

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Lower Court Case No. 2016-CP-38-00623
Appellate Case No. 2021-000673

BRUCE JEROME HOUSER, 243356

PETITIONER.

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

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STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY

Luke N. Brown, Jr., Special Circuit Court Judge

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ORIGINALS
199705864
99-MO-05

THE STATE,

RESPONDENT,

V.

BRUCE JEROME HOUSER,

APPELLANT.

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DIRECT EXAMINATION

BY SOLICITOR WILLIAMS:

Q. LATONYA, I'M GOING TO ASK YOU TO KIND OF LOOK AT ME AND THE JURY, BUT YOU'RE GOING TO HAVE TO TALK INTO THAT MICROPHONE SO THAT EVERYBODY CAN HEAR YOU. LATONYA, WHERE DO YOU LIVE?

A. ONE O NINE BETHEL AVENUE, NORTH, SOUTH CAROLINA.

Q. AND HAVE YOU LIVED THERE ALL YOUR LIFE?

A. YES, SIR, EXCEPT FOR THE LAST, MAYBE, TWO YEARS, WHEN I WAS STAYING IN SWANSEA WITH MY FRIEND'S FATHER.

Q. ALRIGHT. WHO WAS YOUR FRIEND YOU WERE STAYING WITH?

A. JAMES OLIVER, THE THIRD.

Q. AND HOW LONG HAD YOU AND JAMES BEEN FRIENDS?

A. THREE YEARS.

Q. WERE YOU LIVING TOGETHER AT THE TIME OF HIS DEATH?

A. YES, SIR.

Q. AND WHERE WERE YOU LIVING?

A. IN SWANSEA, ---

Q. AND WHO WERE YOU LIVING WITH?

A. HIS FATHER, JAMES OLIVER.

Q. AND, BUT UNTIL THAT, UNTIL YOU MOVED UP THERE WITH JAMES, YOU'D BEEN LIVING IN NORTH?

A. YES, SIR.

1 Q. AND HOW OLD ARE YOU, LATONYA?

2 A. I'M NINETEEN.

3 Q. AND YOU SAID YOU'D BEEN GOING WITH JAMES ABOUT
4 THREE YEARS?

5 A. YES, SIR.

6 Q. DO YOU REMEMBER THE EVENTS OF THE NIGHT OF FEBRUARY
7 THE THIRD, I BELIEVE, OF THIS YEAR, NINETEEN
8 NINETY-SEVEN?

9 A. YES, SIR.

10 Q. WERE YOU, WHERE WERE YOU THAT NIGHT, AT THE
11 BEGINNING OF THAT NIGHT?

12 A. AT HOME, AT HIS FATHER'S HOUSE IN SWANSEA.

13 Q. AND WHO WAS, WHO ELSE LIVES IN THAT HOUSE ON A FULL
14 TIME BASIS?

15 A. AT THE TIME WHEN WE WAS STAYING THERE IT WAS JAMES
16 AND I, HIS FATHER, AND HIS TWO YOUNGER BROTHERS.

17 Q. AND WHAT ARE HIS TWO YOUNGER BROTHERS' NAMES?

18 A. T. J. OLIVER AND TROY OLIVER.

19 Q. AND HOW OLD WAS T. J.?

20 A. I ASSUME, ABOUT FOURTEEN, FIFTEEN.

21 Q. AND HOW OLD WAS TROY?

22 A. THIRTEEN.

23 Q. ALRIGHT. AND WHO WAS THERE THAT PARTICULAR NIGHT?

24 A. THAT PARTICULAR NIGHT IT WAS EVERYBODY EXCEPT FOR
25 T. J., HE HAD LEFT TO GO TO A GAME. SO, THAT WOULD

1 THROW JAMES AND I AND TROY AND JIMARCUS ALL TO BE
2 TOGETHER.

3 Q. AND WHO IS JIMARCUS?

4 A. HE'S A YOUNGER NEPHEW.

5 Q. JAMES'S NEPHEW?

6 A. UH HUH..

7 Q. AND HOW OLD WAS HE IN FEBRUARY?

8 A. ABOUT SEVEN OR SIX.

9 Q. ALRIGHT. AND SO, WHAT DID Y'ALL DO THAT NIGHT?

10 A. WELL, THAT PARTICULAR NIGHT, WE WAS ALL SITTING
11 AROUND THE HOUSE, AND THE KIDS HAD WANTED TO GO TO
12 THE GAME. AND WE DROPPED THEM OFF TO THE GAME, AND
13 WAS ---

14 Q. WHERE WAS THE GAME?

15 A. IN NORTH AT THE HIGH SCHOOL, IT WAS A BASKETBALL
16 GAME.

17 Q. ALRIGHT.

18 A. SO, WE DROPPED THEM OFF TO THE GAME ---

19 Q. AND WHO DID YOU DROP OFF?

20 A. TROY OLIVER AND JIMARCUS OLIVER.

21 Q. ALRIGHT.

22 A. SO, JAMES AND I PROCEEDED TO RIDE DOWNTOWN. AND
23 WHEN WE GOT DOWNTOWN TOWARDS THE BOTTOM, THAT'S
24 WHEN WE SEEN BRUCE.

25 Q. ALRIGHT.

DIRECT - LATONYA WAY BY SOL. WILLIAMS

1 A. AND WE SIT THERE -- WE WENT BY BRUCE'S HOUSE AND
2 WE SIT THERE AND WE TALKED, AND HIM AND JAMES WAS
3 OUT THERE LAUGHING.

4 Q. ALRIGHT, NOW, THAT'S WHO, BRUCE WHO?

5 A. BRUCE HOUSER.

6 Q. DO YOU SEE BRUCE IN THE COURTROOM TODAY?

7 A. YES.

8 Q. WHERE IS HE?

9 A. SITTING BACK THERE WITH THE BROWN ON.

10 Q. THE BROWN PLAID SHIRT ON?

11 A. YES.

12 SOLICITOR WILLIAMS: ALRIGHT, LET
13 THE RECORD PLEASE INDICATE THAT SHE HAS INDICATED THE
14 DEFENDANT.

15 Q. ALRIGHT, SO, FIRST YOU AND JAMES WENT TO SEE BRUCE?

16 A. YES.

17 Q. HOW LONG HAVE YOU KNOWN BRUCE?

18 A. ALL OF OUR LIVES. PRACTICALLY, HIM AND JAMES WAS
19 RAISED UP TOGETHER AS KIDS IN THE BOTTOM, BY THEM
20 STAYING IN THE SAME AREA. THEY WAS FRIENDS ALL
21 THEIR LIFE UNTIL BRUCE WENT TO JAIL, AND THEN, YOU
22 KNOW, THAT KIND OF SEPARATED THEM.

23 Q. ALRIGHT, WHERE DID YOU SEE HIM THAT NIGHT, WHERE
24 WAS BRUCE?

25 A. AT HOME.

1 Q. ALRIGHT, AND WHAT HAPPENED WHEN Y'ALL WENT TO
2 BRUCE'S HOME?

3 A. HIM AND JAMES SIT OUT THERE ON THE PORCH AND THEY
4 KIDDED AROUND. AND THEN, WE WAS ONLY GOING TO
5 ORANGEBURG, AND JAMES TOLD BRUCE THAT, "I'VE GOT
6 TO GO DO A LITTLE BIT OF VALENTINE SHOPPING." AND
7 BRUCE SAID, "OH, DON'T TALK ABOUT THAT BECAUSE I
8 GOT TO DO SOME OF THAT TOMORROW." SO, YOU KNOW,
9 THEY LAUGHED AND THE KIDDED OFF, AND JAMES SAID,
10 "I'LL STOP BACK THROUGH WHEN I COME BACK FROM
11 ORANGEBURG." SO, THEY LEFT IT LIKE THAT. SHOOK
12 OFF, WE PULLED OFF AND LEFT. WE WENT TO
13 ORANGEBURG, CAME TO THE MALL, DID A LITTLE
14 SHOPPING, AND THEN WE CAME BACK AND WENT UP TO THE
15 HIGH SCHOOL TO PICK UP THE YOUNGER KIDS, BUT THE
16 GAME WASN'T OVER.

17 Q. SO, WHAT DID YOU DO THEN?

18 A. SO, WE LEFT FROM THE SCHOOL GYM AND THEN WE RODE
19 BACK DOWNTOWN, AND THEN WE THOUGHT ABOUT WE NEEDED
20 GAS. SO, WE TURNED BACK AROUND AND WE WENT TO THE
21 BP STATION TO GET THE GAS. AND AS WE WAS GETTING
22 THE GAS, THAT'S WHEN JAMES'S AUNT TRUDY PULLED UP
23 WITH THE TWO YOUNGER KIDS IN THE CAR WITH HER. AND
24 THEY GOT IN THE CAR WITH US.

25 Q. AND THOSE WERE THE SAME TWO YOU HAD LEFT AT THE

1 BALL GAME?

2 A. YES, SIR.

3 Q. JIMARCUS AND TROY?

4 A. YES, SIR.

5 Q. ALRIGHT. AND THEY GOT IN THE CAR WITH YOU. WHAT
6 KIND OF CAR WAS IT?

7 A. AN EIGHTY-SIX OLDSMOBILE, EIGHTY-SEVEN OLDSMOBILE.

8 Q. HOW MANY DOORS DID IT HAVE?

9 A. TWO.

10 Q. ALRIGHT, GO AHEAD.

11 A. SO, AS WE GOT THE GAS AND STUFF AND WAS LEAVING TO
12 GO BACK DOWN TO THE BOTTOM, BECAUSE HE SAID HE WAS
13 GOING TO TALK TO BRUCE FOR A LITTLE WHILE LONGER,
14 AGAIN, WE PULLED UP AND WE CAME, WE CAME TO
15 STAFFORD AVENUE. AND THEN, AS ALL OF THEM WAS
16 STANDING OUT THERE, JAMES HAD STOPPED IN THE ROAD
17 TO TALK TO THEM. AND THEN COJACK ---

18 Q. ALRIGHT, YOU SEE THAT MAP OVER THERE DRAWN IN
19 GREEN?

20 A. YES.

21 Q. CAN YOU RECOGNIZE THAT?

22 A. YES, SIR.

23 Q. ALRIGHT. ABOUT WHERE DID YOU STOP? WHERE DID
24 JAMES --- JUST WALK OVER THERE AND SHOW THE JURY
25 APPROXIMATELY WHERE JAMES STOPPED THE CAR.

1 A. OKAY. DOES THIS COME IN FROM THREE TWENTY-ONE? I
2 WANT TO MAKE SURE.

3 Q. ALRIGHT, OLIVER STREET COMES IN FROM THREE TWENTY-
4 ONE, RIGHT?

5 A. OKAY. WE CAME IN FROM OFF OF THREE TWENTY-ONE, -

6 --

7 Q. THAT WOULD BE ---

8 A. --- DOWN TOWARDS OLIVER ROAD, SO THAT WOULD BE
9 HERE, AND WE TURNED HERE AND MADE THE FIRST RIGHT
10 ONTO STAFFORD STREET.

11 Q. THE FIRST ---

12 A. LEFT.

13 Q. LEFT.

14 A. ONTO STAFFORD STREET.

15 Q. ALRIGHT, SO, IF YOU TURN LEFT ON STAFFORD. SEE THE

16 ---

17 A. OKAY. TURN LEFT ON ---

18 THE COURT: SOLICITOR, GO UP THERE
19 AND FAMILIARIZE -- THAT IS NOT DRAWN TO SCALE.

20 Q. THIS IS OLIVER STREET. THIS IS THREE TWENTY-ONE
21 OUT HERE. THIS IS STAFFORD STREET.

22 A. OKAY. SO, WE TURNED LEFT ON OLIVER STREET.

23 Q. YOU CAME IN FROM THREE TWENTY-ONE?

24 A. THIS IS THREE TWENTY-ONE HERE?

25 Q. NO, THREE TWENTY-ONE WOULD RUN THIS WAY, THE SAME

1 WAY AS ---

2 MR. GROSE: YOUR HONOR, ---

3 THE COURT: HOLD IT JUST A MINUTE.

4 MR. GROSE: --- MAYBE IT WOULD BE
5 BETTER IF THE WITNESS DREW HER OWN MAP. SHE OBVIOUSLY
6 DOESN'T UNDERSTAND THAT ONE.

7 THE COURT: WELL, I DON'T MIND THE
8 SOLICITOR EXPLAINING TO HER HOW IT'S DRAWN.

9 SOLICITOR, TO TELL YOU THE TRUTH,
10 I CAN'T READ IT FROM HERE. WHY DON'T YOU TAKE THIS BIG
11 THING HERE, SOLICITOR, AND WRITE ON THERE THE STREETS,
12 AS IT'S DRAWN.

13 YOU DON'T HAVE ANY OBJECTION TO
14 THAT, DO YOU?

15 MR. GROSE: NO, SIR.

16 THE COURT: TAKE -- THERE YOU GO,
17 SOLICITOR, RIGHT THERE. WRITE IT BIG.

18 SOLICITOR WILLIAMS: WILL THIS COME
19 OFF? I'VE GOT THE NAMES OF THE STREETS. SHE'S LOOKING
20 FOR THREE TWENTY-ONE.

21 THE COURT: ALRIGHT, PUT THREE
22 TWENTY-ONE ON THERE.

23 LOOK OVER HER AND SEE IF YOU AGREE
24 WITH HIM, COUNSELLOR.

25 Q. ALRIGHT, THIS IS OLIVER STREET AND THIS IS STAFFORD

1 STREET. IF YOU CAN'T USE IT, YOU CAN JUST DESCRIBE
2 IT TO THE JURY.

3 A. ALRIGHT. AND AS WE WAS COMING FROM OFF OF THREE
4 TWENTY-ONE WE TURNED AND MADE THE FIRST LEFT RIGHT
5 HERE ON STAFFORD STREET, NOT TOO FAR FROM THE HOUSE
6 DOWN HERE.

7 REPORTER: KEEP YOU VOICE UP,
8 PLEASE, MA'AM.

9 THE COURT: A LITTLE LOUDER FOR ME.

10 A. WE TURNED ON STAFFORD STREET, ---

11 THE COURT: OKAY.

12 A. --- MAYBE -- I DON'T KNOW HOW FAR, IT WASN'T EVEN
13 THAT FAR, IT'S SOME SEPTIC TANKS OUT THERE THAT WE
14 MENTIONED.

15 Q. A CONCRETE CULVERT TOP?

16 A. YES.

17 Q. ALRIGHT, THAT SQUARE IS THE CONCRETE CULVERT.

18 A. OKAY. SO, WE WAS, MAYBE, UP IN THE HIS AREA ABOUT
19 THE TIME WE STOPPED.

20 Q. ALRIGHT.

21 A. AND THAT'S WHEN WE NOTICED THAT ALVIN MCMICHAEL,
22 WHICH IS COJACK, AND BERNARD DEASE WAS ARGUING.
23 SO, BERNARD -- COJACK BEGAN TO RUN AROUND THE CAR,
24 AND BERNARD WAS IN BEHIND HIM. AND THEN, HE SAID,
25 "JAMES, LET ME IN." AND JAMES SAID, "NO." SO, HE

DIRECT - LATONYA WAY BY SOL. WILLIAMS

1 OPENED THE DOOR AND SHOVED JAMES, AND JUMPED IN THE
2 BACK SEAT OF THE CAR. AND THAT'S WHEN BERNARD HAD
3 PUNCHED HIM.

4 Q. BERNARD PUNCHED WHO?

5 A. ALVIN MCMICHAEL.

6 Q. AND ALVIN MCMICHAEL WAS THE ONE WHO JUMPED IN THE
7 BACK OF THE CAR YOU WERE IN?

8 A. YES, SIR.

9 Q. ALRIGHT. SO, BERNARD, THE OTHER GUY PUNCHED, AND
10 THEN WHAT HAPPENED?

11 A. AND THEN JAMES PROCEEDED TO GET OUT AND TOLD
12 BERNARD, "DON'T HIT HIM," BECAUSE HE HAD HIS LITTLE
13 BABY BROTHER AND NEPHEW IN THE BACK. SO, THEY
14 GRABBED EACH OTHER, YOU KNOW HOW YOU HUG, I MEAN,
15 YOU JUST LOCK UP TO ONE ANOTHER AND WON'T LET GO.
16 SO, THAT'S WHEN I JUMPED OUT THE CAR, AND WITH THE
17 HELP OF BRUCE AND ALVIN, WE ALL PULLED THEM APART.

18 Q. AND THAT WAS -- WHO DID YOU PULL APART?

19 A. JAMES AND BERNARD DEASE.

20 Q. JAMES AND BERNARD. ALRIGHT, GO AHEAD.

21 A. SO, AS THEY GOT APART AND JAMES GOT BACK IN THE
22 CAR, AND WE DECIDED TO LEAVE, JAMES NOTICED THAT
23 HIS RING WAS MISSING. SO, AS HE TURNED BACK AROUND
24 TO GO BACK FOR HIS RING, HE JUST PULLED IN THE
25 MIDDLE OF THE ROAD, HE NEVER PULLED ON THE SIDE,

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1 AND WE GOT OUT AND LOOKED FOR THE RING, AND
2 COULDN'T FIND IT. SO, HE WAS THEN, DECIDED TO
3 LEAVE. AS HE WAS WAITING ON ME TO WALK AROUND TO
4 GET IN THE CAR, THAT'S WHEN BRUCE WALKED UP, AND
5 BRUCE SAID SOMETHING ABOUT, "WAIT A MINUTE, COJACK
6 GOT IN YOUR CAR," OR SOMETHING LIKE THAT. AND
7 JAMES JUST SAY, "BRUCE, GO ON WITH THE GUN,"
8 BECAUSE HE WAS WALKING UP WITH THE GUN IN HIS HAND
9 RIGHT THEN. AND WHEN JAMES SAID, "BRUCE, GO ON
10 WITH THE GUN," AND THEY DID LIKE THAT, ELBOW,
11 BRUCE, LIKE HE STUMBLED BACK, AND I GUESS HE CAUGHT
12 HIS BALANCE, AND HE JUST START SHOOTING. AND THAT
13 WAS IT. JAMES ASKED HIM WHY WAS HE SHOOTING HIM,
14 AS HE WAS SHOOTING HIM.

15 Q. WELL, WHY DID BRUCE, WHY DID HE COME AROUND TO TALK
16 TO JAMES?

17 A. HE, HE DIDN'T. AS I WAS TOLD, IT WAS, LIKE, HE
18 DIDN'T MEAN TO KILL HIM, HE JUST CAME WALKING UP
19 FROM NOWHERE, BECAUSE AS WE WAS, WHEN WE WENT BACK
20 THERE THE SECOND TIME TO LOOK FOR THE RING, AND WE
21 WAS LOOKING FOR THE RING, HE WAS SITTING OUT THERE
22 SAYING THAT, YOU KNOW, WHEN HIS GUN GET BACK HE WAS
23 GOING TO KILL SOMEBODY. BUT WE NEVER THOUGHT THAT
24 HE WAS TALKING ABOUT JAMES, BECAUSE LIKE I SAY,
25 THEY WAS JUST LAUGHING EARLIER, TALKING ABOUT

DIRECT - LATONYA WAY BY SOL. WILLIAMS

1 VALENTINES. SO, I ASSUME JAMES DIDN'T PAY IT NO
2 ATTENTION EITHER.

3 Q. DID BRUCE TRY TO GET IN THE CAR?

4 A. NO.

5 Q. ALRIGHT. NOW, DO YOU REMEMBER HOW MANY SHOTS WERE
6 FIRED?

7 A. NOT EXACTLY, BUT I KNOW IT WAS AT LEAST THREE. I
8 REMEMBER SEEING THAT MANY.

9 Q. ALRIGHT, AND AFTER THE SHOTS WERE FIRED WHAT DID
10 JAMES DO?

11 A. HE ASKED BRUCE, HE SAID, "BRUCE, WHY DID YOU SHOT
12 ME?" AS HE WAS STUMBLING DOWN, AND BRUCE WAS JUST
13 A SHOOTING. AND THEN, AFTER HE TOOK OFF RUNNING
14 TOWARDS THE OTHER SIDE OF THE CAR, I WAS RUNNING
15 TO MEET HIM. HE WAS JUST SAYING, "JUST GET ME TO
16 THE HOSPITAL, GET ME TO THE HOSPITAL." SO, I TOOK
17 HIM.

18 Q. NOW, HE WAS ON ---

19 A. THE DRIVER'S SIDE.

20 Q. HE WAS FIXING TO GET INTO THE DRIVER'S SIDE WHEN
21 HE WAS SHOT?

22 A. AND LEAVE.

23 Q. ALRIGHT. AND THEN, WHICH WAY DID HE RUN AFTER HE
24 GOT SHOT?

25 A. TOWARDS THE REAR OF THE CAR, TOWARDS THE PASSENGER

DIRECT - LATONYA WAY BY SOL. WILLIAMS

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DOOR.

Q. AND DID HE GET IN THE CAR THEN?

A. YES.

Q. AND WHERE WERE YOU?

A. RUNNING AROUND FROM THE PASSENGER SIDE TOWARDS THE REAR TO THE DRIVER'S SIDE.

Q. ALRIGHT. AND WHAT HAPPENED THEN?

A. AND THEN, AS HE WAS JUST SAYING, "JUST GET ME TO THE HOSPITAL." AND AFTER HE GOT IN THE CAR, I JUST TOOK HIM ON THE HOSPITAL, YOU KNOW. I NEVER THOUGHT HE WAS JUST THAT SERIOUS. AND AS WE GOT TO THE HOSPITAL, THEY WAS TELLING ME THAT, YOU KNOW, THEY WAS GOING TO DO SURGERY ON HIM. AND WHEN I FIRST GOT THERE, HIS SISTER AND BROTHER WAS RIGHT BEHIND ME.

Q. WHO'S SISTER AND BROTHER?

A. BRUCE HOUSER'S SISTER AND BROTHER. AND HIS BROTHER, ALONZO, SAID TO ME, SAID, "ARE YOU GOING TO TELL WHO DID IT?"

MR. GROSE: OBJECTION TO THE HEARSAY, YOUR HONOR.

THE COURT: ALRIGHT, SIR.

Q. ALRIGHT, YOU CAN'T SAY WHAT ALONZO SAID.

MR. GROSE: I MOVE TO STRIKE THAT.

THE COURT: ALRIGHT, SIR. MR.

1 FOREMAN, AND MEMBERS OF THE JURY, SHE'S SAYING WHAT
2 SOMEBODY ELSE SAID. UNLESS IT WAS IN THE PRESENCE OF
3 THE DEFENDANT THEY CAN'T SAY WHAT OCCURRED, BECAUSE THAT
4 PERSON'S NOT HERE TO TESTIFY. IT'S CALLED HEARSAY, SO,
5 JUST DISREGARD WHAT SHE SAID THAT SOMEBODY MIGHT HAVE
6 SAID.

7 GO AHEAD.

8 Q. ALRIGHT, SO, WHAT HAPPENED WHEN YOU GOT TO THE
9 HOSPITAL, WHERE DID THEY TAKE JAMES?

10 A. IN THE BACK, I THINK. THEY SAID THEY WAS GOING TO
11 PERFORM SURGERY ON HIM.

12 Q. ALRIGHT, AND HOW LONG -- DID YOU WAIT THERE?

13 A. YES, SIR.

14 Q. HOW LONG DID YOU WAIT?

15 A. THE DOCTOR CAME OUT AROUND ABOUT, I THINK, TEN, -
16 - CAN I SAY WHAT HE SAID?

17 Q. WHAT DID HE SAY?

18 A. I KEPT ASKING HIM WAS HE ALRIGHT. AND THEN THE
19 DOCTOR SAID, ASKED WAS A FAMILY MEMBER THERE. AND
20 THEN, THE POLICE OFFICER TOLD HIM THAT HE COULD GO
21 AHEAD AND TELL ME BECAUSE HIS SISTER WAS THERE.
22 AND THEN, AND I ASKED HIM AGAIN, HE SAID, NO.

23 Q. DID HE TELL YOU JAMES HAD DIED?

24 A. NOT EXACTLY, BUT WHEN HE SAID, NO, AND THE WAY HE
25 LOOKED AT ME, I COULD TELL.

DIRECT - TROY OLIVER BY SOL. WILLIAMS

DIRECT EXAMINATION

BY SOLICITOR WILLIAMS:

Q. TROY, HOW OLD ARE YOU?

A. THIRTEEN.

Q. AND WHERE DO YOU LIVE? WHAT TOWN, THAT'S ALL.

A. NORTH.

Q. AND WHO DO YOU LIVE WITH?

A. MY MOTHER.

Q. AND IS SHE IN THE COURTROOM?

A. YES, SIR.

Q. WHERE IS SHE?

A. RIGHT THERE.

Q. THIS LADY RIGHT HERE WITH THE BLACK AND BROWN
BLOUSE?

A. YES, SIR.

Q. DO YOU HAVE ANY BROTHERS?

A. YES, SIR.

Q. HOW MANY BROTHERS DO YOU HAVE NOW?

A. TWO.

Q. AND WHAT ARE THEIR NAMES?

A. ROY, ME AND T. J.

Q. AND HOW MANY -- DID YOU HAVE ANOTHER BROTHER?

A. YES, SIR.

Q. JAMES OLIVER.

Q. OKAY. DO YOU REMEMBER THE NIGHT THAT JAMES WAS

DIRECT - TROY OLIVER BY SOL. WILLIAMS

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1 KILLED?

2 A. YES, SIR.

3 Q. WHERE WERE YOU THAT NIGHT?

4 A. IN THE CAR.

5 Q. ALRIGHT, BUT BEFORE Y'ALL, BEFORE THAT HAPPENED,
6 WHERE HAD YOU BEEN, WHERE DID YOU FIRST SEE JAMES
7 THAT NIGHT?

8 A. AT MY DADDY'S HOUSE.

9 Q. AND YOUR DADDY IS THE GENTLEMAN SITTING HERE WITH
10 THE BLUE AND RED STRIPED SHIRT?

11 A. YES, SIR.

12 Q. WHO WAS THERE AT YOUR DAD'S HOUSE THAT NIGHT?

13 A. IT WAS ME AND MY DADDY, MY NEPHEW AND LATONYA.

14 Q. AND YOUR NEPHEW, JIMARCUS?

15 A. YES, SIR.

16 Q. AND LATONYA WAY?

17 A. YES, SIR.

18 Q. ALRIGHT, AND WHAT DID Y'ALL DO THAT NIGHT?

19 A. I HAD WANTED TO GO TO A BASKETBALL GAME, AND SO,
20 HE TOOK ME TO A BASKETBALL GAME AND DROPPED US OFF,
21 ME AND JIMARCUS.

22 Q. AND WHERE DID YOU GO AFTER THE BASKETBALL GAME?

23 A. WELL, I GOT IN THE CAR WITH MY AUNT TRUDY, AND I
24 SAW MY BROTHER AT THE BP AND I GOT IN THE CAR WITH
25 HIM.

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1 Q. AND WHO ELSE WAS IN THE CAR, THEN, WHEN YOU GOT IN
2 WITH YOUR BROTHER?

3 A. LATONYA.

4 Q. AND WHO ELSE?

5 A. AND ME AND JIMARCUS.

6 Q. AND WHERE DID Y'ALL GO AFTER YOU GOT IN THE CAR AT
7 THE BP?

8 A. BRUCE'S HOUSE.

9 Q. DO YOU KNOW BRUCE?

10 A. YES, SIR.

11 Q. DO YOU SEE HIM IN THE COURTROOM TODAY?

12 A. YES, SIR.

13 Q. WOULD YOU POINT TO HIM?

14 A. RIGHT THERE.

15 Q. WHAT'S HE WEARING?

16 A. A BROWN COLORED SHIRT.

17 Q. HOW LONG HAVE YOU KNOWN BRUCE?

18 A. FOR A GOOD WHILE.

19 SOLICITOR WILLIAMS: LET THE RECORD

20 REFLECT THAT HE'S INDICATED THE DEFENDANT.

21 Q. WHAT DID YOU DO WHEN YOU GOT TO BRUCE'S HOUSE?

22 A. WELL, HIS MOTHER TOLD HE WAS UP THE STREET.

23 Q. SO, WHAT DID Y'ALL DO?

24 A. WE WENT UP THE STREET.

25 Q. WHAT HAPPENED WHEN YOU GO UP THE STREET?

DIRECT - TROY OLIVER BY SOL. WILLIAMS

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1 A. COJACK AND BERNARD DEASE WAS WALKING AROUND THE CAR
2 ARGUING.

3 Q. COJACK AND BERNARD DEASE?

4 A. YES, SIR.

5 Q. ALRIGHT, AND WHAT HAPPENED WHEN THEY WERE ARGUING?

6 A. SO, COJACK ASKED MY BROTHER TO LET HIM IN THE CAR,
7 AND MY BROTHER TOLD HIM HE COULDN'T GET IN THE CAR,
8 SO, HE TRIED TO GET IN HER ANYWAY.

9 Q. AND WHAT HAPPENED WHEN HE TRIED TO GET IN ANYWAY?

10 A. BERNARD DEASE TRIED TO HIT COJACK, AND ALMOST HIT
11 MY NEPHEW, JIMARCUS. THAT'S WHEN MY BROTHER JUMPED
12 OUT AND STARTED FIGHTING BERNARD DEASE.

13 Q. ALRIGHT, DO YOU KNOW COJACK'S REAL NAME?

14 A. NO, SIR.

15 Q. OKAY. SO, YOUR BROTHER JUMPED OUT AND STARTED
16 FIGHTING BERNARD TO KEEP HIM FROM GETTING IN THE
17 CAR?

18 A. YES, SIR.

19 Q. AND WHAT HAPPENED THEN?

20 A. SO, BRUCE CAME OVER THERE AND HE BROKE IT UP.

21 Q. OKAY.

22 A. SO, WE GOT IN THE CAR AND LEFT, ME AND JIMARCUS AND
23 LATONYA AND MY BROTHER. WE WENT UP THE ROAD, AND
24 MY BROTHER SAID, HE LOST HIS RING. SO, HE SAID HE
25 WAS GOING BACK, SO WE WENT BACK AROUND TO GET THE

DIRECT - TROY OLIVER BY SOL. WILLIAMS

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1 RING. AND WE GOT OUT THE CAR, WE WAS LOOKING FOR
2 IT.

3 Q. DID YOU FIND IT?

4 A. NO, SIR.

5 Q. HOW LONG DID YOU LOOK FOR IT?

6 A. I'D SAY ABOUT FIVE MINUTES.

7 Q. OKAY, WHAT DID YOU DO WHEN YOU COULDN'T FIND IT?

8 A. WE WAS ABOUT TO GO, I GOT BACK IN THE CAR. AND
9 JAMES WAS STANDING BY THE DOOR DOING SOMETHING.
10 BRUCE WALKED UP. HE ASKED JAMES CAN HE CHECK HIS
11 CAR TO SEE IF HIS GUN WAS IN THERE. MY BROTHER
12 WAS, LIKE, "NOW, GO AHEAD, MAN, NOW, YOU KNOW I
13 AIN'T GOT YOUR GUN." SO, HE HAD WANTED TO CHECK
14 IT ANYWAY. SO, MY BROTHER SHOVED HIM OFF AND HE
15 SHOT HIM.

16 Q. ALRIGHT. WHEN DID YOU FIRST SEE THE PISTOL THAT
17 BRUCE HAD?

18 A. WHEN HE WALKED UP.

19 Q. HE HAD IT IN HIS HAND WHEN HE WALKED UP?

20 A. YES, SIR.

21 Q. WAS YOUR BROTHER, DID HE HAVE ANY WEAPON?

22 A. NO, SIR.

23 Q. WAS THERE ANY ARGUMENT BETWEEN THE TWO OF THEM?

24 A. NO, SIR.

25 Q. AND YOU SAY YOUR BROTHER PUSHED HIM AWAY FROM THE

DIRECT - TROY OLIVER BY SOL. WILLIAMS

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1 CAR?

2 A. YES, SIR.

3 Q. AND HOW LONG AFTER HE PUSHED HIM DID BRUCE SHOOT
4 HIM?

5 A. RIGHT AFTER HE PUSHED HIM.

6 Q. ALRIGHT, WHAT HAPPENED, THEN, AFTER YOUR BROTHER
7 GOT SHOT?

8 A. HE RAN BACK, AND SO, THEN, HE CAME BACK AROUND TO
9 THE PASSENGER SIDE. SO, LATONYA RAN AROUND THE
10 CAR, AND SHE STARTED DRIVING.

11 Q. AND WHERE DID Y'ALL GO?

12 A. TO ORANGEBURG HOSPITAL.

13 Q. ALRIGHT. AND THAT'S WHERE YOUR BROTHER DIED, IS
14 THAT RIGHT?

15 A. YES, SIR.

16 Q. DID YOU SEE ANYBODY ELSE ON THAT SIDE OF THE CAR
17 WHERE BRUCE AND JAMES WERE?

18 A. NO, SIR.

19 Q. WHERE THERE PEOPLE ON THE OTHER SIDE OF THE CAR?

20 A. YEAH, SOME OF THEM.

21 Q. IN THE GRASS?

22 A. YES, SIR.

23 Q. DID YOU SEE ANYBODY ELSE THERE THAT NIGHT WITH A
24 PISTOL?

25 A. NO, SIR.

DIRECT - BLONDELLE MCMICHAEL BY SOL WILLIAMS

1 BRICKS, THROWING AT ONE ANOTHER.

2 Q. ALRIGHT. AND THE CAR WAS ABOUT WHERE?

3 A. YEAH. THE CAR WAS FACING TOWARD TOWN.

4 Q. ALRIGHT. THANK YOU, MA'AM, HAVE A SEAT. AND SO,

5 A. YES, SAND BERNARD WHEN CHASING THE BROTHER, THE CAR AND

7 JUMP IN THE CAR. AND I DON'T KNOW WHETHER HE HIT
8 JAMES OR WHAT, BUT THE ONLY THING I KNOW, HIM AND
9 JAMES STARTED FIGHTING.

10 Q. WHERE WAS JAMES WHEN YOUR BROTHER TRIED TO JUMP IN
11 THE CAR?

12 A. MY BROTHER -- MY BROTHER -- JAMES WAS SITTING IN
13 THE CAR, BEHIND THE WHEEL.

14 Q. ALRIGHT, AND SO, JAMES GOT OUT OF THE CAR?

15 A. NO, SIR. JAMES DIDN'T GOT OUT THE CAR UNTIL AFTER
16 MY BROTHER DONE JUMPED IN THE CAR.

17 Q. ALRIGHT.

18 A. AND HE WAS TELLING BERNARD THAT HE WASN'T GOING TO
19 FIGHT, THAT HE HAD HIS LITTLE BROTHER AND HIS
20 NEPHEW.

21 Q. JAMES TOLD BERNARD WHAT?

22 Q. THAT HE WASN'T GOING TO HAVE THAT IN HIS CAR, JUST
23 LIKE THAT.

24 Q. ALRIGHT, AND THEN WHAT HAPPENED?

25 A. AND SO, I DON'T KNOW WHETHER HE HIT, I DON'T KNOW

DIRECT - BLONDELLE MCMICHAEL BY SOL WILLIAMS

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1 WHETHER HE HIT JAMES OR MY BROTHER. ALL I KNOW IS,
2 JAMES JUMP OUT THE CAR AND THEY WAS FIGHTING.

3 Q. ALRIGHT, NOW, WHO WAS FIGHTING, JAMES AND ---

4 A. JAMES AND BERNARD, THEY TUSSLED.

5 Q. ALRIGHT, OKAY. HOW LONG DID THAT LAST?

6 A. AIN'T BUT A COUPLE OF MINUTES, AND THAT'S WHEN
7 BRUCE AND LATONYA, BROKE THEM UP, BECAUSE I HAD
8 WENT BACK UP ON THE BACK PORCH IN THE HOUSE ACROSS
9 THE STREET WHERE I WAS AT.

10 Q. WHAT DID BRUCE AND TONYA DO?

11 A. THEY BROKE THEM UP FROM FIGHTING.

12 Q. ALRIGHT, AND AFTER THEY BROKE THEM UP, WHAT
13 HAPPENED?

14 A. THAT'S WHEN THEY HAD GOT BACK IN THE CAR AND THEY
15 LEFT.

16 Q. ALRIGHT, WHEN YOU SAY, THEY, NOW, IT'S HARD TO TELL
17 WHO YOU'RE TALKING ABOUT.

18 A. THEM.

19 Q. WHO?

20 A. THEM.

21 Q. ALRIGHT, BUT I MEAN, WHO ARE YOU TALKING ABOUT?

22 A. I WAS TALKING ABOUT TONYA, JAMES AND THE KIDS.

23 Q. ALRIGHT. SO, THEY GOT BACK IN THE CAR AND LEFT?

24 A. THEY MADE MY BROTHER GOT OUT THE CAR.

25 Q. OKAY, AND THEN WHAT HAPPENED?

DIRECT - BLONDELLE MCMICHAEL BY SOL WILLIAMS

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1 A. SO, AFTER THAT, THAT'S WHEN I NOTICED THEM, THEY
2 COME BACK AROUND THE BLOCK, AND I NOTICED THAT
3 JAMES HAD MISSED HIS RING. SO, I CAME BACK OFF THE
4 PORCH AGAIN. AND SO, WE WAS OUT THERE LOOKING FOR
5 THE RING AND STUFF. THE ONLY THING I KNOW, HE WAS
6 OUT THERE FUSSING ABOUT A GUN AND STUFF, AND --

7 Q. HE, WHO?

8 A. BRUCE.

9 Q. OKAY.

10 A. HE WAS FUSSING ABOUT A GUN.

11 Q. ALRIGHT. WHAT WAS HE SAYING ABOUT A GUN?

12 A. ABOUT, HE MISSED HIS GUN. JUST LIKE THAT.

13 Q. ALRIGHT. AND WHERE WAS JAMES AND TONYA, HAD THEY
14 GOTTEN BACK BY THAT TIME?

15 A. YEAH, THEY HAD COME BACK.

16 Q. WHAT WERE THEY DOING?

17 A. THEY WAS OUT THERE LOOKING FOR THE RING.

18 Q. AND THEN WHAT HAPPENED?

19 A. AND THAT'S WHEN HE WAS FUSSING ABOUT THE GUN AND
20 STUFF. AND THERE WAS SOME MORE THAT WAS BACK THERE
21 WITH HIM AND STARTED LOOKING FOR THE GUN. THAT'S
22 WHEN JAMES HAD PULLED BACK UP. AND THE ONLY THING
23 I KNOW IT WAS A CAR PULLED UP. AND HE WAS SAYING,
24 "DON'T WORRY ABOUT IT, MY OTHER SHIT COMING," JUST
25 LIKE THAT.

DIRECT - ORA MADISON BY SOL. WILLIAMS

DIRECT EXAMINATION

BY SOLICITOR WILLIAMS:

Q. MS. MADISON, WHERE DO YOU LIVE?

A. ON ONE SEVENTY EIGHT, NORTH.

Q. WOULD YOU PUT THAT GUM OUT, PLEASE, MA'AM, JUST PUT IT IN THE TRASH CAN RIGHT HER.

REPORTER: SPELL YOUR FIRST NAME.

WITNESS: O-R-A.

Q. YOU LIVE ON HIGHWAY ONE SEVENTY-EIGHT?

A. YES, SIR, I DO.

Q. BETWEEN ORANGEBURG AND NORTH?

A. YES, SIR, I DO.

Q. ALRIGHT, DO YOU KNOW BRUCE HOUSER?

A. YES, SIR, I DO.

Q. DO YOU SEE HIM IN THE COURTROOM TODAY?

A. YES, SIR, I DO.

Q. POINT TO HIM.

A. RIGHT THERE.

Q. HOW LONG HAVE YOU KNOWN BRUCE HOUSER?

A. EVER SINCE HE WAS A LITTLE BOY.

Q. AND DO YOU KNOW JAMES OLIVER, DID YOU KNOW JAMES OLIVER?

A. YES, SIR.

Q. HOW LONG HAD YOU KNOWN JAMES?

A. NOT VERY LONG.

DIRECT - ORA MADISON BY SOL. WILLIAMS

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1 Q. NOT AS LONG AS YOU'VE KNOWN BRUCE?

2 A. YES, SIR.

3 Q. OKAY. DO YOU REMEMBER SEEING BRUCE HOUSER ON THE
4 NIGHT -- OH, YEAH, HOW FAR FROM THE TOWN OF NORTH
5 IS YOUR HOUSE, APPROXIMATELY?

6 A. BETWEEN -- THREE MILES, ABOUT THREE MILES.

7 Q. TOWARD ORANGEBURG?

8 A. YES, SIR.

9 Q. ALRIGHT. DO YOU REMEMBER SEEING BRUCE HOUSER ON
10 THE NIGHT OF FEBRUARY THE THIRTEENTH THIS YEAR, THE
11 NIGHT BEFORE VALENTINE'S DAY?

12 A. YES, SIR.

13 Q. TELL THE JURY HOW YOU CAME TO SEE BRUCE THAT NIGHT?

14 A. HE KNOCKED ON MY DOOR.

15 Q. DO YOU REMEMBER APPROXIMATELY WHAT TIME?

16 A. BETWEEN NINE AND NINE:THIRTY.

17 Q. WHAT DID YOU DO WHEN HE KNOCKED ON THE DOOR?

18 A. I LET HIM IN.

19 Q. AND WHAT DID HE SAY?

20 A. AT FIRST WHEN HE COME IN HE DIDN'T SAY NOTHING, AT
21 FIRST.

22 Q. WHAT DID HE DO?

23 A. HE CAME IN MY HOUSE AND HE STAND UP THERE FOR A
24 WHILE. AND THEN, HE WAS CRYING. AND I ASKED HIM
25 WHAT'S WRONG WITH HIM. AND AT THE TIME HE COULDN'T

DIRECT - ORA MADISON BY SOL. WILLIAMS

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1 TALK. SO, I LET GO TOWARDS MY ROOM, MY BEDROOM.
2 SO, I LEFT HIM IN MY BEDROOM FOR A WHILE SO HE
3 COULD CALM DOWN. SO, HE CALMED FROM CRYING, AND
4 I TRIED TO GET HIM, YOU KNOW, TO SAY WHAT HE WAS
5 GOING TO SAY, BUT AT FIRST HE DIDN'T TALK TO ME.
6 AND ABOUT, AFTER A WHILE, I SAID, WELL, ANYWAY, HE
7 FINALLY CALMED DOWN A LITTLE BIT, AND I SAID, "SON,
8 WHAT'S WRONG WITH YOU?" AND HE TOLD ME, HE SAID,
9 "I GOT IN A LITTLE BIT OF TROUBLE." AND I TOLD
10 HIM, I SAID, "SON, WHAT HAPPENED?" AND HE TOLD ME
11 THAT HE SHOT SOMEONE. AND I SAID, "YOU SHOT
12 SOMEONE?" AND HE SAID, "YES, MA'AM." I SAID,
13 "WHERE DID YOU SHOT HIM AT?" HE SAID, "THE LEG AND
14 THE ARM," LIKE THAT. SO, HE WAS CONSTANTLY CRYING,
15 AND I COULDN'T REALLY GET NOTHING OUT OF HIM
16 BECAUSE HE WAS REALLY UPSET.

17 Q. DID HE TELL YOU WHO HE HAD SHOT?

18 A. NO, SIR, NOT AT THE MOMENT, HE DIDN'T.

19 Q. DID HE EVER TELL YOU WHO IT WAS THAT HE SHOT?

20 A. HE SAID, OLIVER, THAT'S ALL HE SAID.

21 Q. OLIVER?

22 A. YES, SIR.

23 Q. DID HE TELL YOU WHY HE HAD SHOT HIM?

24 A. YES, SIR, HE DID.

25 Q. WHY?

DIRECT - ORA MADISON BY SOL. WILLIAMS

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1 A. WELL, I ASKED HIM WHAT HAPPENED AND HE TOLD ME, HE
2 SAID, "IT WAS ABOUT A GUN." AND I TOLD HIM, "GUNS
3 ARE BAD" YOU KNOW. AND HE SAID HE ASKED MR. JAMES
4 OLIVER CAN HE LOOK IN THE CAR FOR HIS GUN, AND
5 DURING THE TIME HE ASKED, THE YOUNG MAN BEGAN TO
6 PUSH HIM AND SHOVE HIM AND THAT UPSET HIM, OR
7 WHATEVER, SOMETHING LIKE THAT. AND DURING THE TIME
8 HE GOT UPSET, I GUESS EVERYTHING TOOK PLACE, YOU
9 KNOW, HE GOT UPSET AND HE SHOT HIM. THAT'S ALL.
10 THE ONLY THING I KNOW, THE YOUNG MAN TOLD ME THAT
11 HE SHOT HIM IN THE LEG AND THE ARM.

12 Q. AND HOW LONG DID BRUCE STAY AT YOUR HOUSE THAT
13 NIGHT?

14 A. HE DIDN'T STAY VERY LONG.

15 Q. DID HE MAKE ANY PHONE CALLS WHILE HE WAS THERE?

16 A. YES, SIR, HE DID.

17 Q. WHO DID HE CALL?

18 A. HE CALLED HIS MOTHER, SHARON, AND PERHAPS HE CALLED
19 HIS FATHER.

20 Q. ALRIGHT. AND HOW, HOW DID HE GET THERE, DO YOU
21 KNOW?

22 A. NO, SIR, I DON'T KNOW.

23 Q. HOW DID HE LEAVE?

24 A. THIS CAR PULLED UP IN THE YARD AND THEY BLOWED THE
25 HORN, AND HIS LITTLE BROTHER CAME AND PICKED HIM

DIRECT - ORA MADISON BY SOL. WILLIAMS

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1 UP.

2 Q. AND YOU DON'T REMEMBER EXACTLY HOW LONG HE STAYED?

3 A. NO, SIR. NOT THAT LONG. HE STAYED THERE A GOOD
4 WHILE, BUT I WASN'T LOOKING AT THE CLOCK DURING
5 THAT TIME.

6 Q. ALRIGHT. DID HE TELL YOU ANYTHING ABOUT WHAT
7 HAPPENED OTHER THAN WHAT YOU'VE RELATED TO THE
8 JURY?

9 A. NO, SIR, HE JUST TOLD ME HE SHOT HIM IN THE LEG AND
10 THE ARM.

11 Q. ALRIGHT. THANK YOU, MA'AM. PLEASE ANSWER ANY
12 QUESTIONS MR. GROSE MIGHT HAVE.

13 MR. GROSE: BEFORE I DO MY CROSS,
14 YOUR HONOR, I HAVE A BRIEF MATTER OF LAW I'D LIKE TO
15 TAKE UP.

16 THE COURT: GO TO YOUR ROOM JUST A
17 MINUTE. DON'T EVEN SIT DOWN. IT WON'T TAKE BUT A
18 MINUTE.

19 SOLICITOR WILLIAMS: YOUR HONOR, WE
20 MIGHT TAKE THIS RECESS FOR ME TO TALK WITH MY DOCTOR,
21 IF WE'RE GOING TO STOP HERE ANYWAY.

22 THE COURT: ALRIGHT. IT WON'T BE
23 LONG ENOUGH TO SMOKE, THOUGH, SO DON'T DO THAT.

24 (Whereupon, the following
25 takes place out of the

DIRECT - DR. SANDRA CONRADI BY SOL WILLIAMS

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1 Q. ALRIGHT, NOW YOU SAID THAT YOU PERFORM AUTOPSIES
2 TO DETERMINE THE CAUSE AND THE MANNER OF DEATH.
3 PLEASE EXPLAIN TO THE JURY WHAT YOU MEAN BY THE
4 CAUSE OF DEATH?

5 A. THE CAUSE OF DEATH IS THAT CONDITION WHICH BROUGHT
6 ABOUT THE DEATH. IT CAN BE A GUN SHOT WOUND OR A
7 SUDDEN NATURAL DEATH DUE TO HEMORRHAGE IN THE
8 BRAIN, FOR INSTANCE, OR A STAB WOUND. THE MANNER
9 OF DEATH, THERE ARE ONLY FIVE, AND THOSE, AS I
10 MENTIONED TO YOU, ARE ACCIDENT, HOMICIDE, SUICIDE,
11 NATURAL DEATHS AND UNDETERMINED TYPES OF DEATHS.
12 AND WE TRY TO CATEGORIZE THE DEATHS AS TO WHAT THE
13 ACTUAL CAUSE OF THE DEATH IS, AND THE MEDICAL LEGAL
14 TERM, WHAT THE MANNER OF DEATH IS.

15 Q. ALRIGHT. AND IN THAT CAPACITY WERE YOU ASKED TO
16 PERFORM AN AUTOPSY ON THE BODY OF JAMES OLIVER?

17 A. YES, SIR, I WAS.

18 Q. DO YOU REMEMBER WHEN YOU DID THAT?

19 A. YES, SIR, WE BEGAN OUR EXAMINATION AT TEN A.M. ON
20 THE FOURTEENTH OF FEBRUARY THIS YEAR.

21 Q. AND WERE YOU ABLE TO DETERMINE TO A REASONABLE
22 DEGREE OF MEDICAL CERTAINTY THE CASE OF MR.
23 OLIVER'S DEATH?

24 A. YES, SIR, I WAS.

25 Q. AND WHAT WAS THE CAUSE?

DIRECT - DR. SANDRA CONRADI BY SOL. WILLIAMS

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1 A. THE CAUSE WAS INTERNAL HEMORRHAGE, SECONDARY TO GUN
2 SHOT WOUNDS TO THE CHEST AND TO THE ABDOMINAL, OR
3 THE ABDOMINAL WOUND ENTERING THE BACK.

4 Q. ALRIGHT, COULD YOU DESCRIBE THE GUN SHOT WOUNDS
5 THAT MR. OLIVER RECEIVED, PLEASE, TO THE JURY?

6 A. YES, SIR. MR. OLIVER ACTUALLY HAD FOUR SEPARATE
7 GUN SHOT WOUNDS. ONE OF THEM ENTERED THE RIGHT
8 SHOULDER AND PASSED DOWNWARD AND BACKWARD THROUGH
9 THE SHOULDER, EXITING JUST UNDER THE ARM PIT, AND
10 SLAPPING AGAINST THE CHEST ON THE RIGHT.

11 Q. COULD YOU DEMONSTRATE ---

12 THE COURT: SOLICITOR, STAND UP
13 THERE AND LET HER DO IT ON YOU.

14 Q. COULD YOU DEMONSTRATE ON ME?

15 A. YES. ONE OF THE GUN SHOT WOUNDS ENTERED THE RIGHT
16 SHOULDER -- IF YOU'D LIFT YOUR ARM UP -- IT CAME
17 OUT THE BACK OF THE RIGHT, OR UNDER THE RIGHT ARM,
18 ARM PIT, AND SLAPPED AGAINST THE CHEST IN THE BACK
19 HERE, RIGHT ABOUT HERE ON ME. SO, THAT ONE WENT
20 DOWN, BACK, AND HIT THE CHEST BUT DID NOT ENTER THE
21 CHEST. TWO OTHER GUN SHOT WOUNDS WERE HERE. ONE
22 OF THEM ENTERED THE SIDE OF THE LEFT ARM, WHEN
23 THROUGH THE LEFT ARM, AND INTO JUST BELOW THE LEFT
24 ARM PIT INTO THE CHEST, AND CAUSED A LOT OF DAMAGE
25 TO THE LEFT LUNG. IT PROCEEDED TO GO BACKWARD AND

1 END UP ON THE LEFT SIDE OF THE BACK, AND WE WERE
2 ABLE TO RECOVER IT FROM THE SKIN OF THE BACK. SO,
3 THAT ONE WENT DOWNWARD AND BACKWARD IN THE
4 INDIVIDUAL, AND HIT THE LEFT LUNG, AND CAUSED A LOT
5 OF DAMAGE TO THAT LUNG. THE OTHER ONE SIMPLY WENT
6 THROUGH THE LEFT ARM, A LITTLE BIT ON A DOWNWARD
7 TRAJECTORY, OUT THE LEFT ARM, HIT UP AGAINST THE
8 CHEST AGAIN, SO THAT BOTH ARMS WERE ACTUALLY
9 AGAINST THE CHEST WHEN THOSE THREE SHOTS WERE FIRED
10 AND DID NOT ENTER THE CHEST. SO, THAT ONE DIDN'T
11 CAUSE ANY SEVERE INJURY. THEN, THERE WAS AN
12 ADDITIONAL WOUND TO THE BACK, IT ENTERED THE BACK
13 ABOUT THIS LOCATION, WENT THROUGH THE BACK, AND WE
14 WERE ABLE TO RECOVER THAT TO THE LEFT OF THE
15 MIDLINE. SO, IT CROSSED THE MIDLINE AND ENDED UP
16 HERE. IT LACERATED THE RIGHT KIDNEY, THE INFERIOR
17 VENA CAVA, WHICH IS THE LARGE VEIN THAT LEAVES FROM
18 THE BODY BACK TO THE HEART, AND THE LIVER, AND
19 CAUSED A LOT OF BLEEDING INSIDE THE ABDOMEN. IN
20 FACT, THERE WERE ABOUT TWO QUARTS OF BLOOD INSIDE
21 THE ABDOMINAL CAVITY WHEN WE DID THE AUTOPSY. AND
22 THAT BULLET WAS RECOVERED FROM THIS LOCATION UNDER
23 THE SKIN. AND THAT WAS IT.

24 Q. ALRIGHT, THANK YOU, MA'AM.

25 A. OKAY.

DIRECT - DR. SANDRA CONRADI BY SOL.WILLIAMS

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1 Q. IN YOUR AUTOPSY WERE YOU ABLE TO TELL WHICH OF
2 THESE BULLETS HIT MR. OLIVER FIRST?

3 A. NO, SIR.

4 Q. ALRIGHT. WERE YOU ABLE TO TELL WHICH OF THESE
5 CAUSED HIS DEATH?

6 A. YES, SIR. EITHER WHAT WE TERMED BULLET NUMBER TWO,
7 THE ONE THAT WENT THROUGH THE ARM AND INTO THE
8 CHEST AND HIT THE LEFT LUNG COULD HAVE, AND
9 ACTUALLY DID, AS A MATTER OF FACT, WITH THE WOUND
10 TO THE BACK GOING THROUGH THE INFERIOR VENA CAVA,
11 CAUSING A LOT OF HEMORRHAGE THERE. SO, PROBABLY
12 EITHER ONE OF THOSE COULD HAVE AND DID CAUSE MR.
13 OLIVER'S DEATH.

14 Q. ALRIGHT. WERE YOU ABLE TO DETERMINE, THEN, TO A
15 REASONABLE DEGREE OF MEDICAL CERTAINTY THE MANNER
16 OF DEATH?

17 A. YES, SIR.

18 Q. AND WHAT DID YOU DETERMINE THAT TO BE?

19 A. HOMICIDE.

20 Q. ALRIGHT. AND DEFINE HOMICIDE FOR THE JURY, PLEASE?

21 A. IN GENERAL TERMS, IT'S ONE PERSON KILLING ANOTHER.
22 IT'S KIND OF A LEGAL TERM, BUT THAT'S HOW I
23 UNDERSTAND HOMICIDE.

24 Q. AND, OF COURSE, IN YOUR EXAMINATION, YOU EXAMINE
25 ALL ORGANS OF THE BODY FOR ANY OTHER POSSIBLE

DIRECT - DR. SANDRA CONRADI BY SOL WILLIAMS

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1 CAUSES OF DEATH, IS THAT RIGHT?

2 A. YES, SIR, WE DO.

3 Q. AND DID YOU FIND ANY OTHER POSSIBLE CAUSE?

4 A. NO, SIR.

5 Q. ALRIGHT. THANK YOU VERY MUCH, DOCTOR, WOULD YOU
6 PLEASE ANSWER ANY QUESTIONS MR. GROSE MIGHT HAVE.

7 THE COURT: COUNSELLOR.

8 MR. GROSE: THANK YOU, YOUR HONOR,
9 MAY IT PLEASE THE COURT.

10 (NOTE: Blank lines on this page do not indicate any
11 part of record has been omitted. Headers on testimony
12 pages and hard page breaks between testimony are now
13 required by the Court. See next ensuing page for
14 sequential continuation of record.)

CROSS - DR. SANDRA CONRADI BY MR. GROSE

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1 Q. OKAY. SO, AND THEN SOME COULD BE UP TO THIRTY
2 INCHES, ---

3 A. THAT'S RIGHT.

4 Q. --- OR TWO TO TWO AND A HALF FEET?

5 A. THAT'S CORRECT.

6 Q. OKAY. AND WHAT IS -- AND YOU SAID ALL FOUR OF
7 THESE GUN SHOT WOUNDS ARE DISTANT?

8 A. YES, THAT'S CORRECT.

9 Q. AND WHY DON'T YOU TELL THE JURY WHAT A DISTANT GUN
10 SHOT WOUND IS?

11 A. IF WE SEE NO EVIDENCE OF POWDER, SOOT, BURNING IN
12 THE WAY OF MATERIALS THAT COME OUT OF THE MUZZLE
13 OF THE GUN, IF WE SEE NONE OF THAT ON THE SKIN OR
14 THE CLOTHING, WE TERM IT A DISTANT GUN SHOT WOUND.
15 AND AS I SAID, IT COULD BE OVER TWELVE INCHES,
16 FIFTEEN INCHES, OR EVEN THIRTY INCHES, DEPENDING
17 ON THE TYPE WEAPON AND AMMUNITION.

18 Q. OKAY. AND IS IT YOUR OPINION, TO A REASONABLE
19 DEGREE OF CERTAINTY THAT ALL FOUR OF THESE WERE
20 DISTANT GUN SHOT WOUNDS?

21 A. THAT'S CORRECT.

22 Q. NOW, I'M JUST GOING TO ASK YOU BRIEFLY ABOUT SOME
23 OF THESE. YOU HAD INDICATED THAT TWO OF THE
24 GUNSHOT WOUNDS, NUMBERS ONE AND THREE IN YOUR
25 REPORT, ARBITRARY, WERE, PROBABLY DIDN'T DO MUCH

1 AGAINST YOU, BECAUSE YOU DON'T HAVE TO PROVE ANYTHING.
2 NOW, IS IT YOUR DECISION THAT YOU WILL NOT TESTIFY?

3 DEFENDANT: YES, SIR.

4 THE COURT: ALRIGHT, THAT'S ALRIGHT.

5 JUST HAVE A SEAT.

6 ALRIGHT, NOW, I DON'T KNOW OF
7 ANYTHING UNUSUAL ABOUT THE CASE, SOLICITOR AND MR.
8 GROSE, AS I TOLD YOU EARLIER, IT'S A PRETTY SIMPLE CASE.
9 THE FIRST THING I WOULD INSTRUCT THE JURY WOULD BE ON
10 MY GENERAL CHARGE, WHICH INCLUDES, WHICH YOU BOTH
11 ALREADY KNOW MY CHARGE ON A REASONABLE DOUBT. I'LL
12 CHARGE THEM ON EXPERTS. I'LL CHARGED THEM ON CRIMES OF
13 MORAL TURPITUDE. I'LL CHARGE THEM ON MURDER, AND THE
14 STATUTE ON POSSESSION OF A FIREARM DURING A CRIME OF
15 THIS TYPE. CAN YOU THINK OF ANYTHING, SOLICITOR, THAT
16 I MISSED?

17 SOLICITOR WILLIAMS: NO, SIR.

18 THE COURT: MR. GROSE?

19 MR. GROSE: BRIEFLY, WE WOULD
20 REQUEST AN INSTRUCTION ON VOLUNTARY MANSLAUGHTER, BASED
21 ON THE EVIDENCE, THE SAYING THAT THE DECEASED HAD PUSHED
22 THE VICTIM, I MEAN, THE DECEASED HAD PUSHED THE
23 DEFENDANT, AND WE WOULD REQUEST A CHARGE ON
24 CIRCUMSTANTIAL EVIDENCE, GIVEN THAT THERE IS EVIDENCE
25 ABOUT WHERE BULLETS AND SHELLS WERE FOUND AND ANGLES OF

1 THE BULLETS AND STUFF LIKE THAT, I THINK THAT WOULD BE
2 CIRCUMSTANTIAL.

3 THE COURT: THAT'S DIRECT EVIDENCE.
4 WHERE A BULLET WAS FOUND, THAT'S DIRECT EVIDENCE.
5 WHERE, WHERE THE SHELLS WERE FOUND, THAT'S DIRECT
6 EVIDENCE. I DON'T QUITE UNDERSTAND.

7 MR. GROSE: WELL, I ---

8 THE COURT: AND THAT DOESN'T CARRY
9 ANY INFERENCE EITHER WAY, ALL THAT'S DIRECT TESTIMONY.

10 MR. GROSE: WELL, I THINK THAT WHEN
11 THE PATHOLOGIST TESTIFIES THAT, YOU KNOW, BASED ON THE
12 CIRCUMSTANCES OF THE INJURY WOUNDS, THE ANGLES OF SUCH,
13 I THINK THAT'S GETTING MORE TOWARDS REALM OF
14 CIRCUMSTANTIAL EVIDENCE, AND I JUST WANT ---

15 THE COURT: WELL, SHE DIDN'T SAY THE
16 ANGLE KILLED HIM, SHE JUST SAID THE BULLET KILLED HIM.
17 WHAT'S YOUR POSITION, SOLICITOR?

18 SOLICITOR WILLIAMS: THERE'S NO
19 CIRCUMSTANTIAL EVIDENCE IN THIS CASE.

20 THE COURT: ALRIGHT, SIR, I DENY
21 THAT MOTION. NOW, MANSLAUGHTER, TELL ME WHAT WOULD
22 JUSTIFY A CHARGE ON MANSLAUGHTER?

23 MR. GROSE: AT LEAST ONE OF THE
24 WITNESSES TESTIFIED THAT THE VICTIM PUSHED THE DEFENDANT
25 BEFORE ---

1 THE COURT: THAT DOESN'T REACH A
2 CRITERIA OF MANSLAUGHTER. WHAT'S YOUR POSITION,
3 SOLICITOR?

4 SOLICITOR WILLIAMS: THERE'S NO
5 FACTS HERE THAT WOULD INDICATE MANSLAUGHTER. I MEAN,
6 THERE'S GOT TO BE REASONABLE, AFTER REASONABLE
7 PROVOCATION. AND WE DON'T EVEN HAVE ANY REASONABLE
8 PROVOCATION. CERTAINLY, A PUSH IS NOT REASONABLE
9 PROVOCATION. AND IT'S GOT TO BE REASONABLE IN THE EYES
10 OF THE ORDINARY, REASONABLE, PRUDENT MAN.

11 THE COURT: ALRIGHT.

12 SOLICITOR WILLIAMS: AND THERE'S NO
13 TESTIMONY HERE, I THINK, THAT WOULD WARRANT A CHARGE ON
14 MANSLAUGHTER.

15 MR. GROSE: WELL, I THINK THAT HIS
16 VERY RESPONSE INDICATES. WHEN HE TALKS ABOUT A
17 REASONABLE, PRUDENT MAN, AND THE ACKNOWLEDGEMENT THAT
18 THERE WAS TESTIMONY OF A PUSH, MAKES IT A JURY QUESTION.
19 THAT'S OUR POSITION.

20 THE COURT: ALRIGHT. I DENY THAT
21 MOTION. I JUST THINK IT'S YES OR NO. IS IT MURDER OR
22 NOT?

23 ALRIGHT, BRING THE JURY IN.

24 NOW, I WANT SOMEBODY OUTSIDE THAT
25 DOOR, PLEASE. WHILE THESE ATTORNEYS ARE TALKING TO THE

1 THE JURY TO DECIDE WHAT THE TESTIMONY IS. I JUST REPEAT
2 THAT WHAT THESE ATTORNEYS SAY, BOTH SIDES, IS NOT
3 EVIDENCE. YOU REMEMBER THE TESTIMONY AS YOU REMEMBER
4 IT.

5 MR. GROSE: CERTAINLY, HER
6 EXPLANATIONS ABOUT WHAT SHE ACTUALLY SAW AND OBSERVED
7 SAY IT COULD NOT HAPPEN THAT WAY, NOT THE WAY THEY SAY
8 IT DID. OKAY?

9 PREVENT THE STATE FROM RUSHING TO
10 JUSTICE. I TOLD YOU I WOULD GIVE YOU THE REASON WHY YOU
11 SHOULD FIND BRUCE NOT GUILTY. I'VE DONE IT. PLEASE
12 DELIBERATE AND RETURN A VERDICT OF NOT GUILTY.

13 THANK YOU VERY MUCH.

14 THE COURT: DOES ANYBODY WANT TO
15 COME IN OR GO OUT? IT WILL TAKE ME ABOUT TWELVE MINUTES
16 TO GIVE THESE INSTRUCTIONS. NOW, YOU JUST CAN'T GET UP
17 ONE AT THE TIME. ALRIGHT, THAT'S ENOUGH. DON'T ANYBODY
18 ELSE GET UP. THOSE THAT ARE UP CAN GO OUT.

19 CHARGE BY THE COURT:

20 ALRIGHT, NOW, MR. FOREMAN AND
21 MEMBERS OF THE JURY, IT NOW BECOMES MY DUTY TO CHARGE
22 YOU, WHICH MERELY MEANS TO INSTRUCT YOU ON THE LAW THAT
23 APPLIES TO THIS CASE. THIS IS A CASE IN WHICH THE STATE
24 CHARGES THE DEFENDANT, BRUCE JEROME HOUSER, WITH TWO
25 OFFENSES. ONE IS MURDER AND ONE IS THE POSSESSION OF

1 A FIREARM DURING THE COMMISSION OF A CERTAIN CRIME.

2 NOW, AS I STATED TO EARLIER, SITTING
3 AT THAT TABLE HE'S JUST AS INNOCENT AS YOU AND I,
4 BECAUSE HE PLEADS NOT GUILTY. AND WHAT WE JUST WENT
5 THROUGH, AND WHAT YOU ARE ABOUT TO COMPLETE IS TO
6 DETERMINE WHETHER OR NOT THE STATE SATISFIES TWELVE OF
7 YOU OF HIS GUILT BEYOND A REASONABLE DOUBT, BECAUSE A
8 PERSON IS PRESUMED TO BE INNOCENT. AND IT'S AN
9 IMPORTANT RULE OF LAW THAT A PERSON IS PRESUMED TO BE
10 INNOCENT.

11 WELL, WHAT'S A REASONABLE DOUBT?
12 IT'S NOT SOME KIND OF FANCIFUL DOUBT, SOME KIND OF
13 IMAGINARY DOUBT. YOU COULD HAVE WEAK DOUBT, YOU COULD
14 HAVE THAT DOUBT ABOUT ANYTHING. IT'S SAID THAT A
15 REASONABLE DOUBT IS A DOUBT WHICH WOULD MAKE A
16 REASONABLE PERSON HESITATE TO ACT IN HIS OR HER MOST
17 IMPORTANT AFFAIRS.

18 YOU AND I BOTH KNOW THAT PROOF --
19 AND SEVERAL CASES HOLD IN THIS SAME COURTROOM AND IN
20 OTHER COURTROOMS, IN SEVERAL CASES JURORS ARE TOLD THAT
21 IT'S ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY
22 TRUE THAN NOT. IN CRIMINAL CASES THAT PROOF, AS I SAID,
23 MUST BE MORE POWERFUL THAN THAT, MUST BE BEYOND A
24 REASONABLE DOUBT. PROOF BEYOND A REASONABLE DOUBT IS
25 PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE

1 DEFENDANT'S GUILT. WE ALL KNOW THAT THERE ARE VERY FEW
2 THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE
3 CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT
4 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF,
5 BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE
6 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE
7 CRIME CHARGED, YOU MUST FIND HIM GUILTY. ON THE OTHER
8 HAND, IF YOU THINK THERE'S A REAL POSSIBILITY THAT HE'S
9 NOT GUILTY, YOU THEN WOULD GIVE HIM THE BENEFIT OF THAT
10 DOUBT AND FIND HIM NOT GUILTY. AND I SUPPOSE YOU COULD
11 SUM IT UP BY SAYING, A REASONABLE DOUBT IS A DOUBT WHICH
12 A JUROR CAN GIVE WHEN THEY ARE EARNESTLY SEEKING TO FIND
13 THE TRUTH; BECAUSE, YOU DON'T HAVE TO PUNISH ANYONE, AND
14 YOU DON'T HAVE TO REWARD ANYONE, JUST BRING IN A VERDICT
15 THAT SPEAKS THE TRUTH. AND WHEN YOU'VE DONE THAT YOU
16 WILL HAVE LIVED UP TO THAT OATH THAT YOU GAVE AT THE
17 BEGINNING OF THE CASE. AND, OF COURSE, A REASONABLE
18 DOUBT CAN EXIST FROM EVIDENCE IN THE CASE OR LACK OF
19 EVIDENCE. YOU ALONE MUST MAKE THAT DETERMINATION OF
20 WHETHER OR NOT REASONABLE DOUBT EXISTS.

21 NOW, AT THE BEGINNING OF THE CASE
22 I TOLD YOU THAT YOU WERE THE JUDGES OF THE FACTS IN THIS
23 CASE. AND AS JUDGES OF THE FACTS YOU MUST, OF
24 NECESSITY, DETERMINE THE CREDIBILITY OF THE WITNESSES
25 WHO TESTIFIED HERE. WELL, HOW DO YOU DO THAT? YOU KNOW,

1 YOU DO IT EVERY DAY AND YOU DON'T EVEN THINK ABOUT IT.
2 YOU CAN'T SEE OUTSIDE. SUPPOSE SOMEBODY COMES IN THE
3 ROOM, OR IN THE DOOR BACK THERE AND SAYS, "IT'S RAINING
4 OUTSIDE." WELL, YOU'D FEED THAT IN YOUR MIND, KIND OF
5 LIKE A COMPUTER, AND YOU'D ADD THINGS TO IT, LIKE,
6 "WELL, WHAT DO I KNOW ABOUT THAT PERSON? HOW DID THEY
7 SAY IT? WHAT DID THE WEATHERMAN TELL ME WHEN I LEFT THIS
8 MORNING? WHAT DID THE SKY LOOK LIKE?" AND THEN YOU'D
9 MAKE UP YOUR MIND WHETHER OR NOT YOU BELIEVE IT. THAT'S
10 WHAT WE CALL USING YOUR COMMON SENSE, BECAUSE YOU DON'T
11 LEAVE YOUR COMMON SENSE AT HOME IN DETERMINING THE
12 BELIEVABILITY OF THE WITNESS, YOU USE THOSE SAME
13 GUIDELINES THAT YOU USE EVERY DAY AND DON'T EVEN THINK
14 ABOUT IT. WELL, WHAT ARE SOME OF THEM? YOU COULD TAKE
15 INTO CONSIDERATION THE MANNER IN WHICH A WITNESS
16 TESTIFIED. SOMETIMES WE REFER TO THAT AS THE Demeanor
17 OF THE WITNESS. WHAT WAS THE ABILITY OF THE WITNESS TO
18 KNOW ABOUT WHAT HE OR SHE TESTIFIED? WAS THE WITNESS'S
19 TESTIMONY MADE STRONGER BY OTHER EVIDENCE, OR WAS IT
20 MADE WEAKER? DID THE WITNESS HAVE SOMETHING TO GAIN OR
21 SOMETHING TO LOSE? ALL THESE ARE THINGS THAT YOU COULD
22 USE. BUT YOU WOULDN'T DO IT, OBVIOUSLY, FROM COUNTING
23 THE WITNESSES ON EITHER SIDE. BECAUSE YOU COULD BELIEVE
24 EVERYTHING THAT A WITNESS TESTIFIED TO, OR NOTHING. YOU
25 COULD BELIEVE A SMALL PORTION AND DISREGARD THE LARGER.

1 YOU COULD BELIEVE ONE WITNESS AGAINST MANY, OR MANY
2 AGAINST ONE, ALWAYS KEEPING THOSE TWO THINGS IN MIND I
3 TOLD YOU ABOUT, YOU ALWAYS GIVE THE DEFENDANT THE
4 BENEFIT OF EVERY REASONABLE DOUBT. YOU DON'T HAVE TO
5 PUNISH ANYONE, YOU DON'T HAVE TO REWARD ANYONE, JUST
6 BRING IN A VERDICT THAT SPEAKS THE TRUTH.

7 NOW, THAT SAME CONSTITUTION WHICH
8 MADE YOU THE JUDGES OF THE FACTS MADE ME THE JUDGE OF
9 THE LAW. AND IF YOU THOUGHT THE LAW WAS DIFFERENT FROM
10 WHAT I'M ABOUT TO TELL YOU THE LAW IS, OR YOU THINK IT
11 OUGHT TO BE DIFFERENT, OR YOU HEARD IT DIFFERENT FROM
12 SOMEBODY ELSE, YOU JUST TAKE THE LAW AS I GIVE YOU, EVEN
13 THOUGH YOU MIGHT DISAGREE WITH IT, APPLY IT TO THE FACTS
14 AS ONLY YOU CAN FIND, AND DELIBERATE AND REACH A VERDICT
15 IN THIS CASE.

16 NOW, YOU REMEMBER, I TOLD YOU
17 EARLIER THAT I MIGHT RULE IN FAVOR OF EITHER SIDE ON A
18 MATTER OF LAW. IT DOESN'T MEAN I'M FAVORING THAT SIDE,
19 IT JUST MEANS I MUST RULE AS A MATTER OF LAW. AND IF
20 I SAID OR DID ANYTHING THAT GIVES YOU AN IDEA I'M TRYING
21 TO TELL YOU WHO OUGHT TO PREVAIL IN THIS CASE, JUST
22 DISREGARD IT. I'LL RULE ON THE LAW, YOU RULE ON THE
23 FACTS, AND THEN YOU REACH A VERDICT IN THE CASE.

24 NOW, WHAT'S THE LAW THAT I NEED TO
25 TELL YOU TO APPLY TO THE FACTS AS ONLY YOU CAN FIND?

1 WELL, FIRST AND FOREMOST, I THINK, IS WHAT I TOLD YOU
2 EARLIER. THE DEFENDANT DID NOT TESTIFY, AND DID NOT PUT
3 UP ANY WITNESSES. YOU CAN'T HOLD THAT AGAINST HIM,
4 BECAUSE THE DEFENDANT DOESN'T HAVE TO PROVE ANYTHING.
5 SO, WHEN YOU GO BACK INTO YOUR JURY ROOM, DON'T EVEN
6 DISCUSS THE FACT THAT HE DIDN'T TESTIFY OR PUT UP ANY
7 WITNESSES. HE'S MERELY EXERCISING ONE OF HIS
8 CONSTITUTIONAL RIGHTS.

9 ALSO, YOU HEARD THE WORD, EXPERT,
10 YOU REMEMBER, AND YOU HEARD SOME OF THE ATTORNEYS
11 TALKING ABOUT EXPERTS. WHEN PEOPLE COME UP HERE AND
12 TESTIFY, AS YOU ALREADY KNOW, GENERALLY, THEY TESTIFY
13 FROM THEIR SENSES, LIKE, THEY GET UP HERE AND THEY TEL
14 YOU WHAT THEY SAW, OR TELL YOU WHAT THE HEARD. WELL,
15 THERE ARE PEOPLE WHO, THROUGH EDUCATION OR EXPERIENCE
16 OR PERHAPS A COMBINATION OF BOTH, BECOME EXPERTS IN
17 CERTAIN FIELDS, AND THEY'RE ALLOWED TO GIVE YOU
18 OPINIONS, AS OPPOSED TO REGULAR WITNESSES. BUT I TELL
19 YOU, YOU GIVE THAT EXPERT'S OPINION THE SAME WEIGHT
20 YOU'D GIVE ANY PERSON, THAT IS, WHATEVER WEIGHT YOU FEEL
21 IT DESERVES UNDER THE FACTS AND CIRCUMSTANCES OF THIS
22 CASE.

23 NOW, YOU HEARD, PERHAPS, AND WERE
24 SURPRISED THAT SOME OF THE ATTORNEYS MIGHT HAVE TALKED
25 ABOUT SOME CRIMES THAT A WITNESS HAD COMMITTED, AND YOU

1 MIGHT HAVE THOUGHT, "WELL, WHAT DOES THAT HAVE TO DO
2 WITH THIS CASE?" WELL, OUR LAW PERMITS PERSONS TO GIVE
3 THE INFORMATION TO JURIES ABOUT PERSONS WHO HAVE
4 COMMITTED WHAT WE CALL CRIMES OF MORAL TURPITUDE. WELL,
5 CRIMES OF MORAL TURPITUDE WOULD BE LIKE SOMETHING
6 INVOLVING DISHONESTY OR SOME ACT OF BASENESS; IN OTHER
7 WORDS, SOME ATTITUDE OR OFFENSES THAT ARE CONTRARY TO
8 THE ACCEPTED AND CUSTOMARY RULE OF RIGHT AND DUTY
9 BETWEEN MAN AND MAN, OR WOMAN AND WOMAN. BUT THOSE CAN
10 ONLY BE USED, THESE CRIMES OF MORAL TURPITUDE, IN
11 DETERMINING WHAT WEIGHT YOU WANT TO GIVE THAT TESTIMONY
12 - IN OTHER WORDS, THE BELIEVABILITY, THE CREDIBILITY OF
13 THAT WITNESS. JUST USE THAT FOR WHATEVER YOU FEEL YOU
14 WANT TO AND WHATEVER YOU FEEL IT DESERVES IN DECIDING
15 THE CREDIBILITY OR BELIEVABILITY OF THAT WITNESS.

16 NOW, THIS DEFENDANT IS CHARGED WITH
17 TWO CRIMES. THE FIRST ONE INVOLVES A FIREARM. AND THAT
18 INDICTMENT HERE SAYS THAT, "BRUCE HOUSER DID, IN
19 ORANGEBURG COUNTY, ON OR ABOUT FEBRUARY THE THIRTEENTH,
20 NINETEEN NINETY-SEVEN, WHILE COMMITTING THE VIOLENT
21 CRIME OF MURDER, HAVE IN HIS POSSESSION AND DID VISIBLY
22 DISPLAY A FIREARM OR KNIFE DURING THE COMMISSION OF THAT
23 MURDER." WELL, MURDER IS A VIOLENT CRIME. AND WE DO
24 HAVE A STATUTE, IT'S SECTION SIXTEEN TWENTY-THREE, DASH,
25 FOUR NINETY, WHICH MAKES IT A SEPARATE OFFENSE WHEN YOU

1 COMMIT A VIOLENT CRIME TO HAVE A WEAPON, A FIREARM OR
2 A KNIFE. AND IT DESCRIBES FIREARMS, MEANING MACHINES
3 GUNS, AUTOMATIC RIFLES, PISTOLS, ANY WEAPON, INCLUDING
4 KNIVES. AND SO, IT'S A SEPARATE CRIME. AND SO, YOU
5 JUST HAVE TO DETERMINE, ONE, DID THE DEFENDANT COMMIT
6 MURDER; AND TWO, DID HE HAVE A FIREARM AS UNDER THAT
7 STATUTE? THAT'S A SEPARATE OFFENSE.

8 NOW, HE'S CHARGED WITH MURDER.
9 WELL, WHAT'S MURDER? THE ATTORNEYS HAVE TALKED TO YOU
10 ABOUT WHAT MURDER IS. MURDER IS DEFINED AS THE WILLFUL,
11 FELONIOUS KILLING OF A HUMAN BEING BY A HUMAN BEING WITH
12 MALICE AFORETHOUGHT. AND THAT MALICE CAN BE EXPRESSED
13 OR IMPLIED. SO, IN ORDER TO CONVICT A PERSON OF MURDER
14 THE STATE MUST NOT ONLY PROVE THE KILLING OF THE
15 DECEASED BY THE DEFENDANT, BUT THAT IT WAS ONE WITH
16 MALICE AFORETHOUGHT. AND THAT MUST BE PROVED BEYOND A
17 REASONABLE DOUBT. SO, THE TWO THINGS THE STATE MUST
18 PROVE IS, THE KILLING OF THE VICTIM BY THE DEFENDANT,
19 AND THAT THE KILLING WAS DONE WITH MALICE AFORETHOUGHT,
20 EITHER EXPRESSED OR IMPLIED.

21 WELL, WHAT'S MALICE? MALICE IS
22 DEFINED BY THE LAW OF HOMICIDE, I SUPPOSE, AS A TERM OF
23 ART. THAT'S A TECHNICAL TERM, IT JUST IMPLIES
24 WICKEDNESS AND EXCLUDING JUST CAUSE OR EXCUSE. MALICE
25 IS SOMETHING, MR. FOREMAN AND MEMBERS OF THE JURY, WHICH

1 SPRINGS FROM WICKEDNESS, FROM DEPRAVITY, FROM A HEART
2 DEVOID OF SOCIAL DUTY AND TOTALLY BENT ON MISCHIEF.

3 YOU'RE GOING TO HAVE TO TAKE THAT
4 CHILD OUT FOR JUST A MINUTE, IF YOU WILL, FOR ME. THANK
5 YOU. I'LL LET YOU BRING THAT CHILD BACK IN IN JUST A
6 FEW MINUTES. THANK YOU.

7 I WAS TELLING YOU ABOUT MALICE.
8 MALICE, MR. FOREMAN AND MEMBERS OF THE JURY, INDICATES
9 A FIRM PURPOSE AND DESIGN TO DO A WRONGFUL ACT UNDER
10 CIRCUMSTANCES WHICH EXCLUDE ANY LEGAL RIGHT TO DO IT.
11 SO, I SUPPOSE TO BEST SUM IT UP, MALICE IS THE
12 INTENTIONAL AND DELIBERATE DOING OF A WRONGFUL ACT,
13 INTENDING THE ACT TO BE WRONG, AND COMMITTING THAT ACT
14 WITHOUT JUST CAUSE OR EXCUSE.

15 NOW, IT'S NOT NECESSARY, MR.
16 FOREMAN AND MEMBERS OF THE JURY, FOR MALICE TO HAVE
17 EXISTED IN THE WRONG DOER'S MIND FOR ANY PARTICULAR
18 LENGTH OF TIME, BUT IT MUST HAVE BEEN EXISTING AT THE
19 TIME OF THE ACT. IT MUST HAVE BEEN THE COMPELLING
20 MOTIVE WHICH WAS CONSUMMATED IN THE DEATH OF THE PARTY
21 KILLED. AND SO, I TELL YOU THAT IF MALICE IS PRESENT
22 IN THE MIND OF THE DEFENDANT AT THE TIME OF THE KILLING
23 FOR ANY LENGTH OF TIME BEFORE THE ACT, THEN THE PRESENCE
24 OF MALICE WOULD BE SUFFICIENT TO RENDER THE KILLING
25 MURDER.

1 NOW, MALICE MAY BE EXPRESS MALICE,
2 YOU REMEMBER, I TOLD YOU, OR IMPLIED MALICE. AND THIS
3 DOESN'T MEAN TWO KINDS OF MALICE, IT JUST MEANS THAT
4 THESE TERMS SIGNIFY THE WAY IN WHICH MALICE MAY BE
5 PROVED.

6 WELL, WHAT'S EXPRESSED MALICE?
7 EXPRESS MALICE IS WHERE A PERSON, BY WORD OF MOUTH,
8 EXPRESSES HATRED OR ILL WILL FOR ANOTHER; OR WHERE THE
9 STATE SHOWS PREPARATION TO CARRY OUT THE ACT PRIOR TO
10 THE ACTUAL COMMISSION OF THE ACT, SUCH AS LYING IN WAIT
11 FOR A VICTIM, OR PREPARING THINGS WHICH WOULD CAUSE THE
12 DEATH OF THE VICTIM.

13 WHAT'S IMPLIED MALICE? NOW, THE LAW
14 MAY IMPLY OR INFER MALICE WHEN THE DEED IS DONE WITH A
15 DEADLY WEAPON, SUCH AS A GUN OR A KNIFE, OR WITH THE
16 THREAT OF A DEADLY WEAPON, OR SOME OBJECT OR OBJECTS
17 WHICH, WHEN USED WITH THE INTENT TO INJURE ANOTHER
18 PERSON, IT MAY BE CALCULATED TO PRODUCE DEATH OR SERIOUS
19 BODILY INJURY. THAT'S CALLED IMPLIED MALICE. MALICE,
20 MR. FOREMAN AND MEMBERS OF THE JURY, MAY BE IMPLIED FROM
21 THE GENERAL NATURE OF THE ACT, WHERE IT IS EXHIBITED A
22 LOW, WICKED, DEPRAVED OR MALIGNANT SPIRIT. NOW, WHEN
23 YOU HAVE IMPLIED MALICE IT DEALS WITH THE INFERENCE WITH
24 REFERENCE TO THE EVIDENCE; THAT IS, IT PERMITS THE JURY
25 TO FIND MALICE, BUT IT DOES NOT REQUIRE THE JURY TO FIND

1 MALICE.

2 NOW, FURTHERMORE, MR. FOREMAN AND
3 MEMBERS OF THE JURY, EVEN WHERE THERE IS AN ABSENCE OF
4 A SPECIFIC FIXED AND DELIBERATE INTENT TO TAKE THE LIFE
5 OF A PARTICULAR PERSON OR OF ANY PERSON, THE LAW SAYS
6 THAT IF IT IS PROVED BEYOND A REASONABLE DOUBT THAT ONE
7 INTENTIONALLY KILLED ANOTHER WITH A DEADLY WEAPON, OR
8 WITH A DANGEROUS INSTRUMENTALITY SUCH AS A GUN, AN
9 IMPLICATION OF MALICE MAY ARISE. THE USE OF A DEADLY
10 WEAPON PERMITS YOU TO INFER MALICE BUT IT DOESN'T
11 REQUIRE YOU TO INFER MALICE. AND I TELL YOU THAT IF
12 FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT
13 TO RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTIONS,
14 AS I SAID, THIS INFERENCE WOULD BE SIMPLY AN
15 EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU,
16 THE JURY, ALONG WITH ANY OTHER EVIDENCE IN THE CASE, AND
17 YOU CAN GIVE IT SUCH WEIGHT AS YOU FEEL IT SHOULD
18 RECEIVE.

19 NOW, I HAVE TWO INDICTMENTS. YOU
20 WILL HAVE THEM IN YOUR JURY ROOM, MR. FOREMAN. THIS IS
21 NOT EVIDENCE, THIS IS JUST A PIECE OF PAPER THAT GETS
22 IT INTO COURT. AND ON THE BACK OF EACH OF THEM IS A
23 PLACE TO WRITE YOUR VERDICT. I HAVE WRITTEN ON THE
24 INDICTMENT ENTITLED, MURDER, TWO POSSIBLE FORMS OF
25 VERDICT. THE FACT THAT I SAY ONE BEFORE THE OTHER HAS

1 ABSOLUTELY NO BEARING. I JUST HAD TO WRITE ONE BEFORE
2 THE OTHER. AND I'VE AFFIXED SPACES THERE FOR YOU TO PUT
3 A CHECK MARK, ONE WHERE IT SAYS NOT GUILTY, AND ONE
4 WHERE IT SAYS GUILTY. IF YOU FIND THAT THE STATE HAS
5 FAILED TO SATISFY YOU OF HIS GUILT BEYOND A REASONABLE
6 DOUBT, YOU JUST PUT A CHECK MARK WHERE IT SAYS, NOT
7 GUILTY, AND SIGN YOUR NAME, AND WHEN YOU'VE SIGNED YOUR
8 NAME IT INDICATES THAT ALL TWELVE OF YOU HAVE AGREED,
9 BECAUSE WHATEVER THE VERDICT IS, ALL TWELVE OF YOU MUST
10 AGREE. I'M GOING TO KEEP MY ALTERNATE AWAY BY HERSELF
11 FOR THE TIME BEING. ON THE OTHER HAND IF YOU FIND THAT
12 THE STATE HAS SATISFIED YOU OF HIS GUILT BEYOND A
13 REASONABLE DOUBT, YOU'D JUST PUT A CHECK MARK WHERE IT
14 SAYS, GUILTY.

15 IF YOU FIND HE'S NOT GUILTY OF
16 MURDER, THEN OBVIOUSLY, HE COULDN'T BE GUILTY OF
17 POSSESSION OF A FIREARM. BUT IF YOU FIND THAT HE'S
18 GUILTY OF MURDER, THEN YOU WOULD DETERMINE WHETHER HE'S
19 GUILTY OF POSSESSION OF A FIREARM DURING THE COMMISSION
20 OF THE CRIME OF MURDER. AND HERE YOU'D PUT GUILTY OR
21 NOT GUILTY, AND LIKEWISE, SIGN YOUR NAME.

22 NOW, YOU'VE BEEN SWORN AS FAIR
23 JURORS, SWORN TO FAIRLY TRY THIS CASE. AND WHEN YOU'VE
24 DONE THAT YOU DON'T HAVE TO APOLOGIZE TO ANYONE. AS I
25 TOLD YOU, YOU DON'T HAVE TO PUNISH ANYONE, YOU DON'T

1 HAVE TO REWARD ANYONE, JUST BRING IN A VERDICT THAT
2 SPEAKS THE TRUTH. AND WHEN YOU'VE DONE THAT YOU WILL
3 HAVE LIVED UP TO YOUR OATH THAT YOU GAVE WHEN YOU
4 STARTED THIS CASE.

5 I'M GOING TO SEND YOU TO YOUR ROOM
6 JUST A MINUTE, I MIGHT HAVE FORGOTTEN SOMETHING. IF I
7 DID I'LL BRING YOU BACK. IF NOT, I'LL SEND YOU THESE
8 TWO INDICTMENTS IN, I'LL SEND YOU THE EXHIBITS. BEGIN
9 YOUR DELIBERATIONS, AND WHEN YOU'VE REACHED A VERDICT
10 PUT A CHECK MARK IN THE APPROPRIATE PLACES AND SIGN
11 YOUR NAME, MR. FOREMAN. AND WHILE YOU'RE BACK THERE IF
12 YOU NEED ANYTHING TO MAKE YOU COMFORTABLE, JUST LET US
13 KNOW.

14 ALRIGHT, JUST FOLLOW THE BAILIFF FOR
15 ME FOR THE TIME BEING.

16 PUT MY ALTERNATE IN ANOTHER PLACE.
17 IF I KEEP YOU BACK THERE, MADAM ALTERNATE, EVERY TIME
18 I BRING THE JURY OUT I'D BRING YOU OUT ALSO. AND IF
19 YOU NEED ANYTHING TO MAKE YOURSELF COMFORTABLE, JUST ASK
20 THESE LADIES. THEY'D BE DELIGHTED TO HELP YOU.

21 (Whereupon, the jury retires
22 to the jury room.)

23 THE COURT: ANY EXCEPTIONS OR
24 ADDITIONS FROM THE STATE?

25 SOLICITOR WILLIAMS: NOTHING FROM

1 THE STATE.

2 THE COURT: DEFENSE?

3 MR. GROSE: BRIEFLY, YOUR HONOR, WE
4 WOULD JUST NOTE AGAIN OUR REQUEST FOR THE CIRCUMSTANTIAL
5 EVIDENCE CHARGE, AND ---

6 THE COURT: WELL, I COULDN'T THINK
7 OF ANYTHING THAT WOULD BE CIRCUMSTANTIAL. EVERYTHING
8 WAS DIRECT. BUT I NOTE YOUR OBJECTION.

9 MR. GROSE: AND AS WELL AS OUR
10 REQUEST FOR VOLUNTARY MANSLAUGHTER.

11 THE COURT: ALRIGHT, SIR, ALSO, I
12 DIDN'T HEAR ANYTHING THAT I COULD CHARGE VOLUNTARY
13 MANSLAUGHTER. AND I THINK, CANDIDLY, YOU'D PROBABLY HAVE
14 TO AGREE WITH ME. IT'S JUST, HE'S GUILTY OF MURDER OR
15 NOT GUILTY.

16 ALRIGHT.

17 MR. GROSE: AND ADDITIONALLY, YOUR
18 HONOR, AFTER HEARING YOUR CHARGE AND THINKING OF MY
19 CLOSING, WE WOULD REQUEST THAT YOU CHARGE THE JURY ON
20 MERE PRESENCE.

21 THE COURT: NO, SIR, I THINK AT THIS
22 TIME -- I MIGHT HAVE CHARGED IT -- WELL, I DIDN'T HEAR
23 ANY TESTIMONY OF ANYBODY ELSE DOING ANY SHOOTING. I
24 PROBABLY WOULDN'T HAVE CHARGED IT ANYWAY, BUT CERTAINLY,
25 I'M NOT GOING TO CHARGE IT NOW, BECAUSE IT WOULD BE OUT

1 HAVE TO REWARD ANYONE, JUST BRING IN A VERDICT THAT
2 SPEAKS THE TRUTH. AND WHEN YOU'VE DONE THAT YOU WILL
3 HAVE LIVED UP TO YOUR OATH THAT YOU GAVE WHEN YOU
4 STARTED THIS CASE.

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9 YOUR DELIBERATIONS, AND WHEN YOU'VE REACHED A VERDICT
10 PUT A CHECK MARK IN THE APPROPRIATE PLACES AND SIGN
11 YOUR NAME, MR. FOREMAN. AND WHILE YOU'RE BACK THERE IF
12 YOU NEED ANYTHING TO MAKE YOU COMFORTABLE, JUST LET US
13 KNOW.

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15 ME FOR THE TIME BEING.

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22 TIME -- I MIGHT HAVE CHARGED IT -- WELL, I DIDN'T HEAR
23 ANY TESTIMONY OF ANYBODY ELSE DOING ANY SHOOTING. I
24 PROBABLY WOULDN'T HAVE CHARGED IT ANYWAY, BUT CERTAINLY,
25 I'M NOT GOING TO CHARGE IT NOW, BECAUSE IT WOULD BE OUT

VERDICT OF THE JURY:

THE COURT: ON INDICTMENT 97-38-0467, THE STATE VERSUS BRUCE JEROME HOUSER, CHARGED WITH MURDER, THE VERDICT IS GUILTY. SIGNED, BONNIE L. JONES.

ALRIGHT, THE NEXT INDICTMENT, 97-38-0874, CHARGED WITH POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME, THE VERDICT IS GUILTY. SIGNED BY THE SAME FOREMAN.

IF THIS IS YOUR VERDICT, RAISE YOUR RIGHT HAND FOR ME, PLEASE.

(Affirmative response from jury panel.)

THE COURT: IT APPEARS TO BE IN ORDER.

ANYTHING FURTHER FROM THE DEFENSE?

MR. GROSE: WE JUST REQUEST THAT THE JURY BE POLLED.

THE COURT: ALRIGHT, SIR. PASS ME THOSE THINGS DOWN THERE. IF I MISPRONOUNCE SOME OF YOUR NAMES, I HOPE YOU'LL FORGIVE ME. THIS IS WRITTEN IN SOMEBODY'S HANDWRITING, AND SOMETIMES I CAN'T READ THAT GOOD ON HANDWRITING.

NOW, MR. FOREMAN, AND MEMBERS OF THE JURY, I'M GOING TO ASK YOU A QUESTION -- FIRST, I'M GOING TO CALL YOUR NAME. WHEN I CALL YOUR NAME I WANT YOU TO STAND UP AND I'M GOING TO ASK YOU A QUESTION.

1 TOLD HER -- THEY CAN SAY ANYTHING THEY WANT TO, I DON'T
2 HAVE ANY OBJECTION -- WHO SAYS, HE SAID, "YES, I SHOT
3 HIM, I'M IN TROUBLE." AND THIS OCCURRED JUST RIGHT
4 AFTER HE GOT OUT OF PRISON.

5 SENTENCE OF THE COURT:

6 ALRIGHT, ON INDICTMENT 97-0874,
7 POSSESSION OF A FIREARM DURING THE COMMISSION OF A
8 CERTAIN CRIME, IT'S THE JUDGEMENT OF THE LAW AND
9 SENTENCE OF THE COURT THAT YOU, BRUCE JEROME HOUSER, BE
10 CONFINED TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
11 FOR A PERIOD OF FIVE YEARS, CONCURRENT WITH 97-04 -- IT
12 LOOKS LIKES ZERO SEVEN, I BELIEVE THAT'S CORRECT.

13 SOLICITOR WILLIAMS: FOUR SIX SEVEN.

14 THE COURT: FOUR SIX SEVEN, THAT
15 YOU, BRUCE JEROME HOUSER, BE CONFINED TO SOUTH CAROLINA
16 DEPARTMENT OF CORRECTIONS FOR THE BALANCE OF YOUR
17 NATURAL LIFE.

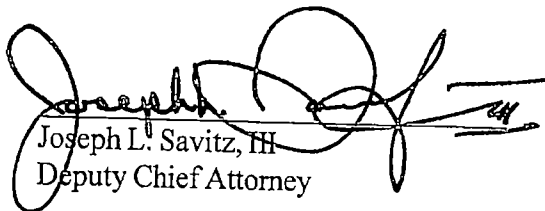
18 GOOD LUCK TO YOU.

19 ALRIGHT, TAKE HIM AWAY.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 22, 1998



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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Honorable Luke N. Brown, Jr., Special Circuit Court Judge

RECEIVED

JUN 22 1998

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

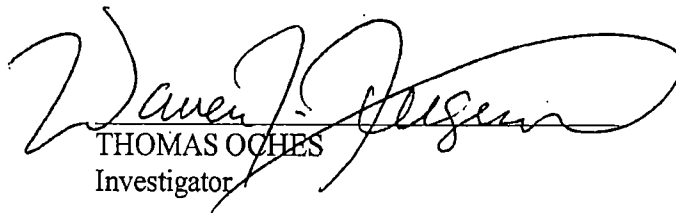
V.

BRUCE JEROME HOUSER,

APPELLANT.

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Lauri J. Soles, Esquire, this 22nd day of June, 1998.

 for:
THOMAS OCHES
Investigator

SUBSCRIBED AND SWORN TO before me
this 22nd day of June, 1998.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Appeal From Orangeburg County

The Honorable Luke N. Brown, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

BRUCE JEROME HOUSER,

Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Orangeburg County

The Honorable Luke N. Brown, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

BRUCE JEROME HOUSER,

Appellant.

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DIRECT - JIMARCUS OLIVER BY SOL. WILLIAMS

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DIRECT EXAMINATION

BY SOLICITOR WILLIAMS:

Q. JIMARCUS, YOU SAID YOU WERE SEVEN YEARS OLD?

A. EIGHT.

Q. EIGHT NOW? OKAY. NOW, LET ME PULL THIS DOWN. AND YOU'VE GOT TO TALK LOUD SO ALL THESE PEOPLE CAN HEAR YOU AND WHERE THIS LADY CAN HEAR YOU. OKAY, CAN YOU DO THAT?

A. YES, SIR.

Q. GOOD. SO, YOU CAN TALK RIGHT CLOSE AND YOU CAN HEAR IT COMING OUT OF THOSE SPEAKERS UP THERE. OKAY? YOU CAN DO THAT FOR ME, CAN'T YOU?

A. YES, SIR.

Q. ALRIGHT, WHERE DO YOU LIVE?

A. IN NORTH.

Q. AND WHO DO YOU LIVE WITH?

A. MY MAMA.

Q. AND WHAT'S YOUR MAMA'S NAME?

A. VERNETTE ---

Q. WHAT'S HER ---

A. --- OLIVER.

Q. VERNETTE OLIVER. DO YOU KNOW, DO YOU REMEMBER JAMES OLIVER?

A. YES, SIR, THAT WAS MY UNCLE.

Q. HE WAS YOUR UNCLE. DO YOU REMEMBER WHAT HAPPENED

DIRECT - JIMARCUS OLIVER BY SOL. WILLIAMS

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1 ON THE NIGHT HE WAS KILLED?

2 A. YES, SIR.

3 Q. WHERE WERE YOU THAT NIGHT?

4 A. I WAS IN THE CAR.

5 Q. IN JAMES'S CAR?

6 A. YES, SIR.

7 Q. DO YOU REMEMBER WHERE YOU WERE SITTING?

8 A. YES, SIR.

9 Q. WHERE WERE YOU SITTING?

10 A. I WAS SITTING ON THE DRIVER'S SIDE.

11 Q. THE FRONT SEAT OR THE BACK?

12 A. THE BACK.

13 Q. ALRIGHT. DID YOU SEE JAMES WHEN HE GOT SHOT?

14 A. YES, SIR.

15 Q. DID YOU SEE, DO YOU KNOW BRUCE HOUSER?

16 A. YES, SIR.

17 Q. DO YOU SEE HIM IN THE COURTROOM TODAY?

18 A. YES, SIR.

19 Q. COULD YOU POINT TO HIM AND TELL US WHAT HE'S
20 WEARING?

21 A. BROWN AND BEIGE.

22 Q. BROWN AND BEIGE?

23 A. UH HUH.

24 SOLICITOR WILLIAMS: AND LET THE
25 RECORD REFLECT HE POINTED TO THE DEFENDANT.

DIRECT - JIMARCUS OLIVER BY SOL. WILLIAMS

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1 Q. AND DID YOU SEE BRUCE THAT NIGHT?

2 A. YES, SIR.

3 Q. WHERE WAS BRUCE?

4 A. HE WAS ON THE DRIVER'S SIDE.

5 Q. AND WHERE WAS JAMES?

6 A. ON THE DRIVER'S SIDE.

7 Q. DID YOU SEE ANYTHING UNUSUAL THAT ONE OF THEM HAD?

8 A. YES, SIR.

9 Q. WHAT WAS THAT?

10 A. A GUN.

11 Q. AND WHO HAD THE GUN?

12 A. BRUCE.

13 Q. ALRIGHT, AND WHAT, WHAT HAPPENED WITH THE GUN?

14 WHAT DID HE DO WITH THE GUN?

15 A. HE SHOT JAMES.

16 Q. AND YOU SAW THAT WITH YOUR OWN EYES?

17 A. YES, SIR.

18 Q. HOW CLOSE WERE YOU TO BRUCE AND JAMES?

19 A. I WAS OUT, MY HEAD WAS OUT THE WINDOW WHEN HE GOT

20 SHOT, AND HE COULD HAVE HIT ME.

21 Q. YOUR HEAD WAS OUT THE WINDOW AND HE COULD HAVE HIT

22 YOU?

23 A. I WAS SITTING IN THE DOOR.

24 Q. SO, YOU WERE REAL CLOSE TO HIM, YOU WERE CLOSE TO

25 JAMES AND BRUCE WHEN BRUCE SHOT JAMES?

DIRECT - JIMARCUS OLIVER BY SOL. WILLIAMS

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1 A. YES, SIR.

2 Q. WAS THERE ANYBODY ELSE OVER THERE WITH A PISTOL?

3 A. NO, SIR.

4 Q. ALRIGHT, THANK YOU, SIR. PLEASE ANSWER ANY
5 QUESTIONS MR. GROSE MIGHT HAVE. HE MIGHT WANT TO
6 ASK YOU A FEW QUESTIONS. OKAY?

7 (NOTE: Blank lines on this page do not indicate any
8 part of record has been omitted. Headers on testimony
9 pages and hard page breaks between testimony are now
10 required by the Court. See next ensuing page for
11 sequential continuation of record.)

DIRECT - BLONDELLE MCMICHAEL BY SOL WILLIAMS

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1 A. YES, SIR.

2 Q. ALRIGHT. DID YOU KNOW JAMES OLIVER?

3 A. YES, SIR.

4 Q. AND I BELIEVE YOU'VE BEEN IN THIS COURTROOM BEFORE,
5 HAVE YOU NOT, AND YOU PLED GUILTY TO SIMPLE
6 POSSESSION OF CRACK COCAINE BACK IN NINETEEN
7 NINETY-FOUR?

8 A. YES, SIR.

9 Q. AND YOU GOT A SUSPENDED SENTENCE FOR THAT?

10 A. ALRIGHT, WERE YOU PRESENT IN THE VICINITY WHEN
11 JAMES OLIVER WAS SHOT BACK IN FEBRUARY, I THINK,
12 FEBRUARY THE THIRTEENTH?

13 A. YES, SIR.

14 Q. HOW LONG HAD YOU BEEN THERE AT THAT LOCATION THAT
15 NIGHT BEFORE YOU FIRST SAW JAMES OLIVER?

16 A. THAT NIGHT, I WAS AT A GIRLFRIEND ON THAT CORNER..
17 AND BRUCE AND THEM HOLLERED OUT -- I THINK WE HEARD
18 A NOISE, SO, I GO OUT THE BACK DOOR, AND IT WAS
19 BERNARD DEASE AND MY BROTHER, COJACK.

20 Q. ALRIGHT, BERNARD DEASE AND YOUR BROTHER, COJACK?

21 A. THEY WAS FIGHTING ON THE FRONT PORCH.

22 Q. ALRIGHT, WHAT'S COJACK'S REAL NAME?

23 A. ALVIN MCMICHAEL.

24 Q. ALRIGHT. THEY WERE FIGHTING ON THE FRONT PORCH OF
25 WHAT, WHOSE HOUSE?

DIRECT - BLONDELLE MCMICHAEL BY SOL WILLIAMS

180

1 IT WAS MY BROTHER, ALVIN, AND BERNARD DEASE WERE
2 FIGHTING.

3 Q. AND WHERE WAS THE FIGHT GOING ON?

4 A. IT WAS ON THE FRONT PORCH.

5 Q. ALRIGHT. CAN YOU SEE IN THAT MAP WHERE THE FIGHT
6 WAS GOING ON?

7 A. IT WAS AT THIS HOUSE HERE.

8 Q. THAT HOUSE THAT'S DRAWN ON THERE?

9 A. YES, SIR.

10 Q. ALRIGHT, WHAT HAPPENED THEN?

11 A. FROM THIS, I NOTICED THAT MY BROTHER WAS BEATING
12 BERNARD, AND SO, THAT'S WHY I AIN'T RUN OUT AND
13 TRIED TO STOP IT. SO, THE ONLY THING I KNOW, AFTER
14 THEY, BRUCE AND THE REST OF THEM WHO WAS THERE HAD
15 STOPPED THE FIGHT.

16 Q. BRUCE AND WHO?

17 A. WELL, THEM GIRLS AND THE GUY THAT WAS THERE.

18 Q. OKAY, SO THEY STOPPED THE FIGHT BETWEEN---

19 A. YES, SIR.

20 Q. --- YOUR BROTHER ---

21 A. AND BERNARD.

22 Q. --- AND BERNARD. ALRIGHT, AND THEN WHAT HAPPENED?

23 A. SO, LATER ON, DIRECTLY, THAT'S WHEN JAMES AND
24 LATONYA COME STRAIGHT FROM OFF THREE TWENTY-ONE,
25 GOING DOWN OLIVER ROAD.

DIRECT - BLONDELLE MCMICHAEL BY SOL.WILLIAMS

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1 Q. ALRIGHT.

2 A. AND THAT'S WHERE HE HOLLERED THEM DOWN, AND SO, HE
3 BACKED ---

4 Q. ALRIGHT, WAIT A MINUTE, NOW, THEY WERE COMING DOWN
5 OLIVER ROAD, AND ---

6 A. OFF OF THREE TWENTY-ONE..

7 Q. --- WHO HOLLERED THEM DOWN?

8 A. BRUCE.

9 Q. BRUCE HOUSER?

10 A. YES, SIR.

11 Q. OKAY. WHAT DID THEY DO WHEN HE HOLLERED THEM DOWN?

12 A. SO, THEY BACKED UP IN THE ROAD THERE.

13 Q. ALRIGHT. AND WHAT DID THEY DO AFTER THEY BACKED
14 UP?

15 A. WHEN THEY BACKED UP THEY TURNED STRAIGHT, YOU KNOW,
16 FACING BACK UP STAFFORD, TOWARDS TOWN.

17 Q. WALK OVER THERE AND SHOW US ABOUT WHERE THEY WERE
18 WHEN THEY STOPPED, AND WHICH WAY THE CAR WAS
19 FACING.

20 A. ALRIGHT. THEY COME STRAIGHT ACROSS THIS WAY HERE.
21 SO, WHEN THEY BACKED BACK HERE, AND THEY PULLED
22 BACK IN HERE.

23 Q. ALRIGHT, AND ---

24 A. AFTER THEY BROKE THE FIGHT UP. AND THAT'S WHEN MY
25 BROTHER AND BERNARD WAS RUNNING AROUND THE CAR WITH

DIRECT - BLONDELLE MCMICHAEL BY SOL.WILLIAMS

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1 Q. WAIT A MINUTE. THE CAR PULLED UP. WHERE DID THE
2 CAR PULL UP, CAN YOU SHOW US?

3 A. THE CAR PULLED UP ON THE SIDE HERE.

4 Q. ALRIGHT, AND THEN YOU SAID, "HE SAID," WHO WAS HE?

5 A. HE WAS SAYING THAT, "WAIT UNTIL MY OTHER SHIT COME
6 BACK," JUST LIKE THAT.

7 REPORTER: WAIT WHAT? I DON'T
8 UNDERSTAND YOU.

9 Q. YOU CANNOT ---

10 A. AM I ALLOWED TO SAY CURSING?

11 THE COURT: SURE. YOU CAN SAY
12 ANYTHING ---

13 Q. YOU HAVE TO TRY TO TALK SLOW, THOUGH, BECAUSE --

14 -
15 A. THAT'S WHAT HE WAS SAYING.

16 THE COURT: ALRIGHT, LET'S HAVE
17 ORDER.

18 A. AND LIKE, WHERE THE SEWER PIPE, ME AND MY BROTHER,
19 WE WAS STANDING RIGHT THERE WHEN THE CAR PULLED UP.

20 Q. ON THE BLACK SQUARE CEMENT?

21 A. YES, SIR, ON THE TOP.

22 Q. AND WHAT DID BRUCE SAY?

23 A. HE SAID, "WAIT UNTIL MY OTHER SHIT COME BACK," AND
24 THE ONLY THING I KNOW HE WALK BACK PAST ME AND MY
25 BROTHER, AND HE SAID, "Y'ALL SEE THAT GUY DOWN

DIRECT - BLONDELLE MCMICHAEL BY SOL.WILLIAMS

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1 THERE?" WHO CAN SAY SOMETHING WHEN SOMEBODY
2 WALKING BY YOU WITH A GUN IN THEIR HAND?

3 Q. ALRIGHT, HE SAID, "WAIT UNTIL MY OTHER SHIT COMES
4 BACK?"

5 A. "SHIT COMES BACK."

6 Q. AND THEN HE WHAT?

7 A. AND IS SOMEBODY GOING TO SPEAK UP, IS THEY GOING
8 TO SAY, THEY GOING TO TALK UP THEN? "WHERE MY GUN
9 AT?"

10 Q. ALRIGHT. DID HE GO OVER TO THE CAR?

11 A. YES, SIR.

12 Q. ALRIGHT, AND WHEN HE LEFT THE CAR WHERE DID HE GO?

13 A. WHEN HE LEFT THE CAR?

14 MR. GROSE: I OBJECT.

15 Q. WHERE DID BRUCE GO? YOU SAID HE WENT TO THE CAR?

16 THE COURT: NOW, JUST A MINUTE.
17 YES?

18 MR. GROSE: I JUST OBJECT.

19 A. HE WENT BACK ON DOWN TO THE CAR, TO THE BACK, BACK,
20 THERE WAS A BUNCH OF THEM BACK THEM.

21 THE COURT: JUST A MINUTE, NOW.

22 MR. GROSE: I WOULD JUST OBJECT TO
23 THE QUESTION. I'M NOT EVEN SURE WHO THE SOLICITOR'S
24 TALKING ABOUT WHEN HE SAYS HE DID THIS OR THAT AT THIS
25 POINT.

DIRECT - BLONDELLE MCMICHAEL BY SOL.WILLIAMS

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1 THE COURT: I'LL LET YOU CROSS-
2 EXAMINE. GO AHEAD.

3 Q. ALRIGHT, WHEN BRUCE WENT BACK TO THE CAR, THEN
4 WHERE DID BRUCE GO?

5 A. HE COME BACK TOWARD ME AND MY BROTHER.

6 Q. AND Y'ALL WERE STANDING ON THE CONCRETE?

7 A. YES, SIR.

8 Q. ALRIGHT. WHERE DID HE GO AFTER HE CAME TOWARD YOU?

9 A. HE WALKED STRAIGHT ON BACK TO JAMES'S CAR. AND
10 JAMES WAS STANDING AT THE THING, AND HE SAID, JAMES
11 SAID, "MAN, THERE AIN'T NO GUN IN HERE," JUST LIKE
12 THAT. AND SO, HE TOOK AND SHOVED JAMES BACK, AND
13 SO, I GUESS JAMES SHOVED HIM BACK, AND WHEN JAMES
14 SHOVED HIM BACK, THE ONLY THING I KNOW HE TOOK THE
15 GUN AND PUT IT IN JAMES'S CHEST.

16 Q. ALRIGHT. WHEN YOU SAY HE. WHEN BRUCE WALKED PAST
17 YOU, ---

18 A. ME AND MY BROTHER WAS STANDING ON THE CEMENT.

19 Q. AND DID YOU OBSERVE ANYTHING IN HIS HAND?

20 A. YEAH, HE HAD A GUN.

21 Q. ALRIGHT, AND THEN HE WALKED ON OVER WHERE JAMES
22 WAS?

23 A. YES, SIR.

24 Q. AND WHAT DID THEY SAY THEN?

25 A. HE TELL ME AND MY BROTHER, "DON'T SAY A DAMN

DIRECT - BLONDELLE MCMICHAEL BY SOL WILLIAMS

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1 THING," JUST LIKE THAT.

2 Q. HE SAID WHAT?

3 A. "DON'T SAY A DAMN THING."

4 Q. OKAY. AND THEN WHAT HAPPENED?

5 A. SO, HE WALK ON UP TO JAMES, TO THE CAR.

6 Q. ALRIGHT.

7 A. AND JAMES STANDING AT THE DOOR OF THE CAR.

8 Q. ALRIGHT.

9 A. AND SO, JAMES SAID, "MAN, IT AIN'T NO GUN IN HERE,"

10 JUST LIKE THAT.

11 Q. JAMES TOLD BRUCE ---

12 A. BRUCE THAT, "THERE AIN'T NO GUN IN HERE," JUST LIKE

13 THAT.

14 Q. ALRIGHT.

15 A. SO, I GUESS HE WANTED TO SEARCHED THE CAR, SO JAMES

16 SHOVED HIM. AND WHEN JAMES SHOVED HIM HE FALL

17 BACK, AND THEN HE TOOK THE GUN AND PUT IT IN HIS

18 CHEST. AND THE ONLY THING I KNOW, HE WENT TO

19 SHOOTING.

20 Q. ALRIGHT, WHEN YOU SAY, "HE TOOK THE GUN AND WENT

21 TO SHOOTING," WHO ARE YOU TALKING ABOUT?

22 A. BRUCE.

23 Q. ALRIGHT. WAS ANYBODY ELSE SHOOTING?

24 A. NO. IT AIN'T NOTHING BUT ONE PERSON OUT THERE WITH

25 A GUN THAT NIGHT..

DIRECT - ALVIN MCMICHAEL BY SOL. WILLIAMS

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1 A. SOME -- A LOT OF PEOPLE.

2 Q. ALRIGHT, WHAT HAPPENED THAT NIGHT WHEN YOU WERE
3 THERE, WITH YOU, THAT YOU WERE INVOLVED IN?

4 A. I WAS IN A FIGHT WITH NARD DEASE.

5 Q. AND WHAT HAPPENED AS A RESULT OF THAT FIGHT?

6 A. WELL, I WAS AT THE HOUSE AND HE CAME TO THE HOUSE
7 LOOKING FOR ME, AND TOLD ME TO COME -- I WAS
8 SITTING IN THE HOUSE AND HE CAME AND ASKED WHETHER
9 I WAS IN THERE OR NOT. I WALKED TO THE DOOR.

10 Q. WHAT HAPPENED WHEN YOU WALKED TO THE DOOR?

11 A. HE SWUNG AT ME.

12 Q. AND THAT'S WHEN THE FIGHT HAPPENED?

13 A. YES, SIR.

14 Q. WAS JAMES OLIVER THERE AT THAT TIME?

15 A. NO, SIR.

16 Q. ALRIGHT. WHEN DID JAMES COME?

17 A. ABOUT FIFTEEN MINUTES AFTER -- FIFTEEN MINUTES.

18 Q. FIFTEEN MINUTES AFTER HE THREW THE PUNCH AT YOU?

19 A. YES, SIR.

20 Q. WHAT HAPPENED IN THE MEANTIME, UNTIL JAMES GOT
21 THERE?

22 A. WELL, HE CAME AT ME, HE CAME AT ME TWO TIMES.
23 AND HE RAN BEHIND THE HOUSE AND GOT A BLOCK, A
24 CEMENT BLOCK, AND CAME RUNNING AND TRIED TO HIT ME
25 WITH THE BLOCK, AND THAT'S WHEN JAMES TURNED THE

DIRECT - ALVIN MCMICHAEL BY SOL. WILLIAMS

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CORNER.

Q. ALRIGHT, WHAT HAPPENED WHEN JAMES TURNED THE CORNER?

A. I WENT TO HIS CAR AND STOPPED THE CAR, AND TOLD HIM TO GIVE ME A RIDE UP TOWN.

Q. WHAT DID JAMES SAY?

A. HE ASKED ME WHAT WAS GOING ON, AND BERNARD CAME RUNNING TO THE CAR WITH THE BLOCK.

Q. WHAT HAPPENED THEN?

A. HE TOLD ME, HE SAID, "MAN, GET OUT FROM AROUND MY CAR, I'VE GOT MY LITTLE NEPHEW AND MY BROTHER IN THE CAR, DON'T THROW THAT BLOCK AT MY CAR." AND HE THREW THE BLOCK DOWN AND THE BLOCK HIT THE SIDE OF THE CAR, AND THAT'S WHEN JAMES JUMPED OUT THE CAR AND THEY GOT INTO IT.

Q. ALRIGHT. AND WHAT HAPPENED WHEN THEY GOT INTO IT THEN, THAT'S JAMES AND BERNARD?

A. YEAH.

Q. WHAT HAPPENED THEN?

A. BERNARD -- MY COUSIN, TONYA, THEY GOT OUT THE CAR, SO I WAS IN -- I GOT OUT, WENT TO TRY TO BREAK THEM UP -- BUT BRUCE HAD RAN UP THERE AND BROKE THEM UP.

Q. BRUCE WHO?

A. HOUSER.

DIRECT - ALVIN MCMICHAEL BY SOL. WILLIAMS

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1 Q. BRUCE HOUSER BROKE UP THE FIGHT BETWEEN JAMES AND
2 BERNARD?

3 A. BERNARD.

4 Q. ALRIGHT, AND THEN WHAT HAPPENED?

5 A. JAMES LEFT AND WENT UP THE STREET A LITTLE BIT.
6 WENT UP THE STREET ABOUT -- FURTHER DOWN STAFFORD
7 STREET.

8 Q. DOWN TOWARD THE FLOOR ON OUR DRAWING?

9 A. YEAH.

10 Q. OKAY. HOW LONG WAS HE GONE. ABOUT TWO MINUTES -
11 - WELL, I'D SAY ABOUT SEVENTY SECONDS, AND TURNED
12 AROUND AND CAME BACK.

13 Q. HE TURNED AROUND AND CAME BACK?

14 A. I WAS ABOUT TO WALK OFF AND I SEE HIM COMING BACK,
15 AND I STAND UP A LITTLE BIT. AND HE CAME AND HE
16 SAID, "I DROPPED MY RING." AND I SAID, "WELL, I'LL
17 HELP YOU FIND IT." AND THE CAR DOOR WAS OPEN. THE
18 CAR WAS FACING THE DIRT ROAD.

19 Q. FACING OLIVER STREET?

20 A. YEAH. THE DRIVER'S SIDE. THE CAR WAS PARK OVER
21 A LITTLE BIT IN THE STREET, ABOUT, RIGHT UP IN
22 THERE ABOUT THE HOUSE RIGHT WHERE THAT LINE IS
23 RIGHT IN FRONT OF THE HOUSE.

4 Q. ALRIGHT, SIR.

5 A. HE SAID, "I DROPPED MY," HE SAID, "I DROPPED MY

DIRECT - ALVIN MCMICHAEL BY SOL. WILLIAMS

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1 RING OUT THERE." SO, I WENT, SO I WENT OVER THERE
2 AND LOOK. I SAID, "MAN, IT'S KIND OF DARK," I
3 SAID, "WE'VE GOT TO FIND A LIGHT OR SOMETHING."
4 AND ABOUT THAT TIME BRUCE CAME UP AND SAID
5 SOMETHING ABOUT A GUN.

6 Q. WHO WAS HE TALKING TO?

7 A. HE ASKED ME ABOUT A GUN. I SAID, "MAN, I DON'T
8 KNOW NOTHING ABOUT NO GUN, MAN." AND HE WALKED
9 UP TO THE CAR DOOR. AND JAMES, JAMES RAN BACK AND
10 SAID, "MAN, YOU AIN'T LOOKING IN MY CAR."

11 Q. NOW, WHICH CAR DOOR DID BRUCE GO TO?

12 A. TO THE PASSENGER SIDE -- DRIVER'S SIDE.

13 Q. ALRIGHT. AND JAMES RAN OVER TO WHERE BRUCE WAS?

14 A. YEAH.

15 Q. AND THEN WHAT HAPPENED?

16 A. THEY WAS TALKING. AND BRUCE SAID, "MAN, I'M
17 LOOKING FOR MY GUN." AND JAMES SAID, "MAN, THERE
18 AIN'T NO GUN IN HERE." AND THAT'S WHEN HE SHOT
19 HIM.

20 Q. WHO SHOT HIM?

21 A. BRUCE SHOT HIM.

22 Q. BRUCE SHOT JAMES OLIVER?

23 A. YEAH.

24 Q. WHEN DID YOU FIRST SEE THE PISTOL -- WHAT DID HE
25 SHOOT HIM WITH?

DIRECT - ALVIN MCMICHAEL BY SOL. WILLIAMS

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1 A. I KNOW IT WAS A GUN, IT WASN'T NO FIRECRACKER, IT
2 WASN'T NO CAP GUN.

3 Q. BUT IT WASN'T A SHOT GUN, IT WAS A PISTOL?

4 A. A LITTLE PISTOL.

5 Q. WHEN DID YOU FIRST SEE THE PISTOL?

6 A. WHEN HE CAME BY, WHEN HE CLICKED IT.

7 Q. WHEN HE CAME BY WHERE?

8 A. WHEN HE WALKED PAST ME AND MY SISTER.

9 Q. WHERE WERE Y'ALL STANDING?

10 A. ABOUT, ABOUT RIGHT UP IN FRONT OF THE HOUSE, ON THE
11 SIDE A LITTLE BIT, BY THE CAR.

12 Q. ALRIGHT, AND HE WALKED PAST Y'ALL WITH THE PISTOL
13 IN HIS HAND?

14 A. YEAH.

15 Q. AND THEN, WHAT WERE THE WORDS THAT THEY SAID TO
16 EACH OTHER BY THE CAR?

17 A. HE SAID, "YOU AIN'T LOOKING IN MY CAR."

18 Q. AND WHAT DID BRUCE SAY?

19 A. I AIN'T HEARD. THE ONLY THING I HEARD WAS THE GUN
20 SHOTS.

21 Q. DID YOU SEE WHO FIRED THE SHOTS?

22 A. YEAH.

23 Q. WHO FIRED THEM?

24 A. BRUCE HOUSER.

25 Q. AND WAS ANYBODY ELSE AROUND THERE THAT FIRED ANY

DIRECT - ALVIN MCMICHAEL BY SOL. WILLIAMS

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1 SHOTS?

2 A. NO, I AIN'T SEEN NOBODY, UNLESS IT WAS AN INVISIBLE
3 MAN OR SOMETHING.

4 Q. ALRIGHT, AND WHAT HAPPENED WHEN JAMES GOT SHOT,
5 WHAT DID JAMES DO?

6 A. HE RAN FROM THE DRIVER'S SIDE AROUND TO THE
7 PASSENGER SIDE.

8 Q. DID HE GET IN THE CAR?

9 A. YES. AND I SHUT THE DOOR.

10 Q. YOU SHUT THE DOOR?

11 A. YEAH, I WALKED UP AND SHUT THE DOOR, ABOUT THAT
12 TIME MY COUSIN HAD REACHED ACROSS THERE.

13 Q. YOUR COUSIN WAS LATONYA THAT WAS GOING TO DRIVE THE
14 CAR?

15 A. YES.

16 Q. AND THEY LEFT?

17 A. YEAH.

18 Q. DID YOU SEE ANY OF THEM AGAIN THAT NIGHT?

19 A. NO.

20 Q. DID -- WHAT DID BRUCE, WHERE DID HE GO?

21 A. I DON'T KNOW.

22 Q. YOU DIDN'T SEE HIM AGAIN THAT NIGHT?

23 A. HUH UH.

24 Q. ALRIGHT, SIR, PLEASE ANSWER ANY QUESTIONS MR. GROSE
25 MIGHT HAVE.

CROSS - ALVIN MCMICHAEL BY MR. GROSE

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CROSS-EXAMINATION

BY MR. GROSE:

1 Q. WHEN YOU SAY THAT YOU LIVED ALL YOUR LIFE IN NORTH,
2 YOU'RE NOT COUNTING THE PART YOU LIVED IN PRISON,
3 RIGHT?

4 A. THAT AIN'T GOT NOTHING TO DO WITH THAT. THE PAST
5 AIN'T GOT NOTHING TO DO WITH THAT, THIS IS THE
6 PRESENT, IT AIN'T GOT NOTHING TO DO WITH THAT. I
7 WAS SUBPOENAED, I AIN'T CAME HERE FOR THAT. THAT
8 AIN'T GOT NOTHING TO DO WITH THAT.

9 Q. NOW, YOU AND BERNARD GOT IN A FIGHT THAT NIGHT,
10 DIDN'T YOU?

11 A. YES, SIR.

12 Q. AND NARD -- BERNARD GOES BY NARD, RIGHT, THAT'S HIS
13 NICKNAME?

14 A. THAT'S ALL I KNOW HIM BY, NARD DEASE, WHATEVER.

15 Q. OKAY. AND YOU AND HE GOT INTO A PRETTY ROUGH
16 FIGHT, DIDN'T YOU?

17 A. YEAH. HE SCARRED MY EYE UP, SCRATCHED ME IN MY EYE.

18 Q. HE DID?

19 A. YEAH.

20 Q. AND HE THREW SOME BLOCKS AT YOU, DIDN'T HE?

21 A. HE DIDN'T NEVER HIT ME.

22 Q. DID HE THROW SOME BRICKS AT YOU?

23 A. YEAH.
24
25

CROSS - ALVIN MCMICHAEL BY MR. GROSE

219

1 Q. AND YOU THREW SOME BRICKS AT NARD, DIDN'T YOU?

2 A. NO, I AIN'T THROWN NOTHING AT HIM.

3 Q. WHY DO YOU THINK BLONDELLE WOULD TELL US THAT YOU
4 THREW SOME BRICKS AT NARD?

5 A. I CAN'T, THE ONLY THING I WAS TRYING TO KEEP THAT
6 MAN FROM TRYING TO HURT ME.

7 Q. UH HUH. OKAY. YOU WEREN'T TRYING TO HURT HIM AT
8 ALL?

9 A. I WAS TRYING TO DEFEND MYSELF.

10 Q. WERE YOU TRYING TO HURT THAT COP WHEN YOU RESISTED
11 ARREST?

12 SOLICITOR WILLIAMS: OBJECTION, YOUR
13 HONOR, THAT'S NOT ---

14 THE COURT: SUSTAINED. THAT DON'T
15 HAVE A THING IN THE WORLD TO DO WITH IT. HE WANTS YOU
16 TO ABIDE BY THE RULES.

17 MR. GROSE: THANK YOU, YOUR HONOR.

18 Q. NOW, YOU TRIED TO GET INTO, YOU TRIED TO GET INTO
19 JAMES'S CAR, DIDN'T YOU?

20 A. YEAH...

21 Q. YOU DID?

22 A. I GOT IN THE CAR.

23 Q. YOU GOT IN THE CAR. DID YOU GET IN THE BACK SEAT?

24 A. YEAH.

25 Q. A TWO DOOR CAR, RIGHT?

CROSS - ALVIN MCMICHAEL BY MR. GROSE

220

1 A. YEAH.

2 Q. OKAY. AND NARD WAS TRYING TO GET IN AFTER YOU,
3 WASN'T HE?

4 A. JAMES STOPPED HIM. HE HAD A BLOCK AND HE WAS TRYING
5 TO THROW THE BLOCK. YEAH, HE WAS TRYING TO THROW
6 THE BLOCK IN THERE.

7 Q. ALRIGHT. JAMES THREW NARD DOWN ON THE GROUND,
8 DIDN'T HE?

9 A. HE WALKED ACROSS THE STREET. HE WALKED OVER TO THE
10 GRASS PART RIGHT THERE. AND THEY GOT INTO IT RIGHT
11 THERE.

12 Q. OKAY.

13 A. HE PUSHED HIS HAND IN HIS FACE, AND THAT'S WHEN HE
14 GRABBED HIM.

15 Q. AND SO, YOU KNOW, JAMES AND BERNARD KIND OF MIXED
16 IT UP A LITTLE BIT, THEN, DIDN'T THEY?

17 A. WELL, THEY HAD A DISPUTE BUT THE MAN WAS -- THE
18 POINT IS, HE DIDN'T WANT HIM TO THROW THE BLOCK IN
19 THE CAR.

20 Q. OKAY. WELL, I CAN UNDERSTAND THAT, BUT ---

21 A. THE KIDS WAS IN THE BACK OF THE CAR AND THE GLASS
22 WOULD SPLATTER, YOU COULD BLIND SOMEBODY LIKE THAT.

23 Q. BUT THEY HAD MORE THAN A DISPUTE, THEY, I MEAN,
24 THEY GOT INTO IT PHYSICALLY, DIDN'T THEY?

25 A. YEAH, BUT IT WASN'T NO BRUISING OR NO, YOU KNOW,

1 AND THEN JAMES GRABBED ME AND PUSHED ME AND PUSHED
2 ME ON THE GROUND. AND THEN TINA SAID, "GET OUT OF
3 THE YARD." THAT'S WHAT TINA SAY, "GET OUT OF THE
4 YARD." AND THAT'S WHEN I GOT IN THE CAR. AND
5 JAMES PULL OFF FIRST. HE LEFT BEFORE I DID, AND
6 THEN I LEFT.

7 Q. AND WHERE DID YOU GO WHEN YOU LEFT THERE?

8 A. I WENT TO THE, A HOUSE ON OLIVER ROAD, A TRAILER, -
9 --

10 REPORTER: WHERE?

11 A. THE MACK RESIDENCE, LONNIE MACK.

12 SOLICITOR WILLIAMS: HE SAID A HOUSE
13 ON OLIVER ROAD.

14 Q. AND WERE YOU THERE WHEN JAMES CAME BACK A FEW
15 MINUTES LATER?

16 A. NO, SIR.

17 Q. WHEN DID YOU FIND OUT THAT THERE HAD BEEN A
18 SHOOTING?

19 A. WHEN I CALL -- I DIDN'T KNOW HE WAS SHOT UNTIL MY
20 MOM HAD PAGE ME. AND I LEFT AND, ME AND ONE OF MY
21 FRIENDS, AND WE WENT TO BLACKVILLE, AND SHE KEPT
22 PAGING ME AND PAGING ME, AND THAT'S WHEN I CALLED
23 BACK, CALLED HER BACK, AND SHE SAID, "DO YOU KNOW
24 ANYTHING ABOUT SOMEBODY GOT SHOT DOWN THERE, A BOY
25 GOT SHOT?" AND THAT'S WHEN I WENT BACK. AND I

CERTIFICATE OF COUNSEL FOR RESPONDENT

Counsel for respondent certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Appeal from Orangeburg County

Luke N. Brown, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRUCE JEROME HOUSER,

APPELLANT.

FINAL BRIEF OF APPELLANT

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98-140

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STATEMENT OF ISSUE ON APPEAL

The judge erred in refusing to instruct the jury on voluntary manslaughter, since there was evidence of sufficient legal provocation by the victim and that appellant had acted in the heat of passion.

STATEMENT OF FACTS

On March 31, 1997, an Orangeburg County grand jury indicted Bruce Houser for murdering his friend James Oliver, III, by shooting him several times and possession of a firearm during the commission of a violent crime. Judge Luke N. Brown, Jr., presided at appellant's jury trial on August 5-7, 1997. The jury found appellant guilty of both charges and the judge imposed concurrent sentences of life imprisonment and five years.

ARGUMENT

The judge erred in refusing to instruct the jury on voluntary manslaughter, since there was evidence of sufficient legal provocation by the victim and that appellant had acted in the heat of passion.

Bruce Houser and James Oliver had known each other all their lives. ROA p. 4, lines 17-22. They were laughing and kidding shortly before appellant shot Oliver to death. ROA p. 4, line 23 - p. 5, line 16. Only moments before the shooting, appellant had intervened in a fight on behalf of his friend. ROA p. 10, lines 4-19.

Oliver's girlfriend testified that appellant shot the victim after he pushed appellant. ROA p. 10, line 20 - p. 11, line 14. Oliver's brother testified that the victim "shoved him [appellant] off and he shot him." ROA p. 18, line 15 - p. 20, line 5. A friend of both appellant and Oliver's who saw appellant after the shooting testified that he was "crying" and "he couldn't talk." ROA p. 25, line 22 - p. 26, line 16. Eventually, he calmed down and told her that Oliver had started "to push him and shove him and that upset him... and he shot him." ROA p. 26, line 17 - p. 27, line 10.

A pathologist testified that the victim had suffered four separate wounds. ROA p. 30, lines 4-17. All shots had been fired from a distance of at least twelve inches. ROA p. 34, lines 9-21.

Defense counsel requested an instruction on voluntary manslaughter "based on the evidence... the deceased had pushed the defendant." ROA p. 35, line 18 - p. 36, line 25. The judge agreed with the solicitor that "a push is not reasonable provocation." ROA p. 37, lines 1-11. He denied the request to charge and submitted the case to the jury as murder or

nothing. ROA p. 37, lines 20-22; ROA p. 38, line 19 - p. 50, line 22. Defense counsel took exception to the omission of voluntary manslaughter from the final charge. ROA p. 50, line 23 - p. 51, line 10. The judge stated, "[H]e's guilty of murder or not guilty." ROA p. 51, lines 11-15.

The judge's final instructions to the jury are determined by the evidence presented at trial. State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989). A judge commits reversible error when he refuses a requested instruction on an issue raised by the indictment and the evidence. State v. Robertson, 191 S.C. 509, 5 S.E.2d 285 (1939). A defendant is entitled to a charge on a lesser offense if there is any evidence in the record from which it could reasonably be inferred that he is guilty of that offense. State v. Taylor, 261 S.C. 437, 200 S.E.2d 387 (1973).

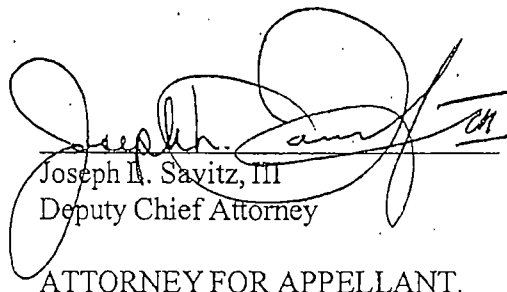
Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. State v. Martin, 216 S.C. 219, 57 S.E.2d 55 (1949). "[T]o warrant the court in eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." State v. Gardner, 219 S.C. 97, 64 S.E.2d 130, 134 (1951).

"In order to reduce a homicide to manslaughter, the provocation must be adequate, or such is the law deemed sufficient to produce the degree of passion required to mitigate the crime, that is to say, such as will negate the element of malice." 40 CJS Homicide Section 81. Heat of passion occurs when emotion overwhelms reason, although "it need not dethrone reason entirely, or shut out knowledge and volition." State v. Davis, 50 S.C. 405, 27 S.E. 905, 911 (1897).

Here, the state's evidence was that appellant shot Oliver in anger after he was pushed and shoved. Such facts have always supported an instruction on voluntary manslaughter in a murder prosecution. See, for example, State v. Lowry, 315 S.C. 396, 334 S.E.2d 272 (1993), State v. Davis, 278 S.C. 544, 298 S.E.2d 778 (1983), and State v. Gallman, 79 S.C. 229, 60 S.E. 682 (1908). It is for the jury, not the judge or solicitor, to determine whether a push is reasonable provocation. In addition, there was no evidence of premeditation, nor of malice apart from the use of a firearm, and the victim was appellant's life-long friend, all circumstances indicative of voluntary manslaughter.

This evidence mandated a charge on voluntary manslaughter. The Court should reverse appellant's conviction for murder and remand for a new trial.

Respectfully submitted,


Joseph L. Savitz, III
Deputy Chief Attorney
ATTORNEY FOR APPELLANT.

This 13th day of July, 1998.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 210(b), SCACR.

July 13, 1998


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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Luke N. Brown, Jr., Judge

THE STATE,

RESPONDENT,

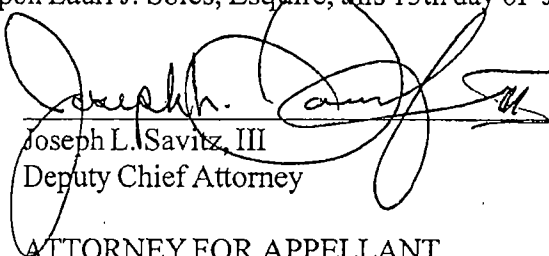
V.

BRUCE JEROME HOUSER,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Lauri J. Soles, Esquire, this 13th day of July, 1998.


Joseph L. Savitz, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 13th day of July, 1998.

Karen D. Elliott (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007

Original 91
7/25/98

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Orangeburg County

The Honorable Luke N. Brown, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

BRUCE JEROME HOUSER,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The judge erred in refusing to instruct the jury on voluntary manslaughter, since there was evidence of sufficient legal provocation by the victim that appellant had acted in the heat of passion.

STATEMENT OF THE CASE

Appellant, Bruce Jerome Houser, is presently confined at the Ridgeland Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Appellant was indicted at the March, 1997, and June, 1997, terms of the Court of General Sessions for Orangeburg County for murder and possession of a firearm during the commission of a violent crime. (Indictment Nos. 97-GS-38-0467, 0874):

On August 5, 1997, Appellant went to trial before a jury and the Honorable Luke N. Brown. Charles Grose, Esquire, represented Appellant at trial. Deputy Solicitor Jimmy Williams represented the State. On August 7, 1997, the jury found Appellant guilty as charged. (R. p. 52, lines 1-8). Judge Brown sentenced Appellant to life imprisonment on the murder conviction and to five (5) years, concurrent, on the possession of a firearm charge. (R. p. 53, lines 6-17). Appellant filed a Notice of Appeal on August 7, 1997.

STATEMENT OF RELEVANT FACTS

On the evening of February 13, 1997, James Oliver and his girlfriend, Latonya Way, dropped his younger brother and young nephew off at a basketball game at North High School. (R. p. 3, lines 9-20; p. 16, lines 19-21). After leaving the school, James and Latonya went to Appellant's house, talked with him for a while and then went to the mall in Orangeburg, so James could buy Latonya a Valentine's present. (R. p. 3, line 22 - p. 5, line 16). Upon returning to North and retrieving the children, James said he wanted to go talk to Appellant for a little while longer. They found Appellant on Stafford Avenue, standing around with a group of their friends and acquaintances, two of whom were arguing with each other. (R. p. 6, lines 11-17).

Latonya Way testified that Alvin McMichael, known as Cojack, and Bernard Dease were arguing when they pulled up. (R. p. 9, lines 21-22). Cojack began running around their car with Bernard chasing him, and tried to get in the car. James told him no, but Cojack shoved James and jumped in the backseat of the car with the children anyway. Bernard then punched Cojack. (R. p. 9, line 23 - p. 10, line 8). James got out of the car and told Bernard not to hit Cojack because the children were in the backseat. James and Bernard "grabbed each other" and Latonya, Appellant, and Cojack pulled them apart. (R. p. 10, lines 11-19). James and Latonya decided to leave, but before they got very far, James noticed his ring was missing, so he turned around to find it. (R. p. 10, line 21 - p. 11, line 2). After unsuccessfully looking for the ring, they started to leave when Appellant walked up with a gun in his hand. James told him to "go on with the gun" and "elbow[ed]" Appellant, who stumbled back and then "just start[ed] shooting." James asked Appellant why he was shooting him, ran around to the

passenger side of the car, and Latonya drove him to the hospital, where he died later that night. (R. p. 11, lines 3-25).

Jimarcus Oliver, James' eight-year-old nephew, testified that he was sticking his head out the same side of the car that James and Appellant were on and saw Appellant shoot his uncle. He testified that there was no one else there with a pistol. (Supp. R. p. 1, line 3 - p. 4, line 3). Troy Oliver, James' thirteen-year-old brother, testified that, when they initially pulled up on Stafford Street, Cojack and Bernard were walking around the car arguing. (R. p. 18, lines 1-4). Cojack asked James to let him in the car, James said no, but Cojack tried to get in anyway. (R. p. 18, lines 6-8). Bernard tried to hit Cojack and almost hit James' nephew, so James jumped out of the car and began fighting with Bernard to keep him from getting into the car. (R. p. 18, lines 9-18). Appellant came over and broke it up and James, Latonya, Jimarcus and Troy left. A little way down the road, James realized he had lost his ring, so they turned back around to go look for it. (R. p. 18, line 20 - p. 19, line 2). As they were getting ready to leave again, Appellant walked up and asked James if he could "check his car to see if his gun was in there." James said: "Now, go ahead, man, now, you know I ain't got your gun." Appellant wanted to check anyway, and James "shoved him off and [Appellant] shot him." (R. p. 19, lines 8-15). Troy testified that Appellant had the gun in his hand when he walked up, that his brother did not have any weapon, and that there had not been any argument between the two. (R. p. 19, lines 16-24). He did not see anyone else on the side of the car where James and Appellant were and he did not see anyone else there that night with a weapon of any kind. (R. p. 20, lines 16-25).

Blondelle McMichael, Cojack's sister, was also present when Appellant shot James. (Supp. R. p. 5, lines 10-13). She testified that, when James and Latonya drove up, Appellant "hollered them down" (Supp. R. p. 6, line 23 - p. 7, line 10) and Cojack and Bernard started running around the car throwing bricks at one another. (Supp. R. p. 7, line 24 - R. p. 21, line 1). When Cojack jumped in the car, James got out of the car and told Bernard that he wasn't going to have any fighting because he had his little brother and nephew in the car. (R. p. 21, lines 15-23). James and Bernard began to "tussle" and Appellant and Latonya broke them up. (R. p. 22, lines 3-11). James and Latonya got in the car and left, but later returned to look for his ring. (R. p. 22, line 12 - p. 23, line 5). She testified that, before James and Latonya returned, Appellant had been "fussing about a gun" and kept repeating: "wait until my other shit come back." (Supp. R. p. 8, line 5 - p. 9, line 4). When James came back, Appellant approached the car and James said: "Man, there ain't no gun in here." (Supp. R. p. 10, lines 9-12). Appellant shoved James, James shoved him back, and Appellant put the gun in James' chest and started shooting. (Supp. R. p. 10, lines 12-15; p. 11, lines 15-19). She testified that Appellant was the only person out there with a gun that night. (Supp. R. p. 11, lines 24-25).

Alvin McMichael, otherwise known as Cojack, testified that, on the night James was killed, he and Bernard had been in a fight. (Supp. R. p. 12, lines 2-16). Shortly after the fight started, James pulled up as Bernard was chasing Cojack with a cement brick. (Supp. R. p. 12, line 14 - p. 13, line 1). When James arrived, Cojack stopped the car and asked James for a ride and got in the car. (Supp. R. p. 13, lines 2-5; p. 19, line 18 - p. 20, line 1). At that point, Bernard came running up to the car with the cement block and James said: "Man, get out from around my car, I've got my little nephew and my brother in the car, don't throw that brick

at my car." (Supp. R. p. 13, lines 10-12). James and Bernard "got into it" and Appellant broke them up. (Supp. R. p. 13, line 12 - p. 14, line 3). James left, but returned shortly thereafter to look for his ring. (Supp. R. p. 14, lines 5-18). Appellant approached the car and James said: "Man, there ain't no gun in here" and Appellant shot James. (Supp. R. p. 15, lines 8-23). No one else fired any shots. (Supp. R. p. 16, line 25 - p. 17, line 3). Appellant had the pistol in his hand when he walked by Cojack to approach the car. (Supp. R. p. 16, lines 5-14).¹

Ora Madison, a life-long friend of Appellant, testified that between 9:00 and 9:30 the night of the murder, Appellant knocked on her door. (R. p. 25, lines 9-18). At first, Appellant didn't say anything, but then began crying and told her that he had shot someone. (R. p. 25, line 22 - p. 26, line 15). He told her that he asked James if he could look for his gun in James' car and that James had pushed him and shoved him, upsetting him so much that he shot James in the leg and in the arm. (R. p. 27, lines 1-11).

Dr. Sandra Conradi, the forensic pathologist who performed the autopsy on James Oliver, testified that James had sustained four separate gunshot wounds: one entered the right shoulder (R. p. 30, lines 15-21); two entered the left shoulder, one of which caused "a lot of damage to the left lung" (R. p. 30, line 21 - p. 31, line 11); and one entered the back and caused "a lot of bleeding inside the abdomen." (R. p. 31, lines 11-23). The cause of death was internal hemorrhage, secondary to gun shot wounds to the chest and to the abdominal wound entering the back. (R. p. 30, lines 1-3).

¹ Bernard Dease also testified at Appellant's trial; however, he testified that he was not there when James returned and Appellant shot him. (Supp. R. p. 21, lines 14-16).

ARGUMENTS

I.

The trial court did not commit reversible error in refusing to give a voluntary manslaughter instruction because the evidence presented at Appellant's trial did not establish sudden heat of passion upon sufficient legal provocation.

At the conclusion of the evidence at Appellant's trial, defense counsel requested that the trial judge instruct the jury as to voluntary manslaughter based on testimony that the victim had pushed the defendant. (R. p. 35, lines 19-23; p. 36, line 24 - p. 37, line 24). The trial judge denied the motion, stating: "I just think it's yes or no. Is it murder or not?" (R. p. 37, lines 20-22). Counsel renewed his motion after the trial judge charged the jury. (R. p. 51, lines 9-10). On appeal, Appellant claims the testimony that the victim had pushed him shortly before Appellant shot the victim four times, once in the back, justifies a voluntary manslaughter charge. A review of the evidence in this case, however, belies Appellant's position.

It is well-settled that the law to be charged is determined from the evidence adduced at trial. Where the evidence presented at a murder trial does not support a conviction for the lesser offense of voluntary manslaughter, the trial judge is not required to charge the jury as to manslaughter. State v. Damon, 285 S.C. 125, 328 S.E.2d 628 (1985). In fact, it is improper to do so. Id. Under South Carolina law, voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. State v. Rogers, 320 S. C. 520, 523, 466 S.E.2d 360, 362 (1996); State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993) (citing State v. Davis, 278 S.C. 544, 298 S.E.2d 778 (1983)). The absence of either the sudden heat of passion or sufficient legal provocation invalidates the requirement for a voluntary manslaughter charge. State v. Tyson, 283 S.C. 375, 379, 323

S.E.2d 770, 772 (1984). Both elements must be present at the time of the killing. State v. Byrd, ___ S.C. ___, 474 S.E.2d 430 (1996). In the case at hand, the testimony presented at Appellant's trial, even when viewed in the light most favorable to Appellant, fails to establish sudden heat of passion based on sufficient legal provocation; thus, a voluntary manslaughter charge would have been improper.

Sudden heat of passion based on sufficient legal provocation has been defined as actions that would "naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." Byrd, ___ S.C. at ___, 474 S.E.2d at 432 (quoting State v. Davis, 50 S.C. 405, 423-24, 27 S.E.2d 905, 911 (1897)). In the case at hand, viewing the evidence in the light most favorable to Appellant, we must assume that James pushed or shoved Appellant as Appellant attempted to get in James' car with James' young brother and nephew to "look for a gun." Even under this assumption, however, Appellant cannot show that the victim's actions would deem a voluntary manslaughter instruction necessary. The testimony is undisputed that the victim was unarmed and that Appellant approached the victim with a gun in his hand. Further, there is no testimony that James threatened Appellant in any way.

In State v. Tucker, 324 S.C. 155, ___, 278 S.E.2d 260, 268-69 (1996), there was testimony that the victim in that case tried to grab the defendant's gun. This Court, however, determined that a voluntary manslaughter instruction was not warranted in that case where the victim's actions merely indicated that she was trying to defend herself. Similarly, in the case at hand, it is clear that James was simply defending himself and the children in the car from

Appellant, who was brandishing a pistol. Further, even if the first shot fired by Appellant were somehow justified under the definition of voluntary manslaughter, clearly the additional three shots, one of which was in the victim's back, went well beyond any shooting that would justify a voluntary manslaughter instruction. The trial court was within its discretion in refusing to give a voluntary manslaughter charge.

CONCLUSION

For the foregoing reasons, this Court should affirm Appellant's murder conviction.

Respectfully submitted,

CHARLES M. CONDON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

LAURI J. SOLES
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

WALTER M. BAILEY, JR.
Solicitor, 140 North Main Street
Suite 102
Summerville, South Carolina 29483
(803) 871-2640

BY:


Donald J. Zelenka

ATTORNEYS FOR RESPONDENT

June 25, 1998

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Orangeburg County

The Honorable Luke N. Brown, Jr., Circuit Court Judge

THE STATE,

Respondent,

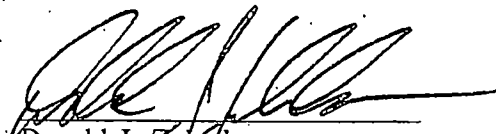
vs.

BRUCE JEROME HOUSER,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief complies with SCAR 210(b).


Donald J. Zelenka
Assistant Deputy Attorney General
Attorney for Respondent

June 25, 1998

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Orangeburg County

The Honorable Luke N. Brown, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

BRUCE JEROME HOUSER,

Appellant.

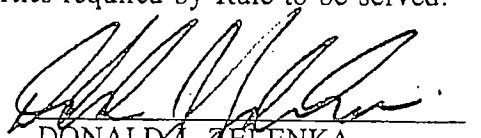
PROOF OF SERVICE

I, Donald J. Zelenka, Counsel for Respondent, certify that I have this date served the *Final Brief of Respondent*, dated June 25, 1998, on Appellant by depositing three (3) copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record:

Joseph L. Savitz, III
Deputy Chief Attorney
South Carolina Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, South Carolina 29201

I further certify that I have served all parties required by Rule to be served.

This 25th day of June, 1998.


DONALD J. ZELENKA
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State,

Respondent,

v.

Bruce Jerome Houser,

Appellant.

Appeal From Orangeburg County
Luke N. Brown, Jr., Special Circuit Court Judge

Memorandum Opinion No. 99-MO-005
Heard January 5, 1999 - Filed January 13, 1999

AFFIRMED

Deputy Chief Attorney Joseph L. Savitz, III, of South
Carolina Office of Appellate Defense, of Columbia,
for appellant.

Attorney General Charles M. Condon, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Donald J. Zelenka, and
Assistant Attorney General Lauri J. Soles, all of
Columbia; and Solicitor Walter M. Bailey, Jr., of
Summerville, for respondent.

STATE v. HOUSER

PER CURIAM: Affirmed pursuant to Rule 220(b) and the following authority: State v. Ivey, 325 S.C. 137, 481 S.E.2d 125 (1997).

Ernest A. Lanning Jr. C.J.

James E. Moore A.J.

John H. Waller Jr. A.J.

Clayton H. ... A.J.

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
BRUCE JEROME HOUSER,)
APPLICANT,)
VS.)
STATE OF SOUTH CAROLINA,)
RESPONDENTS.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

INDICTMENT NUMBER: 97-GS-38-467 & 874

PCR CASE NO.: 2000 CP 38-119

APPLICATION FOR POST CONVICTION RELIEF

1. Place of detention:
Applicant is presently confined at Ridgeland Correctional Institution
2. Name and location of Court which imposed sentence:
Orangeburg County Courthouse, Orangeburg, South Carolina
3. The indictment number or numbers (if known) upon which the offense or offenses for which the sentence was imposed:
97-GS-38-467; Murder
97-GS-38-874; Possession of Firearm During Commission of Certain Crimes
4. The date upon which sentence was imposed and the terms of the sentence:
August 7, 1997; Balance of natural life
August 7, 1997; five years
5. Check whether a finding of guilty was made
(a) after a plea of guilty _____
(b) after a plea of not guilty XX
(c) after a plea of nolo contendere
6. Did you appeal from the judgement of conviction and the imposition of sentence?
Yes
7. If you answered "yes" to (6) list
(a) the name of each court to which you appealed:
South Carolina Supreme Court
(b) the result in each such Court to which you appealed:
As a result the appeal was denied
(c) the date of each such result:

FILED FOR RECORD
LISA W. HIZELL
CLERK OF COURT
ORANGEBURG, S.C.
00 FEB -3 PM 2:47

ATTEST: TRUE COPY

Lisa W. Mizell
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

The result of the appeal was final on February 5, 1999.

(d) if known, citations of any written opinion or orders entered pursuant to such results:
Opinion Number: 99-MO-005

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:

Applicant bases allegations that he is being held in custody unlawfully due to ineffective assistance of trial counsel.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Applicant's trial counsel did not develop enough evidence at trial to obtain a
 (b) jury charge on voluntary manslaughter. Court therefore, refused to charge
 (c) voluntary manslaughter and Applicant was convicted of murder.

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? No
 (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? 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:

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

(c) the disposition thereof:

(d) the date of each such disposition:

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

13. Has any ground set forth in (9) 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:

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

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) Applicant was waiting on results of his appeal

(b)

(c)

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

(a) your arraignment and plea? N/A

(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

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

Charles Gross, Esquire, Orangeburg County Public Defender

Joseph L. Savitz, III, Esquire, of the SC Office of Appellate Defense

Carl B. Grant, Esquire, PCR Attorney

18. State clearly the relief you seek in filing this application.

Reversal of Conviction and sentence and release from unlawful imprisonment and a new trial

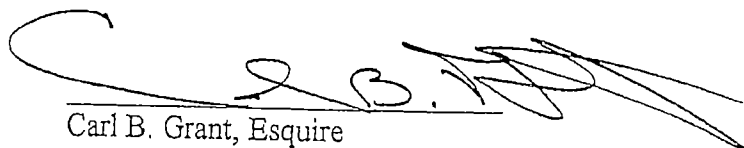
19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

VERIFICATION

I, Carl B. Grant, 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.


Carl B. Grant, Esquire

Sworn to and subscribed before me this 3rd
day of February, 192000.

Michelle J. Latta
Notary Public for the State of South Carolina

My Commission Expires: Sept 22, 2008

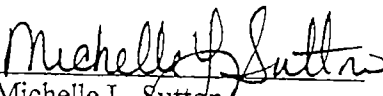
STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
BRUCE JEROME HOUSER,)
APPLICANT,)
STATE OF SOUTH CAROLINA,)
RESPONDENTS.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
INDICTMENT NUMBER: 97-GS-38-467 & 874
PCR CASE NO: 2000-CP-38-119

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have served the Applicant's PCR Application on the Office of the Attorney General, PCR Section, who is the attorney for the Respondent above captioned, by hand delivery the same to the addressee listed below:

Office of the Attorney General
Post Conviction Relief Section
1000 Assembly Street, Suite 501
Columbia, SC 29211


Michelle L. Sutton

February 3, 2000.

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Bruce Jerome Houser,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

00-CP-38-119

RETURN

The Respondent, making its Return to the Application for Post-Conviction Relief dated February 3, 2000, would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Clerk of Court for Orangeburg County. The Applicant was indicted at the November 1997 term of the Dorchester County Grand Jury for murder (97-GS-38-0467); possession of firearm during commission of certain crimes (97-GS-38-0874). He was represented by Charles Gross, Esquire. On August 7, 1997, the Applicant proceeded to trial and was convicted as charged. He was sentenced by the Honorable Luke N. Brown to confinement for life.

Applicant timely filed notice of intent to appeal and an appeal was perfected on his behalf by the South Carolina Office of Appellate Defense. Following the filing of briefs by both sides, the South Carolina Supreme Court affirmed Applicant's sentence. State v. Houser, 99-MO-005 (S.C. Sup. Ct. filed January 13, 1999).

Attached herewith and incorporated herein by reference are the Orangeburg County Clerk of Court's records regarding the subject conviction; the Applicant's records from the South Carolina Department of Corrections; the trial transcript; the appellate records, and the application for post-conviction relief.

II.

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

1. Ineffective assistance of trial counsel.

III.

In his application, the Applicant claims he was denied effective assistance of trial counsel. The Respondent submits this allegation has no merit. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996).

To prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546,

419 S.E.2d 778 (1992). The Respondent submits the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, supra; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Each and every allegation contained within the Application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

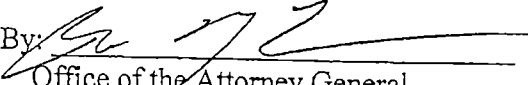
CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

G. ROBERT DeLOACH, III
Assistant Deputy Attorney General

WM. BRYAN DUKES
Assistant Attorney General

ATTORNEYS FOR RESPONDENT

By: 
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

November 30, 2000

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2000-CP-38-119

Bruce Jerome Houser,
S.C.D.C. #253356.

Applicant.

ORDER OF DISMISSAL

a. Ineffective Assistance of Counsel

State of South Carolina.

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 3, 2000. The Respondent (the State) made its Return on November 30, 2000, requesting that an evidentiary hearing be held. An evidentiary hearing was convened at the Carl Knight Law Complex Tuesday, October 30, 2001. The Applicant was present in court and represented by Carl B. Grant, Esquire. Elizabeth R. McMahon, Esquire, of the South Carolina Office of the Attorney General represented the State.

The Court had before it the Orangeburg County Clerk of Court records regarding the subject convictions; the Applicant's records from the South Carolina Department of Corrections; the application for Post-Conviction relief; the State's return; the appellate court records; and the trial transcript.

I. PROCEDURAL BACKGROUND

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg

County Clerk of Court. The Applicant was indicted at the November 1997 term of the Orangeburg County Grand Jury for murder [1997-GS-38-0467] and possession of firearm during commission of certain crimes [97-GS-38-0874]. He was represented by Charles Grose, Esquire. On August 7, 1997, the Applicant proceeded to trial and was convicted as indicted. The Honorable Luke N. Brown sentenced the Applicant to confinement for life.

Applicant timely filed notice of intent to appeal and an appeal was perfected on the Applicant's behalf by the South Carolina Office of Appellate Defense. The South Carolina Supreme Court affirmed Applicant's sentence. State v. Houser, Op. No. 99-MO-005 (S.C. Sup. Ct. filed January 13, 1999).

II ALLEGATION

The Applicant alleged ineffective assistance of counsel for "[n]ot developing enough evidence at trial to obtain a jury charge on voluntary manslaughter."

Charles Grose, Esquire, the Applicant's trial counsel, and Bruce J. Houser, the Applicant, testified at the PCR hearing.

III APPLICABLE LAW

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 747 (1999). For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective

performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 323 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

IV SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

The Applicant claimed that trial counsel did not sufficiently develop the evidence to warrant a voluntary manslaughter charge. Therefore, the trial court denied the Applicant's request. The Applicant stated the victim pushed the Applicant and he fell. The Applicant claimed he was in fear for his life. The Applicant did not tell trial counsel he possessed the gun.

Trial counsel testified that the Applicant told him he did not shoot the victim. The Applicant told trial counsel that he, the Applicant, was near the victim, was pushed, fell, and the shooting started. Therefore, trial counsel stated that the defense presented at trial was that the Applicant was not the gunman. Trial counsel stated this is why he emphasized the testimony of Dr. Conradi regarding the distance and direction of the bullets. Tr. p. 258-264; p.400, 11.2-9, p.404, 11.5-404, 11.6. Trial counsel testified that the Applicant never expressed to him that the victim was aggressive toward him, they fought, or that he was in any way associated with the shooting. Trial counsel stated that the Applicant always maintained that he did not shoot the victim. Nevertheless, trial counsel did request a manslaughter charge, but the request was denied. Tr. p. 377, 11.18-379, 11.27.

V FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Orangeburg County Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Application for Post-conviction relief, the State's Return, the guilty plea transcript, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented:

The Court finds the Applicant's allegation that he received ineffective assistance of trial counsel without merit. The Court further finds the Applicant's testimony to the contrary is not credible. The Applicant failed to submit any probative evidence that trial counsel rendered ineffective assistance of counsel in any regard. The Applicant presented no probative evidence that Mr. Grose failed to perform under objectively reasonable standards or that his actions prejudiced the Applicant.

The Court finds that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. 668; Butler v. State, *supra*.

Trial counsel presented a competent defense based on the facts relayed to him by the Applicant. Trial counsel testified he challenged the State's lack of evidence against the Applicant because the Applicant was not the guilty party. Trial counsel did request a voluntary manslaughter charge. Tr. p. 377, ln.18-379, ln.22. Trial counsel cannot present a defense not given by his client.

Accordingly the allegation of ineffective assistance of counsel is denied with prejudice.

HOLDING

Based on the specific findings above, this Court concludes that the Applicant failed to carry his burden of proof to the PCR Court showing ineffective assistance of trial counsel.

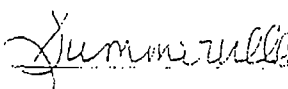
As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds that the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds that the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed with prejudice. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.

IT IS THEREFORE ORDERED THAT:

1. The post-conviction relief application is DENIED WITH PREJUDICE; and
2. The Applicant is remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 22 day of February, 2002.


Diane S. Goodstein
Presiding Judge
First Judicial Circuit

 Sumner, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

Bruce Jerome Houser, #243356,) 2000-CP-38-119
Applicant,)
v.) MOTION TO ALTER AND AMEND
State of South Carolina,) JUDGMENT AND ORDER OR IN
Respondent.) THE ALTERNATIVE FOR A NEW
HEARING

This matter is before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 2, 2000. The Respondent (the State) made its Return on November 30, 2000. An evidentiary hearing was held October 30, 2001. The Applicant's grounds for relief was that trial counsel was ineffective and that Applicant was prejudiced by this ineffectiveness and denied a fair trial. The Court denied Applicant's allegation and dismissed the application with prejudice. Applicant received written notice of the Order of Dismissal on March 20, 2002. Applicant bases this Motion on the following:

a) There was evidence presented at trial in this case that the victim pushed, shoved, or elbowed Applicant. (See trial testimony of Latonia Way, tr. p. 105, ll. 10-11; Troy Oliver, tr. p. 158, ll. 14-15; Blondelle McMichael, tr. p. 187, ll. 13-14, p. 192, ll. 18-21). However, trial counsel failed to expound on this evidence, although pushing or shoving is sufficient legal provocation for manslaughter. See State v. Johnson, 333

S.C. 62, 508 S.E.2d 29 (1998). While the trial judge is required to charge the jury on lesser included offenses if there is evidence from which the jury could infer that defendant committed the lesser offense rather than the greater State v. Pressley, 292 S.C. 9, 354 S.E.2d 777 (1987) it is trial counsel's duty to develop this evidence. Had trial counsel done so Applicant would have then been entitled to a charge instructing the jury that it was their duty to resolve any doubt as to whether Applicant was guilty of murder or manslaughter in favor of the lesser offense of manslaughter. State v. Gorum, 311 S.C. 332, 428 S.E.2d 884 (1993); See also State v. Rucker, ___ S.C. ___, 459 S.E.2d 858 (1995). This is clearly applicable in this case and trial counsel's failure was not based on any reasonable trial strategy, tactic, or decision it was ineffectiveness because trial counsel had to have known prior to trial that to warrant the elimination of manslaughter that it had to very clearly appear that there was no evidence whatsoever tending to reduce the crime from murder to manslaughter. State v. Lowry, 315 S.C. 396, 434 S.E.2d 272 (1993). This failure by trial counsel is inexcusable as it led to the conviction of murder over the more appropriate charge of manslaughter. The jury was left with an all or nothing decision.

Applicant requests the Court to Alter and Amend its Judgment and Order in this case to reflect the facts stated above, to find that trial counsel was in fact ineffective and that Applicant was prejudiced thereby and denied a fair trial, and to grant the requested relief.

119d

b) In the alternative Applicant requests that a new hearing be held. There exists evidence that Applicant has gained since the PCR hearing that needs to be presented to the Court. This evidence consists of the trial testimony of Detective Leon Porter of the Orangeburg County Sheriff's Office, the discovery and location of bullet and shell casings at the crime scene and the crime scene photographs. This evidence calls into question the integrity, credibility and reliability of the investigation conducted by law enforcement. In the interest of fairness and justice this evidence must be reviewed by the Court. The denial of Applicant's request and/or the failure of the Court to review this evidence will cause Applicant to suffer undue and extreme prejudice.

WHEREFORE, based on all of the above Applicant respectfully requests the Court to Alter and Amend its Judgment and Order or in the alternative for a new hearing.

Respectfully submitted,

Bruce Houser

Bruce Jerome Houser, #243356

Applicant pro se

Lieber C.I., CB-28

P.O. Box 205

Ridgeville, S.C. 29472

Ridgeville, S.C.
March 28, 2002

119e

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

Bruce Jerome Houser, #243356,) 2000-CP-38-119
Applicant,)
v.) AFFIDAVIT OF SERVICE BY MAIL
State of South Carolina,)
Respondent.)

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Personally appeared before me, Bruce Jerome Houser, #263356,
who being first duly sworn, states:

1. That I am the Applicant in the above-captioned matter.
2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.
3. That I have this day served a copy of Motion To Alter And Amend Judgment And Order Or In The Alternative For A New Hearing in the above-captioned matter on the following person by depositing same in the United States mail, first class postage prepaid and addressed as follows:

Elizabeth R. McMahon
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211-1549

DATED this 29 day of March, 2002.

Bruce Houser
Bruce Jerome Houser, #253356

SWORN to before me this
29 day of March, 2002.

BR Stevens
Notary Public for South Carolina
My Commission Expires: 12/05/02

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No.: 2000-CP-38-119

State of South Carolina, ... Respondent,

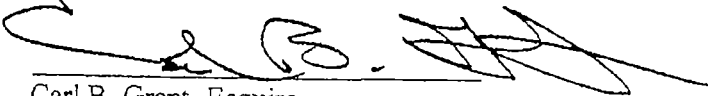
v.

Bruce Houser, ... Appellant.

NOTICE OF APPEAL

YOU WILL PLEASE TAKE NOTICE THAT Bruce Houser intends to appeal and hereby appeals the Order of The Honorable Diane Goodstein, dated February 22, 2002, denying and dismissing his application for Post-Conviction Relief. The appellant was served a copy of the attached signed Order on March 20, 2002.

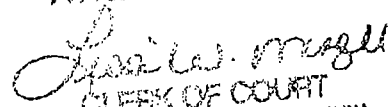
April 19, 2002


Carl B. Grant, Esquire
Attorney for Applicant at PCR
Post Office Box 1203
Orangeburg, SC 29116
(803) 536-4011

Other Counsel of Record:
Office of Appellant Defense
1122 Lady Street, Suite 940
Columbia, SC 29202

ELIZABETH MCMAHON, ESQ., ASSISTANT ATTORNEY GENERAL

ATTENT: TRUE COPY


CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

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LISA A. MIZZELL
CLERK OF COURT
ORANGEBURG, S.C.

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RECEIVED

THE STATE OF SOUTH CAROLINA
In The Supreme Court

SC SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No.: 2000-CP-38-119

State of South Carolina, ... Respondent,

v.

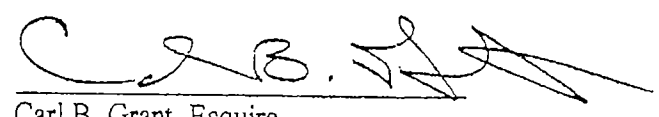
Bruce Houser, ... Appellant.

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FILED
CLERK OF COURT
ORANGEBURG, SC

PROOF OF SERVICE

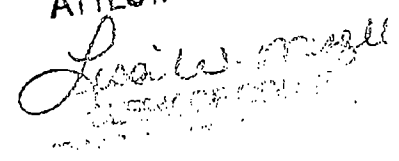
I certify that I have served the Notice of Intent to Appeal on the South Carolina Supreme Court, by depositing a copy of it in the United States Mail, postage prepaid, on April 19, 2002, at the following address, Post Office Box 11330, Columbia, SC 29201, I have also served a copy of same on the South Carolina Attorney General's Office, Elizabeth McMahon, Esquire, Counsel for the Respondent, at Post Office Box 11549, Columbia, SC 29211-1549, and I have served the Office of Appellant Defense at 1122 Lady Street, Suite 940, Columbia, SC 29202 a copy of same and in the same manner.

April 19, 2002



Carl B. Grant, Esquire
Attorney for Applicant at PCR
Post Office Box 1203
Orangeburg, SC 29116
(803) 536-4011

Other Counsel of Record:
Office of Appellant Defense
Elizabeth McMahon, Assistant Attorney General

ATTEST: TRUE COPY

CLERK OF COURT

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney
Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, SC 29201-3243
Telephone (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

May 20, 2002

Ms. Robin L. Keil
Circuit Court Reporter
P O Box 3335
Summerville, SC 29483-3335

Dear Ms. Keil:

Our office has been requested to perfect the appeal arising out of:

Bruce Houser v. State of South Carolina

Indictment #: 00-CP-38-119

County: Orangeburg

Date of Trial: October 30, 2001

Presiding Judge: Diane Schafer Goodstein

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed DI-4 form and include the original criminal case number (Indictment number) where the space is provided.

It has been brought to our attention that the State Printing Office experiences problems when the transcript is prepared on onionskin paper. **PLEASE DO NOT USE ONIONSKIN PAPER.**

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

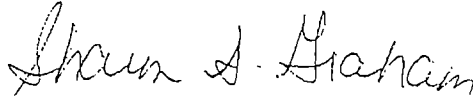
Ms. Robin L. Keil
May 20, 2002
Page Two

If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,



Sharon A. Graham
Administrative Coordinator

xc: S.C. Supreme Court
Attorney General's Office

TDSLAW

123 b

From: RetiredCR [Retiredcr@sccourts.org]
Sent: Wednesday, January 06, 2021 4:45 PM
To: Katie Wade
Subject: RE: PCR Transcript Request: Houser v. State
Attachments: RULE 607.pdf

Unfortunately, pursuant to rule 607, court reporters are not required to retain records after five-years. The date you provided is over the five-year limit. I have attached the rule for your review.

From: Katie Wade <KatieWade@scag.gov>
Sent: Wednesday, January 6, 2021 4:32 PM
To: Transcripts <transcripts@sccourts.org>
Cc: RetiredCR <Retiredcr@sccourts.org>
Subject: PCR Transcript Request: Houser v. State

Good afternoon,

Attached please find the transcript request for the Post-Conviction Relief hearing for Bruce Houser v. State. I could not locate who the court reporter was as this case was heard back in 2001. Any assistance in this matter would be greatly appreciated.

Thank you,

Katie Wade

Legal Assistant
SC Attorney General's Office
Post-Conviction Relief Division
(803) 734-0928
katiewade@scag.gov

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

## South Carolina Office of Appellate Defense

Daniel T. Stacey  
Chief Attorney  
Joseph L. Savitz, III  
Deputy Chief Attorney

Wanda H. Haile  
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940  
Columbia, S.C. 29201-3243

Telephone: (803) 734-1330  
Fax: (803) 734-1397

Robert M. Pachak  
Robert M. Dudek  
Tara S. Taggart  
Aileen P. Clare  
Eleanor Duffy Cleary  
Assistant Appellate Defenders

October 22, 2002

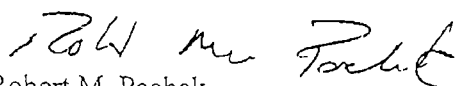
The Honorable Daniel E. Shearouse, Clerk  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Re: Bruce Houser v. State of South Carolina

Dear Mr. Shearouse:

The above case has been appealed to this Court and a petition for writ of certiorari is due to be filed on December 10, 2002. A review of the record, however, reflects that there is still and outstanding Rule 59(e) motion that has not been ruled on by the PCR court. I would respectfully ask that this appeal be dismissed without prejudice pursuant to Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986). A new appeal will have to be filed after the PCR judge has ruled on the Rule 59(e) motion.

Sincerely,

  
Robert M. Pachak  
Assistant Appellate Defender

RMP/jmp

cc: Elizabeth McMahon, Esquire  
Carl B. Grant, Esquire

The Supreme Court of South Carolina

Bruce Houser, #253356,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Diane Schafer Goodstein  
Orangeburg County  
Trial Court Case No. 2000-CP-38-119

---

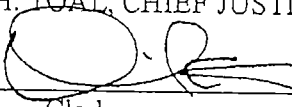
ORDER

---

The above entitled matter is pending on appeal in this Court. It now appears that a Rule 59, SCRCF, motion is still pending in the circuit court. Accordingly, this appeal is dismissed without prejudice. Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986).

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

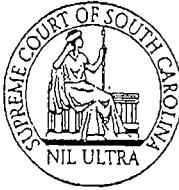
BY 

Clerk

Columbia, South Carolina

October 23, 2002

cc: Assistant Appellate Defender Robert M. Pachak  
Assistant Attorney General Elizabeth McMahon



## The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 8, 2002

### REMITTITUR

The Honorable Lisa Mizell  
Post Office Box 9000  
Orangeburg, SC 29116-9000

Re: Houser, Bruce v. State  
#2000-CP-38-119

Dear Ms. Mizell:

The above referenced matter is hereby remitted to the trial court. A copy of the judgment of this Court is attached.

Very truly yours,

*Daniel E. Shearouse*  
CLERK

DES/twr

Enclosure

cc: SC Office of Appellate Defense  
Assistant Attorney General Elizabeth McMahon

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Bruce Houser, 2243356

☐ Plaintiff

v.

State Of S.C.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2000-CP-38-119

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

FILED FOR RECORD  
CLERK OF COURT  
ORANGEBURG, SC  
JUN 14 PM 1:36

Plaintiff's Attorney:  
Carl Grant, Bar No.  
Address:  
P.O. Box 1203  
Orangeburg, SC 29116  
phone: fax:  
e-mail: other:

Defendant's Attorney:  
Paula Magargle, Bar No.  
Address:  
P.O. Box 11549  
Columbia, SC 29211  
phone: fax:  
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached  
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

May 20, 2005

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT:  
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support  
(check reason) ☐ Domestic Abuse or Abuse and Neglect  
☐ Indigent Status ☐ State Agency v. Indigent Party  
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief  
☐ Motion for Stay in Bankruptcy  
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)  
☐ Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter:  
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.  
☐ Other:

JUDGE

CODE:

CLERK'S VERIFICATION

Collected by: \_\_\_\_\_

Date Filed: \_\_\_\_\_

- ☐ MOTION FEE COLLECTED: \_\_\_\_\_  
☐ CONTESTED - AMOUNT DUE: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )  
)   
Bruce Houser, 243356, )  
Applicant, )  
)   
vs. )  
)   
State of South Carolina, )  
)   
Respondent. )

IN THE COURT OF COMMON PLEAS

2000-CP-38-119

ORDER

FILED FOR RECORD  
LISA W. AMZELL  
CLERK OF COURT  
ORANGEBURG, SC

2005 JUN 14 PM 1:36

This matter comes before the Court by way of Applicant's Motion to Alter or Amend Judgment pursuant to Rule 59, SCRCPP. The Final Order of Dismissal in this matter was signed by me on February 22, 2002. A hearing into the matter was convened on November 4, 2004 at the Calhoun County Courthouse. The Applicant was present at the hearing and was represented by Carl Grant, Esquire. The Respondent was represented by Paula S. Magargle, Esquire, of the South Carolina Attorney General's Office.

At the hearing, the Applicant renewed his Motion to Alter or Amend the Judgment entered by this Court because the Applicant felt that he should have had a manslaughter charge at his trial. This Court finds that the record is clear and that the decision of this Court was proper.

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend the judgment. The previous order fully comports with the requirements of Rule 52(a) SCRCPP.

This Court does find that there was a scrivener's error in the Original Order. The Order states that this Court has reviewed "... the guilty plea transcript" when in fact this Court had

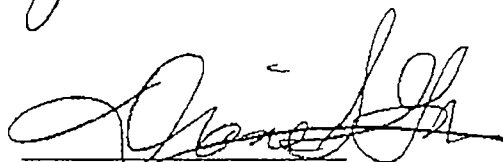
reviewed the Applicant's trial transcript. This Court finds that this error needs to be corrected and an Amended Order submitted with the correct information.

After the hearing the Applicant objected to this hearing being held in Calhoun County rather than Orangeburg County, which is the county of conviction. This Court finds that Calhoun County and Orangeburg County are both in the First Judicial Circuit. Therefore, this Court had jurisdiction to hear this case in Calhoun County rather than Orangeburg County. Buchanan v. State, 276 S.C. 127, 276 S.E.2d 302 (1981).

IT IS THEREFORE ORDERED:

1.. That the Applicant's motion is denied and dismissed.

AND IT IS SO ORDERED this 6 day of June, 2005.



Diane S. Goodstein  
Presiding Judge  
First Judicial Circuit

St. George South Carolina

Mr. R. M. Grant  
 24356 BROOKLYN AVE.  
 4th Ward, Wash. D.C.  
 Columbia, D.C. 20010

Dec. 10, 2005

Mr. R. M. Grant  
 Attorney At Law, P.A.  
 900 10th St., N.W.  
 Washington, D.C. 20001-1003

Re: Case No. 06-07-36119  
Notice of Intent to Appeal Filed (1)

Dear Mr. Grant,

Since the date of June 17, 2005 I have received no response from you regarding "Appeal of my IPR & RUP status which was dismissed by Judge Eugene Goodstein on June 10, 2005."

Please, forward me a copy of the "Notice of Intent to Appeal" which you filed in my case. Also advise me of my IPR status. Additionally, I request for you to send me all documents in your files listed under my name.

Do not hesitate to contact me.

C. M. D. B.



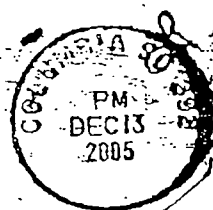
P 87

Bruce House #243356  
Mont-208 S.R.C.I  
4460 Broad River Rd.  
Columbia S.C. 29210

RECEIVED

DEC 13 2005

MAIL ROOM



Clerk of Court S.C. Supreme Court  
The Honorable Daniel Shaver, Clerk  
P.O. Box 11330; Columbia S.C. 29211

128c

State of South Carolina  
In The Supreme Court

Appeal To Orangeburg County  
Diane S. Goodstein, Circuit Court Judge

Bruce Houser, 243356

RECEIVED

DEC 14 2005

S.C. SUPREME COURT

✓  
State of South Carolina,

Respondent.

Pro Se Notice of Intent To Appeal

~~Bruce Houser 243356~~

Bruce Houser, #243356  
Mont. Unit B.R.C.I.  
4460 Broad Riv. Rd.  
Columbia, S.C. 29210

cc: Mr. Carl Grant, ESQ.  
9620 DOYLE ST., P.O. B. 1203  
Orangeburg, S.C. 29116-1203

cc: retained 12/06/05

128f

RECEIVED 17 JAN 1954

1954 JAN 17

U.S. AIR FORCE

RECEIVED 17 JAN 1954

" Notice of Intent To Appeal "

Petitioner, Bruce Hauser SCDC No. # 243356, is a  
 In Haused in the S.C. Dept. of Corr. at the  
 Broad Riv. Corr. Institution presently serving a  
 Natural life sentence from a sentence and  
 conviction rendered to him in The Orangeburg  
 County Court of General Sessions on August 7,  
 1997.

RECEIVED

DEC 14 2005

Petitioner filed A Post Conviction Relief = [P.C.R.]  
 action which was dismissed by the Honorable  
 Judge Diane Goodstein on February 11, 2002.

A hearing was held on Nov. 4, 2004 pursuant  
 to A Rule 59 (e) Motion filed by Petitioner's

On the date of June 6, 2005 Judge Goodstein  
 dismissed Petitioner's Rule 59 (e) Motion, and  
 due to Petitioner not receiving any re-  
 ceipt of " Notice of Intent To Appeal " from PER  
 Counsel Carl Grant, Petitioner, has filed this

12/6/05

#1. Btl.

128 b

RECEIVED

DEC 1 1979

ST. LOUIS COUNTY

ST. LOUIS COUNTY

Provide 'Notice of Intent To Appeal' in hope to Pursue  
Appellate Avenues.

Case No: #2000-CP-38-119

Respectfully Submitted:

X Bruce Hansen #243356

Mr. Bruce Hansen, #243356  
Mont. A. BRET., 4460 Broadview Rd.  
Columbia, S.C. 29210

cc: Esq. Carl B. Grant

cc: Retained.

December 6, 2005  
Columbia, S.C.

#2.B.H.

(EXHIBIT A.)

Letter To Counsel Carl Grant, ESQ.

Dated: 12-6-05

128K

Mr. R. H. Brant  
24356 BROOKMONT AVE.  
4th Floor, Bldg. 100  
Falmouth, ME 04921

Dec. 10, 2005

Mr. R. Brant  
Attorney At Law, P.A.  
400 Dover St., Falmouth, ME  
Falmouth, ME 04921-1303

Re: Case No. 06 CP 38 119  
Notice of Appeal to Appeal Court (1)

Dear Mr. Brant,

Since the date of June 17, 2005 I have received no response from you regarding "Appeal of my 1st & 2nd appeals which were dismissed by Judge Eugene Goodstein on June 17, 2005.

Please, forward me a copy of the "Notice of Appeal" which you filed in my case. Also advise me of my case status. Additionally, I request for you to send me all documents in your files listed under my name.

It is not too late to contact me.

C. or J. B.

1281

Please contact me at home and earliest convenient time.

X  
Continued:

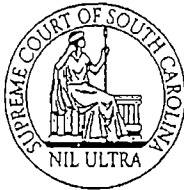
Purple House #243356  
Mr. Bruce Houser

243356 Mount St. LRLT.

4400 Brown Rd. NE  
Columbia S.C. 29202

cc: S.C. County Sheriff  
Returned 12/16/05

2. of 2 b7d.



## 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

February 2, 2006

Carl B. Grant, Esquire  
P.O. Box 1203  
Orangeburg, SC 29116

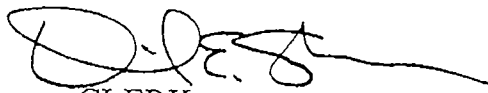
Re: Houser, Bruce v. The State

Dear Mr. Grant:

Bruce Houser has filed a pro se notice of appeal from The Honorable Diane S. Goodstein's dismissal of this matter dated June 6, 2005. Because you were his counsel below, you are reminded that you remain his counsel of record in this appeal unless relieved under Rule 235, SCACR, or under Rule 602(e), SCACR, if the Office of Appellate Defense determines it will represent him in this appeal.

In order to determine the timeliness of this appeal, please advise this Court the date on which you received written notice of entry of this order. Please provide this information in writing within ten (10) days of the date of this letter.

Very truly yours,



CLERK

DES/jj

cc: Bruce Houser #243356  
Assistant Attorney General Paula Magargle

**The Law Firm of Carl B. Grant, P.A.**

ATTORNEY AT LAW

5509 N. Main Street

P.O. Box 3547

Columbia, South Carolina 29230

(803) 754-7411

(803) 754-4593 (FAX)

## Member:

South Carolina Bar  
Maryland Bar

## Orangeburg Office:

960 Doyle Street

P.O. Box 1203

Orangeburg, SC 29116-5258 FEB 17 2006

(803) 536-4011

(803) 536-4163 (FAX)

S.C. SUPREME COURT

## Areas of Practice:

Personal Injury  
Criminal Defense  
Workers' Compensation  
Medical Malpractice  
Family Law  
Contracts  
Military Law  
General Law

FAX

DATE: 2/17/06PAGES TO FOLLOW INCLUDING COVER SHEET: 2TO: The Honorable Daniel E. ShearmanCOMPANY: Supreme Court of S.C.TELEPHONE NUMBER: 734-1499FROM: Karen GrantNUMBER: 754-4593

COMMENTS:

Bruce Houser v. The State

WARNING: The pages comprising this facsimile transmission contain confidential information from The Law Firm of Carl B. Grant, P.A. This information is intended for use by the individual entity named as the recipient thereof. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of this transmission is prohibited. If you received this transmission in error, please notify us by telephone immediately so we may arrange to retrieve this transmission at no cost to you.

*The Law Firm of Carl B. Grant, P.A.*

ATTORNEY AT LAW

## Member:

South Carolina Bar  
Maryland Bar

## Orangeburg Office:

960 Doyle Street  
P.O. Box 1203  
Orangeburg, SC 29116-1203  
(803) 536-4011  
(803) 536-4163 (FAX)

5509 N. Main Street

P.O. Box 3547

Columbia, South Carolina 29230

(803) 754-7411

(803) 754-4593 (FAX)

## Areas of Practice:

Personal Injury  
Criminal Defense  
Workers' Compensation  
Medical Malpractice  
Family Law  
Contracts  
Military Law  
General LawVia Facsimile 734-1499

February 17, 2006

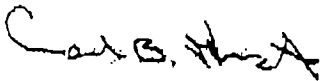
The Honorable Daniel E. Shearouse  
The Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

Re: Bruce Houser vs. The State

Dear Mr. Shearouse:

Pursuant to your request, the Order in the above referenced matter was served on our office on June 7, 2005. If you have any questions, please give me a call. With kind regards, I am

Sincerely,

Carl B. Grant  
Attorney at Law

CBG/kwg

**RECEIVED**  
FEB 17 2006  
S.C. SUPREME COURT

# The Supreme Court of South Carolina

Bruce Houser,

Petitioner

v.

State of South Carolina,

Respondent

The Honorable Diane Schafer Goodstein  
Orangeburg County  
Trial Court Case No. 2000-CP-38-00119

---

## ORDER of DISMISSAL

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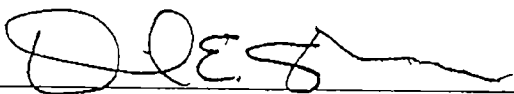
The above entitled case is pending on appeal in this Court. Counsel for petitioner indicates that he received written notice of entry of the order on June 7, 2005. The *pro se* notice of appeal was not served until January 19, 2006. Due to the failure of appellant to timely serve the notice of appeal in the above matter, as provided for by Rules 227 and 203 of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Orangeburg County after fifteen (15) days, exclusive of the date of filing this Order.

128g

JEAN H. TOAL, CHIEF JUSTICE

BY

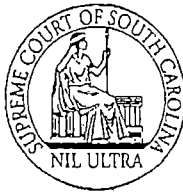


CLERK

Columbia, South Carolina

February 22, 2006

cc: Bruce Houser #243356  
Carl B. Grant, Esquire  
Assistant Attorney General Paula Magargle



# 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 13, 2006

## REMITTITUR

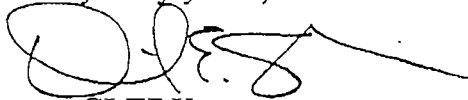
The Honorable Lisa Mizell  
190 Gibson Street  
PO Box 9000  
Orangeburg, SC 29116-9000

Re: Houser, Bruce v. The State – 2000-CP-38-00119

Dear Ms. Mizell:

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: Bruce Houser #243356  
Carl B. Grant, Esquire  
Assistant Attorney General Paula Magargle

129

Bruce Houser #243356  
BRCI, Monticello Unit  
4460 Broad River Road  
Columbia, South Carolina 29210

TO: Orangeburg County Clerk of Court  
P.O. Drawer 9000  
Orangeburg, South Carolina 29116

RE: PCR Application

Dear Clerk,

Please find enclosed for filing my application for Post-Conviction Relief with a Memorandum in Support attached. Thank you.

s/ Bruce Houser  
Bruce Houser

FILED FOR RECORD  
CLERK OF COURT  
JULIA W. JAMES  
ORANGEBURG, SC

2006 APR -6 AM 11:30

Columbia, South Carolina  
March 27, 2006

STATE OF SOUTH CAROLINA

County of ORANGEBURG

Bruce Houser #243356

*Full name and prison number (if any) of Applicant,*

vs.

State of South Carolina

*Name of Respondent.*

In the Court of Common Pleas

06-CR-38-413

PRIOR APP OOCR-119

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED  
CLERK OF COURT  
REC'D  
2006 APR -6 AM 11:30

**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 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 Broad River Correctional Institution  
4460 Broad River Road Columbia, SC 29210
2. Name and location of Court which imposed sentence Orangeburg County Court of  
General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:  
(a) Murder (97-GS-38-0467)  
(b) Poss. of Firearm During Violent Crime (97-GS-38-0874)  
(c) \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence:  
(a) Life imprisonment for Murder  
(b) Five years for Poss. of Firearm During Violent Crime  
(c) \_\_\_\_\_

5. Check whether a finding of guilty was made

- (a) after a plea of guilty Yes
- (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. SC Court of Appeals
- ii. SC Supreme Court
- iii. \_\_\_\_\_

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

- i. Affirmed
- ii. Affirmed
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. January 15, 1999
- ii. February 5, 1999
- iii. \_\_\_\_\_

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

- i. Op. No. 99-MO-005
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N/A
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) PCR counsel was ineffective for failing to seek appellate
- (b) review of the denial of applicants original PCR
- (c) --Austin appeal--

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) See attached memorandum
- (b) \_\_\_\_\_
- (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? Yes
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? \_\_\_\_\_
- (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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. Original PCR application
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. Orangeburg County Court of Common Pleas
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. Application Denied
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (d) the date of each such disposition:
  - i. March 20, 2002
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. N/A
  - 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:

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(a) which grounds have been presented:

i. N/A

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) N/A

(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? Yes

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. E. Charles Grose, Jr., Esq.

ii. Joseph I. Savitz, III, SC office of Appellate Defense

iii. Carl B. Grant

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

i. Trial and sentencing

ii. Direct appeal

iii. Original PCR

18. State clearly the relief you seek in filing this application.

Austin appeal

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

NO

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STATE OF SOUTH CAROLINA

VERIFICATION

County of ORANGEBURG

I, Bruce Houser #243356, 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.

Bruce Houser

FILED FOR RECORD  
LISA M. WIZELL  
CLERK OF COURT  
ORANGEBURG, SC

2006 APR - 6 AM 11:30

SWORN to and subscribed before me this 30<sup>th</sup>

day of March, 2006.

[Signature]  
Notary Public

(L.S.)

My Commission Expires: 3-17-2016

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

I, Bruce Houser #243356, 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.

Bruce Houser  
Applicant

SWORN or affirmed to and subscribed before me this

30<sup>th</sup> day of March, 2006.

[Signature]  
Notary Public

My Commission Expires 3-17-2016

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

Case No. 06-CR-38-413

Bruce Houser #243356  
Applicant

**MEMORANDUM IN SUPPORT OF POST-CONVICTION  
RELIEF APPLICATION; AUTHORITIES CITED**

v.

State of South Carolina,  
Respondent.

NOW COMES the above-named applicant, Bruce Houser, SCDC #243356 in this application for Post-Conviction Relief (PCR), pursuant to South Carolina Code of Laws (SCL) §17-27-20, alleging the following:

**QUESTION PRESENTED**

1. PCR COUNSEL WAS INEFFECTIVE IN FAILING TO SEEK APPELLATE REVIEW OF THE DENIAL OF APPLICANTS ORIGINAL PCR.

**STATEMENT OF THE CASE**

Bruce Houser was arrested on February 24, 1997, on the charges of Murder (97-GS-38-0467) and Possession of a Firearm During the Commission of a Violent Crime (97-GS-38-0874), and indicted in the 1997 March and June terms of court by an Orangeburg County Grand Jury. During the course of the proceedings applicant was represented by E. Charles Grose, Jr., Esq., and the State was represented by Deputy Solicitor Jimmy Williams. Trial began before the Honorable Judge Luke N. Brown, and a jury, on August 5, 1997. At its conclusion, the jury returned a verdict of guilty on all charges presented and the Honorable Judge Luke N. Brown sentenced applicant to Life imprisonment on the Murder conviction and to five years, concurrent, on the Possession of a Firearm During the Commission of a Violent Crime conviction. A timely Notice of Appeal

FILED FOR RECORD  
CLERK OF COURT  
SC  
2006 APR - 6 AM 11:30

ARGUMENT 1

1. PCR COUNSEL WAS INEFFECTIVE IN FAILING TO SEEK APPELLATE REVIEW OF THE DENIAL OF APPLICANTS ORIGINAL PCR.

All applicants are entitled to a full and fair opportunity to present claims in one PCR application. Successive PCR applications and appeals are generally disfavored because they allow an applicant to receive more than the procedural "one bite at the apple . . .". Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999). However, the South Carolina Supreme Court has allowed successive PCR applications where the applicant (as here) has been denied complete access to the appellate process. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Under PCR rules, SCCI §17-27-80, an applicant is entitled to a full adjudication on the merits of the original application, or "one full bite at the apple.". Odom, supra, at 523 S.E.2d 755; AICE v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). This "bite" includes the applicants right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal. See Odom, supra, at 523 S.E.2d 756..

An applicant has a right to an appellate counsels assistance in seeking review of the denial of his PCR. Odom, supra, 523 at 756; Rule 71.1 (d)(g), SCRCF. In the present case, applicant verbally requested PCR counsel to file an appeal on his behalf in the event of an adverse decision by the PCR court and that he do so at the appropriate time (i.e., after a ruling on applicants SCRCF 59(e) motion has been rendered). Despite a clear request by the applicant, PCR counsel failed to file a timely notice of appeal on applicants behalf. An Austin appeal is used when an appli-

was filed.

On Direct Appeal, applicant was represented by Joseph I. Savitz, III, of the South Carolina Office of Appellate Defense. Applicants Direct Appeal was denied on January 15, 1998, as well as his subsequent Petition for Rehearing on February 5, 1999 (Op. No. 99-MO-005). Applicant next filed his original PCR application on February 3, 2000.

Applicant was represented throughout his PCR proceedings by Carl B. Grant, Esq, and Elizabeth R. McMahon, Esq., of the South Carolina Attorney Generals Office, represented the State. An evidentiary hearing was held before the Honorable Judge Diane S. Goodstein on October 30, 2001, in which applicant informed PCR counsel at the conclusion of such that in the event of an adverse decision he wish to pursue an appeal. Applicant received written notice of the Order of Dismissal in this action on March 20, 2002. A motion pursuant to South Carolina Rules of Civil Procedures 59(e) was timely filed and applicant received written notice of the Courts refusal to grant such on June 06, 2002. From this date, applicant was under the impression (due to his previous instructions to Mr. Grant) that Mr. Grant had properly filed an appeal from applicants PCR order. Only upon inquiry into the matter did applicant learn that no appeal was perfected on his behalf. This application, with memorandum in support of, herein follows.

cant is prevented from seeking appellate review of a denial of his or her PCR application, such as when an attorney fails to seek timely review. Aice, 305 S.C. at 448, 409 S.E.2d at 392; Hope v. State, 328 S.C. 78, 492 S.E.2d 76 n. 1 (1997). Applicant maintains that an Austin appeal is the appropriate remedy where, as here, PCR counsel failed to seek a timely appeal on applicants behalf and where only upon inquiry did applicant learn of PCR counsels error.

CONCLUSION

Applicant request an evidentiary hearing be held pursuant to Austin in order to determine the factual questions in issue and that an appeal of applicants PCR denial be reinstated.

Bruce Houser

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Bruce Houser, #243356,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2006-CP-38-413

RETURN

Respondent, making its Return to the application for post conviction relief (PCR) filed April 6, 2006, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Clerk of Court for Orangeburg County. The Applicant was indicted at the November 1997 term of the Orangeburg County Grand Jury for murder (97-GS-38-0467); possession of firearm during commission of certain crimes (97-GS-38-0874). He was represented by Charles Gross, Esquire. On August 7, 1997, the Applicant proceeded to trial and was convicted as charged. He was sentenced by the Honorable Luke N. Brown to confinement for life.

Applicant timely filed notice of intent to appeal and an appeal was perfected on his behalf by the South Carolina Office of Appellate Defense. Following the filing of briefs by both sides, the South Carolina Supreme Court affirmed Applicant's sentence. State v. Houser, 99-MO-005 (S.C. Sup. Ct. filed January 13, 1999).

Applicant subsequently filed an application for post-conviction relief. An evidentiary hearing was convened on November 4, 2004 at the Calhoun County courthouse. The Applicant was represented by Carl B. Grant, Esquire. By Order dated February 22, 2002, the Honorable Diane S. Goodstein denied and dismissed the Applicant's application. Applicant appealed the PCR court's decision. By Order dated October 23, 2002, the South Carolina Supreme Court dismissed Applicant's appeal without prejudiced because a Rule 59 motion was still pending in the circuit court. By Order dated June 6, 2005, Judge Goodstein denied Applicant's Rule 59 motion.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Correction, Applicant's appellate records and the Applicant's prior PCR records. Any of the above not so attached will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. "PCR counsel was ineffective in failing to seek appellate review of the denial of Applicant's original PCR."

## III.

The Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. The Respondent lacks sufficient

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information to admit or deny this allegation. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.; Austin, 305 S.C. 453, 409 S.E.2d 395.

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

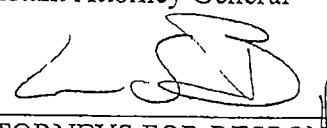
Respectfully submitted,

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

LANCE S. BOOZER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

10/26, 2007.

STATE OF SOUTH CAROLINA )

) IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

2006-CP-38-413

Bruce Houser, 243356,

Applicant,

vs

State of South Carolina,

Respondent.

)

)

)

) AFFIDAVIT OF SERVICE BY MAIL

)

)

)

)

)

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Clarissa W. Joyner, Esquire  
1259 Amelia Street, Ste. A  
Orangeburg, SC 29115

DATED this 26<sup>th</sup> day of October, 2007.

*Ressie A. Faust*

Ressie A. Faust, Clerk

For Respondent

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

06-CP-38-413

Bruce Houser, #243356,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER GRANTING BELATED PCR  
APPEAL

FILED FOR RECORD  
LISA W. MIZELL  
CLERK OF COURT  
ORANGEBURG, SC  
2008 NOV 18 P 1:27

*Clarissa W. Joyner, Esquire, for the Applicant*

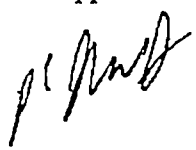
*Lance S. Boozer, Esquire, Assistant Attorney General, for the Respondent*

This matter comes before the Court by way of a Post-Conviction Relief (PCR) application filed April 6, 2006. An evidentiary hearing was convened on May 19, 2008 at the Calhoun County Courthouse. The Applicant alleges he was denied his right to appeal his previous Application for post-conviction relief. The State consented to allow the Applicant to appeal the denial of his previous PCR application.

### I. PROCEDURAL BACKGROUND

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Clerk of Court for Orangeburg County. The Applicant was indicted at the November 1997 term of the Orangeburg County Grand Jury for murder (97-GS-38-0467); possession of firearm during commission of certain crimes (97-GS-38-0874). He was represented by Charles Gross, Esquire. On August 7, 1997, the Applicant proceeded to trial and was convicted as charged. He was sentenced by the Honorable Luke N. Brown to confinement for life.

Applicant timely filed notice of intent to appeal and an appeal was perfected on his behalf by



the South Carolina Office of Appellate Defense. Following the filing of briefs by both sides, the South Carolina Supreme Court affirmed Applicant's sentence. State v. Houser, 99-MO-005 (S.C. Sup. Ct. filed January 13, 1999).

Applicant subsequently filed an application for post-conviction relief. An evidentiary hearing was convened on November 4, 2004 at the Calhoun County courthouse. The Applicant was represented by Carl B. Grant, Esquire. By Order dated February 22, 2002, the Honorable Diane S. Goodstein denied and dismissed the Applicant's application. Applicant appealed the PCR court's decision. By Order dated October 23, 2002, the South Carolina Supreme Court dismissed Applicant's appeal without prejudiced because a Rule 59 motion was still pending in the circuit court. By Order dated June 6, 2005, Judge Goodstein denied Applicant's Rule 59 motion.

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

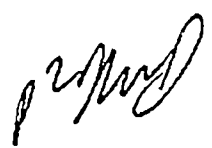
1. "PCR counsel was ineffective in failing to seek appellate review of the denial of Applicant's original PCR."

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records of the Clerk of Court regarding the subject convictions; the Applicant's records from the South Carolina Department of Corrections; the transcript of the prior proceedings against the Applicant; the petition; Respondent's Return, pleadings, and other documents.

### Austin v. State claim

State law expressly authorizes the right to seek appellate review of the denial of post-conviction relief. See S.C. Code Ann. § 17-27-100 (1985). In the absence of an intelligent waiver by the applicant, counsel must advise the applicant of his appellate rights or comply with the



procedure required by Anders v. California, Id. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State. See King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).<sup>1</sup>

The State conceded and this Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to appellate review. After consulting with Applicant's prior PCR counsel, the State submitted to this Court that the Applicant was not advised of his right to an appeal following the denial of his 59(e) motion. The Court concludes that the Applicant is entitled to a belated review of the denial of his first application.

### III. CONCLUSION

Pursuant to Austin v. State, Id., the Court finds that the Applicant did not knowingly and voluntarily waive his right to directly appeal the denial of his first post-conviction relief application.

#### Applicant's Right to Appeal

Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Appellate counsel is required to brief arguable issues in order to safeguard the right to appeal. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must file a Notice of Appeal on the Applicant's behalf. The Court advises the Applicant and his attorney of record that any Notice of

<sup>1</sup>"Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, **the applicant must petition this Court for... review** (emphasis added)." Davis v. State, 288 S.C. 290, 291 at n. 1, 342 S.E.2d 60 (1986).

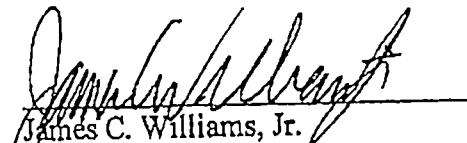
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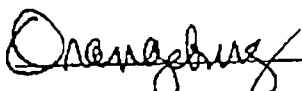
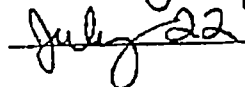
146

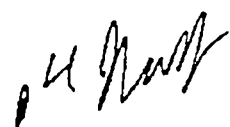
Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.

IT IS THEREFORE ORDERED THAT:

1. The Applicant is granted a belated review of his previous Application for post-conviction relief.
2. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.
3. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

  
James C. Williams, Jr.  
Presiding Judge  
First Judicial Circuit

, South Carolina  
, 2008



46b  
BRUCE HOUSER #243356

McCI F-4 170-A  
386 Redemption Way  
McCormick, South Carolina 29899

July 26, 2011

Mr. Robert Dudek, Esquire  
South Carolina Commission on Indigent Defense  
Appeals Division  
Post Office Box 11589  
Columbia, SC 29211-1433

RE: Belated P.C.R. Appeal  
Bruce Houser v. State  
Case No.: 2006-CP-38-00413

Dear Mr. Dudek:

I am writing this letter because I'm very concern about the status of my appeal.

I filed a post-conviction relief application in Calhoun County on April 6, 2006, Ms. Clarissa Joyner, Esquire, was appointed to represent me in this matter. The State was represented by Lance S. Boozer, Esquire, of the Attorney General's Office.

At the evidentiary hearing on May 19, 2008, I was granted a belated P.C.R. appeal, I need to know from you the status of that appeal.

If no appeal has been filed on my behalf in this matter, please advise me immediately as so I can move to protect my rights in this case.

I thank you for all the attention and assistance you give in this very important matter.

cc: Personal file

Sincerely, Bruce Houser

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## FORM 5

STATE OF SOUTH CAROLINA

County of OrangeburgBruce Houser #243356

Full name and prison number (if any) of Applicant

v.

State of South Carolina

ATTEST: TRUE COPY

Winnys B. Clark

CLERK OF COURT INSTRUCTIONS - READ CAREFULLY

ORANGEBURG COUNTY, SOUTH CAROLINA

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 M<sup>c</sup>Cormick Corr. Inst. 386 Redemption Way  
M<sup>c</sup>Cormick S.C. 29399
2. Name and location of Court which imposed sentence Orangeburg Co. Court  
of General Sessions
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 97-65-38-0467 / Murder
  - (b) 97-65-38-0874 / Poss. of Firearm During Violent Crime

APPLICATION FOR  
POST-CONVICTION RELIEFFILED FOR RECORD  
JAN 22 2014  
CLERK OF COURT  
ORANGEBURG COUNTY  
SOUTH CAROLINA

ОБЩЕСТВЕННЫЙ ДОГОВОР ПОСЛЕ СВАДЕБНОЙ  
ЗАПИСИ ОТ 1992 г.

*[Handwritten signatures and stamps]*

АТТЕСТАТ ОБРАЗОВАНИЯ

149

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                              |
|                          | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF ORANGEBURG     | ) | FIRST JUDICIAL CIRCUIT       |
|                          | ) |                              |
|                          | ) | 06-CP-38-413                 |
| Bruce Houser, #243356,   | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) |                              |
| v.                       | ) | ORDER GRANTING BELATED PCR   |
|                          | ) | APPEAL                       |
|                          | ) |                              |
| State of South Carolina, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |

*Clarissa W. Joyner, Esquire, for the Applicant*

*Lance S. Boozer, Esquire, Assistant Attorney General, for the Respondent*

This matter comes before the Court by way of a Post-Conviction Relief (PCR) application filed April 6, 2006. An evidentiary hearing was convened on May 19, 2008 at the Calhoun County Courthouse. The Applicant alleges he was denied his right to appeal his previous Application for post-conviction relief. The State consented to allow the Applicant to appeal the denial of his previous PCR application.

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Applicant timely filed notice of intent to appeal and an appeal was perfected on his behalf by

the South Carolina Office of Appellate Defense. Following the filing of briefs by both sides, the South Carolina Supreme Court affirmed Applicant's sentence. State v. Houser, 99-MO-005 (S.C. Sup. Ct. filed January 13, 1999).

Applicant subsequently filed an application for post-conviction relief. An evidentiary hearing was convened on November 4, 2004 at the Calhoun County courthouse. The Applicant was represented by Carl E. Grant, Esquire. By Order dated February 22, 2002, the Honorable Diane S. Goodstein denied and dismissed the Applicant's application. Applicant appealed the PCR court's decision. By Order dated October 23, 2002, the South Carolina Supreme Court dismissed Applicant's appeal without prejudiced because a Rule 59 motion was still pending in the circuit court. By Order dated June 6, 2005, Judge Goodstein denied Applicant's Rule 59 motion.

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

1. "PCR counsel was ineffective in failing to seek appellate review of the denial of Applicant's original PCR."

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records of the Clerk of Court regarding the subject convictions; the Applicant's records from the South Carolina Department of Corrections; the transcript of the prior proceedings against the Applicant; the petition; Respondent's Return, pleadings, and other documents.

### Austin v. State claim

State law expressly authorizes the right to seek appellate review of the denial of post-conviction relief. See S.C. Code Ann. § 17-27-100 (1985). In the absence of an intelligent waiver by the applicant, counsel must advise the applicant of his appellate rights or comply with the

procedure required by Anders v. California, Id. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State. See King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).<sup>1</sup>

The State conceded and this Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to appellate review. After consulting with Applicant's prior PCR counsel, the State submitted to this Court that the Applicant was not advised of his right to an appeal following the denial of his 59(e) motion. The Court concludes that the Applicant is entitled to a belated review of the denial of his first application.

### III. CONCLUSION

Pursuant to Austin v. State, Id., the Court finds that the Applicant did not knowingly and voluntarily waive his right to directly appeal the denial of his first post-conviction relief application.

#### Applicant's Right to Appeal

Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Appellate counsel is required to brief arguable issues in order to safeguard the right to appeal. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must file a Notice of Appeal on the Applicant's behalf. The Court advises the Applicant and his attorney of record that any Notice of

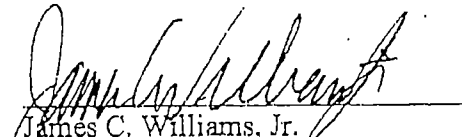
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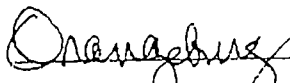
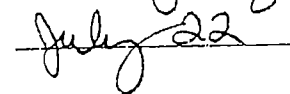
<sup>1</sup>"Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, **the applicant must petition this Court for... review** (emphasis added)." Davis v. State, 288 S.C. 290, 291 at n. 1, 342 S.E.2d 60 (1986).

Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.

IT IS THEREFORE ORDERED THAT:

1. The Applicant is granted a belated review of his previous Application for post-conviction relief.
2. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.
3. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

  
James C. Williams, Jr.  
Presiding Judge  
First Judicial Circuit

 , South Carolina  
 , 2008

|                          |   |                               |
|--------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS  |
|                          | ) | IN THE FIRST JUDICIAL CIRCUIT |
| COUNTY OF ORANGEBURG     | ) |                               |
|                          | ) |                               |
| Bruce Houser, #243356,   | ) | Case No.: 2016-CP-38-0623     |
|                          | ) |                               |
| Applicant,               | ) |                               |
|                          | ) | RETURN AND MOTION TO DISMISS  |
| v.                       | ) |                               |
|                          | ) |                               |
| State of South Carolina, | ) |                               |
|                          | ) |                               |
| Respondent.              | ) |                               |
| _____                    | ) |                               |

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on May 4, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. In March 1997, the Orangeburg County Grand Jury indicted Applicant for murder (1997-GS-38-0467), and possession of a firearm during commission of certain crimes (1997-GS-38-0874). Charles Gross, Esquire, represented Applicant at trial. On August 7, 1997, Applicant proceeded to trial before the Honorable Luke N. Brown. Applicant was found guilty as indicted. Judge Brown sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal. An appeal was perfected on his behalf by the South Carolina Office of Appellate Defense. The South Carolina Supreme Court affirmed Applicant's conviction and sentence on January 13, 1999. State v. Houser, Op. No. 99-MO-005 (1999).

**2000-CP-38-0119**

Applicant subsequently filed his first application for post-conviction relief. An evidentiary

hearing into the matter was convened on November 4, 2004, at the Calhoun County Courthouse. Applicant was represented by Carl B. Grant, Esquire. The Honorable Diane S. Goodstein denied and dismissed Applicant's application by order dated February 22, 2002. Applicant appealed the dismissal. The South Carolina Supreme Court denied Applicant's appeal without prejudice by order dated October 23, 2002, because a Rule 59(e) motion was still pending in the circuit court. Judge Goodstein denied Applicant's motion by order dated June 6, 2005.

**2006-CP-38-0413**

Applicant filed his second application for PCR on April 6, 2006, in which he alleged his PCR counsel from his first PCR action was ineffective in failing to seek appellate review of the denial of Applicant's PCR. The State made its return on October 26, 2007. An evidentiary hearing into the matter was convened on May 19, 2008, at the Calhoun County Courthouse. Clarissa W. Joyner, Esquire, represented Applicant. Assistant Attorney General Lance S. Boozer, Esquire, represented the State. The State consented to allow Applicant to appeal the denial of his previous PCR application. The Honorable James C. Williams, Jr. granted Applicant a belated PCR appeal by order dated July 22, 2008, and filed November 18, 2008.

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

II.

In his third and current application for post-conviction relief, Applicant alleges that he is

being held in custody unlawfully for the following reasons:

1. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) claim.
  - a. "I have been denied the right to appeal the denial of my first and second PCR [actions]."
  - b. "Although this Austin issue was raised in my second PCR upon my first PCR counsel, still my second PCR counsel did not appeal my belated appeal as ordered by Judge James C. Williams, Jr. on July 22, 2008."
  - c. "Also see attached letter to Appellate Division dated July 26, 2011, which to this day I have not gotten an answer regarding my belated appeal."
  - d. "Here, it is clear that counsel Joyner has violated my due process by disregarding the judge's order where the state law expressly authorizes my right to seek appellate review of the denial of PCR matters."

### III.

Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2003). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

Applicant alleges he was denied his right to an appeal of his previous PCR action. The record clearly reveals Judge Williams issued an order granting Applicant a belated appeal in July of 2008, in which Judge Williams advised Applicant that any notice of appeal must be filed within thirty days of service of the signed copy. Furthermore, Judge Williams directed Applicant's attention to Rule 227, SCACR, for appropriate procedures on appeal. This application was filed May 4, 2016. There is no reason to excuse Applicant's delay of nearly eight years to allege he was again denied his right to appeal. Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

#### IV.

Additionally, Applicant's application should be summarily dismissed as successive to Applicant's previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not

properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. The applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

Applicant’s allegations were or could have been raised in his prior PCR applications. Moreover, as stated above, there is no justification for Applicant’s delay of nearly eight years in asserting he was denied his appeal of his previous PCR action. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

V.

The application should also be dismissed under the doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). This requirement “guards the State’s legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available.” Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). In due consideration of the above requirement, Laches is an equitable doctrine defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). “Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or

disadvantage to the other party; delay alone in assertion of right does not constitute laches.” Id.

Applicant seeks post-conviction relief almost two decades after his conviction, and almost nine years after his last PCR action. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review Applicant’s claims. McElrath at 283, 277 S.E.2d at 890; Honeycutt at 41; Whitehead at 220, 574 S.E.2d at 202. Applicant offers no such justification, for there is none. The prejudice brought upon the State by this delay, in the form of witness memories and physical evidence naturally faded and degraded by the passage of time, is self-evident. *See, e.g., Bray* at 140, 620 S.E.2d at 745 (finding laches applied seven years after proceeding in question); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (record reconstruction undoubtedly futile eleven years after proceeding in question). Therefore, the application should also be summarily dismissed as barred by the doctrine of laches.

VI.

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

[Signature block on following page]

## VII.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to Applicant's prior PCR actions, was filed after the statute of limitations had expired, and is barred by the equitable doctrine of laches.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

CHRISTIAN SAVILLE  
Assistant Attorney General

By: Christian Saville  
ATTORNEYS FOR RESPONDENT

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

4/23, 2018

FILED FOR RECORD  
WINNIFA B. CLARK

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS  
IN THE FIRST JUDICIAL CIRCUIT

Bruce Houser, #243356,

2016-CP-38-0623

Applicant,

v.

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed by Bruce Houser (Applicant) on May 4, 2016. Respondent made its Return, requesting the application be summarily dismissed.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. In March 1997, the Orangeburg County Grand Jury indicted Applicant for murder (1997-GS-38-0467), and possession of a firearm during commission of certain crimes (1997-GS-38-0874). Charles Gross, Esquire, represented Applicant at trial. On August 7, 1997, Applicant proceeded to trial before the Honorable Luke N. Brown. Applicant was found guilty as indicted. Judge Brown sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal. An appeal was perfected on his behalf by the South Carolina Office of Appellate Defense. The South Carolina Supreme Court affirmed Applicant's conviction and sentence on January 13, 1999. State v. Houser, Op. No. 99-MO-005 (1999).

## 2000-CP-38-0119

Applicant subsequently filed his first application for post-conviction relief. An evidentiary hearing into the matter was convened on November 4, 2004, at the Calhoun County Courthouse. Applicant was represented by Carl B. Grant, Esquire. The Honorable Diane S. Goodstein denied and dismissed Applicant's application by order dated February 22, 2002. Applicant appealed the dismissal. The South Carolina Supreme Court denied Applicant's appeal without prejudice by order dated October 23, 2002, because a Rule 59(e) motion was still pending in the circuit court. Judge Goodstein denied Applicant's motion by order dated June 6, 2005.

## 2006-CP-38-0413

Applicant filed his second application for PCR on April 6, 2006, in which he alleged his PCR counsel from his first PCR action was ineffective in failing to seek appellate review of the denial of Applicant's PCR. The State made its return on October 26, 2007. An evidentiary hearing into the matter was convened on May 19, 2008, at the Calhoun County Courthouse. Clarissa W. Joyner, Esquire, represented Applicant. Assistant Attorney General Lance S. Boozer, Esquire, represented the State. The State consented to allow Applicant to appeal the denial of his previous PCR application. The Honorable James C. Williams, Jr. granted Applicant a belated PCR appeal by order dated July 22, 2008, and filed November 18, 2008.

CURRENT APPLICATION

In his third and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)
  - a. "I have been denied the right to appeal the denial of my first and second PCR [actions]."

- b. "Although this Austin issue was raised in my second PCR upon my first PCR counsel, still my second PCR counsel did not appeal my belated appeal as ordered by Judge James C. Williams, Jr. on July 22, 2008."
- c. "Also see attached letter to Appellate Division dated July 26, 2011, which to this day I have not gotten an answer regarding my belated appeal."
- d. "Here, it is clear that counsel Joyner has violated my due process by disregarding the judge's order where the state law expressly authorizes my right to seek appellate review of the denial of PCR matters."

Before this court are the Orangeburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's prior post-conviction relief action records, Applicant's appellate records, and the records for this post-conviction relief action.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### **Statute of Limitations**

The Court finds that this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2003). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for

summary disposition of [an] application when it appears from the pleadings...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

Applicant alleges he was denied his right to an appeal of his previous PCR action. The record clearly reveals Judge Williams issued an order granting Applicant a belated appeal in July of 2008, in which Judge Williams advised Applicant that any notice of appeal must be filed within thirty days of service of the signed copy. Furthermore, Judge Williams directed Applicant's attention to Rule 227, SCACR, for appropriate procedures on appeal. This application was filed May 4, 2016. There is no justification to excuse Applicant's delay of nearly eight years to allege he was again denied his right to appeal from the dismissal of his PCR application. Therefore, the application shall be summarily dismissed with prejudice for failure to file within the time mandated by the Post-Conviction Procedure Act.

#### Successive

The Court further finds the Application must be summarily dismissed because it is successive to Applicant's previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

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Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's allegations were or could have been raised in his prior PCR applications. Moreover, as stated above, there is no justification for Applicant's delay of nearly eight years in asserting he was denied his appeal of his previous PCR action. This Court finds the successiveness of this application shall not be excused. Therefore, this application shall be dismissed with prejudice as successive to Applicant's previous PCR actions.

#### **Laches**

The application shall also be dismissed under the equitable doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). This requirement "guards the State's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). In due consideration of the above requirement, Laches is an equitable doctrine defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Bray v. State, 366 S.C. 137, 140, 620

S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). "Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches." Id.

Applicant seeks post-conviction relief almost two decades after his conviction, and almost nine years after his last PCR action. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review Applicant's claims. McElrath at 283, 277 S.E.2d at 890; Honeycutt at 41; Whitehead at 220, 574 S.E.2d at 202. Applicant offers no such justification, for there is none. The prejudice brought upon the State by this delay, in the form of witness memories and physical evidence naturally faded and degraded by the passage of time, is self-evident. *See, e.g.,* Bray at 140, 620 S.E.2d at 745 (finding laches applied seven years after proceeding in question); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (record reconstruction undoubtedly futile eleven years after proceeding in question). Therefore, the application shall also be summarily dismissed as barred by the equitable doctrine of laches.

{Conclusion and signature on the following page}

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Orangeburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Christian Saville, Esquire  
PCR Division – 1st Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Orangeburg County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 27<sup>th</sup> day of April, 2018.



EDGAR W. DICKSON  
Chief Administrative Judge  
First Judicial Circuit

Orangeburg, South Carolina

## SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated L.T. McCumy (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA )

COUNTY OF McCormick

## AFFIDAVIT OF PERSONAL SERVICE

On this 7<sup>th</sup> day of April, 2021, I served the Conditional Order of Dismissal (2016-CP-38-0623), on Inmate Bruce Houser, SCDC Inmate #243356 by delivering personally and leaving a copy of the same at McCormick Correctional Institution. Deponent is not a party to this action.

s/ L.T. McCumy

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 7<sup>th</sup> day of April, 2021

Lakiesha D. Gray (L.S.)  
Notary Public for South Carolina

My Commission Expires: 01/13/30

## ADMISSION OF SERVICE

Service of a copy of the within Conditional Order of Dismissal (2016-CP-38-0623) is admitted at the South Carolina Department of Corrections McCormick Correctional Institution, McCormick County, SC this 7<sup>th</sup> day of April, 2021.  
s/ X Bruce Houser  
Inmate  
SCDC Inmate #: X 243356

167b

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

Bruce Houser, #243356,  
Applicant,

vs.

State of South Carolina,  
Respondent.

Case No.: 2016-CP-38-0623

REASONS SHOWING WHY THE

CONDITIONAL ORDER OF

DISMISSAL SHOULD NOT BECOME

FINAL

FILED FOR RECORD

This matter comes before this Court pursuant to an application for post-conviction relief filed by the Applicant on May 4, 2016. Respondent made its Return, requesting that the application be summarily dismissed. Applicant will show that the Respondent's request should be denied.

#### PROCEDURAL HISTORY

The Applicant believes that the Procedural History as stated on pages 1-3 is accurate. However, the Applicant also believes that his constitutional right to appeal the denial of second post-conviction relief application was violated.

## REASONS FOR FURTHER REVIEW

At the outset the Applicant filed his first post-conviction relief application, see page 2 of the Conditional Order of Dismissal, 2000-CP38-0119. Applicant's first PCR attorney, Carl B. Grant, Esquire, failed to consult with the Applicant concerning his wish to appeal which led to no appeal being filed to review the findings of fact and conclusions of law by the Honorable Diane S. Goodstein, whom dismissed the Applicant's application with prejudice. See page 2 of the Conditional Order of Dismissal, 2000-CP-38-0119.

Failure to file the notice of appeal of denial of the Applicant's first PCR application was a clear violation of the Applicant's Sixth Amendment Rights under the Constitution of the United States of America. This was evident when the Applicant filed his second PCR application in which the Applicant was granted a belated appeal to review issues raised in his first PCR application. See page 2 of the Conditional Order of Dismissal, 2006-CP-38-0413.

Due to the ineffective effort provided by Applicant's second PCR attorney Clarrisa W. Joyner, Esquire, the order of the Honorable James C. Williams was ignored and the Applicant never received a belated appeal. Attorney Joyner never consulted with the Applicant to determine his wishes as to whether he wanted appellate review of his PCR issues, which was obvious that Applicant did, otherwise he would never had filed the PCR

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application requesting an appeal in the first place.

As it stands now, we're at the stage of a third PCR application requesting review of the issues raised in the first PCR application, 2016-CP-38-0623.

The Applicant previously alleged that counsel in both PCR proceedings failed to consult with him concerning him filing an appeal. In the United States Supreme Court's case of Roe v. Flores-Ortega, 120 S.Ct. 1029, 1036 (2000), the Court states that: "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. In making this determination, courts must take into account all the information counsel knew or should have known".

Counsel in the second PCR proceedings should have known that the Applicant wanted appellate review of his issues in light of the fact that the Applicant only argument was related to the fact that he was -- denied appellate review of his first PCR issues.

PCR counsel was just as obligated to file a notice of appeal following the denial of the Applicant's PCR as a trial attorney. The South Carolina Rules of Court, Rule 602 Defense of Indigents, state that: (e)(1) trial counsel, whether retained, appointed, or Public Defender, shall continue representation of an accused until final judgment, including any proceeding on direct appeal, except as hereinafter provided.

It is very obvious how seriously the Courts looks at a situation like this in light of the fact that the Honorable James C. Williams, Jr. granted the Applicant a belated appeal in his final order dated July 22, 2008.

#### STATUTE OF LIMITATIONS

It is stated on page 4 of the Conditional Order of Dismissal that the Statute of Limitations doctrine should apply in this matter because: "Judge Williams issued an order granting Applicant a belated appeal in July of 2008, in which Judge Williams advised Applicant that any notice of appeal must be filed within thirty days of service of the signed copy. Furthermore, Judge Williams directed Applicant's attention to Rule 227, SCACR, for appropriate procedures on appeal". That is a frivolous argument from the Respondent because Applicant was represented by counsel during the period that Respondent relates to, therefore, counsel was constitutionally obligated to file the notice of appeal on behalf of the Applicant.

The Supreme Court of South Carolina has carved out exception to the statute of limitations for when an applicant did not knowingly and voluntarily waive his right to appeal from denial of his PCR application. Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999); see also Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). The Applicant did not knowingly and voluntarily waived his right to appeal the denial of either of his PCR actions.

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#### SUCCESSIVE

The Court contends that this application is "successive" to Applicant's previous applications. That analogy is misplaced because the allegations were not and could not be raised in any of the Applicant's prior PCR actions because the violations occurred after the PCR proceedings had ended. Counsel in the first PCR proceedings, Carl B. Grant, Esquire, knew that he was obligated to file a notice of appeal, he did so file a notice after the first PCR hearing, dated April 19, 2002, however, a Rule 59(e) motion was still pending in the lower courts, therefore, the appeal proceedings were dismissed without prejudice, but counsel never refiled the notice of appeal following the denial of Applicant's PCR application.

- It clearly shows that the Applicant was not at fault as to the way things evolved in his case because he is a layman and was relying on counsel to file a notice of appeal since the Applicant's knowledge of the legal profession is very limited.

#### LACHES

The Laches doctrine should not apply to this case because the delay in this matter was unintentional, it was because he was represented by incompetent counsel. "Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches".

Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005)  
(quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200,

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202 (2002). Here, in the instant case, the Respondent does not allege that it is prejudiced or disadvantaged in any manner. The Respondent only point to situations that could have occurred during the delay, the Respondent does not point to any specific incident that has occurred that prejudiced or put the Respondent at a disadvantage. As previously stated, delay alone in assertion of right does not constitute laches. The Respondent is only relying on the delay brought on by incompetent legal assistance.

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CONCLUSION

In light of the foregoing, the Applicant believes that he is entitled to an evidentiary hearing to have the issues of whether his right to appellate review of his PCR issues were violated, or in the alternative, grant a belated appeal.

Respectfully submitted,

This 9 day of May, 2018

Bruce Houser  
Bruce Houser #243356  
McCI F-4 A-side  
386 Redemption Way  
McCormick, SC 29899

Applicant, pro-se

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ALAN WILSON  
ATTORNEY GENERAL

May 11, 2021

FILED FOR RECORD  
WINNIFA B. CLARK  
2021 MAY 13 PM 11:13  
CLERK OF COURT  
ORANGEBURG, SC

The Honorable Winnifa Brown-Clark  
Clerk of Court - Orangeburg County  
Post Office Box 9000  
Orangeburg, SC 29115-9000

Re: Bruce Houser, #243356 v. State of South Carolina  
2016-CP-38-00623

Dear Ms. Brown-Clark:

Enclosed please find the original Final Order of Dismissal signed by the Honorable Edgar W. Dickson, in the above-captioned case, for filing in your office.

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Samantha J. Weidauer  
Assistant Attorney General

SJW/kw

cc: Bruce Houser, #243356

ATTEST: TRUE COPY

Winnifa B. Clark  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

Bruce Houser, SCDC #243356, )  
Applicant, )

Case No. 2016-CP-38-00623

v. )

FINAL ORDER OF DISMISSAL

State of South Carolina, )  
Respondent. )

FILED FOR RECORD  
WINNIFER B. CLARK  
2021 MAY 13 AM 11:38  
CLERK OF COURT  
ORANGEBURG, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Applicant Bruce Houser on May 4, 2016. In response, Respondent, the State of South Carolina, moved to dismiss the application as untimely and successive pursuant to S.C. Code Ann §17-27-20, §17-27-45, §17-27-90, and under the doctrine of *laches*<sup>1</sup>.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed April 27, 2018, and filed May 3, 2018, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated April 7, 2021, serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant responded to this Court's Conditional Order of Dismissal on May 16, 2018, by filing a document with the clerk of court entitled, "Reasons Showing Why the Conditional Order

<sup>1</sup> Pursuant to Rule 607(i), court reporters are not required to retain the records from proceedings for more than five years. Due to Applicant's significant, almost eight year delay in filing the instant post-conviction relief application, Respondent is no longer able to order a transcript for the post-conviction relief proceedings.

ATTEST: TRUE COPY  
*Winnifera B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

of Dismissal Should Not Become Final". In this document, Applicant reiterates the allegations made in the instant post-conviction relief application – he was denied the right to appellate review of his PCR. Specifically, Applicant asserts Carl B. Grant, Esquire, PCR counsel for Applicant's first PCR, failed to appeal the denial of his PCR. Applicant also states Clarissa Joyner, Esquire, counsel for Applicant's second PCR, failed to pursue *Austin*<sup>2</sup> relief on his behalf. Applicant "believes that he is entitled to an evidentiary hearing to have the issues of whether his right to appellate review of his PCR issues were violated, or in the alternative, grant a belated appeal".

In this document, Applicant states his first PCR counsel failed to consult with him after his post-conviction relief hearing to determine whether Applicant wished to appeal the denial of post-conviction relief. Moreover, Applicant asserts counsel's failure to file a notice of appeal after his first PCR action was a violation of his Sixth Amendment rights. Applicant claims his rights were again violated, when his second PCR counsel failed to file an appeal, despite Applicant being granted a belated appeal to review the issues raised in his first PCR application. Applicant contends his second PCR counsel should have known Applicant wanted appellate review, as his only argument during his second PCR hearing was he was denied appellate review. Applicant notes, this is his third PCR application and he is requesting review of the issues raised in the first PCR application.

Furthermore, Applicant asserts this Court's finding that Applicant's post-conviction relief application is procedurally barred by the statute of limitations doctrine, should not apply to this matter. Applicant argues he was represented by counsel during his second PCR, and thus, counsel was "constitutionally obligated to file the notice of appeal on behalf of the Applicant". Applicant

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<sup>2</sup> *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

further asserts the statute of limitations does not apply because he did not knowingly and voluntarily waive his right to appeal the denial of either of his PCR actions.

Applicant also contends this Court's finding his application is successive to his previous applications is "misplaced". Applicant argues the allegations in the instant post-conviction relief application were not and could not be raised in either of the Applicant's prior PCR actions. Applicant states counsel in his first PCR proceedings knew he was obligated to file a notice of appeal, but did not file following the denial of Applicant's request for relief. Applicant also claims he relied on counsel to file his notice of appeal.

Likewise, Applicant argues the doctrine of *laches* does not apply to this matter. Applicant claims he was represented by "incompetent counsel" and any delay on his part was unintentional. Applicant further asserts Respondent has not pointed to anything specific occurring during the delay that constitutes prejudice or disadvantages Respondent.

This Court has reviewed Applicant's response to this Court's Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court finds this application for post-conviction relief must be summarily dismissed under the equitable doctrine of *laches*.<sup>3</sup> Applicant asserts the doctrine of *laches* "should not apply to this case because the delay in this matter was unintentional", this Court disagrees. To ensure

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<sup>3</sup> Initially, this Court found Applicant failed to show why his application should be considered timely pursuant to S.C. Code Ann. §17-27-45. While this Court agrees there is no justification for Applicant's delay of nearly eight years, the Court's previous finding in favor of the summary dismissal of this action based on the statute of limitations is not appropriate. Furthermore, in the Conditional Order of Dismissal, this Court found the application must be summarily dismissed because it was successive to Applicant's previous post-conviction relief application. This Court also finds, the previous finding in favor of the summary dismissal of this action, based on the procedural bar of successiveness of filings, is not appropriate. Therefore, this Court agrees with Applicant that this post-conviction relief application should not be dismissed based on the procedural bars of the statute of limitations or successiveness.

finality of litigation, our courts require reasonable diligence in pursuing collateral relief. *McElrath v. State*, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). This requirement "guards the State's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." *Id.* (quoting *Honeycutt v. Ward*, 612 F.2d 36, 42 (2nd Cir. 1979)). In due consideration of the above requirement, *laches* is an equitable doctrine defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Bray v. State*, 366 S.C. 137, 140, 620, S.E.2d 743, 745 (2005) (quoting *Whitehead v. State*, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). "Whether a claim is barred by *laches* is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute *laches*."

This Court finds this application is barred by the doctrine of *laches* and denies and dismisses this application for post-conviction relief with prejudice. Applicant seeks post-conviction relief almost eight years after an order granting belated review of his previous post-conviction relief claim. Absent some explanation or justification for the delay, *laches* will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review Applicant's claims. *McElrath* at 283, 277 S.E.2d at 890; *Honeycutt* at 41; *Whitehead* at 220, 574 S.E.2d at 202. Applicant offers no such justification, for there is none. The prejudice brought upon the State by this delay, in the form of witness memories and physical evidence naturally faded and degraded by the passage of time, is self-evident. *See, e.g., Bray* at 140, 620 S.E.2d at 745 (finding *laches* applied seven years after proceeding in question); *State v. Serrette*, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (record reconstruction

undoubtedly futile eleven years after proceeding in question). This Court also notes, the transcript for Applicant's first post-conviction relief hearing, is no longer available pursuant to Rule 607(i).

After a thorough review of the record and Applicant's response to the Conditional Order of Dismissal, this Court finds Applicant has still failed to establish any evidence or facts entitling him to an evidentiary hearing. Accordingly, pursuant to the doctrine of *laches*, this Court finds this action must be summarily dismissed.

This Court hereby advises Applicant he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. *See* Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

**IT IS THEREFORE ORDERED** that, for the reasons set forth herein, this application is hereby **DENIED** and **DISMISSED** with prejudice.

AND IT IS SO ORDERED this 3rd day of May, 2021.



EDGAR W. DICKSON  
Chief Administrative Judge – Common Pleas  
First Judicial Circuit

Orangeburg, South Carolina

STATE OF SOUTH CAROLINA. )  
 ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF ORANGEBURG ) Case No. 2016-CP-38-00623

Bruce Houser, SCDC #243356, )  
 Applicant )  
 )  
 v. ) Notice of Appeal  
 ) from  
 ) Final Order of Dismissal  
 State of South Carolina, )  
 Respondent. )  
 \_\_\_\_\_ )

Now comes, Applicant in the above captioned matter, acting by and through his undersigned Counsel, giving Notice of his Appeal from the Conditional Order of Dismissal filed in this Post-Conviction Relief case on May 3, 2018, as well as the Final Order of Dismissal, signed by the Honorable Edgar W. Dickson, on May 3, 2021 and filed on May 13, 2021. Said Final Order of Dismissal was served on Applicant by way of mail through the USPS on May 25, 2021 and was, on a subsequent date, received by him at the Correctional Institution where he was housed at that time. Applicant has served opposing Counsel with his Notice of Appeal from these Orders by email on today's date. In addition, a copy of this NOA has been sent to the Office of the Orangeburg County Clerk of Court for filing. *See*, Certificates of Service attached hereto.

*Sl Tara D. Shurling*

TARA DAWN SHURLING

Attorney and Counselor at Law  
 S.C. Bar No. 5099

3614 Landmark Drive, Suite A  
 Columbia, South Carolina 29204  
 (803)738-8622  
 (803)738-1600 FAX

Attorney for Applicant

June 25, 2021

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS  
Case No. 2016-CP-38-00623

Bruce Houser, SCDC #243356, )  
Applicant )  
v. )  
State of South Carolina, )  
Respondent. )

Certificate of Service  
Notice of Appeal  
from  
Final Order of Dismissal

Undersigned Counsel hereby certifies that a copy of the NOA filed on today's date from the Final Order of Dismissal filed in the above captioned Post-Conviction Relief matter, has been served upon opposing counsel, Megan H. Jameson, Assistant Deputy Attorney General, by email on today's date, June 25, 2021, to the email address set forth below.

Megan Harrigan Jameson  
Assistant Deputy Attorney General  
mjameson@scag.gov

*s/ Tara D. Shurling*

TARA DAWN SHURLING

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Attorney for Applicant

June 25, 2021