

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions
Larry B. Hyman, Circuit Court Judge

Case No. 2018-000402

The State,

Respondent,

v.

Jody Lynn Ward,

Appellant.

RECEIVED

OCT 24 2019

SC Court of Appeals

RECORD ON APPEAL
Volume I

Tristan M. Shaffer
P.O. Box 1027
Chapin, SC 29036
ATTORNEY FOR APPELLANT

Alan Wilson,
Donald J. Zelenka,
Melody J. Brown, and
Caroline Scrantom
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305
ATTORNEYS FOR RESPONDENT

INDEX

VOLUME I

Appendix from Appeal of 2007-CP-22-0915 pages 1; 199; 208-266; 452-466; 766-817; 848-857; 931-941; 944-958; and 1038-1053.....	1
Jury Selection.....	4
Testimony of Kevin Cooper.....	83
Closing Arguments	99
Verdict.....	150
Sentencing.....	159
Direct Appeal <i>Anders</i> Brief	160
2007 Post-Conviction Relief Application.....	171
Return to Post-Conviction Relief Application.....	183
Final Order of Dismissal.....	186
Ward v. Warden of Lieber Correctional Institution, 0:11-cv-03277 Docket Entries: 1; 22-11, pgs., 1-65; 26-7; 26-9; 26-10; 26-11; 26-13; 26-15; 26-17, pg. 1-10; 26-20; 26-24; 26-25; 26-30; 26-33; 26-34; 26-35; 26-36; 70; 73; and 74.....	202
Dkt. Entry 1 Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus.....	202
Dkt. Entry 22-11 Pro Se <i>Anders</i> Brief	234
Dkt. Entry 26-7 Pro Se Petition for Writ of Certiorari	299
Dkt. Entry 26-9 Withdraw of Petition for Writ of Certiorari.....	314
Dkt. Entry 26-10 Dismissal of Direct Appeal.....	315
Dkt. Entry 26-11 Direct Appeal Remittitur	317
Dkt. Entry 26-13 PCR Petition for Writ of Certiorari	318

Dkt. Entry 26-15 Dismissal of PCR Appeal	330
Dkt. Entry 26-17 2009 PCR Application.....	331
Dkt. Entry 26-20 2009 PCR Application Order of Dismissal	341
Dkt. Entry 26-24 2009 PCR Remittitur	346
Dkt. Entry 26-25 2010 PCR Application.....	347
Dkt. Entry 26-30 2010 PCR Order of Dismissal	355
Dkt. Entry 26-33 Dismissal of 2010 PCR Appeal	357
Dkt. Entry 26-34 2010 PCR Remittitur	358
Dkt. Entry 26-35 State Petition for Writ of Habeas Corpus	359
Dkt. Entry 26-36 Order Denying State Habeas	385

VOLUME II

Dkt. Entry 70 Federal Habeas Report and Recommendation	386
Dkt. Entry 73 Federal Habeas Order on Report and Recommendation.....	420
Dkt. Entry 74 Judgment on Federal Habeas	424
State v. Jody Ward, Opinion Number 2007-UP-048 (January 26, 2007).....	425
Appellate Case 2012-213222 Pro Se Notice of Appeal.....	426
Appellate Case 2012-213222 Brief of Appellant.....	427
Appellate Case 2012-213222 Record on Appeal Pages: 1-12 and 143-144.....	439
2012 Motion for a New Trial Based on After Discovered Evidence.....	439
Order Denying 2012 Motion for a New Trial Based on After Discovered Evidence.....	451
Appellate Case 2012-213222 Notice of Appearance of Natasha Hanna	453
Appellate Case 2012-213222 Notice of Motion and Motion to Suspend Appeal and for Leave to File Motion For a New Trial Based on After Discovered Evidence.....	454

Appellate Case 2012-213222 Order filed October 8, 2014	462
State v. Ward, 2014-UP-402 (November 12, 2014)	464
Motion for A New Trial Based on After Discovered Evidence filed October 30, 2014	467
Form 4 Order Denying Motion filed September 11, 2015.....	471
December 10, 2015 Transcript.....	473
Evaluation Order filed February 2, 2016	490
October 2, 2017 Transcript	498
State’s Motion to Dismiss Defendant’s Motion for a New Trial Based on After Discovered Evidence.....	542
Defendant’s Memorandum In Opposition to the State’s Motion to Dismiss Defendant’s Motion for a New Trial Pursuant to Rule 29(b), SCRE.....	545
Order Granting Dismissal filed December 7, 2017	561
Notice of Appeal March 5, 2018.....	565
Certificate of Appellant.....	566

VOLUME 1 OF 3

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Georgetown County

Steven H. John, Circuit Court Judge

JODY L. WARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589

ATTORNEY FOR PETITIONER

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

P. O. Box 11549
Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) 03-GS-22-1030, 1031
 COUNTY OF GEORGETOWN)

The State,)
)
 Plaintiff,) TRANSCRIPT OF RECORD
)
 -versus-) March 15-18, 2004
)
 Jody Lynn Ward,)
)
 Defendant.)

B E F O R E:

Honorable Paula H. Thomas
 Georgetown County Courthouse
 Georgetown, South Carolina

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

J. Gregory Hembree, Esquire
 Robert B. Bryan, Esquire
 Attorneys for the Plaintiff

Margaret Ann Kneece, Esquire
 J. Wesley Locklair, III, Esquire
 Attorneys for the Defendant

Grace L. Hurley, CVR-CM
 Official Reporter

208

STATE V. JODY WARD

03-GS-22-1030, 1031

Juror No.	Name		State	Defense	Court
133	Barbara Wilson	BF	X		
1	Myra Alston	BF		X	
88	Robert Myers	WM			
48	Judy Harper	WF			
44	Derrick Grove	BM	X		
87	Glenda Munnerlyn	WF		X	
107	Barbara Smith	BF		X	
141	Paul Griffin	WM			
2	Ronald Altman	WM			
100	Reta Simpson	WF			
79	Mart Mihalakis	WM		X	
98	Daphne Ray	WF			
130	Norman Wilcox	WM		X	
34	Jeffery Fisher	BM		X	
19	Marisa Cooper	WF			
76	Theodis McGee	BM		X	
69	Rochelle Leary	BM		X	
59	Sandra Johnson	BF		X	
145	Sydney O'Neil	WF			
112	Virgil Spivey	BM			
150	David Williams	WM	X		
93	Kelly Polen	WF			
16	Carl Chatman	BM			
74	Carol McCann	WF			
ALT. 1					
121	Antonio Thompson	BM	X		
68	Julie Nance	BF			
ALT. 2					
64	Jefferson Kirby, III	WM	X		
39	Bernadette Gardner	BF			

Voir Dire

20g 1

1 (On the record, Monday, March 15, 2004.)

2 THE COURT: All right, and our Solicitor is here, Mr.
3 Greg Hembree. I'll be glad to hear from you now.

4 MR. HEMBREE: Thank you, Your Honor, may it please the
5 Court. I now call the case of The State of South Carolina
6 versus Jody Lynn Ward. I call this case by way of two
7 indictments submitted to the Grand Jury on July 8th of
8 2003.

9 THE COURT: Mr. Hembree, I hate to interrupt, but let
10 me make sure we've got Defense counsel here as well and I
11 do not see them present. Let's run for them before you
12 read those indictments.

13 MR. HEMBREE: Fair enough. Thank you, Your Honor.

14 THE COURT: I'm sorry. I just called on you too soon.
15 We do have somebody who is looking for our Defense
16 lawyers; don't we? Okay, wanted to make sure.

17 (Defense attorneys enter courtroom.)

18 MR. LOCKLAIR: Sorry, Your Honor.

19 THE COURT: All right, yes, sir, Mr. Hembree, once
20 again.

21 MR. HEMBREE: Thank you, Your Honor, may it please the
22 Court.

23 THE COURT: Yes, sir.

24 MR. HEMBREE: I now call the case of The State of
25 South Carolina versus Jody Lynn Ward. I call this case by

Voir Dire

210

2

1 way of two indictments presented to the Georgetown County
2 Grand Jury and true-billed on July the 8th, 2003. The
3 first indictment is indictment number 03-GS-22-1030. This
4 is a one-count indictment for the charge of murder, the
5 murder of Wilfred Brown.

6 The second indictment is 03-GS-22-1031. This is a
7 one-count indictment alleging the murder of Elton Rutledge,
8 Jr. Your Honor, let the record reflect that I am passing
9 these indictments up to the Court.

10 THE COURT: Ladies and gentlemen of the jury panel,
11 you have heard the State call the case of The State versus
12 Jody Lynn Ward, who has been indicted on two charges of
13 murder. These indictments have been true-billed.

14 I tell you that to ask you this question, is there any
15 member of the jury panel who has any information whatsoever
16 regarding these charges against Jody Lynn Ward, if so, or
17 knows anything about this incident, if so please stand.

18 Now, in just a moment I will be asking you whether you
19 have read anything in the media about that and I expect
20 that I would be -- I will be getting some responses to that
21 and I'll ask you about that, if, in fact, you've read
22 anything in the media, but my question is directed if you
23 have any direct information other than what you may have
24 read or seen regarding these charges, if so, please stand.

25 (No response.)

Voir Dire

211

3

1 THE COURT: Is there any member of the jury panel who
2 due to the nature of the charges, that being two counts of
3 murder, is there any member of the jury panel who is unable
4 to serve as a juror due to the nature of the charges and
5 would be unable to be fair and impartial to both the
6 Defendant and the State, if so, please stand.

7 All right, sir, I'm going to need for you to come
8 forward. I may ask these down.

9 BAILIFF: Number 53.

10 MR. HOLLADAY: Number 53.

11 THE COURT: This is Juror Number 53.

12 (Whereupon, an on-the-record bench conference was held
13 with Juror Number 53, John D. Holladay, Jr., counsel for
14 the Defense and counsel for the State in the presence, but
15 out of the hearing, of the jury venire.)

16 THE COURT: I won't holler out everything you say.
17 I'm just going to ---

18 MR. HOLLADAY: That's all right. I mean, I know the
19 accused.

20 THE COURT: You know him?

21 MR. HOLLADAY: Yes, ma'am.

22 THE COURT: Okay, I was going to ask you that question
23 a little bit later on.

24 MR. HOLLADAY: Okay.

25 THE COURT: The fact that you know him, what's your

Voir Dire

1 relationship with him?

2 MR. HOLLADAY: Just an acquaintance, I know of him.

3 THE COURT: You just know of him?

4 MR. HOLLADAY: Uh-huh (affirmative response).

5 THE COURT: Okay.

6 MR. HOLLADAY: I've worked with his mother.

7 THE COURT: All right, is that in any way going to
8 effect your ability to be fair and impartial to both the
9 State and to the Defendant?

10 MR. HOLLADAY: I don't know.

11 THE COURT: You don't know.

12 MR. HOLLADAY: I mean, I just feel awkward serving
13 like that.

14 THE COURT: And it's you feel awkward because you know
15 his mother?

16 MR. HOLLADAY: Right.

17 THE COURT: Has she discussed anything about this with
18 you?

19 MR. HOLLADAY: I don't, I don't talk to her. I just
20 used to work with her.

21 THE COURT: Okay, and you don't work with her anymore?

22 MR. HOLLADAY: No.

23 THE COURT: Okay, now, can you set that aside, though,
24 and can you decide this case based solely on the evidence
25 that's presented in the trial of this case and be fair to

Voir Dire

213

5

1 both the Defendant and to the State?

2 MR. HOLLADAY: I suppose I could.

3 THE COURT: Now, and I appreciate that answer, and I
4 know you have to do some soul-searching to know for sure,
5 but I have to know for sure.

6 MR. HOLLADAY: Right.

7 THE COURT: You think it over. Can you do that?

8 MR. HOLLADAY: I don't know.

9 THE COURT: You don't know?

10 MR. HOLLADAY: No, to be honest.

11 THE COURT: All right, now, let me ask you this,
12 because you're not talking about a current relationship ---

13 MR. HOLLADAY: Right.

14 THE COURT: --- or you currently work with the mother.

15 MR. HOLLADAY: Right.

16 THE COURT: And this is a past relationship; right?

17 If I give you time to think it over can you tell me
18 definitively yes or no? Yes, you could be fair and
19 impartial, but no, you think it'll affect your ability?

20 MR. HOLLADAY: Okay.

21 THE COURT: Do you need some more time?

22 MR. HOLLADAY: Yes.

23 THE COURT: Can I ask you just to step aside for just
24 one moment. Yes, sir.

25 MR. BRYAN: Just while we're here, while he's doing

Voir Dire

214 6

1 that, two jurors came in after, you know, while you started
2 that, calling him forward, just wanted to let you know.

3 THE COURT: See, and they should know to hold them
4 aside so I know to ask the questions.

5 MR. BRYAN: They're on the back, the two ladies on the
6 back row over there.

7 THE COURT: All right, let me talk to my bailiffs.
8 I'm going to hold you aside for just a moment just to give
9 you some time to soul-search.

10 MR. HOLLADAY: Okay.

11 THE COURT: Because I've put you on the spot so
12 quickly. If you'll have a seat. Don't discuss it with
13 anyone else and we'll call you back ---

14 MR. HOLLADAY: All right.

15 THE COURT: --- in just one moment.

16 (Whereupon, the following takes place in open court.)

17 THE COURT: All right, we have two jurors who came in
18 late. To the bailiffs, do you know who they are, and if we
19 have any more jurors that come in late I need them held
20 aside so I ask them -- so I can ask them the questions.
21 I've got to go back through the questions and they need to
22 hear the charges again.

23 Who are those individuals, please?

24 BAILIFF: Right here.

25 THE COURT: All right, did you hear all the questions?

Voir Dire

215 7

1 Did you hear the charges or hear -- were you here for when
2 the Solicitor announced what the charges were?

3 MS. GRATE: No.

4 MS. HOLMES: No.

5 THE COURT: All right, well, I'm going to have to get
6 with you in just a moment. Do we have everybody now?

7 BAILIFF: Have 47.

8 THE COURT: All right, all right, ladies, the
9 Solicitor has announced the case that was being called is
10 The State versus Jody Lynn Ward. He's charged for -- he's
11 been indicted for murder, and in this indictment it is that
12 of Mr. Wilfred Brown. There's also a separate indictment
13 in which Jody Lynn Ward has been charged with murder and
14 that murder is of Mr. Elton Rutledge, and I tell you that
15 to ask you this question, do you have any information other
16 than what you may have read in the media or that type of
17 thing, do you have any direct information regarding these
18 incidents? If so, let me know.

19 MR. LOCKLAIR: Your Honor, is there any way we could
20 place those jurors under oath?

21 THE COURT: They're under oath. They're already under
22 oath and they have indicated no. Let me get your juror
23 numbers. What's your number, ma'am?

24 MS. GRATE: 129.

25 THE COURT: Okay, and you have any direct information?

Voir Dire

216 8

1 MS. GRATE: No.

2 THE COURT: All right, and yes, ma'am.

3 MS. HOLMES: 54.

4 THE COURT: Juror Number 54, do you have any direct
5 information?

6 MS. HOLMES: No, but I know the families.

7 THE COURT: All right, I'll ask you about that in just
8 a moment.

9 Now, let me ask you this, can either of you -- do
10 either of you feel that you would be unable to be fair and
11 impartial due to the nature of the charges, those being
12 murder? If so, I need for you to come forward. If you
13 cannot be fair and impartial because of the nature of the
14 charges please come forward.

15 (No response.)

16 THE COURT: And then, ma'am, you may be seated.
17 You've been brought up to date.

18 All right, yes, ma'am, now we're up to date, I
19 believe. I just want to make sure everybody has gotten the
20 questions. Your Juror Number?

21 MS. THACKER: 120, Jean Thacker.

22 THE COURT: Okay.

23 (Whereupon, an on-the-record bench conference was held
24 with Juror Number 120, Jean M. Thacker, counsel for the
25 Defense and counsel for the State in the presence, but out

Voir Dire

217

9

1 of the hearing, of the jury venire.)

2 THE COURT: Yes, ma'am.

3 MS. THACKER: I'm a -- my family was a victim of a
4 violent crime. My daughter -- my sister was murdered when
5 she was 13.

6 THE COURT: Okay, and that is a question that I do get
7 to and ask later on.

8 Can you set that aside and base your decision in this
9 case solely on the evidence and testimony that's presented.

10 MS. THACKER: I also work with someone that's involved
11 in this case, too.

12 THE COURT: All right, who is it that you work with?

13 MS. THACKER: Candy Cox used to work with me.

14 THE COURT: Okay, "she used to work with me," I don't
15 know what that involvement is in the case, but you have
16 worked with that individual?

17 MS. THACKER: Uh-huh. (affirmative response).

18 THE COURT: Have you discussed this case with that
19 individual?

20 MS. THACKER: No.

21 THE COURT: Okay, now, let me ask you, can you set
22 those matters aside -- is that a potential witness in the
23 case?

24 MR. HEMBREE: Yes, ma'am.

25 THE COURT: Oh, that is someone who may be testifying?

Voir Dire

218

10

1 MR. LOCKLAIR: Yes, ma'am.

2 THE COURT: Okay, if she testifies are you going to
3 weigh her testimony more heavily based solely on your past
4 relationship?

5 MS. THACKER: It's possible, yeah.

6 THE COURT: Okay, all right, I'm going to excuse you,
7 ma'am. Your Juror Number once again?

8 MS. THACKER: 120.

9 (Whereupon, the following takes place in open court.)

10 THE COURT: Juror Number 120 is excused from this
11 particular trial. You need to have a seat. I'll give you
12 further instructions later.

13 BAILIFF: Number 60.

14 (Whereupon, an on-the-record bench conference was held
15 with Juror Number 60, James D. Joyce, counsel for the
16 Defense and counsel for the State in the presence, but out
17 of the hearing, of the jury venire.)

18 THE COURT: All right, yes, sir.

19 MR. JOYCE: I don't know if this is a problem for the
20 Court, but I have known Assistant Solicitor Bryan for 30
21 years and he's a friend, and I just didn't want it to be a
22 problem if I was selected.

23 THE COURT: Is he that old?

24 MR. JOYCE: Doesn't seem like it.

25 MR. BRYAN: I've known him for about 32 years.

1 THE COURT: I ask that question and what I really will
2 get at is is that in any way going to affect your ability
3 to be fair and impartial to both the Defendant and the
4 State? I mean, are you going to ---

5 MR. JOYCE: I don't think so, I mean, it's
6 consciously. I don't know if that ---

7 THE COURT: Okay, now, I appreciate the answer, but I
8 have to know for sure.

9 MR. JOYCE: A yes or no, right?

10 THE COURT: Yes.

11 MR. JOYCE: I would say no.

12 THE COURT: It will ---

13 MR. JOYCE: Would not influence.

14 THE COURT: It will not affect your ability to be fair
15 and impartial. So, you could set that relationship with
16 the family aside and listen to the facts of this case; is
17 that correct?

18 MR. JOYCE: I think so.

19 THE COURT: Okay, now, I think so.

20 MR. JOYCE: Okay, yes, ma'am, yes, ma'am.

21 THE COURT: All right, any question about that?

22 MR. JOYCE: No, I just, I just really wanted it to be,
23 be brought out before if I was selected or something.

24 THE COURT: All right, and you've done the right
25 thing, but what the Court needs to get at is now in light

Voir Dire

220

12

1 of that can you be fair and impartial to the Defendant?

2 MR. JOYCE: Yes, ma'am.

3 THE COURT: Okay, thank you.

4 (Whereupon, the following takes places in open court.)

5 THE COURT: The juror will remain with us.

6 (Whereupon, an on-the-record bench conference was held
7 with Juror Number 54, Bryinne Holmes, counsel for the
8 Defense and counsel for the State in the presence, but out
9 of the hearing, of the jury venire.)

10 BAILIFF: Number 54.

11 THE COURT: Yes, ma'am.

12 MS. HOLMES: Juror Number 54.

13 THE COURT: Yes, ma'am.

14 MS. HOLMES: And I know the family, the Rutledge
15 family.

16 THE COURT: You know which family, I'm sorry?

17 MS. HOLMES: The Rutledge family.

18 THE COURT: Okay.

19 MS. HOLMES: They are my cousins.

20 THE COURT: Do you -- have you talked with them about
21 this case at all?

22 MS. HOLMES: No.

23 THE COURT: All right, but they're related to you?

24 MS. HOLMES: Uh-huh (affirmative response), I'm
25 related to their mother.

Voir Dire

221

13

1 THE COURT: Is it a close relationship? Do you
2 socialize with them? Do you go to family reunions with
3 them, do you ---

4 MS. HOLMES: No, we don't go to family reunions, but
5 we socialize when we see other, when we see each other.

6 THE COURT: All right, let me get you to step away for
7 just one moment, and I'll talk to the attorneys.

8 MS. HOLMES: Okay.

9 THE COURT: Forgive me for just one moment.

10 (Whereupon, the following takes place in open court.)

11 THE COURT: Did he just walk in? He's got to be held
12 aside if he's just walked in. That means I need to go
13 through every question with him. So, just pull him back
14 there and just start all over again. That's why it's very
15 important that we get you back here timely. Just keep him
16 standing so I don't miss him. So, if you'd stand, stand
17 him in the back. I'll question him along, I'll catch him
18 up. All right.

19 (Counsel and Court confer.)

20 THE COURT: As to this, she's indicated she's got
21 family, cousins of the victim in the case. I have concerns
22 because of that relationship. She says she does socialize
23 with them. Is there any objection to my releasing this
24 juror?

25 MR. HEMBREE: No, ma'am.

Voir Dire

14

222

1 MR. LOCKLAIR: No, ma'am.

2 (Whereupon, the following takes place in open court.)

3 THE COURT: Your Juror Number again?

4 MS. HOLMES: 54.

5 THE COURT: Juror Number 54 is excused from this
6 particular case but you may remain with us. I'll give you
7 further instructions later.

8 MS. HOLMES: All right.

9 THE COURT: Now, to my late juror. Let me bring you
10 forward so I don't have to announce to everyone else.
11 They've already heard these questions, and we'll see if we
12 can go through them very quickly. In the future, I'll go
13 ahead and reprimand you in front of everybody, but in the
14 future be here timely. It really sets us back.

15 (Whereupon, an on-the-record bench conference was held
16 with Juror Number 34, Jeffery D. Fisher, counsel for the
17 Defense and counsel for the State in the presence, but out
18 of the hearing, of the jury venire.)

19 BAILIFF: Number 34.

20 THE COURT: All right, sir, the case has been called
21 in this -- the case that has been called is The State
22 versus Jody Lynn Ward. He has been indicted on two
23 different indictments for murder, one with the victim being
24 Elton Rutledge, the other with the victim being a Wilfred
25 Brown. Do you have any direct information, you have any

Voir Dire

223

15

1 information other than what you may have read in the media
2 or heard regarding these incidents?

3 MR. FISHER: No, ma'am.

4 THE COURT: Okay, now, as you can see both of these
5 indictments are for murder. That simply means that's what
6 he's been charged with. Are you unable or do you feel that
7 you would be unable to be fair and impartial due to the
8 nature of the charges in this case?

9 MR. FISHER: Ask that question again, please.

10 THE COURT: Because he's been charged with murder ---

11 MR. FISHER: Right.

12 THE COURT: --- and that -- is that in any way going
13 to affect your ability to be fair and impartial to both the
14 Defendant and to the State?

15 MR. FISHER: No, no.

16 THE COURT: Okay, all right, and I think that's as far
17 as I had gotten. Does that bring him up to date? I
18 believe that's it.

19 Okay, now, you can join the rest, and you'll be in
20 with the rest of the questions. So, at this point I
21 brought you up to date.

22 (Whereupon, the following takes place in open court.)

23 THE COURT: Is there any member of the jury panel who
24 has formed or expressed an opinion as to the guilt or
25 innocence of this Defendant? If so, please stand.

Voir Dire

224

16

1 (No response.)

2 THE COURT: I need to stress to you that a Defendant
3 is presumed innocent until his guilt has been proven beyond
4 a reasonable doubt. Is there any member of the jury panel
5 who will not be able to follow that important principle of
6 law? If so, please stand.

7 (No response.)

8 THE COURT: Mr. Ward, if you would stand for just a
9 moment, please.

10 (Complies with request.)

11 THE COURT: Is there any member of the jury panel who
12 is related by blood or marriage or friends or business
13 acquaintance with Mr. Jody Ward, the Defendant in this
14 case? If so, please stand.

15 (No response.)

16 THE COURT: Mr. Ward, you may be seated.

17 The alleged victims in this case are Mr. Elton
18 Rutledge and Mr. Wilfred Brown. I had mentioned those
19 before. Is there any member of the jury panel who was
20 related by blood or marriage or who was friends or a
21 business acquaintance with these individuals; if so, please
22 stand.

23 All right, yes, sir, let me have you come forward as
24 well, sir.

25 Juror Number 38.

Voir Dire

225 17

1 BAILIFF: 38, yes.

2 THE COURT: 38.

3 All right, yes, sir, if you'd come here and you'd
4 speak into this microphone but we'll all be listening as
5 best we can.

6 (Whereupon, an on-the-record bench conference was held
7 with Juror Number 38, Luther Gamble, counsel for the
8 Defense and counsel for the State in the presence, but out
9 of the hearing, of the jury venire.)

10 THE COURT: What's the relationship?

11 MR. GAMBLE: Okay, I don't know whether -- my wife is
12 first cousin of the Rutledge if that has anything.

13 THE COURT: Okay, now, has your wife talked to you
14 anything about this case?

15 MR. GAMBLE: No.

16 THE COURT: Has she talked to them to your knowledge
17 about the case?

18 MR. GAMBLE: No.

19 THE COURT: Is that in any way going to affect your
20 ability to be fair and impartial to both the Defendant and
21 the State in this case?

22 MR. GAMBLE: No.

23 THE COURT: All right, any question about that?

24 MR. GAMBLE: No, I don't think so.

25 THE COURT: Okay, thank you.

Voir Dire

1 MR. LOCKLAIR: Could we just have his wife's name,
2 Your Honor?

3 THE COURT: Yeah, your wife's name, sir?

4 MR. GAMBLE: Vernell ---

5 THE COURT: Vernell.

6 MR. GAMBLE: --- Thompson Gamble.

7 THE COURT: Okay, and when you said you didn't think
8 so I need to be absolutely sure.

9 MR. GAMBLE: Oh, no.

10 THE COURT: Can you be, can you be fair and impartial
11 to both sides?

12 MR. GAMBLE: Oh, yes.

13 THE COURT: Thank you, sir.

14 MR. GAMBLE: Okay.

15 (Whereupon, the following takes place in open court.)

16 THE COURT: You may remain with us, just have a seat.
17 Is there any member of the jury panel who is
18 themselves involved with law enforcement? If so, please
19 stand.

20 (No response.)

21 THE COURT: Is there any member of the jury panel who
22 either themselves or a close family member or acquaintance
23 is employed with law enforcement? I guess this is
24 extending it. Let me ask it this way. Do you have a
25 family member or a close acquaintance who is involved in

Voir Dire

227

19

1 law enforcement? If so, please stand.

2 All right, we do have several and we'll start in the
3 beginning and work -- in the front and work our way back,
4 yes, sir.

5 MR. GRIFFIN: I've got several friends who are law
6 enforcement officers.

7 THE COURT: All right, now, is that in any way going
8 to affect your ability to be fair and impartial to both the
9 State and the Defendant?

10 MR. GRIFFIN: No.

11 THE COURT: Your Juror Number?

12 MR. GRIFFIN: 141.

13 THE COURT: Thank you, sir, you may be seated.
14 Yes, sir.

15 MR. MCGEE: I have family and friends.

16 THE COURT: All right, your Juror Number?

17 MR. MCGEE: 76.

18 THE COURT: All right, and is that in any way going to
19 affect your ability to be fair and impartial to both the
20 Defendant and the State?

21 MR. MCGEE: No, it won't.

22 THE COURT: Thank you, sir.

23 Yes, sir.

24 MR. KIRBY: Juror Number 64, Your Honor, I was a
25 military policeman in the army.

Voir Dire

1 THE COURT: All right, and is that in any way going to
2 affect your ability to be fair and impartial to both the
3 Defendant and the State?

4 MR. KIRBY: No, Your Honor.

5 THE COURT: Thank you, sir.

6 Yes, ma'am.

7 MS. MCCANN: I'm Juror Number 74 and my husband was a
8 former Secret Service Agent.

9 THE COURT: All right, and you've heard me ask the
10 others. I'll ask you as well.

11 MS. MCCANN: Right, no.

12 THE COURT: Will that affect your ability to be fair
13 and impartial?

14 MS. MCCANN: No.

15 THE COURT: No, thank you, ma'am.

16 And yes, yes, sir.

17 MR. SANDERS: I have -- Number 147, I've got a couple
18 of close friends with law enforcement.

19 THE COURT: All right, and once again, is that going
20 to affect your ability to be fair and impartial?

21 MR. SANDERS: No, ma'am; no, ma'am.

22 THE COURT: Thank you, sir.

23 Now, I do have a juror that I had -- I wanted to give
24 more time to. Could I have you come forward at this time?

25 That was Juror Number 53, Juror Number 53.

Voir Dire

229

21

1 And ladies and gentlemen, be patient with us. We are
2 getting through this.

3 (Whereupon, an on-the-record bench conference was held
4 with Juror Number 53, John D. Holladay, Jr., counsel for
5 the Defense and counsel for the State in the presence, but
6 out of the hearing, of the jury venire.)

7 THE COURT: I was just simply giving you some time to
8 contemplate if it would in any way affect your ability to
9 be fair and impartial. Have you ---

10 MR. HOLLADAY: I, I don't know.

11 THE COURT: Okay, well, you're still saying, "I don't
12 think." I need something definitive. If you have a doubt
13 about that you need to let me know, but if you feel that
14 you can be fair and impartial you need to let me know that,
15 too.

16 MR. HOLLADAY: I have doubts about that.

17 THE COURT: You have doubts, and your Juror Number
18 again?

19 MR. HOLLADAY: 53.

20 THE COURT: 53.

21 (Whereupon, the following takes place in open court.)

22 THE COURT: Okay, Juror Number 53 is excused from this
23 particular case but you remain with us, please.

24 I'm sorry I hadn't asked a question. What was that?

25 BAILIFF: The same thing you just asked last.

Voir Dire

1 THE COURT: About law enforcement?

2 BAILIFF: Family members.

3 MR. HARDEE: No, ma'am, this may not pertain to a
4 question you've asked.

5 THE COURT: Well, I'm going to ask more questions.

6 MR. HARDEE: Oh, I'm sorry.

7 THE COURT: But while we've got you up here.

8 MR. HARDEE: Yeah, it may have been the family ---

9 THE COURT: What's your, what's your juror number?

10 (Whereupon, an on-the-record bench conference was held
11 with Juror Number 47, Stacey R. Hardee, counsel for the
12 Defense and counsel for the State in the presence, but out
13 of the hearing, of the jury venire.)

14 MR. HARDEE: Were you going to refer back to family
15 members?

16 THE COURT: I've already asked if you were related at
17 all to the victim.

18 MR. HARDEE: I wasn't, but when I was taking, when we
19 were taking a break I recognized an old high school friend
20 of mine and embraced her and I don't know who else seen
21 that, but after ---

22 THE COURT: And who was that? Did you know?

23 MR. HARDEE: That was I. Conyers, the mother-in-law of
24 the victim. It was only after the reunion that I realized
25 that she is the mother-in-law of the victim and a lot of

Voir Dire

231

23

1 people seen that. So, that's just information.

2 THE COURT: I think that that was important
3 information. Thank you for sharing that with us. Would
4 you mind just stepping back for just one moment and let me
5 talk to the attorneys in this case.

6 (Court and counsel confer.)

7 THE COURT: Yeah, I'm just going to have to. Under
8 this particular case he admitted that he hugged a family
9 member of the victim unbeknownst to him that that was the
10 relationship. He now knows the relationship. He's
11 admitted that many of the jurors had seen that and I think
12 that it would be appropriate that he not serve in this
13 particular case for fear that those jurors certainly with
14 him may be asking about that relationship and about the
15 family. He certainly would have some knowledge of the
16 family. So, he is being excused.

17 (Whereupon, the following takes place in open
18 court.)

19 THE COURT: Sir, you are being excused from this
20 particular case. Remain with us and I'll give you further
21 instructions.

22 All right, you've heard me ask this question over and
23 over again as we ask questions. Can you be fair and
24 impartial because you understand what I'm getting at. What
25 we need is a fair and impartial jury. Is there any member

Voir Dire

232- 24

1 of the jury panel who would be unwilling to admit that they
2 could not be fair and impartial for fear of some sort of
3 just, fear of some sort of ramification or that maybe even
4 the Judge would be mad with you. The truth of the matter
5 is I would need to know if you can't be fair and impartial
6 and all parties need to know the truth. So, is there any
7 member of the jury panel who would be unwilling to admit
8 that or wants to now admit that when they failed to do so
9 in the past? If so, please stand.

10 (No response.)

11 THE COURT: That's a little bit of a complicated
12 question, but I wanted to make sure that you weren't
13 feeling pressured to say, "Yes, I can be fair and
14 impartial." I want simply you to understand that we simply
15 need to know the truth.

16 All right, is there any member of the jury panel who
17 belongs to a civic group such as Mothers Against Drunk
18 Driving, People Against Rape, Citizens Against -- Citizens
19 Advocating Decency and Return to Ethics or Parents
20 Empowered to Save Teens or Citizens Against Violent Crime.
21 If you're a member of one of these groups or a similar
22 group please stand.

23 (No response.)

24 THE COURT: All right, is there any member of the jury
25 panel who either themselves or has had a close family

Voir Dire

25

1 member or a close friend who was a victim of a violent
2 crime and for that reason feels that they could not be fair
3 and impartial? If so, please stand. If that has bothered
4 you so emotionally that you feel like you cannot set that
5 aside and be fair and impartial in this case and judge this
6 case based on the facts and circumstances presented and the
7 evidence presented in this case, then please stand.

8 We have one. Yes, ma'am, if you'll come forward.

9 (Whereupon, an on-the-record bench conference was held
10 with Juror Number 9, Sara W. Bouchette, counsel for the
11 Defense and counsel for the State in the presence, but out
12 of the hearing, of the jury venire.)

13 BAILIFF: Number 9.

14 THE COURT: Okay, yes, ma'am.

15 MS. BOUCHETTE: Mark Wright was my cousin and he was
16 killed and they've never found his murderer. It happened
17 in Andrews.

18 THE COURT: Is that in any way going to affect your
19 ability to be fair and impartial?

20 MS. BOUCHETTE: I think that it would.

21 THE COURT: Okay, and your number once again?

22 MS. BOUCHETTE: 9.

23 THE COURT: Juror Number 9.

24 (Whereupon, the following takes place in open court.)

25 THE COURT: Juror Number 9 is excused from this

Voir Dire

1 particular case. Thank you, ma'am.

2 Is there any member of the jury panel who either
3 themselves or a close family member has been accused of a
4 violent crime and this would affect your ability to be fair
5 and impartial to both the State and the Defendant? If so,
6 please stand.

7 (No response.)

8 THE COURT: All right, is there any member of the jury
9 panel who has read in the paper or heard on the media
10 anything in this case? If so, please stand.

11 I expected such. So, I'm not surprised. That's okay.

12 Those of you who have heard go ahead. I want -- I
13 still need you to stand. If you've read anything, unless
14 you've been excused from the case. If you've been excused
15 from the case I don't need, I don't need for you to stand,
16 but if you have read or heard anything about the case and
17 what I will need to do is hear from you individually and
18 I'll just have you come forward and ask you about that with
19 the emphasis on and I'll tell you the emphasis will be on
20 your ability to set what you've heard or read aside and
21 base your decision solely on the evidence and testimony
22 presented in this courtroom. That's what will be
23 important. Ma'am, your Juror Number?

24 MS. MUNNERLYN: 82, I believe.

25 THE COURT: Okay, we'll double-check. Your name?

Voir Dire

235
27

1 (Whereupon, an on-the-record bench conference was held
2 with Juror Number 87, Glenda M. Munnerlyn, counsel for the
3 Defense and counsel for the State in the presence, but out
4 of the hearing, of the jury venire.)

5 MS. MUNNERLYN: Glenda Munnerlyn, Munnerlyn, Glenda.

6 MR. HEMBREE: 87.

7 THE COURT: Munnerlyn.

8 MS. MUNNERLYN: It's 82 or 86.

9 THE COURT: Juror Number 87, okay, this is Juror
10 Number 87, yes, ma'am.

11 MS. MUNNERLYN: Well, I had heard about it working at
12 the hospital, the one of the indictments was for a
13 Rutledge.

14 REPORTER: I can't hear when they talk out there. I'm
15 sorry.

16 THE COURT: (To open court) All right, everybody needs
17 to be quiet out there. We're having difficulty hearing.

18 MS. MUNNERLYN: And her mother -- his mother works at
19 the hospital. So, I heard, you know, about it there. I
20 didn't hear anymore about it than that.

21 THE COURT: Okay, now, have you already formed or
22 expressed an opinion as a result of what you've heard?

23 MS. MUNNERLYN: No.

24 THE COURT: All right, can you set aside what you've
25 heard and base your, because you will be required to do

Voir Dire

1 this, and base your opinion just on the evidence and
2 testimony presented in this courtroom?

3 MS. MUNNERLYN: Yes, I can.

4 THE COURT: That's all we can ask of you. Can you be
5 fair and impartial to both sides?

6 MS. MUNNERLYN: Yes.

7 THE COURT: Thank you, ma'am. You may remain with us.

8 (Whereupon, the following takes place in open court.)

9 THE COURT: The juror will remain with us.

10 (Whereupon, an on-the-record bench conference was held
11 with Juror Number 18, Audrey Cooper, counsel for the
12 Defense and counsel for the State in the presence, but out
13 of the hearing, of the jury venire.)

14 BAILIFF: 18.

15 THE COURT: Yes, ma'am, if you'll talk into this.
16 What did you hear and where?

17 MS. COOPER: The "Georgetown Times", I heard about the
18 case. Actually, one of the victim's father is -- was my
19 classmate. That's why I was -- I had saw the name. I was
20 interested. He -- I also knew him personally because he
21 did some work on my mother's home. He is a roofer and
22 ---

23 THE COURT: Was this in the past?

24 MS. COOPER: This is about a year and a half ago, I
25 believe, a little bit longer, maybe two years ago.

Voir Dire

237 29

1 THE COURT: Okay, let me ask you. You're telling me
2 several things.

3 MS. COOPER: Okay.

4 THE COURT: First of all, the things that you've
5 heard, can you set those aside and base your decision
6 solely on the evidence presented in this case? Can you
7 just set those out of your mind?

8 MS. COOPER: Yes, I believe I can.

9 THE COURT: Okay, all right, now, as to this
10 relationship that you know the victim's father.

11 MS. COOPER: Yes.

12 THE COURT: Is that correct? Now, is that in any way
13 going to affect your ability to be fair and impartial to
14 both the State and the Defendant in this case?

15 MS. COOPER: I want to say no. I want to say no, but

16 ---

17 THE COURT: Well, I really need you to soul search.

18 MS. COOPER: Okay.

19 THE COURT: You let this Court know.

20 MS. COOPER: Okay.

21 THE COURT: Do you want -- I gave another gentleman an
22 opportunity to think about it. Do you want some time to
23 really soul search and think about it and we'll have you
24 come back?

25 MS. COOPER: Yeah, I can do that.

Voir Dire

238

30

1 THE COURT: Okay, we'll do that.

2 MS. COOPER: Okay.

3 (whereupon, the following takes place in open court.)

4 THE COURT: Yes, ma'am.

5 BAILIFF: Number 100.

6 THE COURT: If you'll speak right in here. This is
7 Juror Number 100.

8 (Whereupon, an on-the-record bench conference was held
9 with Juror Number 100, Reta C. Simpson, counsel for the
10 Defense and counsel for the State in the presence, but out
11 of the hearing, of the jury-venire.)

12 MS. SIMPSON: I really don't know that much about it,
13 but I have, you know, glanced at the articles in the
14 newspaper, but I haven't -- I don't know the real details.

15 THE COURT: Okay, have you formed any opinion as a
16 result?

17 MS. SIMPSON: No, ma'am.

18 THE COURT: Okay, can you set aside what you may have
19 read about this case and decide the case solely on the
20 evidence presented in this courtroom?

21 MS. SIMPSON: Yes.

22 THE COURT: Can you be fair and impartial towards each
23 side?

24 MS. SIMPSON: Uh-huh (affirmative response), I think
25 so.

Voir Dire

239

31

1 THE COURT: Thank you. That's all we can ask, thank
2 you.

3 (Whereupon, the following takes place in open court.)

4 THE COURT: The juror will remain with us.

5 BAILIFF: Number 144.

6 (Whereupon, an on-the-record bench conference was held
7 with Juror Number 144, Sandra M. Mobley, counsel for the
8 Defense and counsel for the State in the presence, but out
9 of the hearing, of the jury venire.)

10 MS. MOBLEY: I've just heard rumors in my area because
11 it was not far from where we live in our neighborhood,
12 Browns Ferry, and the mother-in-law lives in the
13 neighborhood.

14 THE COURT: Okay, all right, so, you've really got two
15 issues. Let's deal with both of those. First of all,
16 let's deal with what you may have heard. Can you set that
17 aside and understand that that's not evidence in this
18 courtroom unless you hear it as evidence in this courtroom
19 ---

20 MS. MOBLEY: Of course.

21 THE COURT: --- and base your decision solely on the
22 evidence presented?

23 MS. MOBLEY: Uh-huh (affirmative response).

24 THE COURT: Can -- you can do that?

25 MS. MOBLEY: Yes.

Voir Dire

240 32

1 THE COURT: Okay, all right, and so, you could be fair
2 and impartial to both sides; is that correct?

3 MS. MOBLEY: Well, yes.

4 THE COURT: All right, now, let me ask you about that,
5 the fact that the mother-in-law is -- that's the mother-in-
6 law of who, one of the victims ---

7 MS. MOBLEY: No.

8 THE COURT: --- or the mother-in-law of the Defendant?

9 MS. MOBLEY: The Defendant.

10 THE COURT: Okay, the mother-in-law of the Defendant
11 lives in your neighborhood. Is that in any way, in any way
12 going to affect your ability to be fair and impartial?

13 MS. MOBLEY: No.

14 THE COURT: Thank you. That's what I need to know.
15 Thank you for revealing that.

16 (Whereupon, an on-the-record bench conference was held
17 with Juror Number 19, Marisa M. Cooper, counsel for the
18 Defense and counsel for the State in the presence, but out
19 of the hearing, of the jury venire.)

20 BAILIFF: Number 19.

21 THE COURT: All right, Juror Number 19, yes, ma'am, if
22 you'll speak as if you're talking into this ---

23 MS. COOPER: Yes.

24 THE COURT: --- and we'll be listening.

25 MS. COOPER: I just read about it in the newspaper,

Voir Dire

241

33

1 and ---

2 THE COURT: All right.

3 MS. COOPER: --- I mean I'm assuming that a lot of
4 people did, but you asked the question, so.

5 THE COURT: All right, yeah, absolutely, and it has
6 been in the paper but what you'll be required to do is set
7 all that aside, out of your mind ---

8 MS. COOPER: Uh-huh (affirmative response).

9 THE COURT: --- and any opinions you may have formed
10 as a result and base the case solely on the evidence and
11 testimony presented in this courtroom. Can you do that?

12 MS. COPPER: Yes, ma'am.

13 THE COURT: Can you be fair and impartial towards each
14 of the sides in this case?

15 MS. COOPER: Yes, ma'am.

16 THE COURT: Thank you.

17 (Whereupon, the following takes place in open court.)

18 THE COURT: She'll remain with us.

19 (Whereupon, an on-the-record bench conference was held
20 with Juror Number 145, Sydney H. O'Neil, counsel for the
21 Defense and counsel for the State in the presence, but out
22 of the hearing, of the jury venire.)

23 BAILIFF: Number 145.

24 THE COURT: If you'll just speak as if you're talking
25 into this and we'll be listening.

Voir Dire

1 MS. O'NEIL: Just what I've read in the paper.

2 THE COURT: All right, now, can you set what you might
3 have read in the paper aside ---

4 MS. O'NEIL: Uh-huh (affirmative response).

5 THE COURT: --- and base this case solely on the
6 evidence and testimony presented during, during the trial?

7 MS. O'NEIL: Uh-huh (affirmative response), yes, I
8 can.

9 THE COURT: All right, can you be fair and impartial
10 towards each of the parties?

11 MS. O'NEIL: Yes.

12 THE COURT: Thank you very much.

13 MS. O'NEIL: Uh-huh (affirmative response).

14 THE COURT: You may be seated.

15 (Whereupon, the following takes place in open court.)

16 THE COURT: Remain with us.

17 (Whereupon, an on-the-record bench conference was held
18 with Juror Number 2, Ronald W. Altman, counsel for the
19 Defense and counsel for the State in the presence, but out
20 of the hearing, of the jury venire.)

21 BAILIFF: Number 2.

22 THE COURT: Juror Number 2.

23 MR. ALTMAN: Juror Number 2.

24 THE COURT: Yes, sir.

25 MR. ALTMAN: Ronald Altman, yes, ma'am, I was

Voir Dire

243

35

1 following it in the papers, the subject of the day when it
2 was published, and it won't have any bearing on my -- I
3 haven't preformed an opinion one way or the other.

4 THE COURT: Can you set all that aside ---

5 MR. ALTMAN: Yes, ma'am.

6 THE COURT: --- and base your decision solely on the
7 evidence presented here?

8 MR. ALTMAN: Yes, ma'am, I certainly can.

9 THE COURT: Thank you. That's all we can ask, thank
10 you, sir.

11 MR. ALTMAN: You're welcome.

12 (Whereupon, an on-the-record bench conference was held
13 with Juror Number 74, Carol W. McCann, counsel for the
14 Defense and counsel for the State in the presence, but out
15 of the hearing, of the jury venire.)

16 THE COURT: Yes, ma'am.

17 BAILIFF: 74.

18 THE COURT: Yes, ma'am, Juror 74.

19 MS. MCCANN: I remember when it happened. I heard a
20 lot about it and watched it on the news and read in the
21 papers. Lately I haven't see anything about it. We've
22 been out of town, so.

23 THE COURT: Let me ask you, can you set aside anything
24 that you may have read or heard about the case and base
25 your decision solely on the evidence presented in this

1 courtroom?

2 MS. MCCANN: Yeah, uh-huh (affirmative response).

3 THE COURT: All right, can you be fair and impartial
4 towards the State and the Defendant?

5 MS. MCCANN: Yes.

6 THE COURT: Thank you.

7 MS. MCCANN: Uh-huh (affirmative response), thank you.

8 (Whereupon, the following takes place in open court.)

9 THE COURT: She'll remain with us.

10 (Whereupon, an on-the-record bench conference was held
11 with Juror Number 59, Sandra Y. Johnson, counsel for the
12 Defense and counsel for the State in the presence, but out
13 of the hearing, of the jury venire.)

14 THE COURT: Yes, ma'am.

15 BAILIFF: Number 59.

16 THE COURT: All right, did you hear that or read about
17 it, what?

18 MS. JOHNSON: Read about it.

19 THE COURT: Okay, where?

20 MS. JOHNSON: In "Georgetown Times".

21 THE COURT: Okay, now, can you set aside anything you
22 may have read about this case and base the -- base your
23 decision on the case solely on the evidence presented in
24 this courtroom?

25 MS. JOHNSON: Yes.

Voir Dire

245

37

1 THE COURT: Can you be fair and impartial to both the
2 Defendant and the State?

3 MS. JOHNSON: Yes.

4 THE COURT: Thank you.

5 MS. JOHNSON: Thank you.

6 (Whereupon, an on-the-record bench conference was held
7 with Juror Number 147, Terrance D. Sanders, counsel for the
8 Defense and counsel for the State in the presence, but out
9 of the hearing, of the jury venire.)

10 BAILIFF: 147.

11 THE COURT: Juror Number 47.

12 MR. SANDERS: 147.

13 BAILIFF: 147.

14 THE COURT: 147, thank you.

15 MR. SANDERS: For the most part of it I just heard
16 when the drug deal went bad and he was all bragging about
17 he killed two human beings and several other things.
18 That's not going to be a problem with me being truthful for
19 the case.

20 THE COURT: Okay, now, can you set all of that
21 information aside?

22 MR. SANDERS: Yes, ma'am.

23 THE COURT: And base the decision solely on the
24 evidence that's presented in this courtroom?

25 MR. SANDERS: Yes, ma'am.

1 THE COURT: All right, and I don't know, the evidence
2 that's presented in this courtroom may differ greatly from
3 what you've read. It may be what you've read but you've
4 got to put all of that out of your mind and any conclusions
5 that you might have reached out of your mind. Can you do
6 that?

7 MR. SANDERS: Yes, that's no problem.

8 THE COURT: Can you be fair and impartial to both the
9 State and the Defendant?

10 MR. SANDERS: Yes, ma'am.

11 THE COURT: All right, thank you.

12 MR. SANDERS: All right.

13 (Whereupon, an on-the-record bench conference was held
14 with Juror Number 129, Lisa M. Grate, counsel for the
15 Defense and counsel for the State in the presence, but out
16 of the hearing, of the jury venire.)

17 THE COURT: Yes, ma'am.

18 BAILIFF: 129.

19 THE COURT: Juror Number 129, yes, ma'am.

20 MS. GRATE: Just read in the paper, I keep up with the
21 paper, news.

22 THE COURT: Okay, now, can you set aside anything that
23 you may have read in the paper ---

24 MS. GRATE: I certainly can.

25 THE COURT: --- and base your decision solely on the

Voir Dire

39

1 evidence and testimony in this case?

2 MS. GRATE: Yes, I can.

3 THE COURT: You can do that?

4 MS. GRATE: Yes, I can.

5 THE COURT: Can you be fair and impartial to both the
6 Defendant and the State?

7 MS. GRATE: Yes.

8 THE COURT: Thank you.

9 MS. GRATE: Uh-huh (affirmative response).

10 THE COURT: The juror will remain with us.

11 (Whereupon, an on-the-record bench conference was held
12 with Juror Number 130, Norman K. Wilcox, counsel for the
13 Defense and counsel for the State in the presence, but out
14 of the hearing, of the jury venire.)

15 BAILIFF: Juror 130.

16 THE COURT: Yes, sir.

17 MR. WILCOX: Juror 130.

18 THE COURT: Yes, sir, did you -- was it something you
19 read or heard?

20 MR. WILCOX: Read in the newspaper.

21 THE COURT: Okay, now, can you, can you set aside
22 anything that you may have read about this case and base
23 this case solely on the evidence that's presented in this
24 courtroom?

25 MR. WILCOX: Yes.

Voir Dire

40

1 THE COURT: All right, can you be fair and impartial
2 to both the State and the Defendant?

3 MR. WILCOX: Yes.

4 THE COURT: Thank you. You'll remain with us, sir.

5 (Whereupon, an on-the-record bench conference was held
6 with Juror Number 35, Marvadine B. Forehand, counsel for
7 the Defense and counsel for the State in the presence, but
8 out of the hearing, of the jury venire.)

9 THE COURT: Yes, ma'am.

10 BAILIFF: 35.

11 THE COURT: Juror Number 35. Yes, ma'am, if you'll
12 speak as if you're talking into this microphone we'll be
13 listening. Yes.

14 MS. FOREHAND: I have read articles in the paper, but
15 it has, you know, just from outside, but I was being
16 honest.

17 THE COURT: Okay, well, we appreciate that. That's
18 what we want to know. Can you set aside anything that you
19 might remember about what you read, any -- set it all
20 aside, and base the decision solely on the evidence and
21 testimony presented in this courtroom?

22 MS. FOREHAND: Yes.

23 THE COURT: Can you do that?

24 MS. FOREHAND: Yes.

25 THE COURT: Can you be fair and impartial to both the

Voir Dire

219

41

1 Defendant and the State?

2 MS. FOREHAND: Yes.

3 THE COURT: Thank you.

4 (Whereupon, the following takes place in open court.)

5 THE COURT: If I could see Juror Number 18 one more
6 time. I was giving you some time to think about it.

7 (Whereupon, an on-the-record bench conference was held
8 with Juror Number 18, Audrey Cooper, counsel for the
9 Defense and counsel for the State in the presence, but out
10 of the hearing, of the jury venire.)

11 THE COURT: Now, again, there's no right or wrong
12 answer. There's just the truth.

13 MS. COOPER: Okay.

14 THE COURT: You just let us know. Could you be fair and
15 impartial to both the State and the Defendant in this case?

16 MS. COOPER: Okay, no, because it was an animosity
17 because of the work that was done wasn't going real good.
18 So, I think I better step aside.

19 THE COURT: All right, well, thank you for your
20 honesty.

21 (Whereupon, the following takes place in open court.)

22 THE COURT: Number 18 is excused.

23 I've told many of you that you have to set aside
24 anything that you may have read or heard or speculate about
25 this case, set all of that aside, get that out of your mind

Voir Dire

1 and you have to base your decision in this case solely on
2 the evidence that's presented. Ma'am, you need to stay
3 with us because I'll have to give you some further -- I'm
4 sorry, but I'll have to give you some further instructions.
5 You are excused from this case but I'll have to do
6 something with those of you who are excused. I'll give you
7 instructions in just a minute.

8 Now, once again, I told you you have to set all that
9 aside and base your decision in this case on the evidence
10 that's presented in this courtroom. By the same token, you
11 are not to base your -- you are to base your decision on
12 the evidence presented and not strictly on emotion.

13 Is there any member of the jury panel who is going to
14 be unable to set aside the emotional aspect and base this
15 decision solely on the evidence and testimony? If so,
16 please stand.

17 (No response.)

18 THE COURT: Is there any member of the jury panel who
19 has ever been employed or performed voluntary work at the
20 Georgetown Memorial Hospital? If so, please, stand.

21 (Court and counsel confer.)

22 THE COURT: Just give me, give me the juror number,
23 please, once again. Your juror number?

24 MS. MUNNERLYN: 87.

25 THE COURT: All right, your juror number?

Voir Dire

251

43

1 MS. O'NEIL: 145.

2 THE COURT: Your juror number?

3 MS. THOMPkins: 126.

4 THE COURT: Your juror number?

5 MS. GRATE: 129.

6 THE COURT: And yes, sir.

7 MR. GROVE: 44.

8 THE COURT: All right, now, because you have worked at
9 Georgetown Memorial Hospital is that in any way going to
10 affect your ability to be fair and impartial to both the
11 Defendant and the State in this case? If so, remain
12 standing.

13 (No response.)

14 THE COURT: I'll ask it this way. Is there any member
15 of the jury panel who has -- who has a relationship with
16 the families of Elton Rutledge or Wilfred Brown and you
17 have not already revealed that? If you have already
18 revealed that we've already discussed it, but if you have a
19 relationship with either of those families and have not yet
20 revealed that, please stand.

21 (No response.)

22 THE COURT: At this time I'm going to have the
23 attorneys introduce themselves and we will begin with the
24 attorneys for the State. I'll allow you to take your
25 place. I'll move back up.

1 MR. HEMBREE: Good morning, good afternoon.

2 My name is Greg Hembree. I'm the Solicitor for the
3 15th Judicial Circuit and I have responsibility for
4 prosecuting criminal cases in Horry and Georgetown
5 Counties.

6 Trying this case with me will be Deputy Solicitor for
7 Georgetown, Bo Bryan. The chief case officer in this case
8 is investigator with the Georgetown Sheriff's Office, Gary
9 Todd.

10 MR. LOCKLAIR: And my name is Wesley Locklair. I,
11 along with Margaret Ann Kneece represent Jody Ward. We're
12 both in different firms out of Murrells Inlet, and we
13 practice criminal defense around the State.

14 THE COURT: All right, at this time I'm going to have
15 the attorneys list potential witnesses. Now, these are
16 witnesses who may be called in the trial of the case.
17 Before I do that let me ask about the attorneys. This
18 would be a good time.

19 Is there any member of the jury panel who is related
20 by blood or marriage or friends with any of these attorneys
21 or who has been represented by any of these attorneys or
22 who has been on the other side of a case in which one of
23 these attorneys might have represented the opposing party;
24 if so, please stand.

25 (No response.)

Voir Dire

253 45

1 THE COURT: All right, very well. I'm going to turn
2 now to Solicitor Hembree for a list of potential witnesses.
3 Listen very carefully. These are the individuals who may
4 be called in the trial of the case and I need to ask you
5 about these individuals.

6 Yes, sir.

7 MR. HEMBREE: Thank you, Your Honor.

8 I would like to note for the record that this is an
9 extensive list of 63 witnesses. We will -- I would like to
10 state for the benefit of the Court and for the benefit of
11 the jury that we do not intend to call all 63 witnesses,
12 but just to -- didn't want to scare anybody about this long
13 list.

14 THE COURT: Thank you, Mr. Hembree.

15 MR. HEMBREE: Barry Watford; Detective Jimmy Burke,
16 Georgetown Police Department; Candy Cox; Billy Wilson;
17 Senior Agent Steve Lambert from SLED; Denise Langston Cox;
18 Latrese Rutledge; Reverend Elton Rutledge, Sr.; Indria
19 Brown; Nadine Brown; Beverly Ward; Sean Savery; Officer
20 Danny Cooper, Georgetown Police Department; Officer Eddie
21 Dingle, South Carolina Department of Natural Resources;
22 Walker Bone; Charles Lamb; Eric Grantham; Agent Stacy Brown
23 of the Alcohol, Tobacco and Firearms Department; Josh
24 Ackerman; Jason Ackerman; Paula Lamb; Buffy Lynn Parsons;
25 Curtis Fields; Wade Jones; Rhonda Cook; Brian Alston; Brian

Voir Dire

254

46

1 Elliott; Melissa Elliott; John Elliott; Lieutenant Ernest
2 Hampton, Georgetown County Sheriff's Office; Agent Ivan
3 Holden, Georgetown County Sheriff's Office; Shane Prince;
4 Agent Frank Preston, Alcohol, Tobacco and Firearms; Clifton
5 Rogers, Jr.; Carter Weaver, Assistant Sheriff, Georgetown
6 County Sheriff's Office; Arthur Young; Alice Newman; Deputy
7 Kevin Holt, Georgetown County Sheriff's Office; Coroner
8 Kenny Johnson; Louis Bazen; Officer Earl Graham, Charleston
9 Police Department; Deputy Chris Doerr, Georgetown County
10 Sheriff's Office; Special Agent Jeff Crooks, SLED; Special
11 Agent Jim Hickman, SLED; Special Agent Michelle Dixon,
12 SLED; Lieutenant Matthew Grayson, Georgetown County
13 Sheriff's Office; Officer Danny Watson, Georgetown Police
14 Department; Investigator Jonathan Lambert, Georgetown
15 County Sheriff's Office; Roger Cox, Jr.; Tracy Collins;
16 Jody Owens; Olin Hewitt; Kevin Cooper; Roger Dale Ackerman,
17 Sr.; Roger Dale Ackerman, Jr.; Jason Poston; Investigator
18 Gary Todd, Georgetown County Sheriff's Office; Special
19 Agent Rod Greene, SLED; Senior Agent Dan DeFreese, SLED;
20 Cecil Bradstreet, SLED; Officer Richard Cote, Myrtle Beach
21 Police Department; and Special Agent Rhett Holden, SLED.

22 THE COURT: All right, is there any member of the jury
23 panel who is related by blood or marriage or friends or
24 business acquaintance with any of these potential
25 witnesses? If so, please stand.

1 (No response.)

2 THE COURT: All right, very well, if we could then
3 hear from the Defendant.

4 MR. LOCKLAIR: In addition to those witnesses, these
5 are the other potential witnesses: Michael Abner; John
6 Evans; Susan Evans; Don Girnst [spelled phonetically]; Tony
7 Harper; Julius Inman; Kenny Johnson; Mark Johnson; Neil
8 Johnson; Willie Lambert; Dr. Hal Morgan; Investigator Don
9 Myers; Jerry Oldham; Chris Parsons; Mike Rodan; Carol Ward;
10 Lynn Ward; and Rondie Ward.

11 THE COURT: Is there any member of the jury panel who
12 is related by blood or marriage or business or personal
13 acquaintance with any of these potential witnesses; if so,
14 please stand.

15 (No response.)

16 THE COURT: Is there any member of the jury panel who
17 is aware or conscious of any bias or prejudice for or
18 against the State or for or against the Defendant? If so,
19 please stand.

20 (No response.)

21 THE COURT: Is there any member of the jury panel who
22 for any reason whatsoever feels that they could not be fair
23 and impartial to both the Defendant and the State? If so,
24 please stand.

25 (No response.)

Voir Dire

256

48

1 THE COURT: Are there any additional requests?
2 Anything from the State?

3 MR. HEMBREE: No additional requests from the State,
4 Your Honor.

5 THE COURT: All right, anything from the Defendant?

6 MS. KNEECE: Nothing from the Defense.

7 THE COURT: All right, now to those individuals who
8 have been excused from this particular trial I'm going to
9 excuse you at this time as we begin this process. I ask
10 you to call in after six o'clock this evening, call in
11 after six o'clock this evening and follow those
12 instructions. If you have been excused from hearing this
13 particular case you may leave at this time, call in after
14 six.

15 Okay, go get her then. If there's one that left that
16 was not supposed to bring her back in.

17 Bear with us. I think somebody slipped away on us.
18 I'm sure you all had the urge.

19 Let's have order and let me go ahead and -- yes.

20 MS. KNEECE: May we approach?

21 THE COURT: Yes, you may. Wait just a moment. The
22 strikes are five and ten; Madam Clerk, five and ten.

23 (Whereupon, a Bench conference was held in the
24 presence, but out of the hearing, of the jury venire.)

25 THE COURT: All right, as you hear your name and

Jury Selection

1 number called if you would please come forward. You will
2 walk through that middle gate, and I'll get one of the
3 bailiffs to open that up for you. You will stand with your
4 back to me facing the front of the courthouse and you'll
5 remain standing there until you're asked to either have a
6 seat in the jury box or to return to your seat, and as you
7 hear your name and number called, please bring your
8 personal belongings with you assuming that you will be
9 chosen to serve in this particular case.

10 Now, don't be too concerned if when you're standing
11 there the attorneys ask to approach and ask to come talk to
12 me. We are dealing with a matter of law that we will be
13 discussing. So, just remain standing there patiently until
14 we direct you to either return to your seat or have a seat
15 in that jury box.

16 Now, yes, sir, Mr. Mapp, did you need to talk with me?

17 MR. MAPP: No, ma'am.

18 THE COURT: All right, we'll begin at this time.

19 THE CLERK: Juror Number 133, Barbara Wilson.

20 What says the State?

21 MR. HEMBREE: Please excuse Ms. Wilson from the trial
22 of this case.

23 THE COURT: You may return to your seat.

24 THE CLERK: Juror Number 1, Myra Alston.

25 What says the State?

Jury Selection

258

50

1 MR. HEMBREE: Please present Ms. Alston.

2 THE CLERK: What says the Defense?

3 MR. LOCKLAIR: Please excuse Ms. Alston from service
4 on this case.

5 THE COURT: You may return to your seat.

6 THE CLERK: Juror Number 88, Robert Myers.

7 What says the State?

8 MR. HEMBREE: Please present Mr. Myers.

9 THE CLERK: What says the Defense?

10 MR. LOCKLAIR: Please present Mr. Myers.

11 THE COURT: Have a seat in the jury box, sir.

12 THE CLERK: Juror Number 48, Judy Harper.

13 THE COURT: Is that 48?

14 THE CLERK: Yes, Your Honor.

15 THE COURT: Thank you. If you'd back up just a little
16 bit they can both see you.

17 (Complies with request.)

18 THE COURT: There you go.

19 THE CLERK: What says the State?

20 MR. HEMBREE: Please present Ms. Harper.

21 THE CLERK: What says the Defense?

22 MR. LOCKLAIR: Please present Mrs. Harper.

23 THE COURT: Have a seat in the jury box, right over
24 here.

25 THE CLERK: Juror Number 44, Derrick Grove.

Jury Selection

259

51

1 What says the State?

2 MR. HEMBREE: Please excuse Mr. Grove from the trial
3 of this case.

4 THE COURT: You may return to your seat.

5 THE CLERK: Juror Number 87, Glenda Munnerlyn.

6 What says the State?

7 MR. HEMBREE: Please present Ms. Munnerlyn.

8 THE CLERK: What says the Defense?

9 MR. LOCKLAIR: Please excuse Mrs. Munnerlyn from this
10 case.

11 THE COURT: You may return to your seat.

12 THE CLERK: Juror Number 107, Barbara Smith.

13 What says the State?

14 MR. HEMBREE: Please present Ms. Smith.

15 THE CLERK: What says the Defense?

16 MR. LOCKLAIR: Your Honor, may we approach?

17 THE COURT: Yes, you may.

18 (Whereupon, a Bench conference was held in the
19 presence, but out of the hearing, of the jury..)

20 (Whereupon, an on-the-record bench conference was held
21 with Juror Number 107, Barbara Smith, counsel for the
22 Defense and counsel for the State in the presence, but out
23 of the hearing, of the jury venire.)

24 THE COURT: Ma'am, let me ask you just a quick
25 question over here. If you'll speak as if you're talking

Jury Selection

200 52

1 into this microphone.

2 MS. SMITH: Okay.

3 THE COURT: Now, were you talking with the victim's

4 family earlier?

5 MS. SMITH: Huh-uh (negative response), no, ma'am.

6 THE COURT: Now, do you know the victim's family?

7 MS. SMITH: No, ma'am.

8 THE COURT: Okay, all right, thank you, ma'am.

9 MS. SMITH: Okay.

10 THE COURT: (In open court.) Just remain there till we

11 tell you otherwise.

12 MS. SMITH: Okay.

13 THE COURT: Thank you. Yes, sir..

14 MR. HEMBREE: Thank you, Your Honor.

15 Please present Ms. Smith.

16 THE CLERK: What says the Defense?

17 MR. LOCKLAIR: Please excuse Mrs. Smith from this

18 trial.

19 THE COURT: You may return to your seat.

20 THE CLERK: Juror Number 141, Paul Griffin.

21 What says the State?

22 MR. HEMBREE: Please present Mr. Griffin.

23 THE CLERK: What says the Defense?

24 MR. LOCKLAIR: Please present Mr. Griffin.

25 THE COURT: Have a seat in the jury box.

Jury Selection

1 THE CLERK: Juror Number 2, Ronald Altman.
2 What says the State?
3 MR. HEMBREE: Please present Mr. Altman.
4 THE CLERK: What says the Defense?
5 MR. LOCKLAIR: Please present Mr. Altman.
6 THE COURT: Have a seat in the jury box.
7 THE CLERK: Juror Number 100, Reta Simpson.
8 What says the State?
9 MR. HEMBREE: Please present Ms. Simpson.
10 THE CLERK: What says the Defense?
11 MR. LOCKLAIR: Please present Ms. Simpson.
12 THE COURT: Have a seat in the jury box.
13 THE CLERK: Juror Number 79, Mart Mihalakis; is that
14 right? Close?
15 MR. MIHALAKIS: That'll work.
16 THE CLERK: Okay.
17 What says the State?
18 MR. HEMBREE: Please present Mr. Mihalakis.
19 MR. MIHALAKIS: Mihalakis.
20 MR. HEMBREE: Sorry about that.
21 THE CLERK: What says the Defense?
22 MR. LOCKLAIR: Please excuse Mr. Mihalakis.
23 THE COURT: You may return to your seat.
24 THE CLERK: Juror Number 98, Daphne Ray, Juror Number
25 98.

Jury Selection

262

54

1 What says the State?

2 MR. HEMBREE: Please present Ms. Ray.

3 THE CLERK: What says the Defense?

4 MR. LOCKLAIR: Please present Ms. Ray.

5 THE COURT: Have a seat in the jury box.

6 THE CLERK: Juror Number 130, Norman Wilcox.

7 What says the State?

8 MR. HEMBREE: Please present Mr. Wilcox.

9 THE CLERK: What says the Defense?

10 MR. LOCKLAIR: Please excuse Mr. Wilcox from this

11 case.

12 THE COURT: You may return to your seat.

13 THE CLERK: Juror Number 34, Jeffery Fisher.

14 What says the State?

15 MR. HEMBREE: Please present Mr. Fisher.

16 THE CLERK: What says the Defense?

17 MR. LOCKLAIR: Please excuse Mr. Fisher from this

18 case.

19 THE COURT: You may return to your seat.

20 THE CLERK: Juror Number 19, Marisa Cooper.

21 What says the State?

22 MR. HEMBREE: Please present Ms. Cooper.

23 THE CLERK: What says the Defense?

24 MR. LOCKLAIR: Please present Mrs. Cooper.

25 THE COURT: Have a seat in the jury box.

Jury Selection

263

55

1 THE CLERK: Juror Number 76, Theodis McGee.
2 What says the State?
3 MR. HEMBREE: Please present Mr. McGee.
4 THE CLERK: What says the Defense?
5 MR. LOCKLAIR: Please excuse Mr. McGee.
6 THE COURT: You may return to your seat.
7 THE CLERK: Juror Number 69, Rochelle Leary.
8 What says the State?
9 MR. HEMBREE: Please present Mr. Leary.
10 THE CLERK: What says the Defense?
11 MR. LOCKLAIR: Please excuse Mr. Leary.
12 THE COURT: You may return to your seat.
13 THE CLERK: Juror Number 59, Sandra Johnson.
14 What, come back down here. What says the State?
15 MR. HEMBREE: Please present Ms. Johnson.
16 THE CLERK: What says the Defense?
17 MR. LOCKLAIR: Please excuse Mrs. Johnson.
18 THE COURT: You may return to your seat.
19 THE CLERK: Juror Number 145, Sydney O'Neil.
20 What says the State?
21 MR. HEMBREE: Please present Ms. O'Neil.
22 THE CLERK: What says the Defense?
23 MR. LOCKLAIR: Please present Mrs. O'Neil.
24 THE COURT: Have a seat in the jury box.
25 THE CLERK: Juror Number 112, Virgil Spivey.

Jury Selection

264

56

1 What says the State?

2 MR. HEMBREE: Please present Mr. Spivey.

3 THE CLERK: What says the Defense?

4 MR. LOCKLAIR: Please present Mr. Spivey.

5 THE COURT: Have a seat in the jury box.

6 THE CLERK: Juror Number 150, David Williams.

7 What says the State?

8 MR. HEMBREE: Please excuse Mr. Williams from this

9 trial.

10 THE COURT: You may return to your seat.

11 THE CLERK: Juror Number 93, Kelly Polen.

12 What says the State?

13 MR. HEMBREE: Please present Ms. Polen.

14 THE CLERK: What says the Defense?

15 MR. LOCKLAIR: Please present Mrs. Polen.

16 THE COURT: Have a seat in the jury box.

17 THE CLERK: Juror Number 16, Carl Chatman.

18 What says the State?

19 MR. HEMBREE: Please present Mr. Chatman.

20 THE CLERK: What says the Defense?

21 MR. LOCKLAIR: Please present Mr. Chatman.

22 THE COURT: Have a seat in the jury box.

23 THE CLERK: Juror Number 74, Carol McCann.

24 What says the State?

25 MR. HEMBREE: Please present Ms. McCann.

Jury Selection

265

57

1 THE CLERK: What says the Defense?

2 MR. LOCKLAIR: Please present Mrs. McCann.

3 THE COURT: Have a seat in the jury box.

4 THE CLERK: Juror Number ---

5 THE COURT: For our alternate, go ahead. These are

6 for our alternate.

7 THE CLERK: Juror Number 121, Antonio Thompson.

8 What says the State?

9 MR. HEMBREE: Please excuse Mr. Thompson from this

10 case.

11 THE COURT: You may return to your seat.

12 THE CLERK: Juror Number 68, Julie Lance.

13 What says the State?

14 MR. HEMBREE: Please present Ms. Lance.

15 THE CLERK: What says the Defense?

16 MR. LOCKLAIR: Please present Mrs. Lance.

17 THE COURT: Have a seat in the jury box.

18 For our alternate two.

19 THE CLERK: Juror Number 64, Jefferson Kirby, III.

20 What says the State?

21 MR. HEMBREE: Please excuse Mr. Kirby from this trial.

22 THE COURT: You may return to your seat.

23 THE CLERK: Juror Number 39, Bernadette Gardner.

24 What says the State?

25 MR. HEMBREE: Please present Ms. Gardner.

1 THE CLERK: What says the Defense?

2 MR. LOCKLAIR: Please present Mrs. Gardner.

3 THE COURT: Have a seat in the jury box.

4 Are there any motions in regard to this jury?

5 Anything from the State?

6 MR. HEMBREE: No motions from the State, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. LOCKLAIR: Nothing from the Defense, Your Honor.

9 THE COURT: All right, very well.

10 I'm going to turn first to my jury. Well, for
11 scheduling purposes let me have you come forward, please.

12 (Whereupon, a Bench conference was held in the
13 presence, but out of the hearing, of the jury and jury
14 venire.)

15 THE COURT: All right, ladies and gentlemen of the
16 jury, I look forward to working with each and every one of
17 you. I need for you to understand that this afternoon
18 we're going to be doing some motions and making sure that
19 everything is in order for you to begin hearing this case.
20 So, I'm not going to have you here until nine o'clock
21 tomorrow morning, but I need you back in that jury room at
22 nine o'clock tomorrow morning.

23 Now, I'll make sure they have some doughnuts or
24 something back there for you and coffee, especially coffee.
25 So, come a little earlier so that you can enjoy that,

Motions

1 and we will begin with our opening statements in the trial
2 of this case in the morning. See you then.

3 MR. HEMBREE: Thank you, Your Honor.

4 MR. LOCKLAIR: Thank you, Your Honor.

5 ***** OFF THE RECORD *****

6 (On the record, Tuesday, March 16, 2004.)

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right, I also want to let you know at
10 this point we've had a couple of jurors that will need to
11 be questioned. I have received a notice from Juror Number
12 68 and from Juror Number 88. They both are indicating that
13 there is some relationship with somebody who is listed as a
14 witness.

15 One of them is saying basically that she knows the
16 family. I don't know whose family. The other one is
17 saying that one of the witnesses cleaned their house for a
18 number of years and they've come to realize that. I need
19 to bring them out and question them more fully in that
20 regard. We'll begin at this time.

21 I'll first take Juror Number 88, Juror Number
22 88.

23 (Whereupon, Juror Number 88, Robert Myers, enters
24 courtroom.)

25 THE COURT: Hello, sir. If you would just stand there

Questioning of Juror

1 in front of me. You were right to bring this to the
2 Court's attention once you realized, but what I have --
3 what I have received is that one of the witnesses cleaned
4 your house for a number of years; is that correct?

5 MR. MYERS: That is correct.

6 THE COURT: All right, which witness was that?

7 MR. MYERS: Lynn Ward.

8 THE COURT: Lynn Ward?

9 MR. MYERS: That's correct.

10 THE COURT: All right, and how long ago was that?

11 MR. MYERS: It was on and off but the last, the last
12 that I can remember was sometime probably last summer.

13 THE COURT: All right, and how did that relationship
14 end?

15 MR. MYERS: I just didn't -- no longer needed that
16 service.

17 THE COURT: All right, would you say that you were a
18 close friend or acquaintance of Lynn Ward?

19 MR. MYERS: I would not.

20 THE COURT: Okay, how -- and when you no longer needed
21 the service was the relationship fine upon termination?

22 MR. MYERS: Yes, absolutely.

23 THE COURT: All right, now, if Mr. or is it Lynn, is
24 it Ms. Ward?

25 MR. MYERS: Yes.

Questioning of Juror

1 THE COURT: I don't even know, is that -- Ms. Ward?
2 If Ms. Ward testifies in this case are you going to weigh
3 her testimony more heavily or think of it less based on,
4 solely on this relationship?

5 MR. MYERS: No, Your Honor.

6 THE COURT: All right, did you discover anything about
7 this incident through Ms. Ward?

8 MR. MYERS: No.

9 THE COURT: All right, have you had any discussions
10 with her?

11 MR. MYERS: Not regarding this, just brief, brief
12 discussions, held just casual conversation.

13 THE COURT: Okay, but nothing about this particular
14 case?

15 MR. MYERS: No, no, Your Honor.

16 THE COURT: All right, now, let me ask you is the fact
17 that you knew Ms. Ward in that capacity in the past in any
18 way going to affect your ability to be fair and impartial
19 to both the Defendant and to the State?

20 MR. MYERS: I do not, do not think so.

21 THE COURT: Okay now, while I appreciate that answer I
22 really need to know for sure. It's very important.

23 MR. MYERS: No, Your Honor, it will not.

24 THE COURT: Okay, now, let me ask it one more time.
25 Will it in any way affect your ability to be fair and

Questioning of Juror

354

146

1 impartial to both the State and to the Defendant?

2 MR. MYERS: No, Your Honor.

3 THE COURT: All right, and any doubt about that?

4 MR. MYERS: In my heart I don't have a doubt about it.

5 I just ---

6 THE COURT: You want to -- you want to ---

7 MR. MYERS: I've never been through this process
8 before. I don't know, but ---

9 THE COURT: All right.

10 MR. MYERS: --- I mean, I do feel that I can be
11 impartial in this ---

12 THE COURT: Okay.

13 MR. MYERS: --- in this situation.

14 THE COURT: All right, when you said you don't know
15 you -- that makes me have to question you again.

16 MR. MYERS: Okay.

17 THE COURT: You said that you were not familiar with
18 the process and you don't know. Is it the process that
19 you're unfamiliar with that you don't know or is it the
20 fact that you don't know if you can be fair and impartial?

21 MR. MYERS: No, it's the process, Your Honor.

22 THE COURT: Okay, just needed to clarify that.

23 I'm going to have you step out for just one moment.

24 Please don't discuss what we've discussed with the fellow
25 jurors and I need to talk with the attorneys and I'll have

Questioning of Juror

355 147

1 you back out in just a moment. Thank you, sir.

2 MR. MYERS: Thank you.

3 (Whereupon, Juror Number 88, Robert Myers, exits
4 courtroom.)

5 THE COURT: Anything from the State in regard to that
6 seated juror?

7 MR. HEMBREE: Nothing from the State, Your Honor.

8 THE COURT: Anything from the Defendant?

9 MS. KNEECE: If we could beg the Court's indulgence,
10 please.

11 THE COURT: Yes.

12 MS. KNEECE: Nothing from the Defense, Your Honor.

13 THE COURT: All right, is it the position of the State
14 and the Defendant that he would remain on? Are you
15 satisfied that he can be fair and impartial in this case?
16 Let me hear from the State.

17 MR. HEMBREE: The State's satisfied he can be fair and
18 impartial. He seemed to -- he answered questions clearly.
19 He answered them directly, and it was obvious that he, you
20 know, he, when he said, "In my heart I know I can be, I can
21 be fair and impartial," that, that's about all we can ask
22 of him.

23 THE COURT: From the Defendant?

24 MS. KNEECE: The same sentiment from the Defendant.

25 THE COURT: Very well. We'll bring him back out.

Questioning of Juror

1 (Whereupon, Juror Number 88, Robert Myers, enters
2 courtroom.)

3 THE COURT: Mr. Myers, thank you for being forthright.
4 We want you to stay on. You have indicated that you can be
5 fair and impartial and we are requesting that you remain on
6 as a seated juror. Thank you very much.

7 MR. MYERS: Thank you, Your Honor.

8 (Whereupon, Juror Number 88, Robert Myers, exits
9 courtroom.)

10 THE COURT: We now need Juror Number 68.

11 (Whereupon, Juror Number 68, Julie Lance, enters
12 courtroom.)

13 THE COURT: Ma'am, if you would just come and speak to
14 me. Relax. You've done nothing wrong. You simply are
15 bringing to the Court's attention a matter that we, we
16 needed to know about.

17 MS. LANCE: Uh-huh (affirmative response).

18 THE COURT: And we thank you for that. Apparently
19 after you had thought about it you realized that you know a
20 family that's connected with this case and they live in the
21 same community; is that correct?

22 MS. LANCE: Yes.

23 THE COURT: All right, what family is that, ma'am?

24 MS. LANCE: Well, I know, know them by the Linen,
25 their last name is Linen.

1 THE COURT: You know, you know Linen. Would you come
2 over here in front of this microphone because you're going
3 to -- everyone is going to be able to hear you better
4 there.

5 MS. LANCE: Okay, uh-huh (affirmative response).

6 THE COURT: That's right, very good. You know a
7 family whose last name is Linen?

8 MS. LANCE: Yes.

9 THE COURT: All right, and anyone else?

10 MS. LANCE: Well, I know the grandmother. They live
11 in the same community.

12 THE COURT: Now, when you say the grandmother, the
13 grandmother of whom?

14 MS. LANCE: Of, oh, gosh, I really don't know their
15 name but I know their family.

16 THE COURT: Okay, so, you wouldn't say that they were
17 close personal friends?

18 MS. LANCE: No, but they live in the same community.

19 THE COURT: They live in the community.

20 MS. LANCE: And I know their whole family.

21 THE COURT: Okay.

22 MS. LANCE: Yes.

23 THE COURT: So, you know who they are? You know
24 you're acquaintances with them? You know them when you see
25 them?

Questioning of Juror

358

150

1 MS. LANCE: No.

2 THE COURT: You don't know them when you see them?

3 MS. LANCE: Huh-uh (negative response).

4 THE COURT: You simply know that they are in the area?

5 MS. LANCE: Yeah.

6 THE COURT: Okay, all right, now, let me ask you this,
7 have you heard anything about the case from any of these
8 individuals that live in your community?

9 MS. LANCE: Yeah.

10 THE COURT: You have? They've talked to you about
11 this case?

12 MS. LANCE: Yes.

13 THE COURT: Who was that?

14 MS. LANCE: When it first happened relatives was
15 talking about it.

16 THE COURT: Okay, relatives of whom?

17 MS. LANCE: Of this family.

18 THE COURT: Which family? I'm having a problem with
19 family, a Linen family?

20 MS. LANCE: Yeah, I know them by the Linen family but
21 since she get married I don't know her last name.

22 THE COURT: Okay, and she's related to who that -- in
23 this case?

24 MS. LANCE: My dad.

25 THE COURT: All right, now, you've indicated that

Questioning of Juror

1 they're in your community but you don't know them real
2 well, but they're in -- you know they're in the community.

3 MS. LANCE: Yeah.

4 THE COURT: And that someone of that family had said
5 something about this incident early on when it first
6 happened; is that correct?

7 MS. LANCE: Yes.

8 THE COURT: Okay, now, let's deal with a couple of
9 things. First of all, the fact that members of the family
10 live in your community is that in any way going to affect
11 your ability to be fair and impartial towards both the
12 Defendant and the State?

13 MS. LANCE: It's hard to say.

14 THE COURT: It is a difficult question.

15 MS. LANCE: Uh-huh (affirmative response).

16 THE COURT: But I need to know. So, I need for you to
17 think about it.

18 MS. LANCE: Uh-huh (affirmative response).

19 THE COURT: Will it in any way affect your ability to
20 be fair and impartial?

21 MS. LANCE: I try not to let it be but I can't really
22 say.

23 THE COURT: All right, now, and then that's much
24 appreciated because that's part of what you would need to
25 do is put all of that aside and base your decision strictly

Questioning of Juror

1 on the evidence and testimony in this courtroom.

2 MS. LANCE: Yeah.

3 THE COURT: So, I'm going to ask you once -- first of
4 all, let me ask you that. Can you set that relationship
5 aside, that knowledge that they're in your community, can
6 you set that aside and base this decision strictly on the
7 evidence and testimony presented in this courtroom?

8 MS. LANCE: Yeah.

9 THE COURT: Okay, now, I'm going to take you a step
10 further. Can you be fair and impartial towards both
11 the Defendant and to the State?

12 MS. LANCE: Yes.

13 THE COURT: All right, now, there was something else
14 that you told this Court and that is you said that you had
15 had some discussion about the case.

16 MS. LANCE: Uh-huh (affirmative response).

17 THE COURT: Do you recall exactly with whom?

18 MS. LANCE: You're talking about yesterday or earlier?

19 THE COURT: I'm talking about earlier. Did you talk
20 with someone about the case yesterday?

21 MS. LANCE: Well, that's how I know we connected
22 because this girl she was talking about the case and then I
23 realized it but I didn't say anything.

24 THE COURT: Okay, so, you overheard someone talking
25 about the case in your presence?

1 MS. LANCE: Yes.

2 THE COURT: Okay, and that happened yesterday when?

3 MS. LANCE: After I get home.

4 THE COURT: Did someone come to your home and talk to
5 you about the case?

6 MS. LANCE: No, she talked to me on the phone, but I
7 didn't say anything about it, and I just realized it was
8 the same case that I was on.

9 THE COURT: Okay.

10 MS. LANCE: Uh-huh (affirmative response).

11 THE COURT: So, someone called you on the phone about
12 the case.

13 MS. LANCE: Yeah, she was talking about it.

14 THE COURT: Who was that?

15 MS. LANCE: A friend, uh-huh (affirmative response).

16 THE COURT: Okay, a friend whose name you know?

17 MS. LANCE: Yeah.

18 THE COURT: All right, ma'am, who was that individual?

19 MS. LANCE: Willie Mae Washington.

20 THE COURT: All right, and what did she say to you
21 about the case?

22 MS. LANCE: She was saying about this guy had murdered
23 two people and said lived right in the community and it's a
24 way back and she asked me if I was on that case. I tell
25 them, "I don't know," because I had know I didn't suppose

Questioning of Juror

362 154

1 to discuss it with nobody. I said, "I don't know."

2 THE COURT: Okay, all right, let me let you step back
3 for just one moment. We're going to hold you back there
4 and let me talk to the attorneys in regard to this matter.

5 MS. LANCE: Uh-huh (affirmative response).

6 THE COURT: And we'll bring you right back out with
7 more questions. Thank you.

8 MS. LANCE: Okay.

9 (Whereupon, Juror Number 68, Julie Lance exits
10 courtroom.)

11 THE COURT: Counsel, if I could see you up here for
12 just one moment. I'm just trying to get a connection here.

13 (Whereupon, a Bench conference was held.)

14 THE COURT: Counsel, thank you. I will call her back
15 in and do some more questioning. We still need Juror
16 Number 68, please.

17 (Whereupon, Juror Number 68, Julie Lance, enters
18 courtroom.)

19 THE COURT: All right, Ms. Lance, once again let me
20 assure you that you are doing the right thing by being open
21 and honest about what has happened, and ultimately we need
22 to know what's gone on and we need to know if it's going to
23 in any way effect your ability to be fair and impartial.

24 Let me go back. There was a Ms. Washington who called
25 you last night.

Questioning of Juror

155

1 MS. LANCE: Uh-huh (affirmative response).

2 THE COURT: Did you -- you didn't -- well, let me just
3 ask it. Did you call her first?

4 MS. LANCE: Let me think now. No, I call her 'cause
5 she was sick and then she was -- because she know I ---

6 THE COURT: Because she's sick.

7 MS. LANCE: Yeah.

8 THE COURT: So, you called her to check on her because
9 she was ill?

10 MS. LANCE: Yeah.

11 THE COURT: And then she started asking you have you
12 been chosen in the case and started talking to you about
13 the case; is that correct?

14 MS. LANCE: Yeah, uh-huh (affirmative response).

15 THE COURT: Okay, now, is she -- what is her interest
16 in the case? Why does she know about it or think she knows
17 about?

18 MS. LANCE: Well, she, she know about it because she
19 read a lot and she watch TV and ---

20 THE COURT: Does she have any relationship with any of
21 the families that are ---

22 MS. LANCE: I really don't know.

23 THE COURT: Okay, all right, so, she just started
24 telling you about what she read and heard.

25 MS. LANCE: Yeah, because she said this case going to

Questioning of Juror

364 156

1 go on for two, two, two weeks she said in the paper or read
2 about it.

3 THE COURT: Okay, okay, now, and did you just cut her
4 off and tell her, "I can't talk about it?"

5 MS. LANCE: Yeah.

6 THE COURT: Or did you talk to her about it?

7 MS. LANCE: No, I say, "I can't say nothing. I don't
8 know if I'm on this case."

9 THE COURT: Okay, all right, now, let's deal with some
10 of that. What she said she's read out of the paper or
11 she's heard somewhere. Now, let me just tell you that what
12 you may have read or may have heard or what she may have
13 read or may have heard may or may not be correct.

14 MS. LANCE: Uh-huh (affirmative response).

15 THE COURT: And it is not evidence in the case. Can
16 you set all of that aside, forget it and base your decision
17 solely on the evidence that's presented in this courtroom
18 under our rules of law and evidence? Can you do that?

19 MS. LANCE: I'll try.

20 THE COURT: Well, I appreciate that. It is so
21 important that I need to know absolutely you could do it.
22 Can you put that out of your mind or has it so, has it so
23 impressed your mind that you can't let that go?

24 MS. LANCE: Well, I going to be honest with you about
25 it, family and they know me but I don't know, okay, like

1 the girl grandmother and all the rest of the family they
2 know me and if I is a jury and on there I don't know what
3 they -- how they are going to feel about the situation
4 because the family know me.

5 THE COURT: All right, so, you think because they know
6 you that they would have some feelings one way or the other
7 depending on what you did.

8 MS. LANCE: Yeah.

9 THE COURT: Does that make it hard for you to be fair
10 and impartial?

11 MS. LANCE: It's hard to say, but I'll try do my best.

12 THE COURT: Okay.

13 All right, thank you, ma'am. I'm going to have you
14 step back out and then I'll talk to the attorneys in the
15 case one more time. Thank you for your patience.

16 MS. LANCE: Okay.

17 (Whereupon, Juror Number 68, Julie Lance, exits
18 courtroom.)

19 THE COURT: I'll tell you I have some concerns and my
20 concerns are that she's, she's feeling pressure from a
21 family that is -- there's no evidence that they're giving
22 her any pressure. She's feeling that upon herself and I do
23 think that that will effect her ability to be fair and
24 impartial, and when she just said, "I'll be honest," she
25 blurted that out.

1 Anything from the State?

2 MR. HEMBREE: Your Honor, I just would agree. The --
3 I think her response or her concerns about her relationship
4 with the family members was not in response to a question.
5 She was talking about one thing and then all of a sudden
6 she just went down this track and that, I mean, you know,
7 that indicates to me that that's her overriding concern
8 that she wanted to get that out and if it's that compelling
9 to her then I'm concerned that she would, she could sit on
10 this case and eliminate that relationship from her
11 deliberations. We'd ask that she be excused.

12 THE COURT: Yes, sir.

13 MR. LOCKLAIR: We'd have the same feelings as the
14 Court and ask that she be excused.

15 THE COURT: Juror Number 68, please.

16 (Whereupon, Juror Number 68, Julie Lance, enters
17 courtroom.)

18 THE COURT: Yes, ma'am, no more questions, but let me
19 let you know that we're going to excuse you because of your
20 concern in this particular case.

21 MS. LANCE: Uh-huh (affirmative response).

22 THE COURT: That there is a concern and I think even
23 you have that of your ability to be fair and impartial.

24 MS. LANCE: Uh-huh (affirmative response).

25 THE COURT: So, we're going to excuse you and thank

Questioning of Juror

367 159

1 you so much for being so forthright with the Court. You're
2 free to go.

3 MS. LANCE: Well, I'm sorry about that because I
4 really didn't know.

5 THE COURT: That's quite all right, ma'am. Thank you,
6 thank you for being honest.

7 MS. LANCE: Okay.

8 (Whereupon, Juror Number 68, Julie Lance, exits
9 courtroom.)

10 THE COURT: All right, very well.

11 Anything from the State prior to bringing our jury
12 out?

13 MR. HEMBREE: Nothing from the State, Your Honor.

14 THE COURT: Anything from the Defendant?

15 MR. LOCKLAIR: Nothing from the Defendant, Your
16 Honor.

17 THE COURT: All right, I'm going to bring them out.
18 I'll question them about any pretrial publicity, anything
19 that they may have read. I'm also going to question them
20 about the two additional witnesses who were not listed on
21 yesterday. We're ready for them.

22 (Whereupon, the following takes place in the presence
23 of the jury.)

24 THE COURT: Oh, where is our alternate? Let's see if
25 we can -- I -- you're the alternate. You have assigned

Opening Instructions by Court

368 160

1 seating, and while we're at it I'll go ahead and tell you
2 that there is one other assigned seat. If you all will
3 just slide down one that will make it easier. Thank you.
4 We will have one other assigned seat and that is whenever
5 you choose the foreperson of the jury. When you choose the
6 foreperson of the jury then that person will sit where
7 you're sitting now and when I see that happening
8 consistently I'll know that you have chosen that person.

9 Now, let me tell you what the foreperson does.
10 They're really no more important than any other member of
11 the jury and you're all important but the foreperson has
12 some additional duties and that is to see to it that each
13 and every member of the jury can be heard when you begin
14 deliberations, and the foreperson is the one who will be
15 the spokesperson for the jury. It may be as simple as too
16 hot or too cold in the jury room to a more complicated
17 matter of law when you do begin deliberations, and then
18 also the foreperson is the one who will sign and date the
19 verdict form on behalf of the jury's unanimous decision.
20 So, be thinking about who it is that you would like to have
21 serve in that capacity.

22 During any of these breaks that we have I've already
23 told you you can't discuss the case. You can't discuss the
24 testimony that you've just heard, but you can be getting to
25 know one another and decide and make that first decision

Opening Instructions by Court

369 161

1 about who you will have serve in that capacity.

2 Now, I do need to ask you because I do understand that
3 there was some information about this case in the media, on
4 TV and in a paper. Was everybody able to refrain from
5 reading or seeing or viewing anything or discussing
6 anything about this case? If you were unable to, if you
7 happened upon something please raise your hand.

8 (No response.)

9 THE COURT: All right, everybody was able to follow
10 that. I thank you very much for that. Also want to let
11 you know that we have excused one of the alternates. You
12 are now our first alternate, but we have excused an
13 alternate and that was simply because she's done nothing
14 wrong. She simply brought a matter to the Court's
15 attention and was excused. So, to the contrary she was
16 proper in what she did in bringing it to the Court's
17 attention.

18 Now, I need to ask you about a couple of more
19 witnesses and these were individuals who were not listed on
20 the witness list yesterday but I need to ask you whether
21 you are related by blood or marriage or friends or business
22 acquaintance with these two individuals. These two
23 individuals work at the -- they work with the Sheriff's
24 Department, but they actually work at the correctional
25 center. They work out at the detention center which is the

Opening Instructions by Court

370 162

1 individuals are Kenny Owens and Mike Schwartz, a Kenny
2 Owens and a Mike Schwartz. If any of you are related by
3 blood or marriage or friends or have a business or personal
4 acquaintance with any of these witnesses or either of these
5 witnesses please raise your hand.

6 (No response.)

7 THE COURT: All right, very well.

8 MS. POLEN: Excuse me.

9 THE COURT: Oh, yes, ma'am.

10 MS. POLEN: There was one witness mentioned yesterday
11 that I knew as an acquaintance 30 years ago. We went to
12 church together but I don't know him.

13 THE COURT: All right.

14 MS. POLEN: I just don't know.

15 THE COURT: And who is that individual?

16 MS. POLEN: Don Myers.

17 THE COURT: And your juror number?

18 MS. POLEN: 93.

19 THE COURT: Okay, and I trust I know the answer
20 to this, will that in any way effect your ability

21 ---

22 MS. POLEN: No.

23 THE COURT: --- to be fair and impartial?

24 MS. POLEN: No, I just figured I ought to let you know
25 that I do know who he is.

Opening Instructions by Court

371 163

1 THE COURT: All right, many times I fashion it as a
2 close friend rather than just an acquaintance.

3 MS. POLEN: Okay.

4 THE COURT: And so, that's ---

5 MS. POLEN: Well, that's what I thought.

6 THE COURT: Yeah, and that's how I've asked most of
7 those. So, I understand that because the gist of those
8 questions are if it will any way effect your ability to be
9 fair and impartial, and so, that's why I even covered at
10 the end if there is any reason that you feel that you could
11 not be fair and impartial and I'll ask that one more time.
12 If there is any reason that any of you feel you could not
13 be fair and impartial in this case if you'd raise your
14 hand.

15 (No response.)

16 THE COURT: All right, very good. All right, good, we
17 have got our jury in place. I'm going to have you sworn in
18 at this time. If you would please stand.

19 (Whereupon, the jury was sworn by the Clerk.)

20 THE COURT: Your duty as jurors lies essentially in
21 the oath that you've just taken and that is to well and
22 truly try the facts of the case because you, ladies and
23 gentlemen of the jury, will be the sole and exclusive judge
24 of the facts of the case and no one else in this courtroom
25 will have a right to pass upon the facts except you.

Kevin Cooper - Direct by Mr. Hembree

1 please?

2 Nothing further, Your Honor.

3 THE COURT: Redirect.

4 MR. HEMBREE: Nothing on redirect, Your Honor.

5 THE COURT: You may step down.

6 MR. HEMBREE: The State calls Kevin Cooper to the
7 witness stand.

8 Your Honor, I'd ask that this witness -- she was just
9 looking at me like if can she go. I'd ask that this
10 witness be excused.

11 THE COURT: Wait just one moment. Any objection to
12 this witness being released?

13 MR. LOCKLAIR: No objection from the Defense.

14 THE COURT: You're free to go.

15 AT THIS TIME THOMAS KEVIN COOPER WAS CALLED TO THE STAND,
16 DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

17 THE CLERK: Please be seated. Please state your full
18 name for the record.

19 MR. COOPER: Thomas Kevin Cooper.

20 DIRECT EXAMINATION

21 BY MR. HEMBREE:

22 Q: Mr. Cooper, where do you live, sir?

23 A: 231 Gibson Road.

24 Q: Here in Georgetown County?

25 A: Yes, sir.

1 Q: How long have you lived in Georgetown County?

2 A: My whole life.

3 Q: And where did you go to school?

4 A: Georgetown High.

5 Q: All right, graduate?

6 A: Yes, sir.

7 Q: When did you graduate high school?

8 A: '96.

9 Q: So, how old are you now?

10 A: 26.

11 Q: 26 years old. Do you -- are you acquainted with the
12 Defendant in this case, Jody Ward?

13 A: Sir?

14 Q: Are you acquainted, do you know the Defendant in this
15 case, Jody Ward?

16 A: Yes, sir; yes, sir.

17 Q: How long have you known him?

18 A: I'd say about ten years, something like that.

19 Q: And how would you describe your relationship with him?

20 A: We've always been friends.

21 Q: Still friends?

22 A: Yes, sir.

23 Q: Okay, you don't have any hard feelings toward him
24 about anything.

25 A: No, no.

1 Q: Mr. Cooper, I want to take you back to the time frame
2 of August, early August 2002, and do you also -- are you
3 acquainted with a person by the name of Wilfred Brown?

4 A: Yes, sir.

5 Q: How do you know -- how did you know Mr. Brown?

6 A: I went to school with him.

7 Q: Where?

8 A: In Georgetown.

9 Q: Did the Defendant go to school with you at Georgetown
10 High as well?

11 A: No, sir, he was a little bit ahead of me.

12 Q: He was ahead of you?

13 A: Yes, sir.

14 Q: Did he go to Georgetown High School? Was he -- do you
15 know if he went there?

16 A: I think, yes, sir.

17 Q: He's just a little older than you?

18 A: Right.

19 Q: I got you. So, he graduated before you did?

20 A: Yes, sir.

21 Q: And then Wilfred Brown was he in your class or was ---

22 A: Yes, sir, we're the same year.

23 Q: The same year. Were you, were you friends with
24 Wilfred Brown?

25 A: Yes, sir.

Kevin Cooper - Direct by Mr. Hembree

455 247

1 Q: Again, taking you back to early August of 2002 did you
2 have occasion to see Defendant Jody Ward and Wilfred Brown
3 together?

4 A: Yes, sir.

5 Q: If you would tell this jury the circumstances of that
6 meeting. How did you get -- where, where did it happen?

7 A: Well, I was on my lunch break. It was on a Saturday,
8 and I was at Jody Owens's house.

9 Q: Okay, now, what ---

10 A: He ---

11 Q: --- let me stop you. What kind of work do you do?

12 A: Heating and air.

13 Q: And heating and air.

14 A: Yes, sir.

15 Q: So, you install them, work on them, what do you do
16 with them?

17 A: Both, install them and work on them, troubleshoot
18 them.

19 Q: And you were doing that kind of work back in August of
20 2002?

21 A: Yes, sir.

22 Q: You indicated that it was a Saturday?

23 A: Yes, sir.

24 Q: Now, you were on and -- but you -- you work on
25 Saturdays?

1 A: Yes, sir.

2 Q: All right, tell -- continue. You're on, you said
3 you're on your lunch break. What happened next?

4 A: Well, I went to my mama's to eat and Jody Owens lives
5 next door and I went over there because we were friends and
6 we was just hanging out.

7 Q: Now, tell us, tell us who Jody Owens is.

8 A: He's just a friend of mine. We grew up together,
9 lived -- neighbors.

10 Q: Now, to your knowledge is he also friends with the
11 Defendant, Jody Ward?

12 A: Yes, sir.

13 Q: To your knowledge is he also friends with Wilfred
14 Brown?

15 A: Yes, sir.

16 Q: So, all of you all knew each other?

17 A: Oh, yeah.

18 Q: Went to eat at your mom's house. About what time of
19 the day was it?

20 A: Around, around noon.

21 Q: Could it have been 11?

22 A: It could have been anywhere from 11 to one. That's
23 usually when we take lunch.

24 Q: Some time between 11 and one?

25 A: Yes, sir.

- 1 Q: When you went over to Jody Owens's house who was
2 there?
- 3 A: Just Jody.
- 4 Q: What was he doing?
- 5 A: He was painting his roof, putting a seal coat on his
6 trailer.
- 7 Q: .Okay, and how long were you there before -- well, did
8 anybody else arrive at the house?
- 9 A: Jody and Wilfred came up.
- 10 Q: About how long were you there before they came up?
- 11 A: I was there approximately ten minutes before they got
12 there.
- 13 Q: Now, where were you in the house or outside the house
14 when Jody Ward and Wilfred Brown arrived?
- 15 A: I was on the front porch and Jody was on the roof.
- 16 Q: Jody Owens?
- 17 A: Right.
- 18 Q: Okay, better make that ---
- 19 A: Yeah.
- 20 Q: --- better keep that clear for us. Do you recall what
21 vehicle they arrived in?
- 22 A: No, sir.
- 23 Q: Now, in a previous statement, you've given a previous
24 statement to law enforcement?
- 25 A: Yes, sir.

Kevin Cooper - Direct by Mr. Hembree

1 Q: You indicated that that vehicle was a red Firebird?

2 MS. KNEECE: Objection, Your Honor, to leading,
3 objection.

4 MR. HEMBREE: I'll ask it, I'll ask it a different
5 way, Your Honor.

6 THE COURT: Sustained, disregard that question.
7 Rephrase.

8 MR. HEMBREE: Thank you, Your Honor.

9 BY MR. HEMBREE:

10 Q: In that previous statement what vehicle did you
11 indicate the Defendant was driving along with Wilfred
12 Brown?

13 A: I said the Firebird.

14 Q: You said a Firebird?

15 A: Right.

16 Q: All right, but you're saying today that you don't
17 know.

18 A: I mean, I'm not positive. I just saw him driving it
19 all the time. I knew he drove a red Firebird. So, I just
20 assumed that's what they was driving.

21 Q: So, you're not really sure what they were driving?

22 A: No, sir.

23 Q: Now, was there anybody else with them at that point in
24 time when they arrived ---

25 A: No, sir, just them two.

Kevin Cooper - Direct by Mr. Hembree

- 1 Q: --- at the house? Could there have been anybody else
2 with them?
- 3 A: I guess, I didn't see nobody.
- 4 Q: Okay, did you actually see them pull up?
- 5 A: Well, they drove up behind us and whenever I heard the
6 door shut I turned around and saw them getting out.
- 7 Q: And who was driving?
- 8 A: Jody.
- 9 Q: And Wilfred Brown in the passenger seat?
- 10 A: Yes, sir.
- 11 Q: Where did they go after they arrived?
- 12 A: They come up to the porch where I was at.
- 13 Q: And did you have conversation with either or both of
14 them?
- 15 A: With both of them.
- 16 Q: What was Wilfred Brown's general attitude and
17 demeanor?
- 18 A: Well, he was, you know, he was laughing and joking
19 around and I ain't seen him in a long time and he come up
20 and we shook hands and talked and joked around.
- 21 Q: Now, how about Mr. Ward, what was his general attitude
22 and demeanor?
- 23 A: He was, he was mad. He was upset.
- 24 Q: Okay, what was he -- did he indicate to you what he
25 was upset about?

1 A: He just said somebody took his money or got his money.
2 Q: Uh-huh (affirmative response), anything else?
3 A: He said he was mad, that somebody got his money and
4 we, we talked and that's when he asked me to buy some
5 bullets for him.
6 Q: Asked you to buy some bullets?
7 A: Yes, sir.
8 Q: What kind of bullets?
9 A: Nine, nine millimeter.
10 Q: And did he tell you where to go buy these bullets?
11 A: He asked me to run to Wal-Mart and get them.
12 Q: Wal-Mart?
13 A: Yes, sir.
14 Q: Did he give you any money?
15 A: Well, he handed me a ten and a five, but I didn't take
16 it.
17 Q: A ten and a five dollar bill?
18 A: Yes, sir.
19 Q: But you didn't take it?
20 A: No, sir.
21 Q: Did he indicate to you who had taken his money?
22 A: No, sir, he didn't say who.
23 Q: Did he indicate to you how much money was taken?
24 A: No, sir.
25 Q: After you gave him the money or you refused to take

Kevin Cooper - Direct by Mr. Hembree

- 1 the money from him what happened?
- 2 A: Well, he put the money back in his pocket and we was
3 all outside and we talked and that's -- we just sat around,
4 which I didn't stay long, maybe ten minutes and I left to
5 go back to work.
- 6 Q: Did you all smoke anything together?
- 7 A: Yes, sir.
- 8 Q: What was that all about?
- 9 A: We just smoked a joint.
- 10 Q: Now, and then you left?
- 11 A: Yes, sir, went back to work.
- 12 Q: When was the next time that you had occasion to be in
13 the company of Jody Ward?
- 14 A: I'm not sure of the exact date. I mean, it was
15 sometime in August. Jody Owens called me and said he had
16 to go pick up some crab pots and he didn't have no license.
17 He asked if I'd drive him. I said yeah. So, I took my
18 truck and went and got his daddy's trailer and we went to
19 Chavis Landing, I think it was, and we was loading the crab
20 pots up and Jody Ward was there.
- 21 Q: Did you overhear a conversation between Jody Ward and
22 Jody Owens?
- 23 A: Yes, sir.
- 24 Q: Would you please tell this jury the content of that
25 conversation?

Kevin Cooper - Direct by Mr. Hembree

462254

- 1 A: Well, we was tying crab pots on the trailer and the
2 two Jodys was at the back of the trailer talking and I was
3 just tying ropes and I heard him say that them boys who
4 got his money he got them. He was taking care of it.
5 Q: That they was taken care of?
6 A: Yeah, he had taken care of it.
7 Q: Did he say who he had taken care of?
8 A: No, sir.
9 Q: And who did -- who was doing the talking?
10 A: Jody Ward.
11 Q: And who was he directing the conversation to?
12 A: Jody Owens.
13 Q: Did he ask him any more -- did you overhear any more
14 discussion about that?
15 A: No, sir, I really wasn't paying attention.
16 Q: What did they -- what did they do? You didn't pay any
17 attention to that?
18 A: Well, I mean, I wasn't trying to get in that
19 conversation.
20 Q: You wanted to kind of stay out of it.
21 A: Right.
22 Q: And what did Jody Ward do after making this statement
23 to Owens?
24 A: Well, we finished tying all the crab pots up and they
25 went inside to get a receipt for the crab pots.

1 Q: You talked to Jody Ward since?

2 A: No, sir.

3 Q: Please answer any questions Defense counsel has for
4 you.

5 CROSS EXAMINATION

6 BY MS. KNEECE:

7 Q: Mr. Cooper, what was your relationship with Wilfred
8 Brown?

9 A: Close friends or good friends.

10 Q: You sold marijuana for him; didn't you?

11 A: No.

12 Q: You never sold? He wouldn't give you a pound or two
13 to go sell for him?

14 A: No.

15 Q: And the -- I mean, this is -- this whole incident has
16 been a big deal around the community; hasn't it?

17 A: Yes, ma'am.

18 Q: A lot people been talking?

19 A: Yeah.

20 Q: A lot of rumors?

21 A: Yes, ma'am.

22 Q: A lot of people are saying, "Well, Jody told me this.
23 Jody told me that." Haven't you heard that?

24 A: Yes, ma'am.

25 Q: And that's different people have said different

1 things; haven't they?

2 A: I've heard a few stories.

3 Q: And there's stuff all around of different people kind
4 of being involved in this case ---

5 A: Yes.

6 Q: --- trying to say that Jody had told them something;
7 isn't that true?

8 A: Yes, ma'am.

9 Q: And you said when Jody is acting all mad and saying
10 all this stuff about, "Go buy me some bullets," Wilfred is
11 sitting right there laughing?

12 A: Yes, ma'am, or smiling.

13 Q: So, Wilfred didn't think anything about it; did he?

14 A: Not to see him, no, ma'am.

15 Q: And you know all the people involved in all of this;
16 don't you?

17 A: Yes, ma'am.

18 Q: And you all have talked about this quite a bit?

19 A: Who?

20 Q: All the, all the players in this, all the different
21 people, Denise or Candy or Jody Owens?

22 A: Well, I'm not -- but I never talked to Denise or
23 Candice or anyone.

24 Q: Do you know if Jody Owens owned guns?

25 A: I mean, he's got a couple of shotguns that I know of.

1 We used to hunt together.

2 Q: Do you know if Jody Owens had any nine millimeter or
3 anything?

4 A: I'm not sure.

5 Q: Nothing further from this witness, Your Honor.

6 THE COURT: Redirect.

7 MR. HEMBREE: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. HEMBREE:

10 Q: Were you aware if Jody Ward had a nine millimeter?

11 A: I knew he had guns, but I don't know what kind. I
12 mean, he's always had guns. He's a hunter, too.

13 Q: You'd never saw him with a nine millimeter handgun?

14 A: No, sir.

15 Q: Very good.

16 MR. HEMBREE: No further questions, Your Honor.

17 THE COURT: You may step down, sir.

18 Call your next witness, please.

19 MR. HEMBREE: The State calls Beverly Ward to the
20 witness stand.

21 AT THIS TIME BEVERLY WARD WAS CALLED TO THE STAND, DULY

22 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

23 THE CLERK: Please be seated. Please state your full
24 name for the record.

25 MS. WARD: My name is Beverly Ward. Judge, I choose

1 to use my marital rights, to exercise my spousal rights and
2 not testify against my husband.

3 THE COURT: All right, let him ask a question and then
4 we'll take it from there.

5 MS. WARD: Okay.

6 DIRECT EXAMINATION

7 BY MR. HEMBREE:

8 Q: Ms. Ward, what is your -- Mrs. Ward, what is your
9 relationship to the Defendant in this case, Jody Ward?

10 A: He is my husband.

11 Q: Okay, how long have you all been married?

12 A: For 10 years.

13 Q: You all have children together?

14 A: We have three.

15 Q: Okay, let me ask you about -- take you back to August
16 the 3rd of 2002. Was Mr. Ward at home that morning?

17 A: He was there briefly, yeah.

18 Q: And did he borrow your car that day, your Suzuki
19 Samurai?

20 MR. LOCKLAIR: Your Honor, may we approach?

21 THE COURT: Yes.

22 (Whereupon, a Bench conference was held in the
23 presence, but out of the hearing, of the jury.)

24 THE COURT: All right, ladies and gentlemen of the
25 jury, I'm going to allow you just to take a very quick

1 THE COURT: And if you want to make that part of the
2 record you certainly may.

3 Is there anything else?

4 MR. HEMBREE: No, Your Honor.

5 MR. LOCKLAIR: No, ma'am.

6 THE COURT: All right, very well. We're ready for
7 them.

8 (Whereupon, the following takes place in the presence
9 of the jury.)

10 THE COURT: Please be seated.

11 Welcome back, ladies and gentlemen of the jury. I
12 hope that you had a good lunch. We have now come to the
13 phase of the case where the Defendant has an opportunity to
14 present evidence and testimony.

15 Yes, sir.

16 MR. LOCKLAIR: Your Honor, at this time the Defense
17 would rest our case.

18 THE COURT: All right, we have now then moved into the
19 phase of the case where you'll be hearing closing arguments
20 of the attorneys. I will then charge you as to the law.
21 We'll begin at this time. Yes, sir.

22 MR. BRYAN: Thank you, Your Honor. If it please the
23 Court.

24 \$525 apiece is the value of human life to Jody Ward.
25 These two murders that Jody Ward committed on August 3rd of

Closing Argument by Mr. Bryan

1 2002 to Jody Ward they were nothing but a bad business
2 transaction, that's all it amounted to to him, that's all
3 it was ever about. In fact he said it out of his own
4 mouth. In his statement which you heard Jody Ward said
5 that this whole thing was over a drug deal gone bad.
6 That's Jody Ward's take on the whole situation of him
7 taking the life of two innocent people.

8 I want to go through some of the testimony with you.
9 Now, this is summation. So, what I say is not in evidence.
10 If what I say is different from your recollection of the
11 facts then you go with your recollection of the facts.
12 That's your job in this case. You are the judges of the
13 fact, the facts of the case. Ultimately, the facts in the
14 case are whatever you determine that the facts are. So, if
15 your recollection differs from mine then obviously it's
16 your recollection that prevails and the same is said for
17 Defense counsel. What they say in argument is also not
18 evidence. It is simply summation. It's our opportunity to
19 point out to you what we think is important and our
20 opportunity to draw your attention to certain facts.

21 Also, in determining the facts you're going to take
22 your facts from the witness stand and from the evidence
23 that's been placed into evidence in the case. As far as
24 the witness stand goes, you're going to determine whether
25 you believe all of what a witness says, none of what a

1 witness says or part of what a witness says. The way you
2 do that is through your common everyday experience. The
3 bottom line is do you believe what is said by the
4 witnesses? Use your common sense, use your everyday
5 experience. You know when somebody's telling the truth,
6 when they're telling a lie.

7 Also, you can use other tools like the fact that a
8 witnesses's testimony is corroborated or not corroborated
9 or whether they have an incentive to lie or whether they do
10 not have an incentive to lie. Basically, you judge their
11 demeanor and you determine for yourself if they're telling
12 the truth, and I want to start with the first witness,
13 Denise Langston.

14 Denise Langston stated that on the morning of August
15 3rd, 2002, Jody Ward, the Defendant, came over to her house
16 driving a black and red truck. She stated that he wanted
17 her to go buy him some or she needed -- he needed her to go
18 with him to buy some drugs. She stated she didn't have
19 time to do it, she couldn't go with him, he left at which
20 time they began a series of phone calls back and forth, six
21 phone calls, I believe.

22 The first phone call he makes he's riding around. He
23 says, "I'm with Wilfred Brown. We're just riding around
24 smoking some weed. Everything's fine."

25 The second phone call made a little while later

1 they're at the park, and at this point he says that they
2 are there to make a drug deal and says that there's a drug
3 deal for a pound of weed and about -- for \$1050. He states
4 that -- basically she states that she's in the car, and
5 that he gets. -- she takes it that Wilfred has gotten out
6 of the car and that Jody is talking to her about the drug
7 deal being transacted with some third-party. At that point
8 she says he's in a pretty good mood, everything is okay.

9 Sometime later she gets a third call from Jody Ward.
10 At this point he's not in a good mood. He's mad. He says
11 he's been ripped off for \$1050, he's going to get his
12 money, get his weed or he's going to take care of it.

13 Subsequently he's at Wal-Mart. Now, she says that he
14 calls and says that he's at Wal-Mart buying bullets and
15 he's going to take care of it. She says, "Jody, don't do
16 anything stupid." I'll submit to you that Wal-Mart is a
17 crucial fact in this situation because later on you're
18 going to hear from two other people who say that Wal-Mart
19 is involved.

20 Kevin Cooper later on is going to say that the
21 Defendant actually asked him to go to Wal-Mart and buy
22 bullets and Jody Ward in his own statement knows that he's
23 been seen at Wal-Mart. So, he says in his statement he was
24 there buying spark plugs.

25 Subsequently, she gets another call sometime in the

1 evening. He says something to the effect that he is there
2 with Wilfred Brown playing with his dogs or showing him his
3 puppies or some such thing, and finally at 11:45 he calls
4 again, he asks her or she asks, excuse me, he asks her to
5 come pick him up from his house on Sirfield Street and
6 Highmarket or just up the street from his house. She picks
7 him up. They go back to the house where the Defendant
8 confesses to Denise Langston. He states that he shot
9 Wilfred Brown and a man named Elton who he didn't know as
10 well. He stated that he dumped the car in Dawhoo Lake. He
11 told her that he used the TEC-9, which is a weapon that she
12 had seen him fire at least ten times, maybe 10 to 25
13 times in the past, that he disposed of that weapon in Green
14 Pond and sometime later he tells her that he had not only
15 disposed of the gun in Green Pond but then he goes back and
16 says that he retrieved it again and never told her where he
17 put it. Never does he mention in his statement to her
18 anything about Brian Elliott. There's only one time that
19 you hear anything about Brian Elliott and that's in
20 Defendant's statement four months later after the discovery
21 had been given to him and he knows who has said what and
22 when.

23 In addition to the confession she also testifies about
24 the gun. She described the gun. She said it was a nine
25 millimeter and she said it was a TEC-9. She then talks a

1 little bit about some threats that were made and what is
2 the importance of the threats? The reason that the threats
3 are important is because the Defense is going to get up
4 here when I sit down and say, "You can't believe Denise
5 Langston. She lied to the police two times. You can't
6 believe her when she tells the truth." The reason that the
7 threats are important is because this lady is somebody who
8 knows that Jody Ward has confessed to brutally murdering
9 two people. He then threatens her and says, "I'll not only
10 kill her," but he'll kill her children. He keeps her on a
11 string. He keeps coming back by her house. He'll stop by
12 every so often. In fact, he'll stop by when she's not
13 there, wait for her in the dark in her own house. She gets
14 home and Jody is there, has a little talk as he's leaving.
15 He says, "Don't forget what I said." He comes by and he
16 does that periodically.

17 Now, the reason that's important is because it's only
18 two weeks after Jody Ward is incarcerated, locked up in the
19 county jail that she comes -- that when police approach her
20 a third time she tells them everything.

21 Now, how else do you know that she's telling the
22 truth? Now, Denise Langston you may not approve of
23 everything that she does, few people would. She admitted
24 some stuff that wouldn't make you proud if you were her
25 parent, but I'll submit to you that she was credible.

1 First of all you judge her demeanor, did she look like she
2 was lying, did she look like she was hiding something or
3 did she appear to be telling the truth? Secondly, did she
4 tell the whole truth? In other words there were things
5 that she admitted on that witness stand that nobody would
6 be proud of, the fact that she was riding around with Jody
7 Ward getting high all the time, that she was involved with
8 law enforcement on several occasions. There were several
9 embarrassing things that Denise Langston admitted to that
10 nobody would be proud of saying, but she told the truth and
11 she told the whole truth.

12 Finally, you know that she told the truth because her
13 testimony was corroborated. Her testimony was corroborated
14 by the fact that they found Jody Ward's wife's green Suzuki
15 Sidekick in Dawhoo Lake right where she said Jody Ward told
16 her he put it. Jody told Denise, "I sunk the car in Dawhoo
17 Lake." Now, this is important because I believe Chris
18 Doerr, who was the diver who discovered the vehicle, he
19 testified that they had dived in Dawhoo Lake three times.
20 They dove once they found nothing. They dove again they
21 found nothing. The third time they dive again because
22 Denise Langston came forward on September the 13th, I
23 believe.

24 Let me show you this calendar. September the 13th,
25 September the 12th Jody Ward -- I'm sorry, Louis Bazen

1 comes forward. That's when the bodies are found. On the
2 13th he's arrested. Two weeks later that's when Denise
3 Langston feels free to give her statement. As a result of
4 that statement they then dive Dawhoo Lake a third time on
5 September the 30th, the third time. They had already dove
6 twice unsuccessfully, and based on her statement they dive
7 again. Low and behold, Jody Ward's green Suzuki Sidekick.
8 There it is.

9 She was also corroborated by the statement of Kevin
10 Cooper. It's more than mere coincidence that she says that
11 he called her from Wal-Mart where he bought the bullets and
12 Kevin Cooper says, "Jody Ward came by. He asked me to go
13 buy some bullets." Where? From Wal-Mart. Now, is that a
14 coincidence?

15 Also, finally, corroborated by Beverly Ward. Now,
16 Beverly Ward was what could be easily described as a
17 reluctant witness for the State. There's no question that
18 she did not want to be here when she was testifying.
19 However, she did come in and she testified and she
20 corroborated Denise Langston's statement in a number of
21 ways. She stated that Jody Ward left that morning in the
22 black and red truck, which corroborates Denise's story that
23 he showed up over there in a black and red truck, said he
24 came back, they took the truck, left it in the garage. A
25 short time later he left in her green Sidekick, the Suzuki

Closing Argument by Mr. Bryan

1 sidekick, which is obviously very important. That also
2 corroborate the statements of Indria Brown and Nadine
3 Brown.

4 She came home. She stated that he was supposed to be
5 gone about 15 minutes. "Well, for Jody Ward," she says,
6 "15 minutes could turn into three or four hours." Well, in
7 this case apparently it turned into more like 12 hours.
8 She stated that he came home around ten or 10:30 that
9 evening. It's interesting that she didn't know how he got
10 home. He didn't have the car anymore. He shows up. She
11 doesn't know how he gets home. Not only that, they have an
12 argument. She confirms that, again corroborating Denise
13 Cox. Says he goes outside, makes a bunch of phone calls
14 and disappears again, again corroborating Denise Cox who
15 says -- Denise Langston Cox who says, "He called me. I
16 went and picked him up from Sirfield and Highmarket."

17 Then we get to the testimony of Nadine Brown. Nadine
18 Brown is the mother of Wilfred Brown. Her testimony is
19 important because she says that between 11 and 12 o'clock
20 on August the 3rd, 2002, she was home. She lived a few
21 blocks away from where Wilfred lived and Jody Ward, the
22 Defendant, came by her house asking, "Where is Wilfred?"
23 She goes in to make a call to see if she could find
24 Wilfred. Jody said, "Here he comes now." She testified
25 she saw him drive up in the green Suzuki Sidekick. She

1 heard him say that here comes Wilfred and off they go.
2 They're gone, and I'm going to come back to something about
3 Nadine Brown a little later, too.

4 Then Kevin Cooper testifies. He says that on a
5 Saturday early in August, a Saturday early in August, he
6 saw Wilfred Brown in the company of Jody Ward. That's
7 August the 3rd, a Saturday. He says they came out of the
8 house between 11 and one o'clock. He asked him, Jody Ward
9 asked him to buy some nine millimeter bullets from Wal-
10 Mart. He also testified later that he overheard Jody Ward
11 tell Jody Owens that, "He took care of them boys that got
12 his money," bragging about it. Basically what he's doing
13 there is he's putting the word out on the street that if
14 you mess with Jody Ward you're going to get the business
15 end. This is a business transaction to Jody Ward and what
16 he's doing is he's bragging about it. He's telling his
17 good buddy Jody Owens, he's letting Kevin Cooper know to
18 put the word out that if you rip Jody Ward off you're going
19 to pay and you're going to pay with your life. He's
20 bragging about it.

21 Then Indria Brown testifies. Indria Brown is
22 obviously a crucial witness because she sees Wilfred Brown
23 and Elton Rutledge, Jr., the last time that anybody ever
24 saw them that we know of besides Jody Ward. She testifies
25 that she's over there taking care of her grandmother when

1 her husband calls, I think around noon, and says, "What do
2 you want to do about lunch? Do you want me to bring some
3 lunch?" "Yeah, please bring me some lunch." Calls back
4 around two and says, "What do you want?" "Get me some
5 Tony's." He brings by Tony's pizza and subs for his wife
6 at his wife's grandmother's house on 123 Feather Drive.
7 That's the last place that anybody ever saw Wilfred Brown
8 and Elton Rutledge and they were in the company of Jody
9 Ward. She testified not only did she see them drive up
10 together with Jody Ward driving the Suzuki Sidekick but
11 that she saw them leave together. They brought the lunch
12 in, Jody ran an errand, Jody came back, they all got in the
13 Suzuki Sidekick with Jody Ward driving and they left the
14 house. I'm going to come back to Indria Brown, too. That
15 was the last time that she saw her husband.

16 Now, in the opening Mr. Hembree talked a little bit
17 about malice, that malice can be formed in an instant, and
18 malice means a black heart, evil intention, and I want to
19 talk to you a little bit about evil intention. Jody Ward
20 called the mother of the man he knew he had just murdered
21 and told her that they had stolen his wife's car, knowing
22 that he had just shot Wilfred Brown in the back of the head
23 and left him in a field to die. He probably wasn't even
24 cold yet when he's calling his mother to report that her
25 son had stolen from him and that's a lie and he knew it was

1 a lie. Did the same thing to Wilfred Brown's wife, spoke
2 to Wilfred Brown's wife, Indria Brown, and accused the
3 person he had just murdered of stealing from him. Now, is
4 that testimony corroborated?

5 Danny Watson came in and stated that the next day,
6 August the 4th, Jody Ward came in with his wife. She was
7 listed as the victim because it was her car but Jody did
8 all the talking and Jody said that Wilfred Brown and Elton
9 Rutledge had stolen his wife's Suzuki Sidekick, knowing he
10 had left them in a field to die. He threw a little dirt on
11 top of them. He didn't even dig a hole. He left them on
12 top of the dirt for the buzzards to eat them. Knowing
13 that, he calls the wife and tells her that they've stolen
14 his car. I submit to you that's a black heart.

15 Chris Doerr testified, as I said first or earlier,
16 that it took them three times to dive in Dawhoo Lake. It
17 was the worst conditions he has ever dived in his life, 18
18 feet of water Jody Ward sunk this Suzuki Sidekick in.

19 Rod Greene testified about the crime scene. He stated
20 that there was a presumptive test for blood in the back
21 seat next to the baby seat. Now, the baby seat is a
22 crucial piece of evidence, absolutely crucial. The Defense
23 is going to get up here and argue, I assume, they may or
24 may not, but I firmly believe they're going to get up here
25 and tell you that Brian Elliott was driving around with

1 Jody Ward and Elton Rutledge and Wilfred Brown in the
2 Suzuki Sidekick. Now, if you know what a Suzuki Sidekick
3 looks like it is the -- I don't know if you can call it an
4 SUV. It's more like a jeep. It is a small vehicle. If
5 you have a baby seat strapped in the back there is no way
6 on earth that that man and three other grown men were
7 driving around smoking marijuana in the back of a Suzuki
8 Sidekick with a baby seat in it strapped in.

9 Rod Greene testified that the baby seat was strapped
10 in when it was found in Dawhoo Lake, and I submit to you
11 that it's ridiculous for them to assert that they had four
12 grown men in that tiny little car driving around with the
13 baby seat strapped in. If it had been in there you would
14 assume that they would have the sense to take it out and
15 put it in the trunk if they're going to be driving around
16 in the Sidekick. That's just simply not believable because
17 it's not the truth.

18 Tracy Collins testified. I think she was a very
19 credible witnesses who stated that she had fired a nine
20 millimeter weapon which she described as being about this
21 long with a big clip in it that you had to hold like this
22 (indicating). She stated that that gun belonged to Jody
23 Owens, that Jody had just gotten it, asked her to come fire
24 his nine millimeter. On cross, the Defense asked her, "You
25 ever seen Wilfred Brown with a gun?" Never in her life.

1 She's seen Jody with a gun.

2 Louis Bazen testified. Louis Bazen, of course, is
3 another critical, absolutely critical witness to the
4 State's case. Louis Bazen testified that he was living
5 with Jody Ward because he was married to his sister,
6 Beverly Ward. He was having some trouble at home and he
7 was staying with his sister, Beverly Ward, and her husband.
8 He states that on August the 29th or thereabouts Jody Ward
9 asked him to drive him around. He said he had a driver's
10 license. Jody Ward didn't have a driver's license. Jody
11 Ward corroborated that same statement in his statement,
12 said he didn't have a driver's license. He was getting
13 Louis Bazen to drive him around. He didn't tell Louis what
14 it was. He said it was something about a reefer plant or
15 something or Louis said that he assumed that's what it was
16 about. Jody said in his statement that's what he told him.
17 So, Louis knew not what was going on, had no clue what he
18 was about to get himself into. He just knows his good time
19 buddy, Jody Ward has got some marijuana to smoke and some
20 marijuana to go move. So, he hops in the car, Jody's car,
21 because Jody doesn't have a license, and they start off
22 here at Sirfield Street.

23 They first go by Chavis Landing where they get a
24 shovel. Then they go by his sister Buffy's house where
25 they get a bag or vice versa. They get a -- the sack from

1 Chavis Landing and get a shovel from Buffy's house. That
2 all takes place right here on this tiny little area of
3 Sirfield Street right by Jody Ward's house. Then they take
4 off and at his direction, I said, "Where, where were you
5 going? How did you know where to go?" "Wherever Jody told
6 me, take a right, take a left, turn on Highmarket, turn
7 down Indian Hut, turn down Gapway." He says that Jody has
8 him drive him around from Jody's house. After they get
9 those they then go to what I want to call crime scene one.
10 They drive this way up the Georgetown Highway, take a right
11 on Gapway Road and drive past the crossroads and get to
12 what I'm going to call crime scene one. That's where he
13 says, showed you the picture which is in evidence it's a
14 little Hunt Club Road off of Gapway Road that has a picture
15 of a fence there. He says the fence was closed. He drops
16 him off there. He disappears, Jody Ward with a shovel and
17 a bag. He asks Louis to ride around for 15 minutes. He
18 does so. He comes back. When he's there Jody's not there
19 yet. He waits a couple of minutes. Here comes Jody down
20 this long road, Hunt Club Road.

21 He sees Jody coming down with a bag. He doesn't know
22 what's in the bag. He's carrying a little bag behind him.
23 He gets in the car. He asks him to pop the trunk. He puts
24 the evidence in the -- he puts the bag in the -- the shovel
25 in the trunk. Jody then directs him to crime scene two.

1 This is right off of Indian Hut Road. It's a Walker Farm
2 Hunting Club, all in this small little area. This is, I'll
3 point out to you, this is Deer Springs Loop right here.
4 Now, Deer Springs Loop is the former home of Jody Ward.
5 That's not a coincidence. Jody Ward knew this area. He
6 knew he had -- he started getting antsy. That's what he
7 said in his statement. He knew that somebody was going to
8 say something. So, he got antsy. He wanted to move the
9 bodies. Why did he move the bodies? He was getting
10 nervous. They were going to go to crime scene one. So,
11 where does he take the bodies? It's no coincidence that
12 it's one street over from where Jody Ward used to live.
13 Now, that corroborates Louis's statement. I don't think
14 there's any question about that. He takes him there.
15 Louis says he does the same thing. He drives off, drives
16 around, comes back and low and behold Jody comes back.
17 He's got a shovel and no bag now.

18 Louis then tells law enforcement what had happened.
19 They ask him where he took him to the second time where
20 Jody disposed of the bag. It's no coincidence that they
21 find a bag of bones at that location. That obviously
22 corroborates Louis Bazen's story. Now, Louis Bazen also
23 and I'm going to come back to the bag of bones. Louis also
24 made some statements or said that Jody made some
25 statements. He said that a couple of days later Jody said,

1 quote, "I got rid of those boys." Jody, all throughout the
2 course of August, from August 3rd of 2003, 2002, until
3 today or the time when he gave a statement to Carter Weaver
4 he has been hiding evidence and obstructing your ability

5 ---

6 MR. LOCKLAIR: Objection, Your Honor. That's a
7 misstatement of the defense and it's uncharacteristic of
8 the Defendant and counsel and we would ask for a curative
9 instruction or in the alternative a mistrial.

10 THE COURT: Let me have you, let me have you come
11 forward.

12 (Whereupon, a Bench conference was held in the
13 presence, but out of the hearing, of the jury.)

14 THE COURT: Ladies and gentlemen of the jury, I want
15 you just to disregard that last statement. It's -- he's
16 going to rephrase and clarify. I also want to remind you
17 that what the attorneys say in these closing arguments is
18 not evidence. You will recall the evidence as you heard it
19 from witness stand and as you see it in the exhibits.

20 We'll continue.

21 MR. BRYAN: Thank you, Your Honor.

22 I'm going to come back to Jody Ward's attempt to hide
23 the evidence and the fruits of his crime and the evidence
24 thereof. I want to focus on the statements Louis Bazen
25 said. He said, "I got rid of those boys." He said, Louis

1 testified one of the last things that he said was that on
2 February the 26th that he had called his sister Buffy's
3 house. I'm sorry, his sister Beverly's house, Jody's wife
4 to speak to Beverly and that the Defendant told him that he
5 should -- when he's called to testify ---

6 MR. LOCKLAIR: Objection, Your Honor. I believe he's
7 commenting on facts not in evidence.

8 THE COURT: All right, I'm going to -- and I'd have to
9 hear what he -- I think you're anticipating something.

10 MR. LOCKLAIR: Yes, ma'am.

11 THE COURT: All right, I want to caution you to make
12 sure that you testify about what has been -- that you
13 actually argue as to what's in evidence and remind, ladies
14 and gentlemen of the jury, to recall the evidence as you
15 heard it from the witness stand. If you'd continue.

16 MR. BRYAN: Thank you, Your Honor.

17 At the end of his testimony I asked Louis Bazen, "Why
18 did you come forward," and he stated that it was his
19 conscience, that his conscience was working on him," and I
20 submit to you that Louis Bazen was a very credible witness,
21 that he didn't try to hide anything, that he didn't do
22 anything but tell the truth as he knew it, and he told all
23 the truth. There's one more statement that Jody Ward made
24 to Louis Bazen as they're driving around town a little
25 while after he's moved the bag of bones. He tells Louis

1 Bazen, "That's where them boys were." They're driving
2 around some field out near where crime scene one was. He
3 says, "That's where them boys were. There was buzzards
4 everywhere," and I'll submit to you that Louis Bazen did
5 have his conscience work on him, and I think the thought of
6 that statement was too much for Louis Bazen and because
7 Louis Bazen could not deal with his conscience and the
8 actions of what he knew that Jody Ward had done he came
9 forward. As a result of that the State was able to collect
10 the rest of this evidence.

11 I told you that Rhett Holden, as I said, he's a SLED
12 agent and he discovered, he went to the crime scene right
13 where Louis Bazen told him to go. They took the cadaver
14 dogs out there and they found a bag of bones with some
15 other items in it, including Elton Rutledge's shoes, also
16 including some large bird feathers.

17 Steve Lambert testified that the bloodstains in the
18 back of the car were not conclusive but there was a
19 presumptive test and that two months sitting under water
20 could be enough to destroy the bloodstains or any value
21 that it would have as far as a conclusive blood test would
22 be in the back of the Suzuki Samurai. He said in fact that
23 he would not expect to get a conclusive result after that.
24 He also testified that they were unable to get enough
25 material to do a DNA test on the two subjects.

1 However, Kim Collins came in and she was able to
2 identify from the jawbone of Wilfred Brown that it was, and
3 his dental records, that it was, in fact, Wilfred Brown.
4 She stated that from the remains they found she could tell
5 that there were two people in that bag or the remains of
6 two people in that bag, that there wasn't a complete body
7 between them. She also testified, and this is absolutely
8 crucial, that the gunshot that killed Wilfred Brown was to
9 the back of his head.

10 Dan DeFreese's testimony, essentially the importance
11 of that is he does not exclude a nine millimeter caliber
12 from being the caliber fired from the weapon that killed
13 Wilfred Brown. In other words, the Defense may get up here
14 and say there's 37 weapons that could have. Well, one of
15 those 37 weapons or more was the one that Jody Ward was
16 firing all over Georgetown County and ultimately the one
17 that he took and used to kill Wilfred Brown and Elton
18 Rutledge.

19 Now, I want to talk a little bit about Elton Rutledge
20 because I'm anticipating the Defense's case is because
21 there's no medical evidence to say that Elton Rutledge has
22 been -- was killed by Jody Ward or was killed at all that
23 we haven't proven our case, but that's simply not true.
24 This is a circumstantial case but it is a strong
25 circumstantial case, and long before there was ever a

1 concept called DNA there were murderers and there were
2 murderers who were convicted by jurors, and there is still
3 cases where no body is recovered and murderers are
4 convicted based on circumstantial evidence, and in this
5 case there is a lot of circumstantial evidence that this
6 Defendant killed Elton Rutledge, Jr.

7 First of all as I just pointed out, the testimony of
8 Dr. Kim Collins who said in her opinion Wilfred Brown was
9 murdered. Now, his bones and his remains were found in the
10 same bag that other bones were found in. So, there was a
11 second person. Elton Rutledge, Jr., was last seen in the
12 company of two people, the person who was murdered and the
13 person who murdered him. Since then, August 3rd, 2002, he
14 has not been seen by his father, Elton Rutledge, Sr., who
15 he worked with everyday, or his sister, who he was supposed
16 to go shopping with later that afternoon, and not only
17 that, but also in evidence is the shoes that belonged to
18 Elton Rutledge, Jr. His dad testified and his sister
19 testified that those were those shoes, and they were found
20 in the bag with the skull of Wilfred Brown where he had
21 been shot in the back of the head and also his own, his own
22 bones.

23 Now, there's also the fact that, of course, this
24 Defendant had made prior threats to Wilfred Brown, and the
25 fact that he bragged about having killed them, and probably

1 need not remind you, that the Defendant gave a statement to
2 Assistant Sheriff Carter Weaver that he was present at the
3 scene when Elton Rutledge was killed. I'm going to get to
4 that statement and his assertion of Brian Elliott's self
5 defense but there is no question but that if you believe
6 that that Defendant, Jody Ward, murdered Wilfred Brown that
7 he also murdered Elton Rutledge.

8 I want to talk just briefly about Jody Ward's
9 statement, and I think it bears mentioning that he had four
10 months between the time of this crime and the time that he
11 gave his statement to get his story straight, and in that
12 time he knew according to his statement that Denise
13 Langston Cox had talked to law enforcement and he knew that
14 Louis Bazen had talked to law enforcement and he knew what
15 they said. I think one of the most critical things about
16 the statement of Jody Ward is not necessarily what he said
17 but how he said it. His demeanor on that tape is almost
18 unbelievable. It is simply cold and calculated. It is --
19 there is not a hint of emotion at any point on that tape.
20 He talks about going back to retrieve the bodies and
21 Assistant Sheriff Weaver asked him about digging the hole
22 and he said, "Well, no, no, I didn't dig a hole. I just
23 threw some dirt on them." He says, "That's two grown men
24 you couldn't, you couldn't, couldn't dig a hole for them.
25 You just" -- he just threw some dirt on them, not a bit of

1 emotion. Jody Ward is concerned about nothing but Jody
2 Ward. Protecting Jody Ward is his only interest, not, not
3 the least bit of remorse, not the least bit of concern
4 about the fate of the two people that he had killed.

5 He admits on the tape, and I have said this, he
6 admitted he picked up Wilfred Brown, that they were with
7 Elton Rutledge. He admitted that he went by Wal-Mart.
8 Now, that's not a coincidence. He knows that he's been
9 seen in Wal-Mart where he was buying bullets. He admitted
10 that there was blood on the back seat. He made some
11 statements. You know, again, his cold and calculated
12 nature after he says that Brian Elliott had really killed
13 these fellows in self defense, albeit, what does he do?
14 He's driving around Georgetown looking for something to
15 eat, I mean, not a second thought about it. That's what he
16 testifies that he was doing. He's driving around thinking
17 about McDonald's. He's not sure where they ate, but he
18 knows him and Candy, I believe, they went and got something
19 to eat or him and Denise.

20 He's also caught lying a couple of times on the tapes,
21 a couple, you heard it. You can judge for yourself whether
22 he was credible. I just point out a couple of things to
23 you. On some point in there he starts talking about the
24 shovels and he makes a mistake and Carter Weaver says, "So,
25 you changed a little bit," and he admitted it, "Yeah, yeah,

1 I got mixed up about the shovels."

2 Then he says, just a little while later, he says, I
3 think he was talking about where to dump the Suzuki
4 Sidekick, and he says, "So, I talked to Denise, I mean, I
5 talked to Brian Elliott," because Brian Elliott is his
6 scapegoat. He's decided that he's going to pin it on Brian
7 Elliott, but he slips up and he says, "I talked to Denise,"
8 I mean, "I talked to Brian Elliott." Shortly thereafter,
9 he just goes to stammering and stuttering about just
10 completely unbelievable statement.

11 Another thing he's lying about is Carter Weaver says,
12 you know, the whole statement is poor Jody. You know, can
13 you imagine Jody's fate? Poor Jody. He just happens to be
14 there in the middle of this robbery when Brian Elliott
15 manages to wrangle this gun away from two individuals who
16 are trying to kill him. Barehanded he takes the gun away
17 from them, shoots them, and then as fate would have it
18 Brian Elliott he's done with it. He kills them. He goes
19 home and he's watching TV. He's taking a shower and gets
20 something to eat and he isn't heard from again. It's all
21 Jody's bag now. He's left holding the bag.

22 Well, so, he's pinning it on Brian Elliott and Denise
23 Langston who he's mad at because Denise has come forward
24 and told what she knows. So, now he's going to point at
25 Brian Elliott. Why Brian Elliott? He basically admits it

1 at the end of the statement. He says they argued about
2 crab traps. Now, how unbelievable is it that they have
3 this knock down, drag out argument about crab traps between
4 he and Brian Elliott after Brian Elliott has murdered two
5 people and left Jody Ward to hide the bodies, move the
6 bodies, dump the Suzuki Sidekick, dispose of the gun and
7 clean up the whole operation. He's done with it. Brian
8 didn't really, he didn't really argue with Brian about
9 that. He didn't really have any problem with all that, but
10 the crab traps he was mad at him about. They got in this
11 little argument about the crab traps. Basically, Jody Ward
12 doesn't like Brian Elliott and he's pinning it on him, but
13 that's all he's got, that's all he's got.

14 He says -- so, he's being told the whole time by Brian
15 Elliott what to do and also Denise Langston because she
16 gave a statement. At some point Carter says, "Where's the
17 gun," and he says, "In a creek where Denise told me to
18 throw it." Well, Carter rightfully points out, "You know
19 that area like the back of your hand. You know what creek
20 it's in, what creek is it?" "I don't, I don't know what
21 creek it is." Do you know why he's not saying what creek
22 it is it's because it's not a gun belonging to Wilfred
23 Brown or a gun belonging to Elton Rutledge or anybody else.
24 It's a TEC-9 that people have seen Jody Ward fire all over
25 Georgetown County. So, of course he's not going to tell

Closing Argument by Mr. Bryan

1 law enforcement where it is. "Oh, geeze, I don't -- I mean
2 just some creek Denise told me. I don't know."

3 One more thing he gets caught in a lie as far as he
4 goes out there to move the bodies. He gets a little antsy.
5 He goes out there to move the bodies and he takes with him
6 just a croaker sack. Now, this is two grown men he's going
7 to put in a croaker sack. So, Carter Weaver knows he must
8 know what the condition of the bodies are. So, Carter
9 says, "Well, well, you must have been out there." "No, no,
10 no, I never went out there, just the two times, the one
11 time when I drug them out there, the one time when I moved
12 them. No, that's it."

13 Carter says, "Well, how were you going to fit two
14 grown men into a croaker sack? You must have known what
15 condition they were in, that it was just a pile of bones at
16 this point." "Yeah, yeah, I guess I did go back." He just
17 plain admits that he's lying. There's no question about
18 that. I won't say anything more about it.

19 I want to talk to you briefly about the Defense's
20 case. I don't, I don't know what they're going to argue.
21 I just ask you, obviously, after I sit down there's going
22 to be some things that I'd like -- I'm probably going to
23 forget and there's also going to be some things that they
24 address that I wish that I could readdress to you. I'm not
25 going to have that opportunity. All I ask for you to do is

1 use your common sense when you're listening to the
2 Defense's closing argument.

3 I assume that based on the opening argument that they
4 say that there's some pieces missing to the puzzle, that
5 you're going to have to fill in the details about what
6 really happened. So, I assume that they're going to talk
7 about a lack of evidence and I want to talk to you a little
8 bit about the lack of evidence. I think there is a great
9 deal of evidence and there is no question the State has
10 carried the burden, absolutely no question, but what
11 evidence there isn't is as a direct result of Jody Ward
12 hiding it.

13 Let's talk about the evidence he destroyed. He said
14 -- first he left the bodies out there, August. So, you
15 know what the conditions are like 2002 in August. It was
16 obviously pretty hot in Georgetown County. He leaves them
17 out there in a field not even covered up. He goes back,
18 puts them in a croaker sack, buries them in the swamp.

19 Then he dumps the car in Dawhoo Lake, which is
20 according to Corporal Doerr, was the most difficult place
21 he had ever dove to try to recover the -- they dove three
22 times to try to find the car. He says he threw the weapon
23 in Green Pond, then he retrieved it. Now it's in a creek
24 somewhere who knows where.

25 He threatened to kill Denise Langston if she came

1 forward, threatened to kill her children, and then and this
2 is just plain offensive, he calls up the victim's wife and
3 the victim's mother and tries to sell this phony story
4 about them stealing the car in order to thwart law
5 enforcement from looking for these two dead bodies. "Oh,
6 they've gone, they've gone off somewhere else. They've
7 just stolen my car and absconded. Don't" -- then he files
8 a false police report as if calling the victim's mother and
9 wife isn't enough. I submit to you that's malice. That's
10 a black heart.

11 Now, the Defense, I assume, also is going to talk
12 about self defense and third-party guilt. Now, these I
13 think they're going to have to separate because I don't
14 think Jody Ward's statement ever said that he defended
15 himself. So, that's not self defense. If you believe Jody
16 Ward's statement it's not a matter of self defense. It's a
17 matter of Brian Elliott. If you believe Brian Elliott was
18 driving around in the back of that Suzuki Sidekick sitting
19 in a, sitting in a baby car seat, I guess -- I don't know
20 if that's going to be their argument or not, but I submit
21 to you that as far as this theory goes he says that Brian
22 Elliott is acting in self defense. Wilfred Brown is shot
23 in the back of the head. Now, I do not know how you could
24 shoot somebody in the back of the head in self defense, and
25 I believe the Judge will charge you that if the threat is

1 alleviated, in other words if you're acting in self defense
2 and you're in the right as far as defending yourself, that
3 once the threat has been alleviated you don't have a right
4 to kill somebody, and if somebody has got their back to you
5 and you have taken their weapon, according to the
6 testimony, if you believe that Brian Elliott, Jody Ward,
7 whoever has got the gun from these two -- from Elton
8 Rutledge and Wilfred Brown, plus he's got the gun, there's
9 no threat. There's no need to shoot them, but even that
10 being said he shot him in the back of the head. That's not
11 self defense. It's just not.

12 Finally, as far as Brian Elliott is concerned, Melissa
13 Elliott testified, again, you know, it's nothing that
14 anyone would want to brag about that their husband is
15 addicted to crack and tends to go on benders and not really
16 leave the house, kind of sleeps it off for days at a time,
17 but she came in here. She told the truth. She admitted
18 that Brian Elliott had been out doing what Brian, what
19 Brian Elliott does and that he was sleeping it off for that
20 entire day, that he wasn't outside. The next time she saw
21 Jody Ward was Monday or Sunday night when he came by
22 looking to go crabbing with Brian.

23 Now, if Brian Elliott had killed these fellows in Jody
24 Ward's presence, it must have probably been very
25 frightening for Jody, I'm sure. Now he's charged with the

1 responsibility of destroying all the evidence or getting
2 rid of all the evidence and burying the bodies, but then he
3 threatens to, according to Jody Ward he says he threatens
4 to kill, kill his kids and drink their blood. Now, if he
5 had said that why in the world is he going crabbing with
6 him on Monday morning? Does that make any sense? She said
7 that he came by and they loaded up the boat and went off
8 crabbing together the next Monday morning. I think that
9 pretty much is all I need to say about Brian Elliott's
10 involvement.

11 Now, self defense, I don't even -- I'm going to
12 address it. I think it's coming, maybe it won't be, but it
13 seems absurd, it's ridiculous, but I guess the theory on
14 self defense would be that if you don't believe that Brian
15 Elliott was involved and then somehow insert Jody Ward into
16 his stead and then he was acting in self defense the day
17 that Wilfred Brown, Wilfred Brown and Elton Rutledge had
18 attacked him that he's acting in self defense, not Brian
19 Elliott, that he had just made up the Brian Elliott part of
20 it, that's the only thing that I can assume they're talking
21 about about self defense because, otherwise, you're talking
22 about a third-party guilt of Brian Elliott, but again, self
23 defense isn't an issue. He was shot in the back of the
24 head. There's, there's no self defense there.

25 Finally, reasonable doubt. The State has the burden

1 of proof and you heard the Defense open and say that the
2 Defendant is cloaked in a robe of righteousness. Well, he
3 is at the beginning of the trial, and it's up to the State
4 to remove that robe of righteousness.

5 A Defendant is presumed to be innocent until proven
6 guilty. That's the State's burden. Now, reasonable doubt
7 is the burden. It's the highest burden in the law. It's
8 not beyond any doubt. It's not beyond a crazy doubt. You
9 can have a doubt about anything. You can have a doubt
10 about whether there's salt in the ocean. That's not a
11 reasonable doubt. The Judge is going to charge you that a
12 reasonable doubt is a doubt that would cause a reasonable
13 person to hesitate to act.

14 Now, hesitate to act does not mean that you are not to
15 deliberate. That is your job as jurors. You are to go
16 back in the jury room after all the evidence, the closing
17 and the Judge charges you, you're going to go back in the
18 jury room and you're going to deliberate. You're going to
19 talk about the case and things may come up.

20 Now, hesitate to act means that after you have gone
21 over the evidence in its entirety, if you still have a
22 reasonable doubt the Defendant is not guilty you must let
23 him go, but if after you look at the entirety of the
24 evidence you believe he's guilty your obligation as jurors
25 is to convict him.

Closing Argument by Mr. Bryan

1 Now, the pieces of the puzzle, as I see it, are this.
2 Jody Ward threatened Wilfred Brown, who was coincidentally
3 in the company of Elton Rutledge when he killed him. He
4 threatened him. Denise Langston said that, said he's going
5 to get his money, his weed or he's going to take care of
6 it. Kevin Cooper said, "He asked me to go buy bullets for
7 him, and he said he was going to take care of those boys."

8 They were last seen, Elton Rutledge, Wilfred Brown,
9 never been seen since August 3rd of 2002. The medical
10 evidence, Wilfred Brown is deceased, last seen in the
11 company of Jody Ward. Jody Ward confessed to Denise
12 Langston. He made incriminating statements to Louis Bazen
13 and he also told Kevin Cooper he took care of those boys
14 that got his money.

15 Then there's the obstruction. For Jody Ward it's all
16 self preservation. That's all it is to him. He lies to
17 his wife. He lies to the victim's mother. He lies to the
18 victim's wife. Finally, his last lie is to Carter Weaver,
19 the assistant sheriff who he gave the statement to.

20 Now, in his statement he throws off on Brian Elliott.
21 He had four months to come up with Brian Elliott. All of a
22 sudden Brian Elliott is the guy who did it. Where was
23 Brian Elliott when Jody Ward was burying the bodies, moving
24 the bodies, disposing of the evidence, sinking the car,
25 disposing of the weapon. It's simply ridiculous. The fact

1 is Jody Ward is a cold-blooded killer and that he murdered
2 Wilfred Brown and Elton Rutledge, Jr., on August the 3rd of
3 2002 and that the man you heard on that tape giving you
4 that ridiculous story had killed those two in cold blood,
5 and you can tell not only from what he said but how he said
6 it, and we ask only that you do justice in this case and
7 convict Jody Ward with the murders of Elton Rutledge, Jr.,
8 and Wilfred Brown. Thank you.

9 THE COURT: Thank you, sir. Yes, sir.

10 MR. LOCKLAIR: May it please the Court, Your Honor.

11 THE COURT: Yes, sir.

12 MR. LOCKLAIR: Ladies and gentlemen of the jury, once
13 again my name is Wesley Locklair. I just want to once
14 again thank each of you for your time and the careful
15 attention you've been paying during this case.

16 As the Judge told you earlier and she'll tell you
17 again, Jody Ward still sits there presumed innocent, as he
18 has been throughout this entire trial. Throughout this
19 trial the State carries the burden of proof and they must
20 prove his guilt to every element of the crime beyond a
21 reasonable doubt to each and every one of your
22 satisfactions.

23 Now, I want to go ahead and tell you if either myself
24 or Ms. Kneece have done anything to offend or bother you
25 please don't hold it against Mr. Ward. Please give him his

1 fair and just day in court and weigh the case based on what
2 the State has and has not proven.

3 I'm going to go back through some of the evidence with
4 you and as Mr. Bryan said what I say and what he says is
5 not evidence. If you remember different from what I said
6 you use your recollection of what occurred on that witness
7 stand and you base it on that.

8 Now, there are some things that I want to point out
9 about what Mr. Bryan said that kind of go back towards the
10 prosecution, too. He says, "Well, why would Jody Ward be
11 riding around with Brian Elliott if Brian Elliott
12 threatened him?" Well, why would Denise Langston be riding
13 around with Jody Ward if Jody Ward had threatened her? Why
14 would she ride six hours through rural South Carolina down
15 to Ridgeland, South Carolina, and come back in the dark
16 late at night with somebody who has threatened to kill her?
17 Why would she go to the police and wear a body wire and go
18 and approach somebody who has threatened to kill her? I
19 would submit the reason she did those things is because he
20 never made those threats to her. That's something that she
21 invented and the facts show otherwise. If you look at her
22 testimony and she says, "Well, Jody told me that he shot at
23 Wilfred from the front of the truck and then Elton jumped
24 in the back seat and he shot at him," well how does that
25 explain the bullet hole in the back of the vehicle which

1 their own witnesses said traveled inward from behind the
2 vehicle? Obviously Denise didn't know all the facts and
3 the physical evidence; and so, her story couldn't match up
4 to the things that can be proven through direct evidence.
5 There's proof positive that a bullet went in the back of
6 that truck, and Denise's story does not line up with the
7 physical evidence.

8 She further stated that Jody Owens at one time had
9 owned some guns, and when she went in for her interview
10 there conveniently happened to be a warrant for her arrest
11 sitting on the officer's desk in front of her as she's, as
12 she told you all for obstruction of justice. She's facing
13 prison. The Judge has signed the warrant. The officer has
14 signed the warrant. It's sitting right there. "Come on,
15 Ms. Langston, tell us what you know. I'm going to serve my
16 warrant on you," and then miraculously they never served
17 the warrant on her because they got the story that they
18 wanted. So, they decided, "Even though this judge has
19 signed this warrant saying we should arrest you we're not
20 going to serve it on you. We're going to choose not to do
21 that because you're going to say what we want to hear."

22 I would argue that Louis Bazen, also, cannot be
23 believed on certain points. He has selective memory as you
24 heard on cross examination. He remembered what he wanted
25 to remember, didn't remember what he didn't want to

1 remember. He talked about how he had been prepared time
2 and time again for his testimony here in court. He had
3 gone over that testimony with the Solicitors. He had met
4 with the police on several times, and in fact he said he
5 was mad because the cops thought he was lying. Their own
6 police force did not believe Louis Bazen. They thought he
7 was a liar. They didn't trust him. I would submit you
8 cannot trust everything he said either.

9 Next you had Kevin Cooper. You heard him talking
10 about Wilfred Brown was joking and laughing. He didn't
11 seem like anything was wrong. If somebody was really
12 sitting there seriously threatening somebody's life do you
13 think they're going to hang out with them laughing and
14 joking? Do you think they're going to go into Wal-Mart
15 with him while somebody says they're buying bullets, and
16 let me ask you this, why did they not subpoena anybody from
17 Wal-Mart? Why did they not put in proof of what was
18 purchased on August 3rd of 2002 to show if any bullets were
19 even bought from that store? They offered no evidence that
20 there were any nine millimeter bullets even purchased from
21 Wal-Mart. Yet they want you to believe that when they
22 could have easily marched in a witness to offer you direct
23 proof, but they chose not to do that, ladies and gentlemen.
24 They chose not to bring that witness in, and if you want to
25 talk about witnesses that they chose not to bring in, let's

1 go ahead and speak about Brian Elliott. Where was Brian
2 Elliott to testify? Where was he to say Jody's lying?
3 They bring in his wife to say, "Oh, he had been on a crack
4 bender. So, he had to stay in bed for three days. He
5 couldn't get up. He was out doing drugs," which is
6 something he always does. I mean, he goes out and spends
7 all his money till he's done with it and then she said,
8 "You know, crack addicts they want more crack and more
9 crack and more crack until they just can't get anymore."

10 Well, I would submit to you that she has an incentive
11 to lie because if Brian Elliott was involved then obviously
12 he's going to face punishment. They've been together since
13 she was 15 years old, since she was a little girl she knows
14 of nobody other than Brian Elliott and her father is the
15 men in her lives who are there to protect and guide her.
16 For 16 years she's been at his side. I would submit to you
17 that she has every incentive to lie.

18 In fact, you heard from Jody's statement that Brian
19 was doing crack the day that they were out there, that he
20 was looking for crack, and as she said, you know, obviously
21 that's something we could probably believe because he
22 always does crack cocaine unless he doesn't have any money,
23 and isn't it funny how out of all these times that he goes
24 out and does so much crack that he can't even function or
25 move that she happened to remember the details of this very

1 specific weekend when asked about them later by law
2 enforcement? You would think if you've got somebody going
3 out and doing crack all the time it'd kind of start to blur
4 together when they're laying there as a diseased blob on
5 the couch in their drug state, probably not even half
6 knowing what's going on in his life at the time.

7 You heard Carter Weaver ask Jody on the tape something
8 about the bodies being chopped up. Dr. Collins testified
9 there was no evidence to that. There's no evidence that
10 the bodies were chopped up. We would submit to you the
11 condition of the bodies is due to the fact that it was
12 August in South Carolina and the bodies were outside.
13 There's obviously going to be decomposition and other
14 things such as that.

15 You heard testimony from Robert [sic] Greene. He was
16 the agent at SLED who went out and examined the vehicle
17 after it had been pulled from Dawhoo Lake. Well, first off
18 he testified, yes, there is a bullet hole in the back of
19 the vehicle. So, that discounts Denise's whole theory
20 about what she says is the truth, and then he says there's
21 a driver's door with a bullet mark and it's at a shallow
22 angle, something quick, not wide, but he doesn't know any
23 more about that, you know, that's pretty much all he can
24 say. He can't say if the door is open, can't say if the
25 door was shut, but it's pretty fair to say if there's a

1 bullet on the driver's door and somebody was standing at
2 the front of the car it's going to be pretty hard to come
3 down into it at some sort of a shallow angle, further
4 evidence to discredit Denise Langston's story.

5 Denise Langston, as you know, was a drug user,
6 admittedly. So, I submit to you that her testimony is
7 suspect. Her memory is suspect. Her credibility is
8 suspect. You further heard that Jody was the one who ended
9 their relationship, that he left. I would submit to you
10 that that is another motive for her, the fact that Jody had
11 broken up and ended their relationship.

12 You heard testimony from Indria Brown who talked about
13 Jody Owens's number being on caller ID, Jody Owens has
14 called Wilfred earlier, and you heard that Denise said Jody
15 Owens owned guns. We didn't hear from him either.

16 They want to talk about a drug deal gone bad and \$525
17 is the value of human life and that's good rhetoric to play
18 to your emotions, but the simple fact of the matter is that
19 the testimony shows that Wilfred went to a park and gave
20 somebody money and this other person stole the money, this
21 Hamilton guy who they also didn't bring in to testify. So,
22 if Jody was supposedly going to be mad at somebody for
23 having their money he knew this Hamilton guy from the park
24 had it. That's who Wilfred supposedly gave it to, one of
25 Wilfred's suppliers for his many drug deals, but you don't

1 hear Mr. Hamilton come in and testify for the State. They
2 fail to call him.

3 You heard Tracy Collins. She testified how she bought
4 drugs from Wilfred. She denied she ever seen him with a
5 gun, but she was good friends with him, would ride around
6 with him, get drugs from him. Obviously she has an
7 incentive to come in here and tell her story how she wants
8 to tell it, but what she says does go to the facts of that
9 Wilfred was a drug dealer, which corroborates that he's
10 trying to get drugs from Wade Hamilton and that Jody was
11 involved in this. I mean, it's obvious that this did
12 involve drugs, but the way the Prosecution wants you to
13 believe it is not what they've proven. When they tell you
14 their theory of the case, that's just their theory of the
15 case and you have to weigh each and every element of that
16 theory and say, "Have these facts been proven to me beyond
17 any reasonable doubt," and if they haven't then you have to
18 discount those facts, and if they don't prove the elements
19 of the crime you must come back with a verdict of not
20 guilty.

21 Now, ladies and gentlemen, there was certain evidence
22 out of Jody's statement and you all will be the ones to
23 decide what to believe out of his statement and what to
24 believe out of the witness stand, what to believe out of
25 everybody, but there was evidence that Wilfred Brown had

1 tried to rob them, rob him and Brian Elliott, that he had
2 fired into the car. At that point there was evidence,
3 testimony from his statement, that Brian Elliott got the
4 gun and there was some sort of tussle and the gun went off.
5 They want to say, "How can there be a tussle between Brian
6 Elliott and Wilfred with him being shot towards the back of
7 the head," and I believe her testimony was it was towards
8 the back of the ear, towards the back of the head, not
9 directly in the back of the head, but we don't have to
10 prove how he got shot. They have to prove how he got shot.
11 If it's reasonable to believe that there was a tussle and
12 people were fighting over a weapon and it went off and
13 somebody got shot in the back of the head then you need to
14 understand that that is not enough to convict somebody of
15 murder if the person who was shot was the original attacker
16 and aggressor trying to shoot them first.

17 Now, the evidence from Jody's statement about them
18 shooting into the car I would submit that is corroborated
19 by the physical evidence. The fact that there is a bullet
20 hole in the back of the car, the fact that he said the
21 passenger door and the front driver door were open where a
22 bullet could travel and hit the driver's door that way, the
23 fact that there was a bullet, which I know they say it
24 could have misfired and gone this slow, but a bullet that
25 managed to penetrate the back of foam seating, they never

1 said anything about it hitting anything inside the seat,
2 yet it did not have enough speed to penetrate the fabric in
3 the front of the seat. The bullet was traveling that slow
4 when it hit that seat.

5 I would submit to you that that bullet had to be fired
6 from some distance away to be going that slow and not
7 penetrate through a piece of cloth, a piece of fabric. It
8 just doesn't make sense, ladies and gentlemen, if
9 everything occurs as the State wants you to believe that it
10 occurred.

11 You'll also -- you heard a lot of talk from Mr. Bryan
12 about everybody saw Jody around Georgetown County with a
13 gun. Well, I believe the evidence was maybe that he shot
14 at a stop sign and maybe shot in Ackerman's front yard.
15 He's not all over Georgetown County, but it says, it sounds
16 a lot better to say that he's shooting a gun all over
17 Georgetown County and everybody has seen him than it does
18 to say there's two specific instances where people have
19 seen him with a gun and you've heard evidence that he dealt
20 drugs and Wilfred dealt drugs. They're all drug dealers
21 and your common sense tells you, of course, drug dealers
22 are going to have guns around which is why it's a
23 reasonable thing Wilfred Brown would have a gun around him,
24 too. I mean, it's admitted. This was over drugs. They
25 were trying to buy marijuana. There's no way around that.

1 I mean, these are not the best citizens of Georgetown
2 County, unfortunately. We're not dealing with, you know,
3 lawyers and bankers and teachers and preachers and things
4 like that. These are drugs dealers. The witnesses they've
5 put up a lot of them are drug users, which is why you
6 should be suspect about their testimony. It affects their
7 ability to remember what's going on, to observe events as
8 they happen and to later recall them and tell them to you
9 accurately. I mean, you heard Louis Bazen. He quit
10 smoking marijuana, but he smoked it for a while and your
11 common sense will tell you you don't need an expert to come
12 in here to know that marijuana is bad for people. It's an
13 illegal drug that affects people's memory.

14 Now, one other thing was they say why would Jody not
15 be mad with Brian Elliott after he said he was going to
16 quote, "Kill him and drink his baby's blood," if he told
17 anybody? Well, I would submit to you, number one, they're
18 all using drugs that weekend. So, they're scared and
19 Jody's scared, and that might have a lot to do with why he
20 reacted how he did, and Mr. Bryan wants to talk a lot
21 about, "Well, he spoke with Wilfred Brown's mother and his
22 wife and said the car had been stolen. That makes him cold
23 hearted." Well, maybe that does make him cold hearted for
24 helping cover up for something but he's not on trial for
25 having a cold heart for doing that. He's on trial for

Closing Argument by Mr. Locklair

1 whether the State has proven beyond a reasonable doubt that
2 he unlawfully killed Elton Rutledge and Wilfred Brown with
3 malice aforethought. He's not on trial for being a good or
4 bad person, and if you all don't like Jody Ward I can
5 understand that, but he's not on trial today for being a
6 likeable or not likeable person. He's charged with a
7 crime, a very serious crime which we submit the State has
8 failed to prove each element of beyond a reasonable doubt.

9 Now, I want to go back to some of the law. As I said
10 Jody sits there innocent, and until you go back in that
11 jury room and get word from the Judge that you can begin
12 deliberating you must sit here and look at him and presume
13 him innocent, and it's a hard thing to do.

14 We all watch TV, and we see something like the recent
15 snipers up in Ohio and that he's arrested and people are
16 like, "Good, put him in jail. Lock him up. That guy needs
17 to go away," but you know what, every single one of us goes
18 against the most fundamental principles in our country when
19 we do that and it's okay to do that at home with the TV
20 set, you know, because you hadn't sat here, you hadn't
21 raised your right hand and taken an oath before this
22 Court to follow the law as the Judge instructs it, and if
23 she's going to instruct you you can't jump to those
24 conclusions like you can at home. You took an oath today
25 and nobody said this is going to be an easy job for you

1 all. There's going to be disagreements about what the
2 evidence was, and you all are the ones who have to decide
3 the facts. You all are the sole judges of the facts. If I
4 do something wrong, if they do something wrong or if the
5 Judge happened to do something wrong, there are higher
6 courts that can take care of that. Your decision is final.
7 There are no appeals from your decision on the facts, which
8 is why when you go back there to weigh the evidence I want
9 each of you to think about that oath you took. You might
10 be the one person who has a reasonable doubt about his
11 guilt. You might be one of six who has a reasonable doubt
12 about his guilt, but you must stick to your convictions if
13 you have a reasonable doubt.

14 Now, I'm not telling you to ignore what your other
15 jurors have to say and not deliberate the case but do not
16 be swayed if you individually have a reasonable doubt about
17 the guilt or innocence of Jody Ward, and if you do you must
18 stick to your vote of not guilty and it's more important in
19 a jury your vote than it is in any other situation in our
20 country. We have national elections coming up where you
21 might be one of millions who get a vote for a president.
22 In a local election you might be one of ---

23 MR. HEMBREE: Your Honor, there was a portion there
24 that I've got to object to. If we could approach at side
25 bar.

1 THE COURT: Yes.

2 (Whereupon, a Bench conference was held in the
3 presence, but out of the hearing, of the jury.)

4 MR. LOCKLAIR: Ladies and gentlemen, once again, I just
5 want to tell you when you go back there and you deliberate,
6 as I told you before, I want you to listen to your other
7 jurors, and if you have what you believe is a reasonable
8 doubt at the beginning or maybe at the beginning you don't
9 have any reasonable doubt, you still should listen to the
10 other jurors and what they have to say, and if they can
11 change your mind and persuade you that there's no longer a
12 reasonable doubt or that there is a reasonable doubt then
13 you should listen and you should base that on the evidence
14 and the law that the Judge is going to give you.

15 And the Judge is going to talk to you some about
16 third-party guilt, and I'm going to get to that in a
17 second, just like the Solicitor talked about self defense
18 and third-party guilt a little, but that's going to be
19 something you all have to decide. He says, "Well, how can
20 a jury decide this, how can a jury decide that?" Well,
21 that's why we have you all here because you all have heard
22 the evidence, you all have weighed the evidence. We
23 obviously represent different sides. So, we're definitely
24 going to have different views of the evidence, and that's
25 why it's so important that we can have 12 neutral, detached

Closing Argument by Mr. Locklair

1 individuals that can come in here and be fair and
2 impartial.

3 Now, I mentioned earlier that nobody actually saw Jody
4 with a gun that day, and as he mentioned Dan DeFreese said
5 that the TEC-9 was one of 37 possible firearms. Well, he
6 said it was limited, but not included to those 37 firearms.
7 So, at least 37 firearms could have fired the bullet that
8 they found in the car.

9 Now, when they compared the two projectiles they had
10 found Dan DeFreese said it could have been fired by one
11 gun, it could have been fired by two guns. That right
12 there obviously shows that they have failed to prove beyond
13 a reasonable doubt that those guns and those -- the
14 projectiles would match one single gun, and in fact, they
15 don't have any conclusive testimony that it was, in fact,
16 fired specifically by a TEC-9. It's just one of many
17 possibilities.

18 You heard Agent DeFreese say that the other bullet
19 could have been from a 38 special, a 38 super, a 380 auto,
20 a 357 magnum or any number of larger caliber guns. So,
21 there's a lot of questions out there that still remain
22 unanswered just as far as the facts go.

23 Now, if you believe Jody's statement that was given to
24 Carter Weaver and the Judge charges you on third-party
25 guilt I would submit to you that you would then have to

1 find Jody not guilty.

2 Now, Mr. Bryan wants to argue, this is a Suzuki
3 Sidekick and there was a baby seat in it when they found
4 it. Well, there's no evidence that they offered, and
5 remember we have to offer no evidence, we do not have a
6 burden of offering anything. It rests with them because as
7 you know nobody can come in and prove their innocence.
8 That's why our constitution is designed the way it is, but
9 they offered no evidence that that baby seat was in there
10 prior to it being sunk, that it had not been moved to the
11 back and was later put back.

12 Furthermore, I would submit to you that these are
13 people going out to smoke marijuana, smoke the crack
14 cocaine, probably doing other drugs, clearly breaking the
15 law. They're probably not going to have a big problem
16 being a little uncomfortable as they ride out to do some
17 illegal activity. I mean, you certainly don't want to take
18 a five-person car pool to go smoke crack, you know, park on
19 the side of the road and make it a little obvious. You
20 know, these people were using drugs. They were probably
21 using drugs before they all got in the car together, each
22 of them individually, and then they started using them
23 together. These are not people who have the greatest
24 judgment, ladies and gentlemen. It's not unreasonable to
25 think that four people would get into a Suzuki Samurai to

1 go out and do their illegal activities.

2 Furthermore, they offered no testimony about the
3 weights or heights of Elton or Wilfred or Brian Elliott to
4 prove to you that it couldn't have happened. They didn't
5 come in and say, "These are super tall people." They could
6 be super short skinny people. We don't know because they
7 failed to offer that evidence. They could have excluded
8 that possibility. They could have had other people come in
9 here and testify to clear those items up but they chose not
10 to. There's a lot of evidence they chose not to present to
11 you all, and I submit to you that a lot of the evidence
12 they didn't present does create a reasonable doubt; and so,
13 when you go back there it's just as important to look at
14 the evidence they have presented, but it's also important
15 to look at the evidence they have not presented. Why has
16 the State not presented this? Why have they not presented
17 that? Why is there nobody from Wal-Mart? Why was Brian
18 Elliott not called to the stand, if for nothing more than
19 to say, "Jody Ward is a liar. I was not there." Why did
20 they not put him on that stand to say that?

21 Ladies and gentlemen, the evidence in this case is all
22 circumstantial. There's obviously not a lot of direct
23 evidence. There's no direct evidence for them to link Jody
24 directly to the killings of Wilfred and Elton.

25 Now, if you don't believe Jody's statement the Judge

1 is going to charge you on self defense, and at that point
2 it's going to be your job to figure out what really
3 happened out there if Brian Elliott was not there. Why are
4 there bullet holes in different parts of the car? You
5 know, if he just took them out there like they want to say
6 for \$525 each, you know, why are there these various bullet
7 holes in different parts of the car? It doesn't add up,
8 ladies and gentlemen.

9 The State would like to make this be an easy puzzle
10 where all the pieces just slide right together. When you
11 start deliberating you're going to see that's just not the
12 case, ladies and gentlemen. There are too many holes in
13 their case and there are too many unanswered questions.

14 You might ask, you know, why did Jody do a lot of
15 things he did if Brian Elliott was the one who did it? And
16 I would submit to you he admitted on the tape they were
17 smoking drugs. He was scared, you know. If he's under the
18 influence of illegal narcotics it's probably fair to assume
19 that he wasn't in his right state of mind.

20 Ladies and gentlemen, the evidence in this case does
21 not prove their case beyond a reasonable doubt. They have
22 failed to meet their burden of proof to prove that Jody
23 Ward killed them with malice aforethought, and when they
24 talked about the black, depraved heart you notice how Mr.
25 Bryan kept saying, "Oh, well, he lied to these people's

1 parents. He lied to his wife." Well, that doesn't go to
2 his malice at the time of the alleged crime. You know, it
3 might be mean. It might be a bad person who did something
4 like that and it happened, but that does not mean that
5 there was malice aforethought at the time this crime was
6 allegedly committed, and the State has failed to prove that
7 there was malice and that's why they want to come back and
8 say, "Oh, he's a bad person. He did this. He did that.
9 He's heartless. He didn't care about their families,"
10 because they can't show evidence from when the crime was
11 committed to prove that Jody had malice aforethought, and
12 the Judge is going to tell you that if they can't prove
13 that beyond a reasonable doubt, no matter how much you
14 might dislike Jody personally or the decisions he's made as
15 far as drugs or cheating on his wife that you heard about
16 you're still going to have to find him not guilty. This
17 isn't a popularity contest, ladies and gentlemen. It's a
18 court of law. I would just ask you to go back and
19 carefully deliberate the evidence in this case. Carefully
20 look at what the State did present, but carefully look at
21 what they did not present as well.

22 Also want you to carefully look at the credibility of
23 the witnesses. People like law enforcement and experts
24 they get no more credibility than any other witness. Every
25 single witness who comes into this courtroom their

Closing Argument by Mr. Locklair

1 credibility is judged by you all and the jury. I would
2 submit to you that people like Denise and Louis who use
3 drugs should be trusted less than other witnesses. People
4 like Louis who have been convicted of breaking and entering
5 into a motor vehicle, a crime of dishonesty, stealing from
6 somebody, I think that should make you question somebody's
7 credibility.

8 Ladies and gentlemen, what this case boils down to is
9 it is a sad situation. I mean, there are families here who
10 are hurting and we don't want you to hold that against us
11 that we have to do our job, but the point is they have
12 failed to do their job. They have failed to prove each and
13 every element of this crime beyond a reasonable doubt, and
14 once you go back and deliberate and have had a chance to
15 weigh the evidence and weigh the credibility we believe you
16 will come back with a verdict of not guilty. Thank you.

17 THE COURT: Thank you, sir.

18 Ladies and gentlemen of the jury, the indictments
19 charge the Defendant, Jody Lynn Ward, with two counts of
20 murder. I remind you that the fact that the Defendant was
21 arrested, charged and indicted in this case is not evidence
22 in this case and cannot be considered by you as evidence of
23 guilt in this case, nor does it create any presumption or
24 inference of guilt. The documents, that is these
25 indictments, are simply the formal written instruments

Ruling on Exhibit

1 that final exhibit back.

2 MR. HEMBREE: Thank you, Your Honor.

3 ***** OFF THE RECORD *****

4 (On the record, verdict reached at 5:50 p.m.)

5 (Whereupon, the following takes place outside the
6 presence of the jury.)

7 THE COURT: Thank you. Please be seated.

8 I understand that the jury has reached a verdict in
9 this case. Is there anything from the State prior to
10 bringing the jury out?

11 MR. HEMBREE: No, Your Honor.

12 THE COURT: Is there anything from the Defendant?

13 MR. LOCKLAIR: No, ma'am, Your Honor.

14 THE COURT: All right, let me admonish you when we
15 bring the jury out whatever the verdicts may be I don't
16 want any show of emotion. If you think that you cannot
17 follow those instructions I ask you to leave at this time.
18 So, I don't want to hear any outbursts, any show of
19 emotions at all. If you cannot follow those instructions I
20 ask you to exit at this time.

21 Very well then, we're ready for them.

22 All rise, please.

23 (Whereupon, the following takes place in the presence
24 of the jury.)

25 THE COURT: Please be seated.

1 Mr. Foreman and ladies and gentlemen of the jury, I
2 understand the jury has reached a verdict in this case; is
3 that correct?

4 FOREPERSON: Yes.

5 THE COURT: All right, if you would hand it to the
6 bailiff, please.

7 (Complies with request and Court reviews.)

8 THE COURT: It is correct as to its form. It would be
9 published, please. If the Defendant would please rise.

10 (Complies with request.)

11 THE CLERK: State versus Jody Lynn Ward, indictment
12 number 2003-GS-22-1030, indicted for charge of murder as to
13 Wilfred Brown, we, the jury, by unanimous consent, find the
14 Defendant guilty.

15 State versus Jody Lynn Ward, indictment number 2003-
16 GS-22-1031, indicted for charge of murder as to Elton
17 Rutledge, Jr., we, the jury, by unanimous consent, find the
18 Defendant guilty, signed and dated March 18th, 2004, signed
19 by Mr. Foreman, Paul Griffin.

20 THE COURT: You may be seated.

21 Let me turn to the jury.

22 Ladies and gentlemen of the jury, if this is your
23 verdict please indicate so by raising your right hand.

24 (All jurors raise right hand.)

25 THE COURT: I'll note for the record all the jurors

Polling of Jury

641

1 have, in fact, raised their hand.

2 Are there any motions that need to be -- you may put
3 them down. Any motions that need to be addressed in the
4 presence of the jury? Anything from the State?

5 MR. HEMBREE: Nothing on behalf of the State, Your
6 Honor.

7 THE COURT: Anything from the Defendant?

8 MR. LOCKLAIR: Your Honor, we would move to poll the
9 jury.

10 THE COURT: All right, the jury will be polled at this
11 time.

12 THE CLERK: Ladies and gentlemen of the jury, as I
13 call your name would you please stand and answer the
14 question I'm about to ask you by saying yes or no.

15 Robert Myers, are these your verdicts and still are
16 your verdicts?

17 MR. MYERS: Yes, they are.

18 THE CLERK: Please be seated.

19 Judy Harper, are these your verdicts and still are
20 your verdicts?

21 MS. HARPER: Yes, ma'am.

22 THE CLERK: Please be seated.

23 Paul Griffin, are these your verdicts and still are
24 your verdicts?

25 MR. GRIFFIN: Yes.

1 THE CLERK: Ronald Altman, are these your verdicts and
2 still are your verdicts?

3 MR. ALTMAN: Yes, they are.

4 THE CLERK: Reta Simpson, are these your verdicts and
5 still are your verdicts?

6 MS. SIMPSON: Yes, it is.

7 THE CLERK: Daphne Ray, are these your verdicts and
8 still are your verdicts?

9 MS. RAY: Yes.

10 THE CLERK: Marisa Cooper, are these your verdicts and
11 still are your verdicts?

12 MS. COOPER: Yes.

13 THE CLERK: Sydney O'Neil, are these your verdicts and
14 still are your verdicts?

15 MS. O'NEIL: Yes, ma'am.

16 THE CLERK: Virgil Spivey, are these your verdicts and
17 still are your verdicts?

18 MR. SPIVEY: Yes.

19 THE CLERK: Kelly Polen, are these your verdicts and
20 still are your verdicts?

21 MS. POLEN: Yes.

22 THE CLERK: Carl Chatman, are these your verdicts and
23 still are your verdicts?

24 MR. CHATMAN: Yes.

25 THE CLERK: And Carol McCann, are these your verdicts

1 and still are your verdicts?

2 MS. MCCANN: Yes.

3 THE COURT: The jury has been polled. Thank you.
4 Anything further in the presence of the jury?

5 MR. LOCKLAIR: Nothing at this time, Your Honor.

6 THE COURT: Okay.

7 Mr. Foreman, and ladies and gentlemen of the jury, I
8 thank you for your service. I watched you during the
9 course of this week and you paid close attention to the
10 evidence and testimony. On behalf of both the State and
11 the Defendant I wish to thank you for your service and let
12 you know that this will conclude your service for this
13 week, also let you know that you've earned yourself a
14 three-year exemption. If you get called within the next
15 three calendar years, asked to serve, you remember this
16 term of court and let them know that you have served within
17 the three years and you will be exempt from service.
18 Thanks once again and you're free to leave.

19 (Whereupon, the following takes place outside the
20 presence of the jury.)

21 THE COURT: Please be seated.

22 Any further motions at this time?

23 MR. LOCKLAIR: Your Honor, we would just renew our
24 motion for a directed verdict, a judgment of acquittal and
25 a motion for a new trial.

1 THE COURT: All right, are you requesting ten days or
2 you want to go ahead and make your arguments at this time?

3 MR. LOCKLAIR: Your Honor, we would just make the
4 motion and leave it in your discretion just for the record.

5 THE COURT: Let me ask you to specify if you would,
6 please, the grounds for your motion.

7 MR. LOCKLAIR: The renewal of our directed verdict is
8 based on the previous grounds. Our motion for a new trial
9 we would base that on the admission of his statement and
10 the other objections that we had previously made to
11 evidence that had been noted for the record.

12 THE COURT: All right, let me let you know in regard
13 to the directed verdict would you state your grounds once
14 again?

15 MR. LOCKLAIR: Just that the State had failed to prove
16 to a reasonable jury that each element of the case.

17 THE COURT: All right, all right, and once again the
18 Court had ruled that there was substantial circumstantial
19 evidence upon which the verdict could be, could be based;
20 and therefore, I respectfully deny as to that matter.

21 MR. LOCKLAIR: Thank you.

22 THE COURT: As to the new trial?

23 MR. LOCKLAIR: Your Honor, we would just base that on
24 our previous evidentiary objections and that would be the
25 only basis we would have for that motion.

1 THE COURT: All right, all right, find no error of law
2 in regard to any grant of a new trial as to the objections
3 that were made. There was a ruling in regard to the
4 statement that was previously made. The Court stands by
5 that previous ruling that there was a finding by a
6 preponderance of the evidence. The jury obviously found
7 the standard of beyond a reasonable doubt as to the
8 statement. They made a finding in that regard. I see -- I
9 find no error; and therefore, respectfully deny.

10 MR. LOCKLAIR: Thank you, Your Honor.

11 THE COURT: There's sufficient evidence and the
12 Court's determination is that the Defendant has received a
13 fair and impartial trial.

14 Anything further?

15 MR. HEMBREE: Your Honor, we're prepared to go forward
16 at a sentencing hearing at this time.

17 THE COURT: All right, if you'll come forward for
18 sentencing.

19 (Complies with request.)

20 MS. KNEECE: If I could beg the Court's indulgence,
21 please.

22 We're ready to proceed. Thank you.

23 THE COURT: All right, yes, sir, I'll hear from the
24 State.

25 MR. HEMBREE: May it please the Court, Your Honor, to

Sentencing

1 review the Defendant's prior criminal history, he has a
2 conviction for a failure to stop for a blue light, January
3 22nd of 1992; resisting arrest, December the 10th of 1991,
4 as well as driving under suspension, open container, all
5 growing out of the same series of events; 1998, July 12th,
6 excuse me, July 12th, 1999, the Defendant was convicted of
7 criminal domestic violence; May, excuse me, June 20th of
8 2002, driving under suspension and disregarding a stop
9 sign.

10 Your Honor, I have inquired as to the victims' family
11 and friends. There is a sizeable or a large number of
12 folks here. I don't think that they have anything that
13 they need to say to the Court to add. I would at this
14 point just ask those that are friends and family of Elton
15 Rutledge, Jr., or Wilfred Brown to please stand up.

16 (Complies with request.)

17 MR. HEMBREE: Thank you very much.

18 THE COURT: Thank you.

19 MR. HEMBREE: As I say, Your Honor, I think that I
20 could call a number of folks up here but -- and I think you
21 know what they would probably say and they've had an
22 opportunity previously at some bond hearings to share their
23 feelings about this case on a number of occasions. Your
24 Honor, this was a cold-blooded act. It was, it was
25 gruesome in the steps that were undertaken by the Defendant

1 to cover up this awful crime. The State would ask that the
2 Defendant be sentenced to life without the possibility of
3 parole.

4 THE COURT: Yes, be glad to hear from you.

5 MS. KNEECE: Thank you, Your Honor, may it please the
6 Court.

7 Jody Ward is 29 years of age. He has three children.
8 He has a son, Ashton, who is eight; a daughter, Chelsie,
9 who is five; and another daughter, Victoria, who is two.

10 You've heard his criminal history. Your Honor, it's
11 obviously minimal in comparison to what has transpired here
12 today and we ask that you take that into consideration. If
13 you give him 30 years the statutory minimum, he still has
14 to do day for day. He would be close to 60 when he got out
15 and we would just ask that you have as much mercy as you
16 deem appropriate.

17 THE COURT: All right, anything that you'd like to
18 say?

19 MS. KNEECE: Actually I do want to address the Court
20 on that. We've advised him and discussed with him that it
21 would probably not be in his best interest to address the
22 Court.

23 THE COURT: And that's fine. That's his right.
24 Anything further?

25 MR. LOCKLAIR: No, ma'am.

Sentencing

648

1 THE COURT: As to 03-GS-22-1030, the sentence of the
2 Court is life.

3 As to 03-GS-22-1031, the sentence of the Court is
4 life.

5 Good luck, sir.

6 MS. KNEECE: Thank you.

7 MR. LOCKLAIR: Thank you, Your Honor.

8 MR. HEMBREE: Thank you, Your Honor.

9 MR. BRYAN: Thank you, Your Honor.

10 (Adjourned.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Paula H. Thomas, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JODY LYNN WARD,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Assistant Appellate Defender

South Carolina Office
of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
PETITION TO BE RELIEVED AS COUNSEL	11

TABLE OF AUTHORITIES

CASES

<u>Edwards v. Arizona</u> , 451 U.S. 477, 101 S.Ct. 1880 (1981).....	9
<u>Jackson v. Denno</u> , 378 U.S. 368, 84 S.Ct. 1774 (1964)	6, 8
<u>McNeil v. Wisconsin</u> , 501 U.S. 171, 111 S.Ct. 2204 (1991)	9
<u>State v. Binney</u> , 362 S.C. 353, 608 S.E.2d 418 (2005)	9
<u>State v. Franklin</u> , 299 S.C. 133, 382 S.E.2d 911 (1989)	9

STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to suppress appellant's statement where law enforcement knew appellant was attempting contact his attorney prior to his meeting with Assistant Sheriff Weaver, and where Weaver was aware appellant had invoked his right to counsel upon his arrest, since appellant should not have been deemed to have waived his right to counsel under these circumstances?

STATEMENT OF THE CASE

Appellant was indicted at the July 8, 2003 term of the Georgetown County grand jury for two counts of murder. R. p. 859. His case was called to trial on March 15, 2004 before the Honorable Paula Thomas, and a jury. Margaret Ann Kneece and J. Wesley Locklair, III represented appellant. J. Gregory Hembree and Robert B. Bryan were the solicitors. R. p. 199.

On March 18, 2004 the jury found appellant guilty on both counts. R. p. 849, ll. 11 – 19. Judge Thomas sentenced appellant to life imprisonment. R. p. 857, ll. 1 – 4.

This appeal follows.

ARGUMENT

Law enforcement knew that appellant was attempting to contact his attorney prior to his meeting with Assistant Sheriff Weaver. Law enforcement also was aware that appellant had invoked his right to counsel upon his arrest. The trial judge erred by ruling appellant waived his right to counsel when Weaver interrogated him under these circumstances.

Introduction

The state's theory of the case was that appellant shot and killed the two victims because they stole one thousand fifty dollars from him during a marijuana drug deal. Appellant did not speak to the police upon his arrest. He invoked his right to counsel instead.

Appellant's statement

In appellant's statement to Assistant Sheriff Weaver on January 8, 2003 he told Weaver that he had telephoned Wilford Brown wanting to purchase marijuana from him on August 3, 2002. The two men arranged to get together that day and they later met up with Elton Rutledge and Brian Elliott. The four men shared drugs together. However, Wilford Brown suddenly pulled out a gun and demanded the money -- over one thousand dollars -- that appellant had in his possession. Brown also demanded Elliott's money. See State's Exhibit 41 (Tape of appellant's statement that is on file with this Court).¹

During the struggle that followed, Brian Elliott was able to disarm Brown. Elliott shot both Brown and Rutledge. Appellant helped Elliott drag the bodies into the woods because Elliott "was freaking out." See State's Exhibit 41 (Tape of appellant's statement that is on file with this Court).

Appellant said that there was blood in the backseat of the vehicle because of the shooting. Appellant told the police that Elliott threatened that if appellant called the police that he would kill his family “and drink my baby’s blood.” Another friend, Denise Langston told appellant that the police would not believe him anyway, and that he would be arrested.

Appellant informed Weaver that Elliott had a bad crack addiction, and Elliott apparently soon lost interest in what had occurred. However, appellant told Weaver that he got the assistance of Louis Bazen in moving the bodies to another location because he was worried they would be discovered. See State’s Exhibit 41 (Tape of appellant’s statement that is on file with this Court).

The aftermath

Bazen apparently became worried about moving the bodies. He claimed his “conscience was bothering me,” and he contacted the police. R. 626, l. 18 – 627, l. 15. Tracking dogs discovered the dead bodies on September 13, 2002 on Walker Hunt Club Road. There was corroborating evidence that the bodies had been moved to Walker Hunt Club Road from the woods. R. 642, l. 6 – 647, l. 16.

The badly decomposed body of Brown was identified from dental records. Family members identified Rutledge’s shoes that were found at the site of his burial on Walker Hunt Club Road. R. 677, l. 1-19; R. 718, l. 8 – 719, l. 16.

Suppression hearing

Prior to trial a Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964), hearing was held. It was undisputed, as will be seen infra, that upon his arrest on September 13, 2002

¹ Court’s Exhibit 7, a transcript of the statement is included in the record on appeal. R.

appellant refused to talk to the police, and that he requested an attorney. R. 704, l. 19 – 714, l. 18. Kenneth Owens was the Chief of Operations at the Georgetown County Detention Center on January 8, 2003. R. p. 295, ll. 7 – 22. Owens testified he had talked to appellant twenty to thirty times since his arrest. R. p. 296, ll. 5 – 6.

Owens said on January 8, 2003 appellant came to his office, and said he wanted “to talk Sheriff Carter Weaver.” R. p. 296, ll. 14 – 22. Owens contacted Chief Michael Schwartz, the administrator at the jail, and told him appellant wanted to talk to the Assistant Sheriff, Weaver. R. p. 296, l. 23 – p. 297, l. 2.

Schwartz testified he therefore telephoned Weaver on January 8, 2003. Schwartz told Weaver that appellant “wanted to speak to him.” R. p. 306, l. 10 – p. 307, l. 2.

Weaver testified that he took a statement from appellant that day at 3:50 p.m. “in the victim’s advocate’s office at the detention center.” R. p. 310, ll. 14 – 24. Weaver said he was advised over the telephone that appellant wanted to “sit down and talk with me and give me a statement as to what happened.” R. p. 311, ll. 15 – 18.

Weaver acknowledged that when appellant was arrested that he had asked for an attorney and “the interview ceased.” R. p. 312, ll. 3 – 7. Weaver said he read appellant his Miranda warning and appellant then gave him the statement at issue. R. p. 314, l. 1 – p. 316, l. 20.

Weaver acknowledged that he had received a number of phone calls from appellant since his arrest, and he apparently ignored them. “[A]t no time did I take a statement or did he give me a statement except on January 8.” Weaver claimed that January 8, 2003 was the

first time he was told that appellant wanted to tell him what had happened. R. p. 320, ll. 10 – 17.

The defense introduced documentary evidence during the Jackson v. Denno hearing showing that appellant had attempted to call one of his attorney's, Wesley Locklair, on January 8, 2003 at 2:45. That was just prior to appellant's meeting with Weaver. Law enforcement was aware of that attempt to reach Locklair. R. p. 300, l. 17 – p. 304, l. 25.

Arguments and ruling

Defense counsel Locklair argued that even if appellant initiated contact with Weaver that day, it was clear that law enforcement knew appellant was attempting to contact his attorney at the same time. Locklair argued "his subsequent phone call to my office ended the initiation of that [contact], and at that point we think that the statement was taken in violation of his constitutional rights, and we would ask the court to suppress the statement." R. p. 324, l. 24 – p. 326, l. 18.

Defense counsel argued that even if appellant initiated contact "the second I say I want my attorney it all ends, all that initiation is gone as if it never happened." Defense counsel Locklair urged that appellant should not be deemed to have waived his right to counsel under these circumstances. R. p. 329, ll. 6 – 25.

The judge ruled appellant initiated the contact with the police and that his statement was admissible. R. p. 331, l. 2 – p. 333, l. 9.

The solicitor would later ridicule appellant's assertion in his statement that the two drug dealers were shot in the manner described by appellant in his taped statement to Weaver. The judge gave the jury the option of a verdict of a not guilty by reason of self-defense claim, and charged them on the defense of others. R. p. 830, l. 25 – p. 834, l. 10.

Discussion

The state has the burden of proving by a preponderance of the evidence that a defendant has voluntarily waived his right to counsel. State v. Franklin, 299 S.C. 133, 137, 382 S.E.2d 911, 913 (1989). In Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880 (1981),² the United States Supreme Court held that a waiver of the right to counsel must not only be voluntary, but it also must constitute a knowing and intelligent relinquishment or abandonment of that right.

To invoke his Fifth Amendment right to counsel a defendant must make some statement that can reasonably be construed as an expression of his desire for the assistance of an attorney to aid him with the custodial interrogation by the police. McNeil v. Wisconsin, 501 U.S. 171, 178, 111 S.Ct. 2204 (1991).

In this case, Assistant Sheriff Weaver was aware that appellant had refused to talk with the police, and requested an attorney upon his arrest. Appellant had telephoned Weaver numerous times to speak with him, and Weaver had never responded. The one time Weaver chose to respond, the day appellant gave his statement, the police were aware that appellant had also called defense counsel Locklair eliciting his assistance.

Under the unusual facts of this case, the judge erred by ruling appellant waived his right to counsel. Cf. State v. Binney, 362 S.C. 353, 608 S.E.2d 418 (2005).³ Appellant's statement should have been suppressed, and he should be granted a new trial since the solicitor successfully urged the jury to reject appellant's statement that was obtained in violation of his right to counsel.

²

³ Pending on certiorari in the United States Supreme Court.

Respectfully submitted,

Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of August, 2005.

STATE OF SOUTH CAROLINA

County of GEORGETOWNJody LYNN WARD #300644

Full name and prison number (if any) of Applicant,

vs.

STATE OF SOUTH CAROLINA

Name of Respondent.

In the Court of Common Pleas

CLERK OF COURT

JUL 11 PM 2:09

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention LEE CORRECTIONAL INST. 990 WISACKY HWY
BISHOPVILLE, SOUTH CAROLINA 29010
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS
P.O. DRAWER 421270 GEORGETOWN SOUTH CAROLINA 29442
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 03-G-5-22-1030; 03-G-5-22-1031
 - (b) MURDER, TWO COUNTS
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) MARCH 18, 2004
 - (b) LIFE SENTENCES, RAN CONCURRENT.
 - (c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty ✓ _____
 (c) after a plea of nolo contendere _____

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

YES

7. If you answered "yes" to (6), list

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

- i. SOUTH CAROLINA COURT OF APPEALS, SUBSEQUENT REHEARING DENIED.
 ii. SOUTH CAROLINA SUPREME COURT
 iii. _____

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

- i. APPEAL DISMISSED, ANDERS -VS- CALIFORNIA, 386 U.S. 738 (1967).
 ii. WITHDREW PETITION FOR WRIT OF CERTIORARI June 29, 2007
 iii. _____

(c) the date of each such result:

- i. JANUARY 26, 2007
 ii. JUNE 29, 2007 Withdrew Petition June 29, 2007
 iii. _____

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

- i. ANDERS -VS- CALIFORNIA, 386 U.S. 738 (1967); STATE -VS- WILLIAMS, 406 S.E.2d 357 (1991).
 ii. WITHDREW PETITION FOR WRIT OF CERTIORARI
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

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

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

- (a) SEE ATTACHED SHEET.
 (b) _____
 (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) SEE ATTACHED SHEET
 (b) _____
 (c) _____

1173 Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (1) identify:

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Non Applicable
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. MARGARET ANN KNEECE, ESQUIRE
P.O. Box 3966 PAWLEY'S ISLAND, SOUTH CAROLINA 29585
- ii. JOHN WESLEY LOCKAIR, ESQUIRE
3575 Highway 17 BUSINESS MURRELLS INLET, SOUTH CAROLINA 29576
- iii. ROBERT M. DUDEK, ESQUIRE
P.O. Box 11589 Columbia SOUTH CAROLINA 29211-1589

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

- i. 16.(a),(b),(c). (a) Arraignment, (b) trial; (c) sentencing
- ii. 16.(a),(b),(c). (a) Arraignment, (b) trial; (c) sentencing
- iii. 16.(d) (d) Appeal

18. State clearly the relief you seek in filing this application.

SEE ATTACHED SHEET

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

No

174 947

County of GEORGETOWN

VERIFICATION

175 948

I, Jody LYNN WARD #300644, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jody Lynn Ward

SWORN to and subscribed before me this 6
day of July, 2007
Debra Sines (L.S.)
Notary Public

2007 CP22 915

CLERK OF COURT

2007 JUL 11 PM 2:09

FILED

My Commission Expires: 11-4-2015

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

I, Jody LYNN WARD #300644, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Jody Lynn Ward
Applicant

SWORN or affirmed to and subscribed before me this
6 day of July, 2007
Debra Sines
Notary Public

My Commission Expires 11-4-2015

CLERK OF COURT

2007 JUL 11 PM 2:09

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT

Attached sheet From Questions ⑨(a), ⑩(a) page 2, ⑪ page 4

Jody Lynn Ward *300644

Applicant pro. se

Application

For

-vs-

post Conviction Relief

ss 17-27-10

State of South Carolina

Respondent

The Applicant Herein was Arrested, Tried, Convicted upon Indictments For Murder. He were represented by Two Attorneys as Indicated, Attorneys Applicant submit/contends provided Ineffective Assistance in Controvention/degradation of Applicant's Rights, Protections, Guarantees Pursuant to the Sixth Amendment to the United States Constitution, South Carolina Constitution Art. 1, § 14; South Carolina Code § 17-23-60; Strickland -vs- Washington, 466 U.S. 668, 688, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984). As their conduct so undermined the proper Functioning of the Adversarial process that the Trial cannot be relied upon as having produced a Just result.

Counsel's Representation Fell below an Objective Standard of Reasonableness and But for Counsel's unprofessional Errors a Reasonable Probability Exist That the result of the Proceeding would have been different.

STATE OF SOUTH CAROLINA _____ COUNTY OF GEORGETOWN

Page Two

Wherefore, Applicant Justly demand The Reversal of
His Convictions

Jody Lynn Ward #30064

Applicant pro. SE

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Jody L. Ward SCID 300644

V.

State of South Carolina.

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT**

2007-CP-22-0915

**SUPPLEMENT TO APPLICATION FOR
POST-CONVICTION RELIEF**

FILED
GEORGETOWN COUNTY, S.C.
2008 APR 14 PM 3:15
CLERK OF COURT
ALTIMA WHITE
Settled
the extent
the outcome

In support of his claim for post conviction relief, the petitioner alleges that counsel rendered ineffective assistance in the following particulars, that petitioner was prejudiced to the extent that there exists a probability that counsel's deficient performance affected the outcome of petitioner's trial, and that as a result petitioner is entitled to the grant of a new trial.

- 1) Counsel for petitioner was ineffective by failing to object when the prosecutor argued lack of remorse to the jury during closing argument.
 - a. During closing argument, the prosecutor stated: "His demeanor on that tape is almost unbelievable. It is simply cold and calculated. It is – there is not a hint of emotion at any point on that tape. He talks about going back to retrieve the bodies and Assistant Sheriff Weaver asked him about digging the hole and he said, 'Well, no, no, I didn't dig a hole. I just threw some dirt on them.' He says, 'That's two grown men you couldn't, couldn't dig a hole for them. You just' – he just threw some dirt on them, not a bit of emotion. Jody Ward is concerned about nothing but Jody Ward. Protecting Jody Ward is his only interest, not, *not the least bit of remorse*, not the least bit of concern about the fate of the two people that he had killed." Rec. on App. 787, 17. (emphasis added).
 - b. The prosecutor continued to argue lack of remorse by stating: "You know, again, his cold and calculated nature after he says that Brian Elliot had really killed these fellows in self defense, albeit, what does he do? He's driving around Georgetown looking for something to eat, I mean, not a second thought about it. That's what he testifies that he was doing. He's driving around thinking about McDonald's." Rec. on App. 788, 11.
 - c. Counsel was ineffective for failing to object to this argument, and petitioner was prejudiced "to the extent that there exists a probability that counsel's deficient performance affected the outcome of petitioner's trial." *State v. Fossick*, 317 S.C. 375 (1995) (petitioner entitled to relief on claim

that counsel failed to object to prosecutor's statement in closing argument that petitioner showed no remorse); State v. Johnson, 293 S.C. 321 (1987) ("No right is more fundamental than the right of an accused to plead not guilty . . . comments by the prosecution upon an accused's failure to express remorse invite the jury to draw an adverse influence merely because the Defendant did not appear penitent.").

- 2) Counsel for petitioner was ineffective by failing to object when the prosecutors repeatedly vouched for the credibility of witnesses and placed their personal opinions before the jury.
 - a. The solicitors repeatedly vouched for the credibility of their own witnesses. Beginning with the opening statement, the prosecutor stated: "Most of the evidence in this case, and Judge Thomas referred to this. People are going to put their hand on the Bible. They're going to swear to tell the truth. They are going to get into this chair . . ." Rec. on App. 385, 9.
 - b. In closing argument, the prosecutor described in detail all of the factors that he believed corroborate the testimony of Denise Langston, Rec. on App. 767-771, and in conclusion the prosecutor stated: "She admitted some stuff that wouldn't make you proud if you were her parent, but I'll submit to you that she was credible." Rec. on App. 771, 23.
 - c. The prosecutor went on to say: "There were several embarrassing things that Denise Langston admitted to that nobody would be proud of saying, but she told the truth and she told the whole truth." Rec. on App. 772, 8.
 - d. The prosecutor continued by listing other testimony and evidence that he believed corroborated Denise Langston's testimony, Rec. on App. 772 - 774, and stated: "Finally, you know that she told the truth because her testimony was corroborated." Rec. on App. 772, 12.
 - e. The prosecutor stated: "Tracy Collins testified. I think she was a very credible witness . . ." Rec. on App. 778, 18.
 - f. The prosecutor stated: "I submit to you that Louis Bazen was a very credible witness, that he didn't try to hide anything, that he didn't do anything but tell the truth as he knew it, and he told all the truth." Rec. on App. 783, 19.
 - g. The prosecutor stated, in regard to Melissa Elliot, "she told the truth." Rec. on App. 794, 17.
 - h. Counsel was ineffective for failing to object to these statements because they improperly bolstered the credibility of the government's witnesses. Gilchrist v. State, 350 S.C. 221 (2002)(petitioner was prejudiced by

counsel's failure to object to state's vouching for witness's credibility); Matthews v. State, 350 S.C. 272 (2002) (counsel rendered ineffective assistance by failing to object to solicitor's comments vouching for the credibility of state's witness). The fact that the bolstering by the prosecution of the government's witnesses was pervasive and not limited to one occurrence or any one witness demonstrates that prejudice resulted, and that there is a reasonable probability that the outcome at trial would have been different. Id.

- 3) Counsel for petitioner was ineffective by failing to object when the prosecutors repeatedly stated their personal opinions regarding the credibility of the petitioner and the defense theory of the case.
 - a. In the opening statement, the prosecutor stated, "there's no evidence in this case that's going to indicate that he had anything to do with it other than the statement of the Defendant, *and I don't believe that.*" Rec. on App. 384, 15. (emphasis added)
 - b. In closing argument, the prosecutor, referring to a statement by petitioner, stated, "that's a lie and he knew it was a lie." Rec. on App. 776, 25.
 - c. In reference to the defense's theory of the case, the prosecutor stated, "that's just simply not believable because it's not the truth." Rec. on App. 778, 16.
 - d. The prosecutor stated, "His demeanor on that tape is almost unbelievable." Rec. on App. 787, 17.
 - e. The prosecutor stated, "He's also caught lying a couple of times on the tapes, a couple, you heard it. You can judge for yourselves whether he's credible." Rec. on App. 788, 20.
 - f. The prosecutor stated, in reference to petitioner's taped interview, "Shortly thereafter, he just goes to stammering and stuttering about just completely unbelievable statement." Rec. on App. 789, 8.
 - g. The prosecutor stated, "Another thing he's lying about is Carter Weaver says . . ." Rec. on App. 789, 11.
 - h. The prosecutor stated, in reference to petitioner's statement, "Now, how unbelievable is it that they have this knock down, drag out argument . . ." Rec. on App. 790, 2.
 - i. The prosecutor stated, "One more thing he gets caught in lie as far as he goes out there to move the bodies." Rec. on App. 791, 3.

- j. The prosecutor stated, "He just plain admits that he's lying. There's no question about it." Rec. on App. 791, 16.
 - k. The prosecutor stated, in reference to a defense theory of self-defense, "... it seems absurd, it's ridiculous, ..." Rec. on App. 795, 12.
 - l. The prosecutor said, "He lies ..." four times within four lines. Rec. on App. 797, 16.
 - m. The prosecutor, in reference to the defense theory of the case, stated, "It's simply ridiculous." Rec. on App. 797, 25.
 - n. The prosecutor, in reference to petitioner's statement, stated, "... the man you heard on that tape giving you that ridiculous story ..." Rec. on App. 798, 3.
 - o. The prosecution cannot comment on his personal views to the jury, and counsel was ineffective for failing to object to these statements. Thompson v. Aiken, 281 S.C. 239 (1984) (prosecutorial comment as to prosecutor's personal opinion in seeking death penalty warranted new trial as to sentence); State v. Woomer, 277 S.C. 170 (1981) (solicitor's statement that he had already made the same decision that he was asking the jury to make was improper, and sentence of death was set aside). There is a reasonable probability that the outcome at trial would have been different, given the pervasiveness of the prosecutor's expressions of his personal view that the petitioner is a liar and that the defense theory was absurd and ridiculous.
- 4) Counsel for petitioner was ineffective for failing to request jury instructions on manslaughter and involuntary manslaughter.
- a. There was sufficient evidence at trial to support a jury verdict of manslaughter, under the hand of one is the hand of all theory. In the petitioner's audiotaped statement, which was entered into evidence by the solicitor, Rec. on App. 738, 7, petitioner stated that Wilford Brown attempted to rob the petitioner and Brian Elliot, and then fired a pistol into the back of the vehicle. Rec. on App. 873. Brian Elliot and Wilford Brown then struggled over the gun before it went off, striking Wilford Brown in the head. Id. This was sufficient evidence for the jury to conclude that the victims were attempting to rob the petitioner and Brian Elliot, and that Brian Elliot killed the victims in the heat of passion upon sufficient legal provocation. See State v. Harris, 354 S.C. 382 (2003) (discussion of voluntary vs. involuntary manslaughter, post conviction relief not granted where there was not sufficient legal provocation to support manslaughter charge); State v. Chatman, 336 S.C. 149 (1999) (appellant entitled to instruction on involuntary manslaughter where

STATE OF SOUTH CAROLINA)

GEORGETOWN COUNTY)

Jody L. Ward)

Petitioner)

v.)

State of South Carolina,)

Defendant.)

IN THE COMMON PLEAS COURT

Affidavit of Service

Case No.: 2007-CP-22-0915

I, Heather Harris, on the 9 day of April, 2008, served the **Supplement to Application for Post-Conviction Relief** in the above referenced case, by US mail addressed to:

Office of General Counsel
Christina Catoe, Asst. Attorney General
P.O. Box 11549
Columbia, SC 29211

Heather Harris
Heather Harris
Paralegal

SWORN TO before me this 9
day of April, 2008.

B. J. P.
Notary Public for South Carolina
My Commission expires: 6/17/2012

FILED
GEORGETOWN COUNTY, S.C.
2008 APR 11 PM 3:15
ALISA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2007-CP-22-0915

Jody L. Ward, 300644,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

(Attorney Appointment Requested)

The Respondent, making its Return to the Application for post-conviction relief filed July 11, 2007, by Jody L. Ward, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. The Applicant was indicted at the July 2003 term of the Georgetown County Grand Jury for two counts of murder (2003-GS-22-1030 & -1031). Margaret Ann Kneece, Esquire, and J. Wesley Locklair, III, Esquire, represented Mr. Ward on the charges. The Applicant underwent a jury trial beginning March 15, 2004, and on March 18, 2004, was convicted and sentenced by the Honorable Paula H. Thomas to concurrent life sentences. The Applicant appealed his convictions, and after a review pursuant to Anders, his appeal was dismissed on January 26, 2007 (2007-UP-048). Rehearing was denied on March 22, 2007, and the Applicant Petitioned the Supreme Court for a Writ of Certiorari; however, he withdrew his Petition on June 29, 2007.

Incorporated by reference are the records of the Georgetown County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The appellate records and the trial transcript will be supplemented upon receipt.

II.

In his Application, Mr. Ward alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

III.

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); see also Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000). 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." Id. at 117-18, 386

S.E.2d at 625 (quoting Strickland, 466 U.S. at 689).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation respecting ineffective assistance of trial counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this claim. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that an attorney be appointed for Mr. Ward and an evidentiary hearing be held on the issue of ineffective assistance of counsel.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

By: Christina J. Catoe

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

Columbia, South Carolina
October 5, 2007

3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2007-CP-22-0915

Jody L. Ward, # 300644,

Applicant,

v.

State of South Carolina,

Respondent.

FINAL ORDER OF DISMISSAL

(Evidentiary Hearing Held)

PROCEDURAL HISTORY

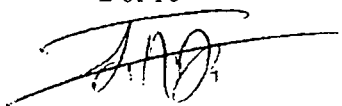
This matter comes before the Court pursuant to an Application for post-conviction relief filed July 11, 2007, by Jody L. Ward. Respondent made its Return on October 5, 2007. The Applicant served an amendment to his Application on April 9, 2008. An evidentiary hearing was convened at the Horry County Courthouse on May 1, 2008. The Applicant was present in court and represented by Bobby G. Frederick, Esquire. The Respondent was represented by Christina J. Catoe, Assistant Attorney General.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. The Applicant was indicted at the July 2003 term of the Georgetown County Grand Jury for two counts of murder (2003-GS-22-1030 & -1031). Margaret Ann Kneece, Esquire, and J. Wesley Locklair, III, Esquire, represented Mr. Ward on the charges. The Applicant proceeded to trial on March 15, 2004, and was convicted by the jury on March 18, 2004. He was sentenced by the Honorable Paula H. Thomas to concurrent life sentences. The Applicant appealed, and after a review pursuant to Anders v. California, his convictions were affirmed on January 26, 2007 (2007-UP-048). Rehearing was denied on March 22, 2007. The Applicant petitioned the S.C. Supreme Court for a Writ of Certiorari; however, he withdrew his Petition on June 29, 2007.

In his action for post-conviction relief, the Applicant alleged ineffective assistance of counsel, including the following specific allegations: (1) ineffective assistance of counsel for failure to object to the solicitor's comments on lack of remorse in his closing argument; (2) ineffective assistance of counsel for failure to object to the solicitor's vouching for the State's witnesses and injecting his personal opinions; (3) ineffective assistance of counsel for failure to object to the solicitor's comments regarding the Applicant's credibility and the defense theory; and (4) ineffective assistance of counsel for failure to request jury instructions on manslaughter and involuntary manslaughter. The Applicant's amendment, entitled "Supplement to Application for Post-Conviction Relief," specifically references the page numbers for the comments he alleges were improper. This Court has had the opportunity to review the record in its entirety, including the Applicant's PCR file, which incorporated the trial transcript, the records of the Georgetown County Clerk of Court regarding the conviction, and the Applicant's records from the South Carolina Department of Corrections. This Court also heard the testimony of the Applicant and his former trial attorneys, J. Wesley Locklair, Esquire, and Margaret Ann Kneece, Esquire, at the PCR hearing, and listened to the arguments presented. Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003).

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); see also Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Dawkins v. State 346 S.C. 151, 551 S.E.2d 260



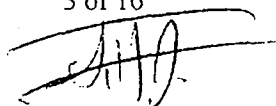
(2001). The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, supra. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood, supra, at 109, 525 S.E.2d at 517 (citations omitted). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. When a defendant challenges his conviction after trial, the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt. Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007). (citations omitted). In order to receive relief, an applicant must prove both ineffective assistance and resulting prejudice. See Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

DISCUSSION OF THE FACTS

Wesley Locklair's Testimony

Wesley Locklair, Esquire, testified that he, along with Margaret Kneece, represented the Applicant at his trial in 2004. The Applicant was arrested for the murders of Elton Rutledge, Jr., and Wilford Brown after his brother-in-law, Louis Bazen, informed Georgetown law enforcement that he suspected that the Applicant was involved in the two men's deaths, and that he may have, without knowing it, assisted the Applicant in moving the victims' bodies in late August 2002. The Applicant was arrested the next day, and



shortly thereafter, the Applicant's friend Denise also came forward and informed police about admissions the Applicant made to her regarding the crimes. Mr. Locklair stated that there was initially some discussion about the death penalty, but the solicitor did not ultimately pursue it.

Mr. Locklair testified that he and the Applicant discussed the charges, what the State would be required to prove at trial, and the possible penalties upon conviction. They also discussed the Applicant's version of the facts, and the Applicant initially told him that there was a struggle between himself and the victims, and he then shot the victims. At that time, he did not mention anyone else being involved. This version of the facts was generally consistent with the other evidence in the case. Mr. Locklair stated that he and Ms. Kneece did file standard discovery motions, and although they had numerous problems with timely receipt of discovery, they did eventually receive what they perceived was all of the evidence. In fact, prior to trial, there were two different hearings held on the defense's motion to disqualify the solicitor due to the discovery problems. However, the motion was denied both times. Mr. Locklair stated that once they did receive the discovery, he came to the conclusion that the evidence against the Applicant was strong.

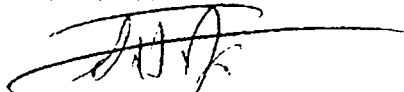
Mr. Locklair stated that there were numerous witnesses for the State, including the Applicant's former girlfriend, Denise Cox. She testified that the Applicant confessed to her that he shot the victims over a drug deal gone bad, and he then threatened to kill her if she told anyone. At trial, Denise was cross-examined her on her drug use and regarding the fact that she was only testifying for the State because she was threatened with criminal charges. She admitted that she took a trip across the state with the Applicant only a few days after the murders. Mr. Locklair recalled Louis Bazen, the Applicant's brother-in-law, being a very credible witness, and recalled that his fear about his own unwitting involvement was readily apparent. Mr. Bazen testified that he drove the Applicant to move something in the woods from one spot to another, and although the Applicant at the time told him it was marijuana plants, he soon began to

suspect that he had in fact helped the Applicant move the victims' remains. Later, the Applicant made statements to Mr. Bazen that he had "gotten rid of" the victims. Another State's witness, Melissa Elliott, testified that, although the Applicant named her husband Brian as the actual shooter of the victims, her husband was in fact at home all day on the day of the incident.

Mr. Locklair testified that he learned of the Applicant's January 2003 statement to Assistant Sheriff Carter Weaver after the statement had already been made; he had not been aware that the Applicant was planning to make a statement. He noted that the Applicant did have access to discovery prior this, and the Applicant's statement actually makes reference to other witness statements. The Applicant's statement was recorded on tape and later transcribed. It was taken after the Applicant, who was in custody at the time, specifically requested to talk to Carter Weaver. In the statement, the Applicant admitted that he moved the victims' remains, but he indicated that Brian Elliott was the actual shooter. He stated that the four of them were smoking marijuana in a secluded area on a dirt road, and that one of the victims, Wilfred Brown, pulled a gun, shot into the vehicle, and demanded money. The Applicant said that after a struggle between Brian and Wilfred Brown over the gun, the gun went off and shot Wilfred, then Brian also shot Elton Rutledge.

Mr. Locklair indicated that the Applicant's statement was the only evidence in the case that another person was involved. In addition, the statement did not match up with other evidence—specifically that the forensic evidence revealed that the gunshot to Wilford Brown was to the back of the head. It also did not match up with the fact that the Suzuki Sidekick in which the four of them were supposedly riding that day had a baby seat still strapped in the rear seat.¹ Mr. Locklair stated that it would have been extremely difficult for four grown men to fit into the Suzuki in that condition. Mr. Locklair noted that, over his objection, the State was permitted to introduce photographs of the backseat of the vehicle including the

¹ The vehicle had been recovered from the bottom of Lake Dawoo.



baby seat.

Although they made a motion to suppress the Applicant's statement, and a Jackson v. Denno hearing was held, the motion was denied, and the jury did have the opportunity to hear the tape at trial. In anticipation of this, of course, they developed a defense that essentially presented Brian Elliott as the shooter, and also that he shot the victims in self-defense. Mr. Locklair could not specifically recall the details of the charge conference in this case, since several years have passed since the trial, but he did request self-defense. He also indicated that if he requested voluntary and involuntary manslaughter, the request was not placed upon the record; however, those two lesser-included offenses did not necessarily fit with the facts that came out at trial. The statement of Denise Cox indicated that the Applicant threatened to kill one of the victims earlier that day, and the testimony of other witnesses indicated that the Applicant was overheard bragging about getting rid of the boys who tried to rip him off for drugs.

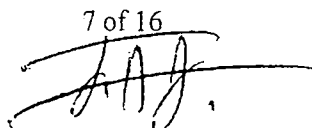
Mr. Locklair acknowledged that there were several instances where he could have objected to things that the solicitor did, but that he did not for various reasons. First, he did not find the solicitor's comments regarding the Applicant's "lack of remorse" to be particularly objectionable because of the Applicant's own taped statement being in evidence. The solicitor's comments were not focused on the defendant's right to remain silent; instead, they were commenting more upon the Applicant's demeanor on the tape and on the inconsistencies in his story. Furthermore, the Applicant in his statement did admit to certain acts, and the jury could certainly evaluate his demeanor regarding those admissions from the taped statements. Mr. Locklair also indicated that the solicitor did, in closing argument, use the words "I think" several times. Mr. Locklair testified that based upon his experience with trying criminal cases, he no longer generally objects to comments such as those due to their generally being innocuous, and because objecting after it has already been said simply wastes time and it just focuses the jury on him for objecting to it. Mr. Locklair stated that the fact that he had the last closing argument would have permitted him to

respond to all of the solicitor's comments and to re-focus the jury on the defense issues. In any event, the court charged the jury several times that the attorneys' arguments are not evidence, and, in fact, both the solicitor and Mr. Locklair pointed this out as well.

Margaret Ann Kneece's Testimony

Margaret Kneece testified that she became involved in the case around February of 2003, after Wes Locklair had already been representing the Applicant for about six months. She testified that it was a difficult case because of the number of people involved, many of whom were drug users, and because the story kept changing. Accordingly, the defense tactics had to evolve to keep up. Ms. Kneece indicated that they were very careful in this case to leave no stone unturned and to attempt to provide the Applicant with a fair trial. In that vein, when they became aware of problems with discovery being properly provided, they documented all issues and made two separate motions for the solicitor's office to be disqualified or for the problems to be otherwise corrected. She stated that, at trial, although the defense tactics had to keep changing, they did focus on the character of the victims, specifically their drug involvement, as well as upon the lack of credibility, and bias, of the State's witnesses.

She stated that she and Mr. Locklair attempted to be as thorough as possible in this very serious case, and were up and down like "Mexican jumping beans" because the numerous objections they made. She stated that by the close of the State's case, the jury appeared tired and seemed non-receptive to further unnecessary delay in the case. She also described the jury as appearing to be annoyed with Deputy Solicitor Bryan and some of the things he was doing. For that reason, they decided not to object to anything further, particularly with regard to Mr. Bryan's closing argument, unless it was critical to the case, because they did not want to anger the jury and wanted to give their defense some credibility. She stated that they felt that the opportunity for last closing argument would be sufficient to address the appropriate issues and respond to the things the solicitor said in his closing. Ms. Kneece felt that having the "last

7 of 16


case. S
with no
tailored
Accord
the state
indicate
their ha

case. S
with no
tailored
Accord
the state
indicate
their ha

case. S
with no
tailored
Accord
the state
indicate
their ha

case. S
with no
tailored
Accord
the state
indicate
their ha

case. S
with no
tailored
Accord
the state
indicate
their ha

CONCLUSIONS OF LAW

This Court finds Attorney Locklair's testimony to be credible and candid, and Ms. Kneece's testimony also highly credible. The Applicant's testimony was not particularly pertinent to the factual issues. For these reasons, in conjunction with this Court's review of the entire record, this Court will find that the Applicant has not met his burden of proof in this matter.

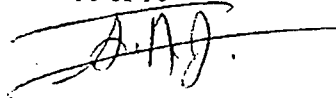
I. – Lack of Remorse Comments

This Court does find that the Applicant's attorneys' conduct fell below an objective standard of reasonableness, pursuant to Strickland v. Washington, in three areas. First, counsel should have objected to the solicitor's comments regarding the Applicant's "lack of remorse." (See Trial Transcript, pages 787-788.) The attorneys' deliberate strategy of refraining from making objections, because of their perception that the jury was restless and tired of objections, should not have extended to comments regarding the Applicant's remorse for the crime of murder. See State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987) (comments upon an accused's failure to express remorse improper because they invite the jury to draw an adverse inference merely because the defendant did not appear penitent). However, the Applicant's admissions in his voluntary statement – that he helped to cover up the crimes – were put into issue when he came forward to make the statement. In addition, any inconsistencies in the statement were properly before the jury. Therefore, the solicitor's comments specifically regarding the Applicant's demeanor on the tape were not improper, as the jurors could listen to the tape and judge it for themselves. See Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004) ("A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony.") (citation omitted); see also State v. Matthews, 296 S.C. 379, 373 S.E.2d 587 (1988) (solicitor's comment upon the defendant's own statements contained in a letter he wrote was not an improper indirect comment upon the failure to testify because comment focused upon the letter in evidence).

Having found that counsel should have objected to comments specifically going to the Applicant's lack of remorse, this Court moves on to the second prong of Strickland, that the Applicant prove prejudice flowing from the failure to object. Improper comments in closing argument do not require reversal if the Applicant fails to prove he did not receive a fair trial because of the alleged improper argument. State v. Rice, 375 S.C. 302, 315, 652 S.E.2d 409, 415 (2007). "When objection is timely made to improper remarks of counsel, the judge should rule on the objection, give a curative charge to the jury, and instruct offending counsel to desist from improper remarks." Rice, supra, at 334-35, 652 S.E.2d at 425. Therefore, had counsel objected, the court would have told the solicitor to cease those comments from that point forward. In this case, even without any objection having been made, the solicitor did not continue to raise the issue of the defendant's remorse. Therefore, potential prejudice from the failure to object was significantly lessened. In addition, this Court does find that Attorney Locklair specifically addressed the "remorse" issue in his closing argument, telling the jury that the defendant's remorse was irrelevant, that the case was not a popularity contest, and that whether the defendant was "likeable" or whether he was "cold-hearted" for helping to cover up the crimes was not the issue. This directly responded to the solicitor's comments on lack of remorse, and accordingly, this Court finds that any prejudice was effectively neutralized. Accordingly, this Court finds that the Applicant has not proven, by a preponderance of the evidence, that the comments of the solicitor affected the outcome of the trial.

II. – Improper Vouching

Secondly, this Court finds that the Applicant's attorneys should have objected to the solicitor's vouching for the State's witnesses. "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. 'A solicitor has a right to state

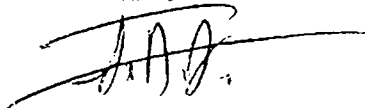


his version of the testimony and to comment on the weight to be given such testimony.’ However, ‘[a] solicitor may not vouch for the credibility of a State’s witness based on personal knowledge or other information outside the record.’” Smith v. State, 375 S.C. 507, 522-23 654 S.E.2d 523, 531-32 (2007) (internal citations omitted). In this case, the solicitor’s assurances to the jury that his witnesses were “telling the truth” were improper, and counsel should have objected to them, especially where these comments continued throughout the closing argument. The solicitor also improperly used the pronoun “I” on occasion. However, many other comments challenged by the Applicant in his PCR do not constitute true “vouching” and were not objectionable, such as pointing to the evidence in the record that corroborated witness testimony. (See Trial Transcript, page 767-771).

In any event, in light of the fact that the solicitor, more than one time, specifically told the jury that they had to judge credibility for themselves, and considering that the judge charged the jury that they were the sole judges of credibility and that the attorneys’ arguments were not evidence, the Applicant has failed to prove that he was prejudiced by the solicitor’s vouching. This is especially so in light of the overwhelming evidence of his guilt. See Smith, supra. Therefore, the Applicant did not prove that the result of the trial would have been different had trial counsel objected to the vouching.

III. – Comments on the Defendant’s Credibility and Defense Theory

Again, the solicitor may properly state his version of the evidence and comment on the weight of such evidence, i.e., whether it is reliable or not. See Randall, supra; see Smith, supra. Here, properly in evidence (although over the objection of the defense) was the Applicant’s own voluntary statement to police. The jury could properly consider all aspects of the statement, including why it was made at that particular time in the progression of the case, how the defendant sounded on the tape as far as his demeanor, whether the story he was telling was plausible and fit with the other evidence in the case, and

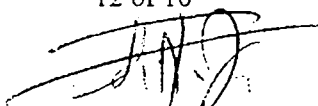


whether the statement was internally consistent. Here, the solicitor argued at length that the defendant was not credible, i.e., was "lying," and that his version of events was "ridiculous." He also pointed out that the only evidence in the case that pointed guilt at anyone else was the defendant's own statement, made five months after his arrest and after he had access to discovery.

Although the solicitor's argument regarding the defendant's statement was certainly vigorous, and although he did improperly couch a few of his comments by using the pronoun "I," this Court finds that, on the whole, his argument was proper considering the evidence in the record. Therefore, this Court cannot say that counsel was ineffective for failing to object to this line of argument, particularly where the statement was admitted over counsel's strenuous objection, and where counsel was able to specifically respond in the last closing argument. Attorney Locklair pointed out in his closing that the Applicant's statement fit with the evidence in the car, and that if Brian Elliott were not involved, he should have been called as a witness at trial but was not. Accordingly, this Court finds that the Applicant failed to prove ineffective assistance of counsel or prejudice as to this particular claim.

IV. - Voluntary/Involuntary Manslaughter Charge

Although the record in this case does indicate that a charge conference was held, it was not placed on the record. At the PCR hearing, neither attorney could specifically recall what was discussed in the charge conference or what they requested, although they indicated that it was likely that they did request voluntary and involuntary manslaughter. However, the record indicates that those two instructions were not in fact charged to the jury, and this Court is therefore unable to evaluate whether the attorneys made a proper request for such charges. Even after the trial court asked if there was anything that counsel wanted to put on the record, the only response was a request for a charge on "addict testimony." (See Trial Transcript pages 765-766). Therefore, this Court finds that the attorneys were ineffective for failing to place on the record a request to charge, or an objection to the failure to charge, voluntary and involuntary

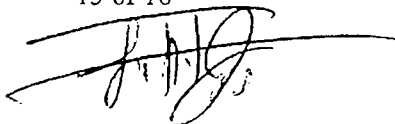


manslaughter, so that the pertinent issues could be properly addressed upon review. See Rule 20(b), SCRCrimP; State v. Johnson, 333 S.C. 62, 64, 508 S.E.2d 29, 30 (1998).

However, this Court cannot find that the Applicant was prejudiced by counsel's failure to place the jury instruction requests on the record, because this Court finds that the Applicant would not have properly been entitled to the charges under the theory set forth in his claim. A jury instruction on a lesser-included offense is required only when the evidence warrants such an instruction, and it is not error to refuse to charge the lesser-included offense unless there is evidence tending to show the defendant was guilty only of the lesser offense. State v. Patterson, 337 S.C. 215, 233, 522 S.E.2d 845, 854 (Ct. App. 1999). The trial court should refuse to charge a lesser-included offense where there is no evidence the defendant committed the lesser rather than the greater offense. Id. Jury instructions that do not fit the facts of the case are inappropriate because they may confuse the jury. State v. Blurton, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002).

Since the charge conference was not placed on the record, this Court cannot determine with certainty the trial court's specific reasons for giving each jury instruction. Clearly, the Applicant's statement, in combination with the numerous witness statements, gave rise to sharply conflicting evidence that would have required jury charges addressing different versions of the evidence. It appears that the third-party guilt and "mere presence" charges that were given addressed the evidence indicating that Brian Elliott alone committed voluntary manslaughter, involuntary manslaughter, or murder. The self-defense charge was likely given out of an abundance of caution to address the evidence potentially indicating that the shootings were intentional, but were necessary in defense of self. The accomplice liability (hand of all) charge addressed the evidence indicating that the Applicant and Brian Elliott acted together and planned a murder with malice aforethought.

In his PCR, the Applicant claims that there was evidence at trial, specifically, the Applicant's own



statement to police, to support a jury verdict for manslaughter under the "hand of one is the hand of all" theory. "Voluntary manslaughter is the 'unlawful killing of a human being in the sudden heat of passion upon sufficient legal provocation.'" State v. Wharton, 367 S.C. 71, 74, 624 S.E.2d 654, 656 (Ct. App. 2005) (citation omitted). "Involuntary manslaughter is (1) the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others." State v. Crosby, 355 S.C. 47, 52-53, 584 S.E.2d 110, 112 (2003)(citation omitted). In this case, the Applicant's own statement presents some evidence that a third party, Brian Elliott, may have committed voluntary or involuntary manslaughter. However, Brian Elliott was not the party on trial, and this Court finds that the Applicant himself could not be held liable, under a theory of accomplice liability, for voluntary or involuntary manslaughter committed by Brian Elliott because both offenses specifically involve a lack of advance planning. Voluntary manslaughter requires *sudden* heat of passion *upon* sufficient legal provocation from the victim, while involuntary manslaughter requires an *unintentional* killing. See also State v. Wharton, 367 S.C. 71, 74, 624 S.E.2d 654, 656 (Ct. App. 2005) ("sufficient legal provocation" for voluntary manslaughter must flow from victim to the killer; it cannot be "transferred" from a third party). One cannot have a prior arranged plan or common scheme to commit either of these offenses. Accordingly, accomplice liability is not applicable.

Since this Court finds that the Applicant would not have been entitled to an instruction on voluntary or involuntary manslaughter under the "hand of one is the hand of all" theory, this Court cannot find any prejudice to the Applicant from the failure of his attorneys to place a request for those instructions on the record. Therefore, the Applicant has not proven his claim as to his fourth allegation.

In sum, this Court finds that, in light of the entire record, none of the comments of the solicitor "infected the trial with unfairness to the extent that conviction was a denial of due process." State v. Rice,

14 of 16


375 S.C. 302, 315, 652 S.E.2d 409, 415 (2007). Therefore, the Applicant has not proven that his attorneys' failure to object to any of these comments caused prejudice to him. Furthermore, this Court does not find that there is a reasonable probability that, absent any errors of his attorneys, the jury would have had a reasonable doubt respecting guilt. The overwhelming evidence in this case pointed to the Applicant's own personal guilt of the crime of murder, regardless of the self-serving statement he gave to police five months after his arrest.² Any errors by the attorneys, even considered cumulatively, were harmless and therefore did not prejudice the Applicant. See Rice, supra.

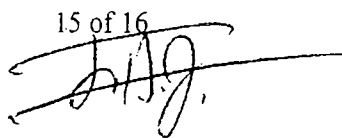
Therefore, this Court finds that no probative evidence was presented supporting a reasonable probability that the outcome of trial would have been different had Mr. Ward's attorneys done anything differently. Accordingly, this Court finds that the Applicant has not proven his claim of ineffective assistance of counsel in this case, because he has failed to prove the second prong of the Strickland test.

CONCLUSION

For all of the reasons discussed above, this Court finds and concludes that Mr. Ward's Post-Conviction Relief Application must be denied and dismissed with prejudice for failure to meet his burden of proof under Strickland v. Washington, 466 U.S. 668 (1984), Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985), Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997), and Dawkins v. State 346 S.C. 151, 551 S.E.2d 260 (2001).

Counsel's attention is directed to Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), and Rule

² The evidence of overwhelming guilt of murder includes, but is not limited to, the following: the Applicant's confessions to Denise Cox that he planned to kill the victims - then, later, that he did in fact kill them (Ms. Cox gave this statement to police shortly after the defendant's arrest); statements from various witnesses who heard the Applicant "brag" that he got rid of the boys who took his money; evidence that the Applicant asked Kevin Cooper to purchase bullets for him in advance; evidence that the gun the Applicant had been seen with on numerous occasions was consistent with the gun that shot the victims; the pathologist testimony indicating that one of the victims was shot in the back of the head; evidence that the Applicant was the only person who moved the victims' remains; evidence of the baby-seat still strapped in the backseat of the Suzuki; and evidence that Brian Elliott was at home on the day of the incident. Internal inconsistencies in the Applicant's own statement, in addition to its conflicts with the other evidence in the case, also tended to point towards his guilt.

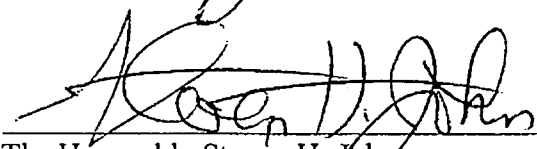
15 of 16


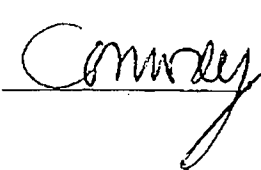
59(e)), SCRPC, regarding the filing of a Motion to Alter or Amend should counsel believe this Order fails to adequately address all issues raised as required by S.C. Code Ann. § 17-27-80 (2003). This Court further advises that if Applicant desires to secure appellate review of this Order, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Order. Pursuant to Rule 71.1(g), SCRPC, PCR counsel must file a notice of appeal on Applicant's behalf if Applicant wishes to pursue appellate review. Applicant and counsel are directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

IT IS THEREFORE ORDERED THAT:

1. Jody Lynn Ward's Application for post-conviction relief is **DENIED and DISMISSED with PREJUDICE**.
2. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND, IT IS SO ORDERED this 15th day of May, 2008.


The Honorable Steven H. John
Presiding Judge, Fifteenth Judicial Circuit

 South Carolina

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District
Name (under which you were convicted): <u>Jody Lynn Ward</u>		Docket or Case No.:
Place of Confinement:		Prisoner No.: <u>300644</u>
Petitioner (include the name under which you were convicted) Respondent (authorized person having custody of petitioner) <u>Jody Lynn Ward, #300644 v. Jon Ozmint, Director S.C.D.C.</u>		
The Attorney General of the State of <u>South Carolina</u>		

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: Georgetown County Courthouse; P.O. Box 479 Georgetown S.C. 29442
 (b) Criminal docket or case number (if you know): 03-GS-22-1030 & 1031
- (a) Date of the judgment of conviction (if you know): March 18, 2004
 (b) Date of sentencing: March 18, 2004
- Length of sentence: 2 Concurrent Life Sentences
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case: 2 Charges for Murder
- (a) What was your plea? (Check one)

(1) Not guilty ☒	(3) Nolo contendere (no contest) ☐
(2) Guilty ☐	(4) Insanity plea ☐

 (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: South Carolina Court of Appeals

(b) Docket or case number (if you know): 2007-UP-048

(c) Result: denied Pursuant to Anders Brief; Pro se Brief

(d) Date of result (if you know): affirmed on January 26, 2007

(e) Citation to the case (if you know): Pursuant to Anders v. California

(f) Grounds raised: _____

SEE: ATTACHED MEMORANDUM
IN SUPPORT

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: South Carolina Supreme Court

(2) Docket or case number (if you know): 2007-UP-048

(3) Result: Petitioner withdrew his Petition for Writ of Certiorari

(4) Date of result (if you know): June 29, 2007

(5) Citation to the case (if you know): N/A

(6) Grounds raised: _____

N/A

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: Georgetown County clerk of Court
 (2) Docket or case number (if you know): 2007 - CP - 22 - 0915
 (3) Date of filing (if you know): July 11, 2007
 (4) Nature of the proceeding: 1st PCR Application / Ineffective Assistance
 (5) Grounds raised: _____

SEE: ATTACHED MEMORANDUM
IN SUPPORT

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☒ No ☐

(7) Result: Order denied May 15, 2008 Writ of Certiorari denied

(8) Date of result (if you know): August 20, 2009

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: Georgetown County Court
 (2) Docket or case number (if you know): 2009 - CP - 22 - 1074
 (3) Date of filing (if you know): July 13, 2009
 (4) Nature of the proceeding: Filed on New Rule Law Davis v. State
 (5) Grounds raised: _____

SEE: ATTACHED MEMORANDUM
IN SUPPORT

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: denied and dismissed

(8) Date of result (if you know): March 22, 2010

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: Georgetown County Court

(2) Docket or case number (if you know): 2010 - CP - 22 - 007330

(3) Date of filing (if you know): May 4, 2010

(4) Nature of the proceeding: Filed on New Rule Law. State v. Belcher

(5) Grounds raised: _____

SEE: ATTACHED MEMORANDUM
IN SUPPORT

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☒ No ☐

(3) Third petition: Yes ☒ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: SEE: ATTACHED MEMORANDUM
HERETO ATTACHED

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- (b) If you did not exhaust your state remedies on Ground One, explain why: _____

- (c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why: _____

- (d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☒

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: South Carolina

Court of Appeals / Appellate Court Direct Appeal

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO: SEE: ATTACHED MEMORANDUM

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: RAISED for

first time at PCR

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCR

Name and location of the court where the motion or petition was filed: _____

Georgetown County Court of Common Pleas

Docket or case number (if you know): 2007-CP-22-0915

Date of the court's decision: MAY 15 2008 (PCR) - Rule 59(c) Aug. 6 2008

Result (attach a copy of the court's opinion or order, if available): _____

UNAVAILABLE

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

South Carolina Supreme Court

Docket or case number (if you know): unknown

Date of the court's decision: August 20, 2009

Result (attach a copy of the court's opinion or order, if available): UNAVAILABLE

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: NA

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: exhausted, PCR, raised certiorari.

GROUND THREE: SEE: ATTACHED MEMORANDUM

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Three, explain why: exhausted

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Raised by way of PCR, New Rule of LAAs

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCR

Name and location of the court where the motion or petition was filed: Georgetown County Court of Common Pleas

Docket or case number (if you know): 2009-CP-22-01074

Date of the court's decision: April 1, 2010

Result (attach a copy of the court's opinion or order, if available): UNAVAILABLE

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: South Carolina Supreme Court

Docket or case number (if you know): UNKNOWN

Date of the court's decision: April 1, 2010

Result (attach a copy of the court's opinion or order, if available): UNAVAILABLE

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: N/A

GROUND FOUR: SEE : ATTACHED MEMORANDUM

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why: exhausted

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Raise by PCR, New Rule of Law

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCR

Name and location of the court where the motion or petition was filed: Georgetown County Court of Common Plea

Docket or case number (if you know): 2010-CP-22-00733

Date of the court's decision: Aug 18, 2011

Result (attach a copy of the court's opinion or order, if available): UNAV. 10/12

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

South Carolina Supreme Court

Docket or case number (if you know): Unknown

Date of the court's decision: Aug 18 2011

Result (attach a copy of the court's opinion or order, if available): _____

UNAVAILABLE

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: NA

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

NA

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: exhausted, no other available remedies

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Wesley Locklair, Esq.

(b) At arraignment and plea: N/A

(c) At trial: Margaret Ann Kneece, Esq. & Wesley Locklair, Esq.

(d) At sentencing: Margaret Ann Kneece, Esq. & Wesley Locklair, Esq.

(e) On appeal: Robert Dudek, Esq. Indigent Defense

(f) In any post-conviction proceeding: Bobby Fredrick, Esq.

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

Robert Pachak, Esq. Indigent Defense

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* equitable tolling is applicable under the

facts and controlling legal principles

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Jody Ward -- Petitioner,

-Vs-

Wayne McCabe, Warden -- Respondent,

**PETITIONER'S ISSUES AND MEMORANDUM
OF FACTS IN SUPPORT OF HIS 28 USC §2254 APPLICATION**

Jody Ward
SCDC# 300644
Lieber Corr. Inst.
P.O. BOX 205 EA-15
136 Wilborn Ave.
Ridgeville, SC. 29472

Petitioner, pro-se

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Jody Ward

Petitioner,

-v-

Wayne McCabe, Warden

Respondent,

)

) PETITIONER'S ISSUES AND MEMORANDUM

) OF FACTS IN SUPPORT OF HIS §2254

) HABEAS CORPUS APPLICATION PURSUANT

) 28 USC §2254

)

COMES NOW, Jody Ward pro-se, hereafter Petitioner who respectfully moves this Honorable Court to grant the petition for writ of habeas corpus, pursuant to 28 USC §2254.

Petitioner is informed and believes that the issues presented and facts relied on will show unto this Court Petitioner's entitlement to the requested relief sought herein.

Respectfully Submitted,

/s/ Jody Ward
Jody Ward

Petitioner, pro-se

GROUND ONE

The Trial Court and subsequent reviewing court's erred in ruling Petitioner waived his right to counsel when Weaver interrogated Petitioner, after Law Enforcement knew Petitioner was attempting to contact his attorney prior to Petitioner meeting with the Assistant Sheriff Weaver. Law enforcement also was aware that Petitioner had invoked his right to counsel upon his arrest and therefore under the facts of the case the statement should have been suppressed.

Facts in Support

The state's theory was that Petitioner shot and killed two people, Wilford Brown and Elton Rutledge because they allegedly stole money from Petitioner during a marijuana drug deal. Upon Petitioner's arrest, Petitioner remained silent and invoked his right to counsel.

During Petitioner's statement to Weaver on January 8, 2003, Petitioner told Weaver that he had phone Wilford Brown wanting to purchase marijuana on August 3, 2002. Petitioner and Brown arranged to get together that day and later met up with Elton Rutledge and Brian Elliot. The four men shared drugs together. However, Brown suddenly pulled out a gun and demanded the money --approximately one thousand dollars - Petitioner had in his possession. Brown also demanded Elliot's money.

During the struggle, Elliot was able to disarm Brown. Elliot shot both Brown and Rutledge. Petitioner helped Elliot drag the bodies into the woods because Elliot "was fearking out."

Petitioner said there was blood in the back seat of vehicle. Petitioner's told police that Elliot threatened that of

Petitioner called the police he would kill his family and drink his baby's blood. Denise Langston told Petitioner that the police wouldn't believe Petitioner anyway and that Petitioner would be arrested.

Petitioner informed Weaver that Elliot had a bad crack addiction, and Elliot apparently soon lost interest in what had occurred. Petitioner told Weaver that he got assistance from Louis Bazen in moving the bodies to another location because he was worried they would be discovered.

Bazen apparently became worried about moving the bodies. Bazen claimed his conscience was bothering him and then he contacted police. Tracking dogs discovered the bodies on September 13, 2002 on Walker Hunt Club Road. There was corroborating evidence that the bodies had been moved to Walker Hunt Club Road from the woods.

The body of Brown was decomposed and was identified through dental records. Family members were allowed to identify Rutledge's shoes that were found at the burial site on Walker Hunt Club Road.

Prior to trial the Court held a Jackson -v- Denno, hearing, 378 U.S. 368 (1964). It was undisputed that upon Petitioner's arrest September 13, 2002, Petitioner refused to talk to police and requested an attorney. Kenneth Owens was the Chief of Operations at the Georgetown County Detention Center on January 8, 2003. Owens testified he had spoken to Petitioner twenty to thirty times since his arrest.

Owens testified that on January 8, 2003, Petitioner came to his office and said he wanted to talk to Sheriff Carter Weaver. Owens contacted Chief Michael Schwartz, the administrator at the jail, and told him Petitioner wanted to talk to Assistant Sheriff Weaver.

Schwartz testified he telephoned Weaver on January 8, 2003, telling Weaver that Petitioner wanted to speak to him.

Weaver testified he took a statement from Petitioner that day at 3:50 p.m. in the victim's advocate's office at the detention center. Weaver said he was advised over the phone that Petitioner wanted to sit down and talk to him and give him a statement as to what had happened.

Weaver acknowledged that when Petitioner was arrested he was asked for an attorney and the interview ceased. Weaver said he read Petitioner his Miranda rights and Petitioner then gave him the statement.

Weaver acknowledged that he had received a number of phone calls from Petitioner since his arrest and he apparently ignored them. At no time did I take a statement or did he (petitioner) give me a statement except on January 8. Weaver claimed that January 8, 2003, was the first time he was told Petitioner wanted to tell him what had happened.

Petitioner's counsel entered documentary evidence during the Jackson v. Denno hearing showing Petitioner had attempted to call one of his attorney's Wesley Locklair on January 8, 2003 at 2:45 pm. Which was just prior to Petitioner meeting with Weaver. Law

enforcement was aware of Petitioner's attempt to reach Locklair.

Petitioner's counsel Locklair argued that even if Petitioner initiated contact with Weaver that day, it was clear from law enforcement knew Petitioner was attempting to contact his attorney at the same time. Locklair argued his subsequent phone call to Locklair's office ended the initiation of that [contact], and at that point the statement was taken in violation of his constitutional rights and Locklair asked the Court to suppress the statement.

The judge ruled Petitioner initiated contact with the police and Petitioner's statement was admissible. In the instant matter Weaver was aware Petitioner had refused to talk with police and requested an attorney upon his arrest. Petitioner had telephone Weaver numerous times to speak with him, and Weaver never responded. The one time Weaver chose to respond Petitioner gave his statement, the police were clearly aware that Petitioner had also called for defense counsel Locklair eliciting his assistance. Under the facts of this case, the trial judge and subsequent reviewing court's erred in ruling Petitioner waived his right to counsel. The statement should have been suppressed. Petitioner is entitled to relief on this issue.

GROUND TWO

The State Courts erred in failing to find defense counsels ineffective in failing to object to numerous errors in the solicitor's closing argument that such argument rendered Petitioner's trial as being unfair and a denial of due process?

Facts in Support

The State PCR Court and subsequent reviewing Court unreasonably applied clearly established federal law based on the facts presented in the state court that was objectively unreasonable.

A. Lack of Remorse

The solicitor in closing argument improperly commented on Petitioner's "lack of remorse." This was very damaging since Petitioner did not testify or take the stand. The solicitor further on multiple occasions argued Petitioner's demeanor was cold and calculated and that Petitioner condoned a cold and calculated nature. A defendant has the right to plead not guilty and put the State to the burden of proof and it would be irreconcilable for a defendant to plead not guilty, present a defense, and simultaneously express "remorse" for acts he has denied committing.

There has been cases in South Carolina where counsel was found ineffective for failing to object to a solicitor's closing that comments on the lack of remorse. Here the State Court unreasonable applied clearly established federal law based on the facts of the case. Petitioner is entitled to relief on this issue.

B. Solicitor vouched for all the State's witnesses

In the instant matter the Solicitor improperly vouching for all the State's witnesses improperly bolstered the State's case that was used to gain a tactical advantage over Petitioner.

The State presented the testimony of Denise Langston -- "She was credible", "she told the whole truth. Finally you know she told the truth because her testimony was corroborated." As to witness Tracy Collins -- "She was a very credible witness." As to Louis Bazen -- he was a very credible witness, that he didn't try to hide anything, that he didn't do anything but tell the truth as he knew it, and he told the truth." Melissa Elliot -- "She told the truth". Now this is important because I believe Chris Doerr."

The Solicitor's repeated assurances the State's witnesses were telling the truth abridged the trial with unfairness that the resulting conviction is a miscarriage of justice, especially in light of the case being nothing more than circumstantial and a swearing match between witnesses. The State PCR Court and subsequent reviewing Court's erred in failing to find counsels rendered ineffective assistance in failing to lodge an objection that ultimately denied Petitioner his right to due process of law and a fair trial. Petitioner is entitled to relief on this issue.

C. Comments on Petitioner's credibility and the Defense's theory of the Case

Here the solicitor repeatedly and without objection gave his personal opinions concerning Petitioner's credibility and the

defense's theory of the case in closing argument. The comments were unduly prejudicial as most of the comments by the solicitor concerned Petitioner's statement, and since Petitioner did not testify this was all the more damaging. The solicitor told the jury "that was a lie and he knew it was a lie," "his demeanor on that tape is unbelievable," "He was also caught lying a couple of times on the tape, a couple, you heard it," "Shortly thereafter, he just goes to stammering and stuttering about just completely unbelievable statement." Another thing he's lying about is Carter Weaver," " Now how unbelievable is that they have this knock down drag out argument..." "One more thing he gets caught in a lie as far as he goes out there to move the bodies." He just plain admits he's lying." Finally his last lie, "The man you heard on that tape giving you this ridiculous story..."

The trial record is replete with evidence that the solicitor overstepped the bounds of fairness by attacking the defense's theory of the case, the solicitor argued, "that's a lie and he knew it was a lie." The defense of self-defense was also presented and the solicitor successfully argued "it seems absurd, it's ridiculous, it's simply ridiculous. South Carolina Courts have held that excessive and repetitious use of comments disparaging to the Petitioner deprives him of a right to fair trial and are denial of due process of law. This type of argument clearly denied Petitioner not only his right to present a defense, but also denied him right to fair trial when counsel failed to lodge a timely objection.

During PCR counsel admitted he could not recall Petitioner

"lying" and also could not recall any inconsistent statements, and ultimately that Petitioner told no blatant lies as argued by the solicitor. Here the multiple errors in the solicitor's closing has resulted in structural error resulting in the denial of fundamental fairness. The State PCR Court and subsequent reviewing courts erred in failing to find counsel(s) rendered ineffective assistance when they utterly failed to object to the solicitor's improper closing summation to the jury. Petitioner is entitled to relief on this issue as the PCR Court and subsequent reviewing Court's decision was objectively unreasonable based on the facts presented in the state court record.

GROUND THREE

The PCR Court and subsequent reviewing court's erred in failing to find counsels rendered ineffective assistance of counsel, when counsel(s) failed to convey plea offers to Petitioner prior to trial?

Facts in Support

Petitioner raised this issue by way of a PCR application pursuant to S.C. Code Ann. §17-27-45(c), according to the ruling in *Davie v. State*, Opinion No. 26608, submitted November 19, 2008 - filed March 9, 2009, certiorari granted, reversed and remand.

In the instant case, the State made plea offers to Petitioner's trial counsel(s). Trial counsels failed to convey the plea agreement to Petitioner or inform him that written plea offer from the State even existed. The plea agreement which if conveyed to Petitioner could have resulted in only a 30-year

sentence instead of the natural life sentence Petitioner is actually serving based on counsels ineffectiveness. During the presentation of this argument Petitioner submitted a "written plea agreement" as a fortior offering Petitioner a minimum of 30-years. During the PCR hearing trial counsel(s) told the PCR Court no written plea agreement exists. This in and of itself is clearly refuted by the record. Here trial counsel were ineffective and Petitioner should be entitled to resentencing to the lesser (30-years), or in the alternative granted a new trial. The State Court's decision is objectively unreasonable and clearly refuted by the record as whole. Petitioner is entitled to relief on this issue.

GROUND FOUR

The State PCR Court and subsequent reviewing courts erred in failing to find Petitioner's jury instructions were unconstitutional under State v. Belcher?

Facts in Support

Petitioner raised this issue by way of PCR application pursuant to S.C. Code Ann. §17-27-45(c), State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009).

In Belcher the South Carolina Supreme Court ruled that when juries are charged with murder and self-defense, juries shall not be charged that malice can be inferred from the use of a deadly weapon, as such an instruction tends to impermissibly comment on the facts of the case and directs a verdict for the State, while simultaneously violating the South Carolina Constitution's

prohibition of trial judges charging on the facts. During Petitioner's trial, the trial judge charged the jury with murder and the option of self-defense, yet also charged the jury "malice could be inferred from the use of a deadly weapon" and the jury ultimately convicted Petitioner of murder. Since Petitioner's trial, the South Carolina Supreme Court ruled on the Belcher decision and overturning 25 known cases from 1894 to 2006. Although, the South Carolina Supreme Court ruled the Belcher decision would not apply retroactively on collateral review and only pertains to cases on direct appeal. The problem has become thwarted since the decision overturned 25 cited cases between 1894 to 2006. Petitioner was tried by a jury March 15-18, 2004, and therefore should also be able to reap the benefits of Belcher, since the ruling triggers a Teague "watershed" rule.

The Belcher decision is not primarily new rule of law, but rather an extension of existing U.S. precedent, *Sandstrom v. Montana*, and *Francis v. Franklin*, and South Carolina's stare decisis of *Yates v. Evatt* of burden shifting jury instructions that violate due process of law. The South Carolina Supreme Court erred in not granting relief on this issue and the ruling was not only objectively unreasonable but also a ruling contrary to well established federal law. Petitioner is entitled to relief on this issue.

GROUND FIVE

The State Supreme Court erred in failing to find counsel ineffective for failing to object to the solicitor's improper closing that denied Petitioner his right to a fair trial.

Facts in Support

This issue was raised by way of State Habeas Corpus to the South Carolina Supreme Court and is therefore exhausted.

During closing summation to the jury the solicitor argued the following: "Now, I want to talk a little bit about Elton Rutledge, because I'm anticipating the defense's case is because there is no medical evidence to say that Elton Rutledge has been or was killed by Jody Ward at all, that we haven't proven our case, but that's simply not true. This is a circumstantial case, but it is a strong case, and long before there was ever a concept called DNA, there were murders, and there were murders who were convicted where no body is ever recovered and murders are convicted based on circumstantial evidence."

Petitioner asserts this comment argued in summation lessened the jury's responsibility in the Solicitor comparing Petitioner's case to "what other jury's" have done in the past. The resulting implication was to substantially lighten the State's burden of proof. Petitioner asserts this argument coupled with the improper comments and arguments contained in Ground Two were deliberately placed before the jury in a manner calculated to invoke personal prejudice against Petitioner that ultimately denied him his right

to a fair trial. The State Supreme Court's decision on this issue was objectively unreasonable based on the facts presented in the State Court record. Petitioner is entitled to relief on this issue.

GROUND SIX

The State Supreme Court erred in failing to find counsel rendered ineffective assistance when counsel improperly told the jury if any mistakes are made a "higher court" will take care of the error and thus counsel's improper argument tipped the scales in favor of the State and lessened the State burden of proof.

Facts in Support

This issue was also raised by way of State Habeas Corpus to the South Carolina Supreme Court and is therefore exhausted.

During closing summation to the jury Petitioner's counsel told the jury "If I do something wrong, if they do something wrong or if the judge happens to do something wrong, there are higher courts that can take care of it." Petitioner asserts this comment only diluted the jury's responsibility in that the comment basically told the jury to go ahead and convict Petitioner and if something was done wrong another court will take care of it. Counsel further told the jury that if they have reasonable doubt concerning guilt, they (the jury) should stick to their "convictions."

Petitioner asserts these improper comments by counsel in essence told the jury that regardless of whether reasonable doubt exists, they must stick to their convictions. This statement was

magnified by counsel's previous statement that if there were any mistakes made during trial a "higher court" would correct the error. A reasonable jurist could have interpreted this statement to mean, go ahead and convict Petitioner and if something was done wrong another court would correct it. Based on these improper comments the State Supreme Court's decision was objectively unreasonable under the facts of the case.

Petitioner is entitled to relief on this issue.

GROUND SEVEN

The State Supreme Court erred in failing to find counsel ineffective for failing to object to the unconstitutional burden shifting jury instructions given during trial. This decision was unreasonable and contrary to clearly established federal law.

Facts in Support

During Petitioner's trial the trial court instructed the jury that malice "is the intentional doing of an unlawful act without just cause or excuse." Coming directly after this the trial court charged the jury that "inferred malice may also arise when the deed is done with a deadly weapon."

Petitioner suggests that the trial court's instructions could not be considered harmless error, where such an instruction in effect direct a verdict for the state and gave the state the benefit of reasonable doubt.

This error is magnified since the trial court "failed" to charge the jury that they "accept or reject" the inference of malice, thus this charge resulted in a mandatory presumption

simply if the jury "concluded" Petitioner was doing an "unlawful act"; which drugs is an "unlawful act" and Petitioner's entire case wreaked of drugs. Therefore [if] the jury couldn't conclude malice from the unlawful act, then if the State proved the victim was killed with a deadly weapon, then malice becomes "mandatory." It becomes mandatory since the trial court failed to instruct the jury they could accept or reject the inference of malice from the use of a deadly weapon.

The State Supreme Court's ruling is not only "unreasonable", but also "contrary to" clearly established United States Supreme Court precedent.

Petitioner is entitled relief on this issue.

CONCLUSION

Based on the foregoing, Petitioner has established "a substantial denial of constitutional rights, and is entitled to have this writ of habeas corpus granted.

In the alternative, this Court should conduct an evidentiary hearing in the instant matter, or whatever relief this Court deems just and proper.

dated November 29, 2011

Respectfully Submitted,

/s/ Jody L. Ward
Jody L. Ward
SCDC# 300644
Lieber Corr. Inst.
P.O. Box 205 Ea-15
136 Wilborn Ave.
Ridgeville, SC. 29472

Therefore, petitioner asks that the Court grant the following relief:

VACATE and remand
for new trial, or in the alternative, grant an evidentiary
hearing in federal Court

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on

11/29/11 (month, date, year).

Executed (signed) on 11/29/11 (date).

Jody Lynn Ward
Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

232

232

Page 16

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

* * * * *

232

232

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

RECEIVED
USDC CLERK, COLUMBIA, SC
2011 DEC -1 PM 2:14

Jody Ward -- Petitioner,

-Vs-

Wayne McCabe, Warden -- Respondent,

CERTIFICATE OF SERVICE

The undersigned pro-se Petitioner certifies he has mailed the Original and (1) one copy of the enclosed.

(1). Petition for Writ of Habeas Corpus and Supporting Memorandum;

(2). Motion for Leave to file for discovery in federal court;

(3). Motion to invoke discovery in federal court;

(4). Motion for evidentiary hearing in federal court;

(5). certificate of service;

to the U.S. District Court Clerk, Charleston Division, 85 Broad St. Charleston, SC. 29401, by placing the aforesaid documents in a properly addressed envelope, first-class postage affixed and placed in the U.S. Mail this November 29, 2011.

Respectfully Submitted

/s/ Jody L. Ward

Jody L. Ward

SCDC# 300644

Lieber Corr. Inst.

P.O. Box 205 EA-13

136 Wilborn Ave.

Ridgeville, SC. 29472

234

ANDEHS RESPONSE BRIEF 234

IN THE COURT OF APPEALS
FOR THE STATE OF SOUTH CAROLINA

ATTORNEY GENERAL'S OFFICE

ADMINISTRATIVE INSTRUCTIONS

FROM THE COUNTY OF GEORGETOWN
THE COURT OF GENERAL SESSIONS

THE HONORABLE JOHN L. BREEDEN, JR. PRESIDING
CASE NUMBERED: 03-GS-22-1030, 1031

FILE OPEN END
HAVE COPIES MADE
ROUTE TO
ORDER TRANSCRIPT
PEN RECORDS CLERK RECORDS
OTHER

Jody Lynn Ward, #300644,

Appellant, Pro Se

vs.

STATE OF SOUTH CAROLINA,

Respondents.

Pro Se Discretionary Review of Additional Issues and Brief In
Addition To Appellant Defense Counsels Final Brief. Made Within
The

Fourty Five (45) Day Period Set By The Court. Appellant
Requests This Court To Review All Issues Set Forth Herein And
Remand Issues To Be Heard For Final Briefing By Court
Appointed Appellant Counsel.

Jody Lynn Ward

Respectfully Submitted,

Counsel of Record:

Lee Correctional Inst.
990 Wisacky Hwy.
Bishopville, S.C. 29010

Office of Appellant Defense
1205 Pendleton Street Rm.306
Columbia, South Carolina
29201

Dated this 13 day of Sept, 2005.

Barbara Ricketson

Oct 28. 2012

234

234

ISSUE ONE

THE GRAND JURY DID NOT HAVE JURISDICTION TO ISSUE AN INDICTMENT WHEN THERE WAS INSUFFICIENT EVIDENCE PRESENTED TO MEET ALL THE ELEMENTS OF THE CRIME CHARGED IN VIOLATION OF ARTICLE I, §3.

The Grand Jury did not have Jurisdiction to issue an Indictment when there was insufficient evidence presented at the Grand Jury Hearing which met all the elements of the crime to be charged.

The indictments issued by the Grand Jury were flawed; (03-GS-22-1030; 03-GS-22-1031).

The indictments failed to allege the essential elements of murder as required by S.C. Statute at the time of the Grand Jury Hearing and the issuing of the Indictments. (S.C. Statute §17-19-30 (1985)).

Under this Code of Laws as applied to appellant at the time of the indictment being issued (and) after the death of the assaulted person the law required:

"the State must prove not only the assault and the death occurring from it, but the time of the assault and the time of the death, as time is recognized in the law."

In Addition:

These necessary elements of the crime of murder must not only be proved, before a person accused may be lawfully convicted, but they must be alleged in the Indictment returned against the accused by the Grand Jury, in accordance with the established constitutional rights of the accused.

In State v. Rector, 158 S.C. 212, 155 S.E. 2d 385 (1930) and

in State v. Platt, 154 S.C. 1, 151 S.E. 206 (1930) it was found that in South Carolina it was legally a necessity of alleging and proving the place of death of the person alleged to have been murdered." Rector, 155 S.E. 385 at 387).

It was found In Russell v. U.S., 369 U.S. 749 (1962), citing Fed. R. Crim. P., rule 7(c)(1) that "Here recitation of Statutory is only acceptable as to the language, if all the elements of the crime charged are subsumed in the language of the indictment, and mere recitation to the Statute Section only acceptable if all the elements are subsumed in the language of the indictment."

The question of the omission of the place where the deceased died in the indictment is a fatal defect under the law at the time of the issue of the indictment and the omission of the place of death in the indictment leaves the defense of appellant to guess as to where the death from the injuries or assaults ensued. Therefore, the question of the evidence before the Grand Jury as to place of death must be answered. See State v. Coleman, 17 S.C. 473, 1882 WL 5605 (1882). The Coleman decision has never been questioned in South Carolina. See State v. Platt, 154 S.C. 1, 151 S.E. 206 (1930) at 211.

The Record is void of any evidence as to where the alleged victims were killed, as is shown throughout the case records and transcripts. See Pg. 7, Preliminary Hearing Tr. Oct. 17, 2002, and also See Tr. p. 454, line 13-p. 455, line 3.

the charged offense before the grand jury to support each element of the charge, an indictment can not be issued. See Browning v. State, 320 S.C. 366, 465 S.E. 2d 358 (1995) ect.

The failure of appellants indictment to allege the time and place of the death of the deceased. Failing to allege the composite crime of murder as set forth in Rector and Platt. Therefore the reasons for such failure goes to the failure of the Grand Jury lack of evidence to issue the esstial elements of the crime and issue an indictment upon the essential elements of the crime charged which violates S.C. Const. Art. I, §3 and the Fourteenth Amendment of the United States Constitution.

Under South Carolina Law at the time of the Grand Jury Hearing and the issue of the indictment charging the Appellant with Murder the applicant contends that in order to properly charge an accused with the crime of murder, the Grand Jury must have sufficient evidence before it to establish the time and place of the assault upon the deceased and the time and place of the death of the deceased. Not just the place the body was found. But to establish place of death of the deceased. The Petitioner contends that the evidence before the Grand Jury was insufficient to warrant an indictment which was flawed with insufficient evidence to establish within the indictment the time and place of death, essential elements of murder and thereby did not serve the notice requirements of law and did not have jurisdiction to process the indictment to issue, violating appellants rights.

Subject Matter Jurisdiction maybe raised at any time. See State v. Funderburk, 259 S.C. 256, 191 S.E. 2d 520 (1972); Moreover, lack of subject matter jurisdiction cannot be waived

The Grand Jury subject matter jurisdiction may be challenged regarding the sufficiency of the evidence presented at the grand jury proceedings. "[T]he Grand Jury operates under a very specialized procedure under which a defendant is permitted to obtain and review all evidence which was considered in handing down an indictment." State v. Evans, 322 S.C. 78, 79, 470 S.E. 2d 97, 99 at n. 1. Under footnote one in Evans, a defendant can attack the Grand jury's subject matter jurisdiction by challenging the sufficiency of the evidence presented at the grand jury proceeding."

Therefore, hearsay in the grand jury proceedings undermined the legal sufficiency of the indictment by lack of sufficient evidence to issue a Indictment.

In State v. Blakeney, 33 S.C. 111, 11 S.E. 673 (1890). The Blakeney Court found:

"That it can hardly be necessary to cite authority to the fact that (sic it is absolutely essential in an indictment, that the place of death of the party killed should be alleged therein, and that, in absence of such allegation, such an indictment is fatally defective, and such an indictment is beyond the reach of amendment." See Blakeney; 11 S.E. 637 at 637-638. It is essential that a Grand Jury be provided sufficient evidence to support the issue of an Indictment. The indictment which is flawed by the absence of pertinent elements to support the charge of murder reveals the necessity for the Grand Jury to support the issue of the indictment upon evidence that supports the charge. Absent

such evidence an Indictment can not issue.

Evidence so vital as the place of death of the party killed is absolutely necessary to warrant the issue of an Indictment. The Jurisdiction of the Grand Jury can only be established upon an individuals Constitutional Rights of an accused and must be passed upon by the evidence presented to the Grand Jury for the Accused has a right to such Due process of Law. See Platt at 211.

The essential elements to be reviewed by the Grand Jury in this Murder Case must be based on evidence before the grand jury, and without such evidence to meet the essential elements of time and place of Death the issue of an indictment which is flawed both the lack of evidence to issue and the jurisdiction to issue based upon the lack of essential elements of the crime charged. Both place of assault and death, the time of assault must be evidentiary and is an essential element of indictment for murder to issue indictment in South Carolina. See *State v. Bostick*, 243 S.C. 14, 131 S.E. 2d 841 (1963) also see *Rector*, *supra*.

In this case, it can be noted once again that the State did not present evidence to the original place or time of death of the deceased.

The sufficiency of an indictment must contain the necessary elements of the offense intended to be charged and sufficiency apprises the defendant of what he must be prepared to meet. The basis of the issue of the indictment goes to the evidence presented before the Grand Jury who then issues an indictment based upon the evidence presented before it that includes sufficient elements of the offense intended and upon indictment charged. Without evidence to support each and every element of

even by the consent of the parties. Hooks v. State, 353 S.C. 48,577 S.E. 2d 211 (2003). An "indictment for murder is sufficient only, "if the offense is stated with sufficient certainty and particularity to enable the Court to know what judgement to pronounce, the defendant to know what he is called upon to answer, and if an acquittal or a conviction thereon may be plead as a bar to any subsequent prosecution. State v. Owens 293 S.C. 161, 165, 359 S.E. 2d 275, 277 (1987).

S.C. Code Section §17-19-20 states:

"Must set forth the time and place"

This case should be remanded for evidentiary hearing as to the Grand Jury Evidence upon which the Indictment issued as to its sufficiency at the time issued under the laws as applied at the time of the Indictment And/Or vacate conviction and sentence.

Trial Counsel was ineffective for not seeking a Motion seeking information from the Grand Jury prior to the swearing of the jury seeking discovery of the Evidence presented before the grand jury for purposes of having the indictment quashed as to lack of evidence to try the case for murder since the elements of time and place of death were not present in the indictment. A indicator , that insufficient evidence existed to grant an Indictment by the Grand Jury and therefore, the Grand Jury had no jurisdiction over the Indictment of Murder against the Appellant. Trial Counsel was ineffective counsel in this matter violating the appellants Sixth Amendment Right to the United States Constitution.

ISSUE TWO:

APPELLANT WAS INDICTED UPON AN ILLEGAL AND INSUFFICIENT PROCESS OF THE GRAND JURY IN VIOLATION S.C. CONST. Art. I, §11 and Art. V, §22 WHEN THE FOREMAN, SCOTT MCKENZIE ~~WAS~~ WAS DIRECTLY INVOLVED AT THE CRIME SCENE, AND HAVING PRIOR BIAS KNOWLEDGE OF THE EVENTS PRIOR TO SERVICE ON GRAND JURY; TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PRESENT THIS ISSUE AT TRIAL PRIOR TO THE VERDICT BY THE JURY IN VIOLATION OF THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION AND VIOLATION OF S.C. CONST. ART. I, §3.

Appellant incorporates Issue One as if repeated herein hereof verbatim.

Scott McKensie was the Foreman on the Grand Jury which issued Indictment for Murder against the appellant.

Scott McKenzie worked for Winston Wrecker Service and responded to the Dawhoo Lake to pull vehicles out of lake. This created a conflict of interest which was not revealed at the Grand Jury hearings and infected the processes required at the Grand Jury hearings. Petitioner believes that he has been deprived of life, liberty and property without due process of law in violation of the State and Federal Constitutions. The Foreman, Mr. Scott McKenzie, should have recused himself from service on the Grand Jury in this instance and/or allowed inquiries into this matter as to possible conflict of interest.

A defendant has a constitutional right to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him without conflict of interest and/or prejudice within the scope of the jurors.

"[O]ne who demands and is refused the right to be tried for crime charged against him only upon and indictment presented by a legal grand jury, in instances where such indictment is

required, may thereafter justly take the position that he has been deprived of life, liberty or property without due process of law", in violation of the constitution. Rector, 158 S.C. at 230, 65 S.E. at 392.

Trial Counsel was ineffective when he failed to investigate and challenge these matters before the jury rendered a verdict in accordance with S.C. Code Ann. §14-7-40(Supp. 2003).

Appellant believes that the injuries of the formans prior knowledge, his influence either knowingly and / or unknowing influenced by prior knowledge of possible evidence being submitted by the state would have infected the process of the grand jury to the extent that such an irregularity is cause for the appellant to believe that his constitutional right to have the criminal allegations against him weighed by a properly constituted grand jury has been violated.

An indictment or "notice document" issued by a grand jury which is established or constituted illegally is deemed a nullity. An indictment which is a nullity would be insufficient, as a matter of law, to give the required notice to a defendant. This goes to the existence of the grand jury as a body, that is void as such, and that its indictment is therefore a nullity.

In State v. Rafe, 56 S.C. 379, 34 S.E. 660 (1900) (that if record revealed... one grand juror was disqualified then the grand jury would be illegal and any indictment issued would be a nullity.

Later the court rejected the language in Rafe and other cases that appeared to require a defendant to show prejudice when challenging the legality of the grand jury. See Rector, 158 S.C. at 222-243, 155 S.E. at 389-396 (to require a defendant to show prejudice by proving an ineligible grand juror participated in the consideration of his case "is to demand an impossibility. -It is to tell him that he must establish something, even if it be true, that he is powerless to have disclosed.")

Therefore, Trial Counsel was ineffective assistance of counsel in not investigating and making motions for records of grand jury for disclosure of issue to expose the fundamental flaw which undermined the structural integrity of criminal tribunal itself and, therefore, is not subject to harmless error. Counsel was proximate cause of petitioner being tried under indictment which was unlawful and unconstitutional when failing to timely file motion to quash indictment based on claim that foreman of grand jury infected the jury with prior information which influenced the judgement and bias the verdict to indict appellant.

It is well known that the circuit court must strike down the indictment when a defendant, in a timely motion to quash and indictment made, demonstrates the grand jury which indicted him is a nullity or proves the disqualification of an individual juror. Otherwise, the defendants constitutional right to demand that his case be considered by a grand jury is properly established and constituted under the law would have no force or effect.

Petitioner believes that he is entitled to review documents and inquire to the grand jury and jurors, in order to determine whether the grand jury which indicted him was legally established and non-prejudicial or suffered from any lesser irregularity which implicated the violation of the appellant's constitutional rights and to have his case considered by grand jury which was properly constituted under the law.

Trial counsel should have sought to request under Rule 5, SCCrimP to release of all or part of the records regarding any statements made by foreman pertaining to the above suggestion of bias, and sought to make interrogatories to jurors as to any discussion regarding a bias and conflict of interest having to do with the issue as stated factually above. Then if necessary motions to compel such investigative measures necessary to reveal truth seeking process could have been made to the State. SC Rule 5(d) SCRCrimP. The State only possesses the necessary information to analyze the issue and explain to the court why records and inquiry should not be forthcoming.

There is a strong presumption that trial counsel rendered inadequate assistance and exercised unreasonable professional judgement in making all significant decisions in the case. Counsel performance was ineffective, deficient and there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different.

In order for appellant to provide supporting evidence of probative value, a remand for a hearing must occur and proper representation to seek records and make investigative inquiries.

It is of paramount importance that an independent interest of the judiciary in these findings, "in insuring that grand jury hearings are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them" and that the "institutional interests in the rendition of just verdicts apply in criminal cases."

ISSUE THREE:

THE INDICTMENT IN APPELLANT'S CASE WAS FLAWED WHERE MISINFORMATION STATED THAT THE DECEASED DIED DUE TO GUN SHOT WHEN AT TRIAL TESTIMONY STATED OTHERWISE IN THIS "NO BODY CASE". TRIAL COUNSEL WAS INEFFECTIVE FOR NOT SEEKING TO QUASH INDICTMENT AND/OR MAKE MOTION FOR MISTRIAL; THE GRAND JURY IN INCLUDING SAME ON INDICTMENT MISREPRESENTED THE EVIDENCE AND ESTABLISHED IN THE MINDS OF THE TRIAL JURY THAT THE DECEASED DEATH WAS DUE TO GUN SHOT IN WHICH WAS NOT EVIDENCED AT TRIAL AND INDICTMENT WAS THEREFORE FLAWED. TRIAL COUNSEL WAS INEFFECTIVE FOR NOT PURSUING THESE ISSUES; INDICTMENT WAS ISSUED IN VIOLATION OF S.C. CONST. AND THE UNITED STATES CONSTITUTION THE 5TH, SIXTH AND FOURTEENTH AMENDMENTS AND S.C. CONST. ART. I, §3.

Petitioner incorporates issue one and two as if repeated herein verbatim.

The invalid and unqualified statement upon the Indictment being misinformation, has prejudiced the Jury at trial into believing that because such is stated on the face of the indictment it must be indeed true. The unsubstantiated statement that this "NO BODY" case and the deceased was shot and that was cause of death was both unproved and unsubstantiated at the evidentiary hearing before the grand jury. At trial there was no sufficient evidence proving that death was due to gun shot. Not at all! Therefore, the indictment misinformed the jury, the court, the applicant as to cause of death and prejudiced the outcome of the trial. Trial Counsel was ineffective for not challenging this issue at trial. The Indictment should have been quashed by motion and counsel was ineffective for not so challenging and making motion to dismiss and / or quash indictment on this bases.

The true test of the sufficiency of the indictment is not whether it could be made more definite and certain, but whether

it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. Browning v. State, 320 S.C. 366, 465 S.E. 2d 358 (1995). The indictment here alleges that a gun shot was the cause of death when there was no body in this case. The indictment fails as to the element of cause of death and misinforms both the defense, prosecutor, jurors and provides believability as to cause of death, simply because the grand jury says so. This misinformation to the jurors is taken as fact, even though it can not be proved and remains unproven. The trial court transcripts have no evidentiary bases in fact as to the cause of death being by gun shot and therefore such misinformation infected the jury.

The indictment fails to allege a factual element of the composite crime of murder. While the indictment at hand arguably established the requisite notice of the charge of murder, it nonetheless fails when setting forth has set forth as an element an unvarifiagble cause of death, and treats it as proofs thus misinforming the juror all involved in the defense, prosecution and jurors in this case.

Accordingly, this court should find that the requirement of "sufficient certainty and particularity" as set forth in State v. Owens, 346 S.C. 637, 552 S.E. 2d 745 (2001) is comprised of the composite crime of murder which includes specific findings of cause of death of the victim. Such requirement as to where the victim died and what the cause of death may be has not been found at trial nor upon a hearing by the grand jury and is not a part

of the necessary requirement of a finding of "sufficient certainty and particularity" as to that element of the crime of murder.

It must be concluded that a matter so vital as the cause of death and method by which assault took place in the death of the party killed which is absolutely necessary to be alleged in a jurisdictional point of view...must be passed upon by the grand jury in accordance with due process and sufficient evidence and proofs that accord with the constitutional rights of the accused.

It is well stated as to the composite elements of the crime of murder that, "Death must follow within a year and day from the stroke, the injury being the cause of death, or a contributing or an accelerating cause." See Brockway v. State, 192 Ind. 656, 138 N.E. 88, 26 ALr 1338.

In Brockway v. State it was stated that "the injury being the cause of death", that the composition of the stroke and the death are the composite of murder, that, death must follow within a year and day from the stroke, the "injury" being the cause of death, or a contributing factor or an accelerating cause." The Grand jury established a false and unfactual determination that a gun was the cause of death and indicated same in the indictment which was misinformation stating that the "injury" was by a gun shot and was the cause of death. This fact has never been established, not at trial, not at all. The "NO BODY" case has no support of such information because the body must be present to prove the cause of death. Again in Blakeway v. State the court stated: "...The stroke does not make the crime. The death does

not make the crime. It is the composition of the two. Death must follow within a year and day from the stroke, the injury being "the cause of death", or a contributing factor or and accelerating cause." Without the proofs of a Gun being the injuring element, the charge of murder can not be made, without the proofs of the Gun being the cause of death, there can not be a murder, it is the combination of the two. No evidence has ever been presented that fulfills the elemental requirements of the composite crime of murder. Therefore, the indictment was defective in that it misinformed all parties including the jury and infected the trial and its result for no proofs exist that meet the standard to convict without a doubt that a gun was the cause of the death of the decedent and the jury was misinformed by the indictment and the trial jurors were infected with this misinformation. The indictment was flawed, the Grand jury did not have sufficient evidence to establish the element of cause of death to indict for murder. The state can not factual state that wounds found were caused by a gun shot. There is no body! Was the decedent beaten up and that caused death? did he have a heart attack? what was cause of death. There is no evidence to prove cause of death. Therefore, the indictment flaw infected the trial of the appellant.

In the interest of justice, this court should vacate sentence, remand for new trial, find the trial counsel ineffective for not preserving all issues set for in Issue one through three and provides sufficient counsel to establish grounds that the grand jury erred and the indictments of the

250

17.

250

appellant are flawed and insufficient to be issued and that thier
was insufficient evidence to issue indictments for charge of
murder in "no body" case.

250

250

ARREST WARRANT

H-248669

H248669

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GEORGETOWN

THE STATE

against

JODY LYNN WARD

Address: [REDACTED]
GEORGETOWN, SC 000029440

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: 5'8" Weight: 196

DL State: [REDACTED] DL #: [REDACTED]

Agency ORI#: [REDACTED]

Prosecuting Agency: [REDACTED]

Prosecuting Officer: [REDACTED]

Offense: [REDACTED]

Code/Ordinance Sec. 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date: [REDACTED]

RETURN

A copy of this arrest warrant was delivered to
defendant [REDACTED]
on [REDACTED]

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
JUDGE ISAAC L. PYATT

GEORGETOWN, S.C.

294420807

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GEORGETOWN

AFFIDAVIT

INV. GARY TODD

Personally appeared before me the affiant JODY LYNN WARD
being duly sworn deposes and says that defendant
did within this county and state on 8/03/2002State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of [REDACTED] violate the criminal laws of the

in the following particulars:

DESCRIPTION OF OFFENSE:

MURDER

16-03-0010, 0020

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.

Sworn to and subscribed before me

on 8/13/2002

Signature of Issuing Judge (L.S.)

Signature of Issuing Judge (L.S.)

Signature of Affiant

Affiant's Address

GEORGETOWN SC 29440

Affiant's Telephone [REDACTED]

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GEORGETOWN

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 the
on 8/01/2002 defendant JODY LYNN WARD

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of [REDACTED] as set forth below.

DESCRIPTION OF OFFENSE:

MURDER

16-03-0010, 0020

Now, therefore, 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.

Signature of Issuing Judge (L.S.)

Signature of Issuing Judge (L.S.)

Judge's Address [REDACTED]

Judge Code: [REDACTED]

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Attachment H.

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 6-18

251

251

251

251

ARREST WARRANT

H-248670

H248670

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GEORGETOWN

THE STATE

 against
JODY LYNN WARD

 Add:
GEORGETOWN, SC 000029440

 Phone: SSN:
 Sex: M Race: W Height: 5'8" Weight: 196

 DL State: DL #:
 DOB: Agency ORI#:
Prosecuting Agency: Prosecuting Officer: Offense:
 Code/Ordinance Sec. 16-03-0010, 0020

 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.

 (L.S.)
 Signature of Judge
Date:

RETURN

 A copy of this arrest warrant was delivered to
 defendant
 on

 Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO:
 JUDGE ISAAC L. PYATT
 33 CLELAND STREET
 GEORGETOWN, S.C.

294420807

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GEORGETOWN

AFFIDAVIT

INV. GARY TODD

 Personally appeared before me the affiant JODY LYNN WARD
 being duly sworn deposes and says that defendant 8/03 2002
 did within this county and state on violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)

In the following particulars:

DESCRIPTION OF OFFENSE:

MURDER

16-03-0010, 0020

 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.

 Sworn to and subscribed before me
 on 8/13/2002
Isaac L. Pyatt (L.S.)
 Signature of Issuing Judge

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GEORGETOWN

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 8/01/2002 defendant JODY LYNN WARD
 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of) as set forth below:
16-03-0010, 0020

DESCRIPTION OF OFFENSE:

MURDER

 Now, therefore, 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.

Isaac L. Pyatt (L.S.)
 Signature of Issuing Judge

 Judge Code: 899
333 CLELAND STREET
 Judge's Address GEORGETOWN, S.C.
8435453381
 Judge's Telephone

 Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

 Form Approved by
 S.C. Attorney General
 July 25, 1990
 SCCA 516

Attachment 2

252

252

252

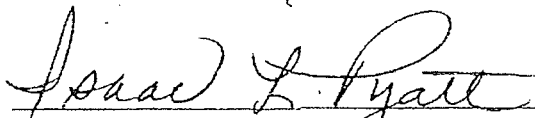
252

AFFIDAVIT

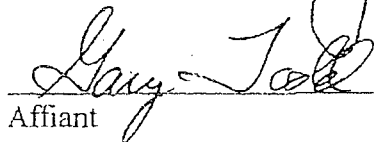
Warrant #H248669

On or about August 3, 2002, approximately during the evening hours, in the County of Georgetown, the defendant with malice and aforethought did cause the death of e Brown. On August 1, 2002 Jody Ward stated that Wilfred Brown had taken his money and ripped him off and that he was not going to get away with this. On September 13, 2002, a confidential and reliable source stated that on or about August 29, 2002 during the evening hours, Jody Ward instructed the source to drive him to a location off of Gapway Road. Ward got out of the vehicle and went into the woods with a shovel and two empty bags. Approximately twenty minutes later Mr. Ward returned from the woods with a bag of unknown contents, placed the bag and the shovel in the trunk of the vehicle. Ward then instructed the source to drive to a dirt road off of Indian Hut Road. Once on the dirt road, Jody Ward instructed the source to stop the vehicle and Jody Ward went to the trunk and removed the bag with unknown contents and shovel and entered the woods. The source was instructed to drive down the road turn around and come back to where Jody Ward was dropped off. Jody Ward at that time was seen coming from the woods with only a shovel in his hands, got into the vehicle and left the area. Several days later Jody Ward made a statement to the source that he "shot them boys" and "got rid of those boys". On September 13, 2002, the Georgetown County Sheriff's Office along with Georgetown City Police and S.L.E.D. searched the area where Jody Ward discarded the bag with unknown contents and found one bag containing human remains believed to be that of Wilfred Brown. This being against the peace and dignity of the state of South Carolina and a violation of South Carolina Code of Law 16-3-10.

Sworn and Subscribed before me

This 13 day of Sept 2002

Signature of Judge



Affiant

9-13-02

Date

Georgetown S.C. 29440Phone 570Case Number 08020701

AFFIDAVIT

Warrant #H248670

On or about August 3, 2002, approximately during the evening hours, in the County of Georgetown, the defendant with malice and aforethought did cause the death of Elton Rutledge. On September 13, 2002, a confidential and reliable source stated that on or about August 29, 2002 during the evening hours, Jody Ward instructed the source to drive him to a location off of Gapway Road. Ward got out of the vehicle and went into the woods with a shovel and two empty bags. Approximately twenty minutes later Mr. Ward returned from the woods with a bag of unknown contents, placed the bag and the shovel in the trunk of the vehicle. Ward then instructed the source to drive to a dirt road off of Indian Hut Road. Once on the dirt road, Jody Ward instructed the source to stop the vehicle and Jody Ward went to the trunk and removed the bag with unknown contents and shovel and entered the woods. The source was instructed to drive down the road turn around and come back to where Jody Ward was dropped off. Jody Ward at that time was seen coming from the woods with only a shovel in his hands, got into the vehicle and left the area. Several days later Jody Ward made a statement to the source that he "shot them boys" and "got rid of those boys". On September 13, 2002, the Georgetown County Sheriff's Office along with Georgetown City Police and S.L.E.D. searched the area where Jody Ward discarded the bag with unknown contents and found one bag containing human remains believed to be that of Elton Rutledge. This being against the peace and dignity of the state of South Carolina and a violation of South Carolina Code of Law 16-3-10.

Sworn and Subscribed before me
This 13 day of Sept 2002

Isaac L. Pyatt
Signature of Judge

Ray Todd
Affiant

9-13-02
Date

Georgetown S.C. 29448

Case Number 08020701

ARREST WARRANT

H-248669

H248669

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 GEORGETOWN

THE STATE

against

JODY LYNN WARD

 Address: GEORGETOWN, SC 000029440
Phone: SSN: [REDACTED]Sex: M Race: W Height: 5' 8"DL: [REDACTED]Agency ORI#: [REDACTED]Prosecuting Agency: [REDACTED]Prosecuting Officer: [REDACTED]Offense: MURDER
 Code/Ordinance Sec. 16-03-0010, 0020

 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: 8/13/2002

RETURN

 A copy of this arrest warrant was delivered to
 defendant [REDACTED]
 on [REDACTED]

Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO:
 JUDGE ISAAC L. PYATT
 333 CLELAND STREET
 GEORGETOWN, S.C.

294420807

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 GEORGETOWN

AFFIDAVIT

 Personally appeared before me the affiant INV. GARY TODD
 being duly sworn deposes and says that defendant JODY LYNN WARD
 did within this county and state on 8/03/2002 violate the criminal laws of the

 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE:

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.

Sworn to and subscribed before me

on 8/13/2002
 Signature of Issuing Judge Isaac L. Pyatt (L.S.)

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 GEORGETOWN

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNT.

 It appearing from the above affidavit that there are reasonable grounds to believe the
 on 8/01/2002 defendant JODY LYNN WARD

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of [REDACTED] as set forth below:

DESCRIPTION OF OFFENSE:

MURDER

 Now, therefore, 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.

 Judge's Address 333 CLELAND STREET
GEORGETOWN, S.C.

 Signature of Issuing Judge Isaac L. Pyatt (L.S.)
 Judge's Telephone 8435453381
Judge Code: 899
 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

 Form Approved by
 S.C. Attorney General
 July 26, 1990
 SCCA 518

Attachment A

256

ARREST WARRANT

H- 248670 H248670

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GEORGETOWN

THE STATE
against
JODY LYNN WARD

Address: [REDACTED]
GEORGETOWN, SC 000029440

Sex: [REDACTED] Race: [REDACTED] Height: [REDACTED] Weight: [REDACTED]

DL State: [REDACTED] DL #: [REDACTED]

Agency ORI#: [REDACTED]

Prosecuting Agency: [REDACTED]

Prosecuting Officer: [REDACTED]

Offense: [REDACTED]

Code/Ordinance Sec. 16-03-0010, 0020

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: [REDACTED]

RETURN

A copy of this arrest warrant was delivered to
defendant [REDACTED]
on [REDACTED]

Signature of Constable/Law Enforcement Officer

256

RETURN WARRANT TO:
JUDGE ISAAC L. PYATT
133 CLELAND STREET
GEORGETOWN, S.C.

294420807

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
GEORGETOWN)

AFFIDAVIT

Personally appeared before me the affiant INV. GARY TODD
being duly sworn deposes and says that defendant JODY LYNN WARD
did within this county and state on 8/03/2002 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)

in the following particulars:

DESCRIPTION OF OFFENSE:

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.

Sworn to and subscribed before me)
on 8/13/2002)
Signature of Issuing Judge (L.S.)

Signature of Affiant
Affiant's Address 333 CLELAND STREET
GEORGETOWN SC 29440
Affiant's Telephone 8435453370

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
GEORGETOWN)

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 8/01/2002 defendant JODY LYNN WARD

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE:

MURDER

Now, therefore, 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.

Signature of Issuing Judge (L.S.)

Signature of Judge

Judge Code: [REDACTED]

Judge's Address 333 CLELAND STREET
GEORGETOWN, S.C.

Judge's Telephone 8435453381

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Attachment

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518

256

AFFIDAVIT

Warrant #H248669

On or about August 3, 2002, approximately during the evening hours, in the County of Georgetown, the defendant with malice and aforethought did cause the death of e Brown. On August 1, 2002 Jody Ward stated that Wilfred Brown had taken his money and ripped him off and that he was not going to get away with this: On September 13, 2002, a confidential and reliable source stated that on or about August 29, 2002 during the evening hours, Jody Ward instructed the source to drive him to a location off of Gapway Road. Ward got out of the vehicle and went into the woods with a shovel and two empty bags. Approximately twenty minutes later Mr. Ward returned from the woods with a bag of unknown contents, placed the bag and the shovel in the trunk of the vehicle. Ward then instructed the source to drive to a dirt road off of Indian Hut Road. Once on the dirt road, Jody Ward instructed the source to stop the vehicle and Jody Ward went to the trunk and removed the bag with unknown contents and shovel and entered the woods. The source was instructed to drive down the road turn around and come back to where Jody Ward was dropped off. Jody Ward at that time was seen coming from the woods with only a shovel in his hands, got into the vehicle and left the area. Several days later Jody Ward made a statement to the source that he "shot them boys" and "got rid of those boys". On September 13, 2002, the Georgetown County Sheriff's Office along with Georgetown City Police and S.L.E.D. searched the area where Jody Ward discarded the bag with unknown contents and found one bag containing human remains believed to be that of Wilfred Brown. This being against the peace and dignity of the state of South Carolina and a violation of South Carolina Code of Law 16-3-10.

Sworn and Subscribed before me
This 13 day of Sept 2002

Isaac L. Pyatt
Signature of Judge

Guy Todd
Affiant

9-13-02
Date

Georgetown S.C. 29440

Case Number 08020701

AFFIDAVIT

Warrant #H248670

On or about August 3, 2002, approximately during the evening hours, in the County of Georgetown, the defendant with malice and aforethought did cause the death of Elton Rutledge. On September 13, 2002, a confidential and reliable source stated that on or about August 29, 2002 during the evening hours, Jody Ward instructed the source to drive him to a location off of Gapway Road. Ward got out of the vehicle and went into the woods with a shovel and two empty bags. Approximately twenty minutes later Mr. Ward returned from the woods with a bag of unknown contents, placed the bag and the shovel in the trunk of the vehicle. Ward then instructed the source to drive to a dirt road off of Indian Hut Road. Once on the dirt road, Jody Ward instructed the source to stop the vehicle and Jody Ward went to the trunk and removed the bag with unknown contents and shovel and entered the woods. The source was instructed to drive down the road turn around and come back to where Jody Ward was dropped off. Jody Ward at that time was seen coming from the woods with only a shovel in his hands, got into the vehicle and left the area. Several days later Jody Ward made a statement to the source that he "shot them boys" and "got rid of those boys". On September 13, 2002, the Georgetown County Sheriff's Office along with Georgetown City Police and S.L.E.D. searched the area where Jody Ward discarded the bag with unknown contents and found one bag containing human remains believed to be that of Elton Rutledge. This being against the peace and dignity of the state of South Carolina and a violation of South Carolina Code of Law 16-3-10.

Sworn and Subscribed before me

This 13 day of Sept 2002Isaac L. Pyatt

Signature of Judge

Guy Todd

Affiant

9-13-02

Date

Georgetown S.C. 29448Case Number 08020701

CLAIM FOUR:

PETITIONER'S RIGHTS WERE VIOLATED UNDER ARTICLE I, §3 OF THE SOUTH CAROLINA CONSTITUTION, THE FOURTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHEN APPELLANT WAS ARRESTED WITHOUT A (PROBABLE CAUSE) WARRANT WHILE NOT IN A COMMISSION OF A CRIME, HELD FOR SEVENTY-TWO HOURS, RELEASED AND AGAIN ARRESTED THEREAFTER BY WARRANTS THAT DID NOT HAVE SUFFICIENT PROBABLE CAUSE FOR AN ARREST WHEN NO SUBSTANTIAL BASES FOR PROBABLE EXISTED WHERE THE MAGISTRATE WAS GIVEN NO INFORMATION REGARDING THE RELIABILITY OF THE CONFIDENTIAL INFORMER, THE SUFFICIENCY REQUIRED TO ISSUE WARRANT DID NOT PROVIDE ACTUAL CAUSE FOR AN ARREST

Appellant incorporates claims 1 through 3 as if repeated verbatim herein.

Appellant was held prior to any issue of a warrant for murder for 72 hours. Appellant was arrested without a warrant even though he was not in the commission of a crime. The warrants later served upon after his release did not have sufficient probable cause. A warrant can not issue when its basis is the information of an informant tip alone. (See Whitley v. Warden, 91 S.Ct at 1031.

A warrant may issue only upon a finding of probable cause. State v. Weton, 329 S.C. 287, 494 S.E. 2d 802 (1997). The magistrate's task in determining whether to issue a warrant is to make a practically common sense decision concerning whether, under the totality of the circumstances set forth in the affidavit there is a fair probability that evidence of a crime will be found in the particular place to be searched. Evidence was never sufficiently presented at trial to establish the basis for the initial issue of the warrant for arrest.

An affidavit must contain sufficient underlying facts and

information upon which the magistrate can make a probable cause determination. State v. Phipot, 317 S.C. at 461, 454 S.E. 2d at 905-907. (Ct. App. 1995). This decision includes consideration of the veracity of the person supplying the information and the bases of their knowledge. (See State v. Johnson, 302 S.C. 243, 395 S.E. 2d 167 (1990). Mere conclusory statements which gave the magistrate no basis to make a judgement regarding probable cause are insufficient, when a warrant affidavit is insufficient on its face to establish probable cause, it may be supplemented by sworn oral testimony before the magistrate, [no substantial basis for probable cause existed in this case where the magistrate was given no information regarding the reliability of the confidential informer.] A Good Faith exception is inapplicable in cases where the affidavit fails to provide the magistrate with substantial basis for probable cause. See State v. Weston, 302 S.C. at 248-49, 395 S.E. 2d at 170.

"Sworn oral testimony, standing alone, do not satisfy" S.C. Code Ann. §17-13-140 (1985). See State v. McKnight, 291 S.C. 110, 352 S.E. 2d 471 (1987).

In the case before the court, appellant believes that the veracity of the informant was not established under the "totality of the circumstances" test set forth in Bellamy; Under the "totality of the circumstances" test, a reviewing court considers all circumstances, including status, the basis of knowledge, and the veracity of the informant, when determining whether or not probable cause existed to issue a warrant. (State v. Bellamy, 336 S.C. 140, 519 S.E. 2d 347 (1999) and State v. Driggers, 322 S.C.

506, 473 S.E. 2d 57 (1996) (non-confidential informants and eyewitnesses have more credibility than confidential informants.)

Because Appellant was held prior to any issue of a warrant for murder for 72 hours. Appellant was arrested without a warrant even though he was not in the commission of a crime. The warrants later served upon after his release did not have sufficient probable cause. A warrant can not issue when its basis is the information of an informant tip alone. (See Whitley v. Warden, 91 S.Ct at 1031. This court should reverse the trial court and remand for new trial, the evidence should be suppressed because the affidavit and its issue was illegal and circumvented the affidavit requirements of S.C. Code Ann. §17-13-140 (1985). See State v. Jones, 331 S.C. 228, 500 S.E. 2d (Ct. App. 1998), see also above, State v. McKnight, 291 S.C. 110, 352 S.E. 2d 471 (1987).

Appellant's counsel was ineffective for not challenging by motion or objection the Warrants in this case.

The arrest warrant affidavit were invalid on their face because they contained only conclusory statements, without any specific support. As with the factual support required for a search warrant a arrest warrant, the affidavit for a arrest warrant cannot support a finding of probable cause where the magistrate has insufficient factual detail to make his own determination of probable cause and merely ratifies the bare conclusions of others. (See U.S. CONST. IV, Amend. XIV; Gates, 462 U.S. at 239; also so see Giordenllo v. U.S., 357 U.S. 480, 485-86, (1958)(fourth amendment requirements which apply with equal force requirements).

Trial counsel was ineffective for if the proper challenges

262

21.

262

been made by trial counsel and ruled on by the trial court, the clear result would have been a finding that the warrant was invalid and the outcome of the trial would have been different.

262

262 28

CLAIM FIVE:

THE SOLICITOR'S HIGHLY INFLAMMATORY AND PREJUDICIAL REMARKS IN OPENING AND CLOSING STATEMENTS, BOLSTERING AND VOUCHING FOR STATE WITNESSES, ACTING AS WITNESS BEFORE THE JURY, TESTIFYING AS IF STATEMENTS MADE WERE FACTUAL, AND THE FAILURE OF TRIAL COUNSEL TO OBJECT VIOLATING APPELLANT'S RIGHT TO A FAIR TRIAL, INFECTED THE JURY PRIOR TO EVIDENCE, AND DENIED APPELLANT DUE PROCESS AND EQUAL PROTECTIONS OF THE LAWS IN VIOLATION OF THE FOURTEENTH AND SIXTH AMENDMENT OF U.S. CONSTITUTION, AND ART. §3, ART. IV, §IV OF THE S.C. CONSTITUTION.

PART I:

The Solicitor in opening remarks stated to the jury:

"What is the value of a human life? It depends on who you ask. In this case, ladies and gentleman, Jody Lynn Ward decided that the value of Elton Rutledge, Jr. was \$524.00. The Defendant, Jody Ward, decided that the value of Wilfred Brown was \$525." (Tr.p. 168, lines 6-10).

The Solicitor continued by stating:

"The Defendant told Denise Langston Cox, 'You're the only one I've told this to, better not get out or I'll kill you and I'll kill your children and I'll know it's you because you're the only one I've told.'" (Tr.p. 170, lines 3-6).

The Solicitor further stated:

"I think there's going to be physical evidence that will, that will help to convince you that Brian Elliott had nothing to do with this case. I don't think there's anything, there's no evidence in this case that's going to -that he had anything to do with it other than the statement of the Defendant, and I don't believe that." (Tr. p. 176, lines 11-18).

The above demonstrates the Solicitor's characterization of the appellant as an out right liar which resulted in denying him a defense by using his prior statement to police to discredit him before the jury in opening remarks and bolstering the state's witness above the appellant. These statements before the jury enhanced the credibility and believeability of Brian Elliott's alibi from his wife, Melissa Louise Elliott. (Tr. Pp. 536, line 11- p. 537, line 17; p. 539, line 4-p. 540, line 5). Brian Elliot was a known crack addict. (Tr. p. 543, line 21 - p. 545, line 6). Ms. Elliot had dated Brian since she was 15 years old and had been married to him for 16 years. (Tr. p. 543, lines 15-20; p. 545, lines 7-17).

This witness had every reason to be bias and lie to he court to protect her husband.

The Solicitor's comments served the sole purpose of enhancing her credibility to the jury in this case, and prejudiced the Applicant in doing so, as he was guilty in the minds of the jurors before they even entered into deliberations in this case.

The Solicitor's comments also enhanced the testimony of Denise Langston Cox who had given prior inconsistent statements to police officers. (Tr. pp. 130, line 7-p. 136, line 25; p. 137, line 11-p. 139, line 19; p. 217, lines 1-15; p. 218, line 23-p. 222, line 8; p. 222, line 9-p. 231, line 17). This witness had met with the Solicitors several times to discuss her testimony at trial, had talked with police several times before making her taped statement, and the Defendant had ended a relationship with her and went back home to his wife. Defendant had paid her bills, taken care of her children, given her money on a regular basis, and supplied her with marijuana. (Tr. p. 215, line 1-p. 216, line 25). This witness had every reason to be biased against the Applicant in this case. Let us review the case records further in this regard. This witness lied about the last time she had talked to the Defendant, she went over phone records with the Solicitor's Office and police records to the case prior to trial, and she had some—some worthless check charges that persons related to the case discussed with her. (Tr. p. 218, line 23-p. 219, line 10). She agreed to wear a wire in this case, but warned Defendant she was wearing it, and was charged with obstruction of justice by the police, which they showed to her on August 27th, 2002. She admitted that police went over her taped statement with her prior to taping it, and that her interview lasted 5 hours. (Tr. p. 222, line 9-p. 231, line 17). Police charged her sister-in-law in this

case, and she was well aware of how the police operated, and furthermore, she did not tell police the Defendant had a TEC-9 until February 11th, 2003 only after her sister-in-law had been charged in connection to this case. (Tr. pp. 231, line 18-p. 232, line 9; p. 236, line 7-p. 237, line 8; p. 242, line 4-p. 243, line 24). Candy Cox is her sister-in-law.)

It is interesting to also note that this witness stated the Defendant had threatened to kill her and her children on Aug. 3rd, 2002, but then took a 3 hour trip with the Defendant on Aug. 9th, 2002, alone with him at night. (Tr. p. 240, line 11-p. 241, line 3). SEE: also, (February 26, 2004 Motion Hearing Tr. p. 6, line 23-p. 8, line 13). Here, the Solicitor states Ms. Langston was not and would not be served with the warrant for obstruction of justice. (Statements)
This witnesses' inconsistent should be enough to overturn this case alone and of its own accord legally speaking. These inconsistent statements would have cast a grave doubt on her credibility upon her story to the jury, without the comments by the Solicitor in this case. The State's introduction of her prior inconsistent statements into evidence and passing statements to the jury constituted improper impeachment of its own witness, as the trial court did not limit admission of statements to only those parts corroborating her testimony, and the prosecuting attorneys had reason to know she would testify contrary to her previous statements and differences between them. Citing, State V. Younger; 295 S.E. 2d 453 (1982); State V. Williams; 459 S.E. 2d 208 (1995); State V. Lynn; 578 S.E. 2d 628 (2003).

The prosecuting attorney here furthered that violation by enhancing Ms. Langston credibility by his improper comments in

25.

opening argument purposely.

Further, the trial Court only made matters worse by refusing to give defense counsel's requested charge on addict testimony. (Tr.p. 556, line 10-p. 557, line 2).

Then, the Solicitor further states to the jury, "People are going to put their hand on the bible. They're going to swear to tell the truth. They are going to get in this chair and they are going to share testimony with you." (Tr.p 177, lines 9-12). This only further served to enhance both Ms. Elliott's and Ms. Langston's testimonies before the jury for the sole purpose of obtaining an easy conviction in this case, as it most assuredly prejudiced the Applicant in the jurors minds resulting in a guilty verdict before they even began their deliberations in this.

The Solicitor's opening statement to the jury resulted in a manifest injustice which clearly prejudiced the Applicant at trial. State V. Mann; 518 S.E. 2d 60 (1999); State V. Guthrie; 518 S.E. 2d 83 (1999).

Counsel was ineffective in failing to object to these improper comments by the Solicitor in his opening argument to the jury. Our Supreme Court has specifically held, that counsel may not assert trial strategy as a defense for failure to object to comments which constitute an error of law and are inherently prejudicial. Dawkins V. State; 346 S.C. 151, 551 S.E. 2d 260 (2001); Strickland V. Washington; 466 U.S. 668-669 (1984).

Due to the prosecutorial misconduct in this instant case, the convictions and sentences should be vacated, or at least a new trial granted due to counsel's ineffectiveness.

PART II:

In closing the Solicitor stated:

"525, apiece is the value of human life to Jody Ward. These two murders that Jody Ward committed on August 3rd of 2002 to Jody Ward they were nothing but a bad business transaction, that's all it amounted to to him, that's all it was ever about. In his statement which you heard Jody Ward said that this whole thing was over a drug deal gone bad. That's Jody Ward's take on the whole situation of him taking the life of two innocent people." (Tr. p. 557, line 24 - p. 558, line 7) (Solicitor Bryan).

The Solicitor bolster's his case and vouches for his witnesses, one, Denise Langston's testimony and her credibility. (Tr. pp. 559, line 14 - p. 563, line 23; p. 569, lines 18-19; p. 574, line 17 - p. 575, line 10).

The Solicitor tells the jury at another place:

"Now this is important because I believe Chris Doerr", (another one). (Tr. p. 563, lines 17 - 23; p. 564, lines 9 - 14).

The Solicitor thereafter goes on to Bolster and Vouch for the Credibility of Keven Cooper, another witness. (Tr. 566, lines 4-20). Solicitor also vouched for other witnesses, Louis Bazen and other state witnesses before the Jury in Closing. (See Tr. pp. 567, line 16-p. 568, line 14; p. 568, line 19 - p. 569, line 17; p. 578, line 8- p. 582, line 18; p. 572, lines 10 - 21; p. 583, line 6 - p. 584, line 10; p. 585, line 12 - p. 586, line 10; p. 588, line 1 - p. 589, line 7).

Additionally, the solicitor in closing intentionally makes a mis-statement of the appellants defense at trial. (Tr. 573, lines 6-20). Solicitor continually and intentionally comments on facts not in evidence. (Tr. p. 574, lines 6-15). Counsel during all of the above fails to make any

objections to any of the false statement , bolstering and

vouching for State witnesses' credibility. There are some other factors involved that need to be reviewed in regards to this issue at hand.

Thomas Kevin Cooper testified, "A lot of people had been talking and a lot of rumors around the community, and he had heard a few stories in that regard. A lot of different people were involved in this case trying to say the Defendant told them something about it. He further testified, "That when the Defendant was acting mad and saying go buy me some bullets, the victim, Wilfred Brown was sitting right there laughing or smiling. (Tr.p. 255, 7-p. 253, line 4). He stated, "that he had never seen the Defendant with a nine millimeter handgun. (Tr.p. 256, lines 9-14; p. 257, lines 10-14).

Wilfred Brown's mother, Nadine Brown testified, "That some good friends of her son came by and wanted to talk to him. (Tr.p. 272, line 7-p. 273, line 15). They knew he didn't live there and were from out of town. (Tr.p. 275, line 4-p. 276, line 6). (**The questions here are what did they really want and could there have been some out of town suspects in this case?**)

Elton Rutledge's sister, Latrese Rutledge testified, "That he got a phone call, but she did not know who called or what it was about, and that he left, and she had not seen him since. (Tr.p. 303, line 14-p. 304, line 16). (**Who was the call from and what was it about?)

Elton Rutledge's father testified, "That he left for a ride with a friend, but he did not know who. (Tr.p. 310, line 20-p. 311, line 1). (Who was the friend?)

Tracy Elaine Collins testified, "That both she and her boy-

friend dealt with Wilfred Brown in alot of drug transactions, and that her boyfriend,Billy was selling drugs. (Tr.p. 395,line 15-p. 396,line 22).

Donald Louis Bazen testified,"that Defendant had told him those boys shot at him and put four or five holes in the Suzuki. He stated,that he drink alot and use to smoke marijuana. (Tr.p. 419,lines 10-12;p. 419line 17-p. 420,line 24). He stated,'That the Solicitor's Office had practiced or rehearsed with him prior to trial,that Solicitor Hembree helped him out on a DUI charge prior to trial,and wasn't going to charge him with any drug charges. (Tr.p. 420,line 25-p. 423,line 24). He stated,"that he did not actually see the Defendant physically place anything in the trunk of the vehicle or remove ahything from it. (Tr.p. (Tr.p. 423,line 25-p. 425,line 6). He stated,"That his meetings with the Solicitor's Office and Sheriff's Dept. had been quite emotional bringing him to tears at times. He stated,"That Officer Gary Todd was pressuring him with a tape where he had been implicated in the alleged crime by Willie Lambert,and that the police were calling him a liar and pressuring him to tell them more when he couldn't. (Tr.p. 425,line 7-p. 428,line 22). He was under subpoena by the State. (Tr.p. 429,lines 3-18).

Officer Gary Todd testified at the Preliminary Hearing on Oct. 17th,2002,"That there was bad blood between the Defendant and Donald Bazen,the father of Louis Bazen,who was not charged with accessory after the fact or obstruction of justice in accordance with the South Carolina Laws for his part in allegedly aiding in moving the bodies in this case. SEE:Pages 7-8,Preliminary Hearing Tr.)

On December 8th, 2003, A Motion Hearing was held before Judge John L. Breeden, Jr., at which it is clearly shown that Solicitor Bryan had pled Willie Lambert guilty to an unrelated charge to this case, and that Mr. Lambert indicated that he had received benefit from the State at the time he pled guilty as a results of his cooperation in this case. (Tr.p. 10, line 9-p. 11, line 19).

At the same Motion Hearing, it is clear, "That Louis Bazen, the original confidential informant who lead to the Defendant's arrest and a main State's Key witnesses at trial had given statements contrary to his testimony, and statements that he was possibly there and was involved in the alleged killings. (Tr.p. 11, lines 6-13, and SEE: p. 12, line 20-p. 13, line 11).

At a different Motion Hearing on February 26th, 2004 before Judge Paula H. Thomas, Solicitor Hembree stated, "That Louis Bazen was not and would not be charged in this case. (Tr.p. 4, line 15-p. 5, line 8) He stated, "That Willie Lambert was never offered or promised anything, but after he gave his statement he plead guilty to an offense and received a very light prison sentence. (Tr.p 5, lines 17-23).

Now let us look at a important factor in regards to this issue being argued in this Initial Brief of Applicant. The Solicitor (Hembree) stated in open Court that no deals were made in exchange for testimony in this case at bar. (**The question here, is why did all the State's witnesses' who aided the State by their testimonies receive plea deals on pending charges or not get charged in connection to this case? We must particularly note that the only witness who did not aid the State, Candy Cox was charged with accessory after the fact that related to this case.

Two other factors are vital to this issue also. First, if the Defendant in this case was the notorious drug dealer the State made it sound like he was, then it does not make any sense at all, for him to give his money to Wilfred Brown to buy drugs before he saw the drugs and tested them, as that is the known procedure for most drugs dealers.

Second, defense counsel requested a bias charge to the jury, and the Court refused to give the charge, but noted it on the record. (Tr.p. 629, line 21-p. 630, line 2). That bias charge certainly should have been given as indicated by the case records.

These reasons cited in support of this Issue E of this Initial Brief of Applicant further indicate why counsel was indeed very ineffective in failing to object to the Solicitor's blostoring of ~~the~~ case and his vouching for the credibility of the State's witnesses.'

The State may not bloster the credibility of one of its State witnesses. State V. Young; 305 S.C. 380, 409 S.E. 2d 352 (1991), Id. 409 at 356; State V. Caldwell; 300 S.C. 494, 388 S.E. 2d 816 (1990); State V. Durden; 264 S.C. 86, 212 S.E. 2d 587 (1975).

The State repeatedly invited the jury to believe the State's witnesses because they had nothing to gain by lying. These arguments constituted personal assurances from the State which ~~went~~ beyond the parameters of the trial record. As such, they were clearly improper and should have been objected to by defense counsel. State V. Kelly; 343 S.C. 350, 540 S.E. 2d 851 (2001); State V. Shuler; 344 S.C. 604, 545 S.E. 2d 805, cert. denied, 534 U.S. 977 (2001).

There is two ways a Solicitor can improperly bloster his case.

(1) By say, "I believe him and you should too." (2) "Through other inappropriate means" and that's clearly what the solicitor did here in this instant case. It is highly improper for a Solicitor to bolster a State's witness. Gilchrist V. State, supra. and Matthews V. State, supra.

When a State improperly bolsters its witnesses or testimony, or improperly vouches for the credibility of State's witnesses'; which is apparent that the State did both in this case, it must be deemed as ineffective assistance of counsel when counsel fails to object to such errors of law. Dawkins V. State; 346 S.C. 151, 551 S.E. 2d 260 (2001).

The convictions and sentences in this case should be vacated or a new trial granted.

The prosecutor's misconduct in acting as both a witness and prosecutor in this murder proceeding was so egregious and prejudicial to fair trial as to undermine confidence in its outcome.

See Walker v. Davis, 840 F. 2d 834 (11th Cir. 1988).

Trial counsel's failure to raise improper remarks during opening and closing arguments constitute ineffective assistance of counsel. Reynolds v. Ellingsworth, 843 F.2d 712 (3rd Cir. 1988); Seehan v. State of Iowa, 37 F.3d 389 (8th cir. 1994); U.S.v.wolf, 787 F.2d 1094 (7th Cir. 1986).

PART III:

DUE TO THE GOVERNMENT'S MISCONDUCT WITHIN THE OFFICE OF THE SOLICITOR TO PROVIDE PROPER AND TIMELY DISCOVERY OF MATERIALS SO THAT A DEFENSE MAY BE PROPERLY CONSTRUCTED THROUGH THESE RAW MATERIALS VIOLATES APPELLANT'S RIGHT TO A FUNAMENTALLY FAIR TRIAL: THE FAILURE OF JUDGE IN HIS DISCRETION TO GRANT MOTIONS TO CURE THE PROBLEMS THE APPELLANTS CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTIONS AND RIGHT TO EFFECTIVE COUNSEL HAVE BEEN VIOLATED

SUCH DEPRIVATIONS BY THE SOLICITOR'S OFFICE IN THIS CASE HAD A PERVERSIVE EFFECT OF ALTERING THE EVIDENTIARY PICTURE AND CONSTITUTES A BREAKDOWN IN THE FUNDAMENTAL FAIRNESS OF THE PROCESS DEPRIVING THE APPELLANT OF A FAIR TRIAL.

At trial defense counsel requested that all previous motions and hearings from December 8, 2003; February 26, 2004 and February 27, 2004 be made a part of the record with all attached exhibits for appellant purposes. These were made a part of the record. (See Tr. p. 62, lines 16 - p. 63, line 2).

This record now preserved for appeal should be carefully reviewed by this court, along with the trial transcripts, and the issues herein briefed as to the prosecution's misconduct in this case during trial as set forth above in parts One, Two and hereafter.

DECEMBER 8, 2003 MOTIONS HEARINGS:

This hearing was held before Judge John L. Breeden, Jr..

Defense counsel moved for recusal or in the alternative to disqualify the Fifteenth Circuit Solicitor and/or Office from the trial of this case. (Tr. pp. 3, line 7-p. 35, line 8, in reference).

This court is requested to pay particular attention to the claims presented by defense counsel at this hearing and referenced in the transcript herein as: (Tr. pp.8, line 21-p. 9, line 7; p. 13, line 7; p. 13, line 12-p. 14, line 1; p. 14, line 22-p. 15, line 4; p. 15, line 5-p. 17, line 7; p. 17, line 11-p. 18, line 24; p. 19, lines 1 - 12; p. 20, lines 10 - 24.

At this hearing before Judge Breeden Jr. , Solicitor Bryan admitted that Solicitor Hembree instructed him to call the police agencies and instruct them that all evidence in relation to appellant's case had to be turned over to the Solicitor's Office first, and that this was a priority. Such, deprived the appellant's defense at trial from

obtaining (Discovery) in a timely manner, and until the Solicitor's Office decided to give it to the defense in this case.

Solicitor Hembree admitted that defense was not provided with a lot of (Discovery Materials) in a timely manner by the their Office. SEE: (Tr. pp. 38. lines 9-20; p. 52. lines 9-17; p. 54. line 1- p. 55. line 4; p. 55. lines 17-25). The Solicitor flatly admits that many of these documentations of evidence were relevant to the defense at trial in this case. This very fact in and of itself does clearly show violations of the following case law precedents and rules. Brady V. Maryland, supra. - U.S. V. Argurs, supra. - Kyles V. Whitley, supra.; Rule 5, SCRCrimP.; Rules 608 and 609, SCRE; and Rules of Professional Conduct, Rules 3.4-Fairness to Opposing Party and Counsel; 3.4-Special Responsibilities of a Prosecutor; 8.4-Misconduct; 3.3-Candor Toward the Tribunal; 4.3-Unrepresented Parties, and Const. Law, Key 257).

The Court at this Hearing ruled and granted a Continuance in order to correct these matters. (Tr. p. 72, line 16-p. 73, line 17). That ruling failed to correct anything at all, as will be shown in the following parts of this argument.

FEBRUARY 26th, 2004 MOTION HEARING:

This Hearing was held before the Honorable Paula H. Thomas, who was also the trial Judge in this case.

At this Hearing, defense counsels move to Dismiss the charges, based upon (Discovery violations), and (After-Discovered Evidence) in that regard.

Judge Thomas stated, "The Motion To Dismiss should be heard by Judge Breeden since it was a subsequent application for an order after refusal under Rule 4(B). (Tr. p. 17, line 18-p. 18, line 16)

FEBRUARY 27th, 2004 MOTION HEARING:

This Hearing was held before the Honorable John L. Breeden, Jr.

At this Hearing, defense counsels moved to Dismiss or in the Alternative to Disqualify based on after-discovered evidence that warranted reconsideration of the prior original Motion and Court ruling upon the Motion on December 8th, 2003. (Tr.p. 1, line 2-p. 3, line 23).

In regards to this Hearing of February 27th, 2004, SEE: the Solicitor's statements to the Court at the December 8th, 2003 Hearing. SEE: (Tr.p. 4, lines 6-7; p. 5, line 20-p. 6, line 3; p. 6, lines 5-12 and lines 14-24).

The following testimonies from the February 27th, 2004 Hearing clearly and plainly show that Solicitor Hembree not only lied to the defense counsels, but to Judge Breeden as well, at the December 8th, 2003 Hearing.

SEE: TESTIMONY of Officer Gary Todd:

(Tr. pp. -p. 10, lines 4-10; p. 11, lines 3-18; p. 12, lines 1-17; p. 12, line 25-p. 15, line 1; p. 15, line 8-p. 17, line 14; p. 18, line 9-p. 22, line 2). SEE: (Tr.p. 33, line 13-p. 34, line 20).

SEE: Affidavit of Louis Bazen:

SEE: (Tr.p. 35, lines 1-17), referenced only. SEE: Original Affidavit:

SEE: TESTIMONY of Officer William Pierce:

In regard to polygraph examination of Roger Warren on August 23rd, 2003: SEE: (Tr.p. 35, line 25-p. 38, line 1).

SEE SOLICITOR'S STATEMENTS:

SEE: (Solicitor's statements to the Court at December 8th, 2003 Hearing in regards to SLED Reports on ballistics and DNA from the

tennis shoes of one of the victim's in this case. (Elton Rutledge, Jr.) SEE:(Tr.p. 7, lines 11-14 and 19-22;p. 8, lines 3-8).

SEETESTIMONY of investigator DON MYERS:

SEE:(Tr.p. 38, line 21-p. 40, line 20).

SEETESTIMONY of SLED Agent Frank Dan DeFreese:

SEE:(Tr.p. 42, line 8-p. 48, line 17;p. 51, lines 4-24).

SEE ARGUMENT by Defense Counsels:

In these arguments before the Court, defense counsels argued that Solicitor Greg Hembree had committed prosecutorial misconduct, and they were correct in that argument. SEE:(Tr.p. 52, line 9-p. 58, line 8;p. 74, line 10-p. 75, line 25;p. 76, line 8-p. 80, line 4).

SEE:ARGUMENT by Solicitor Hembree:

SEE:(Tr.p. 62, line 1-p. 74, line 9;p. 76, lines 2-7).

Judge Breeden put the matter under advisement for a later ruling, and ask both sides to submit proposed orders. SEE:(Tr.p. 80, lines 5-14).

By written Order dated March 8th, 2004, Judge Breeden Dismissed the defense's Motion.

That ruling is in error, but that is not what's important in this case. What is important now follows.

First, Rule 3.4, which provides, "A lawyer shall not unlawfully obstruct another party's access to evidence."

That is exactly what Solicitor Hembree did in this case, and he did not stop there either, which is clear cut from the arguments of ISSUES C and E of this Initial Brief.

Prosecutorial misconduct is very apparent from pre-trial and throughout the trial of this instant case.

The Solicitor's actions in this case violate the rules of professional conduct and ethics within their very meanings, they violate the S.C. rules of evidence, the fundamental fairness of the trial proceedings, both the S.C. and U.S. Constitutions, and the integrity of the entire judicial system, causing ramifications in our public trust of the legal system if his actions are upheld by our S.C. Courts in this case.

There is not only a impermissible inference of bad faith, but a very compelling pattern of negligent action of bad faith and prosecutorial misconduct in this case. This improper conduct by Solicitor Hembree is totally shocking to the American justice system and what it stands for to the American public. His piecemealing of the Discovery materials in this case are completely shocking to our justice system.

"The American public cannot have confidence in our judicial system, our Constitutions, our Laws, our Rules, or a fair trial if Solicitor are allowed to proceed in a procedural manner of this type and nature. If this is allowed by our Solicitors, then there is no need for our Constitution, Rules, Laws, or Courts at all.

Prosecutors hold positions of public trust. They are elected by the people who need to know and feel a sense in every community, that when you walk into our Court rooms, that you will receive true legal justice that want be handed to you piecemeal fashion, and that you will receive a fundamentally fair trial by our S.C. Courts.** State V. Quattlebaum; 338 S.C. 441, 527 S.E. 2d 105 (S.C.S.Ct. 2000); App.Ct. Rule 407).

The actions of the Solicitor in this case assuredly did contribute to the verdict obtained, and they cannot said to be harmless at all in this instant case. Delaware V. Van Arsdall; 475

U.S. 673, 648 , 106 S.Ct. 1431, 1438 (1986), quoting, Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 828 (1967).

The actions of the Solicitor in this case so infected the trial with unfairness as to make the conviction a denial of due process and fundamental fairness. Simmons v. State, 331 S.C. 338, 503 S.E. 2d 166-167 (1998).

The adverse inference indulged against the appellant in this case because of its exercise denied him the presumption of Innocence and shifted the Burden of proof from the State to the appellant in this case. See State v. posey, 269 S.C. 500, 503, 238 S.E. 2d 176-177 (1977), citing, Samnstrom v. Montana, 442 U.S. 513 (1979) and U.S. V. Gordon, 61 F. 3rd 263, 267 (4th Cir. 1995).

F U R T H E R A R G U M E N T:

As a general rule, conduct of a government office and its prosecutors' when addressing the jury in opening and closing remarks violates the appellant's rights when statements are made that are calculated to arouse prejudice against the accused, and to prevent him from having a fair trial and such can not be tolerated. State v. Craig, 2678 S.C. 262, 227 S.E. 2d 306 (1976). And, the Due Process Clauses of S.C. Const. Art. I. §3 and the 14th Amendment of the U..S. Const., prohibit a trial judge from overreaching for the prosecution, (as was done in this case (see part III), so as to deny appellant rights of a fair jury trial, guaranteed by the 5th and 6th amendments, U.S. Constitution. A trial judge should not sanction the solicitor's actions in this case, making highly improper and prejudicial statements during trial, and tapping a telephone and calls between defense counsel

and appellant as well as quartering off the evidence, depriving appellant's counsel of its discovery until late in the trial period as set forth above. See Simmons v. State, 331 S.C. 333, 503 S.E. 2d 164 (1998).

It is the duty of this court to view the failure in providing information in a timely fashion as to discovery right rather than to evidentiary right and due process right issues. The review should be based upon the right of Due Process of law and discovery rather than any evidentiary rules.

The proper analysis under discovery and due process of law regarding the prosecutor's duty is, more than merely to meet the minimum standards of the letter of the law. AS the court stated in State v. Davis, 239 S.C. 280, 122 S.E. 2d 633 (1961), citing State v. McGill, 191 S.C. 1, 3 S.E. 2D 257 (1939); STATE V. KING, 222 S.C. 108, 17 S.E. 2D 793 (1952); BERGER V. UNITED STATES, 295 U.S. 78, 55 S.CT. 561, 87 L.ED. 754 (1942); VIERECK V. UNITED STATES, 318 U.S. 266, 63 S, CT, 561, 87 L.ED. 754 (1942).

In Brady v. Maryland, 373 U.S. 83 *1963), the Court held that the Due Process Clause prohibits a State from withholding (i.e. delaying) evidence that is material and exculpatory of an accused. "--- if the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error has been committed." united States v. Augers, 427 U.S. 97 (1976).

The question remains in view of the accumulation of prosecutorial misconduct in this case that it may even presumed

that other evidence may have been withheld, lost, or destroyed, that is not known of even today. This evidence discovered as delayed access to and manipulated by the government, and withheld along with wheat else may never have been provided may be critical to the case and questions of other state witnesses that may have been involved and had something to lose and who testified in this circumstantial evidence case were let off to obtain conviction against the appellant. Such deserves investigation and further litigation and may even be a lost effort to correct the wrongs presented in this issue. (State v. Caulder, 287 S.C. 504, 339 S.C. 876 (1986)).

The Courts have long condemned unprofessional conduct by the government prosecutors, whether it results from incompetence by the government prosecutors or Manipulation. Prosecutorial actions may "constitute a denial of due process generally". Rogers v. Lynaugh, 848 F. 2d 606, 608 (5th Cir. 1988). the government's prosecutor's duty "in a criminal prosecution is not, "it shall win a case, but the justice shall be done." Berger v. U.S., 295 U.S. 78, 88, 55 S.Ct. 629, 633 (1935). A constitutional error derives from a trial which is unfair. Donnelly v. DeChristofore, 416 U.S. 637, 643 , 94 S.Ct. 1898 , 1871 (1974).

Therefore, the appellant's conviction must be set aside.

The duty of the solicitor before a jury is only to comment on the evidence that was placed into the record, the characteristics of the defendant, and the circumstances of the crime. See State v. Smith, 298 S.C. 482, 381 S.E. 2d 724 1989). The acts of the Solicitor in naming each state witness and vouching for their testimony and verifying that they would not

lie, is designed to assassinate the character of the appellant in that he did related statements against the appellant herein above that deprived him of his right to claim innocence until proven guilty.

Further, in Wilson v. O'Leary, 895 F. 2d 378, 384 (7th cir. 1990) it was decided that ("Procedural rules apply to the government as well as to the defendants...[I]f as a result a violent offender goes free, the Attorney General of Illinois must understand where the responsibility lies - with his own staff").

"It is abiding truth that '[n]othing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence". Oregon v. Hass, 420 U.S. 714, 724-25, 95 S.Ct. 1215, 1222, 43 L.Ed. 2d 570. Also, Harris v. New York, 401 U.S. 222, 232, 91 S.Ct. 643, 649, 28 L.Ed. 2d 1 (1971).

It is an established fact that it is the Jury, not the prosecutor, that, "has the duty to sift through the inconsistencies of testimony, to weigh the credibility of witnesses and to resolve any ambiguities in the evidence." Saint Paul, Marine Trasp. Corp. v. Cerro Sales Corp. 505 F. 2d 1115, 119 (9th Cir. 1974).

The Solicitor's arguments before the jury "so infected the trial with unfairness as to make the resulting convictions a denial of due process." See Donnelly v. DeChristofore, 416 U.S. 637, 94 S.Ct. 1868 (1974). "Improper suggestions, insinuations and especially assertions of personal knowledge are apt to carry much weight against the accused when they should carry none."

Berger v. United States, 295 U.S. 163; United States v. Atkinson, 297 U.S. at 160; Vierick v. United States, 318 U.S. 236 (1943); See also, State v. White, 246 S.C. 562, 144 S.E. 2d 481 (1965). While a prosecutor should prosecute vigorously, State v. Davis, 289 S.C. 280, 122 S.E. 2d 635, his duty is not to convict a defendant but to see that justice is done. State v. Allen, 266 S.C. 468, 224 S.E. 2d 881 (1976); Berger v. United States, 295 U.S. 78, S. Ct. 627 (1935).

The Prosecutor's overall conduct generally before and during trial can accumulatively undermine the fundamental fairness of the trial and contribute to and cause fundamental manifest injustice. See supra. Berger; Vierick; Allen; White, as set forth above.

In State v. Quattlebaum, Op. No. 25051 filed January 24, 2000, the high court stated: "We will not tolerate deliberate prosecutorial misconduct which threatens rights fundamental to liberty and justice."

The cumulative misconduct of the Office of the Solicitor and the Solicitors themselves in opening and closing remarks, tapping telephone at jail house of appellants calls to attorney defense counsel, admissions of wrong doing regarding evidence in part three, the judges failure to cure the problems violated the petitioner's constitutional rights. The cumulative affect of these errors and violations and acts and omissions, misconduct of solicitors and office of solicitor deprived the appellant of a fair trial. These actions and omissions of the government hindered the defendants defense in this murder case. Which in the

interest of justice require a new trial and / or immediate release without new trial.

PART IV:

SOLICITOR TAPPED JAIL TELEPHONE ILLEGALLY

JUDGE FAILED TO CURE PROBLEM

(MORE GOVERNMENT MISCONDUCT)

Trial counsel brought motion and preserved for appeal the question of Solicitor and Government tapping Telephone calls between Appellant and Defense counsel. See Tr. p.194 line 4, through pg.197 line 17. See other Arguments presented to court regarding the governments Misconduct in the Appellant's case, Tr.Pages 169, line 5 through Tr. page 197. See also Judges Order which was adopted from Solicitor filings and adopted by Judge,Tr. pg. 861, through 929.

PART V:

VOUCHING BY GOVERNMENT FOR

GOVERNMENT WITNESSES:

The court cannot uphold the decision of the lower courts when its findings have no probative value. See Holland v. State, 322 S.C. 111,470 S.E. 2d 378 (1996).

In State v. Shuler,344 S.C. 604, 545 S.E. 2d 805, Cert. denied,____, U.S. ____, 122 S.Ct. 404 (2001), the Court explained that a solicitor:

"cannot vouch for the credibility of a witness by expressingp or implying his personal opinion concerning a witness' truthfulness... Improper vouching occurs when

places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony...

344 S.C. at 630, 545 S.E. 2d at 818 (citation omitted). "Because a jury must make its own assessment on the credibility of witnesses, it is inappropriate for the State to assure the jury of a government witness's credibility." State v. Kelly, 343 S.C. 350, 369, 540 S.E. 2d 851 (2001), rev'd on other grounds, 534 U.S. 246 (2002).

The Solicitor not only vouched for one witness but vouched for all the State Witnesses.

1. Denise Langston: Tr. p. 771, line 25: solicitor vouches for witness Denise Langston, "...I'll tell you that she was credible..." also, pg. 772, line 10: "but she told the truth and the whole truth..."

2. Christ Doerr: Tr. p. 772, line 17 through 23 where solicitor vouched for him in statement regarding Denise; " Now this is important., I believe Chris Doerr, wh9owas the diver who discovered the vehicle..."

3. Louis Bazen; Tr. pg. 779, lines 1 to 4; "ouis Bazen, of course, is another critical, absolutely , absolutely critical witness to the States case" and on Tr. pg. 783 line 19-23 states " ...and I submit to you that Louise Bazen was a very credible witness, that he didn't try to hide anything, that he didn't do

anything but tell the truth as he knew it".

It can be easily seen that the state improperly vouched for the credibility of the above three witnesses in closing statements. These statements amount to personal assurances of the witnesses veracity because the solicitor emphatically stated that they are all three worthy of belief. Since it is inappropriate for the State to assure the jury of a government witness's credibility, the Solicitor erred in doing so and was in misconduct before the jury. Solicitor's vouching enhanced the impropriety of in closing remarks. Other repeated remarks throughout the Closing statements as to the character and lies by the appellant and his unbelievability was designed and calculated to persuade the jury to not believe the defense but believe the solicitor.

The prejudicial impact of the vouching by the solicitor clearly scream for this court to find prejudice which flowed from the solicitors misconduct. The credibility of the state witnesses were so crucial in this circumstantial murder case that to vouch for same was therefore misconduct and persuasive on its on-self to manipulate the minds of the jury to a finding of guilt. There was sufficient question of each of the state witnesses credibility in the record. Since both the credibility of State witnesses and that of appellant were in question, the solicitor was wrong in using the states integrity to bolster the witness and vouch for there credibilility.

On the totality of the above claims and parts herein, this case

286

45.

286

should be reversed.

286

286

CLAIM SIX:

p.46

Did the trial Court lack subject matter jurisdiction to enter a conviction or impose a sentence upon indictment 03-GS-22-1031 due to the fatal variance between the proof at trial and the allegations within the face of the indictment?

Indictment 03-GS-22-1031 reads:

"That Jody Lynn Ward did in Georgetown County on or about August 3, 2002, willfully, feloniously, and intentionally, with malice aforethought, kill Elton Rutledge, Jr. by shooting Elton Rutledge, Jr.; and Elton Rutledge, Jr. did die as a proximate result thereof in violation of Section 16-3-10, South Carolina Code of Laws (1976), as amended, and the Common Law of South Carolina.

Now let us review the proof presented by the State in regards to the indictment in question here.

The State alleged the victims were killed in the Applicant's wife's Suzuki Sidekick. (Tr.p. 76, lines 11-16). However, the Applicant alleged that the said victims stole the vehicle. (Tr.p. 77, lines 13-19).

The Solicitor admits that the remains of the second person found were not identified as Elton Rutledge by dental records or other means, and that the pathologist could not positively identify his skull, but that he would offer proof through circumstantial evidence that the remains were that of Elton Rutledge, kind of treating it as a no body case and putting up some evidence along those lines. (Solicitor Hembree), (Tr.p. 68, lines 10-24). We must note that no weapon was ever found in this case.

No DNA evidence was presented to establish that the remains

p. 47

were that of Elton Rutledge, Jr. (Tr.p. 83, lines 10-11; p. 85, lines 2-8).

SLED Agent Roderick Greene testified; "That he performed the presumptive test on the stain found in the crime vehicle, but he could not say it was human blood. (Tr.pp. 376, lines 3-14; p. 385, lines 14-21; p. 387, lines 5-9). He could not obtain any latent prints. (Tr.p. 387, line 13-p. 388, line 2). He stated, "that he could not determine what type ammunition the projectile found in crime vehicle might have been, and there was no evidence of blood stains in the front passenger seat of the vehicle. (Tr.pp. 388, line 3-p. 389, line 7; p. 389, lines 13-15).

SLED Agent Jefffrey Allen Crooks testified. "That we searched another area indicated to us where the bodies might have been originally buried prior to the location they were found at. We did not see anything to indicate or that we could confirm that the bodies had been there at any time." (Tr.p. 454, line 13-p. 455, line 3).

Dr. Kimberly Ann Collins testified, "There was not a complete skelton of either person, but she did determine they were human remains, and one skull had a gunshot wound defect in it. That person was identified as Wilfred Brown by dental records." (Tr.pp 465, line 17-p. 466, line 5). She stated, "That she could not identify the second person or the cause of death. Her conclusion was that both were victims of homicide." (Tr.p. 468, line 20-p. 469, line 18). SEE, also: (Tr.p. 468, lines 1-19).

SLED Agent Steve Lambert testified, "No DNA profile was determined and blood samples could not be confirmed to be human blood. He stated, "that no test for human blood or DNA was

performed on the shoes from the crime scene." (Tr.p. 475, lines 6-8).

Sled Agent Frank Dan DeFreese testified, "That he could not determine the exact caliber of State's Exhibit 38, a bullet fragment from the crime scene, and that he did not have a gun to compare the bullets to in this case." (Tr.pp. 477, line 18-p. 478, line 19). He stated that there was at least 25 to 35 makes of firearms that could have fired the bullet, State's Exhibit 26. A TEC-9 was only one of them, and that the two projectiles could have been fired by one or two guns." (Tr.pp. 482, line 23-p. 484, line 3; p. 485, line 11-p. 486, line 3; p. 490, line 7-p. 491, line 7; p. 492, line 19-p. 493, line 11).

The arresting Officer Kevin Wayne Holt testified, "Upon his arrest he had no weapons on his person or in his vehicle. The warrant had just come out that day and no body had called him or gone to his house. That the defendant had actually spoken to police prior to Sept. 13, 2002, the date of his arrest." (Tr.pp. 503, line 10-p. 504, line 6; p. 504, line 23-p. 505, line 10).

The victim (Elton Rutledge's mother) testified; "That she did not have any question in her mind that State's Exhibit 39 (two white **ADIDAS** sneakers) were her son's shoes. (Tr.p. 509, lines 8-16)..

The victim's father, Elton Nathaniel Rutledge, Sr. testified, "that State's Exhibit 39 were his son's shoes. (Tr.p. 510, line 12-p. 511, line 4). These very shoes were marked into evidence. SEE: (Tr.p. 462, line 22-p. 463, line 16). However, there is an important question and fact in regard to those shoes, as Latrese Rutledge stated in her Missing Person's Report on Tuesday Aug. 6th, 2002, that she last saw her son wearing a pair of white **NIKE sneakers.

The remains of the second person were never identified as those of Elton Rutledge. (Tr.p. 548, lines 12-15).

SUMMARY OF STATE'S EVIDENCE:

Here, there was no identification of the second victim even being Elton Rutledge, the person alleged in the indictment, and there is an inconsistency in what kind of shoes he was wearing when last seen. There is no proof that he was even shot or what did cause the second person's death in this case. One or two guns could have fired the projectiles found at the crime scene, and 25 to 35 different makes of firearms could have fired them. No weapon was found, and no human blood stains identified, and no fingerprints found. There is not physical or forensic evidence of any type to prove the Applicant killed or shot the alleged victim in this indictment in question.

Lack of subject matter jurisdiction may be raised at any time.

The State failed to prove that the alleged victim in the indictment is even the victim in question in this case.

Brown V. State; 343 S.C. 342, 540 S.E. 2d 846 (2001).

There is a fatal variance of the proof presented by the State at trial. Browning V. State; 465 S.E. 2d 358, 359 (1995); State V. Bland; 457 S.E. 2d 611, 612 (1995); State V. Owens; 552 S.E. 2d 745 (2001); Russel V. U.S.; 369 U.S. 749, 763-764

The trial Court lacked subject matter jurisdiction due to the fatal variance between the evidence presented by the State and the allegations and elements set forth and alleged within the indictment for murder. Carter V. State; 495 S.E. 2d 773 (1998); State V. Williams; 552 S.E. 2d 54 (2001); State V. Hoitt; 276 S.E. 2d 163 (1981); State V. Doctor; 413 S.E. 2d 36 (1992); State V. Nix;

291

291

50

334 S.E. 2d 519 (S.C.App. 1986); State V. Keith; 325 S.E. 2d 325, 326 (1985); State V. Bullard; 560 S.E. 2d 436 (2002).

The convictions and sentences in this case should be vacated as a matter of Law and justice.

291

291

51.

CLAIM SEVEN:

TRIAL COUNSEL WAS INEFFECTIVE COUNSEL WHEN FAILING TO MAKE CONTEMPORANEOUS OBJECTIONS IN A TIMELY MANNER IN ORDER TO PRESERVE FOR APPEAL PURPOSES VIOLATING APPELLANT'S RIGHTS OF DUE PROCESS AND EQUAL PROTECTIONS OF THE LAWS UNDER S.C. CONST. ART. I, §3 AND ART. I, §4 AND THE 6TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTIONS.

Appellants incorporates all claims herein hereof as if repeated verbatim herein.

While the court of appeals does not normally consider cases on ineffective assistance of counsel, this court has jurisdiction to hear such claims on appeal when the record is sufficiently developed to provide analysis. In such cases the court of appeals may determine the merits of such contentions and claims on direct appeal. U.S. CONST. AMENDMENT 6. See also, Defense counsel objected to the introduction of State's Exhibit's 34-35 and 36, pictures of the bones and items based upon the State had not laid a proper foundation to identify the bones as an actual part of the crime scene to establish they were human bones and to link them to the alleged deceased victims. (Tr. p. 456, lines 16-22).

However, counsel's objection at side bar had been based on there was no DNA evidence to establish these facts. (Tr. p. 457, lines 3-25). The Court stated the ruling may have been different had counsel made the proper objection. (Tr. p. 457, lines 15-17).

The evidence had all ready been entered into evidence due

52.

and based upon counsel's limited objection. (Tr. pp. 458, line 6 - p. 459, line 5). Here, counsel failed to state a specific objection in a timely manner as to proper foundation as well as DNA. Counsel was ineffective in failing to state a proper objection in violation of this State's Contemporaneous Objection Rule.

Further, counsel objected to State's Exhibit 2 coming into evidence based on its admitted into evidence and then altered by various witnesses after it was admitted, and it was never re-admitted into evidence. (Tr. p. 631, lines 15-19). The Court stated it might have been excluded under the rules of evidence had counsel made a timely objection. (Tr. p. 632, lines 21-21).

Defense counsel admits he did not have case law in support of his objection and had not looked for specific case law regarding the matter. (Tr. p. 634, lines 5 - 8). Counsel further stated upon the record that defense counsels were ineffective and erred in not making the objections timely. (Tr. p. 634, line 24 - p. 635, line 2). The Court ruled the exhibit would go to the jury. (Tr. pg. 63j8, line 10 - p. 639, line 1.).

Continuing, defense counsel requested that the prosecution not elicit any more testimony from any of the witnesses in regards to children of the deceased. (Tr. p. 280, line 21 - p. 281, line 18).

This objection to that nature of testimony should have been made prior to the prosecution eliciting it, and counsel was ineffective in failing to make the objection prior to its elicitation.

Counsels most certainly violated the Contemporaneous

53.

Objection Rule. A review of South Carolina Law indicates that the State has consistently applied the Rule. State v. King, 514 S.E. 2d 578 (1999); State v. McHoney, 544 S.E. 2d 30 (2001); State v. Hoffman, 440 S.E. 2d 869; State v. Primus, 535 S.E. 2d 152 (S.C. Ct. App. 2000).

Counsel was indeed ineffective in this instance and in numerous other instances as set forth herein before. A new trial should be granted.

CLAIM EIGHT:

THE COURT ERRED IN CHARGING THE JURY WITH HANDS OF ONE HANDS OF ALL WHERE THE APPELLANT WAS INDICTED AS A PRINCIPLE ONLY AND THE CHARGE OF HANDS OF ONE HANDS OF ALL WAS INSUFFICIENT, VAGUE, MISLEADING, CONFUSING AND ALONG WITH PRINCIPLE CHARGE DEPRIVED THE APPELLANT OF A FAIR TRIAL AND DUE PROCESS ; COUNSEL WAS ALSO INEFFECTIVE IN FAILING TO OBJECT TO THIS CHARGE AND REQUEST A MORE SPECIFIC CHARGE.

The charge of Hands of One Hands of All was set forth in Tr. pgs. 829 line 20 through Tr. pg. 827 line 15.,

Even if the charge could be said to be sufficient, it deprived the Appellant of a fair trial and due process of law all the same. Trial counsel was ineffective for failing to object to this charge, and request a more specific charg. See Coleman v. Lurey, 199 S.C. 442, 20 S.E. 2d 887 (1950); 6th and 14th Amendment of U.S. Constitution.

Hand of one hand of all charge is in effect similarly one of Conspiracy. And, the trial judge never told the jury that there had to be some meeting of the minds, some agreement of the minds to commit the alleged crime. This charge was especially prejudicial to the appellant due to fact the confusing manner in which the charge was made. Especially being that the record is void of any direct evidence that there was any agreement between the appellant and another to commit any crime, the crime of murder, the crime charged. And, any evidence that could be considered circumstantial in this regard, that could not conclusively point to guilt of appellant of any agreement between him and another to commit crime of murder,"to the exclusion of every other reasonable hypothesis". See State v. Edwards, 298

S.C. 272, 379 S.E. 2d 88 (1989). And, must so beyond a reasonable doubt. In re Winship, 90 S.Ct. 1068, 1072 (1970).

If hands of one or accessory after the fact is not charged in an indictment, but is used as a jury instruction, such a finding is equivalent to a finding of not guilty to murder as a principle. Accordingly, counsel's omission in failing to argue such before the trial court was a deficient performance as counsel and clearly prejudiced appellant because it permitted the jury to reach a compromised verdict of guilty on a non-charged offense. State v. Collins, 266 S.C. 566, 225 S.E. 2d 189 (1976), (Collins I).

Further, accessory or hands of one hands of all is not a lesser included offense of murder, noting that an indictment is sufficient only if it apprises the defendant of what he must be prepared to meet. Thus, where the indictment failed to allege accessory or acting in concert with another, the Court Lacked jurisdiction to convict and sentence under an accessory of hands of one hands of all finding that was not an element of the indicted offense deliberated upon by the Grand Jury. Lake v. Reeder Const. Co., 330 S.C. 242, 248, 498 S.E. 2d 650, 653 (Ct. App. 1998).

Moreover, to allow a hands of one jury instruction on the basis of language not contained in the body of an indictment opens the doors for the State to convict every criminal defendant for an offense that is not a lesser included offense of the offense true billed by the Grand Jury.

Counsel was ineffective in failing to argue this very legal

297

297

56.

point to the trial court. Strickland v. Washington, 466 U.S. 668
- 669 (1984). A new trial should be granted.

297

297

Certificate of Service

I, Jody Lynn Ward, SCDC # 300644, certify that I have served upon the Respondents one copy of "Pro-Se Brief" In addition to the Final Brief of Appellant Defense Counsel."

Appellant certifies that he has placed same into the United States Mails ,Postage Prepaid and addressed as follows:

Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

Respectfully submitted,

Jody Lynn Ward
Jody Lynn Ward #300644
Lee Corr. Inst.
990 Wisacky Hwy.
Bishopville, SC 29010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ATTORNEY GENERAL'S OFFICE
RECEIVED 4-30-07

ADMINISTRATIVE INSTRUCTIONS
FILE _____ OPEN _____ END
HAVE _____ COPIES MADE
ROUTE TO _____
ORDER: _____ TRANSCRIPT
PEN RECORDS _____ CLERK RECORDS
OTHER: _____

APPEAL FROM Georgetown County
Paula Thomas, Circuit Court Judge

Opinion No. 2007-UP-048 (S.C. Ct. App. filed Jan. 26, 2007)

Jody Lynn Ward,

Petitioner,

V.

State of South Carolina,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Jody Lynn Ward, 300644
Petitioner Pro Se
Lee Corr. Inst.
990 Wisacky Hwy
Bishopville, SC 29010

Other Counsel of Record:

Attorney General of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549

300

300

I N D E X

INDEX.....	1
QUESTIONS PRESENTED.....	2
STATEMENT OF THE CASE.....	3
ARGUMENT 1.....	4-5
ARGUMENT 2.....	6-9
ARGUMENT 3.....	10-11
ARGUMENT 4.....	12
CONCLUSION.....	13

300

300

Q U E S T I O N S P R E S E N T E D

1. Did the Court of Appeals err in not ruling that trial court was in error for failing to grant Petitioners' motion to dismiss, or in the alternative, to disqualify the Fifteenth Judicial Circuit for prosecutorial misconduct and discovery violations? Refer to Question 5 part III of Pro Se Brief to Court of Appeals.
2. Did the Court of Appeals err in not ruling that trial court committed error by refusing to give the requested charge on addict testimony? Refer to Question 5 of Pro Se Brief to Court of Appeals.
3. Did the Court of Appeals err in not ruling that trial court committed error in refusing to give the requested bias charge? Refer to Question 5 of Pro Se Brief to Court of Appeals.
4. Did the Court of Appeals err in not ruling trial court committed error in allowing the Solicitors to violate Petitioners' 'attorney-client privilege' by tape-recording jail telephone conversations between the Petitioner and his attorney? Refer to Question 5 part III Part IV of Pro Se Brief to the Court of Appeals.

STATEMENT OF THE CASE

Petitioner was indicted at the July 8, 2003 term of the Georgetown County Grand Jury for two counts of murder; R.p. 859. Petitioners' case was called to trial on March 15, 2004 before the Honorable Paula Thomas and a jury. Petitioner was represented by Margaret Ann Kneece and J. Wesley Locklair, III. J. Gregory Hembree and Robert B. Bryan represented the State as Solicitors; R.p. 199.

On March 18, 2004, the jury found Petitioner guilty on both counts [murder]; R.p. 849, 11, 11-19. Judge Thomas sentenced Petitioner to life imprisonment; R.p. 857, 11, 1-4.

On March 28, 2004, a request for a direct appeal was filed with the State of South Carolina in the Court of Appeals. On August 29, 2005, a final ANDERS brief was filed by Robert M. Dudek, Assistant Appellant Defender of the Office of Appellate Defense. On October 10, 2005, a final Pro Se brief was filed by Petitioner. The Court of Appeals AFFIRMED the judgement of the Circuit Court; State v. Ward, Opinion No. 2007-UP-048 (S.C. Ct. App., Submitted January 2, 2007; Filed January 26, 2007). On February 1, 2007, a PETITION FOR REHEARING was filed in the Court of Appeals pro se by Petitioner. The PETITION FOR REHEARING was denied March 22, 2007. This appeal follows. Petitioner now brings this PETITION FOR WRIT OF CERTIORARI before the Court seeking review of the decision entered by the Court of Appeals.

ARGUMENT

1. Did the Court of Appeals err in not ruling that trial court was in error for failing to grant Petitioners' motion to dismiss, or in the alternative, to disqualify the Fifteenth Judicial Circuit for prosecutorial misconduct and discovery violations?

At the February 27, 2004 motion hearing, held before the Honorable John L. Breeden, Jr., Petitioners' trial counsel moved to dismiss, or in the alternative, to disqualify, based on after-discovered evidence which warranted reconsideration of the prior original motion and court ruling upon the motion on December 8, 2003; Tr. p. 1, line 2 through p. 3, line 23.

In regard to the hearing of February 27, 2004, see: Solicitors' statements to the court, December 8, 2003 hearing; Tr. p. 4, lines 6, 7; p. 5, line 20; p. 6, lines 3, 5 through 12, and 14 through 24.

The following testimony, taken from the February 27, 2004 hearing, shows clear and convincing evidence that Solicitor Hembree intentionally made false statements to defense counsel, and also misrepresented the facts with untrue statements to Judge Breeden as well at the December 8, 2003 hearing. SEE: TESTIMONY OF OFFICER GARY TODD; Tr. pp., 10, lines 4-10; p. 11, lines 3-18; p. 12, lines 1-17; p. 12, line 25; p. 15, line 1, line 8; p. 17, line 14; p. 18, line 9; p. 22, line 2; p. 33, line 13; p. 34, line 20. SEE: AFFIDAVIT OF LOUIS BRAZEN: Tr. p. 35, lines 1-17, referenced only. SEE ALSO: ORIGINAL AFFIDAVIT OF LOUIS BRAZEN. SEE: TESTIMONY OF OFFICER WILLIAM PIERCE; in regard to polygraph examination of Roger Warren, dated August 23, 2003; Tr. p. 35, line 25; p. 38, line 1. SEE: SOLICITORS' STATEMENTS TO THE COURT, dated DECEMBER 8, 2003, in regard to SLED Reports on ballistics and DNA from the tennis shoes of Appellant. SEE: Tr. p. 7, lines 11 through 14 and 19 through 22; p. 8, lines 3-8. SEE: TESTIMONY OF INVESTIGATOR DON MYERS: Tr. p. 38, line 21 through p. 40, line 20. SEE: TESTIMONY OF SLED AGENT FRANK DAN DeFREESE; Tr. p. 42, line 8 through p. 48, line 17; p. 51, lines 4-24. SEE: ARGUMENT BY DEFENSE COUNSELS. In these arguments before the Court, defense counsels argued that Solicitor Greg Hembree had committed prosecutorial misconduct, and Petitioner submits that defense counsels were correct in their allegations. SEE: Tr. p. 52, line 9; p. 58, line 8; p. 74, line 10; p. 75, line 25; p. 76, line 8; p. 80, line 4. SEE: ARGUMENT BY SOLICITOR HEMBREE: Tr. p. 62, line 1; p. 74, line

304

304

9; p. 76, lines 2-7.

Judge Breeden took the matter under advisement for a later ruling, and asked both sides to submit proposed orders; see: Tr. p. 80, lines 5-14.

By written order, dated March 5, 2004, Judge Breeden dismissed Petitioners' motion. This ruling is in error; see: State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (S.C. S.Ct. 2000); (App. Ct. Rule 407)). See also: Delaware v. Van Arsdall, 475 U.S. 673, 648, 106 S.Ct. 1431, 1438 (1986).

304

304

A R G U M E N T

2. Did the Court of Appeals err in not ruling that trial court committed error by refusing to give the requested charge on addict testimony?

The trial court refused to give defense counsels' requested charge on addict testimony; Tr. p. 556, line 10 through p. 557, line 2. The following arguments support Petitioners' claim of error committed by trial court.

The Solicitor, in opening remarks, stated to the jury: "[W]hat is the value of human life? It depends on who you ask. In this case, ladies and gentlemen, Jody Lynn Ward decided that the value of Elton Rutledge, Jr., was five hundred twenty four dollars (\$524.00). The Defendant, Jody Ward, decided that the value of Wilfred Brown was five hundred twenty five dollars (\$525.00)"; Tr. p. 168, lines 6-10. The Solicitor further stated: "[I] think there's going to be physical evidence that will, that will help to convince you that Brian Elliot had nothing to do with this case. I don't think there's anything, there's no evidence in this case that's going to - that he had anything to do with it other than the statement of the Defendant, and I don't believe that"; Tr. p. 176, lines 11-18.

The above demonstrates the Solicitors' improper and prejudicial characterization of Petitioner as an outright liar, which resulted in a denial of Petitioners' defense by using Petitioners' prior statement to police to discredit Petitioner before the jury in opening remarks, along with the inclusion of Solicitors' "bolstering" of the States' witness above the Petitioner. These statements made before the jury improperly enhanced the credibility and believeability of Brian Elliotts' alibi from his wife, Melissa Louise Elliot; Tr. pp., p. 536, line 11; p. 537, line 17; p. 539, line 4; p. 540, line 5. Brian Elliot was a known crack addict; Tr. p. 543, line 21; p. 545, line 6. Ms. Elliot had dated Brian since she was 15 years old, and had been married to him for 16 years; Tr. p. 543, lines 15-20; p. 545, lines 7-17. These material facts convey both probative and substantive motive that this witness had every reason, initiated by personal interest, to bias the proceeding by making false statements to the Court for the purpose of protecting her husband. The Solicitors' remarks to the jury served the exclusive purpose of enhancing the credibility of Melissa Louise Elliot regarding her alibi for her husband, Brian Elliot. This bolstering for States'

witnesses by the Solicitor was indeed prejudicial to the Petitioner, as well as improper and unacceptable by judicial standards. The prejudice and harm stemming from the calculated bolstering by the Solicitor unfairly biased Petitioner and deprived him of an impartial hearing once the jurors were exposed to inappropriate remarks that swayed their beliefs in the direction that Petitioner was guilty - long before the facts of evidence in the case could be fairly assessed for a determination of innocence or guilt.

The record of the proceeding will also divulge the Solicitors' unchallenged and improper bolstering enhanced the testimony of Denise Langston Cox, who had given prior inconsistent statements to police officers; Tr. pp. 130, line 7; p. 136, line 25; p. 137, line 11; p. 139, line 19; p. 217, lines 1-15; p. 218, line 23; p. 222, lines 8, 9; p. 231, line 17. This witness, Denise Langston Cox, had met with the Solicitors' Office several times to discuss her testimony at trial, and had also talked with police several times before making her taped statement. These events came after the Petitioner had ended an extramarital relationship with Denise Cox and returned home to reunite with his lawful wife. The Petitioner had previously paid Denise Cox's living expenses, to include providing sustenance for the children of Denise Cox, giving cash to Denise Cox on a regular basis, and supplying Denise Cox with marijuana; Tr. p. 215, line 1 through p. 216, line 25. The established facts of the record disclose that Denise Cox had motive to retaliate against Petitioner by accepting the Solicitors' proposal to use misleading and untrue statements and testimony to "stack the deck" against Petitioner for the purpose of securing a conviction against Petitioner at any cost, despite the abrogation of justice or Petitioners' constitutional rights. To further substantiate the unworthiness of the testimony provided by Denise Langston Cox, a review will establish that Denise Cox made a false statement concerning the last time she spoke with Petitioner. Denise Cox investigated phone records and police records with the Solicitors' Office just prior to Petitioners' trial, and it was discovered that Denise Cox had some worthless check charges, which were discussed in conjunction with Petitioners' case; see: Tr. p. 218, line 23; p. 219, line 10. Denise Cox agreed to wear a "wire" [recording device] to entrap Petitioner in conversation, but warned Petitioner beforehand that she was wearing the wire, and subsequently was threatened by law enforcement with the charge of obstruction of justice, which law enforcement displayed to Denise Cox on August 27, 2002. Denise Cox admitted in testimony

that police went over her taped statement with her prior to taping it, and that her interview lasted five (5) hours; Tr. p. 222, line 9; p. 231, line 17. Law enforcement charged Candy Cox, the sister-in-law of Denise Langston Cox, in connection with Petitioners' case. Denise Cox was, at that time, well-acquainted with the operational tactics of law enforcement, and of the Solicitors' Office, yet she neglected to tell law enforcement that the Petitioner possessed a TEC-9 firearm until February 11, 2003, a date AFTER Denise Cox's sister-in-law, Candy Cox, had been charged in connection with Petitioners' case; Tr. pp. 231, line 18; p. 232, line 9; p. 236, line 7; p. 237, line 8; p. 242, line 4; p. 243, line 24.

It is of valuable consideration to note that Denise Cox stated that the Petitioner threatened to kill her and her children on August 3, 2002, and then joined Petitioner on a 3 hour trip on August 9, 2002, being alone in the nighttime with Petitioner for the duration of the trip; Tr. p. 240, line 11; p. 241, line 3. **See also:** February 26, 2004 motion hearing, Tr. p. line 23; p. 8, line 13. Here, the Solicitor states Denise Cox was not, and would not, be served with the warrant for obstruction of justice. This witnesses inconsistent statements alone are sufficient to reverse Petitioners' conviction and sentence, given judicious application of constitutional due process principles of reasonable doubt. The inconsistent statements were ancillary to prosecutions' presentation, and an integral factor which was used in the jury's determination of reaching a guilty verdict. As such, it can be stated factually that the inconsistent statements, if offered without the bolstering of the Solicitor, would have cast a revealing light of reasonable doubt on the entire testimony given. In accord with the S.C. Rules of Court, the State transgressed by its' introduction of Denise Cox's prior inconsistent statements into evidence, and in passing statements to the jury which constituted improper impeachment of their own witness, and this resulting because the trial court did not limit admission of statements to only those parts corroborating the witnesses testimony, when the Solicitors' Office had reason to know that the witness would testify contrary to her previous statements, and the ever-apparent inconsistencies between them; citing State v. Younger, 295 S.E.2d 453 (1982); State v. Williams, 459 S.E.2d 208 (1995); State v. Lynn, 578 S.E.2d 628 (2003). The violation here was increased by and through the action of the prosecuting attorneys enhancing the credibility of Denise Cox by issuing improper, bolstering comments during their opening

308

308

remarks. Petitioner states the claim that this action was done deliberately, with the intent of sowing the prejudicial suspicion of guilt towards the Petitioner in the minds of the jurors in an unconstitutional manner.

308

308

A R G U M E N T

3. Did the Court of Appeals err in not ruling that trial court committed error in refusing to give the requested bias charge?

Petitioners' defense counsel properly requested a bias charge to the jury; the court refused to give the charge, but noted the request on the record; Tr. p. 629, line 21; p. 630, line 2. The following argument enumerates the reasons the bias charge should have been granted.

On December 8, 2003, a motion hearing was held before Judge John L. Breeden, Jr., where the record establishes that Solicitor Bryan pled Willie Lambert guilty to an unrelated charge pertaining to Petitioners' present case, and that Mr. Lambert indicated that he had received benefit from the State at the time he pled guilty, as a direct result of his cooperation in the Solicitors' prosecution of Petitioners' case; Tr. p. 10, line 9; p. 11, line 19. At that same motion hearing, it is clear that Louis Bazen, the original confidential informant who provided information leading to Petitioners' arrest, and a key States' witness at Petitioners' trial, gave statements which were contrary to his testimony, to include statements that he (Louis Bazen) was possibly at the crime scene and involved in the alleged murders; Tr. p. 11, lines 6-13. See also: Tr. p. 12, line 20; p. 13, line 11.

At a separate motion hearing on February 26, 2004, before Judge Paula Thomas, Solicitor Hembree stated that Louis Bazen was not - AND WOULD NOT - be charged in connection with Petitioners' case; Tr. p. 4, line 15; p. 5, line 8. Solicitor Hembree also stated that Willie Lambert was never offered or promised anything, but after Mr. Lambert gave his statement, he pled guilty to an offense and received a very light prison sentence; Tr. p. 5, lines 17-23.

An intrinsic element which Petitioner claims as a foundational support in his petition for writ of certiorari is the genuine issue of material fact that Solicitor Hembree stated on the record, in open court, that no deals were made in exchange for their testimony in Petitioners' case. Petitioner challenges that declaration, contending that the record connotes probative evidence that there exists a great probability a deal was struck between the Solicitor and key States' witness Willie Lambert in exchange for Lamberts' endorsement of the Solicitors' prosecution against Petitioner. In the context of this argument it is noteworthy to recognize that the sole States' witness

310

310

who failed to assist the Solicitors in their prosecution of Petitioner, Candy Cox, was charged with accessory after the fact regarding Petitioners' case; Tr. p. 5, lines 9-13.

310

310

ARGUMENT

4. Did the Court of Appeals err in not ruling trial court committed error in allowing the Solicitors to violate Petitioners' 'attorney-client privilege' by tape-recording jail telephone conversations between the Petitioner and his attorney?

Petitioners' trial counsel brought a motion before the Court, properly preserved for appeal, that challenged the Solicitor, and other government representatives, unconstitutionally and unlawfully tape-recorded telephone calls between Petitioner and his defense counsel; Tr. p. 194, line 4 through p. 197, line 17. See: State v. Quattlebaum, 336 S.C. 441, 527 S.E.2d 105 (S.C. S.Ct. 2000).

C O N C L U S I O N

For the foregoing reasons given in this petition, Petitioner is entitled to a new trial, and seeks same from this Court.

Respectfully submitted,

Jody Lynn Ward

Jody Lynn Ward

Petitioner Pro Se

This 14 day of April, 2007

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Georgetown County
Paula Thomas, Circuit Court Judge

Opinion No. 2007-UP-048 (S.C. Ct. App. filed Jan. 26, 2007)

Jody Lynn Ward,

Petitioner,

v.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I certify that a true copy of the PETITION FOR WRIT OF CERTIORARI in this case has been duly served upon the following parties:

Attorney General of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

SOUTH CAROLINA SUPREME COURT
Daniel E. Shearouse, Clerk of Court
P.O. Box 11330
Columbia, SC 29211

SWORN TO AND SUBSCRIBED before me
This 14 day of April, 2007

[Signature]
NOTARY PUBLIC for SOUTH CAROLINA
My Commission Expires: 2015

Jody Lynn Ward
Petitioner Pro Se

[Signature]

Jody Lynn Ward #306044
Lee Corr. Inst. Ches. 5-1245
990 Wisacky Hwy
Bishopville, S.C. 29010

ATTORNEY GENERAL'S OFFICE
RECEIVED 7-5-07

June 29, 2007

ADMINISTRATIVE INSTRUCTIONS
374107
OPEN _____ END _____
COPIES MADE _____
TRANSCRIPT _____
CLERK RECORDS _____

Office of Appellant Defense
Mr. Robert M. Dudek
1205 Pendleton Street Rm. 306
Columbia, S.C. 29201

RE: 2009-LCP-048 - State - vs - J. Ward

Sir/Madam

After reflection I've determine that your Conclusion as to my Appeal to be correct.

Wherefore I request that you as my Attorney of record Notify all interested parties of my concurrence's my decision to withdraw my Petition For Writ of Certiorari.

A prompt reply consistent with this Letter / Request is prayed for.

Verbatim copy
Donald J. Zelenka
Clerk of Supreme Court
Jean Toal
Joseph L. Savitz
File

Respectfully Submitted
x Jody Lynn Ward
Appellant Pro Se



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

July 5, 2007

REGULAR AND CERTIFIED MAIL

Mr. Jody Lynn Ward, #300644
Lee Correctional Institution
990 Wasacky Highway
Bishopville, SC 29010

Re: The State v. Ward, Jody Lynn
2003-GS-22-01030 and 01031

Dear Mr. Ward:

The following Order has been endorsed on your Request to Withdraw your Pro Se Petition for Writ of Certiorari in the above entitled matter.

"Granted and this matter
is dismissed.

Jean H. Toal C.J.
For the Court

By s/ Daniel E. Shearouse
Clerk

July 5, 2007."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

316

316

Mr. Jody Lynn Ward

Page Two

July 5, 2007

Very truly yours,

A handwritten signature in black ink, appearing to be "D.E.S.", followed by a long horizontal flourish.

CLERK

DES/dmh

cc: Assistant Deputy Attorney General Donald J. Zelenka
The Honorable John Gregory Hembree
The Honorable Kenneth A. Richstad

316

316

04-17317
39V



RECEIVED
317

JUL 17 2007

Referred to Zelenka Is
Answered _____

The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 6, 2007

REMITTITUR

The Honorable Alma Y. White
715 Prince Street Rm 221
PO Drawer 421270
Georgetown, SC 29442-1270

Re: The State v. Ward, Jody Lynn
2003-GS-22-01030 2003-GS-22-01031

Dear Ms. White:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

The exhibit being returned is: State Ex. 41(Tape Statement of Defendant). Please sign attached copy of this letter and return to acknowledge receipt of this item.

Sincerely,

V. Claire Allen

V. Claire Allen
Deputy Clerk

KAR/rj

cc: Assistant Appellate Defender Robert M. Dudek
Jody Lynn Ward, #300644
Assistant Deputy Attorney General Donald J. Zelenka
John Gregory Hembree, Esquire

Receipt Acknowledgement:

Name: *Paul D. Haba*

Date: 7/13/07

Deputy

FILED
GEORGETOWN COUNTY, S.C.
2007 JUL -9 PM 3:17
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Georgetown County
Steven H. John, Circuit Court Judge

JODY L. WARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

INDEX

INDEX..... 1

ISSUE PRESENTED..... 2

STATEMENT..... 3

ARGUMENT..... 4

CONCLUSION..... 10

ISSUE PRESENTED

1. Whether defense counsels were ineffective in failing to object to numerous errors in the solicitor's closing arguments such as to render petitioner's trial being unfair?
2. Whether defense counsels were ineffective in failing to request or put on the record requests to charge on the lesser included offenses of voluntary and involuntary manslaughter?

STATEMENT

Petitioner was convicted of two (2) counts of murder after a jury trial held before the Honorable Paula H. Thomas in Georgetown County on March 15-18, 2004. Life sentences were imposed. Margaret Ann Kneece, Esquire and J. Wesley Locklair, III, Esquire were trial attorneys.

Petitioner's convictions were affirmed on appeal after review pursuant to Anders v. California. State v. Ward, 2007-UP-048 (filed January 26, 2007).

Petitioner filed an application for post-conviction relief on July 11, 2007. An evidentiary hearing was held on May 1, 2008, before the Honorable Steven H. John. Petitioner was present and was represented by Bobby G. Frederick, Esquire. Respondent was represented by Christina J. Catoe, Esquire, Assistant Attorney General. Wesley Locklair, Margaret Kneece, and petitioner testified at the hearing.

On May 15, 2008, Judge John issued an order denying and dismissing petitioner's application for post-conviction relief. A motion to alter or amend was filed and was subsequently denied.

This petition follows.

ARGUMENT

Defense counsels were ineffective in failing to object to numerous errors in the solicitor's closing argument such as to render petitioner's trial as being unfair.

A. Lack of Remorse

The solicitor commented on petitioner's lack of remorse during his taped statement to the police and he also argued his demeanor was cold and calculated. (App. p. 787, line 17 – p. 788, line 4) A short time later the solicitor again commented on petitioner's cold and calculated nature. (App. p. 788, lines 11-17)

This Court has previously held that remorse is not an appropriate matter for consideration by the jury when a defendant pleads not guilty and does not testify. State v. Sloan, 278 S.C. 435, 298 S.E.2d 92 (1982); State v. Hawkins, 292 S.C. 418, 357 S.E.2d 10 (1987). A defendant has a "right to plead not guilty and put the State to its burden of proof; it would be irreconcilable equivocation for a defendant to plead not guilty, present defense, and simultaneously express remorse for acts he denied committing." State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987) A defense counsel is ineffective under the Sixth Amendment to the United States Constitution when he fails to object to a solicitor's closing argument that comments on a defendant's lack of remorse.¹ Fossick v. State, 317 S.C. 375, 453 S.E.2d 899 (1995).

B. Solicitor's Vouching for Credibility of State's Witnesses

The solicitor repeatedly vouched for the credibility of the State's witnesses in his closing argument. As to witness Denise Langston – "She was credible" (App. p. 771, lines 21-25) "She told

¹ Defense counsel admitted he should have objected to the comments about no remorse and that it was prejudicial to the jury. (App. p. 994, lines 7-17)

the truth and she told the whole truth. Finally, you know she told the truth because her testimony was corroborated.” (App. p. 772, lines 10-13) As to witness Tracey Collins – “She was a very credible witness.” (App. p. 778, lines 18-19) As to Louis Bazen – he “was a very credible witness, that he didn’t try to hide anything, that he didn’t do anything but tell the truth as he knew it, and he told all the truth.” (App. p. 783, lines 20-23) Finally, as to Melissa Elliott – “She told the truth.” (App. p. 794, line 17)

This Court has previously held that because “a jury must make its own assessment on the credibility of witnesses, it is inappropriate for the State to assure the jury of a government witness’s credibility. State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001), reversed on other grounds, Kelly v. South Carolina, 534 U.S. 246, 122 S.Ct. 726 (2002). The jurors in petitioner’s case could have felt that the solicitor had some evidence not presented at the trial which supported the credibility of some of the above witnesses. This Court has previously held defense attorneys ineffective for failing to object to improper vouching. Matthews v. State, 350 S.C. 272, 565 S.E.2d 766 (2002); Gilchrist v. State, 350 S.C. 221, 565 S.E.2d 281 (2002).

Defense counsels reasons for not objecting was that it would have done no good, the judge would have made him look stupid, and the jury would get offended were not valid trial strategy. (App. p. 995, lines 2-24) In Matthews v. State, 350 S.C. 272, 565 S.E.2d 766 (2002) this Court rejected any notion that an attorney’s fear of a trial judge scolding him in front of a jury was a valid strategy for not objecting. This Court went on to say that “counsel cannot assert trial strategy as a defense for failure to object to comments which constitute an error of law and are inherently prejudicial.”

C. Comments on Defendant's Credibility and the Defense's Theory of the Case

The solicitor repeatedly and without objection gave his personal opinions concerning petitioner's credibility and the defense's theory of the case in closing argument. Most of the comments by the solicitor concerned petitioner's statement as petitioner did not testify at trial. The solicitor said "that's a lie and he knew it was a lie." (App. p. 776, line 25) "His demeanor on that tape is almost unbelievable." (App. p. 787, line 17) "He also caught lying a couple of times on the tapes, a couple, you heard it." (App. p. 788, line 20) "Shortly thereafter, he just goes to stammering and stuttering about just completely unbelievable statement." (App. p. 789, line 8) "Another thing he's lying about is Carter Weaver..." (App. p. 789, line 12) "Now, how unbelievable is it that they have this knock down, drag out argument..." (App. p. 790, line 2) "One more thing he gets caught in a lie as far as he goes out there to move the bodies." (App. p. 791, line 3) "He just plain admits that he's lying." (App. p. 797, line 16) "He lies..." (App. p. 797, line 17) "He lies..." (App. p. 797, also line 17) "Finally, his last lie..." (App. p. 797, line 18) "The man you heard on that tape giving you that ridiculous story..." (App. p. 798, line 3)

In reference to the defense's theory of the case, the solicitor argued "that's a lie and he knew it was a lie." (App. p. 776, line 25) The defense's theory of self-defense the solicitor argued "it seems absurd, it's ridiculous." (App. p. 795, line 12) "It's simply ridiculous." (App. p. 797, line 25).

In State v. Hawkins, 292 S.C. 418, 357 S.E.2d 10 (1987) this court found that the excessive and repetitious use of comments disparaging to the defendant deprive him of a right to a fair trial and are a denial of due process of law. In Major v. Alverson, 183 S.C. 123, 190 S.E. 449 (1937) this court also held where "counsel uses improper and abusive language in his argument

to the jury, to clear hurt and prejudice to the complaining party, case will be remanded for a new trial." In that case the defendant was called a liar just like in this case.

Defense counsel admitted at the PCR hearing that he could not recall petitioner lying and also could not recall any inconsistent statements. There were no obvious blatant lies. (App. p. 969, line 14 – p. 972, line 3)

The solicitor in this case presented a congeries of improperly prejudicial matters in his closing argument to disparage petitioner and his case. And defense counsel was afraid to object and preserve the issues for appellant review. He and co-defense counsel should be held ineffective under the Sixth Amendment to the United States Constitution for failing to properly object and to preserve the issues for appeal. The combination of all of the above errors served to deprive petitioner of a fair trial. State v. Peterson and Stubbs, 287 S.C. 244, 335 S.E.2d 800 (1985), reversed on other grounds, State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

ARGUMENT II

Whether defense counsels were ineffective in failing to request a jury instruction on the lesser included offenses of voluntary and involuntary manslaughter.

Petitioner alleged in his supplemental application for post-conviction relief that defense counsels were ineffective in failing to request jury instructions on the lesser included offenses of manslaughter and involuntary manslaughter. (App. p. 954) Petitioner was tried under the theory of the hand of one is the hand of all. In his statement, petitioner described how Wilford Brown attempted to rob him and Brian Elliot and that he fired a pistol into the back of their vehicle. Elliot and Brown struggled over the gun and it went off, striking Brown in the head. (App. p. 954, and app. p. 738, lines 2-14 and app. p. 873)

In State v. Gilliam, 296 S. C. 395, 373 S.E. 2d 596 (1988) this Court held that both self-defense and voluntary manslaughter should be submitted to the jury when warranted by the evidence where victim threatened defendant and fired at him. Involuntary manslaughter should also be charged when appropriate. State v. Chatman, 336 S.C. 149, 519 S.E.2d 100 (1999)

Defense counsel Lockliar could not remember if he requested charges on the lesser included offenses at a charging conference but admitted putting nothing on the record about them. (App. p. 976, line 2 – p. 977, line 14) Defense counsel Lockliar did, however, argue at closing that there was a struggle over the gun and it went off. (App. p. 1006, line 14 – p. 1007, line 12) Defense counsel Kneece also admitted that no record was made of requests to charge voluntary or involuntary manslaughter. (App. p. 1018, lines 12-17)

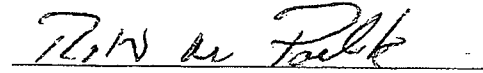
This Court has previously held defense attorneys ineffective when they fail to advise a client of a lesser included offense or to request one when appropriate. Kerrigan v. State, 304 S.C. 561,

406 S.E.2d 160 (1991); Tisdale v. State, 378 S.C. 122, 662 S.E.2d 410 (2008). Defense counsels in this case should be held ineffective.

CONCLUSION

Petitioner's writ should be granted and his case should be remanded for a new trial.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "R. M. Pachak", is written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of December, 2008.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Georgetown County

Steven H. John, Circuit Court Judge

JODY L. WARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

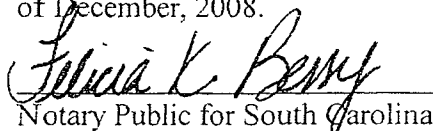
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Christina J. Catoe, Esquire this 30th day of December, 2008.



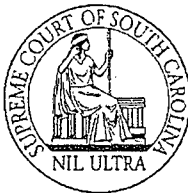
Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day
of December, 2008.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 15, 2010.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

August 20, 2009

Appellate Defender Robert M. Pachak
South Carolina Commission
on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: Ward, Jody L. v. The State

Dear Counsel:

The Court has issued the following Order on your Petition for a Writ of Certiorari in the above entitled matter:

“Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

August 20, 2009.”

The remittitur will be sent to the lower court as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Daniel E. Shearouse
CLERK

DES/klb

cc: Assistant Attorney General Christina J. Catoe

FORM 5

ORIGINAL

STATE OF SOUTH CAROLINA)

County of Georgetown)

IN THE COURT OF COMMON PLEAS

2009CP2201074

Jody Lynn Ward #300644)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

ALMA Y. WHITE
CLERK OF COURTFILED
GEORGETOWN COUNTY, S.C.
2009 JUL 13 P 4:10 PMINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution CA-07
P.O. Box 205, Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Georgetown County
Courthouse, Georgetown, S.C. 29440
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2003-GS-22-1030 & -1031

- (b) _____
(c) _____

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

- (a) March 18, 2004, Concurrent Life sentences
(b) _____
(c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty ~~guilty~~
(b) after a plea of not guilty ✓
(c) after a plea of nolo contendere _____

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

yes

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

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

- i. S.C. Appellate court
ii. _____
iii. _____

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

- i. Affirmed
ii. _____
iii. _____

(c) the date of each such result:

- i. January 26, 2007 (2007-up-048)
ii. _____
iii. _____

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

- i. Anders v. California
ii. _____
iii. _____

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

- (a) _____

- (b) _____
 (c) _____

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

- (a) Ineffective Assistance of Counsel
 (b) see: Attached memorandum of Law
 (c) _____

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

- (a) This action pertains to a "NEW" Rule of Law
 (b) see: Attached memorandum of Law
 (c) _____

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

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

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. Application for Post-Conviction Relief
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Georgetown County clerk of Court, Georgetown, S.C. 29440
 ii. _____
 iii. _____

334

334

ORIGINAL

iv. _____

(c) the disposition thereof:

i. pending on Writ of certiorari after dismissal

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. dismissal May 15, 2008; December 30th, 2008 writ submitted

ii. _____

iii. _____

iv. _____

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

i. Denied and Dismissed with Prejudice; Appeal pending

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) "New" Rule of Law
(b) _____
(c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
- Margaret Ann Kneece, Esquire 35 Bay Tree Place
Pawleys Island, S.C. 29585
 - Wesley Locklair, III, Esquire Joye, Locklair & Powers, PC
3575 Hwy. 17 Bus. Murrells Inlet, S.C. 29576
 - Bobby G. Frederick, Esquire, Attorney for 1st P.C.R.
P.O. Box 8219 Myrtle Beach, S.C. 29578
- (b) the proceedings at which each such attorney represented you:
- (a); (b); (c)
 - (a); (b); (c)
 - (e)

ORIGINAL

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

REVERSE AND REMAND for New Trial
or in the alternative GRANT a Evidentiary Hearing
to resolve issue.

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Georgetown)

VERIFICATION

2009CB2201074

I, Jody Lynn Ward, # 300644, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true, and attached sheets, documents, and exhibits § 17-27-40 §-50 are also true and correct copies.

* Jody Lynn Ward # 300644

SWORN to and subscribed before me this 26th
 day of June, 2009.

Dyana F. Walker (L.S.)
 Notary Public

My Commission Expires: 4/4/2011

FILED
 GEORGETOWN COUNTY, S.C.
 2009 JUL 13 P 4:10 PM
 ALMA Y. WHITE
 CLERK OF COURT

ORIGINAL

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

2009CP2201074

I, Jody Lynn Ward, # 300644, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

x Jody Lynn Ward # 300644
Applicant

SWORN or affirmed to and subscribed before me this

26th day of June, 2009

[Signature]
Notary Public

My Commission Expires: 4/4/2011

FILED
GEORGETOWN COUNTY, S.C.
2009 JUL 13 P 4:10 PM
ALMA Y WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN)

) Docket No. _____

Jody Lynn Ward, # 300644)

Applicant)

v.)

State of South Carolina)

) ATTACHED ISSUE AND EXHIBITS
) IN SUPPORT OF APPLICATION FOR
) POST-CONVICTION RELIEF Pursuant
) to § 17-37-45 (b); (c) New Rule of Law

Questions of Issues

1. Was Applicant's Due Process Rights; and the right to Effective Assistance of Trial Counsel's violated and Applicant Prejudiced, when Trial Counsel's failed to Convey Plea Offer's to Applicant?

2. Was Counsel's Ineffective for failing to Convey Plea Offer?

To save the court's time Applicant will argue these issues together since the facts of one encompass the other.

Jurisdictional Statement

Applicant Brings this Post-conviction Relief Application Pursuant to § 17-37-45 (b); (c), New Rule of Law where Applicant only has one (1) year to File

FACTS

Applicant was Arrested September 13, 2003 charged with Murder two counts under Indictments numbers: (2003-GS-32-1030; 2003-GS-32-1031) True Billed July 8th, 2003. The Trial commenced March 15, 2004 and concluded March 18th, 2004 where Applicant was found Guilty by Jury and sentenced to 2 Natural Life w/o parole concurrent sentences.

Applicant herein brings this Post-Conviction Relief Application Pursuant to § 17-27-45 (b); (c); New Rule of Law that was Adopted by The South Carolina Supreme Court on March 9, 2009 in the case of:

see: Attached copy of case and Ruling

Jeffrey Eugene Davie V. State, Opinion No. 26608

Submitted November 19, 2008 - Filed March 9, 2009

Reversed and Remanded On Writ of certiorari

In the instant case The state offered a Plea Agreement To Trial Counsel(s)

see: Exhibits A

Trial Counsel's failed to convey Plea Agreement to Applicant; failed to inform Applicant of a written plea agreement in which Applicant [could] have only received a 30 year sentence verses going to Trial receiving two Life sentences, Pursuant to § 16-3-20(b) where Trial Judge could have sentenced Applicant to a minimum of 30 years

For the Courts Convenience see: Attached Fortior Exhibit B

Evidentiary Hearing from Post Conviction Relief Hearing dated May 1, 2008
Cross Exam by Ms. Catoe of Trial Counsel relating to Plea Agreements.
of J. Wesley Locklair, III, pg. 22. lines 18 through pg. 23 lines 9

Whereupon Trial Counsel Admitted that there was not a Plea and/or only a Life sentence nothing less than that.

Discussion

Applicant herein contends his Trial Counsel(s) was Ineffective in failing to communicate the States Plea offers to him; see: Exhibits A; and Applicant submits he was prejudiced by counsel's deficient performance. Trial Counsel's deficient performance constitutes unreasonable performance under the prevailing professional standards established by the American

Bar Association or State - specific ethical rules of conduct. Pursuant to these professional standards, counsel is required to fully communicate with the client so that the client can make an informed decision regarding any proposals by the state. See: Attached case and Ruling by the South Carolina Supreme Court to support this claim.

Jeffrey Eugene Davis v. State, Opinion No. 26608, Filed March 9, 2009

Applicant contends that Exhibit A serves one purpose, to eliminate controversy over Attorneys compliance / non-compliance with their fundamental duty to promptly inform me of the states offer.

Whenever this aspect is ignored / omitted (The absent of affixed notation, signature), (It is presumed that they were derelict in every aspect.)

Applicant contends that in this instance his Attorney's Representation Fell below an Objective standard of reasonableness and but for Counsel's unprofessional errors, a reasonable probability exist that the results of the proceeding would have been different had Trial Counsel not made the unprofessional errors by failing to convey the plea offers to Applicant.

Applicant was prejudiced by Trial Counsel's failure to communicate the states plea offers, constitutes deficient performance and prejudicial. Because Counsel's deficient conduct prevented Applicant from making an intelligent informed decision, where Applicant could have possibly received a lesser sentence than that which he received (emphasis supplied), Applicant could have received a 30 year sentence pursuant to § 16-3-20(b) and the states plea where the Trial Judge could have sentenced Applicant to the minimum sentence of 30 years verses going to Trial receiving Two Life sentences which resulted by Counsel's deficient performance in not conveying the states plea offer.

Wherefore, Applicant request that his convictions be Reversed / Remanded or in the Alternative Grant a Evidentiary Hearing to resolve issue.

Respectfully submitted,
x Jeddy Lynn Ward, #300146
Jeddy Lynn Ward #300146

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Jody Lynn Ward, # 300644,

2009-CP-22-1074

Applicant,

v.

FINAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED
GEORGETOWN COUNTY S.C.
2010 MAR 13 AM 11:58
CLERK OF COURT
A. J. WHITE

This matter came before the Court by way of an Application for post-conviction relief filed July 13, 2009, by Jody Lynn Ward. Respondent made a Return and Motion to Dismiss dated August 12, 2009, requesting that the Application be summarily dismissed as a matter of law. The Applicant submitted a response to the State's Return and Motion to Dismiss, dated August 24, 2009, entitled "Opposition and Reply to the State's Motion to Dismiss." The Court issued a Conditional Order of Dismissal dated October 1, 2009, provisionally denying and dismissing this action, while giving the Applicant twenty days from the date of service of the Order in which to show why the conditional dismissal should not become final. The Applicant was personally served with the Conditional Order of Dismissal at Lieber Correctional Institution on October 27, 2009.

The Applicant served a response to the Conditional Order of Dismissal on November 9, 2009, entitled "Objection and Reply to Conditional Order of Dismissal." Attachments to the Objection and Reply included an excerpt from the Criminal Law Reporter, Vol. 84, No. 25 (article entitled "Right to Counsel – Ineffective Assistance – Prejudice from Counsel's Failure to Convey Plea Offer"); also attached was an excerpt from Davie v. State, 381 S.C. 601, 611-12, 675 S.E.2d 416, 421-22 (2009), with certain cases highlighted.

1
WNC

After careful consideration of the Applicant's response to the Conditional Order of Dismissal, this Court concludes that the Applicant has not shown sufficient reason why the Application should not be summarily dismissed as a matter of law. This Court adheres to its previous finding in the Conditional Order of Dismissal that Davie is not directly applicable to the facts of the Applicant's case. In Davie, counsel's conduct resulted in the defendant *waiving* his constitutional rights and pleading guilty without information regarding the prior plea offer. In contrast, in this case – regardless of counsel's conduct with respect to a prior plea offer – the Applicant did not waive any constitutional rights. Instead, he received his constitutional right to a trial by a fair and impartial jury.

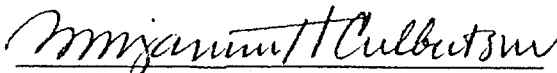
Further, the Davie case does not afford relief because it did not create a "new substantive standard or right" as contemplated by S.C. Code Ann. § 17-27-45(b). The issue of ineffective assistance of counsel in the context of plea bargains has been discussed in case law well before the Applicant filed his first PCR Application. *See, e.g., Jordan v. State*, 297 S.C. 52, 53-54, 374 S.E.2d 683, 684-85 (1988); *Judge v. State*, 321 S.C. 554, 557-563, 471 S.E.2d 146, 148-150 (1996); *Thompson v. State*, 340 S.C. 112, 116-17, 531 S.E.2d 294, 296-97 (2000). Davie did not create a new substantive right; instead, it interpreted the prior law and applied it to a novel set of facts. The Applicant in this case could have raised and fully litigated issues regarding prior plea negotiations in his first PCR Application, since the facts regarding these issues were discoverable pursuant to S.C. Code Ann. § 17-27-45(C). The fact that there was not a case directly addressing the Applicant's allegation prior to Davie is immaterial. Therefore, the current Application is barred by the statute of limitations, and because it is impermissibly successive. *See* S.C. Code Ann. § 17-27-45(A) & S.C. Code Ann. § 17-27-90.

Accordingly, because no sufficient reason has been shown why the Application should not be dismissed as a matter of law, the Conditional Order of Dismissal shall become final.

IT IS THEREFORE ORDERED that, for the reasons set forth above and in the Court's Conditional Order of Dismissal, the Application for PCR is hereby **DENIED** and **DISMISSED** with prejudice.

This Court hereby directs the Applicant's attention to Rules 203 and 243, South Carolina Appellate Court Rules, for the appropriate procedures to be followed in order to commence an appeal from this Order. A Notice of Appeal must be served **within thirty (30) days** of the service of this Order to secure appellate review.

AND, IT IS SO ORDERED this 30th day of December, 2009.


Benjamin H. Culbertson
Resident Judge
Fifteenth Judicial Circuit

Georgetown, South Carolina

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Post Office Box 21787 - Columbia, South Carolina 29221

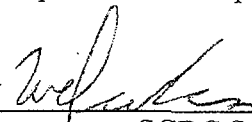
Pursuant to Code Section 15-9-500, Code of Laws of South Carolina, 1976, the Director of the South Carolina Department of Corrections has designated Officer Wilton Symmes (server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)

) **AFFIDAVIT OF PERSONAL SERVICE**

FIFTEENTH JUDICIAL CIRCUIT)

On this 22 day of January, 2010, I served the **Final Order of Dismissal (2009-CP-22-1074)**, on Inmate **Jody Lynn Ward**, SCDC Inmate # **300644**, by delivering personally and leaving a copy of the same at **Lieber Correctional Institution**, _____ . Deponent is not a party to this action.

s/ 
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 22 day of January, 2010

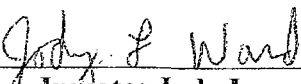
(L.S.)

Notary Public for South Carolina

My Commission Expires: 11-16-2019

ADMISSION OF SERVICE

Service of a copy of the within **FINAL ORDER OF DISMISSAL** is admitted at the S.C. Department of Corrections (Lieber Correctional Institution), _____ County, SC this 22 day of January, 2010.

s/  #300644
Inmate: **Jody Lynn Ward**
SCDC # 300644

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Code Section 15-9-500, Code of Laws of South Carolina, 1976, the Director of the South Carolina Department of Corrections has designated _____ (server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)

) **AFFIDAVIT OF PERSONAL SERVICE**

FIFTEENTH JUDICIAL CIRCUIT)

On this _____ day of _____, 2010, I served the Final Order of Dismissal (2009-CP-22-1074), on Inmate Jody Lynn Ward, SCDC Inmate # 300644, by delivering personally and leaving a copy of the same at Lieber Correctional Institution, _____ . Deponent is not a party to this action.

s/ _____
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this _____ day of _____, 2010

_____ (L.S.)

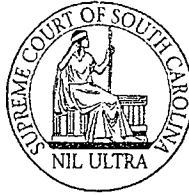
Notary Public for South Carolina

My Commission Expires: _____

ADMISSION OF SERVICE

Service of a copy of the within **FINAL ORDER OF DISMISSAL** is admitted at the S.C. Department of Corrections (_____ **Correctional Institution**), _____, _____ County, SC this _____ day of _____, 2010.

s/ _____
Inmate: Jody Lynn Ward
SCDC # 300644



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 31, 2010

REMITTITUR

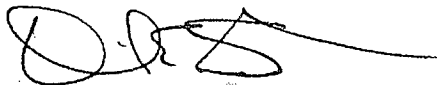
The Honorable Alma Y. White
715 Prince Street Rm 221
PO Drawer 421270
Georgetown, SC 29442-1270

Re: Ward, Jody Lynn v. The State – 2009-CP-22-01074

Dear Ms. White:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,


CLERK

DES/jj

cc: Appellate Defense
Jody Lynn Ward #300644
Assistant Attorney General Christina J. Catoe

STATE OF SOUTH CAROLINA)

County of Georgetown)

In the Court of Common Pleas

2010-CP-22-00733Jody Lynn Ward, #300644)

Full name and prison number (if any) of Applicant)

vs.)

State of South Carolina)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
GEORGETOWN COUNTY, S.C.
2010 MAY -4 PM 2:09
ALMA WHITE
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution P.O. Box
205 Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Georgetown County
Courthouse, Georgetown, S.C. 29440
3. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2003-GS-22-1030
 - (b) 2003-GS-22-1031

- (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 18, 2004 Life sentence
- (b) March 18, 2004 Life sentence run concurrent
- (c) _____
5. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgement of conviction or the imposition of sentence?
- yes
7. If you answered "yes" to question (6), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Appellant Court of Appeals
- ii. _____
- iii. _____
- (b) the result of each such Court to which you appealed:
- i. affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 26, 2007 (2007 - UP - 048)
- ii. _____
- iii. _____
- (d) if known, citation of any written opinion or orders entered pursuant to such results:
- i. Anders -vs- California
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reason for not so appealing:
- (a) _____
- (b) N/A
- (c) _____

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

- (a) Seeking relief based on New Rule of Law
 (b) SEE STATE v. Belcher Op. No. 26729
 (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) The jury instructions in my case are unconstitutional
 (b) under Belcher's opinion.
 (c) _____

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

- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-conviction relief?
yes
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
 (d) any other petitions, motions or applications in this or any other Court? yes

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. application for Post Conviction Relief / New Rule Law
 ii. _____
 iii. _____
 iv. _____

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

- i. Georgetown County clerk of court, Georgetown, S.C.
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

- i. MARCH 15, 2010
- ii. _____
- iii. _____
- iv. _____

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

- i. successive SCACR Rule 243(c), [formerly Rule 227(c)]
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? no

14. If you answered yes to (13) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) "New" Rule of Law
- (b) _____
- (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you:

- i. Margaret Ann Kneese, Esquire 35 Bay Tree Place
Pawleys Island, S.C. 29585
- ii. Wesley Locklair, III, Esquire 3575 Hwy. 17 Bus.
Murrells Inlet, S.C. 29576
- iii. Bobby G. Frederick, Esquire, P.O. Box 8319
Myrtle Beach, S.C. 29578

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

- i. (a) ; (b) ; (c)
- ii. (a) ; (b) ; (c)
- iii. (e)

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

REVERSE AND REMAND for a New Trial or
in the alternative GRANT of an Evidentiary
Hearing to resolve issue herein. d

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

No

STATE OF SOUTH CAROLINA

County of Georgetown2010 CP 22-00733
VERIFICATION

I, Jody Lynn Ward, # 300644, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground know to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true, and attached sheets, documents and exhibits are also true and correct copies.

x Jody Lynn Ward, # 300644

SWORN to and subscribed before me this 3RD day of May, 2010.

Sylira Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

FILED
GEORGETOWN COUNTY, S.C.
2010 MAY -4 PM 2:09
ALMA Y WHITE
CLERK OF COURT

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

I, Jody Lynn Ward, # 300644, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

x Jody Lynn Ward, # 300644
Applicant

SWORN or affirmed to and subscribed before me this 3RD day of May, 2010.

Sylira Jones
Notary Public

My Commission Expires: 1/24/2018

Jody L. Ward, #3006

Lieber Corn. Inst. C-A-41

P.O. Box 205

Ridgeville, S.C. 29472

May 1, 2010

2010-CP-22-00733

Ms. Alma V. White, clerk

Georgetown County clerk of court

P.O. Box

Georgetown, S.C. 29442

FILED
GEORGETOWN COUNTY, S.C.
2010 MAY -4 PM 2:09
ALMA V. WHITE
CLERK OF COURT

RE: Filing of PCR application

Dear Ms. White,

Please find here enclosed an Original PCR application and (1) copy for Plaintiff. Please File and clock-stamp the courts Original copy and please forward to me my copy in the envelope provided. I thank you and May God Bless You Abundantly

Sincerely yours,

Jody Lynn Ward, #3006

Jody Lynn Ward

Applicant pro se

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jody Lynn Ward, # 300644,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2010-CP-22-00733

FINAL ORDER OF DISMISSAL

ALMA J. WILKIE
CLERK OF COURT

2010 JUL 29 PM 1:16

FILED
GEORGETOWN COUNTY

This matter came before the Court by way of an Application for post-conviction relief filed May 4, 2010, by Jody Lynn Ward. Respondent made a Return and Motion to Dismiss dated June 1, 2010, requesting that the Application be summarily dismissed. On June 3, 2010, this Court issued a Conditional Order of Dismissal, provisionally denying and dismissing this action, while giving the Applicant twenty days from the date of service of the Order in which to show why the conditional dismissal should not become final. The Applicant submitted a response to the State's Return and Motion to Dismiss dated June 13, 2010. Thereafter, the Applicant submitted a response to the Conditional Order of Dismissal dated July 1, 2010.

In his response, entitled "Answer to Conditional Order of Dismissal," the Applicant contends that State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), should apply to his action for post-conviction relief in spite of express language in the case stating that the holding does not apply to post-conviction relief actions. The Applicant asserts that failing to apply State v. Belcher to his PCR case violates his constitutional due process rights.

After careful consideration of the Applicant's arguments and his attached case law, this Court concludes that the Applicant has not shown a sufficient reason why the Application should not be summarily dismissed as a matter of law. This Court adheres to its ruling in the

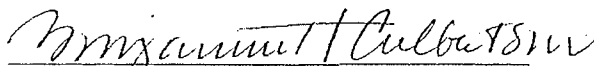
1/ msc

Conditional Order of Dismissal that State v. Belcher does not apply to the Applicant's PCR case. Further, this Court finds that the South Carolina Supreme Court's conclusion in State v. Belcher that its holding does not apply to cases on collateral review does not violate the Applicant's constitutional due process rights. See State v. Belcher at 612-13, 685 S.E.2d at 810-11; Teague v. Lane, 489 U.S. 288, 316 (1989). Accordingly, the Applicant's claim fails as a matter of law, and his Application must be summarily dismissed.

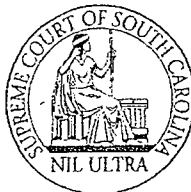
IT IS THEREFORE ORDERED that, for the reasons set forth above and in the Court's Conditional Order of Dismissal, the Application for PCR is hereby **DENIED** and **DISMISSED** with prejudice.

This Court hereby directs the Applicant's attention to Rules 203 and 243, South Carolina Appellate Court Rules, for the appropriate procedures to be followed in order to commence an appeal from this Order. A Notice of Appeal must be served **within thirty (30) days** of the service of this Order to secure appellate review.

AND, IT IS SO ORDERED this 14th day of July, 2010.


Benjamin H. Culbertson
Chief Administrative Judge
Fifteenth Judicial Circuit

Georgetown, South Carolina



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

August 18, 2011

Jody Lynn Ward #300644
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: Ward, Jody Lynn v. The State

Dear Mr. Ward:

The Court has issued the following Order on your Petition for a Writ of Certiorari in the above entitled matter:

“Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

August 18, 2011.”

The remittitur will be sent to the lower court as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

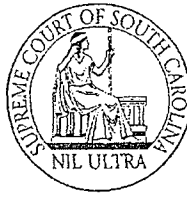
Very truly yours,

Daniel E. Shearouse
65

CLERK

DES/jj

cc: Appellate Defense
Assistant Attorney General Christina J. Catoe



FAX (803) 734-1499

358

Original

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

OCT 31 2011

S.G. SUPREME COURT

Jody Ward, ...PETITIONER,

-Vs-

William Byars, Director of the South Carolina Department
of Corrections, and the State of South Carolina,
.....RESPONDENTS,

NOTICE OF PETITION FOR ORIGINAL JURISDICTION

Pursuant to Rule 245(c), SCACR, Petitioner hereby gives Notice to the Respondents that they have twenty-(20) days from the date of service to serve and file a Return to this Petition. [...] Any party opposing the Petition shall have twenty-(20) days from the date of service to file an original and six (6) copies of its Return to the Clerk of the South Carolina Supreme Court, and serve on all parties a copy of the Return. Failure of a party to timely file a Return may be deemed consent thereby that party to the matter being heard in the Original Jurisdiction. Unless otherwise ordered by the Supreme Court, the Petition shall be decided without oral argument. If the Petition is granted, the Respondents shall have thirty-(30) days to serve and file an Answer to the Petition.

Submitted this 25th day of Oct., 2011.

Respectfully Submitted,

/s/ Jody Ward #300644
Jody Ward
SCDC# 300644
Lieber Corr. Inst.
P.O. Box 205 EA-15
136 Wilborn Ave.
Ridgeville, SC. 29472

360

360

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Jody Ward,.....PETITIONER,

-Vs-

William Byars, Director of the South Carolina Department
of Corrections, and the State of South Carolina,
.....RESPONDENTS,

PETITION FOR ORIGINAL JURISDICTION

Petitioner hereby moves this Honorable Court pursuant to Rule 245, SCACR, to take original jurisdiction of the matter alleged herein the attached Writ of Habeas Corpus for reasons set forth in the attached Memorandum of Law.

Submitted this 25th day of Oct., 2011.

Respectfully Submitted,

/s/ Jody Ward, # 300644

Jody Ward
SCDC# 300644
Lieber Corr. Inst.
P.O. Box 205 EA-15
Ridgeville, SC. 29472

360

360

JURISDICTION

I.

Pursuant to Rule 245, SCACR, S.C. Code Ann. §14-3-310, S.C. Constitution art. I, §3; and S.C. Constitution art. V, §5, Petitioner in the above-captioned matter hereby respectfully requests that the South Carolina Supreme Court entertain this case in original jurisdiction for a final adjudication on the [merits] for the below stated reasons.

II.

Petitioner seeks issuance of an extraordinary writ in the original jurisdiction of this Honorable Court to allow Petitioner an opportunity to challenge the constitutionality in which Petitioner is confined through a writ of habeas corpus. This extraordinary writ brought by Petitioner challenges Petitioner's convictions under extraordinary circumstances as will be sufficiently set forth herein. This Court enjoys jurisdiction to hear and rule on Petitioner's claim(s), which were insufficiently raised during trial and the post-conviction relief hearing.

III.

Petitioner contends that good reason exists as to why the original jurisdiction of the South Carolina Supreme Court should be exercised to entertain Petitioner's issue[s] of unlawful conviction and sentence, as will be discussed below, in resolving

issue[s] of public concern. Petitioner further contends that standing may be conferred upon a party "when an issue is of such public import as to require it's resolution for future guidance." *Baird v. Charleston County*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). This Court and the Court of Appeals have similarly granted standing in cases of important public interest. *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 5331, 590 S.E.2d 338, 347 (Ct.App.2003).

While it is true a person may be procedurally barred from petitioning the Circuit Court for a writ of habeas corpus where an issue alleged is one which could have been raised in post-conviction relief, the only means of obtaining a state habeas corpus relief is to file a petition in the original jurisdiction of the South Carolina Supreme Court. See S.C. Constitution, art. V, §5; and *Keeler v. Mauney*, 330 S.C. 568, 500 S.E.2d 123 (S.C.App.1998). This Court addressed this issue in *Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426 (1998) and *Simpson v. State*, 329 S.C. 43, 495 S.E.2d 429 (1998).

In *Gibson*, the appellants petitioned for writs of habeas corpus based on alleged error that they had not raised in their prior PCR applications. This Court preliminarily determined that the petitions must be treated as PCR applications due to the deficiencies in their petitions. The case was remanded to determine if the application should be dismissed as successive. This Court held the lower court could treat the applications as habeas corpus petitions and provided the appellants with a

hearing on the merits "only" if the appellants "can show upon remand that PCR is unavailable, all other remedies have been exhausted, and the issues raised now could not have been raised in their prior applications. Id 329 S.C. at 42, 495 S.E.2d at 429.

In Simpson, the circuit court dismissed the appellant's habeas corpus petition on the ground that a petition for writ of habeas corpus cannot be used as a substitute for an action under the Uniform Post Conviction Procedure Act ("the Act"). S.C. Code Ann. §§17-27-10 thru 160 (1985 & Supp.1997). This Court agreed, holding "that a matter which is cognizable under the Act may not be raised by a petition for writ of habeas corpus before a circuit court or other lower courts. Id Simpson, 329 S.C. at 46, 495 S.E.2d at 431. However, this Honorable Court expressly reserved the "ability to entertain writs of habeas corpus in [it's] original jurisdiction [under Article V, §5 of the South Carolina Constitution] and grant relief in those unusual instances where "there has been a violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice." Id at 46 n.4, 495 S.E.2d at 431 n.4.

The import of the holdings in Gibson and Simpson is clear. A person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a prior PCR application. Furthermore, if a person is procedurally barred, the only means of obtaining

state habeas corpus relief is to file a petition in the original jurisdiction of this Court. Therefore, this Court must now determine if Petitioner's convictions are contrary to the law on the grounds of the issues raised herein, and discussed below.

In *Butler v. State*, 397 S.C. 87 (1990)(citing *Walker v. Wainwright*, 390 U.S. 335 (1968)), this Court held that the writ of habeas corpus is to test the legality of a prisoner's current detention.

Since *Butler*, this Court has made it clear that it envisions habeas corpus to be a means of correcting a fundamental miscarriage of justice after a prisoner has exhausted all other available remedies. *State v. Torrence*, 305 S.C. 45, 69, 406 S.E.2d 315, 328 (1991)("[A]n imprisoned individual may obtain a writ of habeas corpus from this Court after exhausting all other sources of relief', if he can satisfy the *Butler* standard) see also *Drayton v. Evatt*, 430 S.E.2d 517, 520, n.2, cert. denied, 114 S.Ct. 607 (1993).

IV.

Due to PCR counsel's failure to comply with the mandates of Post Conviction Relief actions, Rule 71.1(d) and (e), SCRCP and S.C. Code Ann. §§17-27-60 and 17-27-90 (2010 Supp.), this is Petitioner's only available remedy to address the issues complained of herein.

CONCLUSION

WHEREFORE, based on the foregoing reasons, Petitioner respectfully request that this Court take original jurisdiction of this matter to protect the public interest as well as Petitioner's inalienable rights to due process of law, and to serve the exigencies of time and judicial economy in this matter.

Respectfully Submitted,

/s/ Jody Ward, # 300644
Jody Ward
SCDC# 300644
Lieber Corr. Inst.
P.O. Box 205 EA-15
136 Wilborn Ave.
Ridgeville, S.C. 29472

Submitted this 25 day of Oct., 2011.
at Ridgeville, SC.

366

366

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Jody Ward, ...PETITIONER,

-Vs-

William Byars, Director of the South Carolina Department
of Corrections, and the State of South Carolina,
.....RESPONDENTS,

In The Original Jurisdiction

PETITION FOR WRIT OF HABEAS CORPUS

Respectfully Submitted,

/s/ Jody Ward, # 300644

Jody Ward
SCDC# 300644
Lieber Corr. Inst.
P.O. Box 205 EA-15
136 Wilborn Ave.
Ridgeville, SC. 29472

Petitioner, pro-se

366

366

PETITION FOR WRIT OF HABEAS CORPUS

JURISDICTION

Pursuant to Rule 245, SCACR, S.C. Code Ann. §14-3-310; S.C. Constitution art. I, §3; and S.C. Constitution art. V, §5, Petitioner in the above-captioned matter hereby respectfully requests that the South Carolina Supreme Court entertain this petition for writ of habeas corpus in original jurisdiction for a final adjudication on the [merits] for the below stated reasons:

Procedural History of the Case

Petitioner (Jody Ward) was indicted in July 2003 in Georgetown County for the alleged murders of Wilford Brown and Elton Rutledge, Jr.

Petitioner proceeded to trial by a jury and judge on March 15-18, 2004. The jury ultimately convicted Petitioner as indicted and the Honorable Paula H. Thomas sentenced Petitioner to two-2 concurrent life sentences. A timely notice of appeal was filed and the appeal was reviewed pursuant to Anders v. California in which the Court of Appeals affirmed the sentences and convictions January 26, 2007 (2007-UP-048). A timely rehearing was filed and rehearing was denied March 22, 2007. Subsequently thereafter Petitioner filed petition for writ of certiorari. The petition for certiorari was withdrawn by Petitioner June 29, 2007 and the remittitur was thereafter handed down to the Circuit Court.

Petitioner filed his first application for Post Conviction Relief ("PCR") July 11, 2007. An evidentiary hearing was convened

May 1, 2008. By way of written order the Honorable Judge John denied the application.

On May 27, 2008, Petitioner submitted a timely Rule 59(e), SCRCF, motion to alter/amend judgement. August 6, 2008, Judge John denied the Rule 59(e) motion. A timely notice of appeal was filed and petition for writ of certiorari was submitted on Petitioner's behalf. This Court denied certiorari August 20, 2009 and the remittitur was handed down September 8, 2009.

Petitioner filed his second PCR application July 13, 2009 based on a "new rule" of law, while his first PCR was currently being reviewed on certiorari. Respondent made a Return and Motion to Dismiss. A Conditional Order of Dismissal was issued and Petitioner made his timely opposition to the dispositive pleading. January 13, 2010 a Final Order was issued granting the Respondent's motion to dismiss. A timely notice of appeal was filed in this Court that was ultimately denied and dismissed. The remittitur was handed down about April 1, 2010.

Petitioner filed a third PCR application May 4, 2010 based on a "new rule" of law. The Respondent filed a Return and Motion to Dismiss June 1, 2010. Petitioner lodge a timely opposition to the Respondent's dispositive pleading June 14, 2010. A Conditional order was issued and Petitioner lodged timely opposition to the Conditional Order. A Final Order was issued granting the Respondent's motion on July 20, 2010. A timely notice of appeal was filed, accompanied with a pro-se petition for writ of certiorari. Respondent filed a Return to the petition August 18,

2010. Certiorari was ultimately denied August 18, 2011.

A.

REASONS WHY THE WRIT SHOULD BE HEARD IN THE ORIGINAL JURISDICTION

The presumed innocence of Petitioner was removed by the State via procedures which were fundamentally unsound and latent with structural defects. The trial procedures were not properly presented for review on post-conviction relief where that procedural was an inadequate corrective process that failed to protect meritorious federal constitutional rights and privileges. The trial and collateral process in this matter resulted in a conviction amounting to a miscarriage of justice.

B.

**STRUCTURAL DEFECTS IN PETITIONER'S TRIAL MAY NOT BE CONSIDERED
HARMLESS**

In conducting harmless error analysis of constitutional violations, the United States Supreme Court repeatedly has reaffirmed that "[s]ome constitutional violations... by their very nature cast so much doubt on the fairness of the trial process that, as a matter of law, they can never be harmless. Satter v. Texas, 486 U.S. 249, 256 (1988), accord Neder v. United States, 527 U.S. 1, 7 (1999)("[W]e have recognized a limited class of fundamental constitutional errors that defy analysis by

harmless error standards... Errors of this type are so intrinsically as to require automatic reversal (i.e. affect substantial rights) without regards to their affect on the outcome of the trial. In *Arizona v. Fulminate*, 499 U.S. 279 (1991), a five-justice majority of the court Id at 306-312, elucidated this rule of per se prejudice (sometimes called the "rule of automatic reversal. Id at 294, see also *Satterwhite v. Texas*, supra 486 U.S. at 257) by distinguishing between the concepts of "structural" and "trial" error: "structural defects in the constitution of the trial mechanism. *Fulminate*, supra, 499 U.S. at 309 are per se prejudicial; trial errors occurring "during the presentation of the case to the jury. *Fulminate*, supra at 307. Structural errors must be corrected regardless of thier effect on the trial because they violated basic protections without which a criminal trial can reliably serve it's function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair. *Fulminate*, supra, 499 U.S. at 310.

POST CONVICTION RELIEF IS AN INADEQUATE CORRECTIVE PROCESS

A determination that a procedure is important enough that the United States Supreme Court may require state courts to use it amounts to a determination that the absence of the procedure violates the Due Process Clause, or some other provision of the Constitution. See generally Judge Skelly Wright & Abraham D. Sofaer, *Federal Habeas Corpus for State Prisoners*. The Allucation

of Fact-Finding Responsibility, 75 Yale L.J. 895, 906-19 (1966).

Such an analysis suggests that reaching the conclusion that a constitutional right to an adequate state post conviction proceeding exists would compel the supplementary conclusion that the federal courts possess the authority to order the state courts to conduct such proceedings when so petitioned.

The function of collateral relief has been to provide a prompt and effective remedy for whatever society deems to be intolerable restraints. It's root principle is that a civilized society, government must always be accountable to the judiciary for a man's imprisonment. Thus, the traditional scope of collateral relief requires that Petitioner (and all prisoners) be afforded the broadest possible opportunity to present claims that [his] detention is the result of an unconstitutional procedure.

Because state post conviction proceedings are prisoner-initiated, and particularly because of the unforgiving nature of federal statutes and case law forbidding meaningful federal habeas review in the wake of a default in state court, the responsibility to conduct a "full and fair" state post conviction proceeding on all available claims -- and, failing that, to construct a record demonstrating how the state proceedings were not "full and fair" and why the state courts bear the entire blame for the deficiencies -- belongs to the Petitioner, hence counsel. Where counsel has inexcusably failed to ask a state POR court for relief on a particular claim, a federal court will penalize Petitioner by denying him relief or

by adopting the state court's inadequately premised fact finding or it's admittedly erroneous legal determinations. Even the best lawyers cannot rectify a meritorious constitutional claim that was procedurally defaulted or waived by prior inadequate counsel in state PCR proceedings. See generally *McFarland v. Scott*, 512 U.S. 1256, 1263-64 (1994) (Blackman, J. dissenting).

It's appointed counsel's statutory (S.C., Code §17-27-60 (Supp.2010); Rule 71.1(d), SCRCP; *Gary v. State*, 347 S.C. 627 (2001) duty as well as professional obligation, therefore, to insist upon a "full and fair" state proceeding -- as defined not only by state law, but also by federal statute (28 USC §2254(d)(1); 2254(e)(West Supp.2001) and case law *Townsend v. Sain*, 372 U.S. 293 (1963); *Finklea v. State*, 273 S.C. 157, 255 S.E.2d 447 (1979)) that specify the attributes of a state proceeding that is sufficiently "full and fair" to preclude de novo federal relitigation.

The issues presented infra were sufficiently and readily available but undermined by the deficiencies in trial, PCR and PCR appellate counsel. Petitioner has no other available remedy for redress, therefore the claims presented are ripe for review by this petition for writ of habeas corpus in the original jurisdiction.

ISSUE I.

Was trial counsel ineffective for failing to object to the Solicitor's improper closing summation which impermissibly lessened the jury's sense of impartiality that denied Petitioner his right to a fair and impartial jury and his right to a fair trial?

Petitioner submits this issue was properly raised during PCR and ruled upon by the PCR Court order denying Petitioner's Rule 59(e), SCRCF motion to alter/amend judgement. Although this issue was gagged by PCR appellate counsel's failure to raise the claim on certiorari review.

The issue raised herein is a denial of due process and is supported by trial counsel's inactions during trial for failing to lodge a contemporaneous objection.

During closing summation to the jury the solicitor stated the following, as was recorded:

Solicitor Bryant: "Now, I want to talk a little about Elton Rutledge, because I am anticipating the defense's case is because there is no medical evidence to say that Elton Rutledge has been or was killed by Jody Ward or was killed at all, that we haven't proven our case, but that's simply not true. This is a circumstantial case, but it is a strong case, and long before there was ever a concept called DNA, there were murderers, and there were murderers who were convicted by jurors, and there is still cases where no body is recovered and murderers are convicted based upon -- circumstantial evidence." [Tr.p.576 line 19 thru p.577, L.4].

As is seen above the solicitor was allowed to use innuendos and in comparing Petitioner's case to "what other jury's" have done substantially lightened the State's burden of proof.

DISCUSSION

A criminal defendant's enjoys the right to a fair and impartial jury. "In essence, the right to jury trial guarantees

to the criminally accused a fair trial by a panel of impartial, indifferent jurors. The failure to accord an accused of a fair hearing violates even the minimum standards of due process. *Irvin v. Dowd*, 366 U.S. 717, 722 (1961)(citations omitted).

Petitioner asserts the solicitor's closing argument as deliberately placed before the jury in a manner calculated to invoke personal prejudice against Petitioner denied him his right to a fair and impartial jury and the right to a fair trial. In the context of criminal trials, the prosecution is held to uniquely high standards of conduct.

In *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 633 (1935), the Supreme Court indicated: "The United States Attorney is the representative of not an ordinary party to a controversy, but a sovereignty to govern all, and whose interest, therefore in a criminal prosecution is not that it shall win a case, but that justice shall be done." It is the duty to refrain from [improper] methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. 295 U.S. at 88, 55 S.Ct. 629 at 633. This Court echoed the same standard in *State v. King*, 71 S.E.2d 793 (1952), "A solicitor is an officer of the court representing all the people, including the accused and occupies a quasi-judicial position and must see that justice is done, that no conviction takes place except in [strict] conformity with the law and that the accused is not deprived of any constitutional rights or privileges and, regardless of how strong his/her belief may be of

an accused's guilt, he must conduct the trial and argument in a manner fair and impartial to the accused.

The Court has specifically indicated that the "duty of a solicitor is to see that justice is done and not just to convict the defendant and furthermore, the solicitor is a quasi-judicial officer, and must not do things which prevent a fair trial. *State v. Durden*, 212 S.E.2d 587 (1975). Petitioner asserts he was denied the effective assistance of counsel as envisioned by the Sixth Amendment when counsel failed to object to the solicitor's improper closing argument. *Strickland v. Washington*, 466 U.S. 668 (1984). The Court, quoting *Gilstrap v. State*, 205 S.C. 412, 416, 32 S.E.2d 163, 164-65 (1944), reasoned... "the rule followed in this State, and we think in most jurisdictions, is that if upon the whole case, it appears to the court that the defendant was prejudiced by the language used, as a result of which he did not have a fair and impartial trial, it would be the duty of the court to reverse the case and remand it for a new trial."

While there are numerous kinds of trial conduct that are improper for prosecutors... i.e. "alluding in argument to the defendant's exercise of right to remain silent; or to the defendant's failure to call witness"; misstating the presumption of innocence; interjecting the prosecutor's personal opinion about the veracity of witness'. In the instant case the record succinctly supports Petitioner's contention the solicitor committed more than one of the aforementioned during the trial of Petitioner that resulted in a denial of due process. *Darden v. Wainwright*, 477 U.S. 168, 181, 106 S.Ct. 2464, 2471, see also

Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868. Counsel should have objected, and further appointed PCR appellate counsel should have raised this issue on certiorari and the failure to do so deprived Petitioner of due process of law and the resulting conviction in a manifest miscarriage of justice. The writ should issue.

ISSUE II.

Was trial counsel ineffective for improperly telling the jury if any mistakes are made a "higher court" will take care of the error and thus counsel's improper statements tipped the scales in favor of the State, and the statements ultimately denied Petitioner his right to a fair trial?

During closing argument Petitioner's attorney Mr. Locklair made the following statement to the jury during closing summation, as was recorded:

Mr. Locklair: "If I do something wrong, if they do something wrong or if the Judge happens to do something wrong, there are higher courts that can take care of that. Your decision is final. There are no appeals from your decision on the facts, which is why when you go back to weigh the evidence I want each of you to think about that oath you took. You might be one person who has reasonable doubt about his guilt. You might be one of six who has reasonable about his guilt, but you must stick to your convictions if you have reasonable doubt. [App.pp.810, L.3-6]."

As is seen above in the underlined portions of counsel's argument it is easily seen that counsel has utterly told the jury regardless of whether they believe reasonable doubt exists "they must stick to their convictions." Petitioner asserts this statement was doubly magnified since counsel had previously told the jury if any mistakes were made a "higher court" would correct it. A reasonable jurist could have interpreted this statement as telling the jury to just convict Petitioner and a higher court would correct any errors.

Petitioner asserts these statements denied Petitioner his Sixth Amendment right to the effective assistance of counsel and his Fourteenth Amendment right to a fair trial.

DISCUSSION

The law in this area is as easy to misstate as it is difficult to apply. Petitioner asserts the improper comments by counsel merely served to remind the jury that's it's decision could be reviewed on appeal.

Obtensibly, this statement absolved the jury of the responsibility for it's verdict and enabled them to render an erroneous decision; as such a reasonable jurist could have interpreted the comment to simply mean "convict the defendant and if something was done wrong another court will fix it."

United States v. Fiorito, 300 F.2d 424, (7th Cir.1962) is supportive in this instance. Although, Fiorito is distinguishable because in Fiorito it was the judge rather than counsel who

explicitly instructed the jury that the court of appeals would review the judgement. Id at 426. In that situation, the Seventh Circuit concluded that "such dilution of the final responsibility of the jury as was thus inferred as permissive to the jury in it's determination of the verdict [was] prejudicial to the defendant. Id at 427.

Surely, it might have been better procedure to have told the jury...."[not] to worry because "this court" would reverse if there were error. As well other courts have reversed convictions because the jury was reminded that a higher court would be reviewing any possible mistakes. Fiortio, supra, also see United States v. Lulaski, 341 F.2d 325, 330 (7th Cir.1965).

The language used by counsel in the instant matter parroted the same language admonished and held unacceptable by sistering circuits. Here counsel's statement in effect said Petitioner is guilty and members of the jury can just convicted Petitioner and if a mistake has been made there is a "higher court" to correct it.

There are many cases that uphold admonitions by the trial court that defense counsel is not to inform the jury of his/her opinion of the guilt or innocence of the defendant. Customarily, this is when defense counsel asserts, I believe this man is innocent because otherwise I would not be here defending him. This is universally held to be improper argument. United States v. Young, 105 S.Ct. 1038 (1984)(defense counsel, like the prosecutor must refrain from interjecting personal beliefs into

the presentation of his case), *United States v. Swafford*, 766 F.2d 426 (10th Cir.1985)(a lawyers assertion of personal opinion during trial is an example of improper advocacy).

The Tenth Circuit has also recognized that "an attorney who adopts and acts upon a belief that his client should be convicted fails to function in any meaningful sense as the government's aversary. *Osborne v. Shillinger*, 861 F.2d 612 (10th Cir.1988)(quoting *U.S. v. Cronin*, 104 S.Ct. at 2051.

Here counsel's statement to the jury clearly conveyed to the jury, that they could juts convict Petitioner and let a "higher court" correct any errors. Counsel's statement undermined confidence in the outcome, as counsel's statement was self-serving and ultimately directed a verdict for the State against Petitioner. Surely when viewed in light of the evidence, the evidence was not overwhelming and this could not be considered an inept attempt to champion Petitioner's case that some how backfired. See *Strickland v. Washington*, 466 U.S. 668 (1984).

The error complained of cannot be considered harmless beyond a reasonable doubt since the evidence was merely circumstantial and a reasonable jurist could have interpreted counsel's statement as a statement of interest against Petitioner. The writ should issue in the instant matter.

ISSUE III.

Was trial counsel ineffective for failing to object to the trial court's burden shifting jury instructions, in violation of the Due Process Clause?

Petitioner suggests that the trial court's malice instructions could not be considered harmless error, where such instruction in effect directed a verdict for the State and gave the State the benefit of reasonable doubt. The Court issued the following jury instructions:

Now, the Defendant is charged with murder. The State must prove beyond a reasonable doubt that the Defendant killed another person with malice aforethought. Malice is hatred, ill will or hostility towards another person. It is the intentional doing of an unlawful act without just cause or excuse. [Tr.p.619, L.16-21].

Malice aforethought may be expressed or inferred. These terms expressed and inferred don't mean different kinds of malice, but merely the manner in which malice may be shown to exist, that is direct, either by direct evidence or by the inference from the facts and circumstances which are proved. [Tr.p.621, L.3-8].

Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. [Tr.p.621, L.15-17].

As is seen above, this instruction failed to instruct the jury they could accept or reject the inference of malice based upon the jury's consideration of the evidence. Evidentiary presumptions [must] be charged as permissive and the jury should be instructed they can "accept or reject" the inference based on their consideration of the evidence. See *Peterson v. State*, 335 S.E.2d 800 and compare *Flowers v. Blackburn*, 779 F.2d 1115. The instruction further led the jury to conclude that if Petitioner committed an "unlawful act", that [they] did not have to look any further to infer malice. Counsel was bound to lodge a

contemporaneous objection where the record is replete with an over abundance of evidence that Petitioner was buying, selling and using "drugs" preceding the alleged crime.

This instruction informed the jury that if they could not conclude malice from Petitioner doing an unlawful act, then if a deadly weapon was involved, malice was to be implied. Petitioner suggests that the jury could have reasonably interpreted this as a mandatory presumption since the the Court failed to charge the jury they could "accept or reject" the inference.

DISCUSSION

In a long line of cases, culminating in *Yates v. Evatt*, 500 U.S. 391 (1991), the U.S. Supreme Court recognized that the prosecution must prove each and every element of the crime charged beyond a reasonable doubt, citing *In re Winship*, 397 U.S. 158 (1970). The burden of proof on any element cannot be shifted to the defense, because doing so decreases the State's burden of proving the crime beyond a reasonable doubt.

As early as 1975, the U.S. Supreme Court considered a Maine Rule which required the defendant charged with murder to prove that he acted in the heat of passion in order to reduce the homicide to manslaughter. The Court determined that a State could not shift the burden on any element of the crime to the defendant, finding the risk described to be intolerable, reversing the conviction, *Mullaney v. Wilbur*, 421 U.S. 684, 701 (1975).

The U.S. Supreme Court overturned another conviction in *Sandstrom v. Montana*, 442 U.S. 510 (1979). Montana law provided that a person could be charged with deliberate homicide when that person "purposely or knowingly" caused the death of another and, at Sandstrom's trial, the judge instructed the jury that, "the law presumes that a person intends the ordinary consequences of his voluntary acts. Id at 512.

After considering Sandstrom's argument, the Court agreed that the effect of that was to shift the burden of proof to Sandstrom on a critical element of the offense. The Court reiterated that a State must prove every element beyond a reasonable doubt and the defendant cannot be required to disprove any elements of his defense or disprove any element of his crime, holding a "reasonable juror might have interpreted the instructions either as a conclusive presumption or as a burden shifting presumption, but either interpretation, the Court rendered the instruction unconstitutional. In *Francis v. Franklin*, 472 U.S. 307 (1985), the Court found that the use of a "rebuttable" presumption was also unconstitutional for the same reason set forth in *Sandstrom*.

Following *Sandstrom v. Montana*, *Mullaney v. Wilbur* and *Francis v. Franklin*, the case of *Yates v. Evatt*, 310 S.E.2d 805 (1982), 474 U.S. 896 (1985) (*Yates v. Aiken*), and 500 U.S. 391 (1991), wound it's way through the judicial system on identical issues. This matter is thus solid *stare decisis* in South Carolina.

Based upon case as presented there is no doubt that the

malice instructions given during Petitioner's trial were unconstitutionally mandatory and burden shifting. This is further exploited to the maximum since the trial counsel failed to instruct the jury they could "accept or reject" the inference of malice based on their consideration of the evidence. This may not be considered harmless where there is no other evidence to be considered "overwhelming", or that Petitioner could be found guilty beyond a reasonable doubt.

If the jury followed the trial court's instructions and it must be presumed that they did, then the jury had to look no further than the "unlawful act"... smoking, buying and selling marijuana, or the use of a "deadly weapon", and thus committed the "unlawful act" without just cause or legal excuse. In doing so, the Judge instructed the jury to direct a verdict for the State. The writ should issue in the instant matter.

CONCLUSION

WHEREFORE, based on the foregoing the writ should issue in the instant matter or in the alternative this Court should fashion any available equitable relief warranted.

Respectfully Submitted,

/s/ Joey Ward, # 300644
Joey Ward
SCDC# 300644
Lieber Corr. Inst.
P.O. Box 205 EA-15
136 Wilborn Ave.
Ridgeville, SC. 29472

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Jody Ward -- Petitioner,

-Vs-

William Byars, Director of SCDC, et al -- Respondents,

CERTIFICATE OF SERVICE

The undersigned, pro-se, Petitioner hereby certifies he has served the Original and (6) six copies of the enclosed petition for original jurisdiction on the S.C. Supreme Court Clerk, Mr. Daniel Shearouse, P.O. Box 11330, Columbia, SC. 29211.

I further state a true and correct copy of the enclosed was also served the Attorney General, Mr. Alan Wilson, P.O. Box 11549, Columbia, SC. 29211, and on Director of SCDC, Mr. William Byars, S.C. Department of Corrections, P.O. Box 21787, Columbia, SC. 29221-1787.

This was done by placing the aforesaid in properly addressed, first-class post affixed envelopes and placed in the U.S. Mail this 25 day of Oct., 2011.

Respectfully Submitted,

/s/ Jody Ward, # 300644

Jody Ward
SCDC# 300644
Lieber Corr. Inst.
P.O. Box 205 EA-15
136 Wilborn Ave.
Ridgeville, SC. 29472

RECEIVED

OCT 31 2011

S.C. SUPREME COURT

The Supreme Court of South Carolina

Jody Ward,

Petitioner,

v.

William Byars, Director of the
South Carolina Department of
Corrections and the State of
South Carolina,

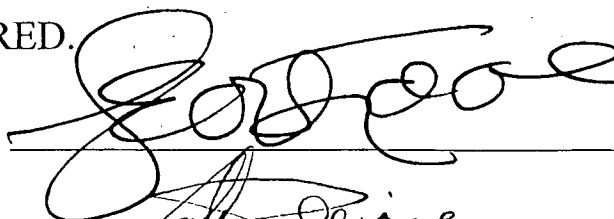
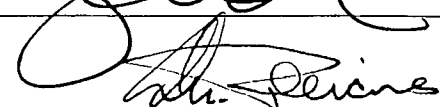
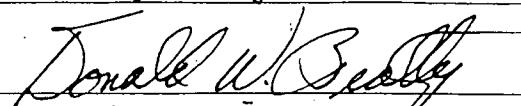
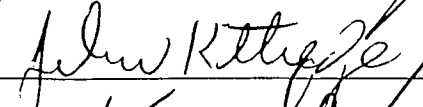
Respondents.

ORDER

This matter is before the Court on a petition for a writ of habeas corpus dated October 25, 2011.

Because petitioner has not shown that "there has been a violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice," the petition is denied. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998).

IT IS SO ORDERED.


C. J.

J.

J.

J.

J.

Columbia, South Carolina

November 16, 2011