREEMENT of 20 years, and concluded to Prosecute the Appellant without informing the court of the Plea deal. Pursuant to 18 U.S.C.A. 1503, 1504 Model Penal Code 224, 4, 1506, 2071, 2073, It is a crime under Federal Statute, for a person, knowingly that, he has no privilege to do, to deceive or injure anyone or to conceal any wrong doing, to tamper with A Plea Agreement and corruptly Persuasive the Appellant to Plead Guilty knowing that the Plea was not officially signed, but was based on deceit. The Autopic evidence of the plea agreement was LIMINE out of court; making it appear as the Appellant was Pleading Guilty without any negotiation or Plea Agreement. For Example: In ANDERSON-V-STATE, 342 S.C 54, 535. S.E.2d 649.(2008) The Supreme Court, held that, a defendant indicted for murder may accept Plea bargain and Plead Guilty to voluntary manslaughter, even though, the facts do not support a lesser charge. The Appellant's Guilty Plea cannot be founded as freely and voluntarily giving of the Appellant knew she would have received a life sentence, she would've gone to trial, and if she had known that, her Guilty Plea was invalid, based on the fact, that she did not sign a Plea Deal, she would not have Plead Guilty. Because, solicitor and counsel concealed the Plea Agreement and failed to disclose of the Plea Agreement in open court, the Plea is therefore deemed involuntary, based on Promise and advice of counsel, to plead guilty.

Quoting Case Laws

Brady-v- Maryland. 373 U.S. 83.S. CT, 1194,10 L. ED. 2d. 215 In-Brady-v-Maryland., The Supreme Court ruled, that Guilty Plea was rendered Involuntary based on the State's Failure to disclose exculpatory evidence.

Quoting Gibson-v-State: Quoting Rollinson-v-State Om Rollinson, the defendant Plead Guilty to second offense drug charge at the same time, as first offense charge as a part of the plea negotiation, to drop three other charges.

Chapter 13 21 of title 24: 1/4 time Parole eligibility, the counsel was ineffective for failing to raise the issue of this statute, which is a subchapter relating to criminal domestic violence chapter under this statute, the Appellant was entitled to have her charge reduce to . C.D.V as well as, (1/4) one fourth time with parole eligibility every year which should've been a factor on her Guilty Plea.

Final Conclusion:

The Appellant's counsel violated her 6th and 14th Amendment State and Federal civil protective rights to due process and equal protection under the law. Both co-defendants were represented by the state's Public Defender's office. Therefore charges should've been of a lesser included the above.

Sincerely,

Erica Butts

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA COURT OF APPEAL

INDICTMENT NO:2010-GS-10-4182
APPELLANT NO:2013-000218
A GUILTY PLEA CONTRACT
EXHIBIT B

STATE OF SOUTH CAROLINA, RESPONDENT
VS.
ERICA BUTTS, APPELLANT

The Appellant submits the Guilty Plea Contract as fact finding and mitigating evidence of fact of the Guilty Plea being made in violation of Due Process of Law.

The Appellant's Guilty Plea was based on Defense Counsel, Solicitor in acting over the case, with mother as third party to enhance the Guilty Plea; However, the agreement wasn't in writing, It was based on a promise of here say evidence, Pursuant to F.R.C.P. Rule 801 a and enter in open court as evidence to show that the Guilty Plea was agreed upon by all parties, as well as, with the Guilty Plea being signed, dated, and stamp with the clerk of courts official letter head and seal in lieu of it being in Discovery evidence. Absence of Guilty Plea in the Discovery evidence used at trial, would be of a fact, that the Guilty Plea was coerced.

Sincerely,

Erica Butts

SWORN TO AND DESCRIBE BEFORE ME
ON THIS 1ST DAY OF NOVEMBER 2013
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES _____

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA COURT OF APPEAL

INDICTMENT NO:2010-GS-10-4182
APPELLANT NO:2013-000218

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

ERICA BUTTS, APPELLANT

AFFIDAVIT OF SERVICE

I Erica Butts declare under penalty of perjury that I have served the attorney General's office, with a motion to amend or supplemental of Record and Pleadings Pursuant to S.C.R.A.P. Rule 211 b.

Sincerely,

Erica Butts

SWORN TO AND DESCRIBE BEFORE ME
ON THIS 1ST DAY OF NOVEMBER 2013
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES _____

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA COURT OF APPEAL

INDICTMENT NO:2010-GS-10-4182
APPELLANT NO:2013-000218
MOTION TO ALTER THE JUDGEMENT
~~PURSUANT TO FEDERAL R.C.P.~~
RULE 59A; F.R.C.P. RULE 60

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

ERICA BUTTS, APPELLANT

The Appellant files this motion to alter the Judgment. Pursuant to Fed. R.C.P. Rule 59
@:Federal Rule C.P Rule 60.

The Appellant can show that she was deprived of her State and Federal Civil Protective
Rights to adequate representation, in the preparation and the Presentation of her Defense.

Defense Counsel's breach of the Attorney and Client Doctrine was violated. Counsel
failed to use the Bill of Rights to Protect and represent her client to the best of her ability,
Counsel was deficient in her performance to the fact, that such as falls within the realms of
Prejudice, and a grossly manifestation of denial of Due Process of Law. The United States
Supreme Court held that breach of Plea Agreement or if Defendant plead guilty on advice of
counsel and the government breaks its promise, then the Guilty plea, would've been made under
false Pretense absent a Plea Agreement being signed by the Defendant, Counsel and Prosecution.

SWORN TO AND DESCRIBE BEFORE ME
ON THIS 1ST DAY OF NOVEMBER 2013
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES _____

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA COURT OF APPEAL

NOTICE OF INTENT TO APPEAL

PURSUANT S.C.A.C.R

RULE 203

INDICTMENT NO:2010-GS-10-4182

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

ERICA BUTTS, APPELLANT

The Appellant files this Notice of Intent to Appeal, Guilty Plea Sentence. Appealing the Honorable Judge, Deadre L. Jefferson's Sentence of life Imprisonment.

Sincerely,

Erica Butts

Chief Solicitor
101 Meeting Street 5th Floor
Charleston, SC 29401

South Carolina Court Of Appeals
P.O Box 11629
Columbia S.C 29211

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA COURT OF APPEAL
APPEAL FROM CHARLESTON COUNTY
HONORABLE DEADRE L. JEFFERSON

~~INDICTMENT NO: 2010-GS-10-4182~~

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

ERICA BUTTS, APPELLANT

CERTIFICATE OF SERVICE

The Appellant hereby certify under penalty of perjury that, a true copy of the notice of Intent of Appeal has been served upon opposing counsel, throughout the U. S Mail on this 6th Day of November 2013, at his office Solicitor. 101 Meeting Street 5th Floor Charleston, SC 29401.

Sincerely,

Erica Butts

SWORN TO AND DESCRIBE BEFORE ME
ON THIS 1ST DAY OF NOVEMBER 2013
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES _____

EXHIBIT B
PLEA AGREEMENT
CASE #2010-GS-10-4182
November 6, 2013

~~STATE OF SOUTH CAROLINA, RESPONDENT~~

VS.

ERICA BUTTS, APPELLANT

Agreement made this 6th day of June 2013 between and among the state of South Carolina as represented by Deputy Solicitor 5th Judicial circuit and the defendant.

In consideration of the mutual agreement promises made herein the parties hereto agree as follows:

1. The defendant agrees to Plead Guilty to the following Indictment Both the state and defendant remains free to be heard concerning sentencing within this range
2. Upon the court acceptance of the Defendant guilty Plea as detailed in Paragraph 1. Sentencing shall be deferred until the prosecution of co-defendant is completed.
3. In exchange for defendant's Guilty Plea. The state agrees to dismiss the following Indictment
4. The defendant agrees to provide complete and thorough cooperation to the solicitor's office and all involved law enforcement agencies, including giving true and honest testimony, at any Appellate Judicial proceeding.
5. The defendant further agrees that her hand written statement, given to Investigator in her attorney's presence is true & correct.
6. Further, If deem appropriate by the prosecutors this agreement is contingent upon defendant passing a polygraph (Lie Detector) test to the satisfaction of the Prosecution,

Page 2
Plea Agreement
November 6, 2013

7. The state defendant argue that this agreement remains, enforceable, in the event that the charges against the co-defendant's are resolved in such away, as to not require the testimony of the defendant provided by the defendant.
8. In the event that the defendant withdraws her plea the defendant's Plea Agreement shall be vacated and the state will pursue all charges it deems appropriate. The defendant cannot withdraw her plea, after she formally enters her guilty plea in General Session Court.
9. In the event that the defendant does not comply with the conditions of this plea agreement, at anytime following her guilty plea to the charges listed in paragraph (2) her guilty plea shall remain in effect and she will be subject to the full penalty of each charge in the discretion of the court, upon such breach of this plea agreement, the maximum (25) years cap will no longer apply and the state may restore all Indictments dismissed pursuant to this Plea Agreement and prosecute the defendant accordingly.
10. The parties hereby argue that this Plea agreement contains the entire agreement to the parties and this agreement may be codified only in writing

Sincerely,

Erica Butts

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA COURT OF APPEAL

STATEMENT OF FACT

The Appellant Plead Guilty on advice of counsel. Appellant's counsel informed her that she would get her a deal, 20 years cap for her Guilty Plea. The Appellant was told by counsel, to enter an Alford Plea, because of Co-defendants Guilty Plea. Basically, the attorney manipulated the Appellant to Plead Guilty, without signing the proper Guilty Plea, Agreement by the State. Therefore, the Guilty Plea was render involuntary and was based on fraud by attorney, who used the Appellant's mother as a co-partner to obtain a Guilty Plea. However, there is no contractual agreement signed. The Appellant's counsel, failed to ask for a modification on the 20 years whereas the Appellant would be allowed to have a yearly parole hearing.

Final Conclusion:

Attorney violated the Appellant's 14th Amendment Rights to due process of law and falsely represented her, and deprived her of fundamental fairness guaranteed to her under the federal Real, by the U.S Constitution counsel failed to inform the trial Judge of the Plea Agreement made by the state, in lieu of the Guilty Plea. Applicant was prejudice by counsel's ineffective assistance.

Sincerely,

Erica Butts

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

In the General Sessions Court
5th Judicial Circuit
Exhibit C
November 6, 2013

ERICA BUTTS, APPELLANT

AFFIDAVIT OF DEFENDANT FOR
GUILTY PLEA

The defendant states to the court, that the Defendant wants to Plead Guilty to the following charges.

A.B.H.A.N (C.D.V Chapter 13 21 of Title 24) (17-20-30) Intoxicants

The negotiated Plea Agreement is as Follows:

Time Served (20) Years

In Connection with the Plea, I certify that the answers to the following questions are true,

- 1) Have the charges been explained to you by your lawyer and do you understand the element of every charge?
- 2) Have you and your lawyer discussed the possible defense if any to the charge?
- 3) Are you satisfied with your lawyer legal service?
- 4) Do you understand that, you have a right to Plead Not Guilty and be tried by a Jury?
- 5) Do you understand that you have a right to remain silent, which is the right against self Incrimination?
- 6) Do you understand that you have the right to cross examine witnesses against you?
- 7) Do you understand that you have a right to a jury trial for a jury to determine whether the state has proved beyond a reasonable doubt?

Page 2
November 6, 2013

- 8) Do you understand that, if you plead Guilty you have a right to appeal the sentence within 10 days.

Sincerely,

Erica Butts

STATE OF SOUTH CAROLINA *IN THE COUNTY OF GENERAL SESSION*
COUNTY OF *Spartanburg* *accepted & paid 11/17/11* *IN THE COURT OF GENERAL SESSION*
STATE VS *Erica Mae Butts*

AKA _____
Race: **BLACK** Sex **F** Age: **25**
DOB: **86** SS# _____
Address: _____
City, State, Zip: **SUMMERVILLE, SC 294830000**
DL#: _____ SID#: **SC01913109**

INDICTMENT/CASE#: **2010GS1004123**
A/W#: **J093883**
Date of Offense: **11/4/2009**
S C Code § **16-03-0085(A)(1)(B)(1)**
CDR Code # **2356**

SENTENCE SHEET

ALFORD

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: **HOMICIDE BY CHILD ABUSE OR NEG**

Under R.C.V. ALFORD CONVICTED OF or PLEADS

in violation of § **16-03-0085(A)** of the S C Code of Laws, bearing CDR Code # **2356**
 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.

ATTORNEY: *Elizabeth Gordon* *16952* *Erica Butts* *MUS* *63773*
Gordon, Elizabeth 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 *Life* days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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 Del. Waiver 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: _____

*Fines:

§ 14-1-206 (Assessments 107.5%)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
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/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other _____

Appointed PD or appointed other counsel,
§ 47 12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk: *Whitney Howard*
Court Reporter: *Leahy*
SCCA217 (03/2011)

Presiding Judge: *A L Jaffe*
Judge Code: *2128*
Sentence Date: *11/3/11*

ESG20091106558

DOCKET NO. 2010GS1004123

WITNESSES

Shannon Sharp
Summerville Police Department

The State of South Carolina
County of Charleston

AGENCY CASE NUMBER

0988658

COURT OF GENERAL SESSIONS

June Term 2010

ARREST WARRANT NUMBER

093883

THE STATE

DATE OF ARREST

November 4, 2009

vs.

ERICA MAE BUTTS
DOB: 1986-
B/F

ACTION OF GRAND JURY

FILED
JUN 08 2010

Foreperson of Grand Jury
Date JUN 08 2010

Indictment for

Homicide by Child Abuse

VERDICT

Foreperson of Petit Jury
Date

INDICT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on June 7, 2010 the Grand Jurors of Charleston County present upon their oath.

Homicide by Child Abuse

That in Charleston County, South Carolina, on or about November 3, 2009, the Defendant, ERICA MAE BUTTS, did cause the death of [REDACTED] MINOR [REDACTED], a child who was under the age of eleven years at the time of her death, and that the defendant did cause the death of said child, in Charleston County, while committing child abuse or neglect, and the death of said child occurred under circumstances manifesting an extreme indifference to human life, in violation of Section 16-3-85, 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


ELIZABETH GORDON
ASSISTANT SOLICITOR

ARREST WARRANT

J-093883

STATE OF SOUTH CAROLINA

County/ Municipality of SUMMERVILLE

THE STATE against

BUTTS, ERICA MAE

Address: SUMMERVILLE SC 29483
Phone: [redacted] SSN: [redacted]
Sex: F Race: B Height: 500 Weight: 135
DL State: SC DL#: [redacted]
DOB: [redacted] Agency ORI #: [redacted]
Prosecuting Agency: SUMMERVILLE
Prosecuting Officer: SHANNON SHARP
Offense: HOMICIDE BY CHILD ABUSE - 18-3-85
Offense Code: 18-3-85
Code/Ordinance Sec: 18-3-85

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of DORCHESTER 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 ERICA MAE BUTTS on 11/03/2009

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

T.M. FINUCAN
300 W 2ND N. ST.
SUMMERVILLE SC 29483

STATE OF SOUTH CAROLINA

County/ Municipality of SUMMERVILLE

Personally appeared before me the affiant SHANNON SHARP who being duly sworn deposes and says that defendant BUTTS, ERICA MAE did within this county and state on 11/03/2009 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of SUMMERVILLE) in the following particulars:

DESCRIPTION OF OFFENSE:
HOMICIDE BY CHILD ABUSE - 18-3-85

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]

STATE OF SOUTH CAROLINA

County/ Municipality of SUMMERVILLE

Affiant's Address: 300 W 2ND N ST
SUMMERVILLE SC 29483
Affiant's Telephone: 843-875-2010

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 11/03/2009 defendant BUTTS, ERICA MAE

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

DESCRIPTION OF OFFENSE:
HOMICIDE BY CHILD ABUSE - 18-3-85

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 [Signature] Judge's Address: 300 W 2ND N ST
SUMMERVILLE SC 29483
(L.S.) Judge's Telephone: 843-875-2010
Signature of Issuing Judge Issuing Court: Magistrate Municipal Circuit
Judge Code: 101

ORIGINAL

AFFIDAVIT
Form Approved by U.S. Attorney General 4-18-2003

Bail set by
Linda Lombard

Judge _____

Date **NOV 05 2005**

Type and Amount **NO BOND**

Name of Surety _____

PRELIMINARY HEARING held by

Judge _____

Date _____

Defense Attorney _____

Defendant _____

2005 NOV 14 44
DISPOSITION before
JULIE J. WYSTRING
CLERK OF COURT
BY _____

Judge _____

Date _____

(indicate jury trial, bench trial, plea, not pros, etc)

Disposition _____

Sentence _____

JURORS

CHAUCKLER

CR. DATE **10995-1**

CASE # **6763**

REPORT GROUP **2356**

ESP. CODE **7900**

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

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TOWN OF SUMMERVILLE)

AFFIDAVIT
WARRANT#J-093883
OCA # 09-88658

Personally appeared before me, on Det. S. Sharp, first being duly sworn, deposes and says that

ERICA MAE BUTTS

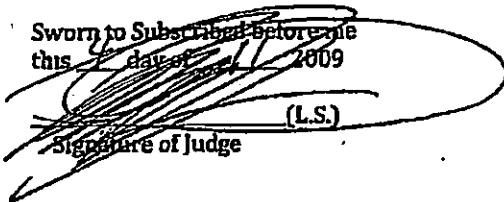
did within this town, county and state on November 3rd, 2009, violate the criminal laws of the State of South Carolina in the following particulars:

**DESCRIPTION OF OFFENSE
HOMICIDE BY CHILD ABUSE
16-3-85**

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

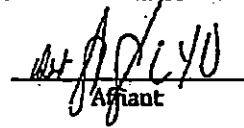
THAT ON NOVEMBER 3RD, 2009, LOCATED AT [REDACTED], IN THE TOWN, COUNTY AND STATE AFORESAID, THE DEFENDANT, ERICA MAE BUTTS, DID WILLFULLY, UNLAWFULLY, AND FELONIOUSLY VIOLATE STATUTE 16-3-85 OF THE SOUTH CAROLINA CODE OF LAWS, (1976) AS AMENDED, HOMICIDE BY CHILD ABUSE, IN THAT THE DEFENDANT DID STRIKE THE MINOR MINOR [REDACTED], WHO IS THREE YEARS OLD, MULTIPLE TIMES ABOUT HER BODY WHILE IN HER CARE, CUSTODY AND CONTROL WHICH RESULTED IN THE MINOR'S DEATH. FACTS TO PROVE THE ABOVE ARE THAT ON NOVEMBER 3RD, 2009 THE DEFENDANT'S MOTHER, LADAWN BUTTS DIALED 911 REPORTING THAT THE MINOR WAS NOT BREATHING. UPON EMERGENCY SERVICES ARRIVAL, THE MINOR WAS IN FULL ARREST AND WAS TRANSPORTED TO SUMMERVILLE MEDICAL CENTER. WHILE AT THE SUMMERVILLE MEDICAL CENTER THE MEDICAL STAFF AND AFFIANT OBSERVED SEVERAL LACERATIONS AND CONTUSIONS ABOUT THE MINOR'S CHEST, ABDOMEN, LEGS, ARMS, FEET AND BACK. THE MINOR ALSO HAD CONTUSIONS ON THE RIGHT SIDE OF HER HEAD AND AT THE BACK OF HER HEAD. THE DEFENDANT PROVIDED A STATEMENT DETAILING THE EVENTS OF HER AND THE MINOR BEING THE ONLY PERSONS AT THE RESIDENCE ALL DAY AND HER "WHIPPING" THE MINOR'S "ASS" MULTIPLE TIMES WITH A BELT AFTER SHE URINATED ON THE FLOOR, CAUSING LACERATIONS AND CONTUSIONS ABOUT THE MINOR'S BODY. THE DEFENDANT ALSO STATED THAT THE MINOR STRUCK HER HEAD MULTIPLE TIMES WHILE FALLING IN THE BATHROOM AT HER RESIDENCE. THIRTY MINUTES AFTER THE LAST FALL THE DEFENDANT STATED THE MINOR'S BREATHING BECAME "SHALLOW" AND SHE CALLED L. BUTTS IN GOOSE CREEK TO COME TO HER RESIDENCE (NOT DISCLOSING THE INCIDENT) INSTEAD OF SEEKING MEDICAL ATTENTION FOR THE MINOR. THE MINOR WAS PRONOUNCED DECEASED AT THE SUMMERVILLE MEDICAL CENTER AND AN AUTOPSY WAS PERFORMED ON HER BY MUSC FORENSIC PATHOLOGIST ELLEN REIMER, MD, JA. ACCORDING TO REIMER, THE MINOR SUSTAINED FULL BODY BLUNT FORCE TRAUMA WHICH RESULTED IN HER DEATH. ALL OF WHICH AGAINST THE FORM OF THE STATUTE IN SUCH CASES MADE AND PROVIDED.

Sworn to Subscribed before me
this 4th day of Nov 2009



(L.S.)

Signature of Judge



Affiant

Address: 300 West 2nd North Street
Summerville, SC 29483
Phone: (843) 851-4100

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
)	
)	2014-CP-10-2518
)	
Erica Butts, #348484,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed April 17, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the June 2010 term of the Charleston County Grand Jury for homicide by child abuse (2010-GS-10-4123). The Applicant was represented by Melissa Gay, Esquire.

On August 25, 2011, the Applicant pled guilty before the Honorable Roger Young. On November 3, 2011, the Honorable Deadra L. Jefferson sentenced the Applicant to confinement for a period of life without parole.

The Applicant filed a timely Notice of Appeal.¹ On December 23, 2013, the Court of Appeals dismissed the Applicant's appeal after reviewing the explanation for appealing the guilty plea provided by plea counsel. The Remittitur was issued on January 8, 2014.

¹ After the filing of the Notice of Appeal and prior to the Court of Appeals dismissing the Applicant's appeal, the Applicant filed a post-conviction relief application (2012-CP-10-7220). This application was dismissed with prejudice based on the Applicant's pending appeal on July 2, 2013 by the Honorable Roger Young.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea and sentencing transcripts. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. Counsel submitted defective appeal.
2. Involuntary guilty plea.
 - a. Guilty plea agreement violated.
 - b. Guilty plea must be signed.
3. Ineffective assistance of appellate counsel.

III.

In this application, the Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either 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, the 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.

The Applicant alleges that she did not plead guilty freely and voluntarily. The Respondent submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Bovkin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The Respondent submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The Respondent submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C: 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such. Accordingly, this allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Lastly, the Applicant alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy..." Jones, 463 U.S. at 754, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. *See* Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. *See* Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ERICA BUTTS, #348484

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-10-2518

AFFIDAVIT OF SERVICE BY MAIL

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

Rodney D. Davis, Esquire
 Lowcountry Law Office
 4000 Faber Place Drive, Suite 300
 Charleston, South Carolina 29405

DATED this 27th day of March, 2015



Sara B. Moore, Legal Assistant
 For Respondent

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STATE OF SOUTH CAROLINA)	
)	Court of Common Pleas
COUNTY OF CHARLESTON)	Case No, 2014-CP-10-02518
<hr/>		
ERICA BUTTS,)	
Applicant,)	
vs.)	Transcript of Record
STATE OF SOUTH CAROLINA,)	
Respondent.)	DATE: January 30, 2018
<hr/>		

B E F O R E:

THE HONORABLE MAITE MURPHY

A P P E A R A N C E:

RODNEY DUANE DAVIS
Attorney for the Applicant

JOHNNY E. JAMES
Attorney for the Respondent

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

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1 THE COURT: Are you ready, Mr. Davis?

2 MR. DAVIS: I think I'm okay. If I need more time, I
3 will certainly ask for it.

4 MR. JAMES: If it please the Court, Your Honor. This
5 is the matter of Erica Butts vs. The State of South Carolina.
6 That's Docket No. 2014-CP-10-02518. Ms. Butts is present here
7 in the courtroom today and is represented by Mr. Rodney Davis,
8 Esquire.

9 Ms. Butts was indicted at the June 2010 term of the
10 Charleston County Grand Jury for homicide by child abuse on
11 August 25th, 2011. She pled guilty before the Honorable Roger
12 Young and was thereafter sentenced on November 3rd, 2011, by
13 the Honorable Deadra L. Jefferson.

14 Judge Jefferson, after a rather extensive sentencing
15 hearing of Ms. Butts, as well as her co-defendant, sentenced
16 Ms. Butts to life without parole. The applicant thereafter
17 appealed. That appeal was dismissed after review of plea
18 counsel's reason provided for the appeal.

19 Your Honor, my understanding is that applicant's
20 allegations are today amended to reflect an allegation of
21 ineffective assistance of plea counsel in that plea counsel was
22 deficient for failing to properly investigate and develop a
23 defense based on battered spouse syndrome.

24 Your Honor, based upon that understanding of what the
25 allegation is here today, the State respectfully makes a

1 standing motion to dismiss this application on the basis that
2 battered spouse syndrome is not applicable where the victim is
3 not the abuser, but, rather, a defenseless child in the care of
4 the accused. Because the victim was not the abuser, was not
5 somebody who could have been specifically directed to say, hey,
6 kill that person, Your Honor, it's not relevant to the
7 allegations that are set forth today.

8 I have sent to the Court and provided to opposing
9 counsel some case law out of other jurisdictions, some of which
10 is binding authority, and some of which is not binding
11 authority, provided samples of when courts in other
12 jurisdictions had to grapple with one or part of the issue that
13 is before the Court today.

14 The cases that I have provided are *People v. Daniels*,
15 2001 Westlaw 119-1114. That is an appeal out of the State of
16 California. I will note that even in California, that is not
17 binding case law. It is an unpublished opinion. However, in
18 that case, the State of California decided that the trial judge
19 did not err in denying the admission of battered spouse
20 syndrome. Evidence in a case where, much like this one, the
21 defense was that the death of a child in the care of the
22 defendant could be justified by the abuse that that defendant
23 suffered at the hands of a co-defendant.

24 Your Honor, I've also provided the Court and provided
25 to opposing counsel the case of *Brewington v. State*. That is

1 98 So. 3rd 628. That is a 2012 case out of Florida. That is
2 binding presently in the state of Florida, Your Honor. In that
3 case, that mostly deals with the same idea, the idea of a
4 battered spouse defense, where the victim is a child in the
5 care of the defendant. And in that case, the court considered
6 under the Frye test and determined that constrained by Frye,
7 that battered spouse syndrome was not applicable in those
8 circumstances.

9 I will, however, note that the court in that case was
10 a little bit more understanding to the proposition and noted a
11 number of other circumstances where battered spouse syndrome
12 has come up, not necessarily to justify the killing of a
13 third-party, but to justify, for example, a defendant's
14 propensity to change their story due to the continued existing
15 abuse of either a co-defendant or of some other close relative.

16 But, Your Honor, since the victim in this case was a
17 child, a small child capable of no abuse, directly in the care
18 of the applicant -- whose abuse came directly at the hands of
19 the applicant, Your Honor, the State's position is that to
20 invoke battered spouse syndrome, to say, my co-defendant beat
21 me and, therefore, I shouldn't be subject to the same
22 punishment for killing this child, is preposterous. And it
23 frankly beggars belief.

24 And so, Your Honor, given that that is the only issue,
25 I would respectfully request that this Court find as a matter

1 of law that any conceivable, developable defense for battered
2 spouse syndrome would not have been relevant at the original
3 potential trial. And, therefore, there's no deficiency on the
4 part of counsel. And, thereafter, as a matter of law, there's
5 no reason to go forward with the rest of the hearing today.

6 Your Honor, I will note, additionally, as a separate
7 ground for the motion to dismiss, that in the sentencing
8 transcript dated November 3rd, 2011, on pages 30 to 31, the
9 original plea counsel noted on the record the possibility of
10 trying to create a battered woman syndrome defense. And I will
11 quote directly from the transcript here, Your Honor: In my
12 practice, I tried very hard to expand on that -- referring back
13 to the abusive relationship between applicant and her then
14 co-defendant Ms. Shaneda Cunningham -- to see if my client
15 would open up to me about some stuff that maybe I could provide
16 to the psychologist to help her create maybe a battered woman
17 syndrome defense.

18 And this is on the following lines: Erica would never
19 do that. She would never tell me anything bad about Ms.
20 Cunningham. She loves her and has loved her for years.

21 Your Honor, as a matter of fact, as well it's clear on
22 the face of the record before the Court, it shows that original
23 plea counsel did endeavor to create the defense that is now
24 proposed by applicant today. She did endeavor to create that
25 defense that she was supposedly deficient for not trying to put

1 together. And that, ultimately, she was frustrated and
2 defeated in that effort by the actions of the applicant.

3 And so on that separate ground, I would also request
4 that because the facts of the transcript are not reasonably in
5 dispute, that the application for post-conviction relief be
6 dismissed. Thank you.

7 THE COURT: Mr. Davis.

8 MR. DAVIS: If I can work backwards, Judge. I believe
9 we can proffer testimony now if you need me. But part of the
10 influence and effects of the psychological abuse dealt with by
11 a battered spouse and this syndrome leads to difficulty in
12 sharing that information, either with the attorney or with a
13 doctor. I have both our expert here to testify about that
14 issue. I have Ms. Gay. I think she is a State's witness, but
15 certainly we can talk to her to explain -- and Erica can
16 certainly explain the issue of why we can lay forward that
17 potential defense.

18 Whether it would be successful or not, we will see.
19 This was a guilty plea. The burden today is ineffective
20 assistance of counsel and the outcome would have been
21 different. We will be presenting evidence to both of those
22 prongs and show that had she known, Erica known that this was a
23 potential defense then, she would have taken advantage of it.

24 Partial blame very well may be with Erica for not
25 divulging the information necessary to establish this defense.

1 But part of the fault is also on Ms. Gay, because, clearly,
2 it's been expressed now. We have an expert that met with Erica
3 more than once, and has gathered information necessary, in her
4 expert opinion, to establish this defense.

5 So simply because it wasn't relayed then and it is
6 now, that's part of the factual basis of this hearing. So we
7 would argue that's not sufficient to stop this before the
8 merits.

9 Secondly, as to the two cases, certainly, we
10 appreciate the attorney general. We both -- this is a very
11 limited area of law. The two cases that the attorney general
12 provided, one is an unpublished opinion from California. I
13 think that bears the weight that should have on this process.

14 The second one is a case, state case out of Florida.
15 Basically, as they admitted at the end, the State admitted at
16 the end, ultimately, it was blocked there because it did not
17 pass the Frye standard for scientific reliability. That was
18 the reasoning there. In that very case, as the State
19 conceded -- Judge, forgive me, I'm not sure which page the
20 order is from. But some jurisdictions have held battered woman
21 syndrome admissible in analogous circumstances, where there's a
22 third-person victim, not the other spouse.

23 Thankfully, my state was Virginia. My original state
24 is the first one listed. But it goes on to list West Virginia,
25 Georgia, Arizona, another one from Georgia, it appears.

1 There's no such cite to a South Carolina case.

2 So we appreciate the theoretical argument of the
3 State, but there's nothing binding in South Carolina that
4 prevents this from going forward. And, ultimately, Judge, in a
5 PCR action, especially one that arises from a guilty plea, the
6 crux of our argument is this. Erica pled guilty. It was an
7 *Alford* plea. There was a second indictment for the second
8 subsection, either physically did it or aided and abetted. She
9 was charged under both, two separate charges, both carrying 20
10 to life. The *Alford* plea, one of those was dismissed before
11 the plea. She pled guilty under *Alford*.

12 As the record even indicates, this opportunity to
13 present the defense at trial of a battered spouse was not
14 available to Erica at the time. And we believe that the
15 majority of that blame has to be on the attorney preparing and
16 presenting defense and other alternatives.

17 I believe her testimony today will be, had her
18 attorney elicited this evidence that now Dr. Veronen and their
19 expert has, and she knew that this was an option, an option to
20 lay out to the jury, similar to any other defense, that the
21 jury may very well say, we just don't believe it. But it is a
22 valid potential defense.

23 And so our burden today is, who is to blame? And
24 there will be testimony on that. And, ultimately, you will
25 decide. And would the outcome have been different? Would she

1 have taken a risk? If the State believes this is a flight of
2 fantasy, so be it. But that is the individual defendant's
3 right to have their constitutional right protected by forcing
4 the State to prove it and present any potential defenses they
5 might have.

6 So since it's not barred by either one of the cites
7 the State can provide, we would argue it's an available defense
8 certainly for purposes of the determination of whether she
9 would have chosen a different outcome and foregone the plea
10 offer and actually gone to trial.

11 THE COURT: Here's what we will do. Out of interest
12 of time, obviously, I want to make sure that we're respectful
13 of everyone's time. And I certainly understand your motion,
14 Mr. James. I don't think it's as a matter for right now. I'm
15 going to take that under advisement and review the law
16 applicable to this case.

17 But, Mr. Davis, I'm going to allow you an opportunity
18 to present what you have to the Court so I can properly review
19 and be fully informed as to what the testimony out there is,
20 what your client is claiming.

21 So you may proceed.

22 MR. DAVIS: I've talked to her about it, but if we
23 could just briefly, she has a life sentence, but there's a
24 charge that was dismissed. So if you could just briefly go
25 over with her on the record.

1 THE COURT: Ms. Butts, if you please stand.

2 ERICA BUTTS,

3 having been duly sworn, testifies as follows:

4 THE COURT: Ms. Butts, I understand that your attorney
5 has gone over with you the risks and potential benefits of you
6 proceeding with this hearing today. Do you understand what
7 those are?

8 MS. BUTTS: Yes, ma'am.

9 THE COURT: Have you had enough time to talk to your
10 attorney about that? Do you understand that if a PCR is
11 granted in your case and your application is granted, that the
12 process would start all over again? So although you received a
13 life sentence, I understand that another charge was dismissed.
14 And you would be facing both of those charges. Do you
15 understand that?

16 MS. BUTTS: Yes, ma'am.

17 THE COURT: So it wouldn't guarantee you any type of
18 reduction in your sentence or anything of that nature. Do you
19 understand that?

20 MS. BUTTS: Yes, ma'am.

21 THE COURT: How far did you go in school, ma'am?

22 MS. BUTTS: I have my GED.

23 THE COURT: And you can obviously read and write and
24 understand the English language?

25 MS. BUTTS: Yes, ma'am.

1 THE COURT: And have you ever been treated for the
2 abuse of drugs or alcohol or mental illness?

3 MS. BUTTS: No, ma'am.

4 THE COURT: And do you have any reason to believe that
5 you don't understand what's going on here today? You fully
6 understand what you are doing here today?

7 MS. BUTTS: Yes, ma'am.

8 THE COURT: And based upon your conversations and the
9 understanding of your rights, do you wish to go forward with
10 this application here today?

11 MS. BUTTS: Yes, ma'am.

12 THE COURT: Do you have any other questions for your
13 attorney?

14 MS. BUTTS: No, ma'am.

15 THE COURT: You may proceed.

16 MR. DAVIS: Thank you very much, Your Honor.

17 We would call Lisa Gay.

18 MELISSA GAY,

19 having been duly sworn, testifies as follows:

20 DIRECT EXAMINATION

21 BY MR. DAVIS:

22 Q. Ms. Gay, we are going to dive right into the issue.
23 The State in their motion talked about in the transcript at the
24 sentencing where you indicated that you were searching for any
25 way to help Erica and searching for the potential defense of

1 battered spouse, I believe in the transcript maybe battered
2 woman syndrome defense. Can you tell Judge Murphy what it was
3 that raised your concern about that potential defense back when
4 you represented Erica?

5 A. Yes. Okay. So these were two girls -- I had a little
6 background history from them. They were about 15, I think,
7 when they got together. They were in a lesbian relationship.
8 They had been together for years. They came -- Erica came down
9 here to live. The other co-defendant was on parole in
10 Michigan. And she broke her parole, basically, became a parole
11 violator, and followed Erica down here. And then she had an
12 eight-year-old child. And so they were living down here. As I
13 said, the co-defendant was -- absconded from supervision in her
14 state.

15 They had a friend that had a small child. She was
16 three. She was a young mother. And so she had -- they were
17 all friends. And she had asked them to take care of her child.
18 So the child was brought down here to stay with them. And
19 when -- after this incident occurred, the child basically was
20 beaten with a hanger by the co-defendant. And the child's
21 organs failed, I think, and the child died.

22 And so it was my understanding that after the child
23 died, they called Erica's mother, who called 911. And, you
24 know, then it all -- the arrest occurred.

25 And I found out really more from her family, not so

1 much from Erica, about a long history of an abusive
2 relationship, lots of incidents of violence towards Erica,
3 towards other people.

4 The co-defendant was on parole for assaulting her own
5 mother. She had gone to prison for it. And was -- her mother
6 had told me that there had been situations where the police had
7 been called different times when they lived up -- I think it
8 was Michigan they were from. And so I had a good knowledge of
9 the fact that -- I had also met both people. I met my client,
10 who was a docile, sweet person, and had been in court with the
11 co-defendant, who was not at all docile and was very
12 aggressive.

13 And so, you know, just appeared to me that there was
14 this situation where this other girl, from what I've been told
15 by family and friends, that dominated her a lot.

16 Things were happening in the jail while they were
17 there. The co-defendant had, I think, beat up Erica or
18 attacked her. She had also beat up and attacked other people
19 that Erica was trying to, you know, hang out with or be
20 friendly with. They were in the same jail, which was, I think,
21 a very big problem. And Erica tried to sort of distance
22 herself from her --

23 MR. JAMES: Objection. Hearsay if all of these things
24 were learned by Ms. Gay after the guilty plea.

25 THE WITNESS: This was all before the guilty plea.

1 THE COURT: This is pretrial detention after the child
2 was --

3 THE WITNESS: Yes, this is before the hearing, you
4 know, before the sentencing, before the plea. So over time --

5 MR. JAMES: My apologies. If I may expand upon my
6 objection, Your Honor. My objection is that -- normally, I
7 don't stand up and argue hearsay in the middle of a PCR
8 hearing, because so much of what the attorney may have heard
9 goes to the efforts that they had to prepare the defense for
10 their client. In this case, if these events didn't occur until
11 afterwards, if they don't go to preparation of the defense by
12 the client, then all of this testimony would be better brought
13 out through the applicant, not the attorney.

14 THE WITNESS: I'm just telling you what I
15 understood.

16 THE COURT: I think that's only relevant considering
17 how she represented her client. I will allow it.

18 MR. JAMES: Thank you.

19 THE WITNESS: So I had observed myself lots of docile
20 behavior from my client, noncommunicative behavior. She just
21 would not talk to me about situations that I had been -- I had
22 information from other sources that I tried to confirm with her
23 and she wouldn't tell me.

24 I did have her -- I believe I sent her to Dr. Waid.
25 And he talked to her. He told me, she won't talk to me, she

1 won't talk to me.

2 Q. Let's stop right there. What was the purpose of that
3 evaluation?

4 A. To try to see -- to give her an opportunity to talk to
5 somebody, to see if I could get some information that she
6 wasn't giving me. But the problem was, it wasn't the right
7 person. It wasn't the right type of person. Dr. Waid didn't
8 have the, I don't believe, the expertise or that to get to the
9 bottom of it. But I think the biggest thing that I did wrong
10 in the process is I didn't separate them. And I know now after
11 different things that once -- this is just a fact, once she got
12 to SCDC and was away from this girl, that her whole demeanor
13 changed from conversations with -- you know, my understanding
14 was that she really began to talk to you more and that things
15 began to develop more because she was no longer under the
16 influence of this girl. They were in the Charleston County
17 jail together. And the co-defendant was assaulting her. And
18 the co-defendant was assaulting friends of hers.

19 And she was -- this is just my opinion, but I believe
20 she was terrified of her. And I believe that she did not want
21 to turn on her or say that -- I mean, it was a fact that the
22 assault and the beatings that occurred with this child were
23 done by the other lady.

24 Q. For the record, Dr. Waid, white male?

25 A. Yes.

1 Q. For the record, the evaluation conducted came back and
2 was given to the court and delved into competency, ultimately,
3 evaluation?

4 A. Right. Yes. And also, there had been a history of an
5 assault by a male in her past. And I didn't even think about
6 that until you asked me, he was a white male. I mean, she was
7 absolutely not going to talk to him. As I said, I did not
8 contact the type of expert that has this expertise. I didn't
9 do that. And, you know, I don't even have a good excuse why,
10 except that it was timing and things like that.

11 You know, I tried to talk to her. I tried to get her
12 to have an outlet, to be able to express some of this. And,
13 unfortunately, I don't believe it was the right person.

14 But there was no question in my mind that this
15 co-defendant had, in fact, abused her many times, had some
16 police contact in the state of Michigan that her mother had
17 provided information about. I didn't get any of that. Just I
18 didn't think it was going to work out this way.

19 So I was working with Elizabeth Gordon thinking that
20 it was not going to work out this way. And I guess that's why
21 I didn't get the right expert.

22 Q. Ms. Gordon, the solicitor who prosecuted the case?

23 A. Yes.

24 Q. A couple housekeeping matters. Erica was charged
25 under both subsections of the homicide by child abuse, both in

1 committing the physical act and then aiding or abetting.

2 Basically, she was charged one count of each?

3 A. Yes. One was abuse and one was neglect, basically.

4 The other co-defendant got convicted of abuse. That was my
5 understanding. And then the subsection that we went under for
6 Erica was neglect.

7 Q. In fact, the co-defendant, Ms. Cunningham, pled guilty
8 just before Erica did under a proffer agreement? Do you recall
9 that?

10 A. Okay. I remember them being sentenced together, but I
11 am not so sure they did their pleas together. I don't remember
12 that.

13 Q. Let's jump to the obvious thing. There was no actual
14 help from the co-defendant, because this didn't go to trial?

15 A. No.

16 MR. DAVIS: And if you give me just one moment, Your
17 Honor. Your Honor, if you allow me one last -- I won't take
18 the time now to point out where there was a plea of the
19 co-defendant prior to Ms. Butts's plea, a proffer, but nothing
20 transpired beyond that.

21 You've talked about what you observed as far as the --

22 MR. JAMES: If I may interrupt, quickly. I would
23 direct the Court's attention to page 7 of the plea transcript
24 dated August 25th, 2011, lines 3 through 8. At the outset of
25 factual recitation by Ms. Gordon, she indicates: This is the

1 co-defendant of Shaneda Cunningham who pled in front of you
2 earlier this afternoon. That's line 4 and 5 on page 7. I
3 think that's what Mr. Davis was referring to.

4 THE COURT: Before Judge Jefferson; is that correct?

5 MR. JAMES: This would be before Judge Young, when
6 they took the pleas separately. And then in front of Judge
7 Jefferson, they were sentenced together at the same time.

8 BY MR. DAVIS:

9 Q. You've talked about what you observed in the
10 courtroom, the demeanor of the two women. You've talked a
11 little bit about Erica's emotional and mental state. Do you
12 recall an incident at the jail after Erica received and was
13 able to view the discovery in this case, her reaction to that?

14 A. She tried to kill herself.

15 MR. DAVIS: If I could have just one moment.

16 BY MR. DAVIS:

17 Q. One final thing. If you had obtained information that
18 was the basis for a battered spouse defense, what would you
19 have done with that information in the sense of talking to
20 Erica about it?

21 A. Well, if I had had an evaluation that said that she
22 was -- you know, met the criteria or that is a defense, we
23 would have discussed it. And I would have explained to her
24 that that was an opportunity that we could have had. You know,
25 obviously, if she wanted a trial at that point, we would have

1 talked about it, because it would have been a defense.

2 I mean, even though this business about her, whether
3 it was the same, killing the spouse or a third-party, I mean,
4 she had no control over that other person. That other person
5 had all the dominating control. She was a shell of a person
6 when she came in to our jail. And so she was -- in my opinion,
7 if I had had the report and it gave me what I needed, I would
8 have pursued it as a defense.

9 Q. One final thing that can't be in the record. Do you
10 recall just the physical stature of Ms. Cunningham, the
11 co-defendant, as compared to Erica?

12 A. I could give you a descriptive word that's not nice.
13 But the other -- I mean, Erica is a little, small person.
14 She's not; I mean, she's thick muscles. You could have
15 mistaken her for a man walking down the street, a big, strong
16 guy walking down the street if you, you know, weren't aware
17 that she was a female. She didn't dress very feminine at all.
18 She was -- she would get nasty sometimes in the courtroom when
19 we were doing different things and storm off and, you know,
20 make noise when she was going in the room and things like that.
21 She was not anybody that -- she was creepy.

22 Q. The final thing we talked about a moment ago, if this
23 had been a viable defense and you had talked to Erica about it
24 and she had asked for a trial, just briefly for the record, can
25 you give the Court a background of your experience and whether

1 you would have abided by her request for a trial?

2 A. Well, as I said earlier today, I've done this 28
3 years. And I've tried more than most people, I think, unless
4 maybe you and I -- you know, I tried a lot of cases when I was
5 a public defender. I tried a lot of cases in public practice.
6 I tried a lot of complicated case, a lot of death cases. You
7 know, I'm capable of trying, you know, just about any kind of
8 case they give me. If I had been able to get what I thought I
9 should have been able to get with the expert, I would have
10 likely advised her to have a trial, because it was a
11 sympathetic situation. It was, you know -- I don't think that
12 she was -- I mean, one of the reasons that we pled to *Alford* is
13 because, obviously, it requires criminal intent. And she
14 didn't have any criminal intent. She was just -- she didn't
15 mean to hurt anybody. She didn't, you know, get up and try to
16 hurt -- there was no part of her actions that were inflicting
17 the injury on the child. She just couldn't control the other
18 woman to keep her from doing it, because they were all
19 basically dominated by this woman. And it was all sad.

20 MR. DAVIS: Thank you, Ms. Gay. Answer any questions
21 the attorney general has.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. JAMES:

25 Q. Ms. Gay, earlier -- and I apologize if you've already

1 answered any of these questions. It was a long narrative. And
2 I want to be abundantly clear on a lot of points. Earlier in
3 the recitation of the underlying facts of the case, you
4 indicated that the victim was killed after being beaten with a
5 hanger and then suffering organ failure. I would like to ask
6 if, in your recollection of preparing for this case, is it your
7 understanding that the victim's injuries were caused by a
8 single instance, or did it occur over a period of time?

9 A. A period of time. They had -- they had pictures of
10 the body, and the body, the pictures, showed stages of
11 injuries. I think that the cause of death was internal organ
12 failure. I think it was even Judge Jefferson who said, I
13 think, that you beat her -- she was talking to the other woman,
14 but, I think that you beat her so much that her organs failed.

15 The girl was peeing on the floor or having problems
16 with not being able to hold her pee. And it became impossible,
17 because she was getting beat by the co-defendant. And then
18 her -- she couldn't hold it. And then it was just kind of a
19 cycle of bad. So, yeah, it was not one time. It was multiple
20 times.

21 Q. When did you first become aware of the idea of
22 pursuing a battered spouse or battered woman defense?

23 A. Early on, after I met with her and saw the parties
24 involved and, really, probably after I talked to her mother.
25 As I said, I think that I should have moved her. I know

1 that -- I know I should have moved her. I should have gotten
2 her out of the Charleston County jail and then in the situation
3 where she was no longer being influenced or having any
4 involvement with this woman.

5 As I said in the jail, the girl attacked her, many
6 things happened while she was in the jail. And I believe that
7 there was even some of that after the sentencing. But so I
8 believe that I should have separated her out so she would have
9 had a much better, safer environment to decide, you know, what
10 she needed or wanted to tell me.

11 Q. Moving on -- not moving on, but proceeding from that
12 last bit of your answer, how would you at the time have
13 described your professional relationship with the solicitor?

14 A. She was a friend of mine, somebody I know well. She
15 had a three-year-old child. She went to the autopsy. I didn't
16 think that was very good, but that's what she had done.

17 Q. What do you recall her orientation towards the case
18 being? Was she understanding or aggressive, or whichever
19 phrase or words you would use to describe it?

20 A. It was very surprising to me at the time of sentencing
21 that she asked for a life sentence. It was very surprising to
22 everybody in the room. Both of these defendants passed out,
23 like on the ground, when they got sentenced. I would have
24 thought earlier on in the case that she was being more -- I
25 mean, I guess maybe not understanding, but she did allow my

1 client to plead to this section -- the rendition of the facts
2 that she used was that Erica had been negligent in not
3 protecting the child, as opposed to the batterer, the person
4 who inflicted the injury. I thought that that was some
5 understanding of what I believed to be the facts.

6 Erica's mother was a State's witness. Erica's mother
7 had had lots of conversations with her. It was my
8 understanding that -- like I said, I was just very surprised
9 what she asked for in the end, because that's not what I had
10 expected. That's not what anybody had expected.

11 Q. Do you know if the co-defendant would have testified
12 against your client had this gone to trial?

13 A. She pled first. No, I mean, I think Mr. Davis said
14 there had been a proffer, but I had never been told what she
15 would say. She, in all of our opinions, was the one who
16 inflicted the injury or the injuries.

17 MR. DAVIS: Your Honor, if we may, similar to the
18 attorney general earlier, on page 23 of the sentencing
19 transcript, November 3rd, 2011, in front of Judge Jefferson,
20 page 23, beginning at line 10, this is the attorney for the
21 co-defendant speaking, he says: We also signed an agreement
22 with the State saying that she -- Ms. Cunningham -- would
23 testify against her co-defendant Erica Butts at trial and she
24 would be very valuable to the State.

25 Ultimately, as we said, it didn't happen because Erica

1 pled. But that's what I was looking for earlier coming up in
2 testimony. Thank you.

3 THE COURT: Thank you.

4 MR. JAMES: Beg the Court's indulgence, Your Honor. I
5 have no further questions for this witness, Your Honor.

6 THE COURT: Any redirect?

7 MR. DAVIS: If I can have just one moment. No, Your
8 Honor, not for this witness.

9 Thank you, Ms. Gay.

10 THE WITNESS: May I be excused?

11 THE COURT: Any objection?

12 MR. JAMES: At this time, I don't foresee needing to
13 call Ms. Gay back to the stand.

14 THE COURT: Okay. You are free to go.

15 MR. DAVIS: Call the next witness, Your Honor?

16 THE COURT: Yes, sir.

17 MR. DAVIS: We would call Dr. Veronen to the stand.

18 LOIS VERONEN,

19 having been duly sworn, testifies as follows: is

20 THE COURT: If you will please state your full name
21 and spell your last name.

22 THE WITNESS: My name is Lois Joan Veronen, spelling
23 V-e-r-o-n-e-n.

24 THE COURT: Proceed with your witness.

25 MR. DAVIS: Thank you, Your Honor.

1 had victimization experiences. And so, I and colleagues were
2 funded at the Medical University by the National Institute of
3 Mental Health and by the National Institutes of Justice to
4 investigate, among things like, you know, victims don't report,
5 and then the long-term impact of being a victim of violence,
6 sexual assault and domestic violence.

7 Q. In your research and in your studies, have you focused
8 on the areas of spousal abuse?

9 A. I have personally. Yes, I have. And first testimony
10 I did in which spousal abuse was at the issue here was a
11 self-defense case in 1979. It involved Cynthia Hutto, who was
12 the daughter of the chief of detectives in North Charleston.
13 And she had taken the life of her abusive spouse. And her
14 testimony was that she had been battered. And that case was
15 one of the first -- not the first in South Carolina, but the
16 first in which spousal battery was used as a defense. But it
17 has also been used in many ways as sort of a mitigating
18 circumstance in all kinds of cases since that time.

19 Q. So to that issue, you have testified previously on
20 these issues in court?

21 A. I have testified, yes, I have, over approximately two
22 to three cases a year. I've testified in 14 states and had
23 testimonies over 60 times and have done about 150 evaluations.

24 Q. So, certainly, you studied and practiced in areas of
25 spousal abuse, correct?

1 A. Although the word "spousal abuse" is not found
2 necessarily within the psychological research, we use the term
3 victims of domestic violence, victims of intimate partner
4 violence, victims of trauma, victims of violence. The legal
5 term, the way in which that psychological research and findings
6 has been accepted into the court is in the area of kind of
7 battered spouse syndrome or battered woman syndrome.

8 Q. So those legal terms you have done research and you
9 have testified?

10 A. Yes.

11 MR. DAVIS: At this time, Your Honor, we would move
12 Dr. Veronen as an expert in the legal or psychological field of
13 battered spouse syndrome.

14 MR. JAMES: No objection, Your Honor.

15 THE COURT: Okay. The Court finds that she's
16 qualified.

17 BY MR. DAVIS:

18 Q. Thank you, Your Honor. You started there explaining
19 the differences between the forensic, the legal term, the
20 courtroom term and the psychological term. Could you give
21 Judge Murphy a brief summary of the syndrome that we are
22 focused on today, battered spouse syndrome?

23 A. Well, battered spouse syndrome or the battered woman
24 syndrome is often used in some defense to mitigate and help
25 understand for the court why certain particular continued

1 actions of sometimes loyalty toward the person that has been
2 abusive and violent is not fully disclosed. And so at times we
3 have talked about, there's elements of fear. And that fear is
4 then conditioned into sort of larger spectrums. So that things
5 that appear to be innocuous, you know, question that might be
6 asked, might be viewed as something that would evoke, you know,
7 former reactions of fear and anxiety.

8 Often we find that people who are experiencing
9 battered spouse syndrome have elements of what we call in
10 psychological terms post-traumatic stress disorder. And so
11 often the post-traumatic stress disorder is the psychological
12 avenue by which "battered spouse" is, in part, defined.

13 Q. And so similar to post-traumatic stress disorder, if
14 there are triggers, this causes reaction in the individual?

15 A. Correct.

16 Q. And that can be several reactions. Can you talk a
17 little bit to Judge Murphy about those fight or flight or other
18 reactions?

19 A. Well, certainly, one of the things that we have seen
20 is that the opportunity -- I mean, you look at -- part of this
21 research began, actually, with battered children. What we
22 found is that there was incredible loyalty for a child that had
23 suffered abuse at the hands of their parent for that child not
24 to fully disclose or disclose at all what had gone on in that
25 home. And so we find that there's loyalty bonds to the person

1 that's inflicting violence. Sometimes it is that there's fear
2 of further repercussions. Some people have used the term that
3 the devil you know is better than the devil you don't know.

4 Some individuals fear that they will not be believed
5 if they should come forth. Then there's the question of adult
6 individuals. Often, you know, it's, why didn't you leave? Why
7 did you continue to endure that particular set of
8 circumstances?

9 And the reason people continue to endure is that
10 there's, you know, sort of cognitive changes that go on,
11 meaning that the problem-solving ability becomes much more
12 limited. And, you know, the idea of being a fully functioning
13 human with options and choices does not necessarily seem to be
14 available. They don't use their full faculties. And often, as
15 we understand, all of this is shrouded in secrecy and
16 self-blame - why am I continuing in this relationship?

17 Q. Let's get on the record and explain to Judge Murphy a
18 little bit some -- some examples of acts that lead to this
19 syndrome physical violence.

20 A. Very definitely. There's physical violence, but it
21 also can be, you know, sort of psychological and sexual
22 violence as well. And, you know, the repercussions and
23 consequences for the individual who is being victimized can be
24 pervasive in all areas.

25 Q. The syndrome is usually a manifestation of perpetual,

1 either physical or emotional violence, correct?

2 A. Lenore Walker, who's one of the first theories that
3 researched this area said at least there had to be three
4 incidents of violence. But what we know is that one incident
5 can be so profound that it produces the change from our
6 research.

7 So, but, generally, when we talk about a battered
8 spouse syndrome, we are talking about it had occurred over
9 prolonged period of time and there had been repeated instances
10 of abuse.

11 Q. And so then certainly, the reaction of someone under
12 these effects, hypothetically, that would be to shrink into a
13 shell, to not act, to not challenge the aggressor?

14 A. Correct. Correct.

15 Q. Could that go as far as to not stepping in to prevent
16 violence?

17 A. There, definitely, yes.

18 Q. Would that go as far as to not seeking assistance
19 either from friends or loved ones or from authorities?

20 A. Correct. And often, you know, in very abusive
21 situations, there's complete isolation. There's a fear to go,
22 you know, outside to relate to family what is going on.

23 Q. One final issue before we kind of leave the
24 theoretical part of this. Have you seen this syndrome not only
25 in opposite gender spousal situations, but in same gender

1 spousal situations?

2 A. Very definitely. The Center for Disease Control has
3 conducted research looking at violence in same sex partners and
4 found, in fact, that it is of higher -- it occurs at higher
5 frequencies. And part of that may be that there's less
6 publicity, less help, less available. But the 2010 CDC said
7 it's got higher incidents for same-sex couples.

8 Q. Turning from theoretical to actual, you were retained
9 to evaluate Erica Butts in this case; is that correct?

10 A. Correct.

11 Q. Can you tell Judge Murphy how many -- can you give the
12 Judge Murphy a summary of the documentation you reviewed to
13 come to your conclusion?

14 A. Well, I requested all the available discovery that I
15 had in paper form. It's approximately three and a half inches
16 of paper. I also received CDs and photos. So there was
17 extensive materials that I reviewed in preparation.

18 Q. Did you also --

19 A. Court testimonies and, you know, but, yes.

20 Q. Did you also have the opportunity to meet with Erica?

21 A. I did. I met with her in August of 2017 at the
22 facility in Columbia. And I was with her for a duration of six
23 hours. And from that, I prepared an extensive report in which
24 I documented the assessment materials that I used, which have
25 been, for me, standard assessments that have been used by other

1 researchers who also work in the area of assessment of women
2 who have had histories of violence. One of those is the
3 Detailed Assessment of Post-traumatic Stress Disorder. Another
4 one is the Personality Assessment Inventory, the interpersonal
5 violence questionnaire. So there's extensive documentation to
6 assess the kind of range of experiences that Erica may have and
7 what her reactions to those experiences were.

8 Q. And you focused specifically on her relationship with
9 Shaneda Cunningham?

10 A. I was focused on that. But the nature of the
11 documentation, we also do a whole detailed assessment of other
12 violent events that Erica may have suffered. She, in fact, was
13 the victim of a sexual assault in her teens prior to this
14 relationship.

15 Q. And is it unique or is it not uncommon to find that in
16 the background of those who are suffering from battered spouse
17 syndrome, prior abuse?

18 A. It is not uncommon at all. And, in fact, you know, we
19 see it in approximately 40 percent of the cases.

20 Q. Based on your review of the documentation and your
21 interviews with Erica, do you have a medical opinion as to
22 whether she suffers from battered spouse abuse syndrome?

23 A. In my opinion, she, indeed, suffers as a battered
24 woman, the victim of interpersonal violence at the hands of
25 Shaneda Cunningham, and suffers a wide range of psychological

1 reactions to that. And coupled with the death of MINOR , you
2 know, those things produced high levels of depression,
3 post-traumatic stress disorder, feelings of hopelessness,
4 helplessness.

5 Q. You mentioned following the death of the victim in
6 this case that these emotional effects were enhanced, is that a
7 fair way to say it, the depression, helplessness, hopelessness?

8 A. Very definitely.

9 Q. Let me take that to the third area I want to focus
10 with you on. What about this syndrome would have caused an
11 issue when she was charged with these offenses to helping her
12 attorney get to what you have now gotten to? Can you help the
13 judge now understand what the syndrome would have caused to
14 that communication?

15 A. Well, she continued to live in fear of Shaneda and
16 what Shaneda potentially could do to her. And as I mentioned,
17 part of this is, you know, there's an incredible loyalty to
18 that particular individual. The very hand that takes you
19 sometimes within inches of taking your life is also the hand
20 that spares you.

21 And so, you know, we talk about that traumatic bonding
22 or loyalty and allegiance that occurs within. So, certainly,
23 heightened fear and allegiance to the abusive individual and
24 continued threats, fear for people that Erica might confide in
25 or might befriend. There was every attempt to keep her

1 isolated within the jail setting, within the setting.

2 Q. I was going to ask about that. So, hypothetically, if
3 there are continued threats or coercion applied by the abuser
4 to the victim, does that make it more or less likely that the
5 factual situation would be shared with the attorney?

6 A. Right. It makes it much less likely that the exact
7 factual setting would be shared with the attorney.

8 Q. Over --

9 A. And among women that I have seen over long periods of
10 time, you know, the power that is exerted, sometimes it takes
11 periods of separation. And some individuals, even subsequent
12 to the, you know, death of the person that was being abusive,
13 still have conditioned fear. You know, the person is gone, but
14 they still have fear of fully disclosing it.

15 Q. Picking up on something you said there. While that
16 may linger after separation even by death, hypothetically,
17 would separation from the abuser to the extent that threats
18 don't have the imminent ability to be completed, would that
19 assist in a victim opening up?

20 A. That may assist with the victim opening up and also,
21 you know, receiving some kind of care. Sister Care operates in
22 the Graham facility. And, you know, that opportunity to talk
23 with and understand that, you know, an individual is not alone
24 in their abuse history, all helps to allow an individual to
25 disclose that might have previously been very closed off, too.

1 frightened, too intimidated.

2 Q. And just so the record is clear, we've both been
3 there, but when you say the Graham facility, you mean Camille
4 Graham, the prison she's at in Columbia?

5 A. Correct.

6 Q. In addition to separation from the abuser, in addition
7 to other counseling or caregiving entities, could you indicate
8 to Judge Murphy some things that an attorney representing Erica
9 could or should have done to draw this information out, in
10 addition to separation from the abuser and care groups? What
11 other things might have been appropriate?

12 A. Well, certainly taking -- looking at the history of
13 violence with the two individuals that were involved in this
14 case, and we find that Erica had no history of violence at all
15 and Erica was, in fact, you know, a caregiver for her -- she's
16 the oldest. And so for her younger siblings, she was a
17 caregiver. Her friend Ayesha, MINOR 's mother, you know,
18 actually, asked Erica to be in the room when she gave birth.
19 So she had a very close, close association with MINOR . And
20 so that history should have been explored.

21 But in terms of the opportunity to allow Erica to more
22 fully disclose, taking a full detailed history of what was the
23 first situation in which you felt fear of your partner, the
24 kind of questions that might probe and, you know, bring out a
25 greater disclosure of history, so clinical interviewing.

1 Q. And can you tell the judge how that would differ from
2 clinical interviewing if you are just focused on the
3 competency?

4 A. Oh, there's a world of difference. Yeah, competency
5 is the approach of just, is this person oriented to reality
6 and, you know, do they understand the nature of the offense
7 that they are facing.

8 Q. Would there be any reason for that examiner on a
9 competency exam to even focus on prior history of violence,
10 necessarily?

11 A. No, there would not be. And one of the arguments
12 we've had through the years with trying to convince colleagues
13 at the crime victims center in the Medical University is that,
14 you know, a history of victimization should be part of every
15 mental health evaluation, yes.

16 Q. And --

17 A. But we haven't been successful because there's so many
18 other questions that people feel they need to ask.

19 Q. So regular protocol would not indicate those questions
20 would be probative to a competency evaluation?

21 A. Correct.

22 Q. If the setting today or when you evaluated Erica were
23 pretrial, of course, it's not post-conviction relief hearing,
24 but if it were pretrial and you were called upon by Erica's
25 attorney to come in and testify at trial to this syndrome, is

1 that something you would be able to do?

2 A. It would be something I would be able to do and have
3 done, repeatedly.

4 Q. In front of a jury, what is your opinion as to whether
5 Erica suffers from battered spouse syndrome?

6 A. In my opinion, she, indeed, suffers from battered
7 spouse syndrome.

8 Q. And based on your -- is it your expert opinion that
9 that syndrome could have caused her to not step in when acts of
10 violence were being committed on a minor child?

11 A. Yes, very definitely.

12 Q. Is it your medical opinion that that syndrome would
13 have caused her to hesitate to contact anyone for help?

14 A. Yes, it is my opinion that it would -- she would be
15 fearful of contacting people for help.

16 Q. Whether that be close loved ones or authorities,
17 strangers, either?

18 A. Both.

19 MR. DAVIS: If I can have just a moment.

20 THE COURT: Yes, sir.

21 BY MR. DAVIS:

22 Q. Doctor, I'm going to go just a little further. We are
23 not in front of a jury on guilt or innocence, but just a little
24 bit further on the record for Judge Murphy. In talking with
25 Erica, you not only got a history of her violence, but you

1 specifically talked about this incident, the incident that led
2 to her arrest, correct?

3 A. Correct.

4 Q. I asked some hypotheticals, specific questions about
5 Erica's reaction or omissions just a moment ago. But to the
6 events just before the infant's death, can you describe how
7 Erica's suffering from the abusive relationship and being under
8 the influence of this syndrome affected her actions? Can you
9 tell the judge about that?

10 A. Erica reports that she would often plead with MINOR
11 and try to avert Shaneda's actions. And, you know, she would
12 be holding the child and, you know, trying to help the child
13 understand that, you know, Shaneda is going to get really upset
14 and she's going to get angry, you know, if we don't use the
15 potty properly. And then when she recognized that MINOR
16 just was so weak, she was just beside herself and couldn't
17 figure out -- overwhelmed with MINOR 's suffering and
18 recognition of that suffering, but helpless to move beyond it.

19 She thought of calling her mother and, you know, when
20 the child ultimately couldn't be awakened, she did, in fact,
21 call her mother and her mother came. But she was in terrible
22 turbulence internally and just was beside herself trying to
23 figure out what could be wrong with this child, because she saw
24 this child as -- overall, she knew her to be a healthy, healthy
25 girl. And, you know, she, in fact, had been part of MINOR 's

1 life since she had been born. And the reason her best friend
2 Ayesha sent her down there is because, you know, she knew of
3 this special relationship. And she thought that, you know,
4 perhaps Erica could be helpful to MINOR during this time
5 where she appeared to be having some, what looked like,
6 behavioral problems. When, in fact, it was probably some
7 medical issues that, you know, perhaps even predated --

8 MR. JAMES: Objection. Speculation as to the medical
9 issues pre-existing in the victim.

10 THE COURT: Sustained. Unless you have any
11 independent knowledge based upon your review, medical
12 documentation --

13 THE WITNESS: I just have the report from Erica.

14 BY MR. DAVIS:

15 Q. I think two final questions, not to belabor the point,
16 but if there were prior instances of violence from the
17 co-defendant, Ms. Cunningham, against the infant, how would
18 this syndrome have affected Erica in stepping in to prevent or
19 stop or not?

20 A. Just overwhelmed with fear, anxiety, and paralyzed.

21 Q. And then on the date where authorities were called and
22 the infant passed, the delay in recording, what would this
23 syndrome have done to Erica's ability to react quickly or to
24 delay reporting?

25 A. Well, again, her high allegiance to Shaneda put her in

1 a position of, you know, afraid of if she calls, you know,
2 Shaneda is going to be discovered there, and she's not supposed
3 to be there, and all the other stuff. And so, you know, based
4 on instructions, waiting for Shaneda to leave before
5 authorities were called in.

6 MR. DAVIS: Judge, I don't think I have any other
7 questions. Thank you so much, Doctor.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION

10 BY MR. JAMES:

11 Q. Did you ever meet with or attempt to meet with the
12 co-defendant, Shaneda?

13 A. No, I didn't.

14 MR. JAMES: Beg indulgence from the Court, Your Honor.
15 I have no further questions for this witness, Your
16 Honor.

17 THE COURT: Thank you. Anything further?

18 MR. DAVIS: No, Your Honor.

19 THE COURT: Doctor, just for clarification to make
20 sure I understood your testimony correctly regarding her
21 capacity to stand trial based upon what you reviewed. You felt
22 that she was competent to stand trial?

23 THE WITNESS: That she could verbalize, you know, what
24 she was being charged with, all of those other things. But
25 given the context of what -- of the time that she -- her

1 defense was not -- you know, in my opinion -- was not adequate,
2 because of, you know, being in the jail, fearing ShanedaShaneda
3 and having those things and not having the benefit of fully
4 exploring what a battered woman's defense is, that there are
5 other women too who have had histories like this and --

6 MR. JAMES: Objection. This is largely at this point
7 explanation as to a statement going to the earlier fact where
8 she earlier said that she didn't think the defense was
9 adequate.

10 THE COURT: Let me ask you this, Doctor. You are not
11 saying that she didn't have the mental capacity to cooperate
12 with her lawyer; is that correct?

13 THE WITNESS: Correct.

14 THE COURT: She had that mental capacity?

15 THE WITNESS: She had that, right.

16 THE COURT: Whether she chose to or not, that was her
17 decision, and she had the capacity to do so, is that correct?

18 THE WITNESS: But in overriding fear --

19 THE COURT: You can say yes, no, and then answer the
20 question, please.

21 THE WITNESS: She had the mental capacity to and she
22 chose not to out of allegiance and fear.

23 THE COURT: And allegiance, and based upon your
24 experience, as far as the battered spouse syndrome, I think
25 your earlier testimony, and I am not familiar with the facts of

1 the case other than the colloquy that's been provided to me
2 today, I think your testimony was she had actually known this
3 child since she was an infant as well. So is she not being
4 allegiant to the infant as well?

5 THE WITNESS: But the allegiance -- yes. And that is
6 why -- or the reasons for her feelings of hopelessness,
7 terrible guilt, yes, but overriding fear of what Shaneda could
8 do to her and without full recognition of, you know, how -- I
9 mean, if you asked Erica, and I did, she repeatedly said, I was
10 responsible, I was responsible, I should have done something
11 different, I should have done something different.

12 So there is, you know, a recognition at this point in
13 time that she failed the child and she failed her friend
14 terribly.

15 THE COURT: And as far as the history that you
16 received as far as the abuse alleged to have occurred to Ms.
17 Butts, was that based upon her history solely, or is there any
18 corroborating evidence of such?

19 THE WITNESS: There's corroborating evidence from her
20 mother and also corroborating --

21 THE COURT: Any actual witnesses, or tell me what type
22 of evidence did you have?

23 THE WITNESS: Well, her mother reported to me that
24 there were five neighbors from the Detroit area where they
25 lived that would be willing to have said how violent Shaneda

1 had been toward Erica, torn patches out of her hair, dragged
2 her. There had been public recognition in that neighborhood.
3 But often, if people are formulating these battered women
4 defenses, sometimes, you know, people -- the next-door neighbor
5 can sometimes testify from things that they've heard or things
6 that they have seen.

7 In the testimony that was first done here in
8 Charleston, there were, like, 17 people, once it hit the news
9 what this was about, that came forth and called the attorney
10 and said that they had witnessed things that, you know, the
11 victim didn't even really recall, but things that they had
12 seen. So the availability of witnesses when that defense is
13 raised can be very great.

14 THE COURT: And in your experience, as far as defense
15 is concerned, typically, though, the victim is the batterer,
16 not a third-party; is that correct?

17 THE WITNESS: Correct. But it is used in sort of
18 mitigating situations.

19 THE COURT: Certainly would be a mitigating factor to
20 consider, but not a defense?

21 THE WITNESS: Correct.

22 THE COURT: Thank you. No further questions. You may
23 step down. Thank you, Doctor.

24 MR. DAVIS: Your Honor, would we be able to inquire
25 based on some of your questions?

1 THE COURT: Sure.

2 REDIRECT EXAMINATION

3 BY MR. DAVIS:

4 Q. The loyalty to the abuser, the loyalty to, basically,
5 a family member, the infant, the guilt from that you just
6 talked about, guilt from that kind of conflicting loyalty,
7 could that manifest itself in attempted suicide?

8 A. Almost definitely, definitely.

9 Q. You've talked a moment ago to the judge's questions
10 about when the victim is a third-party and this evidence is
11 often used in mitigation, correct?

12 A. Correct..

13 MR. DAVIS: Actually, it's more of a legal argument.
14 I would not ask the doctor on that.

15 BY MR. DAVIS:

16 Q. But one final thing, I may have heard it out of
17 context, but the State certainly seized on it. Your phrasing
18 of -- your comment of an inadequate defense, there was
19 insufficient information prior to trial to present this
20 defense?

21 A. Correct.

22 Q. Is that accurate? Given the information you have now,
23 if this case were going to trial -- I think I asked this during
24 my direct, but I just want to be clear, because I want the
25 record to be clear -- do you have a sufficient basis as an

1 expert to testify to this defense if it were to be submitted to
2 a jury trial now?

3 A. Yes.

4 MR. DAVIS: Thank you, Your Honor. No other
5 questions.

6 THE COURT: Anything further from the State?

7 MR. JAMES: No, Your Honor.

8 THE COURT: Thank you so much, Doctor. You may step
9 down.

10 THE WITNESS: Thank you.

11 THE COURT: You may call your next witness.

12 MR. DAVIS: We would call Erica Butts.

13 MR. JAMES: Can I have a moment to speak to counsel
14 real quick?

15 THE COURT: Sure.

16 ERICA BUTTS,

17 having been duly sworn, testifies as follows:

18 DIRECT EXAMINATION

19 BY MR. DAVIS:

20 Q. Erica, I want to ask you -- first of all, let's get
21 some background on you for the judge. Okay? Can you tell the
22 judge how old you are?

23 A. 32.

24 Q. And how far did you go in school?

25 A. I have my GED.

1 Q. Did you finish high school? You didn't finish high
2 school?

3 A. No.

4 Q. How far did you go in high school?

5 A. I had my 12th grade credits, but I didn't graduate.

6 Q. So when you got your GED --

7 A. When I got to prison, I got my GED.

8 Q. Okay. Where were you -- where did you grow up? Where
9 were you born and raised?

10 A. Beachwood, Michigan.

11 Q. And when was it that you had gotten down to South
12 Carolina?

13 A. I got down to South Carolina 2000 -- I've been locked
14 up since 2009. Prior to that, I had been in South Carolina 16
15 months.

16 Q. And why was it you came down here?

17 A. To live closer to my mom.

18 Q. I want to kind of start at the end and work backwards,
19 if we could. Did you have an attorney appointed to you after
20 you were arrested or did you and your family hire someone?

21 A. My mom hired someone.

22 Q. Who was that?

23 A. Lisa Gay.

24 Q. And was there any other attorney involved in your case
25 or she was the lead attorney?

1 A. She was the lead attorney.

2 Q. So any complaints we have about an attorney's
3 performance, it's about Lisa Gay, correct?

4 A. Yes, sir.

5 Q. How many times would you say you met with Lisa after
6 she was hired before you entered the guilty plea?

7 A. Maybe four times.

8 Q. During these meetings, did Ms. Gay discuss with you
9 what you were charged with and what the State would have to
10 prove to convict you of these charges?

11 A. Yes.

12 Q. Did you and Ms. Gay ever talk about any potential
13 defenses to these charges?

14 A. She just -- she would ask me questions about basically
15 what happened or to the degree of my relationship with
16 Shaneda.

17 Q. So was there ever a discussion of alibi or
18 self-defense or was there any discussion, specific defenses
19 that you recall?

20 A. It was after I went to the evaluation.

21 Q. And what would the discussion have been after the
22 evaluation?

23 A. She was saying that she wanted me to basically talk
24 against her.

25 Q. Talk against who?

1 A. Shaneda.

2 Q. About what happened in the death?

3 A. Yes.

4 Q. So other than perhaps being a witness against your
5 co-defendant, were there any other discussions about any
6 defenses?

7 A. No.

8 Q. Was there anything about Lisa that caused you any
9 concern?

10 A. Yes. When I would talk to her, I would talk to her
11 and she would tell me that I wasn't telling her everything.
12 And I had told her that I was telling her everything. She said
13 she didn't believe me.

14 Q. And how did that make you feel?

15 A. I kind of felt like if you trying to represent me, you
16 don't believe what I'm telling you, then how are you going to
17 help me?

18 Q. And, specifically, was that focused on interaction
19 between you and Ms. Cunningham or interaction between you and
20 the infant?

21 A. Both.

22 Q. Was it just she thought there was information you had
23 you weren't telling her, or did she think you were not being
24 helpful with her.

25 MR. JAMES: Objection. Calls for speculation.

1 THE COURT: Sustained.

2 BY MR. DAVIS:

3 Q. Were you -- after your arrest, were you able to make
4 bond on these charges, or did you remain in jail until your
5 court date?

6 A. I remained in jail until the court date.

7 Q. And that was here in Charleston County Detention
8 Center?

9 A. Yes, sir.

10 Q. Your co-defendant, Ms. Cunningham, did she make bond,
11 or was she at the same facility?

12 A. She was at the same facility.

13 Q. Right up until court as well?

14 A. Yes, sir.

15 Q. For today's purposes for Judge Murphy, can you let her
16 know how long you and Ms. Cunningham were involved in a
17 relationship?

18 A. I had been involved with Shaneda since I was 17. We
19 had been living together up until I got locked up. And I got
20 locked up at 22. And then I did two years in the county. And
21 we still were basically together. We just were -- we were
22 housed in the same unit, but it really didn't matter, because
23 she still was able to come to my door and talk to me or we
24 would be able to talk to each other or pass canteens to each
25 other if we had wanted to. It still didn't matter.

1 Q. And I just want to be clear. Were you at any time
2 housed in the same unit?

3 A. Yes.

4 Q. So part of the time, y'all were in the same unit in
5 the detention center, correct?

6 A. Yes.

7 Q. I've been back in there, but can you tell the judge,
8 was it the old part where there was first floor, second floor
9 and rooms, or was it kind of the open area, the new part where
10 there are just cots on the floor?

11 A. No. It's the old jail. We were -- at first we were
12 in, I believe it was 1D then. And it was a top tier and bottom
13 tier. And I was on one side of the room and she was on the
14 other side. We were housed there. And we also were housed in
15 the old medical unit, which I believe was 3G. And that was
16 just one tier. So it was just one floor with rooms on -- kind
17 of like this, but doors on each side.

18 Q. So you are not roommates?

19 A. No.

20 Q. But when everyone is released to the common area, you
21 could mingle together?

22 A. Uh-huh.

23 Q. Yes or no?

24 A. Yes.

25 Q. At some point, you were not housed in the same unit

1 prior to going to court; is that correct?

2 A. Yes. Shaneda had -- I think there may have been a
3 couple of days before, she had got into a fight and flooded her
4 cell. And she wind up going down to the lock-up unit.

5 Q. Other than that few days separation, was there a
6 period of time y'all were not in the same unit together?

7 A. When I first got to the prison, I was in the lock-up
8 side and she was in the general population side. So they had
9 it where we would be 30 days in and then 30 days out. But I
10 still had to come over there to take my shower. So every day,
11 I would go over there for 30 days, take my shower, and they
12 would switch us out. And I would be on the general population
13 side and she would go to the lock-up unit side. That was only
14 for 60 days. After that, we were in the same unit.

15 Q. Could you summarize to the judge what, if any, threats
16 or coercion that she would have made against you while -- after
17 arrest and before you went to court?

18 A. She basically told me that she had a child and I
19 should take the charge. And other than that, she would just be
20 real verbally abusive. In one incident, Melissa Gay had asked
21 me to try to get statements from the other females in the unit.
22 And I expressed to Ms. Melissa that I was scared to, because I
23 feared that they would go back and tell her. And even though I
24 was scared to, I tried it. And it got back to Shaneda And one
25 day we were coming out for trial and she ran up in my room and

1 basically beat me up. And nothing basically happened.

2 And I had told Melissa that. I tried, but it was
3 still nothing. After that, she started being real nasty
4 towards me. And she was telling me that she hope I would burn.
5 And just kind of set me back. Like, I really didn't want to
6 come out. I stopped coming out of my room unless they made
7 sure the doors were locked. Sometimes they wouldn't lock the
8 doors. But if they made sure the doors were locked, then I
9 would come out and go out for rec. Other than that, I just
10 slept the whole day, would be up at night.

11 Q. That conduct that happened at the jail, is that
12 different than or is that similar to conduct that happened
13 throughout your relationship?

14 A. That was mild compared to our relationship.

15 Q. We are not in a jury trial about guilt or innocence,
16 but can you give Judge Murphy some examples from back home or
17 once you got in South Carolina, can you give her maybe a couple
18 of examples of what type of violence you suffered from Ms.
19 Cunningham?

20 A. In one incident, I had called my mom to come and pick
21 me up. And Shaneda didn't want me to leave. By the time my
22 mom got to the house, Shaneda was dragging me towards the
23 kitchen. And all I could think about was, there's knives in
24 the kitchen. I didn't know what she would do. So at that
25 time, my mom busted the window to try to get me out of the

1 house. And they called the police.

2 There was another incident where the house --

3 Q. . . Let me stop you right there. Was that here in South
4 Carolina?

5 A. That was in Detroit. Another incident in Detroit, we
6 got into a real bad fight where she had blacked my eye in front
7 of everybody. She bust the windows out of my car. Her mother
8 came over and was like she blacked out. She wouldn't stop --
9 she had hit me with a stick. I kept trying to run away. And
10 the lady across the street, the neighbor, I tried to run into
11 her house. She ran up on the porch and dragged me back down.
12 She had snatched patches of the back of my hair out. She
13 ripped my earrings out of my ear. That particular time, I
14 called my mom and my mom booked me a flight. And I came down
15 to South Carolina to stay with my mom, but I still went back.

16 Q. What about here in South Carolina?

17 A. When we got to South Carolina, I couldn't talk to my
18 mom. She didn't want my mom to come over to our house.
19 Sometimes she wouldn't want -- Shaneda wouldn't want my sisters
20 to come over. If I was on the phone with my mom, she would ask
21 me, what are you talking to have for, or, what are you calling
22 her for?

23 One incident where her -- Shaneda and my younger
24 sister got into it, she drove all the way to my mom's house to
25 try to fight my little sister.

1 MR. JAMES: Objection. This is a long-running string
2 of hearsay. And it's already been established through the
3 expert witness her opinion that battered spouse syndrome
4 applies. Outside of the expert's conclusion, I don't see how
5 this is relevant to any of the issues before the Court today.

6 THE COURT: Let's move on, Mr. Davis.

7 MR. DAVIS: Thank you, Your Honor.

8 BY MR. DAVIS:

9 Q. Were you fearful of Ms. Cunningham?

10 A. Yes.

11 Q. Did you attempt to -- did you ever attempt to leave
12 the relationship?

13 A. Yes.

14 Q. During the period that the infant was in your care,
15 were you fearful of Ms. Cunningham?

16 A. Yes.

17 Q. During that period of time, were there acts of
18 violence from Ms. Cunningham towards you?

19 A. Yes, yes.

20 Q. Were there acts of violence from Mr. Cunningham toward
21 the child?

22 A. Yes.

23 Q. Did you ever step in to stop those acts of violence
24 toward the child?

25 A. I was scared to.

1 Q. So did you ever?

2 A. No.

3 Q. Did you ever report those acts of violence to anyone?

4 A. No.

5 Q. What was different about the day you called your mom
6 to come over and she called 911? What was different that day?
7 Why did you call your mom?

8 A. That day, I really did not -- I, honestly, did not
9 think that MINOR was passing away, but I didn't know what
10 else to do. Like, I was just at a break-up point. And I
11 didn't want for it to be -- I wanted to save her. So I didn't
12 want it to be like my responsibility that she passed away. And
13 I didn't know at that time that she was already dead.

14 Q. Why did you call your mom and not a hospital?

15 A. I didn't know who else to call.

16 Q. Why did you feel more comfortable calling your mom
17 than EMS?

18 A. Because I felt like I needed her right then.

19 Q. The stuff you testified to this point today, was Ms.
20 Gay aware of -- how much of what you testified today to Judge
21 Murphy was Ms. Gay aware of?

22 A. She was aware of the abuse that I suffered in Detroit.
23 She was aware of what was happening in the county. And that
24 was basically it.

25 Q. Can you tell Judge Murphy why it is that you are able

1 to talk about it currently to Dr. Veronen, to myself and Judge
2 Murphy, but not to Lisa Gay back then?

3 A. I feel like there's nothing more that Shaneda can do
4 to me now. Like, being away from her, like, over these nine
5 years, I've been able to sit back and realize that what I was
6 going through. I could have called for help, but I didn't.
7 But now that I'm away from her, I don't have to be abused. I
8 don't have to go through any of that. Like, I could speak --
9 like, I found my voice now.

10 Q. Where have you been incarcerated since the guilty
11 plea?

12 A. Camille Griffin Graham.

13 Q. Did you go straight from the county jail or from the
14 courthouse to Camille Graham?

15 A. No. We came back to the county jail. And then the
16 very next morning, we were shipped out. But we were in the
17 same van together.

18 Q. You went straight to where?

19 A. We went straight to Camille Graham.

20 Q. Did she remain there or was she assigned to another
21 facility?

22 A. We were there from November 4th to November --
23 probably like the 27th. At the very last minute, Captain
24 Williams, which is one of the higher-up officers there, came
25 down and pulled me from getting shackled. Like, we were about

1 to go to the same prison. And she came and pulled me down from
2 getting shackled and took me and kept me there.

3 Q. But Ms. Cunningham went to a different facility?

4 A. Yes.

5 Q. Have you all ever been at Graham together since that
6 date?

7 A. No.

8 Q. And that was later in the month after the sentencing?

9 A. Yes.

10 Q. In your meetings with Ms. Gay, was it her advice that
11 you go to trial or that you plead guilty?

12 A. That I should take the plea.

13 Q. Other than her advice, what else did you rely on in
14 making your decision to plead guilty?

15 A. My mom.

16 Q. If you were -- if what we are doing today, Dr. Veronen
17 testifying, you testifying, if that information had been
18 available to you as a defense by Ms. Gay back then, would you
19 have accepted the deal that you were given for the *Alford* plea
20 or would you have gone to trial?

21 A. I would have gone to trial.

22 Q. What was your understanding of the benefit of the
23 *Alford* plea?

24 A. That I was going to receive 20 years.

25 Q. From whom did you get that information?

1 MR. JAMES: Objection; not relevant to the claims that
2 have been brought for the hearing today.

3 THE COURT: I will allow it at this juncture.

4 THE WITNESS: From Melissa and my mom.

5 BY MR. DAVIS:

6 Q. Did you have at the time, back then, did you have the
7 defense of alibi that you weren't there? Did you have that
8 defense available to you?

9 A. No.

10 Q. Did you have the defense that you weren't aware of
11 what the co-defendant was doing to the child?

12 A. No.

13 Q. Did you have any evidence that you took affirmative
14 acts to stop any of that violence?

15 A. No.

16 Q. Did you have any evidence that you had attempted to
17 reach out to authorities or friends for help back then as a
18 defense?

19 A. No.

20 Q. Do you understand that battered spouse syndrome is
21 something the jury would have to decide whether they believed
22 or not?

23 A. Yes.

24 Q. Do you understand if we are successful in this PCR,
25 not only the charge you pled to, but the related charges

1 dismissed, could both come back?

2 A. - Yes.

3 Q. Do you understand you would be facing two charges of
4 20 years up to life?

5 A. Yes..

6 Q. So, finally, had this potential defense been elicited
7 by Ms. Gay and she had discussed it as an option for you
8 instead of the plea, would you have risked going to trial or
9 would you have pled guilty?

10 A. I would have gone to trial.

11 MR. DAVIS: Thank you very much. That's all the
12 questions I have. The attorney general may have some questions
13 for you.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. JAMES:

17 Q. Ms. Butts, you indicated earlier that you met with
18 your plea counsel, Ms. Gay, four times. Does that include
19 phone calls you had with her?

20 A. Physical phone calls?

21 Q. Did you ever talk to her over the phone?

22 A. No.

23 Q. You testified that she told you or communicated to you
24 her belief that you weren't telling her everything. Did you
25 tell her everything?

1 A. Yes.

2 Q. Did you tell her that you were afraid of your
3 co-defendant?

4 A. Yes.

5 Q. When you met for an evaluation, did you tell
6 everything to the doctor who evaluated you?

7 MR. DAVIS: Objection, Your Honor. It was a different
8 type of evaluation. It was for competency.

9 THE COURT: I think it's irrelevant. You got into it
10 with the doctor that you called. So I think certainly it's
11 relevant. You may proceed.

12 BY MR. JAMES:

13 Q. I will ask the question again. Did you tell
14 everything to the doctor who evaluated you?

15 A. Which doctor?

16 Q. The doctor that you originally met with before you
17 were convicted as part of the evaluation that your attorney
18 requested for you? I can find --

19 THE COURT: Dr. Waid?

20 MS. JAMESON: Yes.

21 THE WITNESS: If that's the guy --

22 BY MR. JAMES:

23 Q. I'm sorry. I couldn't hear you over the coughing.

24 A. If that's the guy, because I had an evaluation at
25 M.U.S.C. as well.

1 Q. I believe it's the guy, the white male that was
2 discussed earlier.

3 A. Partially.

4 Q. What didn't you tell Dr. Waid or that doctor?

5 A. I didn't explain to him about basically everything
6 that happened when it came up to the abuse that I suffered by
7 Shaneda.

8 Q. You indicated that you decided to take the plea based
9 on advice from Ms. Gay as well as your mother. To be
10 abundantly clear, did your mother advise you to take the plea?

11 A. Yes.

12 Q. Did you ever report any of the abuse from the
13 co-defendant to the jail authorities?

14 A. No.

15 Q. Is there any chance prior to your guilty plea that you
16 would have been more open with your plea counsel, Ms. Gay?

17 A. I wasn't real comfortable with her.

18 Q. Is there any chance prior to your guilty plea that you
19 would have been more open with that doctor or professional
20 psychologist or other evaluator?

21 A. To be honest, I was scared, so I'm not sure if I
22 would. I was still in the same environment with Shaneda.

23 MR. JAMES: Beg the Court's indulgence. No further
24 questions, Your Honor.

25 THE COURT: Any redirect?

1 REDIRECT EXAMINATION

2 BY MR. DAVIS:

3 Q. Why didn't you report to jail authorities the
4 violence?5 A. Because I still was in the same area with her. It
6 wouldn't have solved anything.7 Q. Did she retaliate about some activities that occurred
8 before that?9 A. She really didn't want me talking to anyone in the
10 unit.11 MR. DAVIS: No other questions of this witness, Your
12 Honor.13 THE COURT: You may step down, Ms. Butts. Thank
14 you.15 MR. DAVIS: If I can have one more moment with
16 opposing counsel.

17 THE COURT: Okay.

18 MR. DAVIS: Your Honor, if I can have just one moment.
19 To be blunt, based on some questions the Court had, there were
20 a couple of matters. And I've spoken with attorney general,
21 because I certainly don't want to surprise anyone and all of
22 that. If -- I did not plan to call her, but there are four
23 questions that I would -- I think I would like to ask her, if I
24 can have just a moment.

25 THE COURT: Certainly.

1 MR. DAVIS: Thank you very much, Your Honor. We would
2 call Ladawn Butts to the stand. That was to avoid hearsay
3 issues with the State. I appreciate being able to speak with
4 her.

5 LADAWN BUTTS,
6 having been duly sworn, testifies as follows:

7 THE CLERK: Spell your first and last name for the
8 record.

9 THE WITNESS: Ladawn Butts, L-a-d-a-w-n, Butts,
10 B-u-t-t-s.

11 THE COURT: Your witness.

12 DIRECT EXAMINATION

13 BY MR. DAVIS:

14 Q. You are Erica's mother?

15 A. Yes.

16 Q. We are going to cut straight to some very specific
17 points. Okay? You've heard -- you've been in the court during
18 the hearing, right, for all three witnesses' testimony?

19 A. Yes.

20 Q. You've heard testimony about, prior to the incident
21 that Erica was arrested for, you've heard testimony of some
22 violent acts between -- from the co-defendant towards her?

23 A. Yes.

24 Q. You've heard about that?

25 MR. DAVIS: Your Honor, rather than recounting the

1 specifics.

2 Q. Are there any of those incidents of violence that you
3 personally observed?

4 A. Yes.

5 Q. Can you tell the judge, without getting into detail
6 about what happened, but can you tell the judge the difference
7 specific incidents that you personally observed?

8 A. There's a lot, but while they were here, well, since
9 they had moved to South Carolina, Shaneda and my youngest
10 daughter had gotten into it. I don't know what. But Shaneda
11 came to my house, beaten down my door trying to get in. So
12 when I finally opened the door, she was cussing, going crazy.
13 And I asked, you know, what was going on, or whatever. And I
14 instantly started hollering at Erica --

15 Q. Just so the judge knows, Erica was at your house?

16 A. They both came to my -- Erica was not there. They
17 came to my house. And Shaneda was coming to fight my younger
18 daughter. And --

19 Q. Hold on a second. We are focused on any acts towards
20 Erica. We are not going to expand this out.

21 A. Okay. Well, after all of that, I put them out. I
22 closed my door and they were out there. And Shaneda was out
23 there fighting Erica, I guess because Erica didn't say nothing.
24 I don't know what they were fighting for. Medina and I went
25 out there. And I was trying to get Erica come back in the

1 house to make them get from front of my house.

2 Q. And did she come back in?

3 A. She went with Shaneda.

4 Q. There were a couple of incidents about when Erica
5 called you, one being in Detroit when she called you over. So
6 if you came by afterwards, you didn't see what happened. But
7 can you tell the judge once you arrived what you saw?

8 A. When I got there, their doors were closed. In
9 Michigan, everybody has a steel doors. So I was beating on the
10 door. I couldn't get through the door. So Erica was hollering
11 to help her. So I busted the window and was trying to get
12 Erica out. And Shaneda was choking her, dragging her from the
13 back choking her.

14 Q. Without saying what Erica specifically said on the
15 phone call --

16 A. No, no, I heard her when I got to the house, she was
17 hollering, help her.

18 Q. I have a question for you. Without repeating what
19 Erica said in the phone call, did she call you to come over for
20 a visit, or was she calling you to come over and help out?

21 A. Come get her.

22 Q. Okay. There's been a little bit of testimony about
23 Erica's decision to plead guilty and you talking with her about
24 that decision.

25 A. Yes.

1 Q. Did you, in fact, advise her to plead guilty instead
2 of going to trial on the two charges?

3 A. Yes.

4 Q. Why?

5 A. It was my understanding she would get --

6 MR. JAMES: Objection for the same grounds as earlier.
7 This ground is no longer preserved in the application.

8 THE COURT: Sustained.

9 MR. DAVIS: I would just argue, Judge, it's not for
10 the truth of the matter, but what was in her mind when she's
11 advising her daughter, not whether it was true or not.

12 MR. JAMES: Your Honor, my objection is not on hearsay
13 grounds. Truth has nothing to do with the truth of the matter
14 asserted. It's strictly relevance to the allegation that have
15 been set forth as amended earlier and --

16 THE COURT: Let's my move, Mr. Davis.

17 MR. DAVIS: Thank you, Your Honor.

18 Q. Prior to this hearing, did you have any opportunity to
19 discuss all of this with Dr. Veronen who testified a little
20 while ago?

21 A. Yes.

22 Q. Were you ever asked to speak to any expert witness or
23 any doctor when Ms. Gay was representing Erica?

24 A. No.

25 Q. Did you talk to Dr. Waid?

1 A. No.

2 MR. DAVIS: Thank you, Your Honor. No other
3 questions.

4 THE COURT: Any cross-examination?

5 MR. JAMES: No questions for this witness, Your Honor.

6 THE COURT: Thank you, ma'am. You may step down.
7 Anything further?

8 MR. DAVIS: That's the State's presentation, Your
9 Honor. Thank you.

10 MR. JAMES: No witnesses from the State, Your Honor.

11 THE COURT: All right. Parties care to give a brief
12 summation?

13 MR. DAVIS: I will say this. I think it is clear that
14 she's testified that she would not have pled guilty. She would
15 have entered a defense at trial. While there is some blame on
16 the client for not opening up, she testified she did reveal
17 these things to her attorney, but was then more guarded when
18 she was with the white male, larger, stranger, expert witness
19 doctor psychologist.

20 We are not fabricating or guessing at a defense. The
21 doctor testified there is one. She's backed by the specific
22 incidents.

23 The issue for today's proceeding is not whether she's
24 guilty or not guilty, whether that defense would be successful.
25 The question today, was there ineffective assistance of

1 counsel. And we would argue there are for not removing her
2 from the same housing unit or from the jail. Lesser things
3 have been done to help out clients. And she has -- the record
4 will reflect the day of the conviction. And from a few days
5 after that until now, until Dr. Veronen met with her, she's
6 been separated from Ms. Cunningham. Prior to that, from arrest
7 until court date, they were in the same unit. That is the
8 major change, as she said to you herself. She's had her own
9 voice being separated, not fearing the threat. That is
10 something that changed by mechanism, but something that her
11 attorney could have changed back then. So we lay fault at Ms.
12 Gay's feet. This defense is currently available. It would
13 have been available then had she simply been separated, other
14 factors available, had she simply been separated. And she's
15 testified to you that she would have taken her chance on that
16 and let a jury hear it.

17 You heard a portion today. Both sides intentionally
18 focused on the major points, rather than belaboring it in great
19 detail like you would in front of a jury. But we do believe
20 we've met our burden as to two prongs. We ask you grant her
21 relief, vacate her conviction, overturn her sentence, and
22 return her to the authorities in Charleston County to face
23 these two charges, likely, again.

24 Thank you, Your Honor.

25 MR. JAMES: I will try to be brief, Your Honor. But I

1 recognize that a lawyer's idea of brief is often anything but.

2 As to -- simply put, the State would renew the
3 totality of its argument as presented before trial on both
4 prongs. One, the State still takes the position that a
5 battered spouse syndrome is not an applicable defense in the
6 case where the victim is a third-party and not the abuser.

7 Your Honor, it is the State's position that any
8 reasonable jurist, properly analyzing the law as it exists in
9 this state at this time, with lack of any authority to provide
10 for this defense, would be obliged under an undue prejudice
11 analysis to keep all of this testimony that we've heard today
12 out, and that this defense would not be available to the
13 applicant.

14 Your Honor, we've sat through extremely sympathetic
15 and compelling testimony today. And that's why the State's
16 position is that the bench would have to keep it out at trial,
17 because it would essentially color the jury's perception of the
18 applicant in trial.

19 Furthermore, the applicant was, as testified to, was
20 found to be competent, was found to be legally competent. Your
21 Honor, the applicant testified that she couldn't really
22 conceive of a chance that prior to trial, she would have told
23 Ms. Gay about everything, that she would have been more open
24 with Ms. Gay, that she would have been more open with the
25 evaluators as Ms. Gay endeavored to establish a defense that

1 she is now accused of not putting together. We can't hold Ms.
2 Gay responsible for that. We can't hold Ms. Gay responsible
3 for the fact that her client was not more open and forthcoming
4 to her. That, ultimately, falls upon the applicant. And there
5 may be a variety of reasons why the applicant did not tell more
6 to her attorney and did not tell more to the evaluator and was
7 not more open. But, ultimately, the responsibility for that
8 does fall on the applicant. We can't hold Ms. Gay responsible
9 for that.

10 And so, Your Honor, that's the State's position. We
11 respectfully request that it be denied.

12 THE COURT: Thank you, Counsel. What I will do is, I
13 will take the time to review all the submitted documentation
14 and consider the testimony. And I will advise.


15 (Whereupon, proceedings are adjourned.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina at
Large, do hereby certify that the foregoing transcript is a
true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in the
events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
Erica Butts,)	Case No.: 2014-CP-10-02518
S.C.D.C. No. 348484,)	
)	
Applicant,)	ORDER OF DISMISSAL
v.)	
State of South Carolina,)	
)	
Respondent.)	

FILED
2018 JUN 28 PM 12:50
JULIE B. BROWN
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed by Erica Butts ("Applicant") on April 17, 2014. Respondent made its return on or about March 27, 2015. The Court convened an evidentiary hearing into the matter on January 30, 2018, at the Charleston County Judicial Center in Charleston, South Carolina. Applicant was present at the hearing and represented by Rodney D. Davis, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Applicant's plea counsel, Melisa W. Gay, Esq. ("Counsel"), Applicant's expert witness Dr. Lois Veronen, and Applicant's mother LaDonna Butts also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea and sentencing transcripts, the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the June

2010 term of the Charleston County Grand Jury for homicide by child abuse (2010-GS-10-04123). Melisa Gay, Esq. represented Applicant, and Elizabeth Gordon, Esq., of the Ninth Circuit Solicitor's Office, prosecuted the case. On August 25, 2011, Applicant entered an Alford¹ plea to the indictment before the Honorable Roger M. Young, Sr. Sentencing was deferred until a representative of the victim's family could be available, and Judge Young directed that any circuit judge could impose the sentence. Applicant appeared before the Honorable Deadra L. Jefferson on November 3, 2011, who sentenced Applicant to imprisonment for a term of life without parole.

Applicant filed a motion to reconsider the sentence on November 10, 2011. The State files its memorandum in opposition on February 22, 2012. Judge Jefferson denied the motion to reconsider the sentence by order filed January 14, 2013.

Applicant filed a timely notice of appeal. On December 23, 2013, the South Carolina Court of Appeals dismissed Applicant's appeal for want of a sufficient explanation required by Rule 203(d)(1)(B)(iv), SCACR. State v. Butts, S.C. Ct. App. Order filed Dec. 23, 2013. The Remittitur was issued on January 8, 2014.

Present Application

In her post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that:
 - a. Counsel submitted a defective appeal;
2. Involuntary guilty plea, in that:
 - a. The guilty plea agreement was violated;
 - b. The guilty plea must be signed; and
3. Ineffective assistance of appellate counsel.

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

At the evidentiary hearing, Applicant proceeded instead only on an allegation that Applicant's guilty plea was unknowing and involuntary because plea counsel failed to investigate and prepare a defense based on battered spouse syndrome and advise Applicant of such a defense. Respondent did not object to the amendment, but moved to dismiss the application as amended on grounds that battered spouse syndrome evidence was not relevant where the victim was not the alleged batterer, and on grounds that the record already before the Court clearly established Counsel attempted to develop a battered spouse syndrome defense strategy. This Court denied Respondent's motion to dismiss but took Respondent's arguments under advisement as reasons to deny relief.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure

of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen 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)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged

errors, she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to Prepare Defense Based on Battered Spouse Syndrome

Applicant alleges her guilty plea was involuntary and unknowingly entered because Counsel was ineffective in failing to adequately investigate, develop, and execute a defense based upon battered spouse syndrome and inform Applicant of the availability of such a defense at trial. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

The admissibility of battered spouse syndrome evidence is governed by statute:

Evidence that the actor was suffering from the battered spouse syndrome is admissible in a criminal action on the issue of whether the actor lawfully acted in self-defense, defense of another, defense of necessity, or defense of duress. This section does not preclude the admission of testimony on battered spouse syndrome in other criminal actions.

S.C. Code Ann. § 17-23-170; see also State v. Grubbs, 353 S.C. 374, 380-81, 577 S.E.2d 493, 496-97 (Ct. App. 2003) (exploring the history of the development of battered spouse syndrome in S.C. law); Robinson v. State, 308 S.C. 74, 417 S.E.2d 88 (1992). Battered spouse syndrome is well-established in South Carolina caselaw in the context of self-defense, but there is scarcely any caselaw on the subject as it might apply to duress.

Duress is not a defense to homicide, for "when the crime is the murder of an innocent person, the choice of two evils rationale is unavailing." State v. Rocheville, 310 S.C. 20, 425 S.E.2d 32 (1993). The Court in Rocheville explained the reasoning underpinning the defense of duress:

The rationale of the defense of duress is that if the only means of avoiding greater harm is for the defendant to engage in illegal conduct resulting in a lesser harm, he [or she] should not be held criminally liable for the illegal conduct. The commission of the crime which results in a lesser harm is therefore justified. However, when the crime is the murder of an innocent person, the choice of two evils rationale is unavailing. The resulting harm, the murder of an innocent person, is at least as great as the threatened harm, the death of the defendant.

"To excuse a criminal act, the degree of coercion must be present, imminent, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done." State v. Robinson, 294 S.C. 120, 121, 363 S.E.2d 104, 104 (1987). "Coercion is no defense if there is any reasonable way, other than committing the crime, to escape the threat of harm." Id.

Plea and Sentencing

During the August 25, 2011, plea proceeding, the court inquired as to Applicant's motives for pleading and whether she was coerced:

THE COURT: All right. These are all things you give up when you do that, when you enter this plea. But you're basically doing this because you think you would be convicted if you went to trial, even though you're telling me you didn't do it, right?

THE DEFENDANT: Yes, sir.

THE COURT: All right. This is your choice and your choice alone?

THE DEFENDANT: Yes, sir.

THE COURT: Has anybody promised you anything or threatened you to get you to enter this plea?

THE DEFENDANT: No.

...

THE COURT: All right. Does she understand what she's doing, Ms. Gay?

MS. GAY: Yes, sir. We've extensively gone over the case and the defenses.

(Aug. 25, 2011 Tr. 5-6). Judge Young thereafter found the plea was freely, voluntarily, and intelligently made. (Aug. 25, 2011 Tr. 6-7).

During the sentencing hearing, both the State and Counsel requested that Applicant be sentenced separate from her co-defendant, Shanita Cunningham, but Judge Jefferson indicated a preference to sentence the two together in the absence of any safety concern. (Nov. 3, 2011 Tr. 3-5). The State requested the maximum sentence. (Nov. 3, 2011 Tr. 9, ll. 9-10; p. 20, ll. 6-7).

The solicitor noted the precise scope and severity of the minor victim's beatings:

Your Honor, if I may also submit, the pathologist indicated these injuries did not occur at one time. This was a culmination of a continual beating. The estimation was about two weeks, which just happened to coincide with the exact amount of time this child had been in Shanita and Erica's care.

(Nov. 3, 2011 Tr. 10, ll. 1-6). Co-defendant's counsel, Cassandra Woosley, Esq., after extensive remarks from the victim's family, informed the Court "that both Erica and Shanita would hit [the MINOR] for urinating on the floor." (Nov. 3, 2011 Tr. 24, ll. 14-15).

Counsel in mitigation described Applicant as a "mild" and "meek" person. (Nov. 3, 2011 Tr. 28, ll. 23-24). Counsel provided to the court a report from the Medical University of South Carolina, informed the court that she had Applicant evaluated, and that MUSC found Applicant competent and criminally responsible. (Nov. 3, 2011 Tr. 29, ll. 13-22). Counsel explained her efforts to explore Applicant's relationship with the co-defendant, and described an abusive relationship with the co-defendant. (Nov. 3, 2011, Tr. 29-30). In particular, Counsel detailed Applicant's submissive role in the relationship and Counsel's efforts to develop a defense based upon the relationship:

[Dr. Wade] reported an abusive dysfunctional relationship with Shanita Cunningham, who is controlling and aggressive, and he also said her reports of numerous individuals, which he cites in the reports, Ms. Cunningham often was physically aggressive in her behaviors toward Ms. Butts, who remained fearful.

Now, in my practice I tried very hard to expand on that to see if my client would open up to me about some stuff that maybe I could provide to the psychologist to help her create maybe a Battered Woman Syndrome defense. Erica would never do that. She would never tell me anything bad about Ms. Cunningham. She loves her and has loved her for years[.]

(Nov. 3, 2011 Tr. 30-31). Counsel later continued explaining she "sent [Applicant] to two different psychiatrists and psychologists trying to see if there is something I'm missing, some kind of version of facts that I'm missing, and she has admitted her responsibility." (Nov 3, 2011, Tr. 32, ll. 9-13). Counsel reported Applicant never denied her presence or that she participated in the beatings. (Nov. 3, 2011 Tr. 32, ll. 5-6). Counsel also informed the court that, though they were segregated while in custody, Applicant and co-defendant Cunningham communicated with

one another in jail and that Counsel believed Applicant to have felt very intimidated by Cunningham. (Nov. 3, 2011 Tr. 40-41). Counsel again circled around to her efforts to communicate with her client:

I have offered my client several opportunities just, you know, spill out all these bad things about Ms. Cunningham mainly just because she could, under the circumstances of providing people for her to talk to, and she has never chosen to do that. She has chosen to say specifically, you know, we both disciplined her, yes we argued, but we argued because we both have reasons to be upset, but yet, personality wise, I think it is objective, I have a meek personality client, and the co-defendant is much more aggressive, objectively from things that have happened in her life and her history, and I think that has played out in other statements that have been given to me by their family members and friends.

(Nov. 3, 2011 Tr. 42, ll. 1-15). Attorney Woosley, on behalf of Cunningham, alerted the Court to statements by Applicant to law enforcement admitting to whipping the minor victim on two separate occasions with a belt. (Nov. 3, 2011 Tr. 42, ll. 17-23). Applicant told the court: "[o]n that day I was responsible, but I didn't mean to kill her." (Nov. 3, 2011 Tr. 44, ll. 12-13). Judge Jefferson imposed life sentences on both Applicant and co-defendant.

Evidentiary Hearing

At the evidentiary hearing, Counsel testified Applicant started her relationship with Cunningham at the age of 15. Applicant moved to South Carolina from Michigan only for Cunningham to break parole and follow shortly after. Counsel described Applicant as docile and passive, and described Applicant's relationship with Cunningham as extremely abusive. Counsel recalled sending Applicant to be professionally evaluated, but that Applicant wouldn't talk. Counsel posited she should have done something to have Applicant and Cunningham more thoroughly separated during pre-trial incarceration, and that Applicant opened up about her experiences once she was housed more securely in SCDC. Counsel noted in retrospect the evaluating doctor was a white male, and that Applicant had a history of assault by a male.

Counsel recalled she tried to talk to Applicant in her own right and attempted to get information from her to prepare a defense, but met no success. Counsel described Cunningham as big, muscular, nasty, creepy, and mean. Counsel stated she would have made Applicant aware of the battered spouse defense if she'd been able to better develop the defense. However, on cross-examination, Counsel confirmed that she conceived of the defense early on in her representation, after meeting with Applicant's mother.

Applicant's expert witness, Dr. Lois Veronen, described battered spouse syndrome as a misplaced loyalty to one's abuser. Dr. Veronen explained that a battered individual develops fear of the abuser that extends into other aspects of the abused's life, providing for self-loathing and self-blame on the part of the abused. Battered spouse syndrome results from one or more of a combination of physical, psychological, and emotional abuse. Dr. Veronen testified battered spouse syndrome could result in failure on the part of the abused to stop violence or report it.

Dr. Veronen then explained she met with Applicant for six hours and prepared a report based upon her meeting with Applicant and based upon voluminous discovery provided to her. The meeting focused primarily on Applicant's relationship with Cunningham. Dr. Veronen professionally opined that Applicant suffers from battered spouse syndrome as a result of her relationship with Cunningham and from depression resulting from the death of the minor victim. Dr. Veronen testified Applicant lived in fear of Cunningham, and that she continued to be isolated with that fear in the jail setting; combined with threats, she was less likely to talk to her attorney. Dr. Veronen asserted the competency evaluation by MUSC was not close in scope to her own evaluation. Dr. Veronen reported her understanding of the underlying facts—Applicant would plead with the minor victim to try to avert violence on the part of Cunningham, and thought of calling her mother, but did not do so until the minor victim could not be awakened.

Dr. Veronen never met with Cunningham. The doctor confirmed Applicant was competent, but argued Applicant's actions were out of allegiance to Cunningham. Dr. Veronen confirmed that in most instances of battered spouse syndrome, the abuser is typically the victim, not a third party.

Applicant testified to meeting with Counsel, who told her that the only defenses would require her to speak against Cunningham in some way. Applicant recalled Counsel's belief that Applicant was not telling Counsel everything, and that Counsel did not believe her. Applicant testified she never made bond and, while her relationship with Cunningham ended when she was locked up, the two were housed near one another and she could still see Cunningham while incarcerated. Applicant explained Cunningham tried to get her to take full responsibility for the crime, and that Cunningham beat Applicant upon discovering Applicant trying to get statements for Counsel. Nonetheless, Applicant described jail as mild as compared to their prior relationship, which involved beatings, being drug into the kitchen near knives, and ripping out earrings. Applicant tried to leave the relationship, but was afraid of Cunningham and too scared to report anything. Applicant did not think the victim was dying on the day of the child's passing, but was afraid the child was going to die. Applicant testified she was advised to take the plea by her mother and Counsel, and that she believed she would get 20 years by pleading. On cross-examination, Applicant asserted she did tell Counsel everything, including that she was afraid of Cunningham, but that she didn't explain to Dr. Waid the abuse she suffered from Cunningham. Applicant never reported Cunningham's abuse to jail authorities. Applicant was afraid to be open with any evaluators so long as she was still in close proximity to Cunningham.

Applicant's mother, LaDonna Butts, testified she saw Cunningham abusing Applicant. Applicant and Cunningham appeared at Ms. Butts' house fighting, and Ms. Butts recalled finding Cunningham choking her daughter. Ms. Butts never spoke with Dr. Waid.

Ruling

The Court finds Applicant is entitled to no relief. First, this Court finds Respondent's legal argument—that battered spouse syndrome is irrelevant in a homicide where the victim is not the abuser, but a third-party—highly compelling. As explored in the recitation of the law above, battered spouse syndrome may be relevant for four potential defenses: self-defense, defense of another, necessity, and duress. Of the four, only duress is worth mentioning here, and in light of both the law and the present facts, it would have been of no help to Applicant. Following in the reasoning of Rocheville, just as no amount of duress can justify the murder of another person, no amount of duress can permit the brutal, protracted, repeated beating of a toddler child until dead, nor can it permit the silent consent to as much. The choice of two evils rationale is unavailing. The multiple statements during sentencing that Applicant did not merely passively observe the victim's abuse, but actively participated, were unchallenged. Applicant's fear of Cunningham provides no justification or excuse for the killing of a child.

Second, the underlying record, as well as the testimony presented at the evidentiary hearing, provide that Counsel was aware of battered spouse syndrome and attempted to develop a defense based on the condition, but was unable to do so due to the unwillingness of Applicant to disclose much, if anything, in psychological evaluations prior to her plea. Applicant argues that Applicant's unwillingness to cooperate in the development of the defense was the result of her continued subjugation to Cunningham while incarcerated. Though this argument has some persuasive merit, this Court is not compelled. Fundamentally at issue is the performance of

Counsel, who identified a potential defense, told her client she would need to speak against Cunningham to make any defense work, sent Applicant to be evaluated, and was at every stage foiled by Applicant's unwillingness to cooperate. Counsel could not make Applicant talk or cooperate with the defense. There is some general argument that Counsel could have done more to separate Applicant from Cunningham while incarcerated, but ultimately the conditions of Applicant's incarceration were not within Counsel's control. Further, there is not clear evidence that Applicant would have timely cooperated but for her incarceration proximately near Cunningham. To the contrary, Dr. Veronen's expert testimony clearly established that the conditioned fear resulting from battered spouse syndrome persists not merely after separation from the abuser, but even after the abuser's death. As such, the evidence before this Court indicates Applicant still would not have cooperated had she been more fully separated from Cunningham.

Third, the Court cannot find that, but for the alleged deficiencies of Counsel, Applicant would not have pled guilty but would have insisted on going to trial. As noted above, the battered spouse syndrome defense strategy was identified by Counsel prior to the plea and prevented by the lack of Applicant's cooperation. Though battered spouse syndrome was not specifically mentioned during the qualification of the plea, Judge Young asked Applicant if she wanted to explore having a defense put up by Counsel—Applicant declined. Counsel at that time affirmed they had "extensively gone over the case and the defenses." (Aug. 25, 2011 Tr. 6, ll. 19-22). The Court finds Applicant knew of the possible defense and affirmatively declined to pursue it.

Altogether, this Court finds no deficiency on the part of Counsel, nor prejudice therefrom. To the contrary, this Court finds Counsel performed well within the range of

competence demanded of attorneys in criminal cases. This Court observes no unreasonable failures on the part of Counsel, but rather finds Counsel endeavored to defend a client who would not, or perhaps could not, assist in the conceived strategy. Additionally, Applicant cannot meet her burden of showing prejudice by presenting a strategy she would not have cooperated with, and which would not have been applicable in the present case. Accordingly, Applicant's request for post-conviction relief is **DENIED**.

III. CONCLUSION

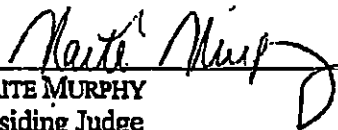
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 20 day of June, 2018.



MAITE MURPHY
Presiding Judge
Ninth Judicial Circuit

St. George, South Carolina

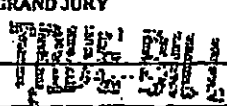
EG20091106558

WITNESSES
Shannon Sharp
Summerville Police Department

AGENCY CASE NUMBER
0988658

ARREST WARRANT NUMBER
093883

DATE OF ARREST
November 4, 2009

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury Date JUN 08 2010

VERDICT

Foreperson of Petit Jury Date

INDICT

DOCKET NO. 2010GS1004123

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

June Term 2010

THE STATE

vs.

ERICA MAE BUTTS
DOB: 1986-
B/F

Indictment for
Homicide by Child Abuse

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on June 7, 2010 the Grand Jurors of Charleston County present upon their oath.

Homicide by Child Abuse

That in Charleston County, South Carolina, on or about November 3, 2009, the Defendant, ERICA MAE BUTTS, did cause the death of [REDACTED] CHILD [REDACTED], a child who was under the age of eleven years at the time of her death, and that the defendant did cause the death of said child, in Charleston County, while committing child abuse or neglect, and the death of said child occurred under circumstances manifesting an extreme indifference to human life, in violation of Section 16-3-85, 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


ELIZABETH GORDON
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA *FILE ACCEPTED 8/23/12* IN THE COURT OF GENERAL SESSIONS
COUNTY OF *Sentence may be imposed by any competent judge* Charleston
STATE VS Erica Mae Butts

INDICTMENT/CASE#: 2010GS1004123
A/W#: J093883
Date of Offense: 11/4/2009
S C Code § 16-03-0085(A)(1)(B)(1)
CDR Code # 2356

AKA _____
Race: BLACK Sex F Age: 25
DOB: 186 SS# _____
Address: _____
City, State, Zip: SUMMERVILLE, SC 294830000
DL#: _____ SID#: SC01913109

SENTENCE SHEET *ALFORD*

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was *Under W.C.V. ALford* CONVICTED OF or PLEADS
TO: HOMICIDE BY CHILD ABUSE OR NEG

in violation of § 16-03-0085(A) of the S C Code of Laws, bearing CDR Code # 2356
 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: *Elizabeth Gordon* 16952 SC Bar# *Erica Butts* Defendant *MJB* Attorney for Defendant *63773* SC Bar#

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

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

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

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. Waiver Hearing Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

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

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
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/ea	\$
Proviso 90.5 (SCCIA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.70
TOTAL		\$ 133.90

Appointed PD or appointed other counsel,
§ 47 12 requires \$500 to be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk: *Whitney H. ...*
Court Reporter: *Chermy ...*
SCCA/217 (03/2011)

Presiding Judge: *A L Judge*
Judge Code: 2128
Sentence Date: 11/3/11