

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Dorchester County
The Honorable Diane S. Goodstein

Appellate Case No. 2018-000210

RECEIVED
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SC Court of Appeals

The State of South Carolina,, Respondent,

v.

Tiffany Ann Sanders,, Appellant.

RECORD ON APPEAL
VOLUME II OF II

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1 We're not going to talk about that.

2 It's August, it's hot. I'm going to talk about the
3 winter time and get everybody cooled off, even though,
4 Madam Presiding Juror, you're kind of bundled up a little
5 bit. That air condition is working in here today. So, I'm
6 going to give you an example of direct and cross examine --
7 direct and circumstantial evidence, because I think it
8 helps you understand the concepts. And then we're going to
9 move to our next topic.

10 Remember we talked about direct -- direct evidence and
11 circumstantial evidence. Go with me to last February. Go
12 with me to last February. There was an evening in
13 February, it was so cold -- it was so cold. And I remember
14 it was about after supper time, about when we got dishes
15 put away, and I knew that, you know, snow had been
16 forecasted. I was so excited. I think we even closed
17 court a little bit early, because we were worried about
18 people getting home in the blizzard that of course hadn't
19 started yet. But we were waiting on it.

20 And so, we all sitting there about after supper --
21 about after supper. February, it's -- it's forecast, and I
22 looked out of the window, and low and behold white stuff
23 started coming down, kept coming down. And then the lawn
24 was covered in this wonderful white stuff. And my grown
25 children immediately became about 4 and 5, and out they

1 went.

2 Ladies and gentlemen, that is direct evidence that
3 it's snowing. You see it's snowing. Direct evidence.
4 Evidence that immediately establishes the main fact to be
5 proved. It snowed. It snowed that night.

6 Okay. Let's talk about circumstantial evidence.
7 Let's go back to February. Let's say it's real cold, real
8 cold. Snow is forecast. You look up, skies look a little
9 gray, even though it's dark. You go to bed. Your lawn is
10 brown and crunchy, like it always is in February unless you
11 do that rye grass. You go to sleep. Snow is forecast.
12 It's freezing cold outside. Your lawn is brown and
13 crunchy. You wake up the next morning, and low and behold
14 while the sky is blue, your lawn is covered with snow.
15 That is circumstantial evidence that it snowed overnight.

16 You don't see it snowing, but it was forecasted, it
17 was cold, and there in the morning your lawn, which was,
18 when you went to bed, brown and crunchy, is now covered in
19 white snow. Circumstantial evidence that it snowed
20 overnight.

21 You prove a number of things: It's February, it's
22 cold, it's forecast. You don't see it snow, but based on
23 those facts, based upon the additional fact that the snow
24 is covering the lawn the following morning, those facts
25 allow you to draw an inference, the proof -- collateral

1 fact from which the main fact may be proved, and that is
2 that it snowed overnight.

3 Now, I forgot to give you that example and I figured
4 it might cool us all off. We might borrow your sweater.

5 All right. Now, we're going to -- now, let me -- I'm
6 going to move on forward in the instruction and we're going
7 to talk about intent. Intent. Because you see, in order
8 to establish criminal liability under our law, criminal
9 intent -- criminal intent is required.

10 For example, the mental state required to be proven by
11 the State for a particular crime might be purpose, intent,
12 knowledge, recklessness, or criminal intent. Criminal
13 intent must be proven by the State beyond a reasonable
14 doubt. Criminal intent is always a matter that must be
15 determined by the jury from the circumstances surrounding
16 the situation.

17 There is no way to prove intent to a mathematical
18 certainty. There is no way that medical science can
19 dissect a person's brain and determine what the person had
20 in mind. So, the law says that criminal intent may be
21 inferred from the circumstances shown to have existed.

22 This is how you make a determination of whether or not
23 the element requiring intent was present. It is not
24 necessary to establish intent by direct and positive
25 evidence. But intent may be established by inference in

1 the same way as any other fact, by taking into
2 consideration the acts of the parties and all of the facts
3 and circumstances of the case.

4 Criminal intent is a mental state, a conscious
5 wrongdoing. It is up to you to determine what the
6 defendant intended to do, based on the circumstances shown
7 to have existed. Criminal intent can arise from action or
8 a failure to act. It may arise from negligence,
9 recklessness, or an indifference to duty or to
10 circumstances that is considered by the law to be
11 equivalent of criminal intent.

12 Now, ladies and gentlemen, I'm going to read to you
13 the -- some of the allegations of the indictments. Ladies
14 and gentlemen, indictment 2007-GS-18-1206 alleges in part
15 (as read): "That in Dorchester County, South Carolina, on
16 or about June the 8th, 2007, the defendant, Tiffany Ann
17 Sanders, nee -- I will say now -- Hecksher, did knowingly
18 and unlawfully aid in the commission of, abet, counsel,
19 hire, or otherwise procure the commission of murder by the
20 principal, Sean Kammerer, and the defendant was not present
21 when the principle felony was committed. This offense
22 being in violation ..." and the code section is -- is
23 mentioned, which we're going to talk about in just a few
24 moments.

25 Indictment 2010-GS-18-0707 alleges(as read): "That in

1 Dorchester County, on or about June the 8th, 2007, with
2 malice aforethought the defendant, Tiffany Ann Sanders, nee
3 Hecksher, did kill or aid, abet, assist, or join with Sean
4 Kammerer to kill Jessie Ham by means of shooting him. The
5 victim did die as a proximate result thereof. This offense
6 being in violation of the common law ..." and there's a
7 code section there mentioned as well.

8 In a moment we're going to talk about these two
9 offenses. But I wanted to -- as I told you I would do
10 earlier, I want to tell you of the stipulation of counsel.
11 Remember stipulation is an agreement. It is an agreement
12 that you should find the following as fact by agreement of
13 counsel, both for the State as well as Ms. Hecksher.

14 The State and the defendant stipulate to the following
15 facts(as read): "Jessie Ham, the victim, was killed by
16 four shots; three in the back and one to the neck.

17 "Jessie Ham was killed near the Tire Kingdom in the
18 Publix shopping center at the corner of Park Forrest
19 Parkway across from Ashley Phosphate and Dorchester Road in
20 the City of North Charleston, Dorchester County.

21 "Sean Kammerer fired those four shots. Sean Kammerer
22 was convicted by his plea of guilty to murder.

23 "DeJuan Jenkins drove Sean Kammerer to the scene and
24 away from the scene, and was convicted by his plea to
25 accessory after the fact."

1 Now, ladies and gentlemen, we are going to first of
2 all talk about accessory before the fact to felony. This -
3 - the felony here being murder. And once we have talked
4 about that offense, then we're going to talk about murder.
5 So, to give you an overview we're first going to talk about
6 accessory before the fact to murder and then we're going to
7 talk about murder.

8 Ladies and gentlemen, the defendant is charged and
9 indicted with being an accessory before the fact of murder.
10 In order to prove this crime, the State must prove beyond a
11 reasonable doubt that the defendant either advised, agreed,
12 urged, counseled, hired, or in some way aided or abetted
13 another person to commit a crime; and that the defendant
14 was not present when the offense was committed. The
15 defendant may also be held criminally responsible for
16 accessory before the fact of any other crime which is the
17 natural or probable result of the agreed upon crime.

18 "Aid" means to help, to promote the course or
19 accomplishment of, to give support to or to give assistance
20 to. "Abet" means to encourage or appear to favor or
21 support. Now, that concludes my instruction on accessory
22 before the fact.

23 Now I'm going to talk to you about the crime of
24 murder. The defendant is charged with murder. The State
25 must prove beyond a reasonable doubt that the defendant

1 killed another person with malice aforethought. Malice is
2 hatred, ill will, or hostility towards another person. It
3 is the intentional doing of a wrongful act without just
4 cause or excuse, and with an intent to inflict an injury or
5 under circumstances that the law will infer an evil intent.

6 Malice aforethought does not require that malice exist
7 for any particular time before the act is committed, but
8 malice must exist in the mind of the defendant before or at
9 the time that the act is committed. Therefore, there must
10 be a combination of the evil intent and the act.

11 Malice aforethought may be express or inferred. These
12 terms "express" and "inferred" do not mean different kinds
13 of malice, but merely the manner in which malice may be
14 shown to exist; that is, either by direct evidence or by
15 inference from the facts and circumstance which are proved.

16 Express malice is shown when a person speaks words
17 which express hatred or ill will for another person, or
18 when the person prepared beforehand to do the act which was
19 later accomplished. For example, lying in wait for a
20 person or any other acts of preparation going to show that
21 the deed was within the defendant's or principal's mind
22 would be express malice.

23 Malice may be inferred from conduct showing a total
24 disregard for human life. Inferred malice may also arise
25 from the deed that is done with a deadly weapon. A deadly

1 weapon is any article, instrument, or substance which is
2 likely to cause death or great bodily harm. Whether an
3 instrument has been used as a deadly weapon depends on the
4 facts and circumstances of each case.

5 The following are examples, and just examples, of
6 instruments which may be deadly weapons: a shotgun, a
7 rifle, a dirk, a dagger, a knife, a slingshot, metal
8 knuckles, a razor, gasoline, a firebomb or Molotov
9 cocktail, lighter fluid. You know, a firearm may be a
10 deadly weapon even if it is not operating.

11 Ladies and gentlemen, I'm now going to charge you with
12 the theory called "hand of one is the hand of all." If a
13 crime is committed by two or more people who are acting
14 together in committing a crime, the act of one is the act
15 of all. A person who joins with another to commit an
16 unlawful act is criminally responsible for everything done
17 by the other person which happens as a probable or natural
18 consequence of the acts done in carrying out the common
19 plan and purpose.

20 For example, two people can be guilty of armed robbery
21 when only one of the two had the knife. It was only one
22 knife and only one person wielded the knife. The other
23 person was the lookout. If two or more people are
24 together, acting together, assisting each other in
25 committing the offense, the act of one is the act of all,

1 or as it is sometimes said, "the hand of one is the hand of
2 all."

3 Prior knowledge that a crime is going to be committed
4 without more is not sufficient to make a person guilty of
5 that crime. Mere knowledge that another person is going to
6 commit a crime, even if the person -- the defendant is
7 present when the crime committed, is not sufficient to
8 convict the defendant as a principal.

9 Guilt as a principal is shown by actual or
10 constructive presence at the scene and as result of prior
11 arrangement. Therefore, a finding of a prior arranged plan
12 or common scheme is necessary for a finding of guilt as a
13 principal. The State must prove beyond a reasonable doubt,
14 by competent evidence, the theory of the hand of one is the
15 hand of all.

16 A principal in a crime is one who is either actually
17 committing or commits the crime, and who is present,
18 aiding, abetting, or assisting in committing the crime.
19 When a person does an act in the presence of and with the
20 assistance of another, the act is done by both. Where two
21 or more, acting with a common plan or intent, are present
22 at the commission of a crime, it does not matter who
23 actually commits the crime, all are guilty. The hand of
24 one is the hand of all.

25 "Present at the commission of a crime" means to be

1 sufficiently near to aid and abet and assist in the
2 commission of the crime. However, mere presence at the
3 scene of a crime is not sufficient to convict one as a
4 principal on the theory of aiding and abetting. Intent is
5 also a necessary element, for there must have been a common
6 design or intent to commit the crime, and the crime must
7 have been committed pursuant thereto with a person aiding
8 and abetting by some overt act.

9 "Intent" means intending the result which actually
10 occurs. Not accidentally or involuntarily. Intent may be
11 shown by acts and conduct of the defendant and other
12 circumstances from which you may naturally and reasonably
13 infer intent. The State must prove these elements beyond a
14 reasonable doubt.

15 Counsel, I want you to take one more look at the
16 verdict form.

17 (Bench conference.)

18 THE COURT: Ladies and gentlemen, we now going to go
19 over the verdict forms. But before we do that, I want to
20 discuss with you that your verdict must be unanimous. That
21 means this must be the verdict of each and everyone of you.

22 (To the alternates) That should be a hint to you guys,
23 my alternates, that the next time that our jury leaves,
24 y'all stay with me in here. Okay?

25 (No audible response.)

1 THE COURT: What I am talking about when I say it must
2 be unanimous is this must be the verdict of each and
3 everyone of you. Not the majority of you and not any one
4 of you. This must be the verdict of each and everyone of
5 you, unanimous.

6 Also, even before we go over the verdict form, I want
7 to tell you that I have put words on a piece of paper. I
8 had to do that in order to create a verdict form.

9 There are two possible verdicts. One of them has been
10 put on this piece of paper first, and one of them has been
11 put on this piece of paper second. I want you to know I
12 could just as easily and just as legitimately put the
13 second possible verdict first and the first possible
14 verdict second.

15 The reason that I'm telling you this is that I don't
16 want any of you to take any hidden meaning, any hidden
17 instruction, any opinion by the Court as to what ought to
18 be your verdict. You know, it's just reality, you're going
19 to put something on paper, something got to be first and
20 something got to be second. So, do not take any hidden
21 meaning in which the order of words have been put on these
22 pieces of paper, because there is none intended.

23 All right. Ladies and gentlemen, there are two
24 verdict forms, because there are two indictments. I could
25 have put both of them on one piece of paper. I simply

1 chose to put -- use two pieces of paper.

2 Now, irrespective of what your verdict is, I want you
3 to be clear, I want you to circle it. You might want to
4 underline and circle it. But I just want to be sure that
5 there is a clear indication with regards to each of these
6 indictments what is the verdict of the jury.

7 Now, this is 07-GS-18-1206, which is the indictment
8 for accessory before the fact to a felony. Of course, the
9 felony in this instance is murder. And the verdict form --
10 and let me explain this to you, with my little handwritten
11 note. It says "State of South Carolina vs. Tiffany Ann
12 Hecksher, "FKN" stands for "formally known as." And
13 everybody's thinking about Prince, the singer. That's the
14 way that we've done it, just so the indictment and her
15 current name are both included, we put Tiffany Ann Hecksher
16 formally known as Sanders. And that's what that's about.

17 And number one here says (as read): "As to the
18 indictment alleging accessory before the fact to a felony,
19 we the jury unanimously -- my children think I'm a nag --
20 unanimously find the defendant ..." and there are two
21 possible verdicts. Whichever is the verdict of this jury,
22 I want you to circle it. You might want to underline and
23 circle it. I just want it to be clear which of these two
24 possible verdicts is the verdict of the jury.

25 Now, the second verdict form, and again(as read):

1 "The State of South Carolina vs. Tiffany Ann Hecksher, FKN,
2 formally known as Tiffany -- well, formally known as
3 Sanders" -- we've got to do FKA.

4 All right. Number one, as to the charge of murder, we
5 the jury unanimously find the defendant ..." there are two
6 possible verdicts. Whichever is found to be the unanimous
7 verdict of this jury, circle it. If you want to underline
8 it too, just so it's clear which of these two possible
9 verdicts is the unanimous verdict of the jury. You'll
10 indicate that, too.

11 Madam Presiding Juror, when the jury has completed its
12 deliberations, filled out the verdict forms, I want you to
13 sign here where it says presiding juror, and you know who
14 you are. Today is -- for your reference, today is August
15 the 5th -- August the 5th, 2010. I'm going to ask you,
16 once the jury's completed it's deliberations, you've filled
17 out your verdict forms, I need you to sign where it says
18 presiding juror, and date the verdict forms, both of them
19 for me.

20 When you have concluded your deliberations and filled
21 out your verdict form, you'll knock on the door and then
22 you all will return to the courtroom. You will then pass
23 the verdict form to Mr. Taylor who will in turn give that
24 to me. You do not publish the verdict.

25 Now, ladies and gentlemen, I -- I told you that there

1 would be another break. And I'm going to talk about that
2 with you now, because when you step back to your jury room
3 in just a moment, I'm going to give you this instruction:
4 Do not discuss this matter or allow anyone to discuss it
5 with you.

6 And you would be so within your rights at this point
7 to say, "Now, wait a minute. You've been telling us for
8 two days when we'd heard the evidence, the arguments of
9 counsel, your charge on the law, we were ready to
10 deliberate." So, I'm going to hasten to tell you exactly
11 what we're going to be doing when you leave on this next
12 occasion.

13 I'm going to turn to these lawyers and I'm going to
14 ask them two questions: Have I given this jury all of the
15 law that they may need for their deliberations, and have I
16 stated it for them correctly? These lawyers help me know
17 if I have failed to give you all the law which you may
18 need.

19 Sometimes I need to bring jurors back out, and I need
20 to charge them further because I have failed to give them
21 all of the law that they may need.

22 I ask you to in advance, if I need to bring you back
23 out for that purpose, please don't consider that
24 instruction with any emphasis. If I need to bring you back
25 out because I have stated something incorrectly, and

1 goodness knows, I don't intend to do that, but sometimes
2 things just pop our wrong; and in the event that I need to
3 bring you back out to correct my error, I ask you in
4 advance, please allow me to correct my error in your minds.
5 This is my chance to get this right, to give you all of the
6 law that you may need for your deliberations and to state
7 it for you correctly.

8 Now, in the event that I do not need to bring you back
9 out, you will be brought the verdict forms and the
10 exhibits, and Mr. Taylor will bring you an instruction to
11 begin your deliberations.

12 Ladies and gentlemen, Mr. Taylor and I've been doing
13 this for a long time. He has yet to fail to give a jury
14 that specific instruction, but this might be the first
15 time. You will not have this verdict -- these verdict
16 forms and these exhibits unless you are prepared to
17 deliberate. So, if you have the verdict forms, if you have
18 the evidence, you begin your deliberations with the
19 exhibits.

20 Now, all 12 of you must be together for you to
21 deliberate. So, in the event that you need to take a
22 break, for example, if one or more jurors need to take a
23 comfort break, stop your deliberations, take your break,
24 and then reconvene you deliberations when all 12 of you are
25 together again. Just remember that all 12 of you must be

1 together for you to deliberate.

2 And now, I'm going to conclude these instructions with
3 this: The word verdict, the word verdict comes from the
4 Latin phrase *veredicto*, which means "to speak the truth,"
5 "to speak the truth," which is now your task, to speak the
6 truth.

7 Please step to your jury room. Do not discuss this
8 matter or allow anyone to discuss it with you.

9 (Jury exits at 11:47 a.m.)

10 THE COURT: (To alternates) Here's what I'm going to
11 ask you all to do for me and here's the why. You of course
12 are our alternate, correct?

13 JURORS: Yes.

14 THE COURT: And for our record, I need you to state
15 your name as our alternate.

16 JUROR: John Garofalo.

17 THE COURT: Yep.

18 JUROR: Rhonda Snipe.

19 THE COURT: Thank you. Now, I believe that if
20 something was to happen with one of our jurors in the next
21 15 minutes, I believe that I could stop the deliberations,
22 seat one of you, and then reconvene -- or actually not
23 reconvene, but start the deliberations anew and save the
24 trial. Because I believe I can do that for a 15 minute
25 period -- I don't think I could do it longer than that. I

1 think the deliberations at that point would have gone on
2 too long.

3 But because I think I can do that for about 15
4 minutes, you've given us so very much of your time, I'm
5 going to ask you for 15 minutes more. But you all keep up
6 -- yeah, y'all keep up with the time. Don't wait on me to
7 keep up with the time. Y'all keep up with the time. And
8 Mr. Taylor's going to take the two of you in another --
9 just another area. I hope we got some magazines or some
10 snacks or something for you. I'm sure we do. But if y'all
11 will give me 15 more minutes, I'd be so grateful. If y'all
12 will go with Mr. Taylor.

13 (Alternate jurors exit at 11:49 a.m.)

14 THE COURT: Exceptions?

15 MR. BELL: None from the State, Your Honor.

16 THE COURT: Additions?

17 MR. BELL: None from the State.

18 MR. O'NEAL: I do have an exception and possibly an
19 addition, Judge.

20 THE COURT: Okay.

21 MR. O'NEAL: When we had our informal conference
22 yesterday on the charges, I knew that it ended up that you
23 were going to charge on accessory to a crime, that you were
24 going to use the word "crime" in that charge.

25 And I kind of anticipated that Mr. Bell would argue a

1 crime would be, for example, bringing a guy to a fight.
2 And that's why yesterday I -- I asked you if you would
3 always say, "the crime of murder" on that charge, accessory
4 before the fact to the crime of murder.

5 Because I didn't -- my fear was the jury would hear
6 that charge, accessory before the fact to a crime, and
7 figure, well, I agree with Mr. Bell that bringing a guy to
8 a fight, a fight in public is a crime, disorderly conduct,
9 or whatever you want to call it. And that's what she did,
10 and there they've proved it.

11 And my exception really I suppose is an addition, I
12 want you to add the words "of murder" to anytime you say
13 the word "crime" in the charge on accessory.

14 THE COURT: Thank you so much. And I think, actually,
15 I do that in the charge where it says -- let me -- let me
16 just flip back to that portion because -- the defendant --
17 here's what I stated (as read): "The defendant is charged
18 with being an accessory before the fact of murder." And
19 then I go on with the charge.

20 It comes up again -- the only other place (as read):
21 "The defendant may also be held criminally responsible for
22 accessory before the fact for any other crime which is the
23 natural or probable result of the agreed upon crime." I
24 think that's the place that you're talking about.

25 MR. O'NEAL: Yes, ma'am.

1 THE COURT: You know, I don't -- I don't speak of any
2 other crime. And I told them earlier that -- that the
3 crime related to accessory before the fact is murder.

4 And then I go on to say (as read): "The defendant may
5 be held criminally responsible for accessory before the
6 fact for any other crime which is naturally the -- or
7 probable result of the agreed upon crime.

8 And so, it wouldn't be appropriate to always charge
9 the crime of murder, because this section is meant to
10 explain to the jury probably that which you are concerned
11 about. And that is, is that if you in fact were an
12 accessory before the fact of a -- of a crime such as
13 assault and battery of a high and aggravated nature, and
14 the jury was to determine that the -- that the natural or
15 probable result of the crime of assault and battery of a
16 high and aggravated nature was murder, then the defendant
17 would also be responsible -- held criminally responsible
18 for that.

19 Because that -- the murder in that instance would be
20 the natural or probable result of the agreed upon crime of
21 assault and battery with in -- with intent to kill or of
22 assault and battery of a high and aggravated nature.

23 And rather than giving specific examples in this
24 section I just -- I talk in terms of just crimes in -- a
25 little more in -- in general. But that's on all fours with

1 the case law that we went over yesterday --

2 MR. O'NEAL: Yes, ma'am. I was shown that.

3 THE COURT: And I don't remember it. Do you have that
4 cite?

5 MR. BELL: I think it's *State vs. Peterson*.

6 THE COURT: *State vs. Peterson*?

7 MR. BELL: Yes, ma'am.

8 THE COURT: All right. And I'd love to have the cite.

9 MR. BELL: I -- as soon as I can find it.

10 THE COURT: Okay.

11 MR. BELL: It's here somewhere.

12 THE COURT: We can go on and get that. So, I note
13 your exception.

14 MR. O'NEAL: Thank you, Judge.

15 MR. BELL: *State vs. Mose, M-o-s-e, Peterson III and*
16 *Craig Anthony Stubbs*. It is cited as 287 S.C. 244 or 335
17 S.E. 2d 800.

18 THE COURT: Thank you all. Gentlemen, do this for me,
19 please?

20 MR. O'NEAL: Yes, ma'am.

21 THE COURT: Please come and review all of the exhibits
22 and the verdict forms one more time. And it says "FKN." I
23 think it's supposed to just say "FKA." So, y'all change
24 that for me, please.

25 MR. O'NEAL: Yes, Your Honor.

1 THE COURT: And then we will be in recess until we
2 hear ...

3 (Both counselors confer with the court
4 reporter about the exhibits.)

5 (Bench conference.)

6 THE COURT: And I tell you what, Counsel, I'm going to
7 let them -- I'm going to let them deliberate for about 30
8 minutes and then I'm going to ask Ms. Salisbury and Mr.
9 Taylor to go in and -- about lunch. Or they may just --
10 sometimes they just -- Ms. Salisbury knows what's wonderful
11 for lunch and she just orders it.

12 So, do you want to be notified when she goes in or --

13 MR. O'NEAL: No, ma'am.

14 THE COURT: -- George goes in just to talk about
15 lunch? Okay. Very well. Very well. And again, we will
16 be in recess until we hear from our jury.

17 MR. O'NEAL: Very well, Judge. My client and her
18 family will probably go outside the courthouse briefly and
19 come right back in, if that's all right?

20 THE COURT: I have no problem with that at all. And
21 again -- but I'll just speak to your client about that.

22 Ms. Hecksher, just as I said several times to you, and
23 I do this in an abundance of caution so that you are
24 notified and -- and on notice: If you should fail to
25 return from your lunch, I would immediately issue a bench

1 warrant and -- but the trial, the verdict, and receiving
2 the verdict and the sentencing, would proceed on without you
3 here.

4 And again, I'm saying that, not because I don't think
5 that you will be as honorable as you have throughout these
6 proceedings in returning, I just tell you so that I know
7 that you have heard that from me and you are on notice.
8 But I have no problem with -- with her remaining out.

9 MR. O'NEAL: Thank you, Judge.

10 THE COURT: All right. Very well. And also -- and
11 let me just say this, because I'm -- I -- since it's on my
12 mind. We have no way of knowing how long the jury will
13 deliberate. We just have no way of knowing that.

14 And if you -- if you need to bring -- if you all need
15 or want to bring the baby and -- and again use the
16 conference room, I want you all to feel free to do that
17 because, you know -- I know -- I don't know how long the
18 pumping and all will last, and I don't know how long
19 they're going to deliberate. But I want you to be at ease.
20 Again, that's your room.

21 MR. O'NEAL: Thank you, Judge.

22 THE COURT: All right. Thank you all. All right.

23 (Off the record at 11:57 a.m.)

24 (On the record at 1:10 p.m.)

25 THE COURT: All right. As you all know, the -- our --

1 our jury wants to rehear some testimony and we're going to
2 play it back for them.

3 MR. BELL: That's what we're working on, Your Honor.
4 Your Honor, we're not --

5 THE COURT: Huh?

6 MR. BELL: We're not quite ready.

7 THE COURT: We're not quite -- I thought we were?

8 MS. KIMMONS: We're having some trouble getting it to
9 play. Do you we need to call Sean?

10 THE COURT: Yeah. Tell them to hold just a sec --
11 tell them we thought we were ready, but we're having a
12 momentary technical difficulty. Hang loose.

13 COURT SECURITY: Yes, ma'am.

14 THE COURT: Stay tuned.

15 (Brief pause due to technical difficulty.)

16 (On the record at 1:29 p.m.)

17 THE COURT: All right. Anything else before we bring
18 our jury out?

19 MR. BELL: No.

20 MR. O'NEAL: No.

21 THE COURT: No? No? No? Yes?

22 (Bench conference.)

23 THE COURT: All right. Could we get the jury, please?

24 (Jury enters at 1:37 p.m.)

25 (Marked Juror Notes as Court's Exhibit Nos. 3 and 4.)

1 THE COURT: Ladies and gentlemen, I have your notes.
2 And I, of course, thank you for them. This is how we're
3 going to be proceeding. In just a moment the testimony of
4 the two individuals, Mr. King, Ms. Hans, we're going to
5 replay those for you. And then once we have replayed that
6 testimony for you, then I will -- I will recharge you on
7 intent and malice.

8 Ladies and gentlemen, at this time we're going to
9 begin by playing the testimony, I would think, of Mr. King
10 first. Is that right?

11 MR. O'NEAL: That's correct.

12 THE COURT: Very well.

13 (At this time, the testimony of Kevin King
14 was played back for the jury.)

15 THE COURT: Are y'all going to come on and assist him
16 and switch to the next --

17 (Mr. Bell and Mr. O'Neal come up
18 to assist the Deputy Clerk of Court.)

19 (At this time the testimony of Jessica Hans
20 was played back for the jury.)

21 (Audio CD marked as Court's Exhibit No. 5.)

22 THE COURT: All right. Thank you. Ladies and
23 gentlemen, I am now prepared to charge you with regards to
24 intent and malice.

25 First intent: In order to establish criminal

1 liability, criminal intent is required. For example, the
2 mental state required to be proven by the State for a
3 particular crime might be purpose, intent, knowledge,
4 recklessness, or criminal negligence.

5 Criminal intent must be proven by the State beyond a
6 reasonable doubt. Criminal intent is always a matter that
7 must be determined by the jury from the circumstances
8 surrounding the situation.

9 There is no way to prove intent to a mathematical
10 certainty. There is no way medical science can dissect a
11 person's brain and determine what the person had in mind.
12 So, the law says that criminal intent may be inferred from
13 the circumstances shown to have existed.

14 This is how you make a determination of whether or not
15 the element requiring intent was present: It is not
16 necessary to establish intent by direct and positive
17 evidence, but intent may be established by inference in the
18 same way as any other fact, by taking into consideration
19 the act of the parties and all of the facts and
20 circumstances of the case.

21 Criminal intent is a mental state, a conscious
22 wrongdoing. It is up to you to determine what the
23 defendant intended to do based on the circumstances shown
24 to have existed. Criminal intent can arise from action or
25 a failure to act. It may arise from negligence,

1 reckless, or an indifference to duty; or to
2 consequences that are considered by the law to be the
3 equivalent of criminal intent.

4 Malice: Malice is hatred, ill will, or hostility
5 towards another person. It is the intentional doing of a
6 wrongful act without just cause or excuse, and with an
7 intent to inflict an injury or under circumstances that the
8 law will infer an evil intent.

9 Malice aforethought does not require that malice exist
10 or any particular time before the act is committed, but
11 malice must exist just before and at the time that the act
12 is committed. Therefore, there must be a combination of
13 previous evil intent and the act.

14 Malice aforethought may be express or inferred. These
15 terms "express" and "inferred" do not mean different kinds
16 of malice, but merely the manner in which malice may be
17 shown to exist, that is either by direct evidence or by
18 inference from the facts and circumstances which are
19 proved.

20 Express malice is shown when a person speaks words
21 which express hatred or ill will for another, or when the
22 person prepared beforehand to do the act which was later
23 accomplished. For example, lying in wait for a person, or
24 any other acts of preparation going to show that the deed
25 was within the person's mind would be express malice.

1 Malice may be inferred from conduct showing a total
2 disregard for human life. Inferred malice may also arise
3 when the deed is done with a deadly weapon. A deadly
4 weapon is any article, instrument, or substance which is
5 likely to cause death or great bodily harm. Whether an
6 instrument has been used as a deadly weapon depends on the
7 facts and circumstances of each case. The following are
8 examples, and examples only, of instruments which may be
9 deadly weapons: a shotgun, a rifle, a dirk, a dagger, a
10 knife, a slingshot, metal knuckles, a razor, gasoline, a
11 firebomb or a Molotov cocktail, lighter fluid; a firearm
12 may be a deadly weapon, even if it is not operating.

13 Ladies and gentlemen, that concludes my charge on
14 intent and malice. Please retire to your jury room and
15 continue your deliberations.

16 (Jury exists at 2:19 p.m.)

17 THE COURT: Any exceptions or additions?

18 MR. BELL: None from the State, Your Honor.

19 MR. O'NEAL: None from the Defense.

20 THE COURT: We will continue in recess. We will be at
21 ease, because I need my computer back.

22 (Marked Court's Exhibit No. 6, juror note.)

23 (Off the record at 2:20 p.m.)

24 (On the record at 3:17 p.m.)

25 THE COURT: All right. I'm -- I intend to -- to bring

1 the jury and I'm going to recharge them regarding the hand
2 of one is the hand of all. And then I'm going to use the -
3 - the explanation that you all helped so much -- thank you,
4 Ms. Kimmons. Thank you Mr. O'Neal. Thank you, Mr. Bell.

5 MR. O'NEAL: Yes, ma'am.

6 THE COURT: And then I intend to define commission of
7 a crime as -- as being the doing, the doing of the crime --
8 - commission, doing ---

9 MR. O'NEAL: That part that we talked about just now.
10 That thing you just read, that's what I liked.

11 THE COURT: What?

12 MR. O'NEAL: May we approach?

13 THE COURT: Yeah.

14 (Bench conference.)

15 THE COURT: Oh, you're going to mark this as the
16 Court's Exhibit No. 40-what?

17 THE COURT REPORTER: Number 7.

18 THE COURT: Okay. Number 7.

19 (Marked Court's Exhibit No. 7, juror note.)

20 (Jury enters at 3:26 p.m.)

21 THE COURT: Ladies and gentlemen, I have your note.
22 Thank you for it. And this is how we're going to be
23 proceeding with regards to your first question, I'm going
24 to recharge you regarding the hand of one is the hand of
25 all. With regards to the other three, I'm going to try to

1 -- to -- I'm going to try to answer that as well.

2 Now, ladies and gentlemen, the charge regarding the
3 hand of one is the hand of all: If a crime is committed by
4 two or more people who are acting together in committing a
5 crime, the act of one is the act of all.

6 A person who joins with another to commit an unlawful
7 act is criminally responsible for everything done by the
8 other person, which happens as a -- as a probable or
9 natural consequence of the acts done in carrying out the
10 common plan and purpose.

11 For example, two people can be guilty of armed robbery
12 when only one of the two had a gun and the other acted as a
13 lookout and -- and only one approached to take the goods
14 with the gun. If two or more people are together, acting
15 together, assisting each other in committing the offense,
16 the act of one is the act of all; or as it is sometimes
17 said, the hand of one is the hand of all.

18 Prior knowledge that a crime is going to be committed
19 without more is not sufficient to make a person guilty of
20 that crime. Mere knowledge that another person is going to
21 commit a crime, even if the defendant and the person is
22 present when the crime is committed, is not sufficient to
23 convict the defendant as a principal.

24 Guilt as a principal is shown by actual or
25 constructive presence at the scene as a result of prior

1 arrangement. Therefore, a finding of a prior arranged plan
2 or common scheme is necessary for a finding of guilt as a
3 principal. The State must prove beyond a reasonable doubt,
4 by competent evidence, the theory of the hand of one is the
5 hand of all.

6 A principal in a crime is one who either actually
7 commits the crime or who is present, aiding, abetting, or
8 assisting in committing the crime. When a person does an
9 act in the presence of and with the assistance of another,
10 the act is done by both. Where two or more, acting with a
11 common plan or intent, are present at the commission or
12 doing of a crime, it does not matter who actually commits
13 or does the crime, all are guilty. The hand of one is the
14 hand of all.

15 Present at the commission or doing of a crime means to
16 be sufficiently near to aid and abet and assist in the
17 commission or doing of a crime. However, mere presence at
18 the scene of a crime is not sufficient to convict one as a
19 principal on the theory of aiding and abetting. Intent is
20 also a necessary element. For there must have been a
21 common design or intent to commit the crime, and the crime
22 must have been committed pursuant thereto with the person
23 aiding and abetting by some overt act.

24 Intent means intending the result which actually
25 occurs, not accidentally or involuntarily. Intent may be

1 shown by acts and conduct of the defendant, and other
2 circumstances from which you may naturally and reasonably
3 infer intent. The State must prove these elements beyond a
4 reasonable doubt.

5 Now, ladies and gentlemen, (as read): "Please explain
6 the difference between the two indictments." That was your
7 -- that was your second question.

8 I would respond as follows: For murder, the defendant
9 must have been present. For accessory before the fact of
10 murder, the defendant was not present during the commission
11 of the crime or the -- presence is not required. Presence
12 is -- in other words, for accessory before the fact to a
13 felony, here murder, defendant is not present during the
14 commission of the crime or the doing of the crime.

15 Which should be a hint to you: What is the definition
16 of commission of a crime? You could remove the word
17 "commission." and replace that with "the doing of a crime."
18 The -- the commission, the doing of the crime.

19 Does commission of a crime start at the time the first
20 criminal act happens? It is the doing. It is the doing.
21 So, the answer, I think is pretty evident, is yes. The
22 doing of the crime. So, in other words, your question is:
23 Does commission begin when the -- when -- if you will when
24 the doing begins? Yes.

25 Please retire and continue to deliberate your verdict

1 -- or I should say, verdicts.

2 (Jury exits at 3:35 p.m.)

3 THE COURT: Exceptions?

4 MR. BELL: None from the State.

5 MR. O'NEAL: None from the Defense.

6 THE COURT: Thank you. Y'all continue in recess.

7 (Off the record at 3:35 p.m.)

8 (On the record at 4:12 p.m.)

9 THE COURT: All right. It is my understanding that
10 the jury has reached it's verdict. And in just a moment,
11 we're going to invite them back out into the courtroom and
12 receive their verdict.

13 Ladies and gentlemen, again let me reiterate and
14 remind all of you that I am very well aware about how
15 difficult, how emotional, how heart wrenching particularly
16 these matters when there has been a loss of a loved one.
17 But that these matters are difficult for both sides. And -
18 - and I'm very mindful of that.

19 Having said that, the demeanor of the court must be
20 maintained, and I will insist upon it. And I would ask at
21 this point if anyone is concerned about your ability to
22 maintain your composure -- irrespective of what the verdict
23 is of this jury, if you are concerned at all about your
24 ability to maintain your composure, I'm going to ask you to
25 exit now.

1 (No audible response.)

2 THE COURT: Very well. Having said that, if -- once
3 the verdict comes in, I do not expect there to be any
4 outburst. There must not be. But if you are overwhelmed
5 one way or the other, ladies and gentlemen, please take
6 your leave of the courtroom at that time.

7 All right. Anything before we bring the jury out from
8 the State?

9 MR. BELL: Nothing from the State.

10 THE COURT: From the Defense?

11 MR. O'NEAL: Nothing, Your Honor.

12 THE COURT: Very well. Let us have our jury.

13 (Jury enters at 4:17 p.m.)

14 THE COURT: All right. It is my understanding that
15 the jury's reached its verdict; is that correct?

16 PRESIDING JUROR: Yes, ma'am.

17 THE COURT: Will you pass it please to Mr. Taylor?

18 (The presiding juror complies.)

19 (Mr. Taylor hands the forms to the Court, and the Court
20 reviews the verdict forms.)

21 THE COURT: (To the Court Clerk) You may publish the
22 verdict. They are in due form.

23 COURT CLERK: (As read) "In regard to the State of
24 South Carolina, the County of Dorchester vs. Tiffany Ann
25 Haskell [sic], formally known as Sanders, Indictment No.

1 2007-GS-18-1206, as to the indictment alleging accessory
2 before the fact to a felony, we, the jury, unanimously find
3 the defendant not guilty."

4 "In regards to the *State of South Carolina, County of*
5 *Dorchester vs. Tiffany Ann Haskell* [sic], *formally known as*
6 *Sanders*, the defendant, Indictment No. 2010-GS-18-707, as
7 to the charge of murder, we, the jury, unanimously find the
8 defendant guilty."

9 Ladies and gentlemen of the jury, if this is your
10 verdict and it's still your verdict, please raise your
11 right hand.

12 (All jurors comply.)

13 COURT CLERK: Thank you.

14 THE COURT: Very well. Anything before we dismiss our
15 jury from the State?

16 MR. BELL: Nothing from the State, Your Honor.

17 THE COURT: All right. From the Defense?

18 MR. O'NEAL: I respectfully request polling of the
19 jury, Your Honor.

20 THE COURT: Very well.

21 (Bench conference between the Court the Court Clerk.)

22 THE COURT: Ladies and gentlemen, I'm going to ask you
23 -- I'm going to call your name, and as I call your name I'm
24 simply going to ask you to please stand. I have two
25 questions for you: Ladies and gentlemen, was this your

1 verdict in your jury room, and is it still your verdict?

2 Now, again, it's always exciting when you are the
3 first person who responds.

4 All right. David Villinger.

5 (The juror stands.)

6 THE COURT: Mr. Villinger, was this your verdict?

7 JUROR: Yes, ma'am.

8 THE COURT: Is it still your verdict?

9 JUROR: Yes, ma'am.

10 THE COURT: Thank you, sir.

11 Ms. Donna Gore.

12 (The juror stands.)

13 THE COURT: Ms. Gore, was this your verdict in your
14 jury room?

15 JUROR: Yes, ma'am.

16 THE COURT: Is it still your verdict?

17 JUROR: Yes, ma'am.

18 THE COURT: Very well. Thank you.

19 Shannon Guilford.

20 (The juror stands.)

21 THE COURT: Ms. Guilford, was this your verdict in
22 your jury room?

23 JUROR: Yes, ma'am.

24 THE COURT: Is it still your verdict?

25 JUROR: Yes, ma'am.

1 THE COURT: Ms. Christina A. Willis.

2 (The juror stands.)

3 THE COURT: Was this your verdict in the jury room?

4 JUROR: Yes, ma'am.

5 THE COURT: Is it still your verdict?

6 JUROR: Yes, ma'am.

7 THE COURT: Ms. Huger.

8 (The juror stands.)

9 THE COURT: Was this your verdict in your jury room?

10 JUROR: Yes, ma'am.

11 THE COURT: Is it still your verdict?

12 JUROR: Yes, ma'am.

13 THE COURT: Thank you. You may be seated.

14 And Ms. Brenda L. McCoil.

15 (The juror stands.)

16 THE COURT: Was this your verdict in your jury room?

17 JUROR: Yes, ma'am.

18 THE COURT: Is it still your verdict?

19 JUROR: Yes, ma'am.

20 THE COURT: Thank you.

21 Thomas M. Armstrong.

22 (The juror stands.)

23 THE COURT: Mr. Armstrong, was this your verdict in
24 the jury room?

25 JUROR: Yes, ma'am.

1 THE COURT: Is it still your verdict?

2 JUROR: Yes, ma'am.

3 THE COURT: You may be seated.

4 John E. Blanchard.

5 (The juror stands.)

6 THE COURT: Mr. Blanchard, was this your verdict in
7 the jury room?

8 JUROR: Yes, ma'am.

9 THE COURT: Is it still your verdict?

10 JUROR: Yes, ma'am.

11 THE COURT: Mr. Ronnie L. Stone.

12 (The juror stands.)

13 THE COURT: Was this your verdict in the jury room?

14 JUROR: Yes, ma'am.

15 THE COURT: Is it still your verdict?

16 JUROR: Yes, ma'am.

17 THE COURT: Ms. Iluminada Nettles.

18 (The juror stands.)

19 THE COURT: Did I do that okay?

20 JUROR: Uh-huh.

21 THE COURT: Was this your verdict in your jury room?

22 JUROR: Yes, ma'am.

23 THE COURT: Is it still your verdict?

24 JUROR: Yes, ma'am.

25 THE COURT: And Ellen L. Cone.

1 (The juror stands.)

2 THE COURT: Ms. Cone, was this your verdict in your
3 jury room?

4 JUROR: Yes, ma'am.

5 THE COURT: Is it still your verdict?

6 JUROR: Yes, ma'am.

7 THE COURT: And Homer J. Roberts.

8 (The juror stands.)

9 THE COURT: Mr. Roberts, was this your verdict in your
10 jury room?

11 JUROR: Yes, ma'am.

12 THE COURT: Is it still your verdict?

13 JUROR: Yes, ma'am.

14 THE COURT: Very well. You may be seated.

15 All right. The jury has been polled. The -- all 12
16 jurors concur that this was their verdict in the jury room
17 and it is still their verdict.

18 Anything further at this time?

19 MR. O'NEAL: Not at this time, Your Honor.

20 THE COURT: Very well. Ladies and gentlemen, I want
21 to thank you for your service on this jury and on this jury
22 panel this week. That should be a hint to you that you do
23 not need to call after six o'clock this evening, because
24 this will conclude the work that our jury -- court will
25 still -- we still have things to do.

1 But, ladies and gentlemen, our jurors are finished and
2 your jury services is concluded.

3 Now, Ladies and gentlemen, let me share with you that
4 you are now not eligible to serve on a jury in a court of
5 record during the balance of 2010. So, remember that. And
6 of course you have earned, and you have by our law, an
7 exemption for 2011 and 2012, if you need it.

8 Now, I -- for those of you who are -- will be going to
9 work either this evening, if you wish -- although you've
10 been hard at it.

11 JUROR: I already called.

12 THE COURT: Well, I think that's appropriate. I
13 really do. And -- but those of you who need something for
14 tomorrow morning or tomorrow, we can certainly get that for
15 you in the clerk's office; which -- Ms. Salisbury may have
16 something up here.

17 Ms. Salisbury, do you have the -- it's -- do you have
18 the -- the --

19 MS. SALISBURY: I think so.

20 THE COURT: Ms. Salisbury will hand -- those of you --

21 MS. SALISBURY: They need something for work, you
22 mean?

23 THE COURT: Yeah.

24 MS. SALISBURY: Yes, ma'am, I do.

25 THE COURT: Ms. Salisbury's got you covered. So,

1 those of you that need that, if you will just retire to you
2 jury room, she will be happy to get that for you and save
3 you a trip down to the Clerk's Office.

4 Now, ladies and gentlemen, the jurors often want to
5 know, and I know they do, and I understand why, but they're
6 shy to ask and that is: How about my check. I used to
7 tell jurors that the check was in the mail, because I
8 thought it was. And Ms. Graham said, "No. They're not in
9 the mail. You can't tell -- you're the Judge, you can't be
10 telling people that. That's not true."

11 So, let me tell you that it will be to you very
12 shortly. It will be to you very shortly. Our -- our trip
13 to Tahiti we've been talking about all week, it'll get you
14 to Jedburg.

15 Ladies and gentlemen, it is -- I want to thank each
16 and every one of you -- each and every one of you for all
17 of the time, your energy that you have given to our system
18 and our way of life. I hope you have found your service to
19 be informative and interesting. I can assure you it has
20 been essential.

21 Let me conclude by telling you that your service is
22 concluded. You are at liberty to talk about this case if
23 you wish. The practice of law is an art and not a science.
24 Oft times lawyers want to talk to jurors to find out what
25 was helpful and perhaps what was not. And if you're

1 comfortable talking about it, that's fine. If you're not,
2 that fine. These lawyers would never persist if you told
3 them you didn't want to speak about the trial. But if
4 you're comfortable doing it, that's perfectly fine, too.

5 Whomever is curious about what you have been up to
6 today when you go home, it's perfectly fine to talk about
7 this case, again, if you wish.

8 Now, ladies and gentlemen, that will conclude my
9 remarks, it will conclude your service. I am going to
10 proceed to sentencing at this point. And, of course, you
11 now return to a member of the public. If you wish to -- if
12 you wish to be present, that's fine. If you don't wish to
13 be present, that is equally fine. I leave it up to you.

14 If you wish to remain you are fine where you are. If
15 you wish to leave, you are certainly welcome to do that.
16 And you probably would want to do that now, because I'm
17 going to proceed to sentencing. And thank you again so
18 much for your service.

19 (Jury exits at 4:27 p.m.)

20 MR. O'NEAL: All right, Judge. I guess it's time for
21 sentencing.

22 THE COURT: Yes.

23 MR. O'NEAL: My understanding is my client doesn't
24 have a previous criminal record. And I'm going to go ahead
25 and tell you that verdict was a complete surprise to me,

1 and I think it was a complete surprise to everybody in this
2 courtroom. And I just ask, Your Honor, if you would show
3 her mercy.

4 THE COURT: Very well.

5 MR. O'NEAL: Yes, ma'am.

6 THE COURT: First of all, I need to know -- let me
7 first of all ask about her record. And I need to, of
8 course, know what that is. And then -- but let -- let me
9 know that first. Yes, what is her record.

10 MR. BELL: She has no record, Your Honor.

11 THE COURT: She has no prior record. Very well. Now,
12 Counsel, let me see you all just a moment.

13 (Marked Court's Exhibit No. 8, juror note.)

14 (Bench conference.)

15 (Mr. O'Neal confers with the defendant.)

16 (Briefly off the record at 4:33 p.m.)

17 (On the record at 4:46 p.m.)

18 THE COURT: Yes, sir?

19 MR. O'NEAL: Well, Judge, what can I offer in
20 mitigation? I mean, she's 21 years old. It turns out she
21 got married in '08, as opposed to '09, like I thought. The
22 baby was born earlier this year; six months ago.

23 Never been in trouble with the law before. Her
24 husband's present in the courtroom, her mother's present in
25 the courtroom, her stepfather's present in the courtroom.

1 She had family in here with her.

2 And like I say, Judge, I mean, what can I offer in
3 mitigation? No previous criminal record; tender age of 21;
4 a young mother.

5 THE COURT: Very well. And our young Mr. Ham's
6 grandfather wanted to speak; am I right?

7 MR. BELL: Yes, Mr. Mac Ham. Mr. Ham? Come around
8 here.

9 (Mr. Ham complies.)

10 MR. BELL: Say your name first.

11 MR. HAM: Good afternoon, Your Honor.

12 THE COURT: Good afternoon.

13 MR. HAM: My name is Connie Mac Ham. I'm the
14 grandfather of Jessie Mac Ham. These past three years have
15 been a terrible ordeal on my family, and I hope today this
16 is going to bring closure. I have been in front of a judge
17 three times, and it's hard.

18 It's my understanding this young lady is being
19 sentenced for what happened on June of 2007, not what
20 happened since then. You know, I know she's got married,
21 and all like that.

22 Jessie never had the chance to get married, as we
23 heard previously. Fine young boy. Just had one enemy,
24 Sean, and Sean took care of him. You know, I -- it's just
25 -- it's just one of those things. It's something that

1 should never have happened, but it did.

2 And having said that, whatever sentence you impose on
3 this young lady, my family and myself will accept and abide
4 with it. Thank you.

5 THE COURT: Thank you. Thank you so much, Mr. Ham.

6 All right. Anything further?

7 MR. O'NEAL: Nothing from the Defense, Your Honor.

8 THE COURT: All right.

9 MR. BELL: Nothing from the State.

10 THE COURT: Very well. Did your client spend any time
11 at all locked up, pretrial detained, Mr. O'Neal?

12 MR. O'NEAL: How long? Three weeks, Your Honor.

13 THE COURT: You all bear with me just a moment.

14 (To the Court Clerk) And, Jennifer, pass me the --
15 pass me the indictment back, please, ma'am.

16 (The Court Clerk complies.)

17 (Brief pause as the Court prepares the sentence document.)

18 THE COURT: All right. Ms. Sanders, of course,
19 remains at table. You wish for her to remain there?

20 MR. O'NEAL: I don't think she can stand up, Judge.

21 THE COURT: All right. Very well. Ms. Tiffany Ann
22 Sanders, the jury today has found you guilty of murder.
23 And pursuant to Indictment 2010-GS-18-0707, I impose the
24 mandatory minimum sentence on you of 30 years in prison.

25 Therefore, I commit you to the State Department of

1 Corrections for a determinant term of 30 years, giving you
2 credit for the time that you have served.

3 MR. O'NEAL: Thank you, Your Honor.

4 MR. BELL: Thank you, Your Honor.

5 THE COURT: All right.

6 MR. O'NEAL: Judge, can we approach one last time?

7 THE COURT: Of course.

8 (Bench conference.)

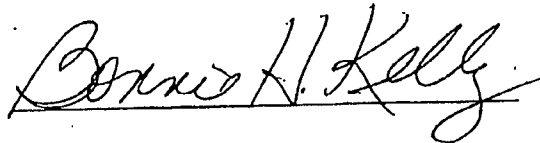
9 (Off the record at 5:00 p.m.)

10 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

1
2
3 I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL
4 COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE
5 STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
6 FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT
7 OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE
8 INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE,
9 RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR
10 DORCHESTER, SOUTH CAROLINA, ON THE 3RD THROUGH THE 5TH
11 DAYS OF AUGUST, 2010.

12 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
13 COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

14 

15 BONNIE H. KELLY,

16 COURT REPORTER

17 COLUMBIA, SOUTH CAROLINA

18 DECEMBER 25, 2010

000546

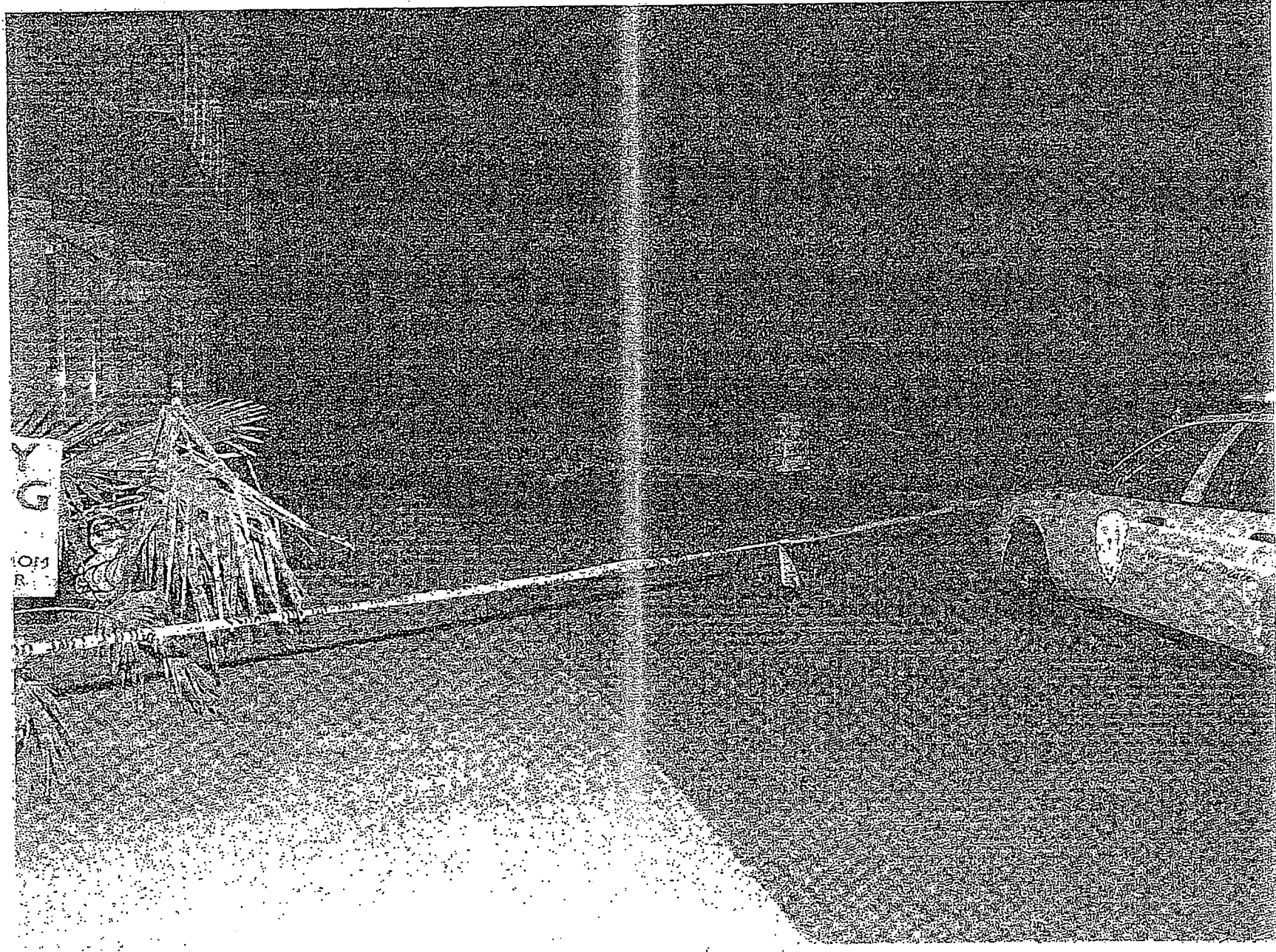
STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

EXHIBITS

Plaintiff(s) State of S.C.
vs.
Defendant(s) Tiffany Ann Sanders

PLAINTIFF'S EXHIBITS	EX	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 Photo	✓	1	1 Stipulation Document 1PS
2 Photo	✓	2	2 Statement Document 3PS
3 Photo	✓	3	3 Juror Note
4 Photos	✓	4	4 Juror Note
5 Photos	✓	5	5 CD/Playback
6 Miranda Form Doc	✓	6	6 Juror Note
7 2PS Statement Doc	✓	7	7 Juror Note
8		8	8 Juror Note
9		9	
10		10	
11		11	
12		12	
13		13	
14		14	
15		15	
16		16	
17		17	
18		18	
19		19	
20		20	

Court Reporter Bonnie H. Kelly 8-3-10 -
Clerk of Court Jennifer Jones 8-3-10 - 8-5-10

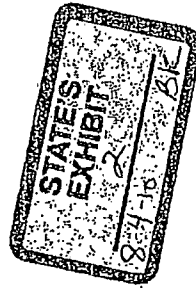


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12





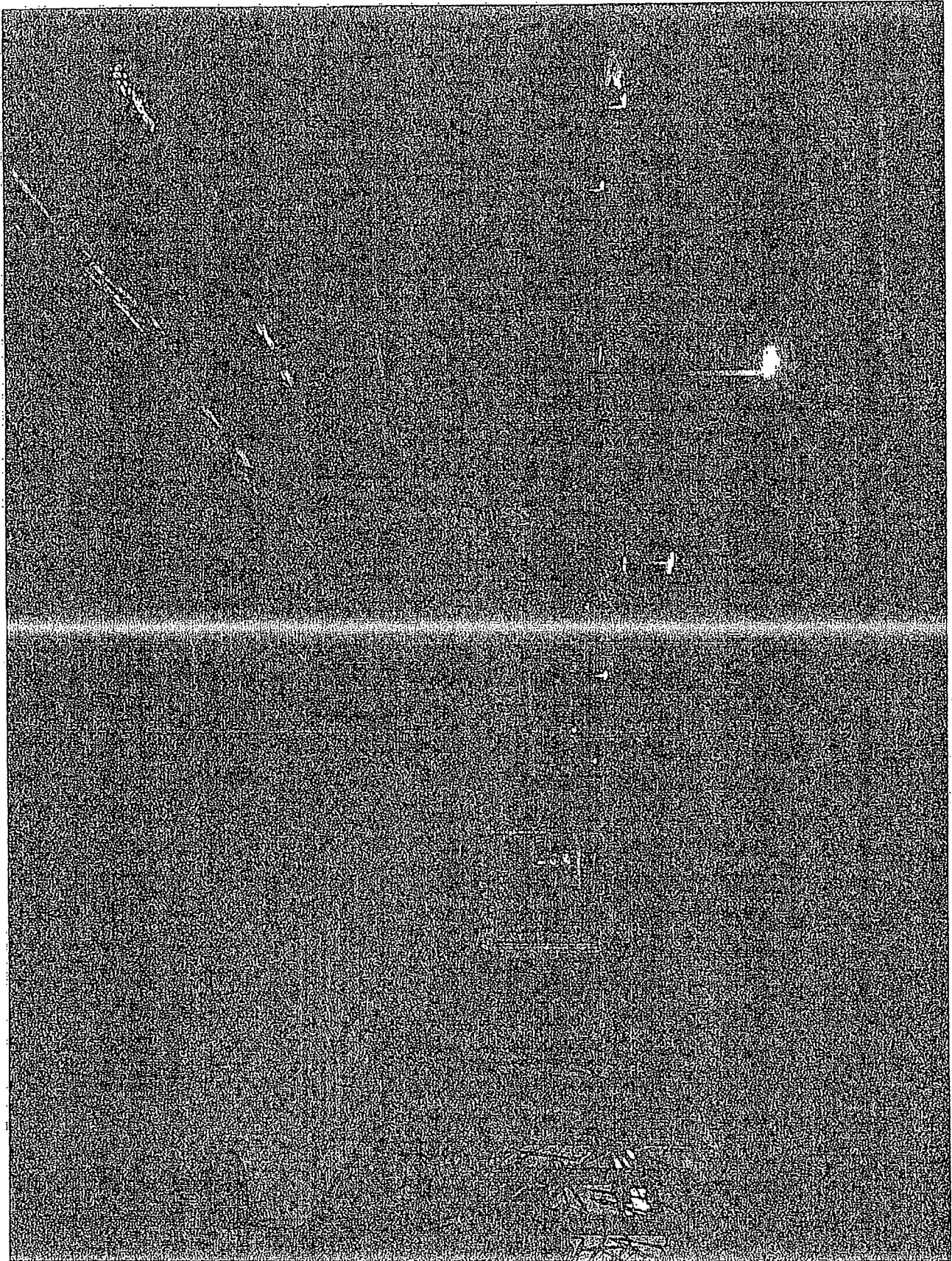
332

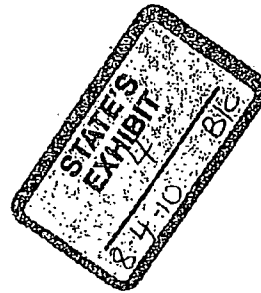
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333

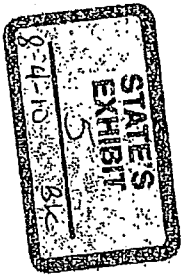
STATE'S
EXHIBIT
3
8-4-70 BK

000552

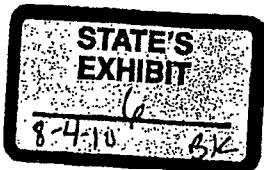








NORTH CHARLESTON POLICE DEPARTMENT



COMPLAINT # 2007024114

ADVICE OF CONSTITUTIONAL RIGHTS

FULL NAME Sanders, Tiffany ANN DATE OF BIRTH 4-12-89
AGE 18 GRADE COMPLETED IN SCHOOL 12 Tiffany Ann Sanders
HAVE BEEN ADVISED BY Det. J. Sturkie

OF THE NORTH CHARLESTON POLICE DEPARTMENT THAT:

- 1) I HAVE THE ABSOLUTE RIGHT TO REMAIN SILENT AND DO NOT HAVE TO ANSWER ANY QUESTIONS OR GIVE A STATEMENT AND THIS FACT CANNOT BE USED AGAINST ME.
- 2) IF I DO ANSWER QUESTIONS OR GIVE A STATEMENT, ANYTHING I SAY CAN AND WILL BE USED AGAINST ME IN A COURT OF LAW.
- 3) I HAVE THE RIGHT TO CONSULT WITH A LAWYER OF MY CHOICE BEFORE I ANSWER QUESTIONS OR GIVE A STATEMENT AND ALSO HAVE HIM PRESENT WHILE I AM BEING QUESTIONED.
- 4) IF I WISH TO TALK TO A LAWYER OR HAVE HIM PRESENT, BUT AM UNABLE TO AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT ME FREE OF CHARGE.
- 5) IF I DECIDE TO ANSWER QUESTIONS OR GIVE A STATEMENT WITHOUT HAVING A LAWYER PRESENT REPRESENTING ME, I HAVE THE ABSOLUTE RIGHT DURING THIS INTERVIEW TO STOP ANSWERING QUESTIONS AND TO REMAIN SILENT.

I FULLY UNDERSTAND EACH OF THESE RIGHTS EXPLAINED TO ME.

WITNESS: James Sturkie SIGNATURE: Tiffany Sanders
WITNESS: DP Dalt DATE: 06-09-07 TIME 01:15 p.m.

HAVING THESE RIGHTS IN MIND I WISH TO WAIVE THESE RIGHTS AND ANSWER QUESTIONS CONCERNING THE

CHARGE OF Murder NO THREATS, FORCE OR PROMISES OF ANY KIND HAVE BEEN MADE TO ME BY ANYONE TO CAUSE ME TO WAIVE THESE RIGHTS AND/OR ANSWER QUESTIONS.

WITNESS: James Sturkie SIGNATURE: James Sturkie / Tiffany Sanders
WITNESS: DP Dalt DATE: 06-09-07 TIME 01:17 p.m.

NORTH CHARLESTON POLICE DEPARTMENT

DEFENDANT STATEMENT



STATEMENT OF Sanders, Tiffany Ann
HOME ADDRESS 4606 Battery Range HOME PHONE 552-6402
EMPLOYER BUSINESS ADDRESS Cell: 814-8185
BUS. PHONE OCCUPATION 819-3135

THIS STATEMENT IS GIVEN June 9, 2007 (DATE) AT 1320 (TIME)
4900 LaCross Rd, N. Charleston SC 29405 (LOCATION) 9:45-12:00

This statement / Riding around with my sister. My
Parents called said they was almost home rode to
my neighborhood was riding through seen Brandon, David,
Jessi, & Kevin. I knew David & Brandon before. Shawn calls
and asks who I'm with then asks me to bring
Jessi up to Publix Kevin, Jessi, my sister, & I ride to
Publix Kevin & Jessi wanted to get out of the car
and as soon as they did Shawn ran up to Kevin
pushed him & Jessi screamed drive and I took off &
went to Brandon's house got Brandon went back
up there to see if they ducked in the woods. I had
no knowledge of a gun until I heard the shot. After
me & Brandon didn't see anyone Brandon said
alright you can take me home I dropped Brandon
off and went home tried to call Shawn
no answer. I had no knowledge of a gun
being present to take a life the only knowledge
that I had was Shawn wanting to fight
Jessi because of Jessi beating Shawn in

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

WITNESS: [Signature]
WITNESS: [Signature]

SIGNATURE: [Signature]

STIPULATION---TIFFANY ANN SANDERS

THE STATE AND DEFENDANT STIPULATE TO THE FOLLOWING FACTS:

JESSIE HAM, THE VICTIM WAS KILLED BY FOUR SHOTS, THREE IN THE BACK AND ONE TO THE NECK

JESSIE HAM WAS KILLED NEAR THE TIRE KINGDOM IN THE PUBLX SHOPPING CENTER AT THE CORNER OF PARK FOREST PARKWAY (ACROSS FROM ASHELY PHOSPHATE RD.) AND DORCHESTER ROAD IN THE CITY OF NORTH CHARLESTON, DORCHESTER COUNTY

SEAN KAMMERER FIRED THOSE FOUR SHOTS

SEAN KAMMERER WAS CONVICTED BY HIS PLEA OF GUILTY TO MURDER

DEJUAN JENKINS DROVE SEAN KAMMERER TO THE SCENE AND AWAY FROM THE SCENE AND WAS CONVICTED BY HIS PLEA TO ACCESSORY AFTER THE FACT



NORTH CHARLESTON POLICE DEPARTMENT



COMPLAINT # 20070241A

ADVICE OF CONSTITUTIONAL RIGHTS

FULL NAME Sanders, Tiffany ANN DATE OF BIRTH 4-12-89
AGE 18 GRADE COMPLETED IN SCHOOL 12, Tiffany Ann Sanders
HAVE BEEN ADVISED BY Det. J. Sturkie

OF THE NORTH CHARLESTON POLICE DEPARTMENT THAT:

- 1) I HAVE THE ABSOLUTE RIGHT TO REMAIN SILENT AND DO NOT HAVE TO ANSWER ANY QUESTIONS OR GIVE A STATEMENT AND THIS FACT CANNOT BE USED AGAINST ME.
2) IF I DO ANSWER QUESTIONS OR GIVE A STATEMENT, ANYTHING I SAY CAN AND WILL BE USED AGAINST ME IN A COURT OF LAW.
3) I HAVE THE RIGHT TO CONSULT WITH A LAWYER OF MY CHOICE BEFORE I ANSWER QUESTIONS OR GIVE A STATEMENT AND ALSO HAVE HIM PRESENT WHILE I AM BEING QUESTIONED.
4) IF I WISH TO TALK TO A LAWYER OR HAVE HIM PRESENT, BUT AM UNABLE TO AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT ME FREE OF CHARGE.
5) IF I DECIDE TO ANSWER QUESTIONS OR GIVE A STATEMENT WITHOUT HAVING A LAWYER PRESENT REPRESENTING ME, I HAVE THE ABSOLUTE RIGHT DURING THIS INTERVIEW TO STOP ANSWERING QUESTIONS AND TO REMAIN SILENT.

I FULLY UNDERSTAND EACH OF THESE RIGHTS EXPLAINED TO ME.

WITNESS: James W. Sturkie SIGNATURE: Tiffany Ann Sanders
WITNESS: D.D. Pate DATE: 06-09-07 TIME 01:15 p.m.

HAVING THESE RIGHTS IN MIND I WISH TO WAIVE THESE RIGHTS AND ANSWER QUESTIONS CONCERNING THE

CHARGE OF Murder NO THREATS, FORCE OR PROMISES OF ANY KIND HAVE BEEN MADE TO ME BY ANYONE TO CAUSE ME TO WAIVE THESE RIGHTS AND/OR ANSWER QUESTIONS.

WITNESS: James W. Sturkie SIGNATURE: James W. Sturkie / Tiffany Ann Sanders
WITNESS: D.D. Pate DATE: 06-09-07 TIME 01:17 p.m.

NORTH CHARLESTON POLICE DEPARTMENT

DEFENDANT STATEMENT

STATEMENT OF Sanders, Tiffany ANN
 HOME ADDRESS 4606 Battery Range HOME PHONE 552-6402
 EMPLOYER _____ BUSINESS ADDRESS Cell: 814-8185
 BUS. PHONE _____ OCCUPATION 817-3135

THIS STATEMENT IS GIVEN June 9, 2007 (DATE) AT 1330 (TIME)

4900 LaCross Rd, N. Charleston SC 29405 (LOCATION) 9:45-12:00

This statement / Riding around with my sister. My parents called said they was almost home. Ride to my neighborhood was riding through seen Brandon, David, Jessi, Kevin. I knew David & Brandon before. Shawn calls and asks who I'm with then asks me to bring Jessi up to public Kevin, Jessi, my sister, & I ride to public Kevin & Jessi wanted to get out of the car and as soon as they did Shawn ran up to Kevin pushed him & Jessi screamed drive and I took off & went to Brandon's house got Brandon went back up there to see if they dicked in the woods. I had no knowledge of a gun until I heard the shot. After me & Brandon didn't see anyone Brandon said alright you can take me home I dropped Brandon off and went home tried to call Shawn no answer. I had no knowledge of a gun being present to take a life the only knowledge that I had was Shawn wanting to fight Jessi because of Jessi beating Shawn in

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

WITNESS: [Signature]

[Signature]

19 02-05 02

EXN 2007024114

The head with a baseball bat. If I had known
guns would have been involved I would
have kept Jess & Kevin at Brandon's house

~~Handwritten signature and scribbles, crossed out by a diagonal line.~~

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

WITNESS:

Al Burt

WITNESS:

James White

SIGNATURE:

Al Burt

Can we have Kevin King and Jessica Hans
statement read back to us?

[Handwritten signature]



"The hand of one is the hand of all" when does the criminal offense start?

Please explain the difference between the two indictments? For murder, the defendant must have been present. For Accessory before the fact, the defendant was not present during the commission of the crime.

What is the definition of "commission of a crime"?

Does "commission of a crime" start at the time the first criminal act happens?



Can we hear or be read Kevin King's statement and Jessica Hens statement?

Do you mean you wish to rehear their testimony?

Can you clarify if she can be guilty of both charges? Or only one or neither?

ONLY ONE OR NEITHER

David J. Ford



Alleg

Can ~~you~~^{we} get a short version explanation of
intent and malice?

Alise



STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
STATE OF SOUTH CAROLINA,)
vs.)
Tiffany Ann Hecksher, ~~nee~~ Sanders,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
OF THE FIRST JUDICIAL CIRCUIT

Indictment No. 07-GS-18-1206

VERDICT FORM

PLEASE CIRCLE THE APPROPRIATE VERDICT BELOW AND FOLLOW THE
ACCOMPANYING INSTRUCTIONS CAREFULLY.

1. AS TO THE INDICTMENT ALLEGING ACCESSORY BEFORE THE FACT TO A
FELONY, WE THE JURY UNANIMOUSLY FIND THE DEFENDANT

GUILTY

NOT GUILTY
↑

STOP AND END YOUR DELIBERATIONS

Please sign and date.

[Signature]
Presiding Juror

8/5/10
Date

GENERAL SESSIONS DOCKET REPORT FOR DORCHESTER COUNTY

REPORT RUN DATE 7/03/2007

INDICTMENT #: ~~8000GG18~~ ²⁰⁰⁷⁻¹²⁰⁶ ENTRY DATE: 7/03/2007 LAST UPDATE: 7/03/2007
DEFENDANT NAME: SANDERS, TIFFANY ANN AKA:
ADDRESS: 4606 BATTERY RANGE CITY: N CHARLESTON STATE: SC ZIP: 29420
SOCIAL SECURITY NUMBER 888888888 SEX:F FEMALE RACE:W WHITE
DATE OF BIRTH: 4/12/1989 DRIVERS LICENSE STATE / NO.: SC /100867701
WARRENT OR TICKET #: K269532 COUNTS: 00001 OFFENSE CODE: 2414
NO WARRANT00001 NAME OF OFFENSE: Murder / Murder
DATE OF ARREST: 6/26/2007 DATE REC BY CLERK: 7/02/2007 SUMMARY JUDGE: 000
RESTORE DATE: 0/00/0000
DISP DATE: 0/00/0000 DISP TYPE: 8/5/10
DISP TYPE EXPLANATION:
JUDGE CODE/NAME: *Goodstein* COURT REPORTER: *B. Kelly*
CONVICTION: CTS: OFFENSE:
SENTENCE:
DEFENSE ATTORNEY: *Michael O'Neal* ^{CP06422} PROSECUTING ATTORNEY:
H. Bell

Trial - not Guilty

WITNESSES

J. Jellico

North Charleston Police Department

07-024114

ARREST WARRANT NUMBER

K269532

Arrested: June 26, 2007

ACTION OF GRAND JURY

TRUE BILL

DATE

9/4/08

[Signature]

Foreperson of Grand Jury

Date: September 08, 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007GS18-1206

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

September 08, 2008 TERM

THE STATE

vs.

Tiffany Ann Sanders

Indictment for

**ACCESSORY BEFORE THE FACT TO A
FELONY**

SC Code: 16-1-40

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

000570

351

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

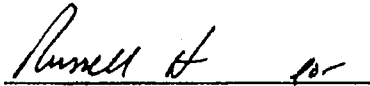
INDICTMENT
2007GS18-1206

At a Court of General Sessions, convened on September 08, 2008 the Grand Jurors of
Dorchester present upon their oath:

ACCESSORY BEFORE THE FACT TO A FELONY

That in Dorchester County, South Carolina, on or about June 8, 2007, the
Defendant, Tiffany Ann Sanders, did knowingly and unlawfully aid in the
commission of, abet, counsel, hire, or otherwise procure the commission of
Murder, by the principal, Sean Kammerer, and the defendant was not present
when the principal felony was committed; this offense being a violation of Section
16-1-40 of the South Carolina Code of Laws, as amended.

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



B. Bell, Solicitor

07-024114

ARREST WARRANT

K- 269532

STATE OF SOUTH CAROLINA

County/ Municipality of DORCHESTER

THE STATE against

SANDERS, TIFFANY ANN

Address: 4606 BATTERY RANGE N. CHARLESTON SC 29420-7211

Phone: SSN: Sex: F Race: W Height: Weight: 000 DL State: SC DL#: 100867701 DOB: 4/12/1989 Agency ORI#: NCPD Prosecuting Agency: Prosecuting Officer: JELICO, DET. SGT. J Offense: MURDER

Offense Code: 116 Code/Ordinance Sec: 16-3-10

This Warrant is CERTIFIED FOR SERVICE in the County/ Municipality of . The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Tiffany A. Sanders on 6-26-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: 90:4 HD 2- 2007

STATE OF SOUTH CAROLINA)

County/ Municipality of DORCHESTER)

AFFIDAVIT

Personally appeared before me the affiant JELICO, DET. SGT. J. who being duly sworn deposes and says that defendant SANDERS, TIFFANY ANN did within this county and state on 6/08/2007 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of) in the following particulars: VIOLATION SECTION 16-3-10 OF SC CODE OF LAWS

DESCRIPTION OF OFFENSE: MURDER

Accessory before the fact (Common Law) of Murder

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

ALL OF WHICH IS AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA AND WILL BE MORE FULLY DESCRIBED IN THE 1976 CODE OF LAW. Signature of Affiant

STATE OF SOUTH CAROLINA)

County/ Municipality of DORCHESTER)

Affiant's Address: 4900 LACROSS ROAD N. CHARL S.C. 29418 Affiant's Telephone: 554-5700

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 6/08/2007 defendant SANDERS, TIFFANY ANN did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: VIOLATION SECTION 16-3-10 OF SC CODE OF LAWS MURDER

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 6-26-07

Signature of Issuing Judge: Judge Code: 034

Judge's Address: 212 Deming Way, Box 10 Summerville SC 29483-0000 Judge's Telephone: (843) 832-0376 Issuing Court: Magistrate Municipal Circuit

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 618

000572

353

K269532

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER
CITY OF NORTH CHARLESTON

AFFIDAVIT

CHEKIL G. GARNETT
CLERK OF COURT
DORCHESTER COUNTY

JUN 11 2007 4:06 PM

OCA# 2007024114
Det D. D. Watson

Sergeant Jellico

Personally appeared before me, a magistrate of this County, one

who first being duly sworn, deposes and says that (name of the defendant)

Tiffany Ann Sanders

did within this County and State on **June 8, 2007**

violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

Accessory before the fact (Common Law) of Murder (16-3-10)

The affiant states 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 June 8, 2007 while at 8421 Dorchester Road which is located in the City of North Charleston, County and State aforesaid, the above named defendant, **Tiffany Ann Sanders** did commit the offense of **Accessory Before the Fact of Murder** in violation of the common law of the State of South Carolina. In that she did willfully, unlawfully and feloniously provide counseling and assistance to the principle defendant, Sean Kammerer by procuring the victim and transporting him to the scene of the crime were he was mortally wounded.

That during the course of the investigation two witnesses were identified that were present when Tiffany Ann Sanders made contact with the victim. Tiffany Ann Sanders was overheard telling the victim that she knew of a female that thought he was attractive and wanted to meet him. Tiffany Ann Sanders left the location of the victim several times after trying to convince him that he needed to meet this unidentified female only to return and re-initiate contact with the victim. Tiffany Ann Sanders eventually convinced the victim to accompany her to meet the unknown female. Tiffany Ann Sanders subsequently transported the victim to the aforementioned location.

That on June 9, 2007 Tiffany Ann Sanders was interviewed concerning the murder of the victim. That after being advised of her rights she provided a signed written statement that she had been in telephonic contact with her boyfriend, Sean Krammerer during the incident.

This information was gained through the investigation of Detective Sergeant Jerry Jellico and Detective Corporal E. Jourdan of the North Charleston Police Department and they along with the signed written statements of the witnesses are witnesses to prove the same in such case, which is made and provided against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 26 day of June
2007.

Seany Messina
Signature of Judge

J Jellico

Address: 4900 LACROSS ROAD

Phone: 554-4700

AFFIANT

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
STATE OF SOUTH CAROLINA,)
vs.)
Tiffany Ann Hecksher, ^{FKA} ~~nee~~ Sanders,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
OF THE FIRST JUDICIAL CIRCUIT

Indictment No. 10-GS-18-0707

VERDICT FORM

PLEASE CIRCLE THE APPROPRIATE VERDICT BELOW AND FOLLOW THE
ACCOMPANYING INSTRUCTIONS CAREFULLY.

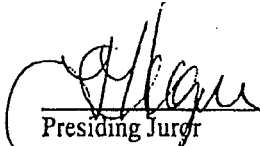
1. AS TO THE CHARGE OF MURDER, WE THE JURY UNANIMOUSLY FIND THE
DEFENDANT

→ GUILTY

NOT GUILTY

STOP AND END YOUR DELIBERATIONS

Please sign and date.



Presiding Judge

8/5/10

Date

STATE OF SOUTH CAROLINA)
 COUNTY OF Dorchester)
 STATE VS.)
Tiffany Ann Sanders)
 AKA:)
 Race: _____ Sex: _____ Age: 2010)
 DOB: 00-00-0000 SS#: _____)
 Address: _____)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS18-0707
 AWW#: 2010DOR08
 Date of Offense: 6/8/2007
 S.C. Code § 16-3-10
 CDR Code #: 0116

SENTENCE SHEET

CDL: Yes No CMV: Yes No Hazmat: Yes No
 In disposition of the said indictment comes now the Defendant who was:
 TO: Murder

CONVICTED OF or PLEADS

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST:
B. Harrison Bell, Harrison SC Bar# 7863
Tiffany Ann Sanders Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 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 Dept. 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. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

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

set by SCDPPPS _____
 Recipient: _____

*Fine:	\$ _____
14-1-206 (Assessments 107.5 %)	\$ _____
§ 14-1-211(A)(1)(Conv. Surcharge)	\$100 \$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§ 58-5-2995 (DUI Assessment)	\$12 \$ _____
§ 58-1-288 (DUI Breath Test)	\$25 \$ _____
Proviso 47.9 (Public Del/Prob)	\$500 \$ _____
§ 73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$150 \$ _____
§ 50-21-114 (BUI Breath Test Fee)	\$50 \$ _____
§ 58-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5 \$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350 \$ _____
3% to County (If paid in installments)	\$ <u>340</u>
TOTAL	\$ <u>159.00</u>

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

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

PRESIDING JUDGE [Signature]
 Judge Code: 2112
 Sentence Date: 8-5-200

Cheryl Graham Clerk of Court/Deputy Clerk
B. Kelly Court Reporter

SCCA/217 (06/2010)

WITNESSES

J. Jellico

North Charleston Police Department

ARREST WARRANT NUMBER
2010DOR08

Arrested: 0, 0

ACTION OF GRAND JURY

TRUE BILL

DATE 5/6/10

Foreperson of Grand Jury
Date: May 6, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS18-0707

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

May 17, 2010 TERM

THE STATE
vs.

Tiffany Ann Sanders

Indictment for

MURDER

SC Code: 16-3-10

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECORDED
2010 MAY - 6 AM 10:41
CHERYL BRAYAM
CLERK OF COURT
DORCHESTER COUNTY

000576

357

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

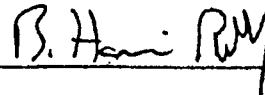
INDICTMENT
2010GS18-0707

At a Court of General Sessions, convened on May 17, 2010 the Grand Jurors of
Dorchester County present upon their oath:

MURDER

That in Dorchester County on or about June 8, 2007, with malice aforethought,
the defendant, Tiffany Ann Sanders did kill or aid, abet, assist, or join with Sean
Kammerer to kill Jesse Ham by means of shooting him. The victim did die as a
proximate result thereof. This offense being in violation of the Common Law and
Section 16-3-10, of the South Carolina Code of Laws, as amended.

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



Harrison Bell, Solicitor

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Court of Common Pleas

Dianne S. Goodstein, Circuit Court Judge
(Trial)
Deandrea G. Benjamin, Circuit Court Judge
(PCR)

Case No. 2011-CP-18-1497

Tiffany Sanders, Petitioner,

vs.

State of South Carolina Respondent,

PETITION FOR WRIT OF CERTIORARI

June 10, 2013

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STATEMENT OF ISSUES ON APPEAL

APPEAL FROM JUDGE DIANNE GOODSTEIN

(Trial judge)

(filed separately as Appellant's Brief as direct appeal)

- I. Did the trial judge award fail to direct a verdict of acquittal when there was no evidence to establish the necessary elements for the crime of murder? (filed separately as direct appeal)

- II. Did the trial judge err in failing to instruct the jury that the killer's malice cannot be transferred to the appellant without some evidence that the appellant demonstrated malice? (filed separately as direct appeal)

APPEAL FROM JUDGE DEANDRE G. BENJAMIN

(Denial of Relief from PCR judge)

ARGUMENTS

- I. Did the Court of Common Pleas err in failing to grant the appellant a new trial when the overwhelming evidence is that her trial counsel deviated from the minimum standard of care by failing to interview or call material witnesses? 9
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STATEMENT OF THE CASE¹
(TRIAL)

On June 8, 2007, Sean Kammerer shot and killed Jessie Ham in the Publix/Tire Kingdom parking lot on Dorchester Road in Dorchester County, South Carolina. On June 26, 2007, the Dorchester County Sheriff's Department arrested the appellant and charged her with the crime of accessory before the fact of murder on the theory that she drove the victim to the scene at the request of the shooter, Sean Kammerer. Thereafter, on September 8, 2008, the Dorchester Grand Jury indicted the appellant for this charge. See Appendix at page 1 for Indictment Number 2007-GS-18-1206. For reasons that are not clear in the record, almost two years later, the Dorchester County Grand Jury indicted the appellant for murder on May 6, 2010, at Indictment number 2010-GS-18-707. (Appendix at page 3) Presumably, the State increased the charge because the appellant would not plea to the 2007 charge to accessory. 88 days after being indicted for murder, the appellant appeared before Judge Goodstein and a jury on August 3, 2010, for trial on both charges. She entered a plea of not guilty to each charge, waived arraignment on the new charge of murder, and the Court of General Sessions tried her on both charges. The State called seven witnesses as follows:

1. Detective David Watson (North Charleston Police Officer)
2. Kevin King (Jessie Ham's friend who rode to scene of the shooting in back seat of Tiffany Sander's Honda and who sat behind Jessie Ham)
3. David Hughey (Jessie Ham's friend who rode to scene after the shooting on bicycle while carrying a gun)

¹ This statement of case is the statement of case from the petitioner's direct appeal. The petitioner includes it here because it is hard to make sense of the statement of case from the P.C.R. appeal without this factual background.

4. Brandon Frye (Jessie Ham's friend who rode to scene on bicycle with David Hughey)

5. Jessica Hans (North Charleston Police Officer, formerly Publix employee, who witnessed the shooting)

6. DeJuan Jenkins (driver of Sean Kammerer's Jeep Cherokee who drove Sean Kammerer to the scene of the shooting—the Jeep belong to Sean's mother, and the witness testified he was driving it because Sean lost his driver's license.)

7. James Sturkie (North Charleston Police Detective)

The appellant did not testify, but the parties stipulated to the introduction of her uncounseled, written statement given on June 9, 2007. (See page ___ Record on Appeal for her written statement—trial transcript is included in the record on appeal in direct appeal being filed simultaneously.)

In addition to these seven witnesses, the parties stipulated that on June 8, 2007, the defendant, Sean Kammerer, shot and killed Jessie Hamm by shooting him three times in the back and one time in the neck. (See page ___ [tr. 67] of R.O.A. for stipulations and page ___ of the R.O.A. for the written stipulation.) The Defendant, after colloquy with the Court, declined to testify, and the defendant called no witnesses. R.O.A. page ___ [tr. Page 230] On August 5, 2010, after requesting that the Court replay the testimony of the eyewitness, Jessica Hans (the Publix employee, later N. Charleston police officer), and Kevin King (Jessie Ham's friend who rode with him to the scene) and for clarification of the court's instruction on "intent and malice" and thereafter the definition of "principal," the jury returned a verdict of not guilty on the charge of accessory before the fact of murder and a verdict of guilty on the charge of murder. The Court sentenced the appellant to 30 years in

prison, giving credit for time served in pre-trial detention. See Record on Appeal page ___[tr. Pages ___[tr. Page 314] and sentencing sheet. (Appendix page 17)

STATEMENT OF THE CASE
(POST-CONVICTION RELIEF)

Following the Court's sentencing on August 5, 2010, the appellant did not appeal her conviction. On August 3, 2011, petitioner filed a *pro se* application for post-conviction relief. On August 18, 2011, she filed an amended application for post-conviction relief, alleging that her trial counsel failed to notify her of her right to appeal, failed to call witnesses at trial, the shooter, Sean Kammerer or her sister, Amanda Fender, and failed to follow up on a cross examination of Jessica Hans, confirming the fact that the appellant was not present at the scene. (Appendix, page 5) One of the grounds for relief was that the petitioner's trial counsel failed to advise her of her right to appeal. On May 24, 2012, the Honorable Deandrea G. Benjamin heard the appellant's post-conviction relief. On July 27th, Judge Benjamin issued a written order, denying the appellant's claim for post-conviction relief, but granting her leave of court to file a direct appeal of her conviction on the ground that her counsel failed to advise her of her right to an appeal. Judge Benjamin's order is in the Appendix at page 18. Therefore, since the trial court granted the petitioner the right to a direct appeal, she does not address that separate ground in detail. The issues raised in the direct appeal are addressed in petitioner's separate brief filed simultaneously with this petition for *certiorari*.

On August 28, 2012, the appellant filed her notice of intent to appeal.

Introduction/Standard of Review

The VI Amendment to the U. S. Constitution and Article I § 14 of the State Constitution guarantee to every criminal defendant the right to be represented by a competent lawyer and receive a vigorous defense. There is a well-developed body of law in the federal circuits and South Carolina that require lawyers to present a competent defense, and when a lawyer fails to act in a competent manner and his or her representation falls below an objective standard, then the defendant is denied a constitutional right to counsel. See, for example, *Sosebee v. Leeke*, 293 S.C. 531, 362 S.E.2d 22 (1987), where the Supreme Court found that a lawyer's performance was so deficient as to prevent the defendant from receiving a fair trial when the trial lawyer failed to object to the trial judge's comments on the credibility of witnesses. "The comments unfairly prejudiced petitioner. The compounding of that prejudice by counsel's failure to object was an error so serious as to deprive Petitioner of a fair trial." *Sosebee* at page 24.

The standard for judging the performance of counsel is what is reasonable under prevailing norms:

"The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Strickland v. Washington*, 466 U.S. 668, 688, 104 S.Ct. 2052, 2065, 80 L.Ed.2d 674, 636 (1984). The second prong of the *Strickland* test requires a showing that trial counsel's deficient performance so prejudiced the defense "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 693.

Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987)

Here, the deficiencies were far greater and more material than a failure to object to a trial judge's comments.

Argument I

The Court of Common Pleas erred in failing to grant the appellant a new trial when the overwhelming evidence demonstrates that her trial counsel deviated from the minimum standard of care by failing to interview or call material witnesses, which prevented the petitioner from receiving effective assistance of counsel.

A.

Trial Counsel Did Not Interview Witnesses.

To prevail in a PCR action, an applicant must satisfy a two prong test: he must first show her counsel's performance fell below an objective standard of reasonableness, and he is then required to prove he suffered prejudice as a result of counsel's deficient performance. *Franklin v. Catoe*, 346 S.C. 563, 570-71, 552 S.E.2d 718, 722-23 (2001) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). "However, there is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Edwards v. State*, 392 449, 456, 710 S.E.2d 60, 64 (2011) (internal quotation omitted) *Sigmon v. State*, ___ S.C. ___, ___ S.E.2d ___ (Opinion No. 27233, filed March 20, 2013).

As the transcript of the trial demonstrates, the State indicted the appellant for the charge of accessory before the fact of murder on September 8, 2008.² On May 6, 2010, the State indicted the appellant for the charge of murder and called the case for trial 88 days later on August 3, 2010. (See pages 13 and 15 Appendix for the indictments.) As

² The petitioner's direct appeal is filed simultaneously with this petition for certiorari. Therefore, the petitioner makes reference to the Appendix and the separate record on appeal.

discussed above, the State called seven witnesses, three police officers and four eyewitnesses. The appellant elected not to testify and entered her June 27, 2010, written statement in to evidence. (See R.O.A. filed simultaneously in the direct appeal at page ___ for the written statement.) The State did not call Sean Kammerer who previously plead guilty to murder and who was in state custody at the time of appellant's trial. Appellant's trial counsel counted on the State calling Kammerer and was surprised when the State did not do so. If this were the only strategic error committed by counsel, this matter would not rise to the level of ineffective assistance of counsel. However, the appellant's counsel **never interviewed or attempted to interview Kammerer**, and this is one critical failure that deprived the appellant of effective representation:

Q. And what did you do to investigate the charges and any defenses?

A. The trial came up. I figured the government, the state was going to bring him [Kammerer] to trial. I kind of was counting on that. I told my client that. We showed up for trial, he wasn't there, and I can just tell you right now that after the trial was over I realized that I should have gone to see him in jail. I should have found out what he was going to say and I should have brought him down there. I did, in my closing argument, try to put it on the state, that if he was going to help their case they would have brought him, but I guess, I could tell looking in the jury's eyes that they weren't buying it. They figured I could have got him there just as easily as they could.

Appendix page 95 [tr. Page 66])

This statement is an admission of a deviation from the objective standard governing

the representation of a criminal defendant. While the State can argue that it may be a plausible strategy not to call Kammerer as a witness, it is an undeniable deviation from the minimum standard of competent representation to avoid discovering what he had to say. No lawyer can adopt a "strategy" if he does not know what is included or excluded in the strategy. Another way of saying the same thing is to say that no one can make a strategy decision without knowing what potential elements are available. The lower court erred in justifying the departure from the minimum effective standard holding: "The applicant did not present Kammerer at the post-conviction relief hearing or properly establish his testimony in accordance with the rules of evidence." (Order under review at page 5, page 22 of the Appendix.) This analysis misses the point. The undisputed point is that the applicant's trial counsel never interviewed the witness. This is far different from failing to call the witness, which might have been a strategy decision if counsel had interviewed him. By the time of the P.C.R. hearing, the opportunity was lost. As counsel explained to the court, the petitioner was denied the opportunity to call Mr. Kammerer because of his application for post-conviction relief:

MS. ELLIOTT: Your Honor, I object. This is going to be based on hearsay. He's not here. He could have been brought into court to testify. We do not have the opportunity to cross-examine him and tremendously object to anything related to Mr. Kammerer from this witness.

MR. COBB: Well, unfortunately, Your Honor, he is pending a post-conviction relief, and is waiting to have counsel appointed and obviously could not be summoned as a witness.

Appendix at page 88 [transcript page 59])

Thus, the appellant suffered prejudice at the time of trial because when appellant's counsel conceded that he never interviewed the most critical witness to his defense, he conceded falling below an objective standard of competency. The failure to attempt to interview Kammerer is a critical deviation from the minimum standard of care that directly prejudiced the petitioner and denied her a fair trial. As the lower court noted in the Order under review: "Where counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. *Watson v. State*, 370 S.C. 68, 634 S.E.2d 642 (2006). 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. Where counsel articulates a valid reason for employing a particular trial strategy, counsel's conduct will not be determined ineffective assistance of counsel. *Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006). This Court finds that all allegations with the exception of the appeal to be without merit and are denied and dismissed as set forth below." (Order at page 4, Appendix at page 21) It is one thing to make a strategic trial decision not to call a witness, but it is quite a different thing to neglect to interview him, thus preventing any meaningful analysis of such a decision. This failure is alone sufficiently prejudicial to deprive the appellant of any hope of a fair trial, and especially so when the failure is combined with the failure to call an available witness in the courtroom, Amanda Fender.

As the trial transcript in the record on appeal establishes, Jessica Hans, the Publix employee who later became a North Charleston police officer, witnessed the shooting. At the time of the shooting, she worked at Publix and saw the murder as she left work. Her testimony is contained in the trial transcript filed in the direct appeal Record on Appeal at page ____ [transcript page 195] as follows:

A. Yes, sir. After I walked to my car, another employee and I stood in the parking lot for a few minutes. We were talking about work and other things. Some point between 11 and 12, I'm not sure the exact time, we heard several loud pops. I thought they might have been fireworks. I'm not 100 percent positive. But at some point my attention was drawn across the parking lot to the Papa John's/Tire Kingdom area, which is on the other side, which is where I actually continued to see a person standing—standing pointing at the ground.

Eventually he actually fired a gun. There was another shot, I'm not sure if it was one or two, fired another shot. There was another person that was standing with that person that ran between the two buildings, because Publix is separate from Papa John's and Tire Kingdom.

After that shot was fired, the person who actually held the gun in their hand ran to the other side of Tire Kingdom, which was even further away. They disappeared behind the side of the building between Tire Kingdom and the woods.

About 30 seconds later, a Jeep Cherokee pulled out from the side of the building, pulled out through the parking lot and turns left onto the little

side street that is between the parking lot and the other restaurants that are right there; and sped off in the direction opposite from where we were in the parking lot.

(emphasis added)

It is undisputed that DeJuan Jenkins drove the Jeep Cherokee while the shooter, Sean Kammerer was the passenger. In fact, this car belonged to the Kammerer family, and DeJuan Jenkins testified he was driving only because Sean Kammerer lost his driver's license. Officer Hans testified no one else was present, which was consistent with all the other testimony. Thus, the jury's murder conviction is based on nothing more than the jury's speculation that the petitioner was involved in a scheme to murder only because she drove the victim to the scene of the crime, and thus the failure to interview or call the shooter to the stand and examine him was critical. Even if the shooter's testimony would be unfavorable, the petitioner's counsel neglected to interview him to learn what his testimony would be and thus had no basis to form any strategy. This is a failure that is indisputably prejudicial to the petitioner's case. Not one witness had any direct evidence of a conspiracy to commit murder. The closest evidence was a police officer's statement that he "heard" from an undisclosed declarant that Tiffany Sanders was Sean Kammerer's girlfriend. See the direct appeal Record on Appeal at page ____ [tr. page 217]). Astonishingly, the petitioner's attorney did not object to this hearsay statement, which Officer Sturkie recited in the passive voice as "it was said" that Tiffany was romantically linked to the shooter. A more damaging unchallenged statement cannot be imagined, which further supports the

deficient performance of trial counsel who fell below any professional objective standard.

Since Sean Kammerer is one of the two witnesses who can exonerate the petitioner, there was no excuse for the petitioner's lawyer to fail to contact him and discover exactly what his testimony would be. This critical failure deprived the petitioner of a substantial chance to mount an effective defense, and she has been prejudiced by being sentenced to 30 years in prison in spite of the fact that not one witness puts her at the scene at the time of the murder.

B. Trial Counsel Did Not Call Available Witnesses In The Courtroom

As the record demonstrates, there were six people at the scene of the crime before the shooting: Sean Kammerer and his driver, Dejuan Jenkins arrived in the Kammerer's Jeep Cherokee. The appellant drove her Honda automobile to the scene accompanied by the victim, Jesse Ham, his friend, Kevin King, and her sister, Amanda Fender. In the hours leading up to the shooting and in the hours following the shooting, Amanda accompanied the petitioner at every moment. She was there when the two of them initially came upon the four boys at around 7:00 p.m. She was there when the appellant drove back to Brandon's house and spoke to Brandon and David Hughey in Brandon's front yard. She was there when Kevin King and Jessie Hamm later joined them. She was there when the four—Tiffany, Amanda, Kevin and Jessie—drove to Publix/Tire Kingdom, and she was there when appellant left the scene without the two boys. She saw and heard everything, and she was in the courtroom available

to testify. She has no criminal record, and she witnessed all of the events involving her sister on the night of the event. At the hearing before the P.C.R. judge on May 24, 2012, she testified that the four boys stopped them, not the other way around:

A. Well, we went to grab something to eat because our parents went out for their anniversary, and then we were riding around the neighborhood, and we got stopped by these guys walking and they said, come on to our house.

Q. Okay.

A. So when we got there they asked me, they all asked me if I could go get them some beer, and I told them no, because they were underage. They also asked me if I knew where I could get them any marijuana. I was, like, I don't do that kind of stuff. So I don't — I couldn't help. I told them I wouldn't—no.

Q. Okay. And--

A. Because they were drinking that night and—

Q. And did you ultimately end up at somebody named Brandon's house?

A. Yes, sir.

Q. Were there some people there shooting baskets, playing basketball?

A. Yes, sir, and they were drinking, but me and my sister didn't drink anything.

Q. You weren't drinking?

A. No.

Q. Were y'all shooting baskets with them?

A. No.

Q. Were you listening to music?

A. No.

Q. O.K.

Appendix pages 68-69 [tr. Pages 39-40]

This is critical testimony. It is critical testimony from a witness who was present at the petitioner's trial and available to be called. Amanda's testimony demonstrates that Tiffany had no plan, and more importantly, the four boys approached them! The State's entire theory of the case was based on speculation that because Tiffany knew Sean Kammerer was lying in wait for Jesse Hamm, that she delivered the victim to the scene of his death. However, there is not a scintilla of direct evidence of such a plan in the record, and Amanda Fender, who the State concedes is blameless and who is unimpeachable—except as being related to the defendant—was present every second of the tragic night that led to the death of Jesse Hamm. It is particularly disturbing that the defense did not call this witness, and the failure to do so is a demonstrable deviation from the minimum standard of practice. The failure to call Amanda critically prejudiced the defendant, especially since Amanda confirms—just as Officer Hans saw—that Tiffany was not present at the time of the shooting:

Q. Okay. When you got to the Publix, did anybody get out of the car?

A. Kevin. He was real—he was real—like he knew something. He was like, let me out, let me out, you know. And then Jesse got out, and he said drive. So we left.

Q. You left?

A. Yes, sir.

Q. Where were you sitting then?

A. I was still in the back seat.

Q. Okay. And where did you drive or where did Tiffany drive?

A. We went past the churches and that's when we heard, you know, I guess shots, and I didn't know quite what it was, you know?

Q. All right. How far away from the boys were you when you heard those noises?

A. I know it was pretty – you know, it's pretty far because from the Publix to the Catholic church is like – I would say maybe a mile or two. It's that far away.

Q. All right. When the boys were in the car, did you see any guns?

A. No, sir.

Q. Did you hear them talk about any guns?

A. No, sir.

Q. Where did you go after you left; after you heard the noises where did you go?

A. We went to Brandon's house.

(Appendix at pages 71-72 [tr. 42-43])

This is critical testimony because it demonstrates the lack of a plan and the fact that Tiffany went back to Brandon's house. The State elicited the most crucial information on page 80 of the Appendix [tr. Page 51] when the State asked Amanda if she was aware of everything going on that night:

Q. Could you hear everything that was going on?

A. I know that Jesse got the phone from Tiffany and then after he got off the phone

he said to take me up to Publix. So him and Kevin got in the car with us. Because we said were going to go home.

Even the State will concede this is crucial testimony. While it is exclusively the jury's province to choose how much to believe of any witness' testimony, it is indisputable that this is critical testimony, for it demonstrates that Tiffany took Jesse to Publix at his direction, rather than Tiffany having a plan to drive him there. If the jury had heard this testimony, it could acquit the appellant of the accessory charge **and** the murder charge, but the jury never had an opportunity to evaluate Amanda's credibility because petitioner's counsel failed to call her even though she was present in the courtroom. Moreover, all trial lawyers know that the failure to call an available witness leads to an adverse inference. See *Davis v. Sparks*, 235 S.C. 326, 111 S.E.2d 545 (1959): "Inference from the unexplained failure of a party to call an available witness that the testimony of such witness would have been unfavorable may be drawn only where, under all of the circumstances of the case, the failure to produce such witness creates suspicion of a willful attempt to withhold competent testimony. Such suspicion is generally held not warranted where the material facts assumed to be within the knowledge of the absent witness have been testified to by other qualified witnesses." Amanda could have testified to facts that no other witness knew, especially in the critical moments leading up to the coincidental meeting with the four boys. The jury knew Amanda was on the scene, and thus it became critical to call her. While the trial court correctly charged the jury that the failure to call the defendant cannot be considered, this charge says nothing about failing to call eyewitnesses. Stated another

way, it is impossible to build an alibi defense without taking some step to prove the alibi. Thus, the decision falls below the standard of practice, and the resulting prejudice to the appellant cannot be overstated. The State's entire case against Tiffany Sanders is built on inferences that are supported only by speculation. The State's eyewitness to the shooting, Officer Hans, testified that she saw only one vehicle—Sean's Jeep Cherokee. Thus, Amanda Fender's testimony would have been corroborated by the State's eyewitness. Thus the failure to call Amanda or make any effort to amplify Officer Hans' testimony doomed any chance of a defense and fell below the objective standard.

Argument II.

Trial Counsel deviated from the minimum standard of care in failing to cross-examine the one unbiased eyewitness to the crime. As the record on appeal demonstrates, Officer Hans testified from pages 193 to 198, and, as quoted above, testified that she was an eyewitness to the shooting and saw the perpetrators flee in a Jeep Cherokee. It is a rare murder scene that includes an eyewitness, who at the time of her testimony, wore the uniform of a police officer. There is no doubt that the police officer's testimony was favorable to Tiffany Sanders because, as quoted above, she established beyond any question, that at the time of the shooting, Tiffany Sanders was not present. Thus there was no need to cross-examine the witness for purposes of impeachment, but the failure to examine her to reinforce the testimony she gave in

direct was not only a critical blow to the defense, but also a clear deviation from the minimum standard of effective representation. Even a cursory cross-examination would amplify the officer's ability to see and hear the events at the exact moment Sean Kammerer was committing the offense and reinforce the point that the only vehicle in the vicinity at the time of the shoot was Sean Kammerer's Jeep Cherokee. The availability of Officer Hans to the defense was the most critical piece of the defense's theory of the case and would have paved the way to present Amanda Fender as the only other eyewitness to the events leading up to the crime. This is not a case in which the evidence of guilt is so overwhelming that counsel's failure to follow up on Officer Han's testimony is harmless. "An error 'is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. Thus, an insubstantial error not affecting the result of the trial is harmless where guilty has been conclusively proven by competent evidence such that no other rational conclusion can be reached.'" *State v. Martin*, ___ S.C. ___, ___ S.E.2d. ___ (Ct. App. 2013, Opinion No. 5125) The evidence leading to the conviction of Tiffany Sanders is non-existent, being premised only up inferences and speculation. Therefore, her lawyer's failure to follow up and amplify the evidence of her innocence offered by the State resulted in extreme prejudice to her defense and prevented her from receiving a fair trial.

The lower court brushed off this failure by rationalizing that "nature and scope of cross-examination is inherently a matter of trial tactics." (Order at page 8, Appendix at page 24). This is a correct statement of law, with which the petitioner has no quarrel. However, where the undisputed evidence in the record is that the eyewitness **saw** the murder and saw the participants, the failure to cross-exam her to emphasize this

crucial point is well below the standard of care for effective representation. The P.C.R. court missed the legal issue. The Order under review recites: "Applicant failed to present Hans as a witness at the post-conviction relief hearing to establish whether beneficial information could have been elicited other than that obvious from a review of Hans' testimony on direct examination." (Order at page 8-9, pages 24-25 of Appendix)

This is a correct statement of law and a correct statement of fact, but it misses the essential point of the petitioner's application. Officer Hans's testimony was crucial to the elements of the petitioner's defense of murder. She was not present. Officer Hans's testimony demonstrates that at the time of the murder, the petitioner was not present. At the post-conviction relief hearing, the petitioner did not need more evidence from Officer Hans—all she needed to demonstrate was that her trial counsel failed to follow up with a single cross-examination question that amplified and emphasized the Officer's critical defense testimony. As the trial transcript makes clear, Officer Hans offered the petitioner an alibi, and her trial counsel did not ask a single question to follow up or amplify. This failure is the deficient performance that prejudiced the petitioner and prevented her from receiving anything close to a fair trial. The jury convicted the petitioner of murder despite Officer Hans establishing she was not present. Therefore, she was critically prejudiced by her counsel's failure to amplify and augment Officer Han's testimony.

CONCLUSION

In summary, it is impossible to look at the petitioner's trial counsel's failings and see them as anything other than a failure to conform to the minimum standard for competent and effective representation. In short, the petitioner was denied any meaningful opportunity to mount a defense and thereby deprived of her constitutional right to counsel. As may be seen by reference to the trial transcript being filed in the direct appeal filed simultaneously with this Petition for Certiorari, the State had insufficient evidence to get to a jury. With anything approaching a competent defense, the trial judge would have been more likely to grant a directed verdict, at least on the charge of murder. Instead, despite a record devoid of any evidence that the petitioner was present at the scene of the shooting at the time of the shooting, the trial court not only refused to grant a directed verdict, but also a jury convicted her of murder on the thinnest of evidence. It is impossible to look at the thin evidence in this case combined with the deficient performance of counsel and conclude anything other than this case represents a miscarriage of justice. For these reasons, this Court should vacate the sentence and remand the case for trial so that the petitioner can receive the benefit of a competent defense.

Respectfully submitted,

June 12, 2013

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Tiffany Sanders, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-212858
Lower Court Case No. 2011-CP-18-01497

Appeal From Dorchester County
The Honorable DeAndrea G. Benjamin, Circuit Court
Judge

Memorandum Opinion No. 2014-MO-049
Submitted December 9, 2014 – Filed December 17, 2014

AFFIRMED

Dale T. Cobb, Jr. and Thomas R. Goldstein, both of Belk
Cobb Infinger & Goldstein, P.A., of Charleston, for
Petitioner.

Senior Assistant Deputy Attorney General Salley W.
Elliott, of Columbia, for Respondent.

000601

PER CURIAM: Petitioner seeks a writ of certiorari from the denial of her application for post-conviction relief (PCR).

Because there is sufficient evidence to support the PCR judge's finding that petitioner did not knowingly and intelligently waive her right to a direct appeal, we grant certiorari on this issue, deny certiorari on petitioner's Questions I and II, and proceed with a review of petitioner's direct appeal issues pursuant to *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986).

Petitioner's conviction and sentence are affirmed pursuant to Rule 220(b)(1), SCACR, and the following authorities:

Issue I (directed verdict): Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); *State v. Cherry*, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury."); *State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001) ("On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State."); *State v. Langley*, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999) ("Under this theory [the hand of one is the hand of all], one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose."); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal."); *State v. Cannon*, 49 S.C. 550, 555, 27 S.E. 526, 530 (1897) ("The common purpose may not have been to kill and murder, but if it was unlawful, as, for instance, to break in, and steal, and in the execution of this common purpose a homicide is committed by one, as a probable or natural consequence of the acts done in pursuance of the common design, then all present participating in the unlawful common design are as guilty as the slayer.").

Issue II (jury instruction): Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); *State v. Mattison*, 388 S.C. 469, 697 S.E.2d 578 (2010) (holding a jury instruction is correct if it contains the proper definitions and adequately covers the law); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled

upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *State v. Collins*, 228 S.C. 537, 91 S.E.2d 259 (1956) (holding where the jury acquitted the appellants on one particular offense in the indictment, no prejudice resulted from the jury instructions for that offense).

AFFIRMED.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

000603

The Supreme Court of South Carolina

Tiffany Sanders, Petitioner,

v.

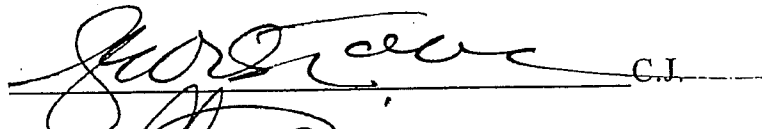

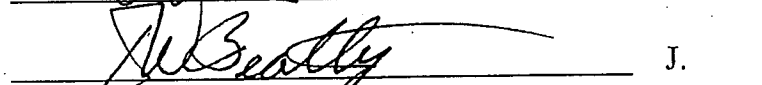
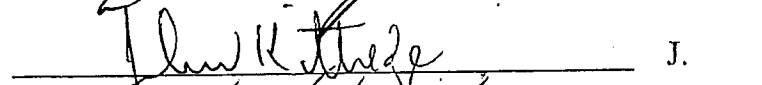
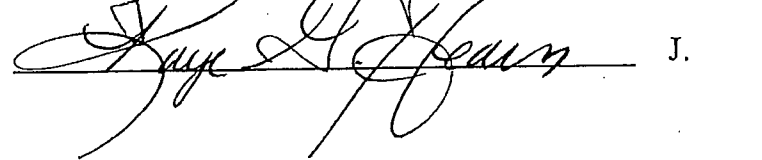
State of South Carolina, Respondent.

Appellate Case No. 2012-212858

Lower Court Case No. 2011-CP-18-01497

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.
 J.
 J.

Columbia, South Carolina

January 22, 2015

cc:

Dale T. Cobb, Jr., Esquire

Salley W. Elliott, Esquire

Thomas R. Goldstein, Esquire

000604

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JAN 10 2019
SC Court of Appeals

Appeal from Dorchester County
The Honorable Diane S. Goodstein

Appellate Case No. 2018-000210

The State of South Carolina,, Respondent,

v.

Tiffany Ann Sanders,, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any party and not any other material.


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January 10th, 2019.