

VOL. 11

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S.C. Supreme Court

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
The Honorable L. Casey Manning, Circuit Court Judge

SHARON L. SMITH, 030885,

, RESPONDENT

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

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1 anything in his hand?

2 A Not at that time, no.

3 Q And you were over there that day for what?

4 A Pick up the games and get a few things so I could go
5 down to the country.

6 Q And you had no idea that your stepfather was coming
7 to do the same thing, did you?

8 A I surely didn't.

9 Q You surely didn't?

10 A No, I didn't.

11 Q And he lives in Hopkins, right?

12 A Yes.

13 Q And you had called your residence a couple of times
14 to talk to your mom when you were there, hadn't you?

15 A I'm sorry. I don't understand the question.

16 Q Okay. I said your residence. You had called from
17 4107 Mildred, what I call you and Charles' residence,
18 you're now calling your residence?

19 A Mm-hmm (affirmative).

20 Q To your mother and Daniel Parker's residence, hadn't
21 you?

22 A On what day?

23 Q On this day.

24 A No.

25 Q You did not? 455

1 A I did not call them.

2 Q At all?

3 A I did not call her at all.

4 Q What's their number?

5 A 647-0107.

6 Q And what was the number at 4107 Mildred Avenue? Is
7 it 929-0975?

8 A Mm-hmm (affirmative).

9 Q So if there is a phone call from Mildred Avenue to
10 your folks' house, after you got there, you wouldn't
11 have done it?

12 A I mean, I didn't do it. He could have done it or
13 either my step dad.

14 Q Or either your step dad. When you stabbed Charles in
15 the heart, Ms. Smith, you didn't help him at all, did
16 you?

17 A I helped him. But I didn't stab him in his heart.

18 Q And as a matter of fact, you made some phone calls
19 before you called 911, didn't you?

20 A No. I was basically already on the phone when he
21 approached me in that room.

22 Q And you were trying to clean up the knife with the
23 towel, weren't you?

24 A No.

25 Q Did you go back⁴⁵⁶ the drawer?

1 A Did I go back to the drawer?

2 Q After Charles was stabbed, did you go back to the
3 drawer? Did you back to the kitchen?

4 A After he said he was, I was still in the drawer.

5 Q Did he stab himself?

6 A I wouldn't want to think that he did.

7 Q What did you say before that? After he said he was
8 stabbed, you did what? You went back to the drawer?

9 A Yeah. I was pretty much still going about what I was
10 doing.

11 Q Did you go back to clean off the drawer?

12 A No.

13 Q You had touched the drawer previously, hadn't you?

14 A No. I was looking, still looking for the lease.

15 Q But you'd opened the drawer. There's a picture of
16 it?

17 A Yes.

18 Q There's where the lease and some knives are kept,
19 right?

20 A What?

21 Q Some knives were kept in there, too?

22 A No.

23 Q Yes, ma'am. You said earlier there were?

24 A In the bedroom? We don't keep any knives in the
25 bedroom.

1 Q No, ma'am. In the kitchen. I asked you the kitchen.

2 A Well, I thought you were still in the bedroom.

3 Q I'm sorry. Okay. You closed the bedroom drawers. I
4 forgot about that. Did you go back to the kitchen?

5 A No.

6 Q But you had previously touched that kitchen drawer to
7 open it, hadn't you?

8 A Yes. I had opened plenty of drawers.

9 Q And isn't it true you didn't call 911 'til you
10 realized your stepfather was there?

11 A No. Hmm-mm (Negative).

12 Q As a matter of fact, your stepfather, they'd been to
13 Edisto together, hadn't they?

14 A We'd all been to Edisto.

15 Q Yes, ma'am. But they'd been together, hadn't they?

16 A Yes. Everybody has been there.

17 Q Were you trying to clean up and figure out what to do
18 when he surprised you there? You didn't know he was
19 coming?

20 A No. I was on the phone when he came.

21 Q You heard him coming, didn't you?

22 A No. I didn't hear him.

23 Q And you couldn't tell 911 what happened, could you?

24 Thank you. That's all I have.

25 THE COURT: 458. Sampson.

1 **MS. SAMPSON:** Yes, Your Honor. A few things.

2 **THE COURT:** Yes, ma'am.

3 REDIRECT EXAMINATION

4 **BY MS. SAMPSON**

5 **Q** Ms. Smith, is this the knife we've all been talking
6 about?

7 **A** Yes.

8 **Q** Marked State's Exhibit No. 86?

9 **A** Yes.

10 **Q** Brown stuff on the end?

11 **A** (Nods head affirmatively).

12 **Q** What's that look like to you?

13 **A** It looks like blood or either food or something.

14 **Q** So it's got stuff on it?

15 **A** Yeah.

16 **Q** And that's on the end where it would have been in his
17 body?

18 **A** Yes.

19 **Q** And then there is pictures. I'll just point to
20 State's Exhibit No. 54. Is that the brown dress
21 we've been talking about?

22 **A** Yes.

23 **Q** And there is blood all over it, correct?

24 **A** Yes.

25 **Q** Did you have it c459hen your father-in-law showed up?

1 A Yes.

2 Q Or stepfather. I'm sorry.

3 A (Nods head affirmatively).

4 Q And my recollection, you had blood all over your arms
5 when the police showed up, correct?

6 A Yes.

7 Q And State's Exhibit No. 47 and 48, there is blood on
8 your face, correct?

9 A Yes.

10 Q And in all of those pictures there's blood all over
11 the place. Would that be fair to say?

12 A Yes.

13 Q In fact, there's blood on the door?

14 A (Nods head affirmatively).

15 Q So you didn't try to wipe that off, did you?

16 A I wasn't trying to wipe anything.

17 Q And when you went over there to his body, you tried
18 to help him. Would that be fair to say?

19 A Yes.

20 Q And the knife, where did you put it?

21 A The knife was in the -- in the bathroom.

22 Q Did you try to cover it up with that towel?

23 A No. I was just trying to think fast what to do. I
24 mean, you've got to apply pressure. I can use a
25 towel. I can u460 something. I was just trying to

1 think. First I tried to use my dress but the blood
2 still was coming.

3 Q And we've been -- we just went over this. You were
4 covered with blood?

5 A (Nods head affirmatively).

6 Q And you were here. These photos were taken after the
7 incident? Would that be fair to say?

8 A Mm-hmm (affirmative).

9 Q Is there any blood in the kitchen?

10 A Hmm-mm (Negative).

11 Q Okay. And you talked about -- he asked you did
12 you -- when you went in the kitchen drawer, did you
13 take a knife out of that kitchen drawer ever?

14 A No. No knife was in it.

15 Q No knife was in it?

16 A Hmm-mm (Negative).

17 Q Why did you go in the kitchen drawer?

18 A I was looking for the lease.

19 Q Okay. And there has been a lot of questions about
20 this, so I just want to clear this up. Did you at
21 any point see Charles have a knife before the
22 incident? Not while you're struggling or anything
23 but before the incident.

24 A I know he had something in his hand when he comes to
25 the door.

1 Q And is it fair to say you told Investigator Wilson
2 and Investigator Vinson that he had a knife at that
3 point?

4 A Yeah. I told him he could have, yes. I told them
5 that.

6 Q And when you keep saying you did not see him with the
7 knife, what time are you -- when are you talking
8 about you did not see a knife?

9 A When he approached me in the room.

10 Q And when you're struggling, did you see him with a
11 knife?

12 A No.

13 Q Were you looking at his hands?

14 A No. Not really. I was just trying to get him off of
15 me.

16 Q Were you looking for a knife?

17 A No.

18 Q Did you expect him to be armed in any way whatsoever?

19 A No.

20 MS. SAMPSON: No further questions, Your Honor.

21 MR. MEADORS: I just have three follow-up.

22 MS. SAMPSON: Just three?

23 MR. MEADORS: Well, four maybe.

24 RECROSS EXAMINATION

25 BY MR. MEADORS

1 Q He was alive when you called 911, correct?

2 A Yes, sir.

3 Q And how did the knife get out of his heart?

4 A I don't know.

5 Q And she asked you about -- did blood come right out?

6 A There was no blood when I looked -- when I was
7 looking at him in the mirror, there was no blood.

8 Q Did you hold his feet up or do any other kind of
9 things you learned as an LPN to try to help him?

10 A Because I didn't see the blood, no, I didn't at
11 first. I was checking to see if he had pulses to his
12 lower extremities and stuff.

13 Q And did you press something on him?

14 A Yes. As I was checking again, he didn't have any.

15 Q Why did you take the knife to the bathroom? Why did
16 you move it at all?

17 A I don't know.

18 Q And that's where the towel was with the blood on it,
19 in the bathroom. It wasn't by Charles, was it?

20 A I don't know.

21 Q That's all.

22 THE COURT: Thank you. Ma'am, you may step
23 down. Thank you. Anything further from the defense?

24 MS. SAMPSON: At this time the defense rests,
25 Your Honor. 463

1 BY MR. MEADORS

2 Q Ms. Gibson, I've just got a few questions for you.
3 I'm going to ask you just to answer these questions
4 specifically. Okay? You're Charles' daughter?

5 A Yes.

6 Q Did you have an occasion to see him on the day he
7 died?

8 A Yes.

9 Q What is your phone number?

10 A At the time it was 735-0138.

11 Q And as reflected on these tolls that day, 735-0138,
12 did you have an occasion to call Charles where he was
13 staying?

14 A Yes.

15 Q Was that 929-0975?

16 A Yes.

17 Q And I'll show you -- if I may approach? And I
18 apologize.

19 THE COURT: Yes, sir.

20 Q On State's 97, 735-0138, is that the number where you
21 made the phone call?

22 A Yes.

23 Q And that number is 12:28, correct? That time is
24 12:28?

25 A Yes.

1 Q Did you have an occasion to go see Charles after
2 that?

3 A Yes.

4 Q As a result of that, what were you going to do?

5 A Just, I was supposed to check on the house when he
6 left. He was getting ready to go back out of town to
7 work, and he called me in order to give me the keys
8 to the house.

9 Q Check on the house after he left?

10 A Mm-hmm (affirmative).

11 Q As a result of that conversation, you believed he was
12 planning on coming back to the house?

13 A Yes. He told me he would see me next week.

14 Q How long were you there?

15 A Maybe 30 minutes or so, a little over 30.

16 Q That's all. Thank you.

17 THE COURT: Thank you. Any questions, Ms.
18 Sampson?

19 MS. SAMPSON: Beg the Court's indulgence.

20 THE COURT: Yes, ma'am.

21 MS. SAMPSON: No questions, Your Honor.

22 THE COURT: Ma'am, you may step down. Thank
23 you.

24 MR. MEADORS: The State would now call
25 Lieutenant Marv466Fortner.

1 MARVIN C. FORTNER, after being duly sworn,
2 testifies as follows:

3 THE CLERK: Thank you. Please have a seat on
4 the witness stand and state your full name for the
5 record.

6 MS. SAMPSON: Your Honor, we need to approach.

7 THE COURT: Yes, ma'am.

8 WITNESS: I am Marvin Campbell Fortner.

9 (Whereupon, a bench conference is had)

10 THE COURT: Mr. Meadors.

11 MR. MEADORS: Thank you, Your Honor. If it
12 pleases Your Honor.

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION

15 BY MR. MEADORS

16 Q Good morning, Lieutenant.

17 A Good morning.

18 Q Would you please tell these Ladies and Gentlemen of
19 the Jury about yourself; specifically, where you're
20 from and where you are born and raised?

21 A Born and raised in Cayce, South Carolina, attended
22 college in Spartanburg, reside in the Columbia area.
23 I've been a paramedic with Richland County EMS for a
24 little over 11 years. I currently work as a
25 Lieutenant with the 467 as a field training officer.

1 It's my job to help employees become adept at being
2 paramedics. Therefore, what I do is I first respond
3 to calls, help out with bad calls and generally just
4 help teach.

5 Q Let me ask you specifically; after you got out of
6 college, did you have an occasion in 1991 to be an
7 EMT?

8 A That's correct.

9 Q All right. And that is kind of where you start in
10 your field?

11 A That is correct. You start as an EMT and you go for
12 about a six-month course. That's where you learn
13 bandaging and things like that. Then you go to
14 paramedic school which can stretch from 14 to 24
15 months where you learn about medications and
16 electricity to help the heart and things like that.

17 Q And did there come a time when you became -- you're
18 employed now with Richland County?

19 A That's correct.

20 Q And when did you start that, start as a paramedic
21 after an EMT?

22 A In December of 1993 I became a paramedic and started
23 at Richland County.

24 Q All right. And you mentioned a field training
25 officer?

1 A That's correct.

2 Q Are you doing that now? And, if so, how long have
3 you been doing that, Lieutenant?

4 A I'm doing that now, and I've been doing that for
5 seven years.

6 Q If you said it just minute ago, I'm sorry. What does
7 that mean?

8 A That means I help new paramedics and new EMT's learn
9 how to do their job.

10 Q And other than the training you've just described to
11 these folks, do you have to go through periodic
12 training?

13 A That's correct. We have an in-service training
14 program. We meet monthly. We're certified every
15 three years in basic things we have to go through to
16 make sure we're fresh in our capabilities.

17 Q So you're certified now; is that correct, as a
18 paramedic?

19 A Yes, sir.

20 Q Tell the folks, how many scenes have you been to,
21 just --

22 A I don't have any idea.

23 Q Thousands?

24 A It's been in the thousands.

25 Q How many scenes h469 you responded to where there

1 have been deceased bodies?

2 A I tried to put a number on that, and I can't tell you
3 how many. Best guess would be 400.

4 Q 400?

5 A 400 is my best guess.

6 MR. MEADORS: Your Honor, at this time we would
7 offer Lieutenant Marvin Fortner as an expert in the
8 field of pre-hospital medicine.

9 THE COURT: Any objection or requested Voir
10 Dire?

11 MS. SAMPSON: No objection.

12 THE COURT: Without objection, you're so
13 qualified and may testify as such.

14 MR. MEADORS: Thank you, Your Honor.

15 Q (By Mr. Meadors) Do you tend to go to the more
16 violent scenes, let's say?

17 A I go to the most intense scenes because that's where
18 the most challenges are for our employees. So indeed
19 I do.

20 Q And specifically, tell these folks on May 11th, 2003,
21 you were in the same capacity as you are now?

22 A Indeed.

23 Q And in that capacity, Lieutenant, did you become
24 aware of an incident at 4107 Mildred Avenue?

25 A That's correct. 470.07 Mildred Avenue. The call went

1 out which indicated a signal 14. That means a
2 stabbing. And so I took note of that and first
3 responded to that call. First responded means I went
4 ahead of the ambulance. I was in front of them. I
5 go there first. They got there right behind me.

6 Q And can you tell the folks, if I can find it, showing
7 you State's 3, does that look like 4107 Mildred
8 Avenue?

9 A It looks pretty close. I don't remember a whole lot
10 about it on the outside because I was looking for
11 police officers.

12 Q And describe to the Ladies and Gentlemen of the Jury;
13 as you went in the house, do you remember seeing
14 anybody else there?

15 A Yes, sir.

16 Q Can you tell us who was there?

17 A I now know their names. I'm going to refer to my
18 record. As I entered, you kind of go around the back
19 of the house and you go into a den/sunroom type area.

20 Q And I refer you to State's 84. Does that help you?

21 A Where is the front of the street?

22 Q The front would be up here.

23 A I went in there in the den. I went in this way, up
24 this way through here. I came in here. Officer
25 Wilson cleared the scene for me. By that I mean I

1 asked him if it was okay, am I clean, is it safe? He
2 said, you're safe. That means he's cleared it and
3 I'm safe to go in. They are very good about taking
4 care of us. Obviously --

5 Q You mean is the scene clear for you to go in?

6 A That's right. Is everybody safe? Is there somebody
7 that's going to hurt me? He said -- you know, we say
8 that more quickly. Is it cool, something like that,
9 and he said yeah. So we went in. I went in with a
10 crew. There was a lot of blood on the floor.

11 Q Did you see a woman there when you came in?

12 A I did see a woman with Officer Wilson in that den
13 area. I don't remember anything else about that.

14 Q Did you see Officer Thornton?

15 A I saw Officer Thornton but I don't remember where I
16 saw him. He was inside but I don't know where. I
17 saw him and was assured. It's always nice to have
18 all the guys in blue and women in blue.

19 Q When you saw Lieutenant Gibson, did you see him
20 there?

21 A I didn't see Lieutenant Gibson until I cleared the
22 scene at 14:28 hours.

23 Q I apologize. You're now in the room with the body
24 of --

25 A Not yet.

1 Q Okay. I'm sorry. Go ahead.

2 A We go through the house, kind of meander through the
3 home. There's a good amount of blood on the floor.
4 I saw the body from across the room. It looked like
5 a dead on arrival body. It was an obvious crime
6 scene. We're taught to protect crime scenes for law
7 enforcement. For that reason I told the crew to not
8 enter the room, that I would enter the room so there
9 would only be one set of boot prints.

10 Q And showing you State's 5, would that fairly and
11 accurately represent at least part of the room you
12 saw?

13 A That indeed is what I saw.

14 Q So you went in?

15 A I went in to confirm death. We can confirm death
16 without a Life Pack which is a heart monitor. And I
17 touched the patient's neck with my forearm, and I
18 also checked carotid pulse with my finger, using your
19 forearm because you want skin-on-skin because when
20 you use a glove you can lose temperature because it's
21 a barrier. I then asked the crew --

22 Q Let me approach you real quick. Just show me how you
23 did it, touched his forearm if I am on the ground?
24 You touch your forearm with --

25 A Come around here 473e that. Like that.

1 Q So you --

2 A You can feel a lot better. It's just like when you
3 check a temperature in a child, sometimes you'll feel
4 better, more sensitive right here than here. Plus,
5 I'm wearing Latex gloves.

6 Q So you wanted skin-on-skin versus gloves on there?

7 A I wanted skin-on-skin.

8 Q And why did you do that? Why did you want that?

9 A You've got better sensitivity. You can tell better
10 the -- what you feel.

11 Q And you said you touched somewhere else on him?

12 A Sure. I checked his carotid pulse.

13 Q Can you describe to the jury; when you touched him
14 with your forearm, can you describe Charles' body?

15 A It was cool to the touch.

16 Q What does that mean?

17 A I can't give you a temperature, but it was an
18 unnatural cool. It was the cool that you feel only
19 when you touch a dead person.

20 Q How much does my body weigh (sic) right now if I
21 don't have a fever? How much temperature am I right
22 now if I'm okay and don't have a fever?

23 A You're supposed to be pretty close to 98.6.

24 Q And when you felt Charles' body skin-to-skin, it felt
25 cool?

1 A It felt cool. It was a day in May. And we looked up
2 on the Internet, and the temperature from 1:53 to
3 2:53 was from 84 to 84.9 degrees. It was a warm day.
4 The AC was probably on. But it wasn't -- it wasn't
5 cool like that. We're talking core temperature. For
6 a muscular man, he was cool.

7 Q And is there a term that you and your profession and
8 based on your training and experience have for when
9 your body temperature up here as the body starts to
10 cool, is there a term for that?

11 A You can assume room temperature, which is an ominous
12 sign obviously for any patient to assume room
13 temperature.

14 Q And why does a body start to assume room temperature?

15 A Because it's no longer profusing. Profusing is like
16 gasoline in a gasoline engine. It's like it pumps
17 through, goes through the carburetor, fires and then
18 you go on down the road. Your blood goes through
19 your heart, goes through your lungs, does its job in
20 the lungs, in the pulmonary system and keeps going
21 through a series of veins and arteries that we could
22 go on for days about. But we all have a rudimentary
23 knowledge of it.

24 As this happens the hypothalamus keeps it about
25 98.6 degrees. So475of the main carriers of that are

1 the internal and external jugular veins which are
2 located on either side of the neck. When those stop
3 moving, when there's no longer fluid moving through
4 it, that is going to cause it to cool down pretty
5 quick.

6 Q And the hotter the temperature outside should mean
7 the longer it would take to cool down, correct?

8 A One would assume --

9 Q The hotter the place you're in, right?

10 A One would assume so, sir.

11 Q Did you -- I don't know if "opportunity" is the right
12 word -- but did you touch Charles anywhere else on
13 his skin?

14 A I did. I put electrodes on Charles because the
15 secondary device for -- it's a legal thing. I didn't
16 have to do it, but I like to teach new paramedics
17 especially to do it in case there is any question,
18 which there was not in my mind about Charles, this --

19 Q Mr. Gibson?

20 A Mr. Gibson. You put electrodes on the patient and
21 you check the electrical activity of the heart. And
22 I chose to use a 12 lead Life Pack for that which we
23 use on our Richland County ambulances. You put one
24 patch here, one patch here, and one on the belly.
25 What that does triangulates electrical activity

1 to the heart and it says if there's any electrical
2 activity in the heart, which there was none.

3 I checked in two leads which means I took a
4 two-picture electrical view, and there was none
5 there. So I did feel the shoulders and the belly
6 while I was putting them on. However, I did not feel
7 the shoulders and belly as well as I felt the upper
8 chest.

9 Q And --

10 A Because, like I said, my main job after discerning
11 what we were going to do with the patient was to
12 leave as little mess as possible because of the
13 possible criminal investigations.

14 Q Do you call that the thoracic area that you were --

15 A Sure. Pretty much anything from your belt line to
16 your neck is the thoracic area.

17 Q Would you describe that area also as cool?

18 A That was cool. And that's the biggest area of most
19 people.

20 Q Now, after you had -- is that what you see on TV when
21 you shock the body with electric --

22 MS. SAMPSON: Objection, Your Honor, to the
23 leading.

24 MR. MEADORS: Your Honor, I don't --

25 THE COURT: 477hink it's an okay, proper

1 question.

2 A It's a similar area. It's not the same area you put
3 the little stickers though.

4 Q All right. Well, let me ask you this much. Did you
5 have any electrical activity as a result of that?

6 A None.

7 Q And how long, based on your experience and training,
8 will a body still release some elect --

9 A I tell you, you can have young folks and you can have
10 old folks with healthy hearts that go on for a long,
11 long time, 45 minutes or an hour. They'll keep
12 conducting electricity and they'll keep trying.
13 They'll just keep trying to beat. The electrical
14 system in the body is amazing in that it tries to
15 beat, but the musculature has to continue to work.
16 What was the question?

17 Q I guess my question was, would you expect -- does it
18 put off electricity after somebody has died for a
19 period of time?

20 A It does. Indeed. It goes for a long time if you're
21 a healthy person. Some weak person that has an
22 injured heart that has been abused, that's elderly
23 perhaps, doesn't have a strong heart, will die more
24 quickly, and the electrical activity won't last as
25 long as you or 478pefully would.

1 Q And the longer one is deceased, the less likely you
2 are to find electrical activity?

3 A That's correct.

4 Q And how would you describe it? I've seen up and down
5 lines, flat lines. What would you describe it as?

6 A Well, we've got a bunch of them.

7 Q How would you describe the results of this one once
8 you determined to see, tried to see if there was any
9 electrical activity?

10 A It was flat. That means there was an absence of
11 electricity.

12 Q Now, can you tell the jury, based on your experience,
13 your training of these 400 and something scenes where
14 you've gone to and dealt with bodies, do you have an
15 opinion in your field, to a degree of expert in your
16 field as to how long -- well, as to whether or not
17 the lack of electricity that you got or the coolness
18 to the touch, how long Charles Gibson would have been
19 dead?

20 A I'm more stricken -- I'm struck more by the fact that
21 he was so cool than by the lack of electricity. A
22 direct hit to the heart can cause the electricity to
23 stop faster than that coolness. He was cold. He had
24 been there quite a while. And that was very eye
25 opening.

1 Q Based on your experience and based on your skin
2 touching Charles' skin, can you give me an estimate
3 about how long Charles Gibson had been deceased when
4 you touched him?

5 A At least 30 minutes.

6 Q Could it have been more?

7 A It could have been more, but I'm not willing to say
8 that because I'm just not sure. But I can give
9 you --

10 Q What time did you -- go ahead.

11 A But I haven't had a class on body decomposition. But
12 I can give you 30 minutes totally.

13 Q And the temperature outside that day was how much?

14 A 84 degrees.

15 Q And what time did you get there?

16 A 84 degrees. I arrived at the scene at 14:15 hours,
17 at 2:15 in the afternoon.

18 Q 2:15 in the afternoon?

19 A That's right. And I called -- I called the signal of
20 death at 14:20, at 2:20 in the afternoon.

21 Q If Charles Gibson was breathing at 2:07, would his
22 body have been as cool as it was then? If he was
23 breathing at 2:07 and you saw him at 2:15 and touched
24 his skin, would he have been alive at 2:07?

25 A He might not have been alive but he wouldn't have

1 been that cold and he would have had electrical
2 activity in my opinion.

3 Q Beg the Court's indulgence. I'm just looking for a
4 picture. I'm sorry. Showing you what's marked
5 State's -- and if I can approach the witness?

6 THE COURT: Yes, sir.

7 MR. MEADORS: Thank you, sir.

8 Q (By Mr. Meadors) Do you recognize this as the room
9 you were in?

10 A It wasn't quite my shot; but, yes, I was here. I was
11 over there about where your finger is at.

12 Q And I guess I'm trying to point it to you. Do you
13 recognize the fan up there in the top?

14 A I do.

15 Q Is that fan moving?

16 A I can't tell. It might be a good camera. It doesn't
17 look like it is.

18 Q And was the vent over on the -- which side of the
19 room to the body for the air conditioner?

20 A Well, I was over here. So it was to the left and up
21 on the ceiling. The bed would occlude any vent
22 action.

23 MR. MEADORS: Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 MR. MEADORS: 481our Honor, I think Mr. Wagoner

1 tells me that was marked for I.D. and not in. We'd
2 respectfully --

3 MS. SAMPSON: I don't even know what picture it
4 is.

5 MR. MEADORS: State's 39.

6 COURT REPORTER: It's for I.D.

7 THE COURT: It's only for I.D.

8 MR. MEADORS: We'd offer it as State's 39.

9 MS. SAMPSON: That's without objection.

10 THE COURT: Without objection, it's admitted.

11 (WHEREUPON, State's Exhibit No. 39 is admitted
12 into evidence.)

13 MR. MEADORS: That's all. Thank you.

14 THE COURT: Ms. Sampson.

15 CROSS EXAMINATION

16 BY MS. SAMPSON

17 Q Good afternoon.

18 A Hello.

19 Q Did you take -- you didn't take a body temp, did you?

20 A I did not take a body temperature.

21 Q Do you know what the temperature was in the room?

22 A No, ma'am.

23 Q Did you know that the coroner report says he died at
24 2:00?

25 A No, ma'am. I h482n't head the Coroner's report.

1 Q And you arrived at 2:15?

2 A I arrived on the scene at exactly 2:15.

3 Q And do you know how long it took you to get from
4 arriving on the scene to his body?

5 A Well, I arrived on the scene at 2:15 and I called the
6 signal of death at 14:20. So I --

7 Q So about five minutes?

8 A So I guess about four and a half minutes.

9 Q Okay. And it's the Coroner's job or someone else's
10 job to actually estimate time of death, correct?

11 A Yes, ma'am.

12 MR. MEADORS: Your Honor, I object to that.

13 THE COURT: I'll let you rephrase it.

14 Q Is it your job to decide the time of death?

15 A Nope.

16 Q Did you tell the officers he had been dead 30 or 40
17 minutes?

18 A No, ma'am.

19 Q And did you tell anybody that?

20 A No, ma'am. Not 'til today.

21 Q Thank you.

22 MS. SAMPSON: No further questions.

23 THE COURT: Thank you.

24 REDIRECT EXAMINATION

25 BY MR. MEADORS

1 Q Any question in your mind based on your experience
2 and your touching Charles' skin he'd been dead 30
3 minutes?

4 A Not question in my mind.

5 Q Thank you.

6 THE COURT: Anything on recross?

7 MS. SAMPSON: No, sir.

8 THE COURT: Sir, you may step down. Thank you.

9 WITNESS: Thank you.

10 MR. MEADORS: That's all. Thank you, sir.

11 THE COURT: Thank you. Anything further from
12 the defense?

13 MS. SAMPSON: Not at this time, Your Honor.

14 THE COURT: Ladies and gentlemen, we're going to
15 let you all eat lunch, and we'll shorten up lunch and
16 we'll come back. We'll be wrapping up. As I said to
17 you yesterday, I anticipate shortly you all will be
18 receiving this case. When we come back at some point
19 we'll do closing arguments from both sides as well as
20 a charge on the law from me and you'll begin your
21 deliberations.

22 You all enjoy lunch. And I just ask one last
23 time that during your lunch break do not discuss the
24 evidence or testimony. And we'll see you all. Why
25 don't we shorte484unch up. Lunch is back there for

1 you all, to about 50 minutes. So about 10 'til 3
2 we'll come back. You all enjoy lunch. Thank you.

3 (Jury out at 2:00 p.m.)

4 **THE COURT:** Thank you, sir. Ms. Sampson, do you
5 all anticipate there being any sort of rebuttal?

6 **MS. SAMPSON:** No, sir. No, sir.

7 **THE COURT:** All right. Let me ask both sides,
8 in terms of the charges, anything other than the
9 indicted charge?

10 **MS. SAMPSON:** None from the defense, Your Honor.

11 **MR. MEADORS:** Your Honor, we'd hand up State v.
12 Davis. I think under the facts of this case, --

13 **THE COURT:** Yes, sir.

14 **MR. MEADORS:** -- 298 SE2d 778, Your Honor, it
15 stands for the proposition I believe that under the
16 facts where there was evidence of a fight or
17 provocation that voluntary manslaughter would be
18 appropriate. In this case I clearly think there was
19 a fight. Based on her statements, there was a fight.
20 I'm not saying I'm going to argue that, but I think
21 under the evidence that came in through the
22 statements, she said there was a struggle, there was
23 a fight. When she testified here today she said she
24 pushed him, actually kicked him off of her.

25 We clearly th⁴⁸⁵at's brought in voluntary

1 manslaughter, and we think the case law requires it,
2 Your Honor, whether it comes from the defense or the
3 State. And we would be requesting Your Honor charge
4 murder and manslaughter.

5 **THE COURT:** Ms. Sampson.

6 **MS. SAMPSON:** Thank you, Your Honor. May it
7 please the court. We also have case law, as I've
8 been known to do often apparently. The first thing
9 we have is, Your Honor, under State v. Wood which I
10 hand over to Mr. Meadors and to Your Honor. It's a
11 2005 case, unlike the 1993 case that I think he just
12 cited.

13 And in that case, Your Honor, it clearly states
14 that they must show that it's not heat of passion
15 alone. They must show that there are no actions by
16 the deceased to constitute legal provocation. What
17 Ms. -- and it also has to show that the way that she
18 acted was in combination with the heat of passion,
19 Your Honor. It does not have to show she was upset.
20 They have to show that her actions were in concert
21 with being provoked and reacting to that provocation.

22 What Ms. -- they can argue whatever they want,
23 but the evidence according to the case law says it
24 has to be viewed in a light most favorable to the
25 defendant, is tl486 they have to have both: Legal

1 provocation and they have to have heat of passion.
2 By her own words, there was at least a moment where
3 she stopped. If you want to believe that that last
4 push was when he was stabbed, he wasn't doing
5 anything but coming at her according to her and she
6 was not responding to any heat of passion. It wasn't
7 anything that held her incapable of stopping.

8 The actual quote from State v. Smith is the
9 provocation must be such as to render the mind of an
10 ordinary person incapable of cool reflection and
11 produce an uncontrollable impulse to do violence.

12 All she testified to was she pushed him. There
13 has to be more than just a struggle. There has to be
14 more than just her being upset. And she has said
15 more than once that she wasn't upset.

16 In State v. Smith, Your Honor, it was I would
17 say something that is I would say similar in this
18 regard. In State v. Smith the facts of the case were
19 this. A father speaking with his daughter, finding
20 out the daughter had been molested by his
21 father-in-law, stepfather, whatever you want to call
22 him. He goes to confront that person after cool he
23 flexion, after being at work, after talking to his
24 family. This is also a 2005 case. And when he gets
25 there has a gun, 487's out of the car. His mother

1 comes up, says, what are you doing here? He states
2 to her, I'm here to talk to that man about what he
3 did to my daughter. The mother says, your daughter
4 is a liar. He gets out of the car and sees him,
5 says, I'm going to kill you, and proceeds to shoot
6 him.

7 In that case the State asked for voluntary
8 manslaughter, got it. He was convicted of voluntary
9 manslaughter. And the Court of Appeals ruled it was
10 reversible error for voluntary manslaughter to be
11 given for the reasons that I just stated.

12 In this case my understanding is I guess they're
13 trying to say they had some argument before. At this
14 time, according to her statement, they are not
15 arguing. He may be physically coming after her but
16 they're not even arguing about it any more is my
17 understanding of the testimony, that she pushes him.
18 It's not enough to just have provocation. They have
19 to have heat of passion and provocation and her will
20 has to be overborne by it. If it's an unintentional
21 act as she is saying that it is can't get to that it
22 overbore her ability to control the impulse.

23 I have State v. Smith. I don't think I handed
24 it to the Court.

25 **THE COURT:** 48811, I agree. But what if the jury

1 disbelieves that and chooses to believe the testimony
2 regarding that she came over there to confront him
3 about having been out with another woman?

4 MS. SAMPSON: Then they should have charged her
5 initially with voluntary manslaughter and never gone
6 to murder. If they chose to go with murder --

7 THE COURT: Oh, no. I'm saying in terms of what
8 is before the jury at this point as the
9 lesser-included on murder, what if the jury
10 disbelieves any testimony that she wasn't angry but
11 chooses to believe what's in evidence as well, that
12 she came over there confronting him about being with
13 another woman?

14 MS. SAMPSON: And, Your Honor, I would disagree
15 about what we're supposed to be looking at at this
16 point. According to State v. Grubbs which I also
17 have, when determining whether entitled to a
18 voluntary manslaughter charge, the Court views the
19 facts in the light most favorable to the defendant.
20 I'm not supposed to be arguing what the jury may or
21 may not think. I'm supposed to be arguing what
22 the evidence is that's presented in the light most
23 favorable to the defendant.

24 Viewing that and viewing that they have no
25 evidence to conte489 that, they don't have another

1 witness, they just have calling her a liar, I would
2 still argue that they not be allowed to get voluntary
3 manslaughter because there is not evidence presented
4 other than saying she must be lying or presenting
5 something different than what she is saying. The
6 only evidence they have is her.

7 **THE COURT:** But the statement, her statements
8 are in evidence to the --

9 **MS. SAMPSON:** And I can read to Your Honor again
10 her statement. In her statement she never once said
11 it was intentional. She never once said she stabbed
12 him. She said more today than she said in her
13 statement. But the statement as is introduced
14 doesn't even talk about pushing him. It says they
15 tussled and that he said, "You stabbed me".

16 **THE COURT:** But isn't -- and I haven't seen the
17 statements but just what you all have done in
18 examining the witnesses -- isn't there a discussion
19 in one of her statements to the fact that she had
20 come over there to confront him about this other
21 woman?

22 **MS. SAMPSON:** That -- and I have to look. If
23 I'm understanding your question, Your Honor, are you
24 asking what her statement says or what Vinson says
25 she said? Because those are two different things.

1 THE COURT: Well, --

2 MS. SAMPSON: We have the written statement
3 that's been introduced to the jury.

4 THE COURT: Right.

5 MS. SAMPSON: Okay. And that says -- the first
6 question was:

7 "Q What was the original argument about?

8 "A It was about the lease and last night.

9 "Q Who told you they saw him at the club with
10 another woman?

11 "A Rosalyn Boyles.

12 "Q What happened earlier at Eddie Fogle's?"

13 He goes on about that. There is nothing about
14 her coming home and confronting him about anything in
15 the written statement, if that's what you're asking
16 me about. The written statement says: "When I
17 pulled up in Eddie's car, Charles came out. He said
18 I wasn't going to come in. I bumped into his rental
19 car with Eddie's car. He had been standing in the
20 back doorway. He came out after I bumped the car. I
21 walked past him into the house. He was trying to
22 pull me out. He was behind me and I fell down. I
23 fell three or four times before I got up. I was
24 trying to get to the bedroom to show him the lease.
25 He was behind me 491ding onto me. I was struggling,

1 knocking his arms away. I never saw a knife in his
2 hand. I was going through the drawers in the bedroom
3 for the lease. I had already opened the drawers in
4 the kitchen looking for the lease. When I was in the
5 bedroom he said, "You know you done stabbed me."

6 There is nothing even about the altercation in
7 that. They asked her about the pistol.

8 "Q Did you see Charles with it?

9 "A No.

10 "Q Did you ever have a knife in your hand?

11 "A I picked up the knife off the floor when it was
12 by him. I didn't want to step on it.

13 "Q Did you hold the knife in your hand and
14 stab Charles?

15 "A No."

16 MR. MEADORS: May it please the Court?

17 THE COURT: Yes, sir.

18 MR. MEADORS: I'm sorry. Are you through,
19 April?

20 MS. SAMPSON: Go ahead.

21 MR. MEADORS: Your Honor, with all due respect,
22 State v. Locklear and numerous other cases which I
23 have and will cite, State v. Locklear, 535 SE2d 420:
24 "It's proper for a judge to refuse to charge
25 voluntary manslaughter in a murder case where it very

1 clearly appears there is no evidence whatsoever
2 tending to reduce the crime from murder to
3 manslaughter."

4 Your Honor, State v. Davis, as I cited earlier,
5 does stand for the proposition, is still good law,
6 fighting between the deceased and the defendant is a
7 circumstance of both provocation and heat of passion.

8 Judge, I think this record is -- if you have any
9 references, I think it has to a fight. She put it in
10 her written statement, a struggle. She tells in her
11 oral statement to Wilson specifically there was a
12 fight. And that has come in through evidence through
13 Wilson that she told him that. She told her
14 father-in-law I stabbed him, and he's testified to
15 that. She's told three officers "I did it." She got
16 on the stand and said today, I hit him and then I
17 pushed him as hard as I could.

18 I think, respectfully to Ms. Sampson, that there
19 is plenty of evidence in this case of provocation and
20 heat of passion. And I think under these
21 circumstances where there clearly is a fight and
22 there's evidence in her oral statement to Wilson, her
23 second oral statement to Wilson, her oral statement
24 to Thornton, her oral statement to Vinson again, a
25 written statement⁴⁹³at there was a struggle, they

1 fought, and she has confirmed that here today, we
2 respectfully ask Your Honor to charge voluntarily.

3 **MS. SAMPSON:** The only thing I have to add to
4 that, Your Honor, is in every case that he has cited
5 there is an intentional act, no question about it.
6 There was a gunshot. There's an intentional act on
7 the part of the defendant.

8 In this case, every time she's been asked there
9 has been nothing about it being intentional. They
10 specifically asked her did she ever stab him, grab a
11 knife. None of that. Every time she's been asked
12 she said no.

13 In all of those cases there was no question that
14 there was an intentional act. And in all of those
15 cases I think you could argue that, as the State
16 said, or as the Court said in the cases that he
17 cited, it was as they stated. And as I keep -- I
18 guess I'm not saying it correctly, the will was
19 overborne by the heat of passion and that caused the
20 act. I just don't think that we necessarily have
21 evidence of that in this case. They can --

22 **THE COURT:** Let me ask; if there is evidence of
23 a fight based on her testimony, the fact that she
24 says, I'm not angry about that, does that overcome
25 the fact that t.494: was a fight in terms of the

1 charge on voluntary? I may not be articulating that
2 perfectly right. But if two people are engaged in a
3 fight such that it would justify the charge of
4 voluntary manslaughter and one says, well, yeah, but
5 I wasn't angry or mad about it, does that negate the
6 voluntary manslaughter charge?

7 MS. SAMPSON: I think what I am trying to say,
8 and maybe I'm just not articulating it correctly, is
9 that according to the readings that I have and the
10 case law that I have, that I got, my understanding is
11 it must be -- the act must be one that would overbear
12 another person's will to keep their calm and their
13 cool and act in that manner.

14 It's not enough that they're just upset. They
15 have to have been so provoked by the other person
16 that it produces an uncontrollable impulse to do
17 violence, to do harm. If it's a struggle to get
18 away, your impulse is not overborne. You're getting
19 away. If it's a fight where, you know -- and I guess
20 what everybody is -- or they're going to argue and I
21 guess what the Court is trying to say, if it's a
22 fight; I hit you, you hit me, whatever happens
23 happens, if that's what they're saying, then it still
24 has to be that she is doing that because she has some
25 sort of provocation⁴⁹⁵ from him and that she's upset and

1 in the heat of passion. She is reacting the way
2 she's reacting.

3 The testimony I heard is she is struggling to
4 get away from him. Yes, they are fighting; but her
5 point is to get away from him, not to fight with him.

6 **THE COURT:** Are you all requesting an accident
7 charge or a self-defense charge?

8 **MS. SAMPSON:** No. I've never asked for
9 self-defense. And I don't think I would have
10 gotten -- been able to get a self-defense charge.

11 **THE COURT:** Are you all asking for an accident
12 charge?

13 **MS. SAMPSON:** I hadn't intended to; but if the
14 Court is stating that I should, I will look into
15 that.

16 **THE COURT:** No. I'm not stating either way.
17 I'm sort of asking. I'm not quite sure what all --

18 **MS. SAMPSON:** I will state this. If you are
19 going to grant them voluntary manslaughter, which I
20 strenuously object to, then I would request
21 involuntary manslaughter because it does entail if
22 there is an accidental act that causes a death, that
23 encases that in the involuntary manslaughter. So,
24 therefore, if you were going to grant involuntary, I
25 would therefore ask for involuntary as well.

1 But based on what my reading of the case law and
2 the evidence that I see presented, I don't feel that
3 there's been the evidence presented to show that she
4 was doing anything other than getting away from him,
5 and that at best he did not legally provoke her to
6 the level that is needed to arise for her heat of
7 passion to have caused the action that she gave.

8 **THE COURT:** Well, if I believe her testimony, he
9 was beating her, throwing her around the room.

10 **MS. SAMPSON:** Not at the time of the fatal blow.

11 **THE COURT:** Well, she testified that she charged
12 into the room aggressively and she thought he was
13 going to do something to her.

14 **MS. SAMPSON:** So she pushed back at him. She
15 didn't stab him. Then I probably would be asking for
16 self-defense.

17 **THE COURT:** But at that point though she's
18 testified though that she has a fear that he was
19 going to do something to her.

20 **MS. SAMPSON:** A fear.

21 **THE COURT:** Based on the other --

22 **MS. SAMPSON:** If I thought that, Your Honor, and
23 I thought that that was the evidence, then I would
24 probably be asking for a self-defense. But if -- my
25 understanding of 497^t she said was that he came at

1 her. She didn't -- thought he was coming at her
2 maybe to do her some harm but she just pushed him.
3 It was not an act to cause him harm in any way.

4 And in all of these cases that we're talking
5 about where voluntary was given, the act was
6 intentional and was done to cause harm. They don't
7 have any evidence --

8 **THE COURT:** Your focus is not on --

9 **MS. SAMPSON:** -- that she was there to cause him
10 harm.

11 **THE COURT:** Right. Your focus is not on the
12 issue of whether or not they were in a fight at all
13 but whether or not her actions based on the evidence
14 were anything directed towards him other than just,
15 you know, they were still fighting.

16 **MS. SAMPSON:** Correct.

17 **THE COURT:** Which is why I had a question as to
18 whether accident should be charged.

19 **MS. SAMPSON:** And it may be. Maybe it's
20 splitting hairs, Your Honor. Maybe accident should
21 be charged. I haven't looked up accident to make
22 sure that it even applies in this case, to be quite
23 honest, Your Honor. But again, that is more or less.
24 And it may be splitting hairs, but the court has been
25 very clear about⁴⁹⁸at. When it's given and if she

1 got it and they felt like it was wrong, it would be
2 reversible error; we'd be right back where we are
3 right now. I just don't --

4 **THE COURT:** Only if she were to be convicted of
5 the lesser.

6 **MS. SAMPSON:** If she were convicted of the
7 lesser.

8 **MR. MEADORS:** And, Judge, that's what I'm
9 worried about, being right back here right now. I
10 think it should be charged. I think the case law of
11 State v. Heyward, State v. Locklear, if there's any
12 scintilla of an evidence that comes in that a
13 lesser-included should be charged, then I think Your
14 Honor respectfully should charge it based on the
15 evidence.

16 **THE COURT:** Yeah. I think the law is clear that
17 if the evidence is there a charge has to be charged.

18 **MR. MEADORS:** And she acknowledged during cross
19 that, well, I did say I did it. She said that. But
20 here I meant that. So she said, yeah, I did say "I
21 did it", which was intentional. There is more than a
22 scintilla of an evidence. Her family members came
23 in. She can argue maybe that wasn't said. But it
24 came into evidence that she told him, I stabbed him.
25 I mean, that's ev-499idence of an intentional act.

1 I think basically the law as I understand it
2 from State v. Davis is a circumstance of provocation
3 and heat of passion can be shown by a fight, which
4 clearly there were. Intentional acts on her part, I
5 don't even know if that's an issue. But she clearly
6 admitted she hit him, she kicked him. He was on --
7 I'm not sure who was on top of who, but one of them
8 kicked off the other one. I think she finally said
9 she kicked him off. I'm not sure about that. I'm
10 confused about that.

11 But clearly blows are going back and forth.
12 And, Your Honor, she did say through an oral
13 statement to Wilson, I'm going over there to confront
14 him about last night and the lease. That was in the
15 oral statement to Wilson after she'd been advised her
16 rights.

17 **MS. SAMPSON:** And again, Your Honor, I'm looking
18 at a case, and I probably need to read it a little
19 bit more to make sure at some point. But my
20 understanding is in deciding this charge, when
21 viewing the evidence in a light most favorable to the
22 defendant, and I'm looking at State v. Rose, a Court
23 of Appeals case from 2003.

24 **THE COURT:** But again, I'm still looking at the
25 issue of whether 500 not it exists. I mean, I'm not

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Reginald I. Lloyd, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHARON L. SMITH,

APPELLANT

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1 weighing the evidence in my own right. I'm just
2 looking at whether or not it actually exists.

3 MS. SAMPSON: Right. And again, what I'm
4 arguing is looking at the evidence in a light most
5 favorable to the defendant, she says she pushes him
6 away because he is coming at her. She doesn't know
7 that he's armed, and she clearly says more than once
8 she's not armed. No intentional act to harm him.

9 There has got to be at least an intentional act.
10 Even with voluntary manslaughter, it's got to be
11 intentional; and viewing it in the light most
12 favorable to the defendant.

13 MR. MEADORS: Well, Your Honor, respectfully, I
14 just don't think that's the standard. If there's any
15 evidence out there that calls out from the record
16 that voluntary should be charged or a lesser-included
17 should be charged, we would argue that that is the
18 standard; if there's evidence to come out that shows
19 there is a lesser-included, which we think has come
20 out in this case.

21 THE COURT: I'll look at it while we take this
22 break and let you all take a little short break and
23 get ready for your closings.

24 MS. SAMPSON: And -- I'm sorry. -

25 THE COURT: 503, ma'am.

1 **MS. SAMPSON:** On the record, if you do feel that
2 voluntary is appropriate, then I would request a
3 self-defense charge.

4 **THE COURT:** I'm going to --

5 **MS. SAMPSON:** And I'm going to request
6 involuntary manslaughter.

7 **THE COURT:** You all will know my decision before
8 we come out here, before you start your closings.
9 Let me ask; is there any other requests for anything
10 else in the charge other than this issue of the
11 lesser?

12 **MR. MEADORS:** And, Your Honor, are you
13 considering the lesser/lesser, involuntary, too?

14 **THE COURT:** I'll take a look at all of it during
15 lunch. I'll be glad to hear from both of you.

16 **MR. MEADORS:** Okay. Because I'm prepared to
17 argue that as well. But either way.

18 **MS. SAMPSON:** I have case law for that, too, if
19 I need to, but ...

20 **THE COURT:** I think the State would oppose
21 involuntary.

22 **MR. MEADORS:** "An unintentional killing without
23 malice while someone is engaged in an unlawful
24 activity that is not a felony and does not naturally
25 tend to cause d504, or great bodily harm or engaged

1 in a lawful activity with a reckless disregard for
2 the safety of others." I just don't know if the
3 facts fit.

4 MS. SAMPSON: I would say, and I'll put on the
5 record, it fits the second prong. If their argument
6 is going to be they're fighting, which they just said
7 that that's what they're arguing, then she would --

8 MR. MEADORS: No, ma'am. No, ma'am. That's not
9 what I said.

10 MS. SAMPSON: I didn't interrupt him.

11 MR. MEADORS: I apologize.

12 MS. SAMPSON: That they are in a lawful act of
13 trying to get away, if they're fighting, if he hit
14 her first or touched her first, is my understanding
15 of what they're saying, it's lawful for her to try to
16 get away. And if one of them has got a knife,
17 whether it's her or him, reckless disregard for the
18 life of another. So I think that there would be
19 evidence to support an involuntary manslaughter based
20 solely on that if you want to argue the evidence in
21 that manner.

22 MR. MEADORS: Judge, I wasn't going to say what
23 I'm arguing or not arguing. I was just saying what
24 came into evidence with the charges. That's all I'm
25 saying.

1 **MS. SAMPSON:** And if it's got to be scintilla of
2 evidence and he said there's a fight or a struggle,
3 whatever it may be, she is trying to get away, one of
4 them has got a knife; I guess they're going to say
5 she's -- well, whoever; there has been evidence that
6 there's a knife. Obviously there's a knife
7 somewhere. If she is struggling and one of them had
8 a knife, we could argue that's reckless disregard.
9 There is a deadly weapon involved.

10 **THE COURT:** Again, I guess that's my question as
11 to the voluntary -- I mean, yeah, the voluntary.
12 From my understanding --

13 **MS. SAMPSON:** I'm only saying that if you get to
14 the voluntary. I still say you don't get to the
15 voluntary. But if I've got to --

16 **THE COURT:** But in order to find that second
17 prong, even then viewing the evidence in the light
18 most favorable to the defendant, is whether or not
19 the evidence exists. It's not whether or not I
20 believe whether or not she saw the knife or ever saw
21 the knife. Because if that's the case, if I have to
22 buy solely her testimony on that issue, she never saw
23 the knife; and I don't know that involuntary, that
24 entire second prong of involuntary would apply.

25 **MS. SAMPSON:** 506 Well, then maybe it's an

1 unintentional act. Again, involuntary is the part
2 that I'm focusing in on. And again I'll do some more
3 while we're gone. Unintentional, that is the prong
4 that I'm most supporting in an involuntary
5 manslaughter request.

6 **THE COURT:** I'll look at it all while we're back
7 there, and I'll let both counsel know before we come
8 back out here.

9 **MR. MEADORS:** Thank you, Your Honor. And I
10 apologize for interrupting Ms. Sampson.

11 **THE COURT:** No. That's all right. We'll see
12 you all in --

13 **MS. SAMPSON:** Can I ask Mr. Meadors, because I
14 don't know. He doesn't have to tell me I suppose.
15 Are you splitting?

16 **MR. MEADORS:** No, Your Honor. We're prepared
17 to -- I was going to do the whole close. It's the
18 second time. I don't need to open on the law.

19 **MS. SAMPSON:** I was just asking.

20 **MR. MEADORS:** Yeah. We don't need to open on
21 the law.

22 **THE COURT:** Okay. All right. We'll see you all
23 at about ten 'til 3.

24 (Whereupon, a lunch break is taken).

25 **THE COURT:** (507)sel, during the last few moments

1 in chambers and in regards to our discussion, I'm
2 inclined not to charge anything except murder. I
3 think I go down a road where I'm searching for
4 evidence. I think there are arguments respectfully
5 on both sides to charge voluntary, involuntary. We
6 discussed self-defense. We discussed accident.

7 What I have a hard time wrestling with and have
8 wrestled with quite honestly in this case is any
9 evidence that there was an act taken to actually
10 commit the harm that resulted in this case or any act
11 taken that would lead to this harm.

12 I probably am not articulating this in the best
13 way. I think we'll send it to the jury straight up
14 on murder. I think it's a question of the jury.
15 They're either going to believe the State's case or
16 the defendant's testimony, evidence. Quite frankly,
17 I think it's a case where the burden should come down
18 to murder or no murder. I respect the arguments both
19 sides have made. I'll be glad to hear from either
20 side on anything else on that.

21 **MR. MEADORS:** We respectfully except Your
22 Honor's ruling. Just cite State v. Davis and think
23 there is an abundance of evidence that there was a
24 fight. We believe that under that case that that
25 would lead to a 508:hat specific case said that heat

1 of passion and adequate provocation could be shown
2 and should be charged to the jury under the facts
3 where a fight is shown.

4 In this case, she not only said, I stabbed him
5 and "I did it", she said I stabbed him to her step
6 dad, but did it to several officers; got on the stand
7 and said I kicked him, I pushed him off of me, we
8 fought. We just think that under the circumstances
9 of a man and a woman, she gave a statement to Scott
10 Wilson that she came over there to confront him about
11 the lease that those are all factors that would lead
12 to voluntary manslaughter. And we state exception on
13 the record. Thank you.

14 **THE COURT:** Counsel on both sides, just based on
15 what was discussed prior to us taking a break and
16 back in chambers, I understand the defense; and based
17 on my prior ruling, I'm not going to charge either
18 accident or self-defense as well or involuntary. I
19 take it the defense is not requesting any arguments
20 as well.

21 **MS. SAMPSON:** No. In light of you only charging
22 murder, that's the only charge that we ever
23 requested. Anything else was in light of if you were
24 going to grant them voluntary manslaughter. Your
25 ruling as it stand509 we don't ask for anything but

1 the murder charge.

2 THE COURT: All right. I'm going to just charge
3 that to the jury. I think everything else is
4 standard charge that I normally do. I understand the
5 State is not going to split argument.

6 MR. MEADORS: No, sir.

7 THE COURT: Okay. All right. Are both sides
8 ready for the jury?

9 MS. SAMPSON: Your Honor, it's -- I won't say
10 it's come to my attention. But it is 20 'til 4.

11 THE COURT: That's right.

12 MS. SAMPSON: My only concern, I am prepared to
13 go forward. I don't want this to sound like a delay
14 tactic.

15 THE COURT: Sure.

16 MS. SAMPSON: I do know that we had at least one
17 juror who I don't know that anybody ever told her to
18 get her child care taken care of for this afternoon,
19 who by my understanding has to pick up her child at
20 6.

21 If we argue, assuming that Mr. Meadors and I get
22 done in an hour, then charges usually take 20 to 30
23 minutes, that gets us at after 5:00 even giving the
24 jury the case. I'm just concerned about that.

25 THE COURT: 510 inclination is to actually get

1 them out, get them started. If they need to break to
2 take care of her child care matters, they can make
3 that decision. I'll give her the option of making a
4 phone call or doing whatever she wishes to do. And,
5 you know, if they need to come back in the morning,
6 that's fine. But if she can make some other
7 arrangements, too, I'll give her that chance and let
8 her make that decision.

9 **MR. MEADORS:** Your Honor, could we approach?

10 **THE COURT:** Yes, sir.

11 (Whereupon, a bench conference is had)

12 **THE COURT:** Yes, sir, Mr. Meadors.

13 **MR. MEADORS:** Your Honor, may it please the
14 Court. One thing has come to my attention from able
15 staff here of Solicitor Giese. There is at least one
16 juror that has been sleeping most of the trial.

17 **MS. SAMPSON:** We have the same problem. It's
18 the lady in the blue dress?

19 **MR. MEADORS:** That's what I've been informed.
20 So if Your Honor could just keep an eye on that. And
21 if she sleeps through the closing we'd ask for an
22 alternate.

23 **MS. SAMPSON:** I'm sorry. I'll put on the
24 record, she slept through a lot of what we noticed
25 her doing. I didr511of course notice it when I was

1 questioning her. But I did notice it when he was
2 doing his cross examination. She would -- I will put
3 on the record as clearly as you, she was nodding off.
4 I mean, it wasn't just maybe she just had her eyes
5 closed. You could clearly see her nodding. We meant
6 to have brought that up before. So we're totally in
7 agreement that there a particular juror here --

8 **MR. MEADORS:** And under light of that, and
9 thanking her for her honesty, we'd ask she be
10 excused. If she slept through the cross of the
11 defendant, then she missed we think a vital part of
12 the case, and we'd ask that one alternate be put on
13 there.

14 **THE COURT:** Actually, Ms. Coats brought it to my
15 attention as well. And I was watching her. She was
16 opening her eyes every now and then, but she was --
17 you're right. She was nodding off. She wasn't just
18 closing her eyes. She was nodding off. But she
19 would open them back up.

20 **MS. SAMPSON:** I will say for the record, she put
21 her hand on her chin and it fell off her chin. So
22 that to me entails she probably was asleep. We did
23 notice that before. I'm sorry. I'm glad you brought
24 it up. We just --

25 **THE COURT:** 512at's fine. It was something we

1 were going to have to address. My inclination is to
2 just go through the charge and when we send them out
3 bring her back. I don't want to embarrass her in
4 front of everybody. Just bring her back and do a
5 colloquy on the record with her over here about it.
6 And I'll tell both sides, my thought is just to
7 replace her at this point.

8 **MS. SAMPSON:** We would have no objection to that
9 from the defense, Your Honor.

10 **THE COURT:** All right. I'm just going to put it
11 on the record after we charge. And when we send them
12 back out, we'll deal with it so that she's not
13 feeling embarrassed about it. But I'm glad you
14 brought that back up as well.

15 **MR. MEADORS:** And the other issue; I know Ms.
16 Sampson won't do it, but as far as referencing any
17 penalty for this crime --

18 **MS. SAMPSON:** Oh, no.

19 **MR. MEADORS:** -- I know she wouldn't do that.

20 **MS. SAMPSON:** No, sir.

21 **THE COURT:** Okay. All right. We'll bring the
22 jury out, please.

23 (Jury in at 3:47 p.m.)

24 **THE BAILIFF:** The jury is all present, Your
25 Honor.

1 **THE COURT:** Thank you, sir. Thank you, ladies
2 and gentlemen. I apologize that we ran longer in
3 dealing with some matters that we needed to take up
4 outside your presence. We are ready to proceed with
5 the case at this point.

6 Ladies and gentlemen, you've heard all the
7 evidence and testimony you're going to receive in
8 this case, and at this point counsel from both sides
9 will get a chance to argue what they believe their
10 view of the facts are from the evidence and testimony
11 that was presented to you. After that I will give
12 you a charge on the law and we will begin, let you
13 begin your deliberations.

14 Just so that nobody is feeling pressed, I do
15 remember there was a juror who did have a child care
16 issue. After you all have received the case in terms
17 of the charge and everything, I'm going to let you
18 make a decision as to what you all want to do, how
19 long, late you all want to deliberate tonight or if
20 there are other arrangements that could be made
21 regarding your child care.

22 But I'll let you all have a chance to discuss
23 that amongst yourselves and decide what you want to
24 do. You're under no obligation obviously to stay all
25 night. Or you c514:ome back tomorrow or you can stay

1 tonight and deliberate. But I'll let you, Madam
2 Forelady, lead the jury in that discussion at the
3 appropriate time.

4 Ladies and gentlemen, at this point I just ask
5 you to give counsel for both sides your very careful
6 attention, and they will have a chance to make
7 closing arguments to you. Ms. Sampson.

8 **MS. SAMPSON:** Thank you, Your Honor. May it
9 please the Court.

10 **THE COURT:** Yes, ma'am.

11 **MS. SAMPSON:** Good afternoon. Ladies and
12 gentlemen, this is a tragic, tragic case. It is a
13 tragedy for the Gibson family; it is a tragedy for
14 the family of Sharon Smith. This case is a tragedy;
15 no doubt about it.

16 The State would have you believe that Sharon
17 Smith murdered Charles Gibson. Murdered him. Now,
18 as I told you, murder is defined as the killing of
19 another person with malice aforethought, either
20 express or implied.

21 Now, I'm a lawyer, so I know that has a whole
22 lot of legal terms in it. But what it basically
23 means is you had an intentional act and when you did
24 it you intended for the harm that occurred. What it
25 also means is that515en you did it you had malice in

1 your heart. You meant to hurt someone. You didn't
2 accidentally hurt someone. You didn't
3 unintentionally hurt someone. If you thought for one
4 brief second before it happened, I want to harm that
5 person, and you did harm them and they died, then
6 that would be murder.

7 Now, what most of us think about in terms of
8 murder is what you see on TV. You think about it: I
9 want to kill that man. I want to shoot that man.
10 And you go and do so. We don't have that in this
11 case. I don't think the State is going to get up
12 here and tell you that when Sharon Smith came home
13 that day she intended to go kill Charles Gibson.

14 What they're going to tell you is that because a
15 weapon was involved you get to infer or imply that
16 she had malice aforethought. But let's think about
17 that for a second. Who brought the knife into this?
18 There has been not one piece of evidence, not one,
19 that Sharon Smith ever held that knife before the
20 stabbing. Not one piece.

21 It's up to them. They're the State. They have
22 the power of all of the law enforcement of South
23 Carolina. They have to provide to you witnesses,
24 evidence that you can use to decide whether Sharon
25 Smith murdered Charles Gibson. And they didn't do

1 it.

2 What do they rely on? What do they tell you was
3 the first words out of Mr. Wagoner's mouth Monday
4 afternoon. "I did it." That's their evidence. She
5 said, "I did it." Therefore, she must have killed
6 him. He's dead. She said, "I did it."

7 But let's look at that. "I did it." I did
8 what? Did anybody ever ask her, did you stab him?
9 When they show up, what did Officer Wilson tell you?
10 Did she say, I went up to Sharon Smith and said, did
11 you stab him? No. He told you on more than one
12 occasion he asked her the who and the what: Who did
13 it and what happened?

14 He knew that he had received a call about a
15 stabbing. She didn't know what went out on that
16 call. She is not there. She is not listening to the
17 EMS people telling them we need a police officer to
18 go to a stabbing. He shows up. She is standing
19 there with her stepfather who hadn't done anything
20 and they ask her, who did it? She says, "I did it."
21 He didn't say, what did you do? The next question
22 is, where is he? Where is the person that's hurt?
23 And she goes and she shows him. That doesn't mean
24 she murdered him because she said she did it.

25 I want you to 517.nk about there are things that

1 we say, that we want to accept responsibility for
2 things; and that is exactly what Sharon Smith did.

3 Back in November I had a car wreck. I
4 rear-ended a woman. The police got there, said, what
5 happened? I said, I did it. I rear-ended the lady.
6 But then when they asked me more questions, what I
7 said was, she slammed on her brakes. We're standing
8 out in the middle of the rain. It's raining. And I
9 skidded into the back of her. It's not my fault she
10 decided to stop in the middle of the road. But when
11 you ask me to this day I say, I did it. Because I
12 did. I hit the back of the lady.

13 Sharon Smith said she did it. Charles Gibson
14 didn't stab himself. He is stabbed. She's got to
15 choose somebody who did it. So she says, "I did it."
16 She didn't say, I did it on purpose. She didn't say,
17 I did it because he was coming after me.

18 And let's look at that one, ladies and
19 gentlemen. Because couldn't she have said that?
20 Because wouldn't that have been a much better story
21 to have presented? I remember when I got this case.
22 I salivated. I'm a defense case. I love this. I
23 love what I do. I love being in trial. I would do a
24 trial every day of the week if I got the chance,
25 because it's fun 518 here.

1 When I got this case and I saw these pictures of
2 him laying on top of a gun, I was like, halleluiaah!
3 Give me a self-defense case. That is the best thing
4 you could have, a five-eight man laying on a gun with
5 a five-three woman and a knife in her had. That has
6 got to be a self-defense case. Great case!

7 Then I talked to her and I meet her. Did you
8 see a gun? No. Are you sure? No. You really did
9 see a gun, didn't you? Surely you saw the gun. No.
10 And that's exactly what she told the police. If she
11 wanted to just say, I was defending myself when I
12 killed him, and get away with it, what better thing
13 to say? It's only the two of them. All she had to
14 say was, he pulled a gun out so I stabbed him. Who
15 would be there to say anything different? But did
16 she do that? No. She is truthful to her detriment.

17 Another defense she could have given. She says
18 to the police, I come home. He has a knife. Why
19 didn't she just say, he comes at me; we fight over
20 the knife; he ends up stabbed? Why not say that?
21 That is a much better self-defense case.

22 But you heard me ask her. Was this done in
23 self-defense? No. No. Wouldn't that be a much
24 better defense if a big old man and a little woman,
25 he came after me s519 defended myself and he ended up

1 stabbed and I'm sorry it happened but that's what
2 happened? It wouldn't have taken her two seconds to
3 have thought that one up. But that's not what she
4 said. She told them the truth.

5 She told them, I'm not even sure how he got
6 stabbed. Wouldn't it be have been much better to
7 have just said, I did it in self-defense? But she
8 didn't. Ladies and gentlemen, it was an accident.
9 You saw her up here. You've seen her.

10 **MR. MEADORS:** May we approach?

11 **THE COURT:** Yes, sir.

12 (Whereupon, a bench conference is had)

13 **MS. SAMPSON:** Remember the evidence as you heard
14 it. You saw the demeanor of Ms. Smith. You've seen
15 her sitting over there. You saw her testify all
16 today. Did she appear to be the type of person who
17 would stab someone on purpose, who would have malice
18 aforethought, even if for an instant, because that's
19 all she has to have it for, and stab him? Because
20 that's what they have to prove.

21 What did she testify today to? She testified
22 that they're struggling. Not over the knife.
23 Because, again, it had to be a much better argument.
24 She just says they're struggling. She tells you
25 never during that struggle did she ever see the

1 knife. She tells you, I never had the knife in my
2 hand until after when I moved it and put it in the
3 bathroom. That's not murder, ladies and gentlemen.
4 It just isn't.

5 Murder requires an intentional act.
6 Intentional. Not something that happens during a
7 struggle, not something that happens when you don't
8 intend it to happen.

9 I assume they're going to argue something like
10 reckless disregard when there is a weapon involved.
11 I don't know what they're going to say. They have
12 the luxury of going after me. So they get to come up
13 here and take whatever I say and twist it to favor
14 what they want it to be.

15 **MR. MEADORS:** Objection to that, Your Honor.

16 **THE COURT:** I sustain that.

17 **MS. SAMPSON:** They get to take the evidence and
18 argue it how they want to, just like I get to come up
19 here and argue the evidence as I want to. But what I
20 want you to remember is what you heard and what you
21 saw.

22 They provided to you this knife. And you're
23 going to be able to go back there and look at it.
24 Now, you heard them talking about how they asked
25 questions. Did she wipe it off? Did you wipe off

1 the knife? There is blood on it. If she was going
2 to wipe off the knife, wouldn't you do a better job
3 than this?

4 If she's going to try to get away with it,
5 again, she had a much better story. He was laying on
6 top of a gun. But she doesn't even try to do that.
7 I assume because she takes off her dress, that's
8 going to be a problem, too. But they told you they
9 took the dress into evidence. They could have
10 brought it in here and shown it to you, but they
11 didn't. But they provided you pictures. And you'll
12 be able to take those back there with you. The thing
13 is covered in blood.

14 And she told you why she changed. She said
15 parts of her -- and I had to get real specific
16 because she didn't want to talk about it -- but that
17 parts of her were hanging out. Her stepfather is
18 standing there in the house with her. So she changes
19 her clothes. Does she try to hide them? No.
20 They're just laying out.

21 Does she try to hide the knife that apparently
22 they say she's going to try to wipe the blood off?
23 No. It's sitting out in the bathroom. Again, you'll
24 have pictures of it. You can see she wasn't trying
25 to hide it. 522

1 If she wanted to get away with this, why bother
2 to call 911 at all? She could have left the house.
3 Nobody knew she was there. She could have gone back
4 to Eddie's house. She could have gone wherever she
5 wanted to. The only person who knew she was there
6 was Charles Gibson. So if she wanted to get away
7 with murder, just leave. Don't call 911.

8 And I guess this afternoon I was really confused
9 this afternoon. And sometimes I think I'm smart but
10 today I was beginning to feel like I was kind of
11 stupid. When there seems to apparently now be a
12 dispute over the time of death? Their coroner got up
13 here and told you it was around 2:00.

14 Their witness that they presented to you, Mr.
15 Parker, told you when he got there he was gasping,
16 not responding but gasping. So now they've got
17 another person that they call after I put up my case
18 to say, well, it could have been -- I am positive --
19 what did he say? Scientifically he made his opinion
20 that it happened, he'd been dead 40 minutes?

21 Their own witnesses are contradicting each
22 other. They are the State. They are here to present
23 evidence that will convince you beyond a reasonable
24 doubt that she murdered a man, and their own two
25 witnesses don't ev523agree on certain aspects. That

1 does not prove that Ms. Smith murdered anybody. This
2 is not a murder. It just isn't.

3 There is no malice. You can't infer it that she
4 killed him on purpose simply because the weapon is a
5 knife. That's what they're going to argue you should
6 do. You are to rely on what you saw and what you
7 heard. They have not presented anything to you to
8 contradict the evidence of Sharon Smith.

9 You saw her. You heard her. She told you she
10 was telling the truth. Her story matched today what
11 she told Officer Wilson and what she told
12 Investigator Vinson. Now, as confident as I am that
13 I'm standing right here, I am confident he is going
14 to get up here and tell you that it didn't match.
15 And there are parts that don't match if you don't ask
16 them in the right order.

17 At some point she does see a knife, when she
18 first arrives. When they're fighting she doesn't see
19 a knife. When you ask her, did you have a knife in
20 your hand during the stabbing, all of that stays the
21 same. No, I didn't have a knife when he got stabbed.
22 I'm not even sure when he got stabbed. I know he has
23 been stabbed. I did it. That does not mean she
24 murdered him.

25 Again, they 524t prove she did it with malice

1 aforethought. That's the legal term, that she had a
2 depraved heart, that she meant to do it, that it was
3 intentional, that she did it with at least a thought
4 about the act and about the harm that she was going
5 to cause. They just haven't provided that to you.
6 And that's their job.

7 My job is to defend her to the best of my
8 abilities, to present whatever I can. I didn't have
9 to present anything. All we had to do was ask
10 questions of their witnesses. I didn't have to put
11 up not one single person. But I put up a person, Mr.
12 Davis, to show you that she was indeed the lease
13 holder. She was the only one supposed to be in that
14 home. Why did I do that? To support her story that
15 he had no right to be trying to throw her out and she
16 wasn't going to be mad about it because she knew she
17 was in the right. She knew that she was the
18 homeowner and he wasn't. And she wasn't mad because
19 she knew she had repercussions.

20 What did she tell you she was going do? Call
21 the police because she is the person on the lease.
22 She was just trying to find it to show Mr. Gibson to
23 prove to him what she was saying. That was it.

24 We put up Eddie Fogle to show you her demeanor,
25 her attitude. This is not something she was mad

1 about. She was not upset. Surely not upset enough
2 to go stab a man and kill him. Because that's what
3 they have to prove to you, that she intended to kill
4 him, that she murdered him. Ladies and gentlemen,
5 they just didn't do it.

6 I guess Mr. Meadors is going to talk to you --
7 because apparently I don't know if the phone records,
8 I guess he's disputing that there's calls made. Or
9 he had someone come up here and there's calls made to
10 her father-in-law. Her father-in-law -- excuse me;
11 her stepfather -- her stepfather told you who called
12 him. Sharon didn't call him from her house. Mr.
13 Gibson did. He told you that.

14 He told you that he and his wife received calls
15 from Mr. Gibson to come get the children's stuff,
16 that he was going over there to get it. And, lo and
17 behold, he shows up. So of course Sharon Smith
18 didn't call him, because she wasn't there. Mr.
19 Gibson is the person on the phone records which
20 you'll get to take back with you. And you can see
21 that she did -- that he called her.

22 Everything that Sharon Smith has told you has in
23 some way, shape or form been corroborated. And
24 that's something you get to use on decide on who is
25 telling the truth who is telling a lie, whether

1 Sharon is a murderer or not.

2 She said she called Patrice about the same time
3 she realized this was becoming about problem. You
4 will see on here there is a phone call. And
5 Patrice's number is even written down here on the
6 bottom. So again, you'll get to look at that, that
7 there is a call at 2:05 to Patrice Parks.

8 Now, again, we agree that there wouldn't be a
9 call to 911 on here because they don't show up. But
10 remember what they told you the time that dispatch
11 went out to call? The officers told you 2:07. 2:07
12 is when dispatch is called. So that means before
13 then they received the call. And the 911 person came
14 in here and told you that.

15 So she did exactly what she told you she did.
16 She hung up with Patrice Parks and called 911.
17 Corroborates exactly what she says. And again, if
18 she wanted him dead, if she wanted to get away with
19 it, if she wanted to commit murder, why call the
20 police? Just leave.

21 Or, when they get there, because I guess they're
22 going to say Mr. Parks surprised her because she
23 wasn't expecting anybody to be there, then give them
24 the excuse that you've been handed beautifully. He
25 is laying on a gun 527 Oh, he was coming after me to

1 kill me. Or I was going after the gun.

2 And that's another thing I thought about. If
3 she wanted him dead, use the gun. What did they ask
4 her? Did you know where the gun was? Yes. Did you
5 know you kept it in the house? Yes. Did anybody use
6 it? No. Why not? If you just want him dead, isn't
7 that a lot easier? Just go kill him. Just go get
8 the gun and shoot him. He's got a knife according to
9 you. Just go get the gun and shoot him.

10 But that's not what happened. And she could
11 have told them that, too, because maybe that's a good
12 self-defense case. A man is coming at you with a
13 knife, so you go get a better weapon, a gun. But
14 that's not what she said. And that would be a much
15 better case than what we are left with today.

16 But what Sharon Smith told you was the truth.
17 She did not murder Mr. Gibson. She did not murder
18 Charles Gibson. Do not convict her of murder,
19 because she did not murder Charles Gibson. It's that
20 simple. It's a cut and dry case.

21 I don't know anything else that I can say. They
22 have not provided the evidence to you. Normally I am
23 the one that they say gets up here and says smoke and
24 mirrors, don't believe your lying eyes, do what I
25 tell you to do, ⁵²⁸ don't believe the evidence that's

1 been presented to you. I want you to believe the
2 evidence that's been presented to you. She did not
3 murder Charles Gibson. Do not convict her of that.

4 Ladies and gentlemen, she sits there innocent of
5 murder. She is still innocent of murder. I ask you
6 to remember what you saw, remember what you heard;
7 and when you go back in that jury room, think about
8 what you saw, think about what you heard. Don't
9 think about me and don't think about what Mr. Meadors
10 will say. We are just arguing to you.

11 Remember the evidence as you heard it. Remember
12 the law as Judge Lloyd gives it to you. And I ask
13 you to come back with the only just verdict, the only
14 verdict, as they like to say, speaks the truth: A
15 verdict of not guilty of murder. Thank you.

16 **THE COURT:** Thank you, ma'am.

17 **MR. MEADORS:** May it please the Court?

18 **THE COURT:** Mr. Meadors. Yes, sir.

19 **MR. MEADORS:** Mr. Wagoner, Ms. Sampson, Ms.
20 Ahrens, Madam Forelady, good afternoon, Ladies and
21 Gentlemen of the Jury. It's a privilege to be with
22 you all today. On behalf of Solicitor Barney Giese,
23 my boss, Todd Wagoner, the Gibsons, Charles Gibson's
24 family, everybody that has worked on this case, I
25 want to thank you ⁵²⁹ being here. I want to thank

1 you for the attention you've given this case. You've
2 been watching. You've been listening.

3 This is as important a case that's going to be
4 tried, that has been tried in this country this week.
5 It's important for the defendant. It's important for
6 the Gibson family. This is the defendant's day in
7 court. It's Charles Gibson's day in court. Thank
8 you all for being here and thank you for the
9 attention you've given his case.

10 Ms. Sampson said some -- and, you all, she is
11 saying she didn't stab him. To find her not guilty
12 of murder, under the law that's going to be charged,
13 you've got to believe she didn't stab him. And if
14 you believe it, let her go.

15 But if you believe she stabbed him, like she
16 told Daniel Parker she did -- and I'm going to go
17 there in a minute -- like she told every one of them,
18 "I did it", "I did it"; I did what to cause the
19 stabbing? I stabbed him. If you believe that,
20 there's no other option, no other option. She's
21 saying she didn't stab him. It's overwhelming,
22 abundant evidence she stabbed him.

23 A couple of things. Ms. Sampson said I had
24 the -- I'm going to get up here and twist things
25 around. And I ok530ted. No, ma'am. No, sir. We're

1 allowed -- this is called closing arguments. It's
2 really not closing arguments. You all can't ask me
3 anything and I can't say, well, John, this and that
4 and back and forth. It's a chance for us to give you
5 what we think the reasonable inferences are from the
6 evidence. That's it.

7 And it's not a luxury I have to go ask. The
8 rules say if they put up evidence, the State has the
9 burden of proof, we get to go last. That's what the
10 law says. And we can argue to you all reasonable
11 inferences. We can't ask you all to put yourself in
12 your own position, think about something. There are
13 rules we to follow. I love this job. It's all I've
14 ever done. It's all I'm ever going to do, hopefully.
15 But we have rules we have to follow.

16 Ladies and gentlemen, on cases that are -- and
17 you all are like Lady Justice. You've seen Lady
18 Justice with the scales and the blindfold. You're to
19 listen to evidence. You heard evidence. You heard
20 that 911 phone call. She couldn't tell what happened
21 then. She didn't want to tell. She doesn't know how
22 to tell.

23 And I'm going to go through every statement she
24 gave and I'm going to show you all in a minute how
25 many different sto:531 she said. She said one time

1 today, I don't know if I had a knife or not. Go back
2 and listen to it, to Scott Wilson when he said she
3 said it. I don't know if I had a knife or not?

4 Ladies and gentlemen, she is charged -- and Lady
5 Justice gets to pull that little thing down, too.
6 And watch the demeanor of the witnesses when they
7 can't answer a question, when it just doesn't make
8 sense. And that's when you all get to use your
9 common sense.

10 Ladies and gentlemen, the Richland County Grand
11 Jury returned an indictment against her for murder.
12 Now, the indictment is a charging paper. It's what
13 we have to go through. But they returned an
14 indictment for murder.

15 And murder is the unlawful, intentional killing
16 of another human, living, blood-flowing person,
17 Charles, with malice aforethought. Now, aforethought
18 is a term of art. No, you don't have to go up there
19 saying, I'm going to kill somebody. But it's got to
20 exist at the instant. It doesn't have to exist long
21 at all, a scintilla, an instant when a knife is being
22 thrust into a heart. That's malice. And it can
23 exist as the knife is going through the chest.

24 Malice aforethought, it can either be expressed,
25 I'm going to kill⁵³² somebody; or it's permissible to

1 infer it from the use of, yes, a deadly weapon. And
2 that's what the law says. That's one reason I am
3 going to ask you to infer malice but not the biggest
4 reason. The biggest reason, as I'll get to later, is
5 this licensed practical nurse let him sit there and
6 bleed to death. And I think there's overwhelming
7 evidence of that. That's the true malice, the true
8 meanness in this case.

9 The burden on the State in this case is the same
10 as in every other criminal case. We have to prove to
11 you beyond a reasonable doubt. As my friend, Mr.
12 Wagoner, said in his opening, it's not beyond all
13 doubt. You can doubt anything if you want to. But
14 it's a beyond a doubt that would make reasonable
15 people hesitate to act.

16 As I'm getting older, I always realize it's like
17 Thomas; reasonable folks hesitate to act. Have we
18 proved it here? Nah. We've gone beyond it. I say
19 we've proved it beyond all doubt. You know, because
20 people say something here, say something here, say
21 something here, confuse and do all that, that doesn't
22 mean a reasonable doubt. That goes to the
23 credibility, believability of a person.

24 And under her theory, when two people are at
25 there and there are not eye witnesses, which most

1 murders are, you could never convict a murderer. So
2 you go to the scene. You call the officers. You
3 take statements. You take pictures. You come in and
4 you present the evidence.

5 Those are some of the smoke screens where there
6 is a good evidentiary case, as we submit the evidence
7 in this case is overwhelming; we suggest the defense,
8 and they do it in many cases, as she admitted herself
9 up here, a lot of cases I get up and throw smoke
10 screens, saying this and this; her doing that is a
11 smoke screen.

12 **MS. SAMPSON:** Objection, Your Honor. I didn't
13 say I get up and submit smoke screens. I did not say
14 that. And that's a misstatement of what I said.

15 **THE COURT:** I remember something about smoke
16 screens. It's argument. I'll let the jury remember
17 what they recall.

18 **MR. MEADORS:** You all remember what she usually
19 does and says she does in criminal trials. And we
20 submit what she said she'd do, saying she'd do that
21 to you all we're saying is a smoke screen in this
22 case.

23 Some examples of those, the knife. She wiped
24 off her fingerprints, ladies and gentlemen. The LPN
25 and the towel was 5341 the bathroom and the knife was

1 in the bathroom. Why did it even go to the bathroom?

2 She says in one statement that I'm going to show
3 you in a minute, I moved it because I didn't want to
4 step on it. Well, it's in the floor of the bathroom
5 with the towel. And there's not all that much blood
6 on it. But this is clean. It was fingerprinted,
7 fingerprinted in preparation for this trial, as is
8 done. It wouldn't have mattered when it was
9 fingerprinted as long as it was fingerprinted. And
10 it was. Look where they kept it.

11 She was wiping his blood, his fingerprints off
12 there. She didn't argue it, but I'm going to try to
13 cover everything. I've written down here another
14 smoke screen she forgot. Anybody else's blood there?
15 If one of you all gets back there and thinks about
16 that, he was the only one bleeding. She said, I had
17 no injuries. It was his blood.

18 The whole argument, all she had to say was this,
19 all she had to say was that; I don't understand that.
20 All you have to say is the truth. I don't know if
21 she knew the gun was there or not. I think she did
22 get startled by Daniel Parker. When she called 911,
23 as she had to because she couldn't explain it to him,
24 she couldn't explain it to 911. The operator had to
25 ask her three times⁵³⁵ She couldn't explain it, didn't

1 want to explain it. And finally she said that he's
2 been stabbed.

3 Did he commit suicide? She's saying she didn't
4 stab him. If you believe it, let her go. If you
5 believe she stabbed him, it's murder. That's what
6 the law says. That's what the facts are in this
7 case.

8 One thing about Mr. Parker, and another thing I
9 think I covered most of -- oh. She said also nobody
10 else knew she was there. Well, yeah; Eddie knew she
11 was there. She borrowed Eddie's car. So the
12 evidence showed that Eddie knew she was there.
13 Clearly she didn't know her father-in-law was coming
14 over there. And I think he did startle her. So,
15 yeah; other folks did know she was there.

16 Why not just leave? Well, I'm trying to think
17 of all the things she covered. Well, Eddie knew she
18 was there. She stabbed Charles. She didn't know
19 what to do. She has just murdered. She was mad.
20 She was mad the night before. She came over there
21 the night before.

22 Ladies and gentlemen, what's this case all
23 about? And remember Lieutenant Marvin Fortner.
24 There is no confusion about time of death. And that
25 was another smok536creen. So it will come back to me

1 when I get going. This smoke screen about the
2 coroner; the coroner got up there and read from his
3 report. And I'm allowed to read from it. I said,
4 tell me about this. You get some information here.
5 A 49-year-old black male was found dead at his
6 residence at approximately 2 p.m. Nothing to do with
7 cause of death. That's roughly approximately when
8 his body was found. That's the evidence.

9 Lieutenant Fortner gets up here and touches him.
10 How long has he been dead? 2:17 minimum. At least
11 30 minutes. She didn't call 911 'til after 2:00,
12 2:07, while he's bleeding to death in front of the
13 LPN. That is murder. That's malice.

14 I forgot to tell you all about malice. I've got
15 so much to cover. I've got so much to cover. Malice
16 is a meanness, an evilness, a wickedness one person
17 shows to the other. It can be expressed or inferred.
18 Infer it from a deadly weapon. Infer it from letting
19 him die and bleed to death. That's malice. That's
20 mean. That's evil. That's wickedness.

21 I want to save this one. Daniel Parker who
22 testified he's been to Edisto with Charles, known
23 Charles, isn't it funny that, too, Charles wants to
24 come over and get the kids' stuff? Come on over now.
25 Things aren't work537 out. And he's thinking about

1 making sure the kids' stuff gets back.

2 Sharon Smith to Daniel Parker: I stabbed
3 Charles. I tell you I ought to be able to say that.
4 She is denying that. Part of her breast was hanging
5 out; she didn't want Charles (sic) to see it, but
6 she's calling him a liar here in the courtroom.
7 Charles (sic) didn't want to be here. But when
8 somebody is at a scene and they've got evidence, he
9 was at the scene before the police got there. Your
10 Honor even had to instruct him to speak up. What did
11 she tell you, Charles (sic)? What did she tell you,
12 Mr. Parker? She said I stabbed Charles.

13 Weigh his credibility against hers. That's what
14 this case boils down to. It's credibility,
15 believability. You don't leave your common sense out
16 there and your everyday experiences. You don't go to
17 school to be a juror. We don't have a class the week
18 before you come in. You come in with your everyday
19 life experiences. And those are in your background
20 when you're watching people, when you're watching
21 their demeanor, when you're listening to them while
22 they testify.

23 Officer Scott Wilson gets there. 911 is called.
24 The call has come out about a stabbing. Where is the
25 body? Who did i538 She has been interrupted by Mr.

1 Parker. She says, "I did it." He is there for a
2 stabbing. That's an intentional act.

3 Now, you all notice today, you notice today this
4 is what you have to decide every case on? She tried
5 to throw in there, I said, well, I guess I did it.
6 And I wasn't trying to be mean. This is my job. I
7 said, well, ma'am, did you say "I did it" or, I guess
8 I did it? She said, well, I said, "I did it." She
9 tried even here today to go around from it a little
10 bit. She told Scott Wilson "I did it." They're
11 saying she didn't.

12 **MS. SAMPSON:** Your Honor, at this point I'm
13 going to object. He's said it three times, that we
14 said that she didn't. If we need to approach, I
15 will.

16 **THE COURT:** Yes, ma'am.

17 (Whereupon, a bench conference is had)

18 **THE COURT:** Ladies and Gentlemen of the Jury,
19 I'm going to ask that you all return to the jury room
20 momentarily. I need to take up a matter of law with
21 counsel. And do not discuss the testimony, the
22 evidence, or any of the arguments. We'll bring you
23 back out very shortly.

24 (Jury out at 4:30 p.m.)

25 **THE COURT:** 539'. Ms. Sampson.

1 **MS. SAMPSON:** I have two problems, Your Honor.
2 And I've never had this happen, so I'm having trouble
3 trying to determine how to either -- how to state it.

4 My understanding of Mr. Meadors' objection
5 initially to what I said was that because I called it
6 an accident that he now wanted a voluntary
7 manslaughter charge.

8 **MR. MEADORS:** That's not true. I'm sorry.

9 **THE COURT:** He was saying -- his point on the
10 accident thing is that if you're arguing it, then,
11 number one, I would have to deal with the charge on
12 accident. And there has been a request not to charge
13 that. Let me hear you a second.

14 **MS. SAMPSON:** I have never had any judge or
15 anyone ask that the charge be changed in the middle
16 of closing or after closing base on what I said.
17 Otherwise, maybe I would have tempered my argument
18 differently. It was not in my realm of possibility
19 that based on what I said you would now change your
20 decision on charges.

21 **THE COURT:** Well, but the bottom line is that --

22 **MS. SAMPSON:** I have never had that come up.

23 **THE COURT:** -- if we -- this is why we had that
24 discussion. I wasn't going to charge any of that. I
25 wasn't going to charge accident. I wasn't going to

1 charge voluntary, involuntary, self-defense, any of
2 that, because you all argued to me that none of that
3 fits. But then if you all argue to the jury that
4 this is what it is, then I've got to tell the jury
5 what to do with that. I mean, I've got to then
6 charge them on some law about that.

7 So when the accident thing came up, that was why
8 I was specifically trying to address that from the
9 start. Do we need to charge accident? Do we need to
10 charge self-defense? That's why. That's why I have
11 to then raise whether or not I have to change the
12 charge.

13 **MS. SAMPSON:** And that's why I no longer said
14 anything about accident. Once you told me that was
15 in your realm of possibilities, I stopped. My
16 objection was he keeps saying that I said she didn't
17 do it. I've never said she didn't stab him. I said
18 it wasn't murder because it wasn't intentional.

19 **THE COURT:** So, you see, I don't mean to
20 interrupt you, counsel. But now we're back to this
21 issue of it's something. Now, --

22 **MS. SAMPSON:** But my argument, Your Honor, and
23 I'm not trying to interrupt you, is at this point to
24 me they had murder or nothing. If it's an
25 unintentional act 541 there's -- I don't see why I

1 can't argue if they want to believe that it was
2 unintentional, they can find that it's not murder.

3 **THE COURT:** But you all have argued to me that
4 there should be no lesser-included's. And you all
5 even have argued that it would be error in this case
6 to charge any lesser-included's. If your argument to
7 the jury is, and you're to stop the State from
8 arguing to the jury that she didn't do it, period,
9 the it could be accident. It could have been -- you
10 know, I'm not quite sure what after that, then don't
11 have I to charge a lesser-included?

12 **MS. SAMPSON:** No. Because, again, with
13 voluntary manslaughter, there was other things other
14 than it being unintentional. There had to be heat of
15 passion.

16 **THE COURT:** Well, at the very least, even under
17 your argument now, it would fit it.

18 **MS. SAMPSON:** Maybe so. But my whole point is,
19 I didn't talk about the accident stuff any more
20 because you said if I did you might consider charging
21 it. So I stopped. My whole point is, one element
22 they have to prove of murder, even for voluntary
23 manslaughter, is the intentional act. I can still
24 say it's unintentional. It still doesn't mean it's
25 voluntary manslaughter because there's other --

1 involuntary manslaughter -- because there are other
2 elements that must be also met for it to be
3 involuntary manslaughter even if it's unintentional.
4 It's not enough that it just be unintentional,
5 because then you would be right.

6 **THE COURT:** But it's got to be something other
7 than that. I mean, --

8 **MS. SAMPSON:** I mean, maybe it is.

9 **THE COURT:** -- that's why I was asking about
10 accident and all this other stuff. It's got to be
11 something. It's not just -- I mean, either that or
12 he committed suicide, quite honestly. I mean,
13 because there is nothing else inbetween. I mean, I
14 don't mean that in a disrespectful way.

15 But I can't -- if the State is limited to
16 arguing that she either did it -- I don't know what
17 they could argue at that point then. I'm not quite
18 sure what the defense is arguing that the State can
19 posit to the jury at this point.

20 **MS. SAMPSON:** Your Honor, if you want to charge
21 on accident because of that, fine. Charge them on
22 accident. That would -- I don't know what else to
23 say at this point. That doesn't make it voluntary
24 manslaughter because that still requires an
25 intentional act. 543

1 **MR. MEADORS:** Judge, I'm --

2 **THE COURT:** But at this point then, he's got --
3 if you're arguing that he cannot argue that she
4 didn't do it --

5 **MS. SAMPSON:** No. I just don't want him saying
6 that I said she didn't do it, because that's not what
7 I said.

8 **MR. MEADORS:** All she said was she didn't murder
9 him. She never said she did it unintentionally.
10 She's is leaving it up there, they're saying this
11 isn't a murder; she didn't murder him. She is
12 inferring, Your Honor, that she didn't do it.

13 **MS. SAMPSON:** If you want to say I inferred it,
14 then fine. But stop saying that I said she didn't
15 stab him, because I did not say that.

16 **MR. MEADORS:** Your Honor, I think she is trying
17 to get the benefit of the charges without having the
18 charge.

19 **MS. SAMPSON:** No, I'm not.

20 **THE COURT:** Well, let me ask you a question.
21 What then -- your position is, is that the State can
22 argue exactly what?

23 **MS. SAMPSON:** I just don't want him misstating
24 what I've said. If he wants to say I inferred by
25 saying she didn't commit murder; that, therefore, she

1 didn't stab him, fine. But stop saying that I said
2 she didn't stab him when that's not what I said. I
3 mean, he is making it sound like I verbatim got up
4 there and said she didn't stab him.

5 **THE COURT:** But he's got to be able to argue the
6 reasonable inferences from the evidence. If it's a
7 reasonable inference from the evidence that she did
8 it by accident, that it happened in the course of the
9 struggle, he's got to be able to argue it. If your
10 position is that he can't argue that -- and maybe
11 it's just me. I am not quite sure what this case --
12 exactly what the defense is saying if he can't argue
13 that she is denying doing it. I'm not quite sure
14 what it is that you're saying in terms of what the
15 State can argue to the jury that the defense is,
16 which they'd be entitled to do.

17 **MS. SAMPSON:** I just felt like -- and if I am
18 wrong, then please let him say whatever he wants to
19 say. But I felt like he was misstating what I said.
20 Because he has said at least four times that I said
21 in my closing she did not stab him. I did not say
22 that by those words. If I inferred it and that's
23 what he's arguing, fine. And if I'm wrong, that he's
24 not misstating what I'm saying, he's just arguing
25 that that's my argu545it, let him. Fine. I'm sorry.

1 I withdraw my objection.

2 But I felt like because he had said it more than
3 once, that in my closing I said she didn't stab him,
4 I was taking that very literally. And I didn't say
5 that literal. And that was my objection. I did not
6 want him misstating the words that came out of my
7 mouth.

8 If I am wrong and that's not what he meant, if
9 I'm wrong and that was not his intentions, if I'm
10 wrong and he can be allowed to say that, then I'm
11 wrong and I will sit down. But I surely did not mean
12 for all this to happen and now we're considering
13 different charges, because my argument probably would
14 have been much different had I known that this was
15 going to happen.

16 **MR. MEADORS:** Your Honor, I didn't think you
17 were thinking different charges when I was in my
18 closing. We're either going, as Your Honor has
19 ruled, and they didn't request a lesser, murder or
20 nothing. She's saying it's not murder. She's saying
21 that she didn't murder her. She's saying she didn't
22 do it.

23 Because if she's saying she didn't murder her
24 and there are no other options and she's trying to
25 tell them, well, 546 could have done it

1 unintentionally or in a fight; well, then,
2 respectfully, there ought to be another charge to
3 consider. But since she hasn't asked it, it's either
4 murder or not, they're saying she didn't murder him,
5 they're saying she didn't do it.

6 **THE COURT:** Is your objection, is it that he's
7 referring to what you said during closing?

8 **MS. SAMPSON:** Yes.

9 **THE COURT:** I mean, if he says the defendant
10 says she didn't do it, is it your argument that
11 that's still improper?

12 **MS. SAMPSON:** No. It was him saying that I said
13 it in my closing. He said it three or four times.
14 He didn't say Sharon said it. He said I said it.
15 And I took that very literal, so that he was saying
16 that I told the jury she did not stab him. I didn't
17 say that. And that was my sole objection, was that
18 it was sounding like he was saying from my mouth the
19 words, I said she did it. I think I've made that
20 clear. I took it very literal.

21 **THE COURT:** I'll ask Mr. Meadors to refer to the
22 defendant, that she denies doing it. I think he can
23 argue what you were arguing. We'll just say refer to
24 the defendant instead of Ms. Sampson.-

25 **MR. MEADORS:** 547d, Your Honor, in all due

1 respect to the Court, she is saying that she didn't
2 stab him. She never said she didn't stab him
3 intentionally. She has never once put the knife in
4 her hand, not one time. So then she's got to be
5 saying she didn't stab him.

6 MS. SAMPSON: And if he had said that --

7 MR. MEADORS: But you said that in your closing.
8 And I always refer to that's what the lawyers are
9 saying and arguing, because you are.

10 THE COURT: I think normally we always refer --
11 well, not "we". But normally it is referred to as
12 from the --

13 MR. MEADORS: Can I say, the defense is saying?

14 THE COURT: Yeah. I think you can say that.

15 MS. SAMPSON: He just kept saying in her closing
16 Ms. Sampson. And that's to me very literal; not
17 their argument is, their defense is.

18 MR. MEADORS: Your Honor, in fairness to the
19 State, she's up here referring to me saying I'm going
20 to twist things around and I've got the last
21 argument.

22 MS. SAMPSON: He sustained you on that.

23 THE COURT: You'll refer to the defense then
24 instead of -- folks, this is not funny. This is 30
25 to life.

1 All right. The State can make the same
2 arguments. As I understand, Mr. Meadors will say the
3 defense is saying. Any objection to him referring to
4 it in that way?

5 MS. SAMPSON: No, sir.

6 MR. MEADORS: And, Your Honor, as I'm thinking
7 here, I don't know if I should do it, but I don't
8 know how she can argue -- that's fine. I'm ready.

9 THE COURT: Do you need a moment.

10 MR. MEADORS: All right.

11 THE COURT: We'll bring them back in.

12 (Jury in at 4:42 p.m.)

13 THE BAILIFF: The jury is all present, Your
14 Honor.

15 THE COURT: Thank you, sir. Thank you, ladies
16 and gentlemen. We're ready to continue at this
17 point. Mr. Meadors.

18 MR. MEADORS: May it please the Court?

19 THE COURT: Yes, sir.

20 MR. MEADORS: Madam Forelady, ladies and
21 gentlemen, after that to Officer Wilson -- actually
22 Sergeant Derrick Thornton. You all saw Derrick here.
23 And Derrick actually came when she is outside with
24 Investigator Vinson. He is Sergeant Thornton, as
25 well as his boss, 549 came up, also knew what was

1 going on, came back to the den area, saw her there
2 and says, what's going on? He asked her, have you
3 been Mirandized? She said yes. And she told him "I
4 did it." She told him "I did it." The defense is
5 claiming she didn't do it.

6 Investigator Mark Vinson, and he comes. I'm
7 going back to Scott Wilson's second oral statement in
8 a minute. But he comes up and he says, has she been
9 Mirandized? Yes, she has. What happened? "I did
10 it." "I did it." "I did it." "I did it." I
11 stabbed him.

12 Daniel Parker, the stepfather: I stabbed him.
13 I stabbed him. I stabbed him. I stabbed him. I
14 stabbed him. The defense is claiming they didn't.

15 Your Honor, is it all right if I put this here?

16 **THE COURT:** Yes, sir.

17 **MR. MEADORS:** If you all remember, and we
18 respectfully say the evidence shows that -- and I'll
19 show this to you first if you want me to.

20 **MS. SAMPSON:** I don't care.

21 **MR. MEADORS:** Sharon Smith after the "I did
22 it's" out front with Scott Wilson, he came back after
23 he went to look at the body. And he said he was
24 dead. He comes back to the den area, reads him (sic)
25 his rights. You550! see his card. And if one thing

1 is clear, it's clear that these officers were fine,
2 professional gentlemen and ladies. He read his card.
3 He read it like it was that day. He read her his
4 (sic) rights, asked her if she understood it. She
5 said I did.

6 And after a while, about ten minutes, she said,
7 okay, I'll talk to you. His notes, if you want to go
8 back and hear, I hope Your Honor doesn't get mad at
9 me, hear this testimony, the statement of Wilson.
10 She didn't address this, didn't go over this. Come
11 back and ask to listen to it.

12 Oral statement she got right there on the scene.
13 "I came to confront the victim, Charles, about being
14 out with another woman." That's why she said she
15 came over there. Now she's telling you all I wasn't
16 there. No, I wasn't mad the night before. It's
17 Patrice's idea to go there the night before. I
18 wasn't mad the next morning. When he threw my
19 clothes out, I wasn't mad. I wasn't mad, she told us
20 today, when he's throwing me down and fighting,
21 throwing me into the TV. No, I wasn't mad.

22 Credibility, believability. Struck his vehicle.
23 I think she explained today she missed the brake. I
24 don't know. She struck his vehicle.

25 There's been 551:imony about not seeing the

1 knife, seeing the knife. What did she say at first
2 about it? Charles had a knife in his hand when I saw
3 him. Charles had a knife in his hand. She thought
4 he'd been cooking. Well, that casserole is done. It
5 looks like macaroni and cheese to me. It's back on
6 the back of the stove. Go look at it. That's done.
7 That's been cooked. The officers didn't finish
8 cooking it. I don't know what he's been cooking.

9 She went over to that drawer and got that knife.
10 She had to have put the knife in his hand. Now she's
11 denying seeing it somewhere.

12 Verbal allocation which led to physical
13 altercation in the den. Right when they get there
14 she tells Officer Wilson. She's got to figure out
15 how to tell -- she can't tell him I just stabbed him
16 in the heart. So she's trying to put a reason,
17 trying to put an understanding. But it doesn't make
18 sense because it's not the truth.

19 First she tells him, I see a knife right here.
20 We get in a physical altercation right here. And I
21 see the knife there. Now, today, she's saying, well,
22 I didn't see the knife. In a minute she's going to
23 say, well, I don't know if he had a knife or not. I
24 don't know if I had a knife or not. That's what she
25 told him right on the scene.

1 Verbal altercation which led to a physical
2 altercation in the den. Charles stepped back; here
3 now, that's what she first said, and says she stabbed
4 him. That's what she told Officer Wilson in her den.

5 "Charles stepped back and said, 'You stabbed me.
6 You stabbed me.' Victim walked to the rear bedroom.
7 Smith followed. Smith saw blood on Charles' chest.
8 Charles said, 'Call an ambulance' and then fell on
9 the floor. Smith then called 911."

10 Now, that's what she first tells Officer Wilson.
11 Didn't tell him, well, we were fighting. Didn't tell
12 him we got -- I got thrown into the TV. Didn't tell
13 him he was on top of me. I'm still not sure who was
14 on top of who and who kicked who off. I think she
15 kicked him off. Or him, he may have kicked her off.
16 I don't know. But she's got them fighting down here
17 in the den like that, not being stabbed there.

18 And this all boils down to credibility and
19 believability. Sure didn't tell him in the room that
20 she pushed him as hard as she could. When it's not
21 the truth, you can't tell the same story. Called 911
22 then. Well, according to Lieutenant Fortner,
23 according to her, when she called 911, he was alive.
24 There's no way. There is no way. He gets there ten
25 minutes later. He 553's there's no way. The body

1 temperature is down. It's 84 degrees outside. It's
2 not possible. The coroner: The body was found there
3 at 2. That's not time of death.

4 Mark Vinson comes next. She initially tells him
5 "I did it." Then he asked Wilson, have you done her
6 rights? He said, yes, I have. Does she understand
7 them? Yes. Asked her again out there in the den, do
8 you know your rights? Yes. Did he read them to you?
9 Yes. She's acknowledged that. She can't -- you've
10 seen the demeanor of these officers. Yes, I
11 understood them. Yes, they read them to me.

12 She and victim have been together for a year and
13 living at the house since September. Exactly out of
14 his words that he said they told him. They were
15 arguing. The victim was apparently cooking and had a
16 knife in his hand. The casserole was done. But he
17 comes to the den.

18 Nothing about him coming out and looking at
19 Enterprise, by the way, and scurrying in there as she
20 got in there today, trying to get inside. They were
21 arguing. The victim apparently cooking had a knife.
22 They were tussling and he told her that she had
23 stabbed him.

24 Well, that's again back here, not in the room.
25 She's got to get 554n in that room. She's got to.

1 She couldn't figure out her story the first day.
2 Wasn't ready to talk to 911. That's the last thing
3 I'm playing. I want you all to hear that last.
4 Wasn't ready to talk to 911, didn't have a story
5 together because didn't know Mr. Parker was coming,
6 Mr. Parker who she told, I stabbed him.

7 Pistol kept on the nightstand but neither one of
8 them had it. She did not think it was serious. LPN
9 stabbed in the heart, pierces the heart; she didn't
10 think it was serious. The statement I'll get to in a
11 minute: She said, well, I saw a little blood and
12 immediately called 911. Credibility, believability.
13 That's all you've got to base on this case.
14 Incredible.

15 Called Patrice, Patrice Parker, and was talking
16 to her when victim stumbled in there and Patrice told
17 her to call 911. And she said today when she called
18 911, Patrice, I was talking to her on the phone.
19 Again, those phone calls, that would have been at
20 2:05. 2:07 they respond, dispatch. She is saying
21 he's alive. No, ma'am. No, sir. He would have been
22 dead over 30 minutes.

23 Pistol kept on the nightstand but neither one of
24 them had it. She changed clothes. Those clothes, we
25 showed you a pictu555 We didn't bring you bloody

1 evidence. If they were anything important, she could
2 have put them in. She can put in as much evidence as
3 we can. That's a smoke screen. If there was
4 anything to help them out, they'd have brought it.
5 Blood on it, we've got your pictures on it.

6 And you know that gun? Yeah, I'm going to get
7 her to tell me. The gun doesn't have anything to do
8 with it. The gun wasn't fired. I guarantee you old
9 Charles wished he'd have fired that thing. Sure did.
10 Did she get it to try to put it over there, trying to
11 think up a plan, to cover, trying to put him in
12 there? I don't know.

13 But, you know, sometimes if we don't have
14 answers for everything, that's not a reasonable
15 doubt. That's just a question. That's just a
16 question. Clearly if he had had it when she stabbed
17 him in the heart she'd have shot him, he'd have shot
18 her. She didn't see it.

19 I don't know how it got underneath there. I
20 don't know. Maybe old Charles got stabbed and went
21 over to that thing and was getting the gun, came back
22 and collapsed. I don't know. Maybe she didn't know
23 it was down there because he got it after she shot
24 him. He was going try to defend his life. I don't
25 know. But she d556't put it in that first statement.

1 So she couldn't come back then; oh, by the way, he
2 had a gun. Charles didn't have the gun when she
3 stabbed him.

4 She had no injuries on her. And you know why
5 that's important? Think about this for a minute.
6 She's got him fighting. She's got him tussling.
7 She's on the ground throwing him into that big-screen
8 TV, which is fine. The den is fine. Nothing messed
9 up. She's hitting him today. He's kicking her. Not
10 a mark on her, not an injury on her. That's because
11 she stabbed him when he wasn't looking.

12 Five-eight, his weight, he's fighting her and
13 you think she's not going to have any injuries? She
14 said no injuries. Now they're trying to -- that's a
15 problem, so they're trying to say, well, didn't you
16 come back a week or two later and tell you you've got
17 injuries now? That's not real.

18 Let her go if you want to. But when you go back
19 there and ask that, when Mark Vinson asked her, was
20 the knife ever in your hand, Charles Gibson stabbed
21 in his heart, you're an LPN, was the knife ever in
22 your hand; I don't know.

23 She can't explain it. She doesn't want to
24 explain it. Daniel Parker does. God bless Daniel
25 Parker. Later she557cked that knife off the floor

1 after the victim collapsed and she put it in the
2 bathroom. I don't understand that knife. She didn't
3 want to step on it. Yet it ends up in the bathroom.
4 Why move it? Why take it to the bathroom at all? To
5 wipe it off. To maybe try to clean off the bloody
6 tip. I don't know. It sure was on the floor right
7 there right when you came in. She sure wasn't
8 worried about stepping on it there.

9 So then it comes down to the Columbia Police
10 Department. As they do, that's just what they do,
11 read her her rights. Again, not an issue. The judge
12 is going to charge you when you consider statements
13 that you go through and you must consider whether it
14 was freely and voluntarily given. And you're allowed
15 to consider all the background, including the
16 defendant's background, education and whether the
17 officers, do you feel that they were voluntarily
18 given? That's why we go through that stuff. I'm not
19 doing that trying to be -- we go through that because
20 we have to prove to you all that it was freely and
21 voluntarily given.

22 They went through this. She signed it. Mark
23 signed it. There's no threat or coercion here at
24 all. She's coming up with different stories as it
25 goes along. 558

1 Now, I don't know if I like this procedure or
2 not, but he does it and he does it regularly. I
3 said, Mark Wilson, Investigator Vinson, what's this
4 at the top? Well, I let them write what they want
5 to. You're the producer, the executor, the executive
6 director, the star, this is your place, right here
7 write the script.

8 "Struggled from arrival in the door. Stabbing
9 occurred during dispute. Charles had knife."

10 Now, I believe the defense is saying she never
11 saw a knife. I don't know. Does that make sense?

12 "Struggle occurred during dispute. Charles had
13 knife in hand. Knife punctured me a little. I did
14 not know puncture was as severe."

15 I didn't understand that. And I asked her. I
16 submit to you she couldn't explain it either. No
17 injuries on her. Maybe a spot of blood right here
18 from when she stabbed Charles. No injuries on her.
19 She wasn't punctured. She couldn't explain it either
20 when she wrote it. She couldn't write it down,
21 couldn't put down, I can't tell you, because she
22 stabbed him in the heart. She didn't say I didn't
23 stab him. Tell me what happened. He stabbed
24 himself? Committed suicide?

25 "I did not kn559puncture was severe. I called

1 911 when I realized what was going on. Police
2 officer, stepfather present afterwards."

3 She called 911 when Daniel Parker was coming.
4 "What was the original argument about?" "It was
5 about the lease and last night."

6 Folks, she came over there at 2:30, 3:00 in the
7 morning. I'm not making an issue about her having a
8 little bit to drink. I may have done that in my
9 time. I'm not trying to judge her on that. But my
10 point was, she was out and she heard he had been out
11 with another woman, thought he was gone, made her
12 mad.

13 She and Patrice go over there. She's now trying
14 to say Patrice wanted her to go over there. That
15 makes no sense, we respectfully submit. Goes by and
16 chats to him. And the evidence says, look, do you
17 want to talk? No, I don't want to talk. Who told
18 you you saw him in a pub? A woman named Rosalyn
19 Boyles. What happened earlier at Eddie Fogle's
20 house? He brought my clothes over there. I told him
21 there wasn't any reason for that because Charles
22 wasn't on the lease.

23 Are you mad about that? No, I'm not mad.
24 Because it doesn't matter if she was mad or not
25 beforehand. But 560:arly, use your common sense, did

1 she get mad at all this when she initially told them,
2 I went over there to confront him about last night
3 and the lease? Was she mad? Yes, she was mad. She
4 was angry. She wanted them both.

5 You heard the testimony. Charles and Eddie, you
6 know, they got along. Maybe Charles didn't want her
7 there; maybe Eddie didn't, but they weren't fighting
8 about it.

9 "What happened earlier at Eddie's house?" And I
10 may have already said it. I'm sorry. "What happened
11 from the time you got home around 2 p.m.? When I
12 pulled up in Eddie's car, Charles came out. He said
13 I wasn't going to come in. I bumped into his rental
14 car with Eddie's car. He had been standing in the
15 back door."

16 You know, this lease, he was on it through
17 September 2003. I submit to you it's irrelevant.
18 Mr. Harvey (sic) is not sure if he talked to him. He
19 said he sent him a letter. I think he may have made
20 one reference saying he forgot that Charles told him
21 he was leaving. It wasn't clear out of here whether
22 Charles knew that he was off that lease or not. We
23 argue the evidence shows he didn't. As a matter of
24 fact, it was made -- whatever it is; you all can look
25 here -- about 7 to 561 9 days beforehand.

1 Old Charles, out working, gone, comes back in
2 here. The house is clean. His stuff -- by the way,
3 credibility, believability. All his stuff was packed
4 up? He unpacked it that night? Cleaned the house,
5 put his stuff up? Does that make sense? Charles
6 didn't know about that lease. It doesn't matter if
7 he did or not, but he didn't know about that lease.
8 She sure didn't try to get him out of there if he did
9 know.

10 She sees him early that night. She didn't say
11 anything about you not being on the lease. She was
12 mad at him, hearing about he was with another women.
13 Which there's no evidence of that, credible evidence.

14 "He came out after I bumped the car. I walked
15 past him into the house. He was trying to pull me
16 out. He was behind me and I fell down. I fell three
17 or four times" -- No injuries -- "before I got up. I
18 was trying to get to the bedroom to show him the
19 lease."

20 Nothing about him running outside looking at a
21 car and her trying to get in, by the way, before he
22 could get back in there. That came out today. "He
23 was behind me holding onto me. I was struggling,
24 knocking his arms away. I never saw a knife in his
25 hand."

1 Well, earlier she did when she saw him at the
2 door. Now she's back, she's thought about giving the
3 statement. Well, you know, I didn't see a knife.
4 It's credibility, believability.

5 He (sic) either did it or he didn't do it. The
6 defense said he (sic) didn't do it. Everybody else
7 we called here said he (sic) did it. Eddie Fogle
8 didn't tell you she didn't do it. And he has been
9 living with her. And Daniel Parker told you, she
10 said I stabbed him.

11 I never struggled. "Knocking his arms. I never
12 saw a knife. I was going through drawers in the
13 bedroom looking for the lease. I had already opened
14 drawers in the kitchen looking for the lease."

15 There ought to be a knife right there. She
16 opened that drawer and got a knife out of there. She
17 admitted to it first on cross. Then she said, well,
18 no. Then she admitted it. There was a knife in that
19 drawer. That's what she was going to get.

20 "When I was in the bedroom he said, 'you know
21 you done stabbed me.' He fell back on the floor. I
22 already had Patrice Parks on the phone while I was
23 looking for the lease, and when he told me I had
24 stabbed him, she told me to hang up and call 911. I
25 thought at first he was just having breathing

1 problems because he does have them. My stepfather
2 got there because I know we were going to have to go
3 to the hospital."

4 "Q Who did the pistol belong to?

5 "A Charles.

6 "Q Where is it kept at?

7 "A On the shelf where I keep my books.

8 "Q Did you ever see Charles with it that day?

9 "A No.

10 "Q Do you know how it ended up underneath
11 him?

12 "A No.

13 "Q Was he cooking when you got there?

14 "A Yes. One of the officers cut the stove off. I
15 assumed he was cooking because of the food on the
16 stove.

17 "Q Did you ever have the knife in your hand?"

18 She said she saw it earlier when she was asked.
19 She said, I don't know if I did or not. Now I submit
20 to you she's wiped off the fingerprints, although
21 she's tried to get them off. Now, when she's asked
22 again: "I picked up the knife off the floor when it
23 was by him. I didn't want to step on it."

24 "Q Did you told the knife in your hand and
25 stab Charles? 564

1 "A No."

2 The warrant is served. They read her the
3 warrant. It's just got language: "Stabbed at least
4 once. She said, 'wasn't he stabbed more than once?"

5 Credibility, believability.

6 Folks, because in a one-on-one case somebody
7 gets up here and gives this version, this version,
8 this version; and then today -- where is today --
9 she's got him back in the doorway with the knife now.

10 Hit rental car, went past him, started looking
11 for the lease. We've got a bigger fight in the den
12 today. Charles pushed me, the TV. She hits Charles
13 back today. That's never been mentioned before;
14 never, ever. She's hitting him now. She's got to
15 make it seem bad. He's on top of her. One of them
16 is kicking the other one off of them. I'm still
17 confused. I said her. This comes out today.

18 Charles laid on top of her and she kicked him
19 off. Are you not going to tell them that back when
20 this thing happened? She's on trial now. It's got
21 to look worse. It's got to be worse. You've got to
22 make Charles look worse. Why did he lay on top of
23 her? She kicked him off. Well, were you upset then,
24 Ms. Smith? No. No. I wasn't upset. -

25 They're sayin⁵⁶⁵ he didn't stab him. That's what

1 the defense is saying.

2 Went in the room to look for this. Charles
3 approached her in the room, pushed Charles with
4 everything I had. Ain't never heard that before.
5 Never, never, ever 'til today. Never! And he comes
6 at me?

7 This ain't a self-defense case, not an accident
8 case, not a voluntary. It's murder. She stabbed him
9 or she didn't stab him. He comes at me. Are you
10 upset? No. I pushed him with everything I had. And
11 then Charles, you stabbed him. Didn't it come out in
12 her testimony? Did she stab him? She stabbed him.

13 Could you see the blood on Charles? I thought
14 that Charles had a heart attack, did CPR, blood.
15 Blood is from compressions. Called Patrice, called
16 911, went to the door, let Daniel in.

17 Now, folks, if this is true today, which we
18 submit who knows; but if this is true, that as she's
19 looking at these cosmetics in the room and looking
20 for the lease and he comes in and she pushes him as
21 hard as she can, he must have had the knife like
22 this. She pushes him and he's walking in the room
23 like this and she pushes him. Did she push him right
24 here? Is that what happened? Oh, that would be
25 stabbing him, wouldn't it? No, I didn't stab him.

1 That didn't happen.

2 The only other way it happens is if the knife is
3 laying straight up on the floor and she pushes him
4 and he falls down and he falls down on the knife.
5 What did Clay Nichols tell you? What kind of force?
6 Intentional force. I hate to use this analogy, but
7 it hit home with me. It's like cutting a rib. Have
8 you ever done that? Intentional force. Not just
9 pricking it in there. It fractured the rib. It
10 fractured the rib.

11 I don't know if I had a knife. I don't know if
12 a knife was in my hand. I didn't know he'd been
13 stabbed. "I did it." "I did it." No, I didn't do
14 it. I stabbed him, didn't I? She can't tell you.
15 She couldn't tell you. Intentional force. Was that
16 it up there like that? Well, no. You all, it can't
17 be that way. Because if that happened and his body
18 went on it, it would have gone all the way down.
19 That's why it couldn't have happened that way. It
20 went in three inches, punctured his heart. I'm not
21 going to show it to you now. It's back there.

22 Changed to go to the hospital, picked up knife
23 twice because she's got to get it in the bathroom.
24 Helping Charles when Daniel came. Never saw a gun or
25 a knife. Told the 567 officers -- this is my job. It's

1 the job of you all's to seek justice. That's all
2 we're asking, justice for the State, justice for
3 Charles, justice for the facts.

4 When I asked her, did you tell them you did it?
5 Did you tell them you did it? Did tell them you did
6 it? Now, today, up here under cross examination,
7 well, I did it but I didn't really mean it. Finally,
8 she said, well, I did tell them I did it. Well, I
9 guess I did it. No, ma'am. You told them you did
10 it. Well, yeah, I told them I did it. The officers
11 didn't bother her. They were all professional to
12 her. Did they all get together and come here and
13 conspire? No?

14 Did you tell Daniel Parks (sic) that you stabbed
15 him, your father-in-law? I did not. Not one
16 question on cross to him about that. Not one. Not
17 from them. Do you think if you had asked him, do you
18 think, did she really tell you that; not one question
19 about that did she tell you. And you know why.

20 I'm sorry to keep you all so long. I submit to
21 you the phone calls are important. You know, one of
22 my favorite shows growing up was Columbo. You got to
23 see the crime. You knew what it was. You got to
24 watch the bumbling guy figure it out. Sometimes I
25 feel like that. 568ybe April does.

1 But sometimes we've got the tolls we can go
2 through them. And, yes, he had called the Parkers at
3 some part, Charles had, and said, hey, come get the
4 kids' stuff. There are phone calls back and forth.
5 But, folks, you go back and look at these phone
6 calls. And Eddie Fogle's phone number came out.
7 It's in evidence. 12:28 is where Christen said she
8 went there. Right there. Stand up, Christen. Told
9 you she went by there at 12:28. As a result of that,
10 what were you doing? I was going to come by the
11 house and check on it. Check on the house. He
12 wouldn't know he wasn't on that lease. But after
13 12:28, that's her phone number. She stays for 30
14 minutes.

15 Now, there's some calls coming from the Parkers'
16 residence.. It could have been calls coming saying
17 when Daniel would be over there. I don't know.
18 Daniel said there were some calls. There's calls
19 afterwards, too. But you look after 12:28. She's
20 there 'til 1. Call, a minute, call, a minute.
21 That's 1:39. I submit to you she could already be
22 there.

23 But let's assume it's Charles who has just
24 talked to his mother-in-law, or your common law
25 mother-in-law. Ar⁵⁶⁹e's breaking up with his

1 girlfriend. And he's already talked to her a minute.
2 He's going to sit and maybe talk to her three
3 minutes. Is he going to talk to her again? Does
4 that make sense? And you've already got Daniel
5 Parker coming, on the way to pick up the kids' stuff.

6 Then there are two calls from there to the
7 house. Mr. Parker is on the way. He gets there
8 shortly after. You can't get from Hopkins in that
9 time period to get there when he got there. I submit
10 to you she stabbed him in this time period. I submit
11 to you that's a reasonable inference. She doesn't
12 know if she did it or if she did it intentionally.
13 But I'm telling you this now to back it up, not that
14 we need it. You only need Daniel Parker. That's all
15 it is about.

16 But you look down here. Calls from this
17 residence to right here, to Daniel Parker. You back
18 off 12, 1:39. Let's assume that was him. 1:49. He
19 is going to call back there after talking? 1:58, I
20 submit to you she stabbed him then. She's on the
21 phone with Patrice, then calls 911 which isn't on
22 here. I submit to you the stabbing happened in here.
23 It's consistent with Lieutenant Derrick -- what's his
24 name? Marvin Fortner.

25 When he get⁵⁷⁰ here at 2:15, he said he had to be

1 dead 30 minutes. Had to be. She slipped up today
2 and put herself there at 1:30, 1:45. She slipped up
3 and did that. No doubt about it. Then tried to back
4 it up when I came back. That's why that's
5 consistent. It said he got stabbed shortly after
6 that, she got there; the altercation. And then
7 waited and waited.

8 And it's consistent with that temperature coming
9 down, from our body temperature, that when he touched
10 his skin, that is good evidence. I forgot to go into
11 all the types of evidence with you. The judge will
12 do that. That's good evidence. He's cool now. He
13 was hot before. The hotter it is, the longer it
14 takes you to come down. They didn't argue that.
15 He's cool. That's consistent with her getting there
16 at 1:30, 1:45, consistent with her sitting there,
17 consistent with her trying to figure out what to do.
18 I'm sorry about that. Consistent, consistent with
19 not knowing what to do, consistent with Mr. Parker
20 coming later and then her having to call 911. That
21 from an LPN.

22 Which I submit to you it's beyond all doubt that
23 she said he was living when she called 911, it's
24 impossible when he saw her at 2:17. And even Mr.
25 Parker, when I finished, got him up: Mr. Parker, was

1 he dead? He was dead. He was dead.

2 MS. SAMPSON: Objection, Your Honor. He's
3 misstating the evidence. And he can play the tape,
4 but that's not what he said.

5 THE COURT: Well, the jury will remember the
6 evidence. This is counsel's argument. You all
7 remember the evidence. And you all will also have an
8 opportunity, should you choose to, to review any of
9 the testimony.

10 MR. MEADORS: As to Mr. Parker, did you hear
11 anything? I don't know. Make any sounds? I don't
12 know. I may have heard something. Mr. Parker, was
13 he dead when you looked down? He said he was dead.
14 Go play the tape.

15 That's nice, letting him bleed to death. She
16 came in. She was angry. She was there the night
17 before angry, had been out. She was angry that day
18 when she realized and woke up. Hey, you know I got
19 that lease a week ago. I'm going to go over there
20 and see if I can get him out of my house. They start
21 arguing. They fight. Do couples argue and fight?
22 Yes.

23 She took it to the next level. No injuries.
24 She went in the kitchen and she surprised him. Some
25 of the best evidence we have, there's no defensive

1 wounds, no injuries on her, no injuries on him. She
2 stabbed him she said. Did he fall back in there when
3 she stabbed him and hit his arm and go back and fall?
4 I don't know. There is no way, because she can't
5 explain the true way, to confess in front of you;
6 there's no way it could happen the way she told you
7 all today.

8 When he comes at her, she turns and just pushes
9 as hard as she can. And she says it just happened.
10 She doesn't see a knife. He ends up on his back on
11 the other side of the room. There's no way. That's
12 incredible.

13 She caught him by surprise, she stabbed him in
14 his heart, and she tried to figure out what to do.
15 Ms. Sampson says, well, why didn't she just leave? I
16 think she was trying to figure out, the evidence
17 shows, what to do. How could she get away? And Mr.
18 Parker came. She didn't know he was coming. She
19 didn't know he was coming.

20 Ladies and gentlemen, I'm sorry it took so long.
21 I'm going to wrap up now. And I am going to play you
22 this. You know, our system over 200 years is based
23 on you all. This is why we still are better than
24 anywhere in the world. Our judicial system, our jury
25 system, it's beautiful, it's pure. That's what

1 veredicto means. It's pure. It's justice. Verdicto
2 means to speak the truth. But it's the pure, just
3 system.

4 And when you took your oath you took an oath to
5 decide the case based on the facts using your common
6 sense, evaluating the witnesses, credibility,
7 demeanor. And you will take the law His Honor, Judge
8 Lloyd, is fixing to charge to you and apply it to the
9 facts and come back with a verdict. And that's all
10 we can all ask of you.

11 You have the power to say, go, sin no more. But
12 to do that, respectfully, you'll have to believe she
13 didn't tell the officers "I did it." She didn't tell
14 the second officer, the third officer. She didn't
15 tell Mr. Parker. Because we submit that's the only
16 way you can find her not guilty. Because she's
17 saying, the defense is saying, I didn't stab him,
18 that he must have fell on that knife on the floor,
19 that I didn't see a knife. It's incredible.

20 When she called 911, 911: "Can I help you?" "I
21 need an ambulance." "Why?" "I need an ambulance."
22 "Why?" She couldn't tell them. "Ma'am, has he been
23 shot? Has he been stabbed?" "He's been stabbed."
24 She let a little leak out there. She couldn't, she
25 couldn't tell th574 She hasn't been able to tell

1 since. She's tried to tell so many different
2 stories.

3 This is the case here, not -- she couldn't tell.
4 This isn't a case of an accident or self-defense or
5 voluntary. Either she stabbed him or she didn't.
6 Did he commit suicide? That's really what you've got
7 find to let her go.

8 And one last witness I forgot to tell you all
9 about. You know, he wasn't in here, but he spoke
10 through -- Charles spoke to you through Dr. Nichols.
11 Charles spoke to you through Dr. Nichols. He said,
12 Ladies and Gentlemen of the Jury, here is where I was
13 cut. Here is where my rib was fractured. Charles
14 told you that about his body. Charles got his
15 temperature down. He got his temperature down so
16 Fortner could come in here and tell you, I was dead
17 when 911 was called.

18 (Whereupon, the 911 tape is played for the
19 jury).

20 **MR. MEADORS:** Please tell us what happened.
21 Return a verdict that speaks the truth, a verdict
22 that on May 11th, 2003, Sharon Lisa Smith killed
23 Charles Gibson by piercing his heart with a knife.
24 Then she let him bleed until she had to call 911.
25 And that's murder. 575 Thank you.

1 **THE COURT:** Thank you, Mr. Meadors.

2 Ladies and Gentlemen of the Jury, you've heard
3 the arguments now from both sides, and I'm going to
4 charge you on the law that you're to apply to this
5 case. After that, ladies and gentlemen, you all can
6 begin your deliberations. And as I said, Madam
7 Forelady, you all can make the choice as to how late
8 you all wish to go this evening. And you certainly
9 are welcome to make that choice as to whether you
10 want to continue deliberating tonight or come back in
11 the morning.

12 But it is at this point, ladies and gentlemen,
13 incumbent upon me to charge you the law that you're
14 to apply to the facts as you find them in this case.
15 At this point I do remind you as I told you at the
16 very beginning that the indictment charges the
17 defendant, Ms. Sharon Smith, with murder.

18 Ladies and gentlemen, I told you all at the very
19 beginning when you were picked for this jury that the
20 fact that somebody has been arrested, charged and
21 even indicted in this case is not evidence in this
22 case and cannot be considered by you as evidence of
23 the question of guilt, nor does it create any
24 presumption or inference of guilt.

25 The indictment⁵⁷⁶, ladies and gentlemen -- and,

1 Madam Forelady, you'll actually have the indictment
2 back in the jury room with you -- is simply the
3 formal written document that brings this case to this
4 court. You should make no inferences or presumptions
5 based upon the indictment.

6 Ladies and gentlemen, the defendant has pled not
7 guilty to the indictment; and, simply, that plea puts
8 the burden on the State of South Carolina to prove
9 the defendant guilty. I charge to you and tell you
10 that a person charged with committing a criminal
11 offense in South Carolina is never required to prove
12 himself or herself innocent.

13 Ladies and gentlemen, it is an important rule of
14 law that the defendant in a criminal trial no matter
15 what the seriousness of the charge may be will always
16 be presumed to be innocent of the crime for which the
17 indictment was issued unless and until guilt has been
18 proven by evidence satisfying you as the jury of that
19 guilt beyond a reasonable doubt.

20 Now, the presumption of innocence does not end
21 once you begin your deliberations but rather
22 accompanies the defendant throughout the trial unless
23 and until you as the jury reach a verdict of guilt
24 based on evidence satisfying you of that guilt beyond
25 a reasonable doubt 577

1 Presumption of innocence, ladies and gentlemen,
2 has been described often as being like a robe of
3 righteousness that is placed about the shoulders of
4 the defendant which remains with the defendant until
5 it had been stripped from him or her by evidence
6 satisfying you as a jury of the defendant's guilt
7 beyond a reasonable doubt.

8 Presumption of innocence is not mere legal
9 theory. It is not just a legal phrase. It is rather
10 a substantial right to which every defendant is
11 entitled unless and until you as the jury are
12 satisfied from the evidence of the defendant's guilt
13 beyond a reasonable doubt.

14 Ladies and gentlemen, the State has the burden
15 of proving the defendant guilty beyond a reasonable
16 doubt. And I will explain to you under the law what
17 a reasonable doubt, what that phrase means. Now,
18 those of you who may have served as jurors in civil
19 cases or may have been familiar with the standard in
20 civil cases may have been told or know that in those
21 cases it is only necessary to prove that a fact is
22 more likely true than not true, such as by greater
23 weight or preponderance of the evidence.

24 In criminal cases the State's proof must be more
25 powerful than th578 It must be proof beyond a

1 reasonable doubt. A reasonable doubt is the kind of
2 doubt that will cause a reasonable person to hesitate
3 to act.

4 Now, proof beyond a reasonable doubt is proof
5 that leaves you as a jury firmly convinced of the
6 defendant's guilt. I charge you and tell you that at
7 this point that there are very few things in the
8 world that any of us can know with absolute
9 certainty. And in criminal cases, ladies and
10 gentlemen, the law does not require proof that
11 overcomes every possible doubt.

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

19 I remind you and tell you, ladies and gentlemen,
20 like the lawyers, you and I have had certain roles
21 and duties to perform during this trial. As the
22 trial judge it is my duty and responsibility to
23 preside over the trial of this case, but I also have
24 the duty to rule on the admissibility of evidence
25 offered during this trial.

1 Ladies and Gentlemen of the Jury, you're to
2 consider only the competent evidence before you. If
3 there was anything ordered stricken from the record
4 in this case during the course of the trial, you must
5 disregard that testimony or matter. You are to
6 consider only the testimony which has been presented
7 from the witness stand, any Exhibits which have been
8 made a part of the record in this case and which you
9 will have in the jury room with you, and any
10 stipulations between counsel.

11 Now, I have the additional duty to charge you
12 the law applicable to this case. And as the
13 presiding judge, I am the sole judge of the law of
14 this case. And it is your duty, ladies and
15 gentlemen, under your oath to accept and apply the
16 law exactly as I state it to you during the course of
17 this charge.

18 If you already have any idea as to what the law
19 is or what the law ought to be and it does not agree
20 with what I tell you the law is, you must abandon
21 your idea of what the law is or should be. Quite
22 simply, ladies and gentlemen, under your oath as
23 jurors in this case, you are sworn to accept and
24 apply the law exactly as I state it to you.

25 Now, in eve580 case tried in this court before a

1 jury the jury becomes the sole and exclusive judges
2 of the facts in the case. I tell you and charge to
3 you that a trial judge cannot intimate, state,
4 comment on, or make any statement to a trial jury
5 about the facts in a case.

6 Since you as the jury are the sole judges of the
7 facts in this case, you are not to infer from what I
8 have said during the progress of this trial in ruling
9 on the admissibility of evidence or otherwise or
10 anything that I say to you during the course of this
11 instruction that I have any opinion about the facts
12 in this case. The law does not allow a judge to have
13 an opinion about the facts in a case. That is a
14 matter solely for you as the jury to determine. As
15 jurors, it is your duty to determine the effect,
16 value, weight and truth of the evidence presented
17 during trial.

18 Now, ladies and gentlemen, generally there are
19 two types of evidence presented during the course of
20 a trial: Direct evidence and circumstantial
21 evidence. Direct evidence is the testimony of a
22 person who claims to have actual knowledge of a fact,
23 such as an eye witness. It is evidence which
24 immediately establishes the main fact to be proved.

25 Circumstantial evidence on the other hand is

1 proof of a chain of facts and circumstances
2 indicating the existence of a fact. It is evidence
3 which immediately establishes collateral facts from
4 which the main fact may be inferred. Circumstantial
5 evidence is based on inference and not on personal
6 knowledge or observation.

7 Now, ladies and gentlemen, the law makes
8 absolutely no distinction between the weight or value
9 that you are to give to either direct or
10 circumstantial evidence, nor is a greater degree of
11 certainty required of circumstantial evidence than of
12 direct evidence.

13 You should weigh all of the evidence in this
14 case; and after weighing all of the evidence, if you
15 are not convinced of the guilt of the defendant
16 beyond a reasonable doubt, you must find the
17 defendant not guilty.

18 Now, necessarily, ladies and gentlemen, you must
19 determine the credibility of witnesses who have
20 testified in this case. Credibility simply means
21 believability. It becomes your duty as jurors to
22 analyze and to evaluate the evidence and determine
23 which evidence convinces you of its truth.

24 In determining the believability of witnesses
25 who have testified in this case, you may believe one

1 witness over several witnesses or several witnesses
2 over one witness. You may believe a part of the
3 testimony of a witness and reject the remaining part
4 of the testimony of that same witness.

5 You may believe the testimony of a witness in
6 its entirety or reject the testimony of a witness in
7 its entirety. You may consider whether any witness
8 has exhibited to you any interest, bias, prejudice,
9 or other motive in this case. Ladies and gentlemen,
10 you may also consider the appearance and manner of a
11 witness while the witness is on the witness stand.

12 As I told you during the trial, the rules of
13 evidence ordinarily do not permit witnesses to
14 testify to opinions or conclusions. One exception to
15 this rule exists for witnesses that we call expert
16 witnesses. A witness who by education and experience
17 has become an expert in some art, science, profession
18 or calling may state an opinion as to relevant and
19 material matter in which the witness claims to be an
20 expert and may also state the reasons for that
21 opinion.

22 You should consider any expert opinion received
23 in evidence in this case, and like any other
24 evidence, give it the weight that you think it
25 deserves. If you decide as a jury that the opinion

1 of an expert witness is not based on sufficient
2 education and experience or if you conclude that the
3 reasons given in support of the opinion are not sound
4 or that the opinion is outweighed by other evidence,
5 you may disregard the opinion entirely.

6 An expert witness's testimony is to be given no
7 greater weight than that of other witnesses simply
8 because the witness is an expert. Further, you are
9 not required to accept an expert's opinion even
10 though it is not contradicted.

11 Now, in order to establish criminal liability
12 criminal intent is required. For example, the mental
13 state required to be approach by the State for a
14 particular crime might be purpose, intent, knowledge,
15 recklessness or criminal negligence.

16 Criminal intent must be proven by the State
17 beyond a reasonable doubt. Criminal intent is always
18 a matter that must be determined by the jury from the
19 circumstances surrounding the situation. Now, there
20 is no way to prove intent to a mathematical
21 certainty. For example, there's no way medical
22 science can allow us to dissect a person's brain and
23 determine what that person had in mind at the time.
24 So the law simply says that criminal intent may be
25 inferred from ci1584stances shown to have existed at

1 the time of the incident. This is how you as a jury
2 make a determination of whether or not the element
3 requiring intent was present.

4 It is not necessary to establish intent by
5 direct and positive evidence, but intent may be
6 rather established by inference in the same way as
7 any other fact, by you as the jury taking into
8 consideration the acts of the parties and all of the
9 facts and circumstances of the case.

10 Criminal intent is a mental state. It is a
11 conscious wrongdoing. It is up to you as a jury to
12 determine what the defendant intended to do based on
13 the circumstances shown to have existed.

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

19 Now, statements alleged to have been made by the
20 defendant have been admitted into evidence in this
21 case. While I have determined as the Court that the
22 statements were admissible, I instruct you that you
23 as a jury make the ultimate decision of whether or
24 not the defendant made the statement.

25 If the defende585 did make the statement, you

1 must then determine whether the statement was made by
2 the defendant rather voluntarily and of his or her
3 own free will. That means, ladies and gentlemen,
4 that the statement was not caused by pressure, force,
5 fear, threats, coercion or intimidation or by hope or
6 a promise of leniency or a reward of any kind.

7 In determining whether the statement was
8 voluntary you should consider both the
9 characteristics of the defendant and the details of
10 the questioning. Some of the factors that you must
11 consider are the age of the defendant, the
12 defendant's education or lack of education, the
13 defendant's mental ability or capacity, the
14 defendant's IQ or intelligence, the defendant's
15 background and environment, the place and length of
16 the detention, the nature of the questioning, and the
17 advice or lack thereof to the defendant of her
18 Constitutional rights; including, but not limited to,
19 the right to remain silent, that any statement could
20 be used against her in a court of law, the right to
21 have a lawyer present, that if she could not afford a
22 lawyer, a lawyer would be appointed to represent her
23 without any cost, and that she could stop making a
24 statement at any time.

25 You as the '586' must carefully consider all of

1 the surrounding circumstances before you give any
2 weight to an alleged statement. The State has the
3 burden of proving beyond a reasonable doubt that the
4 alleged statement was voluntary. If you determine it
5 was, you may give the statement any further
6 consideration that you as a jury deem proper.

7 You must decide what weight, if any, should be
8 given to the alleged statement. If you determine the
9 alleged statement was not the free and voluntary
10 statement of the defendant, you should not consider
11 the statement at all.

12 Now, ladies and gentlemen, the defendant in this
13 case is charged under the indictment with the crime
14 of murder. The State must prove beyond a reasonable
15 doubt that the defendant killed another person with
16 malice aforethought.

17 Malice is hatred, ill will or hostility towards
18 another person. It is the intentional doing of a
19 wrongful act without just cause or excuse and with an
20 intent to inflict an injury under circumstances that
21 the law will infer an evil intent.

22 Now, malice does not necessarily always mean --
23 import rather -- ill will toward an individual
24 injured, but rather signifies a general malignant
25 recklessness of the lives and safety of others or a

1 condition of mind which shows a heart regardless of
2 social duty and fatally bent on mischief.

3 Malice aforethought does not require that malice
4 exist for any particular time before the act is
5 committed, but malice must exist in the mind of the
6 defendant just before and at the time of the act is
7 committed.

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

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

23 Also malice may be inferred from conduct showing
24 a total disregard for human life. Inferred malice
25 may also arise w588 the deed is done with a deadly

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

7 Now, ladies and gentlemen, that concludes my
8 charge on the law to you. Madam Forelady, it will be
9 your job during deliberations to make sure that every
10 member of the jury has a say on the evidence as they
11 wish to during the course of your deliberations. It
12 will be also your duty, ma'am, should the jury have
13 any questions to write those questions down, for you
14 to let the bailiff know that you have a question, and
15 we'll return here to deal with that question.

16 It will also finally be your job to fill out the
17 verdict form, Madam Forelady. It's a simple verdict
18 form. And while you will have the indictment back
19 there, you will also have this verdict form which you
20 will fill out at the time that the jury does reach
21 verdict.

22 Your verdict must be unanimous. All 12 of you
23 must agree on the verdict. Now, Madam Forelady, your
24 verdict form simply says that we, the jury, find as
25 to the defendant, \$589 on Smith, on the charge of

1 murder, a place to mark guilty and not guilty. And
2 then you will sign that form, Madam Forelady, and
3 again let the bailiff know that you have reached a
4 verdict, and we'll return to receive that verdict.

5 Madam Forelady, should, as I said, you all wish
6 to continue to deliberate tonight, you may do so. If
7 you wish to continue to deliberate tonight and you
8 wish for us to order you all dinner, we'll be glad to
9 do that. If you'll let us know, and then the clerk
10 can make preparations to do that, and we'll be glad
11 to continue to let you deliberate. If you all wish
12 to break for the evening after you all have had the
13 discussion, we can return in the morning and let you
14 continue your deliberations at that point.

15 Ladies and gentlemen, sometimes I leave off
16 things as I'm giving you a charge. Let me check with
17 counsel before I send you back to the jury room.
18 Madam Forelady, I'm going to send everybody back to
19 the jury room, but do not begin your deliberations
20 until I have sent the verdict form, the indictment
21 and the Exhibits which have been admitted into
22 evidence into the jury room. At that point the
23 bailiff will let you know that you can begin your
24 deliberations. But let me check with counsel to see
25 if there's anythi590I need to cover.

1 **MR. MEADORS:** May we approach?

2 **THE COURT:** Yes, sir.

3 (Whereupon, a bench conference is had)

4 **THE COURT:** Ladies and gentlemen, that covers my
5 charge of the law to you all. If you'll return to
6 the jury room at this point. Madam Forelady, before
7 you all begin your deliberations, if you all can
8 discuss whether or not you wish to continue tonight
9 and whether you wish for dinner.

10 **JUROR:** Am I allowed to speak?

11 **THE COURT:** Yes, ma'am.

12 **THE JUROR:** When we recessed just a moment ago
13 we discussed that, and we would like to continue
14 until tomorrow. We don't want to deliberate tonight.

15 **THE COURT:** Okay. I'll let you all go back.
16 I'm going to send you back to the jury room for a
17 short while. I've got another matter I need to take
18 up and we need to make sure we've got all the
19 Exhibits together. Those will be in the jury room
20 for you first thing in the morning when you get
21 there.

22 Ladies and gentlemen, at this point I'm going to
23 send you back to the jury room very briefly. And the
24 bailiff will come and let you know when you can go.
25 Okay. Do not do a591 discussions of the case

1 obviously at this point.

2 (Jury out at 5:40 p.m.)

3 **THE COURT:** All right, counsel. As I understand
4 it Mr. Pleasant is the first alternate and would
5 replace the juror.

6 **MR. MEADORS:** Thank you, Your Honor.

7 **MS. SAMPSON:** I'm sorry. I'm sorry. I was ...

8 **THE COURT:** I was just looking at my -- what I'm
9 looking at, I believe Mr. Pleasant is actually the
10 first alternate, that he would replace the juror that
11 we were discussing earlier.

12 **MS. SAMPSON:** That's fine, Your Honor.

13 **MR. MEADORS:** Thank you.

14 **THE COURT:** All right. Counsel, if you all will
15 check the Exhibits and make sure -- we'll get those
16 together. I'll let you all do that when we break for
17 the day since they are going to break shortly.

18 **MS. SAMPSON:** I will say for the record, Your
19 Honor, myself, Jenny, the court reporter, and the
20 bailiff, we did that earlier. Mr. Meadors is fine to
21 go up, but I have no problems with -- we checked all
22 the evidence to make sure what had been admitted and
23 what hadn't been admitted, and everything that hadn't
24 been admitted is off the table. So, I mean, we can
25 check it again, 1592 I'm just putting on the record;

1 as far as I know, everything is the same.

2 THE COURT: Okay. Mr. Bailiff, let me talk to
3 you.

4 MR. MEADORS: Mr. Wagoner is going to talk to
5 him.

6 MR. WAGONER: I'll look through it briefly. I
7 know some things were moved from when we came back.

8 THE COURT: Yes, ma'am. If you'll come down
9 next to the court reporter.

10 (Whereupon, the juror enters the courtroom and
11 the following sidebar conference is had)

12 THE COURT: I brought you back out here. I
13 don't mean this to embarrass you at all. But there
14 was some noticing during the trial today that you
15 were nodding off a little bit.

16 JUROR: Oh. Medication. I'm on medication.

17 THE COURT: Okay. Because of that and just -- I
18 checked with counsel on both sides to make sure that
19 we have a jury that has heard all the evidence and
20 that did hear every part of the testimony, we're
21 going to relieve you on this case for the
22 deliberation process.

23 JUROR: Okay.

24 THE COURT: I'm not finding fault with you. I
25 understand that. 593

1 **JUROR:** Okay. That's --

2 **THE COURT:** I have been there myself. So I
3 don't want you to feel bad for that. But I
4 appreciate your service. Actually, you'll be allowed
5 to go and you do not have to return tomorrow.

6 **JUROR:** Oh, okay.

7 **THE COURT:** So you'll be done. But I just -- I
8 appreciate your honesty about that.

9 **JUROR:** Yes. I've been in a car accident and
10 that's why.

11 **THE COURT:** I appreciate your honesty.

12 **JUROR:** Okay.

13 **THE COURT:** If you'll actually go back to the
14 jury room, I'm going to let the bailiff know that.
15 And I'll just replace you with the first alternate.

16 **JUROR:** All right. Thank you.

17 (Whereupon, the side bar conference is concluded
18 and a bench conference is had between the Court and
19 the bailiff)

20 **THE COURT:** Counsel, are there any other matters
21 before we --

22 **MR. MEADORS:** Your Honor, I would ask since the
23 jury is now out that Ms. Smith be taken into custody.

24 **THE COURT:** Ms. Sampson.

25 **MS. SAMPSON** 594¹ have a couple of things. As far

1 as to that, Your Honor, I understand the jury is out.
2 My argument today is the same as it was yesterday,
3 the same as it was Monday. At this point she has
4 come every single time, has been here early. The
5 jury is out and the evidence is no different now than
6 it was this morning, no different now than it was at
7 lunch, no different now than when she sat for two
8 hours waiting for us to start. If she was going to
9 flee, she would have fled already. She's had two
10 years to do it.

11 I don't see why she can't remain out. This may
12 be the last time she gets to see her family for
13 potentially 30 years. I think she should be allowed
14 to stay out tonight. She's been out at this point
15 over two years while all this was pending over her.
16 She knew the meat of their case yesterday.

17 **THE COURT:** Well, at this point though she's
18 heard everything that's been presented.

19 **MS. SAMPSON:** I would agree, Your Honor. But
20 the only thing different she heard was her own
21 testimony. I mean, she knew what she was going to
22 say when she walked in here this morning. And if she
23 thought her own testimony itself was going to be bad,
24 she wouldn't have come in here this morning. I mean,
25 my argument is still the same. She has at this point

1 no more interest than she had yesterday and she
2 stayed yesterday, too.

3 **MR. MEADORS:** Your Honor, Fortner's testimony I
4 don't think she anticipated. That is different. We
5 just ask that you take her into custody.

6 **THE COURT:** Counsel, I understand your
7 arguments. I would really have no problem if we
8 had -- a lot of it is the fault of the court because
9 we had to deal with some other matters this morning.
10 I anticipated the jury would have been out a lot
11 earlier.

12 In light of some of the events in terms of the
13 presentation of evidence and stuff that was presented
14 this afternoon and the arguments that were made, I'm
15 going to err on the side of taking her into custody
16 overnight and will let her be back here in the
17 morning while the jury is deliberating obviously.

18 But obviously, one way or the other we'll know
19 tomorrow what the verdict will be I assume, unless
20 the jury is going to be out much longer than that.
21 But I'm going to go ahead and take her into custody
22 tonight since the jury is going to break. And we'll
23 see tomorrow where we stand with their deliberations.

24 **MS. SAMPSON:** Your Honor, if I may, I don't know
25 if we need to do 596s now or in the morning. I have

1 some matters that I would like to the put on the
2 record that involve closing. And I don't know if you
3 just want me to do this tomorrow. I feel that we
4 need to do it now. I prefer to do it now mainly
5 because it will be fresher in our minds.

6 **THE COURT:** Yes, ma'am.

7 **MS. SAMPSON:** Your Honor, during my closing Mr.
8 Meadors objected because I said the word "accident"
9 or I kept saying the word "accident", and we
10 approached the bench. It was my understanding based
11 on the conference that we had that if I continued
12 along that lines that you may charge accident and
13 also that it may go along the lines of being charged
14 voluntary and involuntary manslaughter. All of the
15 things that we had already discussed that weren't
16 going to be charged might haven then be charged based
17 on what my arguments were in closing.

18 I have never been in that position before. I
19 have been in the position several times where a judge
20 has either not charged things that they've asked for,
21 not charged things that we've asked for. We've still
22 been allowed to argue different things but we weren't
23 allowed to have the charge. Therefore, the jury
24 wouldn't have been allowed to just let it go based on
25 what I said.

1 For example, I've done murders that we had asked
2 for ABWIK, that we asked for ABHAN because we felt
3 like there was an intervening circumstance. In that
4 case the judge said, well, no, I'm not going to give
5 you the charge on the intervening circumstance and
6 I'm not going to give you the lesser of ABWIK and
7 ABHAN. However, we were allowed to argue; and you
8 didn't tell us we were, but we were allowed to argue
9 that there was an intervening circumstance. We just
10 could not tell the jury; so, therefore, that comes
11 out.

12 And, actually, you know what? We did. And
13 afterwards they objected and it was not sustained.
14 You allowed us to go on. Because he said he just
15 would not charge the jury that.

16 I have never once had a judge or been in a
17 circumstance where what I said in closing could
18 possibly change what was going to be the outcome of
19 the charge. Therefore, when I was told that that's
20 what may or may not happen, I would say at this point
21 that that made me ineffective.

22 And the reason that I say that is I had no idea
23 what to say at that point. I was afraid. I didn't
24 say accident any more, but I was almost afraid to say
25 unintentional. 598

1 **THE COURT:** Let me ask you, counsel; if you had
2 argued after requesting no charge except murder
3 involuntary to this jury, your position is that that
4 should have been argued -- that should be argued to
5 the jury but not charged to them.

6 **MS. SAMPSON:** Your Honor, involuntary
7 manslaughter has more elements --

8 **THE COURT:** I understand that. But my question
9 is, element-wise or not, or position-wise on the
10 elements, I think it's arguable on both sides that
11 there may be some right to a lesser-included. But
12 would your position be that Your Honor don't charge
13 the lesser-included but then you could argue to the
14 jury the lesser-included?

15 **MS. SAMPSON:** I could not have argued the
16 lesser-included in all of the elements. No, I could
17 not. But for me to be able to say that it was
18 unintentional, I don't think that that gets down to
19 the level of involuntary manslaughter because there
20 are other elements to involuntarily. There are other
21 elements to voluntary.

22 But because of what you had said -- and maybe I
23 should have asked for clarification, maybe I should
24 have asked for the jury to leave and you explain to
25 me how far I could 599 and could not go -- I didn't

1 know what to say. I was afraid to say anything other
2 than, well, it wasn't murder. I felt hindered in my
3 ability of what to say because I didn't know how far
4 to go. I had not gotten instructions other than if I
5 argued anything that was close to voluntary or
6 involuntary or to me --

7 **THE COURT:** My statement was --

8 **MS. SAMPSON:** -- any particular element of that,
9 I was in fear of that.

10 **THE COURT:** Not to interrupt you, but my
11 statement was that if you argued accident I'm going
12 to charge accident.

13 **MS. SAMPSON:** Right. I understood that. And
14 this is why I wanted to do this today because I will
15 be quite honest; in my I was confused. I'm not sure
16 if when we came back up the second time during Mr.
17 Meadors' closing or whether it was during the first
18 time we went up there, there was some question as to
19 whether you might charge voluntary or involuntary
20 based on what we were saying.

21 **THE COURT:** Well, at that point I wasn't quite
22 sure where you were going. And that's why I said,
23 well, if we're going back down the road of issues
24 that it was my understanding that we were not going
25 to charge at the 600ense's request, then I was going

1 to have to address that. And I made it clear to both
2 sides that all of those issues would be back on the
3 table.

4 If arguments to the jury are going to go to
5 putting issues in front of them that there is a
6 charge on the law for, then at that point I've got to
7 make a decision whether an issue has been argued to
8 them, as in then, ladies and gentlemen, there is
9 evidence in the record for X, Y and Z. Otherwise, it
10 should not be argued to the jury at all. If it is
11 argued to the jury that there is evidence to support
12 whatever those arguments are, then I have to charge
13 them. That is my understanding of the law, that I
14 actually then have to charge them.

15 **MS. SAMPSON:** And I am not saying that that's
16 not correct. What I am saying, Your Honor, is
17 because of that, because of what you had said, I
18 don't want to -- I don't know whether to call it my
19 inexperience or just I didn't know what to do.

20 **THE COURT:** You're far from inexperienced.

21 **MS. SAMPSON:** I did not know how far I could
22 take it. Because my argument would have been that
23 even if I said unintentional, it didn't get into the
24 rest of the elements that are required for
25 involuntary manslaughter. I did not know how to do

1 that. And this is not to change the nature. This is
2 for the record for if there needs to be a post
3 conviction relief or anything else. I want it put on
4 the record what I did and why I did it and how I feel
5 that I did not do what I needed to do based on that.
6 That's all I wanted to get on the record, that my
7 closing I felt like had to be different and,
8 therefore, probably ineffective because I did not
9 feel and did not know what I could or could not say
10 because I did not know how that was going to
11 influence a charge.

12 And I have not never been in that position
13 before. Every time that I have been in this court
14 and argued, whatever we've done, the charges remained
15 the same. It was never -- it's never happened to me
16 before that the charge may change based on what I
17 said. And I'm not saying that that was improper for
18 the Court to do. I am just putting it on the record,
19 that for me that was a new experience and I feel like
20 that because I did not know how to deal with that
21 that I may have been ineffective for Ms. Smith.

22 I mean, I understand Mr. Meadors may have
23 something to -- and I'm not arguing to the Court you
24 should change your opinion or mind in any way, shape
25 or form. I'm just putting on the record why I felt

1 that way for future reference.

2 **THE COURT:** And that's fine, you know. But that
3 is why I addressed specifically this issue a couple
4 of times of should we charge accident, should we
5 charge self-defense, should we charge voluntary,
6 should we charge involuntarily. And --

7 **MR. MEADORS:** Judge, can I say something
8 briefly?

9 **THE COURT:** Yes, sir.

10 **MR. MEADORS:** It's my recollection when we came
11 up to the bench, initially it was about accident.
12 And I think, as we discussed in some detail
13 previously about the charges, it was determined it
14 would just be murder or nothing.

15 The second time when she objected to my saying
16 that she said she did it, we approached the bench.
17 And I think there were some general discussions about
18 this. It's why we went over the charges earlier. I
19 think that was the gist of it, the conversation at
20 the bench with Your Honor.

21 But her objection specifically was that I not
22 refer to her, just say the defense. I think that was
23 what she -- the second time we came up there, would
24 just say the defense did it. Not that I argued it.

25 Judge, I don't want to talk but a second. But

1 this is the problem. I thought when she agreed that
2 they didn't want murder, they wanted only murder,
3 it's murder or nothing. I don't think you can have
4 your cake and eat it, too; you can get up and argue,
5 well, it's not murder, implying it's something else
6 and implying that's either voluntary, involuntary. I
7 don't think you can argue that when it's not charged.
8 You put the jury -- it's not fair to the jury or the
9 State, Judge.

10 And I think that -- maybe not intentionally; I'm
11 not saying it's intentional -- but I think that's
12 what she was doing.

13 **THE COURT:** Well, that was a little bit of the
14 difficulty of the second objection because at that
15 point I honestly don't know. And I take it, Ms.
16 Sampson, you're saying she objected to you referring
17 to her specifically. But the conversation at the
18 bench was really what made me not quite sure where we
19 were going and in what direction.

20 It is either or. I mean, it's either murder or
21 it's not based upon the charges that were requested,
22 that it only be murder. And I understand, Ms.
23 Sampson, your argument; but from the Court's
24 perspective if the request is not to charge certain
25 things, irrespective of what other judges have

1 allowed or not allowed -- and I could be wrong, they
2 could be right; I don't know -- or whether somebody
3 objected or not.

4 But if the request is, jury, this is what you
5 all are deciding this case on, here is now the law to
6 apply to the facts, and then in this case, for
7 example, murder is the question before that jury, and
8 then counsel then argues the lesser-included; and I
9 understand you say that there is no lesser-included
10 that could be argued here, but there is a charge on
11 the law of accident.

12 And whether it's applicable to these
13 circumstances or not, there is a -- that is an issue,
14 that then I have to figure out whether or not I've
15 got to charge them so that they can understand what
16 law they're to apply to the inferences and facts that
17 counsel has then argued to the jury.

18 And so that was why it was raised. Counsel was
19 free at that point to either continue to argue
20 accident or not. And, you know, we may have had to
21 deal with it by adding a charge on accident or
22 anything else.

23 **MS. SAMPSON:** And I guess knowing that, that was
24 where my hesitancy became, because I didn't know if
25 then we got accident, would we then got voluntary.

1 And by the time I would know that, I wouldn't have
2 time to get up and address it. I would have been
3 done and I wouldn't have been able to address the
4 elements of those and why it didn't meet those. I
5 would have been finished, and then the elements, what
6 they could have looked at, would have been different,
7 and I would have no way of addressing that.

8 So instead of even going in that realm, I just
9 limited what I said to them so that that would not
10 even be a problem. And I just feel like that could
11 have been a detriment and made that an ineffective
12 closing simply because of that. And I just -- again,
13 I just want to put it on the record.

14 **THE COURT:** Sure. I'm not sure what counsel
15 would have wanted to argue other than it was an
16 accident or something along the lines of involuntary.

17 **MS. SAMPSON:** The only thing I think that I was
18 trying to get at is it could have been -- that they
19 have to prove, they have the burden of proving it's
20 intentional because of it being a murder charge. If
21 it was unintentional, even if it was every other
22 thing, it's not murder. And that's all. Maybe I --
23 I didn't even say anything close to that other than
24 it's just not murder because I was afraid of going
25 anywhere close to that because then maybe, maybe it's

1 voluntary; maybe we go back into the whole realm of
2 argument. And I just wasn't sure standing up there
3 having to figure it out.

4 **THE COURT:** Well, I'm still at a little bit of a
5 loss because we got four options in my mind, five I
6 guess if you say self-defense. But self-defense,
7 nobody even argues it's self-defense. But we've not
8 murder, voluntary, involuntary and accident. It's
9 got to be one of those four. I mean, I don't know
10 what else to charge the jury. I don't know what else
11 counsel could argue to the jury other than one of
12 those four.

13 **MS. SAMPSON:** And again, I'm not trying to go
14 back and forth about that. I'm just putting it on
15 the record just for the purpose of the record. I
16 think I've stated what I intended to say on that.

17 One other thing was brought to my attention.
18 And again, I will polish this, put this up front. It
19 again was due to, I don't know what you want to call
20 it, my ineffectiveness or my inability to think that
21 fast.

22 Ms. -- I believe there may have been some burden
23 shifting. And I think that I probably -- because Ms.
24 Ahrens understood it much better than I could
25 probably ever explain to you, I'm going to ask -- I

1 know we don't normally do this -- but if she could
2 explain it. I don't think that at this moment I can
3 do it.

4 **MS. AHRENS:** And I apologize, Your Honor,
5 because it's hard because I'm not in Ms. Sampson's
6 head and it's also going to be a little bit difficult
7 since I wasn't involved in the closings to articulate
8 this.

9 But I think that because Ms. Sampson -- and,
10 again, I'm not in her head; I don't know what her
11 limitations or what she felt they were. But because
12 she felt constrained from arguing anything other
13 than, this isn't murder, to some extent what happened
14 was the burden shifting, such that if the -- and I
15 believe that this was actually implicit in Mr.
16 Meadors' closing and somewhat explicit.

17 Unless you believe that she went nowhere near
18 the knife she is guilty of murder was to some extent
19 the gist of the closing. That's my impression. And
20 I think that that is burden shifting. And perhaps
21 that's because none of the lesser-included offenses
22 were available. I think that every element has to be
23 proven beyond a reasonable doubt.

24 And I think that because Ms. Sampson felt
25 constrained from arguing anything could have happened

1 other than she went nowhere near the knife, and
2 because Mr. Meadors then was I think because of that
3 arguing in closing either she went nowhere near the
4 knife or she's guilty of murder, I perceived a burden
5 shifting, and I just expressed that to Ms. Sampson.

6 **THE COURT:** Let me ask counsel, strategically,
7 did counsel and the defense make a decision to go
8 forward straight up or down on murder or not?

9 **MS. SAMPSON:** Yes.

10 **MR. MEADORS:** Judge, as far as that last part,
11 burden shifting, I said if you don't believe Wilson,
12 Thornton, some of these, it's murder. Now, that's
13 State v. McCaw. And that was upheld. I tried that
14 case in Kershaw County. It's proper to pit witnesses
15 in closing. I don't remember the other reference she
16 is talking about. But I respectfully --

17 **THE COURT:** I'm assuming, Ms. Ahrens, --

18 **MS. AHRENS:** That was not it, Your Honor.

19 **THE COURT:** -- what you're saying is because you
20 could not argue that it was an accident or
21 unintentional or whatever that that shifts the
22 burden. And again, that's why I'm asking was it
23 defense's strategy to go straight up or down on
24 murder and, therefore, request that there be no
25 lesser-included charges?

1 **MS. SAMPSON:** Your Honor, what we had planned to
2 do, and as best as I can articulate it, is to argue
3 it was unintentional. Whatever it might have been,
4 it was unintentional, that they could never prove the
5 intent based on the evidence that they presented.

6 And I just -- I did say accident, and then I
7 just stopped saying accident. But I just felt like I
8 couldn't say anything about it being unintentional.
9 That's still something they're required to prove. If
10 it was voluntary, they'd still have been required to
11 prove that it was intentional. But I just didn't
12 know how much I could or couldn't say.

13 **MR. MEADORS:** Your Honor, that's the problem I
14 have I guess. The problem I have is they requested
15 murder. Was it intentional? If they were saying it
16 was unintentional, there should have been a charge
17 for the jury to consider that. And that's why we
18 felt bootstrapped and why we objected, that if you
19 want to go for murder but argue lesser-included,
20 which again I'm not saying she was doing it
21 intentionally, but that's what was coming out, and I
22 believe that's what the jury was hearing; they have
23 got to have something else to rely on or have
24 something else to consider.

25 **THE COURT:** And with all due respect to the

1 State, I think that was why the issue was raised we
2 were discussing earlier, the second part of the
3 involuntary charge. Something else has to apply
4 there if you're going to argue something else to the
5 jury as I see it.

6 **MR. MEADORS:** And I think I approached and said,
7 should we even do involuntary? I was fine with
8 anything being charged.

9 **THE COURT:** And the defense I assume, and has
10 stated so, that it was a strategy to go straight up
11 or down on murder. I don't think at that point you
12 can argue anything else other than -- you can argue
13 they haven't met their burden of proof on each
14 element. But I don't think you can then argue to the
15 jury that they should consider something that would
16 be --

17 **MS. SAMPSON:** And I'm just saying I don't
18 understand how I can tell them that they have to
19 prove each and every element when the first one is
20 intentional if I can't say it's unintentional because
21 then it might be something else that you didn't
22 charge.

23 **THE COURT:** Well, if it was unintentional, why
24 would the second prong of the involuntary not --

25 **MS. SAMPSON:** Maybe it's not a lawful act.

1 There's other things that go with unintentional of
2 involuntary manslaughter.

3 **THE COURT:** I understand that. But what part --

4 **MS. SAMPSON:** And I wasn't going to get into
5 saying that it meant those other ones.

6 **THE COURT:** I understand that. What I'm asking
7 though is, engaged in a lawful activity with reckless
8 disregard for the safety of others, is there any part
9 that the defense would argue would not have applied?

10 **MS. SAMPSON:** Your Honor, if they -- this is I
11 think what Ms. Ahrens is talking about, burden
12 shifting. I don't have to prove they met the other
13 three prongs.

14 **THE COURT:** I understand that. But you all
15 requested that State not be allowed to charge the
16 jury unintentional.

17 **MS. SAMPSON:** I don't --

18 **THE COURT:** Or involuntary.

19 **MS. SAMPSON:** Your Honor, actually, I never did.
20 I requested involuntary if they got voluntary.

21 **THE COURT:** Right. Only if they got voluntary.

22 **MS. SAMPSON:** When you stated that you weren't
23 going to talk -- that you weren't going to do any of
24 those, I didn't say a word about whether involuntary
25 should come in or not.

1 **THE COURT:** I think the -- I took it that the
2 defense's position was, at least based on our
3 discussions, that none of the lesser's applied.

4 **MS. SAMPSON:** I only was asking for the lesser
5 if voluntary. We never got past, okay, well, Ms.
6 Sampson, what if voluntary doesn't get in, what do
7 you want to do?

8 **MR. MEADORS:** So she's not asking for the
9 unintentional then but arguing it.

10 **MS. SAMPSON:** I didn't -- we never got to it, is
11 my whole point.

12 **THE COURT:** Well, I'm satisfied there was a
13 defense strategy. I respect the position that
14 counsel is arguing. I just didn't believe you can
15 argue in essence a lesser-included that is not -- I
16 know your argument is that you're still not arguing
17 that it was a lesser-included.

18 **MS. SAMPSON:** Because there is other elements
19 besides just that issue.

20 **THE COURT:** I figured there are other elements.
21 I know that there are other elements. But I felt
22 based on the evidence that was presented, I'm not
23 quite sure if that's the case what part of that would
24 not apply. I think the record is preserved.

25 **MS. SAMPSON:** And the only other matter, Your

1 Honor, again, this -- I am preserving it for appeals
2 purposes. I did not object to something, and I don't
3 know if it's proper for me to -- it's not really --
4 it is an objection that I need to put on the record.

5 In closing Mr. Meadors said three or four
6 occasions -- and I should have objected then and I
7 admit that -- that she let the victim bleed to death.
8 The Coroner's, the pathologist's statement was he
9 would have pled to death no matter what she did. So
10 I feel that was a misstatement of the evidence. And
11 I just --

12 THE COURT: I think his argument was that she
13 waited.

14 MS. SAMPSON: He said it on more than one
15 occasion, Your Honor. And if it needs playing --

16 THE COURT: No. I remember what you're talking
17 about. I just I think the argument as I assumed, I
18 don't remember it verbatim, but was that she didn't
19 call 911 right away.

20 MS. SAMPSON: I wrote it down when he said it
21 because he did say it more than once, that that was
22 part of the malice, that she let him bleed to death.
23 As an LPN she let him bleed to death. Their
24 pathologist said, and I remember --

25 THE COURT: As⁶¹⁴ relates to the element of

1 malice.

2 MS. SAMPSON: But my whole point is, what his
3 own witness said was he would have bled to death no
4 matter what she would have done.

5 THE COURT: Right.

6 MR. MEADORS: Your Honor.

7 MS. SAMPSON: So I think it's just a
8 misstatement of the evidence presented that she let
9 him bleed to death. She couldn't have stopped it
10 even if she'd have wanted to.

11 MR. MEADORS: Your Honor, with all due respect,
12 that was a reasonable inference. I think she did let
13 him bleed to death. And I argued that and am saying
14 to the Court now based on the fact she didn't call
15 911. If she would had called 911 sooner -- she's
16 saying she called when he was still alive. Based on
17 Fortner, if you believe his testimony, he would have
18 already been dead 30 minutes ago. So I think that's
19 a reasonable argument based on the facts and on the
20 circumstances that she didn't call 911 when she said
21 she did, that he had been stabbed longer than she
22 said she did.

23 MS. SAMPSON: I think that's an argument. I'm
24 very literal. So maybe that's my fault. Their
25 coroner said lit61511y the only thing that could have

1 been done once he was stabbed was call 911, apply
2 pressure. He would have bled to death no matter what
3 she did. So I'm still saying that to me --

4 **THE COURT:** Well, at the time she didn't know
5 that, did she?

6 **MS. SAMPSON:** He said she let him bleed to
7 death. I'm just saying that even if she would have
8 been Mother Teresa and done as much as possible, he
9 still would have bled to death. I just felt it was a
10 misstatement of the evidence. That's all.

11 **THE COURT:** All right. Anything else?

12 **MR. WAGONER:** I actually have one matter that's
13 well unrelated.

14 **THE COURT:** Yes, sir.

15 **MR. WAGONER:** There was one Exhibit that was
16 introduced during Clay Nichols's testimony that
17 needed to be redacted. I do not know if that has
18 been redacted.

19 **MS. SAMPSON:** Oh. It was the drawing. It needs
20 to be cut. I forgot about that.

21 **MR. WAGONER:** Also, Your Honor, there are a
22 couple of 403's in the audience at the appropriate
23 time.

24 **THE COURT:** Yeah. Ms. Coats. Is there
25 agreement between c616sel on the Exhibit redaction?

1 **MS. SAMPSON:** I haven't even seen it.

2 **MR. WAGONER:** We are awaiting for scissors.

3 **MS. SAMPSON:** There's just a groin shot. It
4 just needs to be cut out. A genital shot rather.

5 (Whereupon, the proceedings are concluded for
6 the day, to be reconvened tomorrow morning)

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1 Thursday, June 23, 2005

2 (Whereupon, the jury begins deliberating at
3 approximately 9:35 a.m.)

4 (WHEREUPON, Court's Exhibit No. 1 is marked for
5 identification.)

6 **THE COURT:** Counsel, are you ready?

7 **MS. SAMPSON:** Yes, sir, Your Honor. Thank you.

8 **THE COURT:** All right. We'll bring the jury in.

9 (Jury in at 10:13 a.m.)

10 **THE BAILIFF:** Your Honor, the jury is present.

11 **THE COURT:** Thank you, sir. Thank you, ladies
12 and gentlemen. Madam Forelady, I received your note
13 about a copy of the charge. And I can't send a copy
14 of the charge back, but I wanted to check with you
15 and see if you all wanted to be recharged again or if
16 you want a part of the charge.

17 I also wanted to stress to you that obviously
18 you all can come out as many times as you want to
19 either be recharged or to hear testimony. We can
20 play that back for you. You're not bothering us or
21 anything. And as much as you all need, we'll come
22 out and do it. If you want to come out and rehear a
23 part of the charge or if you want to come back out
24 and replay testimony, you're welcome to do that.

25 **FORELADY:** Your Honor, would you reread the

1 instructions to us?

2 **THE COURT:** Okay. The entire charge?

3 **FORELADY:** Yes.

4 **THE COURT:** Yes, ma'am. Okay. Ladies and
5 gentlemen, I'll just charge you again and go back
6 over these matters with you. The indictment which
7 you all have back in the jury room with you charges
8 the defendant with murder. And I remind you once
9 again that the fact that somebody has been arrested,
10 charged and even indicted is not evidence to be
11 considered by you on the question of guilt in this
12 case, nor does it create any presumptions or
13 inferences of guilt. The document that you have back
14 there with you, the indictment, is simply the formal
15 written instrument that brings this case to court and
16 that makes the charge against the defendant.

17 Now, the defendant has pled not guilty to the
18 indictment, and that plea puts the burden on the
19 State of South Carolina to prove the defendant
20 guilty. I tell you again that a person charged with
21 committing a criminal offense in South Carolina is
22 never required to prove himself or herself innocent.

23 I further charge you that is it an important
24 rule of law that the defendant in a criminal trial
25 that matter what 619 seriousness of the charge may be

1 will always be presumed to be innocent of the crime
2 for which the indictment was issued unless guilt has
3 been proven by evidence satisfying you of that guilt
4 beyond a reasonable doubt.

5 Now, the presumption of innocence does not end
6 once you begin your deliberations but rather
7 accompanies a defendant throughout the trial unless
8 and until you as a jury reach a verdict of guilt
9 based on evidence satisfying you of that guilt beyond
10 a reasonable doubt.

11 Now, the presumption of innocence, ladies and
12 gentlemen, has been described as being like a robe of
13 righteousness that is placed about the shoulders of
14 the defendant and which remains with the defendant
15 until it has been stripped from him or her by
16 evidence satisfying a jury of the defendant's guilt
17 beyond a reasonable doubt.

18 The presumption of innocence, ladies and
19 gentlemen, is not mere legal theory. It is not just
20 a legal phrase. It is a substantial right to which
21 every defendant is entitled unless and until you as
22 the jury are satisfied from the evidence beyond a
23 reasonable doubt.

24 Now, I'll explain the term beyond a reasonable
25 doubt to you. I te620you again that the State has

1 the burden of proving the defendant guilty beyond a
2 reasonable doubt. And those of you who are familiar
3 with the standard in civil cases may know that there
4 it is only necessary to prove that a fact is more
5 likely true than not true. It's what we in the law
6 call by a greater weight or preponderance of the
7 evidence.

8 In criminal cases the State's proof must be more
9 powerful than that. It must be beyond a reasonable
10 doubt. And, ladies and gentlemen, beyond a
11 reasonable doubt is the kind of doubt that would
12 cause a reasonable person to hesitate to act.

13 Proof beyond a reasonable doubt is proof that
14 leaves you firmly convinced of the defendant's guilt.
15 And I charge to you and remind you once again that
16 there are very few things in this world that any of
17 us know with absolute certainty. And in criminal
18 cases the law does not require proof that overcomes
19 every possible doubt.

20 If based upon your consideration of the evidence
21 you as a jury are firmly convinced that the defendant
22 is guilty of the crime charged, you must find the
23 defendant guilty. If on the other hand you think
24 there is a real possibility that the defendant is not
25 guilty, you must 621 be the defendant that benefit of

1 the doubt and find her not guilty.

2 Now, ladies and gentlemen, during the trial you
3 and I have had certain duties like everybody else in
4 this courtroom to perform. As the trial judge it has
5 been my responsibility to preside over the trial of
6 this case, and I've also had the additional duty to
7 rule on the admissibility of evidence offered during
8 the trial.

9 You are to consider only the testimony -- only
10 the competent evidence rather -- before you as a
11 jury. If there was any testimony ordered stricken
12 from the record in this case during the trial, you
13 must disregard that testimony. You are to consider
14 only the testimony which has been presented from the
15 witness stand, any Exhibits which have been made a
16 part of the record in this case and which you will
17 have and do have back in the jury room with you, and
18 any stipulations of counsel.

19 I have an additional duty to charge you the law
20 applicable to this case. And as the presiding judge,
21 I am the sole judge of the law in this case. It is
22 your duty as jurors to accept and apply the law as I
23 now state it to you. If you already have any idea as
24 to what the law is or what the law ought to be and it
25 does not agree with what I now tell you the law is,

1 you must abandon your idea about the law because
2 under your oath as jurors in this case you are sworn
3 to accept and apply the law exactly as I state it to
4 you.

5 Now, in every case tried in this court before a
6 jury the jury becomes the sole and exclusive judges
7 of the facts of the case. A trial judge cannot
8 intimate, state, comment on or make any statement to
9 a jury about the facts of a case. Since you as the
10 jury are the sole judges of the facts in this case,
11 you are not to infer from what I have said during the
12 progress of this trial or anything that I say to you
13 during the course of these instructions that I have
14 any opinion whatsoever about the facts in this case.
15 The law does not allow a judge to have an opinion
16 about the facts in a case because that is a matter
17 solely for you as a jury to determine.

18 As jurors it is your duty to determine the
19 effect, value, weight, and truth of the evidence
20 presented during the course of the trial.

21 Now, generally, ladies and gentlemen, there are
22 two types of evidence which are presented during a
23 trial: Direct evidence and what we call
24 circumstantial evidence. Direct evidence is the
25 testimony of a person who claims to have actual

1 knowledge of a fact, such as an eye witness. It is
2 evidence which immediately establishes the main fact
3 to be proved.

4 Circumstantial evidence on the other hand is
5 proof of a chain of facts and circumstances
6 indicating the existence of a fact. It is evidence
7 which immediately establishes collateral facts from
8 which the main fact may be inferred. Circumstantial
9 evidence is based on inference and not on personal
10 knowledge or observation.

11 Now, the law makes absolutely no distinction
12 between the weight or value to be given to either
13 direct or circumstantial evidence, nor is a greater
14 degree of certainty required of circumstantial
15 evidence than of direct evidence.

16 You should weigh all of the evidence in this
17 case. After weighing all of the evidence, should you
18 not be convinced of the guilt of the defendant beyond
19 a reasonable doubt, you must find the defendant not
20 guilty.

21 Now, necessarily you must determine the
22 credibility of witnesses who have testified in this
23 trial. Credibility under the law, ladies and
24 gentlemen, simply means believability. It becomes
25 your duty as jurors to analyze and to evaluate the

1 evidence and determine which evidence convinces you
2 of its truth.

3 In determining the believability of witnesses
4 who have testified in this case, you may believe one
5 witness over several witnesses or several witnesses
6 over one witness. You may believe a part of the
7 testimony of a witness and reject the remaining part
8 of the testimony of that same witness.

9 You may believe, ladies and gentlemen, the
10 testimony of a witness in its entirety or reject the
11 testimony of a witness in its entirety. You may
12 consider whether any witness has exhibited to you
13 during the course of the trial any interest, bias,
14 prejudice, or other motive in this case. You may
15 also consider the appearance and manner of a witness
16 while that witness was testifying on the witness
17 stand.

18 Now, ordinarily the rules of evidence do not
19 permit witnesses to testify to their opinions or
20 conclusions. An exception to that rule exists for
21 witnesses that we call expert witnesses. A witness
22 who by education and experience has become an expert
23 in some art, science, profession or calling may state
24 an opinion as to relevant and material matter in
25 which the witness claims to be an expert and may also

1 state the reasons for that opinion.

2 You should consider any expert opinion received
3 in evidence in this case and like any other evidence
4 give it the weight you think it deserves. If you
5 decide that the opinion of an expert witness is not
6 based on sufficient education and experience or if
7 you conclude that the reasons given in support of the
8 opinion are not sound or that the opinion is
9 outweighed by other evidence, you may disregard the
10 opinion entirely. An expert witnesses's testimony is
11 to be given no greater weight than that of other
12 witnesses simply because the witness is an expert.
13 Further, you are not required to accept an expert's
14 opinion even though it is not contradicted.

15 Now, in order to establish criminal liability
16 criminal intent is required. For example, the mental
17 state required to be proven by the State for a
18 particular might be purpose, intent, knowledge,
19 recklessness or criminal negligence. Criminal intent
20 must be proven by the State beyond a reasonable
21 doubt.

22 Ladies and gentlemen, criminal intent is always
23 a matter that must be determined by a jury, you
24 folks, from the circumstances surrounding the
25 situation.

1 Now, there is no way any of us can prove intent
2 with any mathematical certainty or any medical
3 science will not allow us to look inside a person's
4 brain to determine what that person had in mind at
5 the time. So, ladies and gentlemen, the law says
6 that you as a jury may determine rather criminal
7 intent by inferring from the circumstances shown to
8 have existed what was in that person's mind. That is
9 how you as a jury make a determination of whether or
10 not the element requiring intent was present.

11 It is not necessary to establish intent by
12 direct and positive evidence. Rather, intent may be
13 established by inference in the same way as any other
14 fact, by you as a jury taking into consideration the
15 acts of the parties and all of the facts and
16 circumstances surrounding the case.

17 Ladies and Gentlemen of the Jury, criminal
18 intent is a mental state. It is a conscious
19 wrongdoing. It is up to you as a jury to determine
20 what the defendant intended to do based on the
21 circumstances shown to have existed.

22 Criminal intent can arise from action or a
23 failure to act. It may arise from negligence,
24 recklessness or an indifference to duty or to
25 consequences tha6273 considered by the law to be the

1 equivalent of criminal intent.

2 Now, ladies and gentlemen, you've heard during
3 the trial statements alleged to have been made by the
4 defendant. They have been admitted into evidence in
5 this case. And while I have made a determination
6 that the statements are admissible, I instruct to you
7 that you as a jury make the ultimate decision of
8 whether or not the defendant made those statements.

9 If the defendant did make the statements, you
10 must determine whether they were made by the
11 defendant voluntarily and of her own free will. That
12 means that the statements were not caused by
13 pressure, force, fear, threats, coercion or
14 intimidation or by hope or promise of leniency or a
15 reward of any kind.

16 In determining whether the statement was
17 voluntary you should consider as a jury both the
18 characteristics of the defendant and the details of
19 the questioning. Some of the factors that you must
20 consider are the age of the defendant, the
21 defendant's education or lack of education, the
22 defendant's mental ability or capacity, the
23 defendant's IQ or intelligence, the place and length
24 of any detention, the nature of questioning, the
25 defendant's backgro628 and environment, the advice or

1 lack thereof to the defendant of her Constitutional
2 rights; including, but not limited to, the right to
3 remain silent, that any statement could be used
4 against her in a court of law, the right to have an
5 attorney present, that if she cannot afford a lawyer,
6 a lawyer would be appointed to represent her without
7 any cost, and that she could stop making a statement
8 at any time. You must carefully consider all of the
9 surrounding circumstances before you give any weight
10 to an alleged statement.

11 Again, the State has the burden of proving that
12 the statement was voluntary. If you determine it
13 was, you may give the statement any further
14 consideration that you deem proper. You must decide
15 what weight, if any, should be given to the alleged
16 statement. If you determine the alleged statement
17 was not the free and voluntary statement of the
18 defendant, you should not consider the statement at
19 all.

20 Now, the defendant is charged under the
21 indictment with the crime of murder. And the State
22 must prove beyond a reasonable doubt that the
23 defendant killed another person with malice
24 aforethought.

25 Malice is h:629:d, ill will or hostility towards

1 another person. It is the intentional doing of a
2 wrongful act without just cause or excuse and with an
3 intent to inflict an injury or under circumstances
4 that the law will infer an evil intent.

5 Now, malice does not necessarily have to mean --
6 import rather, an ill will toward the individual
7 injured but can signify rather a general malignant
8 recklessness of the lives and safety of others or a
9 condition of mind which shows a heart regardless of
10 social duty and fatally bent on mischief.

11 Malice aforethought does not require that malice
12 exist for any particular time before the act is
13 committed, but malice must exist in the mind of a
14 defendant before, just before and at the time the act
15 is committed.

16 Therefore, there must be a combination of
17 previous evil intent and the act. Malice
18 aforethought may be express or inferred. These terms
19 express and inferred do not mean different kinds of
20 malice but rather merely the manner in which malice
21 may be shown to exist; that is, either by direct
22 evidence or by inference from the facts and
23 circumstances which are proved.

24 Express malice is ill -- is shown rather when a
25 person speaks words⁶³⁰ which express hatred or ill will

1 for another or when the person prepared beforehand to
2 do the act which was later accomplished. For
3 example, if someone were lying in wait for a person
4 or any other acts of preparation going to show that
5 the deed was within the defendant's mind would be
6 expressed malice.

7 Now, on the other hand, malice may be inferred
8 from conduct showing a total disregard for human
9 life. Inferred malice may also arise when the deed
10 is done with a deadly weapon. A deadly weapon is any
11 article, instrument or substance which is likely to
12 cause death or great bodily harm. Whether an
13 instrument has been used as a deadly weapon depends
14 upon the facts and circumstances of each case and is
15 a matter for you as a jury to determine.

16 Ladies and gentlemen, again that concludes the
17 entire charge to you all on the law. Again, your
18 verdict must be unanimous. All 12 of you must agree
19 on your verdict.

20 Madam Forelady, that was the charge on the law
21 that I gave you. And should once again you all need
22 further charge on anything or if you wish to review
23 any testimony, we'll bring you back out whenever you
24 all wish to do so. We'll replay that or recharge you
25 or anything that 631¹ ask for.

1 **FORELADY:** Thank you, Your Honor.

2 **THE COURT:** Thank you, ladies and gentlemen.

3 **THE BAILIFF:** Judge, they want to know if they
4 can have the board to take back to the jury room.

5 **THE COURT:** That plain board?

6 **THE BAILIFF:** Yes, sir.

7 **THE COURT:** Yes, sir. You all can take it back.

8 (Jury out at 10:30 a.m.)

9 **THE COURT:** Counsel, anything we need to take
10 up?

11 **MR. MEADORS:** Beg the Court's indulgence.

12 **THE COURT:** Yes, sir.

13 **MR. MEADORS:** Your Honor, nothing at this time.
14 I may have something in a little bit.

15 **THE COURT:** We discussed some matters in
16 chambers. I understand that there may be a motion.
17 And we'll take that up should the State make that
18 motion. And I'm not foreclosing that at any point.
19 Anything from the defense?

20 **MS. SAMPSON:** Your Honor, I don't know what the
21 procedure is. I would just like to have a moment to
22 talk to Sharon before she is taken back down to
23 holding if that's at all possible. I need to advise
24 her of about what we've been discussing and get some
25 response.

1 **THE COURT:** Yes, ma'am. If nothing further,
2 then we'll stand down while the jury is deliberating
3 then. Thank you.

4 (Whereupon, a break is taken)

5 **THE COURT:** Counsel, I understand the jury has
6 reached a verdict. Are both sides ready to receive
7 the verdict?

8 **MR. MEADORS:** The State is ready.

9 **MS. SAMPSON:** The defense is ready.

10 **THE COURT:** All right. We'll bring them out.

11 (Jury in at 11:33 a.m.)

12 **THE BAILIFF:** Your Honor, the jury is present.

13 **THE COURT:** Thank you, sir. Thank you, ladies
14 and gentlemen. Madam Forelady, I understand the jury
15 has reached a verdict.

16 **FORELADY:** Yes, Your Honor, we have.

17 **THE COURT:** If you'll pass the verdict form to
18 the bailiff, please.

19 (Forelady complies)

20 **THE COURT:** Counsel, the verdict form appears to
21 be in proper order. And I will once again remind
22 everybody that the clerk as she publishes the
23 verdict, there should be no outbursts or reactions
24 from the audience at all.

25 Madam Clerk, 633 you will, publish the verdict,

1 please.

2 **THE CLERK:** Yes, Your Honor. Indictment
3 No. 2003-GS-40-3439, the State of South Carolina vs.
4 Sharon Smith; we, the jury, find as to the defendant,
5 Sharon Smith, on the charge of murder: Guilty.
6 Signed Hope E. Derrick, Foreperson, June 23rd, 2005.

7 Madam Forelady, is this your verdict and the
8 verdict of the entire jury?

9 **FORELADY:** Yes, it is.

10 **THE CLERK:** Thank you.

11 **THE COURT:** Anything, counsel, before we dismiss
12 the jury?

13 **MS. SAMPSON:** I'd ask them to be polled, Your
14 Honor.

15 **THE COURT:** Yes, ma'am. Madam Clerk, if you
16 will poll the jury, please.

17 **THE CLERK:** Ladies and Gentlemen of the Jury,
18 I'm going to ask you two questions related to your
19 verdict. Please answer yes or no to both questions.
20 Hope Derrick, was this your verdict?

21 **JUROR:** Yes, it was.

22 **THE CLERK:** Is it still your verdict?

23 **JUROR:** Yes, it is.

24 **THE CLERK:** Erica Thomas, was this your verdict?

25 **JUROR:** Yes, 1634'as.

1 THE CLERK: Is it still your verdict?

2 JUROR: Yes.

3 THE CLERK: Natalie Epperson, was this your
4 verdict?

5 JUROR: Yes, it was.

6 THE CLERK: Is it still your verdict?

7 JUROR: Yes.

8 THE CLERK: Dale Sawyer, was this your verdict?

9 JUROR: Yes, it was.

10 THE CLERK: Is it still your verdict?

11 JUROR: Yes.

12 THE CLERK: Robert Ricky, was this your verdict?

13 JUROR: Yes, it was.

14 THE CLERK: Is it still your verdict?

15 JUROR: Yes, it is.

16 THE CLERK: Nancy Gross, was this your verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: Mondrell Sumter, was this your
21 verdict?

22 JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 JUROR: Yes.

25 THE CLERK: 635 icia Brown, was this your

1 verdict?

2 JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR: Yes.

5 THE CLERK: Mary Monroe, was this your verdict?

6 JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 JUROR: Yes.

9 THE CLERK: Meredith Raley, was this your
10 verdict?

11 JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 JUROR: Yes.

14 THE CLERK: Bethany Gragg, was this your
15 verdict?

16 JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 JUROR: Yes.

19 THE CLERK: Mark Pleasant, was this your
20 verdict?

21 JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 JUROR: Yes.

24 THE CLERK: The jury has been polled, Your

25 Honor.

1 **THE COURT:** Thank you, ma'am. Thank you, Ladies
2 and Gentlemen of the Jury! You all have been very
3 patient this week. And we've had some interruptions
4 and you all have taken that with a great deal of
5 patience and understanding, and I certainly
6 appreciate it. Thanks goes to you for that. You all
7 have also been very attentive throughout this week,
8 and I appreciate that. And I know both sides
9 appreciate your attention to the evidence and
10 testimony that was presented to you during the course
11 of this trial.

12 Folks, nobody can question your verdict at all.
13 And you're free at this point to talk with anybody
14 you wish to about your verdict or to not talk with
15 anybody you wish to about your verdict. If somebody
16 wants to talk to you and you wish to talk to them,
17 you're free to do so. If at any point you wish to
18 stop talking to them, you can do that and they have
19 to stop talking to you at that point. If they do no
20 do that, if you'll let the clerk's office know, we'll
21 have some -- we'll take care of that problem for you
22 Don't worry about that.

23 But, ladies and gentlemen, I thank you again.
24 Your service actually is done for the week. You go
25 with my thanks and appreciation for your service th

1 week. It's one of the most important things I think
2 any citizen can do, is actually serve on a jury up
3 here, because you all decide this these cases; not
4 myself, not the lawyers or anybody else.

5 Madam Clerk, do you need them for a moment?

6 **THE CLERK:** No. They're free to leave.

7 **THE COURT:** Ladies and gentlemen, they'll take
8 care of sending everything to you in the mail.
9 You're free to go at this point. And certainly go
10 safely. And hopefully we'll see you all again
11 sometime soon. Thank you.

12 (Whereupon, the jury is excused from the trial
13 of the case).

14 **THE COURT:** Thank you, sir. Counsel, anything
15 further before sentencing?

16 **MR. MEADORS:** Nothing from the State. I'm
17 sorry.

18 **THE COURT:** Yes, ma'am.

19 **MS. SAMPSON:** Yes, Your Honor. At this time the
20 defense would renew any and all previous objections
21 and motions that were overruled by Your Honor.

22 Also at this time, Your Honor, I believe that it
23 would be appropriate for me to ask for a new trial
24 based on, in two parts, based partly on what I argued
25 to you yesterday. 638 has been argued again in

1 chambers and discussed almost per ad nauseam.

2 I feel like and I will still argue that the
3 defendant's Constitutional rights to effective
4 assistance of counsel, due process, all of her rights
5 created to her under the Constitution were violated
6 in that I was not allowed or was restricted in the
7 argument that I could give because I was told during
8 the middle of my closing that whatever I said could
9 change the charge that would be given without being
10 given or also told that I would be given a chance to
11 come back and talk to the jurors about why it didn't
12 meet those elements as well.

13 I was not allowed to give the jurors an
14 alternative theory other than to say if they don't
15 meet the elements then you cannot find murder. Mr.
16 Meadors was allowed to argue as much as he wanted the
17 evidence as he saw it and the alternatives as to why
18 what she said was not correct, why it was or was not
19 murder.

20 If I could have done any of that, that could
21 have, from what I understood you to have said, opened
22 the door to other charges having to come in and me
23 not, as far as I was told, being able to address
24 those.

25 I was not allowed to say it was my understanding

1 that it was anything other than the elements having
2 to be proven. If I'd have said it was unintentional,
3 that could have brought up involuntary manslaughter.
4 If I had said accident, then you had said you would
5 charge accident. And my understanding from the
6 conversations that we had had and all of the
7 discussions we had is that if you gave accident, you
8 would also give the rest of the charges or at least
9 some of them.

10 And in that time that I had standing up there
11 with you in the middle of my closing I had to make a
12 decision without co-counsel, without talking to my
13 client, and then I had to go forward.

14 Also, Your Honor, I feel I was ineffective per
15 se, and I feel like she should have a new trial in
16 that the minute before I am to close on a murder case
17 I do not know what the charges are. I did not know
18 what the charges were going to be until you stepped
19 out of that door and told us and then asked me was I
20 ready to go forward.

21 I then asked could we wait 'til the next day
22 because I thought it was unfair to give the jury the
23 case that late in the day. I was told no, that we
24 would go forward, and we did. And in the middle of
25 my closing again I6401 to change everything.

1 I feel like that did not give Ms. Smith
2 effective assistance of counsel. I also feel like
3 that it did not allow for the defense to properly put
4 out the evidence as we saw it because I was limited,
5 and I feel like that was in violation of her
6 Constitutional rights.

7 Therefore, I would ask for a new trial on the
8 basis of the verdict of the jury and for all the
9 reasons that I have set forth.

10 **THE COURT:** Thank you, ma'am. Mr. Meadors.

11 **MR. MEADORS:** Your Honor, I'd like for the
12 record just to reflect that it's been stated
13 previously, it was trial strategy on their part to go
14 just for murder. That's what they prepared for
15 argument. That's what Your Honor charged, just
16 murder. They chose to do that and go for that. I'd
17 just like the record to reflect that.

18 **MS. SAMPSON:** Just to clear that up, the
19 strategy was to ask -- that is correct -- to ask for
20 murder or nothing based on the fact that I would be
21 able to clearly argue my case with the alternative
22 theories or just be able to say, if you think it was
23 unintentional, it's not murder. If you think she did
24 it but had no malice aforethought, it was not murder.
25 But I felt like I had to use of what you had said that if

1 I had said anything close to that, then they would
2 have been given a charge of voluntary, involuntary
3 manslaughter, accident, self-defense. All of those
4 charges would have come in. And then they would have
5 had no explanation from either myself or from Mr.
6 Meadors as to how those applied in this case.
7 Because under the way that I was -- I have always had
8 it go and have never had it be any differently, we
9 argued; you charged. We don't get back and argue
10 again.

11 So I was under the impression, and it was never
12 straightened out to me, never told to me until this
13 morning in chambers, that we would have had an
14 opportunity to come back and be heard as to why those
15 charges did not apply. Had I known that, I will say
16 on the record as a part of this court, I would have
17 argued differently.

18 But not knowing that and having no way of
19 figuring out that that was going to be how it would
20 go, I don't know how I would have known that, I did
21 curtail my argument. I did stop arguing. I did not
22 do what I had planned to do. I did not give her the
23 defense that she deserved under the Constitution and
24 under the laws of this state because I felt limited
25 and prohibited in 1642 knowing what was going to

1 happen at that moment.

2 **MR. MEADORS:** Your Honor, may I add --

3 **MS. SAMPSON:** That was not a defense strategy.

4 **MR. MEADORS:** Your Honor, if I may add one
5 thing. I believe that when I objected during her
6 closing, the State objected when she used the word
7 "accident", we approached then. She had not
8 requested a charge on accident. I think the Court
9 inquired if they wanted one. They said no, Your
10 Honor. So at that point is when I objected. She
11 agreed not to say "accident" any more because it
12 wasn't being charged and it wasn't the law of the
13 case. Thank you.

14 **MS. SAMPSON:** And again, I was told accident
15 came in with all the rest of the charges, not --

16 **THE COURT:** I actually disagree with you on
17 that, counsel. I said that depending on where your
18 arguments went, the side bar conference was actually
19 as to the issue of accident. And if you were going
20 to argue that, then we needed to readdress whether or
21 not that needed to be charged to the jury.

22 I understand your comments as you said for the
23 record I think are pretty clear about that what
24 happened. If you were going to argue something as a
25 legal matter bas643 on the facts to the jury, then

1 I've got to charge the jury on that. And that is
2 what the door that we discussed at side bar could
3 reopen.

4 Counsel indicated that there -- and I stated to
5 counsel at that time that depending on then where you
6 wanted to go, it may re-raise the issue of certain
7 other charges that would need to be given to the
8 jury.

9 But my decision on changing the charges is not
10 actually me changing the charges. It was whether or
11 not counsel was even going to open the door to
12 arguing certain other issues to the jury that may
13 necessitate them having to be charged as a matter of
14 law on those legal issues.

15 Obviously at that point we may have had to
16 reevaluate closing arguments in sending the jury out,
17 but counsel said that she was not going to use the
18 word "accident" again, and that sort of negated that
19 whole issue in the Court's view.

20 My question to both sides was, what charges do
21 we need? And we went over, as counsel said, probably
22 ad nauseam the number of charges that could have been
23 possible given the facts in this case. Counsel for
24 the defense argued to this Court that it would be
25 improper even to charge certain lesser-included
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1 offenses and specifically asked the Court under their
2 view of the facts of this case to only charge murder.
3 And that's what the Court did.

4 In my position I have always got to be careful
5 that if counsel argues certain things to the jury
6 that the facts exist to argue certain things to the
7 jury. I then am in a position to have to charge the
8 jury on the law of that.

9 And while you are correct that generally we do
10 not change the charge once it's been discussed, when
11 the Court tells you what I'm going to charge, should
12 either side argue other issues to the jury, obviously
13 given the constraints of closing arguments, the only
14 thing you're allowed to argue are inferences and
15 reasonable inferences and what the facts actually
16 were in your view during the case. But once counsel
17 raises that as a possibility of being facts arguable
18 to the jury, then the Court is then in a position to
19 have to charge the jury on the law of that.

20 I had understood from both sides, at one point
21 obviously the State moved to have this Court charge
22 the lesser-included of voluntary manslaughter. It
23 then led to discussions about involuntary as well.
24 We had discussions about self-defense as a charge and
25 accident as a charge.

1 And as I understood it yesterday, it was the
2 defense's strategy to go forward solely on the charge
3 of murder. That was what was charged to them, to the
4 jury. And I think, counsel, certainly in terms of
5 knowing what you were going to argue prior to me
6 coming out on the bench, counsel got what the defense
7 asked for which was straight up or down on the murder
8 charge. There was no inclusion of any other
9 lesser-included that the State could ask for.

10 So I think in terms of the preparation that
11 counsel would not have had to change. I understand
12 your argument about the accident issue and what was
13 discussed. But in terms of counsel's arguments to
14 the jury, I can only presume that counsel was
15 prepared to argue straight up or down on the murder
16 indictment and charge anyway.

17 And that's all that the Court did charge to the
18 jury, actually over the State's objection. But I
19 think the record is complete on that. I don't think
20 anybody has waived any issue in that.

21 **MS. SAMPSON:** If I may, Your Honor, I just want
22 to make it perfectly clear. My point is that based
23 on you stating whatever I said could change the
24 charges, I did not know the parameters of that. I
25 did not know if I s⁶⁴⁶ it was unintentional that that

1 opened the door to involuntary manslaughter, although
2 just saying unintentional does not mean that the
3 evidence proved the other elements of unintentional.

4 If I said it was intentional but without malice,
5 did that, therefore, open the door to voluntary? I
6 had no -- to me, no understanding of how far, what
7 the parameters were. Because it was all based on
8 whatever I said. I was not -- I understand what the
9 elements are, and I was not -- it was never my
10 intentions to argue that it met these elements. So,
11 therefore, even though you didn't charge voluntary,
12 that's what it was. I had no intentions of doing
13 that. However, based on all I got was, well, what
14 you say may change what the charges would be, I was
15 not --

16 **THE COURT:** Let's be clear. We were actually
17 discussing accident at the time and whether or not
18 based on what counsel had started arguing to the jury
19 about accident, whether or not the Court needed to
20 change and have accident as a charge to the jury.

21 **MS. SAMPSON:** My understanding was the last
22 thing that I was told was whatever I said may change
23 what charges were given. That to me is open-ended.

24 **THE COURT:** Or Mr. Meadors would object and we
25 would have to deal with limiting your argument to the

1 jury.

2 **MS. SAMPSON:** And if it's already out there, you
3 can't remove it. So if I would have said something
4 wrong, the charge would have been given. And in my
5 thought I would have no way to come up to the jury
6 and show them why it's not that charge either.

7 **THE COURT:** I understand.

8 **MS. SAMPSON:** Because I did not know you were
9 going to give me the opportunity to reargue.

10 **THE COURT:** Obviously the issue of the charge
11 was dependent on whether or not I sustained Mr.
12 Meadors' objection. If I had overruled his objection
13 and let you continue, then that that may have been an
14 issue. If I would have sustained any objections,
15 there would not have been even an issue to readdress
16 in that regard.

17 **MR. MEADORS:** I don't know if I need to say
18 anything. Your Honor, our objection was that she was
19 arguing law that wasn't charged.

20 **THE COURT:** Yes, sir.

21 **MR. MEADORS:** That's all we have.

22 **THE COURT:** I think that that issue is certainly
23 preserved for both sides in terms of what transpired
24 during the course of the charges and discussions
25 leading up to that. 648 Anything else before sentencing?

1 **MS. SAMPSON:** Your Honor never said. I assume
2 you're denying my motion for a new trial.

3 **THE COURT:** Oh. Yes, ma'am. I'm going to deny
4 the motion for a new trial. I think the verdict was
5 certainly reasonable given the evidence and the
6 testimony that was presented to the jury. And I
7 overrule the other objections you raised previously.
8 Obviously the Court sticks with its prior rulings in
9 those matters. Anything else before we go forward?

10 **MS. SAMPSON:** No, sir.

11 **THE COURT:** Both sides ready for sentencing?

12 **MS. SAMPSON:** Yes, sir.

13 **THE COURT:** Yes, sir.

14 **MR. MEADORS:** Your Honor, if it pleases the
15 Court, very briefly.

16 **THE COURT:** Yes, sir.

17 **MR. MEADORS:** Of course the jury has spoken.
18 And on the record publicly I thank the jury for their
19 verdict.

20 Judge, with me is Lavern Gibson. They're all
21 family of Charles. Christen Gibson, daughter; and
22 Eleanor Gibson, mother-in-law. Sharon Henry was here
23 most of the week, just couldn't be here; and also
24 family and Christen's daughter. Mother. Did I say
25 daughter? You a.649 now what I mean.

1 Judge, I've gotten to know these people.
2 They're going to be -- they miss Charles. They wish
3 he was here. They love him.

4 **CHRISTEN GIBSON:** Monday would have been my
5 father's son 52nd birthday. And I personally can't
6 think of a better way to celebrate his birthday. So
7 I want to thank the judge. I want to thank the
8 jurors for everything. That's it.

9 **MR. MEADORS:** Judge, --

10 **UNKNOWN PERSON:** She said it all.

11 **MR. MEADORS:** Thank you, Judge.

12 **THE COURT:** Thank you, Mr. Meadors. Ms.
13 Sampson.

14 **MS. SAMPSON:** Thank you, Your Honor. May it
15 please the Court?

16 **THE COURT:** Yes, ma'am.

17 **MS. SAMPSON:** This is Ms. Smith. You have heard
18 everything about her that I think that you should
19 hear. She is a registered nurse. She has four
20 children, as she has told you. Her family is here,
21 Your Honor. They are standing -- they are sitting
22 right here. You can see a number of them. In the
23 maroon jacket is her mother. You've heard from her
24 stepfather. Her friends and other family have been
25 here. They've been here the entire trial. They've

1 come to court with her at different time periods when
2 we've had other things to do. They stand in total
3 support with her.

4 Your Honor, her only prior record, as you've
5 already heard, is a fraudulent check from 1996 and a
6 giving false information to police in 2004. She has
7 never been to prison before, spent 30 days in jail on
8 this particular charge. She has been the easiest
9 client for me to deal with. It is hard for me to
10 stand up here because this is not what I expected.
11 And I don't think that it is what she expected.

12 I understand that she has to get a 30-year
13 sentence. She has no choice in that matter. I don't
14 feel that the sentence matches what happened in this
15 particular scenario, but I understand that that is
16 what Your Honor and the courts do.

17 Is there anything else you would like to add,
18 Ms. Smith?

19 **MS. SMITH:** I would just like to thank my family
20 for supporting me through this. I do have my
21 remorses (sic) about your father, Christen, and what
22 happened that night, that day. And I'll go with the
23 sentence and I leave it in God's hands.

24 **THE COURT:** How old is the defendant?

25 **MS. SAMPSON** 6513he's 37.

1 **MS. SMITH:** Thirty-three.

2 **MS. SAMPSON:** I'm sorry. Thirty-three. I keep
3 doing that. That's probably the second time I've
4 done that.

5 **THE COURT:** Anything further from the defense?

6 **MS. SAMPSON:** No, sir.

7 **THE COURT:** Anything further from the State?

8 **MR. MEADORS:** No, sir. Judge?

9 **THE COURT:** Yes, sir.

10 **MR. MEADORS:** And this will be positive.

11 **THE COURT:** Yes, sir.

12 **MR. MEADORS:** She says she's got something she
13 wants to say.

14 **THE COURT:** Yes, sir.

15 **CHRISTEN GIBSON:** Sharon, I don't hate you. I
16 know you probably think I do. I don't hate you. I
17 feel like in life you learn. Some things make you
18 stronger. Some things tear you down. Now, this is a
19 situation that could have torn me down. But I chose
20 not to let it. I don't hate you, and I know that's
21 what you're probably thinking. But I don't.

22 **MS. SMITH:** Well, I pray that you will forgive
23 me.

24 **CHRISTEN GIBSON:** And I do.

25 **MS. SMITH:** Th652 you.

1 **CHRISTEN GIBSON:** You're welcome.

2 **THE COURT:** Ms. Smith, while the Court can't
3 state anything related to the facts or comment on the
4 facts in front of the jury, I will say that your --
5 this Court finds troubling your testimony during the
6 trial, quite honestly. I'm in a position I have to
7 evaluate credibility and demeanor as well.

8 Ms. Smith, I'm going to sentence you on your
9 indictment of 03-GS-40-3439 to a term of 48 years.
10 Thank you, ma'am.

11 **MR. MEADORS:** Thank you, Your Honor.

12 (Whereupon, the proceedings are concluded)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 21st, 22nd, 23rd and 24th days of June, 2005.

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

August 22, 2005

Jenny H. Williams

Jenny H. Williams, Court Reporter

1 STATE OF SOUTH CAROLINA
 2 COUNTY OF RICHLAND

COURT OF GENERAL SESSIONS

3
 4
 5 STATE)

6 V.)

TRANSCRIPT OF RECORD

7 SHARON SMITH)

03-GS-40-3439

8 DEFENDANT.)

9
 10
 11 AUGUST 15, 2005
 12 COLUMBIA, SOUTH CAROLINA

13 B E F O R E:

14 THE HONORABLE REGINALD I. LLOYD, JUDGE.

15
 16 A P P E A R A N C E S:

17 JOHN P. MEADORS, ASSIST. SOLICITOR
 18 TODD M. WAGONER, ASSIST. SOLICITOR
 ATTORNEYS FOR THE STATE

19 APRIL W. SAMPSON, ASSIST. PUBLIC DEFENDER
 20 ATTORNEY FOR THE DEFENDANT

21
 22
 23
 24 STACY L. SHEPPARD
 25 CIRCUIT COURT REPORTER

ORIGINAL

I N D E X

WITNESSESDIRECTCROSSREDIRECTRECROSS

(There were no witnesses.)

E X H I B I T S

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NO.DESCRIPTIONID. EVD.

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(There were no exhibits.)

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1 (The following proceedings were held on
2 August 15, 2005.)

3 **MS. SAMPSON:** Do you want me to go into
4 background or...

5 **THE COURT:** I know we kind of discussed this
6 previously just in trying to, I think, schedule a
7 time for the hearing, but I'll let you put whatever
8 on the record, just background-wise.

9 **MS. SAMPSON:** Thank you, Your Honor. May it
10 please the Court. I believe I've already handed to
11 Your Honor back on July 11th my memo in support of
12 this motion.

13 On June 20th of 2005, the case of State versus
14 Sharon Smith was called and she was tried for
15 murder. During the trial, Mr. Meadors requested
16 that the charge of voluntary manslaughter be given
17 to the jury. As her defense attorney, we argued
18 that manslaughter not be given, but if you were to
19 give it, that involuntary manslaughter also be
20 given, as well as the charge of accident. After a
21 lot of discussion and deliberation, you determined
22 that you would only give them the charge of murder
23 and no lesser included charges and that's how we
24 went forward.

25 We argued -- at the end of the day, you gave

1 the jury the option of either deliberating that
2 afternoon or coming back in the morning and starting
3 fresh with deliberations. They chose to come back
4 in the morning. After deliberating in the morning,
5 there was one question during their deliberations.
6 They came back and got instruct -- were charged
7 again on the law by your -- given the same charge
8 they were given earlier. They deliberated and came
9 back with a verdict of guilty on June 23rd.

10 On June 24th, as is my habit, I always call my
11 jurors when they have been excused for the week.
12 They were excused that day for the week. I believe
13 that was a Wednesday -- it might have been a
14 Wednesday afternoon I believe, but they were excused
15 for the week. It might have been Thursday. I can't
16 remember what day it was. I started calling them on
17 the 24th.

18 After I called the first four, it became very
19 clear that one of the jurors had gone home and done
20 his own research and come back to the other jurors
21 with that information. Eventually, I was able to
22 talk to that juror, that juror being Mark Pleasant.
23 And he told me that, yes, the afternoon of the 22nd
24 after they had heard the charges, he went home and
25 went on the Internet and did his own research. He

1 came back to the deliberation room with charges on
2 involuntary manslaughter, voluntary manslaughter,
3 first degree murder and second degree murder.

4 He -- not only did he bring that information
5 into the jury room with him, he printed it up and
6 brought it in there with him. They discussed the
7 different charges, the different elements of all of
8 those things. He showed the printouts to all of the
9 other jurors and they had discussions about it.

10 **THE COURT:** And as I understand from our
11 discussions, the juror in question actually brought
12 not only other information into the jury room, but
13 false information. It had something to do with
14 murder in the first, murder in the second, which we
15 don't have in South Carolina.

16 **MS. SAMPSON:** He also, Your Honor, and I did
17 not put this in the memo, but when I spoke to him
18 about it, he also discussed with them what she was
19 facing as far as the sentence. He had looked up the
20 actual statute. They discussed whether she would
21 even get a 30 year sentence. They all concluded --
22 well, I wouldn't say all, but according to my
23 conversations with Mr. Pleasant, that she wouldn't
24 -- that maybe that wasn't actually accurate.

25 **MR. MEADORS:** And I would object now under

1 606(b), none of that we shouldn't even be talking
2 about in this courtroom, and that's protective jury
3 discussions.

4 **MS. SAMPSON:** I cannot talk about that.

5 **MR. MEADORS:** Well, it's on the record. I
6 just, for the record, I would object to that even
7 coming out.

8 **MS. SAMPSON:** Your Honor, I'm just trying to
9 give you a full picture of my conversation with
10 Mr. Pleasant. I have submitted an affidavit to Your
11 Honor on this particular issue as to the extraneous
12 information.

13 As far as to what he's saying it's 606, it does
14 allow you to talk -- it does allow you to talk about
15 what happened in jury deliberations as to it goes to
16 extraneous information that was given to the jurors
17 and brought into the jury room and that's all I'm
18 discussing. He brought that information, being
19 Mr. Pleasant, brought that information into the jury
20 room and I am allowed to discuss that with Your
21 Honor based on that same ruling.

22 Your Honor, as I said, he talked to -- they
23 discussed heat of passion and different elements
24 having to do with voluntary manslaughter, which they
25 weren't presented with. And he discussed, as you

1 already said, first and second degree murder, which
2 we don't even have in South Carolina. Based on
3 that, Your Honor, I had an investigator go talk to
4 Mr. Pleasant and do an affidavit with him, which
5 Your Honor already has, and I submitted with my
6 motion.

7 The motion, as I've already stated, Your Honor,
8 I've given you all of that, but I will go over it
9 again. It's not enough, and I would submit, as I'm
10 sure Mr. Meadors is going to argue, it's not enough
11 for me to show that extraneous evidence was brought
12 into the courtroom -- or into the jury room. I have
13 to show how it prejudiced my client.

14 There are relevant factors that the Court has
15 outlined need to be discussed, the number of jurors
16 exposed is the first one, second, the weight of the
17 evidence properly before the jury, and, third, the
18 likelihood that curative measures were effective in
19 reducing the prejudice, that's from State v. Kelly,
20 Your Honor.

21 In the first prong, Your Honor, the number of
22 jurors exposed, they all were exposed. He went and
23 looked it all up and they've discussed it.

24 No curative measures were ever given, Your
25 Honor. We didn't even know about it. The only

1 curative measure was you gave them the charge again
2 because they requested that they get the charge on
3 the law again, but they were still discussing the
4 erroneous charges as far as I know.

5 **THE COURT:** Well, counsel, let me ask you as to
6 the other charges, the issue of what was brought
7 before the jury about this juror, how does that hurt
8 Ms. Smith?

9 **MS. SAMPSON:** Well, Your Honor, what I believe,
10 as far as based on my discussions with Mr. Pleasant
11 and based on his affidavit, is they're discussing
12 whether heat of passion was involved and whether Ms.
13 Smith's actions were based on heat of passion and
14 they were having this discussion. That wasn't even
15 before them. They wouldn't even know what heat of
16 passion was because they weren't allowed to dis --
17 we did not charge them on that. The term heat of
18 passion is a legal term of art I would argue. They
19 got that because he brought it into the jury room.

20 **THE COURT:** Well, I guess my question is, is
21 that, in essence, they were discussing lesser
22 includeds, and granted, this juror was discussing
23 erroneous lesser includeds in some circumstances,
24 but to the extent that they were discussing lesser
25 includeds and they rejected those and convicted on

1 murder, how exactly is Ms. Smith prejudiced by the
2 discussion of lesser includeds, albeit improperly
3 discussing lesser includeds?

4 **MS. SAMPSON:** Well, Your Honor, again, my
5 understanding from talking to Mr. Pleasant and
6 talking to the other jurors that I've spoke with is
7 that some of them agree that she was guilty of
8 something, but since they couldn't find her guilty
9 of that lesser thing, they found her guilty of the
10 only thing they could find her guilty of, which was
11 murder. That's the incorrect part and that's the
12 prejudice to my client. Maybe if they didn't have
13 those lessers to have even been discussing, they
14 would have been on the term of if it's murder or
15 not. Not if she's guilty of some lesser included,
16 not if she's guilty of one of these things he
17 brought in, but is she guilty of murder or not.

18 And I don't think that it's proper for this
19 Court, or even if we could bring all of them in to
20 discuss how did it affect each one of them. It's
21 been almost, at this point, two months since the
22 trial. I've tried to have this heard on July 11th.
23 Mr. Meadors asked for time to give me a rebuttal
24 motion, Your Honor, which I got today, you know, so
25 we gave him the extra time for that, but that also,

1 I think, would hurt bringing in jurors.

2 This might have been something important, of
3 course, to Ms. Smith and something I remember, but I
4 don't know how well they're going to remember how it
5 influenced them back then because that is exactly
6 the crux of the problem is how did it influence them
7 at all.

8 **THE COURT:** Well, the issue, though, for this
9 Court is this extraneous material was, in essence,
10 the lesser included. They were charged that they
11 could only consider her not guilty or guilty on
12 murder. And if -- including your own client -- I
13 mean, the juror you have an affidavit from, even
14 with your argument that there was some consideration
15 that maybe she should be convicted on some other
16 charge, they could have found her not guilty on the
17 murder.

18 **MS. SAMPSON:** But the problem is, Your Honor, I
19 don't know if -- because they're having these
20 discussions that these lessers even exist out there,
21 that that's what they should really be coming back
22 with. Because they're having these discussions
23 inside, well, she must have done this lesser, but
24 since we can't, we're just going to find her guilty
25 of the higher of the murder, I think that there

1 would be confusion that wouldn't have been there had
2 they not even known about these lesser charges.

3 And since they're using the phrases that comes
4 exactly from those lesser charges, heat of passion,
5 it's not something Mr. Meadors, it's not something
6 that I argued, they clearly are getting extraneous
7 information to have a deliberation about. And they
8 just should not be deliberating at all with this
9 extraneous information that I argue does prejudice
10 my client. And that if they decided, yes, she's
11 guilty of these lessers, but the lessers aren't
12 before us, we can't find her not guilty because she
13 did do something, so we're just going to compromise
14 and find her guilty of the murder.

15 They clearly thought she did something wrong
16 and that's what Mr. Pleasant told me, but they
17 didn't have the opportunity to find her guilty of
18 those lessers, granted that they should have if that
19 was the --

20 **THE COURT:** But they had an opportunity to find
21 her not guilty of the greater.

22 **MS. SAMPSON:** I understand that, Your Honor,
23 but I don't know that they knew that knowing that
24 the lessers were out there, not understanding the
25 law, not understanding that even if you thought she

1 was guilty of these lessers, that you were to find
2 her not guilty of the murder. We, as legal
3 authorities, would know that --

4 **THE COURT:** Doesn't the charge adequately
5 inform them that if the State does not meet its
6 burden of proof as to the elements for the charge
7 that they are deliberating on, that they're to find
8 her not guilty?

9 **MS. SAMPSON:** That was your charge, but,
10 clearly, they're not listening to your charge if
11 they're listening to something that Mr. Pleasant is
12 telling them in the jury room about other charges.
13 Yes, that's your charge, Your Honor, and I agree
14 that that's what it is, but they're not following
15 that if they're discussing other stuff that they're
16 not even supposed to be discussing. They're not
17 just looking at your charges, they're looking at
18 other information that somebody else brought in
19 that's not even right in some respects.

20 **THE COURT:** Well, let's assume that this
21 particular juror didn't bring in these Internet
22 printouts and issues into the jury. How would this
23 be any different if they had had the same discussion
24 about, you know, was this just a heat of passion
25 thing or was this really the issue of murder?

1 **MS. SAMPSON:** Well, Your Honor, for all I know,
2 they wouldn't have that discussion. It's not for me
3 to say what would have been had they not had this.
4 All I have in front of me is what they did do.

5 If they would have come to their own mind that
6 maybe she did something else and they didn't have a
7 term for it, I wouldn't even be here because what
8 they did would not be wrong, that's exactly what
9 jurors are supposed to do is deliberate on whatever
10 they want to deliberate on, but that's not what we
11 have.

12 We have them bringing in information and
13 discussing it, clearly discussing it, and making
14 their own opinions based on stuff that they have
15 discussed that they weren't supposed to be
16 discussing, that neither myself nor Mr. Meadors had
17 had an opportunity to discuss with them. That was
18 the whole point of getting the charges beforehand so
19 that we would know what to argue with them in our
20 arguments to show them why the evidence did or did
21 not favor these lesser includeds.

22 And, in fact, that was an argument that I made
23 to Your Honor. When I was doing my closing
24 argument, there was an objection by the State
25 because I was going into some issues that we had

1 decided I should not go into. And at the bench, I
2 was told that being -- that whatever I said might
3 influence what the charges were going to be even
4 though we had already made a determination of what
5 the charges should be.

6 **THE COURT:** As I recall, there was this issue
7 about, and the defense made the decision not to
8 charge the lesser included, and as I recall, there
9 was this issue of -- I don't believe voluntary -- I
10 wasn't sure -- I'm not sure, in terms of memory at
11 this point, whether or not there was any
12 consideration -- ever any consideration of charging
13 voluntary, but that there was this issue of murder,
14 involuntary and possibly accident being charges.

15 **MS. SAMPSON:** My understanding -- are you
16 talking about at all or at the bench?

17 **THE COURT:** At all.

18 **MS. SAMPSON:** Mr. Meadors wanted voluntary.
19 From the beginning, he asked for voluntary. When he
20 asked for voluntary, I said, no, I did not want
21 voluntary, but if he was going to get voluntary, I
22 would ask for involuntary. At that point, you
23 asked, did I also want accident as well and I said,
24 I suppose so. And then we went on to discussions as
25 far as which one.

1 And it never, and I'll need to make sure the
2 record is clear on this for future reference, I
3 never knew what the accident charge was going to be.
4 I've never had that charge, did not know, and until
5 we talked to you after -- the next morning while we
6 were waiting for the jury to deliberate, I didn't
7 know what the factors for accident even were.

8 **THE COURT:** Well, as I recall, though, there
9 was -- once I said that we were not going to do
10 voluntary, there was also a decision by the defense
11 not to have any lesser includeds for the jury.

12 **MS. SAMPSON:** That's correct.

13 **THE COURT:** And to the extent that the jury was
14 considering lessers --

15 **MS. SAMPSON:** And because of this, Your Honor,
16 I can't tell if they were doing lessers because they
17 would have done it anyway or because Mr. Pleasant
18 brought it up.

19 **THE COURT:** Is it the defense's argument that
20 the jury, based on your discussions with this juror,
21 would have found her guilty of a lesser included?

22 **MS. SAMPSON:** My view is that there could have
23 been. I can't tell -- I talked to six out of the 12
24 all together and they all told me the same thing,
25 that they did discuss it. There were some that

1 thought she was guilty of something, but they didn't
2 have a choice of the something so they agreed that
3 they would just go ahead and find her guilty of
4 murder. I could not get numbers out of them. There
5 were some that thought she was guilty of murder and
6 were fine and there were some that were on the fence
7 and then just, for whatever reason, changed.

8 **THE COURT:** Which would have been -- the only
9 proper lesser I could think of would have been this
10 issue of involuntary.

11 **MS. SAMPSON:** And if that -- that's a huge
12 difference in sentencing if that's what would have
13 happened, Your Honor. So it's very --

14 **THE COURT:** I guess from the Court's
15 perspective, they had to make certain findings of
16 fact in order to reach even the lesser included.

17 **MS. SAMPSON:** That may be so, Your Honor.

18 **THE COURT:** And, presumably, the jury would
19 have made those findings of fact necessary to
20 convict of even involuntary. And when those
21 findings of fact -- they had to be the same under
22 the facts to --

23 **MS. SAMPSON:** The problem is I don't know
24 without knowing what his -- I know he brought in the
25 voluntary, involuntary, the first degree and second

1 degree charges. I don't know if he brought that in
2 and they started discussions from the get-go on the
3 wrong thing or did they start discussing the correct
4 thing and then he brought up all of these charges
5 that they weren't supposed to be talking about. I
6 can't separate what would have been because that was
7 put out there and that's the problem. Once it's out
8 there, we can't sit and decide, well, maybe it did,
9 maybe it didn't.

10 We know that it affected him. At least to me,
11 it would feel that way because he talks about it.
12 They are talking about heat of passion in those
13 terms, we didn't give them those, maybe somebody
14 would have known that independently and that would
15 be okay, but I don't know that.

16 **THE COURT:** Given that they were recharged on
17 the elements of murder and told that they would have
18 to find the State proved those elements beyond a
19 reasonable doubt, even your juror that brought in
20 the improper other offenses that exist, some that
21 don't exist in South Carolina, and he's the one that
22 still voted to convict on murder --

23 **MS. SAMPSON:** And that's part of my problem,
24 Your Honor, they're not listening to your charge.
25 If they were listening to your charge, he wouldn't

1 have looked it up in the first place. If they were
2 listening to your charge, the minute he'd start,
3 they'd say, no, no, the law is what the Judge gave
4 it to us as. Clearly, they're not doing as you
5 charged them or they never would have had the
6 discussion.

7 **THE COURT:** Isn't that where they ended up
8 saying, well, you know, all that's well and fine,
9 but this is all we've got is on murder?

10 **MS. SAMPSON:** I think that's an assumption on
11 our part, Your Honor. They've already discussed it
12 at that point. You can't take the cat out of the
13 bag. I mean, it's out there.

14 **THE COURT:** Well, how is she prejudiced if they
15 came back to the, albeit in a circuitous route, back
16 to the same place that they started from or should
17 have started from, which is all that's well and
18 fine, but you've got to consider her guilty or not
19 guilty on this one charge?

20 **MS. SAMPSON:** If we had something to determine
21 that that's what they did, Your Honor, we'd have a
22 different case, but we don't have that. We don't
23 know if they continued to have the discussions after
24 they got the charge on whether it's these other
25 things and they then decided, well, if we can't find

1 her guilty of these other things, so we're going to
2 find her guilty of the murder because we know
3 something happened, we just don't know what to call
4 it.

5 We know that they're discussing these things
6 they're not supposed to be discussing and they're
7 affecting them enough to be discussing them. And
8 there's a huge difference, at least in sentencing,
9 between if they had of been able to come back with
10 what you're saying between voluntary, involuntary
11 and murder.

12 **THE COURT:** I'll come back to you.

13 Mr. Meadors.

14 **MR. MEADORS:** If it pleases the Court. Your
15 Honor, respectfully, I think today there are two
16 issues, whether or not there was misconduct on
17 behalf of the jury -- juror and whether that
18 misconduct, in this case because of extraneous
19 information, whether that extraneous information
20 that was brought into the jury room prejudiced --
21 resulted in prejudice to the defendant. And, again,
22 it's their motion and their burden to show that the
23 misconduct did result in prejudice.

24 Judge, with great -- great rewards come with
25 great risks. They took a great risk, in my opinion,

1 going forward with just murder. They chose that as
2 trial strategy, said that on the record numerous
3 times that it was trial strategy, wanted to find the
4 defendant -- wanted the jury to find her not guilty
5 obviously, but made a conscious decision to go
6 forward just on murder, as they had a right to do.

7 I'd like the record to reflect that clearly
8 counsel on several occasions didn't want any lesser
9 included, my memory is didn't want accident, didn't
10 want anything, wanted all or nothing, that's what
11 Your Honor instructed.

12 Judge, I, respectfully, don't think they've met
13 their burden here today. If anything, when this
14 juror brought in this information, it was
15 prejudicial to the State. He's out there trying to
16 find the heat of passion, anything he can, and
17 that's prejudicial to the State not the defendant at
18 all. If anything, they're trying to help her.

19 Judge, and the other thing -- and,
20 respectfully, when I objected earlier when Ms.
21 Sampson, she's talking about conversations she had
22 with jurors, the only thing, and that's why I
23 objected, I've been through this recently, I don't
24 think we can talk about that, the internal
25 deliberations. I think part of the affidavit, quite

1 frankly, is discussing internal deliberations not
2 relevant to this issue, but it's in. And I think
3 we've all -- and all Your Honor, respectfully,
4 should consider today is this one affidavit because
5 that's all we do have that's in evidence, not
6 conversations that she had with anybody else, it's
7 this one affidavit, which I believe Your Honor has
8 to make his decision on.

9 Judge, I think kind of common sensically (sic),
10 the jury realized going through here, we've just got
11 two choices, murder or not guilty. And in their
12 motion, I don't think they can prove that the jury
13 was influenced by the dissemination of this material
14 by this juror, Mr. Pleasant. If anything, as I
15 said, he was attempting to show there might have
16 been a voluntary. Again, that wasn't charged.

17 Again, in his own affidavit, Our discussion
18 ultimately focused on the definition of malice,
19 which it had to, that's all they were presented
20 with. Based on our understanding of the State's
21 definition of malice and our common beliefs, she
22 intentionally stabbed the victim. All of the jurors
23 felt that we had no alternative but to find Ms.
24 Smith guilty.

25 I agree with them. That's what they chose to

1 go forward on. They believed that there was malice
2 in that case. They had the option, as Your Honor
3 has stated, you charged, if you don't believe the
4 State has met its elements beyond a reasonable
5 doubt, especially as to malice, find her not guilty.

6 They clearly went through this weighing
7 process, again I think with information that would
8 have helped Ms. Smith and harmed the State, and came
9 up with, we've got two options, we know she
10 intentionally did it, it's murder with malice or
11 not. So in a way, I think this affidavit helped
12 show that clearly she wasn't prejudiced. If
13 anything, the State was.

14 **THE COURT:** Well, if I just look at the
15 affidavit, based on the elements of murder and -- I
16 mean, they end up, as I take it from the affidavit,
17 finding the elements of murder. I mean, I
18 understand there may have been this discussion about
19 lessers, but don't they end up basically saying,
20 look, we all agree, we find that she did these
21 things, which are, in fact, the elements of murder?
22 And if that's the case, I mean, are we any different
23 off than if they hadn't considered the lessers at
24 all, but just debated the elements of murder?

25 **MR. MEADORS:** I agree with the Court. I think

1 on page four of the defendant's motion where it says
2 the defendant was prejudiced because not only was
3 the jury presented with the evidence, but they
4 discussed it and were influenced by its
5 dissemination, there's no proof that they were
6 influenced to go to murder. If anything, as I've
7 stated, it was information beneficial to her and
8 they did determine that there was malice and murder.

9 Had they -- on page five of her motion, had
10 they not known the definition of the lesser charges
11 or discussed at all whether she was guilty of those
12 charges, they may have come to a different decision.
13 Well, they didn't. They had it. They knew they had
14 two options. And, Your Honor, it's their burden to
15 show that it did prejudice, just saying may, we
16 don't think meets that burden.

17 **THE COURT:** Well, I guess to the extent that
18 they were considering anything, they would have had
19 to consider whether or not they believed that she
20 intended to commit the stabbing, whether or not the
21 issue of malice aforethought was present.

22 I guess I'm sort of in the position of, based
23 on the affidavit from this one juror, having to find
24 some prejudice to the defendant. I mean, I'm not
25 quite sure I see that from the standpoint of if the

1 -- if you take away these Internet printouts about
2 first degree murder and second degree murder and
3 voluntary and involuntary manslaughter, is there any
4 way that, and, Ms. Sampson, I guess this is directed
5 to the defense more -- all of these issues go to
6 raising reasonable doubt as to the elements for
7 murder. And if they reject those, and based on even
8 the own, which the affidavit says, Ultimately our
9 discussion focused on the definition of malice, and
10 they found her guilty after those discussions, how
11 is she harmed by them discussing the lessers, and --
12 even though they rejected those lessers, but
13 wouldn't the lessers have created more reasonable
14 doubt as to the State's -- whether or not the State
15 met its burden of proof?

16 **MS. SAMPSON:** I didn't know if you wanted Mr.
17 Meadors to --

18 **THE COURT:** I guess it's more directed to the
19 defense.

20 **MS. SAMPSON:** Well, again, Your Honor, I think
21 that we're trying to do exactly what the Court tells
22 us not to, which is to figure out once the prejudice
23 -- once it's out there, trying to figure out how it
24 did affect specifically -- when they're discussing
25 it, I can't sit here and say that without that

1 discussion, they still would have come to the same
2 argument.

3 **THE COURT:** But that's what this Court would
4 have to do, as well as the Court of Appeals or the
5 Supreme Court is find some prejudice to the
6 defendant.

7 **MS. SAMPSON:** Well, the case law, as I read it,
8 Your Honor --

9 **THE COURT:** It's not just the mere bringing it
10 in that creates the prejudice, it's --

11 **MS. SAMPSON:** If he had just brought it in to
12 himself and never said anything, I would agree with
13 you, but they had discussions about it, Your Honor.

14 In Allers v. Riley, and I gave you the case
15 law, which is cited by our Supreme Court in State v.
16 Harris, the court stated, The prejudice to a party
17 occasioned by the jurors taking it upon themselves
18 to redefine a term of art in a critical jury
19 instructions for their review of extraneous
20 materials can hardly be measured. The only cure for
21 such mischief and for the potential prejudice and
22 injury resulting therefrom is to grant a new trial.

23 **THE COURT:** But that's redefining a term.
24 Here, they didn't redefine the term, they --

25 **MS. SAMPSON:** They went and got extra ones.

1 **THE COURT:** -- they went and got other terms
2 that weren't applicable. And those extra terms,
3 everything that they discussed would have actually
4 been for the benefit of the defendant.

5 **MS. SAMPSON:** But my whole point, Your Honor,
6 is having these discussions at all, having
7 discussion, well maybe she's guilty of something
8 else, but since I can't find her guilty of that
9 something else, I know she did something wrong, so,
10 therefore, I'm just going to go ahead and find --

11 **THE COURT:** But that's not what your -- even
12 your affidavit says. The affidavit doesn't even say
13 that, well we thought she was guilty of something,
14 but we just found her, you know, we couldn't find
15 her guilty of anything else, so --

16 **MS. SAMPSON:** His last thing is, Your Honor, In
17 our common belief that she intentionally stabbed the
18 victim. And they had already had this discussion of
19 the heat of passion, which could mean she purposely
20 did it, but with some sort of heat of passion, Your
21 Honor. I don't see how we separate that they -- we
22 can sit here and separate for sure that they decided
23 to go by your charge now and decide, well, now we
24 really do think that it --

25 **THE COURT:** But don't y'all have the burden of

1 showing that?

2 **MS. SAMPSON:** If you want -- I asked if we want
3 to bring them all in here and talk to them about it.
4 If you want to do that, we can.

5 **THE COURT:** But, I mean, in terms of the
6 motion, doesn't the defense have the burden of
7 coming forward to say, look, they applied a
8 different definition of malice, or anything like
9 that? His own affidavit says, look, we eventually
10 got around to -- eventually, I mean, he says, look,
11 we, on our second or third vote, he doesn't even
12 remember, they all agreed on the charge of murder,
13 but they discussed the definition of malice.

14 **MS. SAMPSON:** And, again, Your Honor, if you
15 wanted, we could have brought them all in here back
16 on July 11th or since that time. I would have done
17 that had the Court deemed that this was not enough
18 for me.

19 **THE COURT:** I guess, one of the issues is do we
20 actually -- I mean, does the Court actually go in --
21 unless there's some issue raised as to prejudice
22 initially, does the Court bring back in jurors to
23 then discuss their discussions?

24 **MS. SAMPSON:** That's the only way I'm going to
25 be able to prove to you whether it was prejudicial

1 or not was to ask the people who made the decision.

2 **THE COURT:** Well, but, in terms of -- I mean,
3 you all have actually talked to these people.

4 **MS. SAMPSON:** I haven't -- I can't put --
5 apparently, Mr. Meadors doesn't want me to tell you
6 about my conversations with the juror.

7 **THE COURT:** I mean, the one affidavit y'all got
8 to even raise all of this doesn't even go far enough
9 to say, look, we, you know, we heard the definition
10 of malice, we discussed the definition of malice, we
11 applied somewhat of a different definition --
12 granted they discussed things that they shouldn't
13 have.

14 **MS. SAMPSON:** And, again, Your Honor, I don't
15 want to be told that I'm talking about stuff that I
16 shouldn't be talking to. The conversation that I
17 had with Mr. Pleasant was immediately after this.
18 It was the next day. His conversation with me was
19 much more detailed than his affidavit and his
20 affidavit was made after he talked to a lawyer. And
21 I had my investigator ask him about that and he said
22 he was afraid he might get in trouble. So I don't
23 know if he curved what he said in his affidavit
24 because of that or not. And I didn't want to get
25 into that because I'm not supposed to get into

1 extraneous stuff about that, but that's -- my
2 discussion with him was just, was a good 30 to 45
3 minutes. This affidavit is just one page.

4 If you want to bring Mr. Pleasant in here and
5 get him -- his statement did get very much, I don't
6 want to say abbreviated, but he did talk less once
7 he'd talked to that lawyer because my investigator
8 went the day after that and got the affidavit made.
9 But I talked to him the very next day and he talked
10 to me between 30 and 45 minutes on the subject and
11 it's way more than what I even put in this motion or
12 in his affidavit. And like I said, the affidavit
13 was given to me by him after he had spoken to an
14 attorney and he was not willing to add or talk about
15 it anymore.

16 The only other thing, and I don't know if you
17 want to hear this or not, Your Honor, but I just
18 want to make the record complete for all appeals
19 because I don't think we'll be discussing this
20 anymore, we've gotten a little bit, clearly, into
21 the charges. We did have a judge conference at the
22 bench about whether the charges were going to change
23 after I got through charging, Your Honor. I do hand
24 to the Court and I will hand to Mr. Meadors --

25 **MR. MEADORS:** Is this outside this topic?

1 **MS. SAMPSON:** It sort of covers the same topic
2 as far as the charges, the charges that were given.
3 I hand to the Court State versus Jones, Your Honor.
4 And I'm not expecting Mr. Meadors to give an
5 opinion. We can have another hearing, if necessary.
6 I just want the record to be clear. This is a
7 Supreme Court case from 2001, Your Honor. And it's
8 about changing the charges, that it's reversible
9 error to change the charge after the arguments have
10 been heard.

11 **THE COURT:** Well, just so the record is clear,
12 this Court never indicated that I was going to
13 change charges that I told y'all I was going to
14 charge. What this Court did indicate was, is that
15 based on my declination to charge voluntary
16 manslaughter, which the State requested, the defense
17 did not want, and the defense's own admonition to
18 the Court not to charge any lessers, this Court's
19 opinion, the record will speak for itself on the way
20 up, was that the side bar conversation with counsel
21 on both sides was, is that you could not then argue
22 to the jury the lesser included that y'all had asked
23 me not to charge, that if y'all were going to argue
24 it, I was going to charge it, but I wasn't going to
25 have a situation of either side arguing something to

1 the jury that y'all have either specifically told me
2 not to charge or that I had indicated to both sides
3 that I was not going to charge.

4 **MS. SAMPSON:** And the only thing I want to put
5 on the record, Your Honor, again, is that's exactly
6 what happened in this case, the charge was
7 changed -- the State objected -- I mean, the defense
8 objected -- the defense went forward on a particular
9 -- making an argument. After they had had argument
10 about what the charge should be as a reasonable
11 doubt charge, the defense argued a certain
12 reasonable doubt charge, the State objected, the
13 Court changed the charge after that and, therefore,
14 the Court refuted that as reversible error because
15 they felt like that needed to be charged based on
16 what the defense had said and that's exactly what I
17 was told was going to happen.

18 **THE COURT:** Right. If y'all are arguing a
19 definition -- different definitions of reasonable
20 doubt or whatever the different definitions, and
21 this Court tells you, this is what I'm going to
22 charge, is for the definition that y'all are going
23 to apply, that's one thing. A different thing is
24 arguing a defense to the jury, either side, that
25 y'all have specifically told me do not apply and --

1 **MS. SAMPSON:** And I was not going to do that,
2 but being limited into not knowing what exactly
3 would bring about that, I -- you didn't tell me --
4 we're having a whole nother entire conversation
5 about it right now. At that time, if I remember
6 correctly, it might have been two or three lines. I
7 mean, we did not sit out and say, this is what
8 you're not going to say, Ms. Sampson. You're not
9 going to say involuntary manslaughter. You're not
10 going to say the elements of this or that. We
11 didn't have that conversation. We just said, based
12 on what you say, Ms. Sampson, I may need to change
13 my charges.

14 Because I had said the word -- I think I might
15 have said accident is what I said and I said I could
16 not say accident anymore and go on. And you said,
17 well, just, you know, be forewarned whatever you
18 say, I may change my charges based on what --
19 needing to based on what you say.

20 You know, I'm standing up there with no idea
21 what could bring about a charge being changed. And
22 I just want to add this case to the record as far as
23 changing charges after the closings.

24 **MR. MEADORS:** Your Honor, I just, for the
25 record, want to reflect, I think it was after she

1 gave an analogy of being in a car wreck recently,
2 that she was on her way somewhere and told the
3 officers, I didn't do it, but then there were
4 explanations, the weather, I was going too fast, and
5 tried to actually argue a lesser included when it
6 wasn't there. That's when I think I objected
7 contemporaneously and I hope the record reflects.

8 I don't remember there being any issue about
9 the confusion about the charges whatsoever, Your
10 Honor. I just want to put that on the record.

11 **THE COURT:** As I recall, the defense argued
12 that the lesser includeds were legally not
13 applicable in this case. And I may be wrong about
14 that, but as I recall, it was argued to the Court
15 that they were not applicable, in which case, the
16 only thing the jury could consider was guilt or
17 innocence straight up on the elements of murder.

18 Now, the State may not have proven beyond a
19 reasonable doubt the elements of murder, in which
20 case, the jury would have had to acquit her, but
21 based on the affidavit from Mr. Pleasant -- I mean,
22 the only thing I have in front of me is ultimately
23 they discussed and focused on the definition of
24 malice. Based on their understanding of the State's
25 definition of malice and our common belief that she

1 intentionally stabbed the victim, all of the jurors
2 felt that we had no alternative but to find her
3 guilty.

4 So they -- his own affidavit says that what
5 they had focused on in reaching the verdict was
6 actually the definition of malice and the other
7 elements of murder.

8 **MS. SAMPSON:** And, again, Your Honor, my
9 understanding is that was after all of this
10 discussion and continuing to have this discussion
11 after some of them may or may not have made their
12 opinion based on those discussions as to what she
13 had or had not done. If there is a question as to
14 how much the charges influenced their decision, then
15 I would request that we bring them all in and ask
16 them. I just didn't feel the need to involve the
17 State and everybody else in bringing them in. I
18 mean, it's clear they discussed them.

19 **THE COURT:** Well, let me ask you, is it your
20 argument that their discussions of these other
21 things in any way changed their understanding of the
22 definition of malice?

23 **MS. SAMPSON:** My understanding from talking to
24 Mr. Pleasant is it's a determination of what he
25 could do. Since they felt like she had done

1 something wrong, whether it was intentional, whether
2 it was -- they thought it was intentional, but the
3 question in some of their minds was whether she did
4 it with a heat of passion or not because they had
5 been discussing it, but since they didn't have that
6 option and they knew she had done something wrong,
7 they just went with murder because they didn't have
8 a choice.

9 They did not do what your instructions had
10 called for, which is, well, if you don't find
11 malice, if you don't find all of those other things,
12 then you don't find her guilty. They felt like she
13 had done something wrong; therefore, since the only
14 thing they could find her guilty of was murder
15 because she had done something wrong, they --

16 **THE COURT:** Well, that's not what -- I mean, I
17 understand that that's what you're arguing, that's
18 not exactly what is in the affidavit.

19 **MS. SAMPSON:** I understand that, Your Honor.
20 And, again, I know that the affidavit came after Mr.
21 Pleasant had talked to a lawyer. And it's different
22 from my conversations with Mr. Pleasant. I did not
23 bring him in here. A, I don't have the power to
24 bring him in here. We had a little bit of a
25 discussion about whether we should actually bring

1 the jurors in or not.

2 **THE COURT:** Well, did any other jurors offer to
3 give an affidavit saying that they --

4 **MS. SAMPSON:** They all were willing to talk
5 about it, Your Honor. I did not send an
6 investigator to talk to each one of them about
7 getting affidavits. I thought getting it from the
8 horse's mouth would be the more appropriate thing,
9 but, again, by the time we got to him, he had
10 already talked to a lawyer. There's a lawyer in his
11 office down the hall from him and that's how we know
12 -- he told us that that's who he had talked to.
13 And, again, I'm getting into all of this stuff I'm
14 not supposed to get into.

15 **MR. MEADORS:** Your Honor, again, just Your
16 Honor's charge on the reasonable doubt, they found
17 beyond a reasonable doubt that there was malice and
18 murder. And, again, the defense chose and made a
19 conscious choice and strategy decision to go forward
20 on murder.

21 **THE COURT:** Ms. Sampson, even if I included the
22 other items that you say that other jurors informed
23 you based on the affidavit and the issue of finding
24 prejudice to the defendant --

25 **MS. SAMPSON:** Well, before you rule, if that's
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1 going to be your ruling, Your Honor, I'd ask that we
2 bring them all in then. If that's going to be the
3 necessity to show how much it influenced each and
4 every one of them, then we can bring them in.

5 **THE COURT:** Well, I'm not quite sure what we're
6 bringing them in to ask them.

7 **MS. SAMPSON:** Did it influence their decision
8 to decide, well, I'm just going to find her, which
9 is what Mr. Pleasant told me, and again don't know,
10 that they just decided to go forward on murder
11 because they couldn't find the lessers and did not
12 follow the instructions you gave them, which is if
13 you don't find everything, then find her not guilty.

14 They decided she had done something wrong, we
15 don't know what it is, but we don't have any choice
16 in the matter. Since we think she did something
17 wrong, we're going to find her guilty of murder. We
18 think she intentionally did it. But as Mr. Pleasant
19 said, he initially thought that it was heat of
20 passion sort of thing, but they didn't have that
21 option.

22 **THE COURT:** Well, isn't that what every jury --
23 if the jury had not had that in front of them, these
24 other issues in front of them, their ultimate debate
25 back there could have been on, was she just angry,

1 was it heat of passion, et cetera --

2 **MS. SAMPSON:** That's the thing of it, it could
3 have been.

4 **THE COURT:** -- and worked their way to the same
5 verdict.

6 **MS. SAMPSON:** It could have been. We don't
7 know if it would have been. We've got him bringing
8 in extraneous evidence. You're asking me to decide,
9 well, would they have been or what could have
10 happened if they hadn't of had this evidence. They
11 had it.

12 **THE COURT:** Well, I guess under the standard,
13 though, that the courts look at when jurors do this,
14 what is -- we don't bring in jurors -- juries every
15 time there's been some extraneous information
16 presented. We don't bring them all back in and
17 start discussing how did they reach the verdict. So
18 I guess my question is what, in this case, tells the
19 Court to bring the jurors back in and discuss it?

20 **MS. SAMPSON:** Your Honor, I would argue this is
21 a case of first impression. All of the cases I
22 could find in South Carolina, either one juror
23 brought in a definition from a dictionary, which I
24 would -- that was exactly what the judge had already
25 given them. They didn't go on the Internet and do

1 their own research. In the other cases, they may
2 have talked to somebody outside of the courtroom or
3 they might have waived the cases he outlined, they
4 waved to somebody. There was nothing that involved
5 all of the jurors looking at information they had
6 not been provided or that was wrong.

7 In the cases that we have, all they had was,
8 well, there was a jury -- there was a dictionary
9 definition. There was one, if I remember correctly,
10 where the jurors discussed, I believe it was
11 sentencing or something in that regard and the judge
12 said it didn't matter, it was about sentencing, it
13 wasn't about the guilt or innocence of a person.

14 I could not find a case except for the one that
15 I cited to Your Honor, which was Allers v. Riley,
16 which was cited by our court in Harris that was
17 anywhere close where they had come out with a
18 different -- they had come up with some different
19 information than the judge had presented it to them.

20 So to answer that question, we haven't had that
21 put in front of us except for when it was like
22 dictionary definitions or definitions that were just
23 what the judge had brought. There are cases where
24 they did bring the jurors in and specifically asked
25 them questions about how did it influence them.

1 It's not like it's the first time it's happened.
2 And you're correct, they don't do it all the time,
3 but I think that if it's --

4 **THE COURT:** Well, it's actually rarer than
5 common to bring them in, isn't it?

6 **MS. SAMPSON:** I think that it is rare, but I
7 think that if it's something that's a question for
8 Your Honor as far as whether it did prejudice them
9 or not, the only people that can answer that are
10 them. I can sit here and argue all day that it did
11 prejudice them and Mr. Meadors can argue all day
12 that it didn't because of the verdict, but neither
13 of us were in there.

14 I didn't -- I mean, I didn't request that Your
15 Honor issue warrants to all of these people and
16 bring them all in to make the Court have to do all
17 of that, but if Your Honor had any question as to
18 whether it prejudices them or not, I would argue
19 that you bring them all in and err on the side of
20 caution versus going ahead and not granting the
21 motion when there's a question.

22 **THE COURT:** Well, I guess the issue ultimately
23 becomes what has to be met to raise that question
24 before this Court or any other reviewing court?

25 **MS. SAMPSON:** Well, I believe, Your Honor, I

1 have at least met that they brought in extraneous
2 evidence and it was discussed in their
3 deliberations.

4 **MR. MEADORS:** And, Your Honor, that's not
5 enough. If that's true, everything would be
6 prejudicial. I think they have to show that the
7 jury was prejudiced by it. It was prejudicial
8 information that prejudiced the jury. In this case,
9 if anything, it prejudiced the State, brought in
10 information talking about voluntary, anything -- I
11 just don't think there's any -- she can take
12 everything she's presented, proffered now, plus the
13 affidavit, there's no information that was
14 prejudicial to the defendant, Your Honor.

15 So I don't think they've met their burden. And
16 I don't think it's -- I don't think we're allowed to
17 go back on a fishing expedition and just bring
18 jurors in with no basis or no finding. And I just
19 don't think that this affidavit shows prejudice
20 whatsoever to the defendant.

21 **THE COURT:** And I guess that's one of the
22 questions I have. Even if I brought them back in,
23 what is the proper inquiry to make of the jurors? I
24 don't start really discussing with them, well, did
25 y'all -- how did y'all think about this, who said

1 what, how did you actually end up arriving at the
2 verdict you arrived at. So there's some limit to
3 what the Court's inquiry should be, isn't there?

4 **MS. SAMPSON:** I would agree with that, Your
5 Honor, but I would ask that you limit it to, did you
6 make any determinations as jurors as far as if she
7 did it in the heat of passion or if she did it for
8 some other reason, but she did it on purpose, she
9 did it with intent, did that influence your
10 determination of whether she's guilty or innocent.

11 Because I would argue, based on my
12 conversations with Mr. Pleasant and based on my
13 conversations with some of the other jurors, that
14 that was some of their thoughts was she was guilty
15 of something, she did intend to harm him whether it
16 was in the heat of passion or not. Because we don't
17 have heat of passion, I've got to find her guilty of
18 something, which is exactly the opposite of what
19 they're supposed to do, I understand based on your
20 charges, but, clearly, they're not doing as your
21 charges said or they wouldn't have been having the
22 conversations at all.

23 **MR. MEADORS:** Your Honor, I believe just the
24 opposite, beyond a reasonable doubt, they're back
25 there discussing all of this, prejudicial

1 information to the State comes in, Your Honor says
2 they've got to find beyond a reasonable doubt
3 whether there's malice. And in his own affidavit,
4 he concluded, We realized we had two options, which
5 were the two options they chose.

6 **MS. SAMPSON:** Again, I would just argue even
7 the discussion about it before they decided on her
8 guilt or innocence, Your Honor, they're muddying up
9 the waters. We can't sit here and clean it up based
10 on what they could have done, what they might have
11 done, what they should have done, what they did or
12 didn't do. I think we've raised that there was a
13 problem, that it -- I argue that it did prejudice my
14 client. We've got the case law that says we are
15 sitting here having to go through the minds of the
16 jurors and the case law says that's exactly --

17 **THE COURT:** Isn't ultimately what we're arguing
18 about, as to whether or not the jury debated and
19 believed that malice aforethought existed?

20 **MS. SAMPSON:** I would argue that they had a
21 basis that malice might have existed, but since they
22 could not find the lesser as some of them wanted to,
23 they just went ahead and found her guilty because
24 they knew she did something wrong.

25 **THE COURT:** But ultimately they had to

1 determine whether or not they believed that malice
2 aforethought existed. I mean, in any case, they had
3 to believe she intentionally stabbed him.

4 **MS. SAMPSON:** If they were following your
5 charge, Your Honor, that would be correct, but I'm
6 arguing that they never once followed your charge or
7 we wouldn't be here to begin with. They never
8 followed --

9 **THE COURT:** Well, how do I know that? I mean,
10 other than jurors -- how is that any different than
11 jurors going back there -- and I'm sure sometimes,
12 you know, we charge them on what they can do with a
13 prior record, you know, I don't know it, but there
14 have been cases where they, I'm sure, have discussed
15 improperly a prior record of a defendant. How -- I
16 mean, I don't go back there and determine by
17 bringing them all in, you know, did y'all properly
18 consider the charge on prior records?

19 **MS. SAMPSON:** I understand that, Your Honor,
20 but that's not the basis of bringing in extraneous
21 evidence. They brought in extraneous evidence and
22 had conversations about that extraneous and
23 incorrect information, some of it incorrect. I
24 don't know how the -- I don't even know what first
25 and second degree charges he's talking about, so I

1 don't know what those were.

2 **THE COURT:** Well, ultimately, though, doesn't
3 that hurt the State and not the defendant?

4 **MS. SAMPSON:** It could, Your Honor, but, again,
5 if they decided, well, she did something wrong, we
6 know she probably did one of these lessers, we can't
7 find her guilty of the lessers; therefore, we're
8 just going to find her guilty of the murder because
9 that's all we've got. Instead of doing the
10 opposite --

11 **THE COURT:** But sitting as the Court, how do I
12 know that that's the way they came to a resolution
13 versus, well, we can find her not guilty on murder?

14 **MS. SAMPSON:** If that's a question in your
15 mind, Your Honor, then I would argue bring them in
16 and ask them.

17 **THE COURT:** Well, I'm still struggling with
18 what -- it's not just the fact that there was
19 extraneous information in front of the jury.
20 There's something else that should trigger, in the
21 Court's opinion, that we've now gone over to the
22 point where they have disregarded the Court's
23 instructions on the elements of the crime charged.

24 **MS. SAMPSON:** I would, again, are -- that they
25 even needed to be charged again. I don't know that

1 recharging was because of this or did that come
2 after, I'm assuming it was before, but I don't even
3 know for sure whether it was before they asked for
4 the new instruction, was it after they got the
5 instruction and then go, oh, well, no, what about
6 this other stuff.

7 You've charged them. They keep disregarding
8 your charge and now you're telling me that, well,
9 they must have followed the charge because they
10 found her guilty.

11 **THE COURT:** I'm not telling you that I'm saying
12 that they must have disregard -- or abate the
13 charge. What I'm saying is what gets to that stand
14 -- I mean, you know, this isn't the first time
15 there's been juror misconduct. What gets us to that
16 point of now I've got to haul jurors back in and
17 start questioning? And I guess your argument is, is
18 that because this extraneous information was in
19 front of the jury, that that alone gets us -- in
20 front of the entire jury, that alone gets us to --

21 **MS. SAMPSON:** It's not just that it was
22 presented, it was discussed at length. It wasn't
23 just something they went, oh, okay, that exists, and
24 then dropped the subject, they clearly discussed it
25 more than just probably -- I don't know how long

1 they discussed it, but they clearly discussed it
2 enough so that by the fourth person on the jury, I
3 knew about it. I mean, I knew from juror number one
4 to juror number four. They all told me about it
5 without me asking -- again, I'm getting into
6 something I'm not supposed to -- I didn't ask them.

7 **THE COURT:** I guess that's my question. Even
8 if they sat back there two days and discussed it, by
9 Mr. Pleasant's own affidavit, what they eventually
10 came back to discussing was the issue of malice.
11 And on only either the second or third vote back
12 there, they found her guilty. And I guess I'm just
13 -- if -- even his affidavit says, this is what we
14 considered, which was the issue of malice
15 aforethought, what does the Court have to -- I guess
16 it's your argument that that's enough -- is that
17 enough for the Court to then come back in and bring
18 jurors in rather than --

19 **MS. SAMPSON:** I would say that it is because
20 all of that discussion was before they even got to
21 malice and all of that is in their head. I can't
22 sit here and piecemeal did they -- just what I said
23 they're doing, which is, well, we know she
24 intentionally did something, we don't have these
25 lessers, therefore, we're finding her guilty of

1 something because she did something wrong, or, did
2 they do as your charge instructs, which they clearly
3 did not, I would argue they did not, but did they do
4 as your charge instructs, which is look at it and
5 say, well, it is malice and, therefore, we're going
6 to find her guilty. They had already had this
7 discussion about the other thing.

8 **THE COURT:** I guess, it's do I bring them back
9 in because the jury says, well, she did something,
10 let's convict? Or, am I bringing them back in
11 because they were considering lesser included
12 elements, which only could have gone to affecting
13 the issue of malice aforethought, if I read the
14 affidavit right?

15 **MS. SAMPSON:** I think it's a combination, Your
16 Honor. I think that we are bringing them to ask
17 them, did they find her guilty actually in their
18 minds of the lesser includeds, but since they could
19 not come out here and say she was guilty of the
20 lesser includeds, go, well it's murder, I can't find
21 her guilty of these lessers, but I can't let her go
22 if she did something wrong; therefore, we're going
23 to find her guilty of murder.

24 They're not following your instructions. We're
25 sitting here saying, well if they followed the

1 instructions and that's what they thought, then they
2 would have found her not guilty. Well, if they
3 followed your instructions, we wouldn't be talking
4 about it. He never would have brought the stuff in.
5 And even if he would have brought it in, Mr.
6 Foreman, would go, oh, no we're only supposed to
7 talk about the law that the judge presented to us.
8 They didn't do any of that. So now we're saying,
9 well then --

10 **THE COURT:** But at best -- on the issue of
11 prejudice to the defendant, at best, the extraneous
12 information weakens the State's argument to the jury
13 that there was, in fact, malice aforethought.

14 **MS. SAMPSON:** Only if they then follow your
15 instructions and say, well they didn't prove malice
16 aforethought, they proved this lesser, so we're not
17 going to find her guilty of anything. That's saying
18 that they disregard your instructions at first,
19 decide and argue and talk about it and then go, oh,
20 now we're going to follow his instructions and find
21 her guilty of malice.

22 **MR. MEADORS:** I think respectfully when she's
23 saying disregarding your instructions, I think she
24 means by bringing in extraneous material, just that
25 -- not to disregard Your Honor's charge on malice

1 because clearly --

2 **MS. SAMPSON:** No, no, I'm not saying that. I'm
3 saying your charges as a whole. Your charge as a
4 whole said, don't discuss it, told them for three
5 days, don't discuss it, don't talk about it and
6 don't deliberate it. Then they go and get extra
7 stuff and bring it in and discuss and deliberate law
8 that you told them not to bring in.

9 **MR. MEADORS:** Your Honor, I think the affidavit
10 again, and I don't -- but, again, this jury, I
11 think, focuses -- they begin to discuss murder
12 primarily when they came in that morning, obviously
13 had a short conversation, came out and Your Honor
14 charged them on murder, malice aforethought. Then
15 he goes in and says their discussion -- he has these
16 concerns about voluntary, again nothing prejudicial
17 whatsoever to the defendant in his discussions.
18 They then realized, based on our understanding of
19 the State's definition of malice, in our common
20 belief she intentionally stabbed someone, we
21 realized we've just got two choices, murder and not
22 guilty. And Your Honor instructed them on
23 reasonable doubt.

24 Obviously, they weighed everything to her
25 benefit I think and again to the detriment to the

1 State and then came back with the verdict which did
2 comply, we think, with Your Honor's jury charge on
3 beyond a reasonable doubt and malice. We just don't
4 think there was prejudice shown to the defendant by
5 the information that came into the jury room.

6 **MS. SAMPSON:** The reason I state what I state,
7 Your Honor, is he says, My shared belief that the
8 action took place without premeditation and without
9 intent to kill, but that her actions happened in the
10 heat of passion is the result of a physical and
11 verbal altercation. In my opinion, many of the
12 jurors agreed, but we all recognized that as jurors,
13 we did not have the discretion to find her guilty of
14 a lesser charge. Then he goes on to say, that they
15 focused on malice.

16 But my problem, that they've already discussed
17 that she's guilty of something. They all agree
18 she's guilty of something. Well, according to him,
19 in my opinion, many agreed that they (sic) were
20 guilty of something, but they didn't have the
21 discretion to find her guilty. If they followed
22 your charge, then they would -- if that's true, then
23 they would have said not guilty and they'd say,
24 well, we can't find her guilty of anything because
25 we don't have that lesser, if they were following

1 your charge.

2 **THE COURT:** I mean, you want me to take that
3 part out, but not consider the last part of his
4 affidavit, which is, We did go back and discuss the
5 definition of malice aforethought and the
6 intentional killing and all?

7 **MS. SAMPSON:** I'm saying that if you do that,
8 then you're ignoring that they've already -- they've
9 already discussed it, already came to some sort of
10 conclusions that she's guilty of something and
11 you're taking out that decision. I do think that
12 they --

13 **THE COURT:** Well, how is it prejudicial to the
14 defendant that they --

15 **MS. SAMPSON:** If they decided that --

16 **THE COURT:** -- that they walk in and say, look,
17 we think she's guilty of something here --

18 **MS. SAMPSON:** But that's not what happened.

19 **THE COURT:** -- and all now we've got to do is
20 figure out is she guilty of murder or not? And I
21 guess I'm not quite sure what, other than the
22 defense's argument that because the extraneous
23 information was brought in, that then the Court does
24 an inquiry of each individual juror, because based
25 on the affidavit that's even presented, it's just --

1 I mean, they discuss malice and if they discuss it,
2 they all come to an agreement.

3 **MS. SAMPSON:** But, again, Your Honor, we don't
4 know if they come to an agreement that she's guilty
5 because of the malice or just guilty because they
6 think she's guilty of something. They've had this
7 discussion. They've decided that she -- some of
8 them, according to him, have decided she's guilty of
9 a lesser, but they can't find her guilty of the
10 lesser. So they have a few more discussions and
11 they talk about it. And maybe they -- maybe some
12 decide, well, okay I'll flip. And maybe some are
13 just sitting there thinking, well, she's guilty of
14 something, so I'm going to find her guilty of murder
15 because I don't have the option of the lesser, I
16 don't have that option, but I know she did something
17 wrong. And we can't get to that point because
18 they've had these discussions.

19 And if Mr. Meadors' interpretation is right,
20 they had these discussions after getting your charge
21 a second time. Because he's right, they did ask for
22 the instructions almost as soon as they started
23 deliberating, they asked for the charge again.

24 **THE COURT:** I'll tell you what, counsel, I will
25 issue a written opinion on this. It may not be

1 anything directly on point in South Carolina at this
2 point. I think that there are some, from what I
3 recall, some well-reasoned Fourth Circuit opinions
4 in probably some surrounding states. And I will
5 compare, carefully compare the standards employed in
6 those jurisdictions with the standard enunciated by
7 our Supreme Court on this review. I am -- I will
8 tell you I'm having a hard time seeing the prejudice
9 to the defendant.

10 **MS. SAMPSON:** Your Honor, the only thing I want
11 to add for the record, I'm just arguing that in
12 totality of the circumstances of not being able to
13 present, and again my fault, a complete -- I feel
14 like, a complete closing on different issues because
15 I didn't know what to talk about, I would
16 respectfully ask you again to look at *Allers v.*
17 *Riley*.

18 **THE COURT:** And, again, I would ask y'all what
19 else would y'all have wanted to argue to the jury?

20 **MS. SAMPSON:** How else would I have argued
21 differently?

22 **THE COURT:** Yes, ma'am.

23 **MS. SAMPSON:** You're asking me that now.

24 **THE COURT:** Well, y'all raised that at the
25 time. And at the time, I think Mr. Meadors was

1 right, there was this, what the Court perceived to
2 be, this going down the road of arguing involuntary
3 or something other than what was charged. Because
4 as the Court understands it, based upon the
5 defense's own request in terms of what was charged
6 to the jury, you could argue that under the elements
7 of murder, that this isn't murder because X, Y and
8 Z.

9 **MS. SAMPSON:** Right. Your Honor, if I may in
10 answer to your question. The thing that he objected
11 to was that I had given an analogy to when I had
12 given a car wreck, I called it an accident, but when
13 you had asked me, I had all of these other
14 explanations as to what had happened. If I would
15 have been able to go further in that, I would have
16 said, as Ms. Smith had said, I stabbed him, but she
17 had all of these explanations as to what had
18 happened. It wasn't just that she had done it --
19 actually, she didn't say the words, I stabbed him,
20 she said I did it. And I would have gone into all
21 of that.

22 **THE COURT:** As I recall, there was no charge on
23 voluntary, involuntary, self-defense, accident,
24 anything else and that was at the defense's request.

25 **MS. SAMPSON:** But I still can argue what the

1 evidence showed, that she didn't do murder. And I
2 just felt like, again, that I was limited. And that
3 explanation, it just would have been, as I said, I
4 called something an accident when you first asked
5 me --

6 **THE COURT:** I did it, but.

7 **MS. SAMPSON:** Sort -- maybe, Your Honor, or
8 there are these reasons why it's not murder. It's
9 something, but it's not murder. And I felt like I
10 was hamstrung in being able to present it because I
11 didn't know what wording or what phrase or what
12 anything I would have said that would have brought
13 about the charges and then I thought it would have
14 been left --

15 **THE COURT:** Well, I guess that brings up a
16 unique position we're in because your argument is
17 that you were prejudiced by not being allowed to
18 continue on arguing, which may have triggered an
19 involuntary manslaughter charge to the jury or
20 self-defense or whatever around what you were
21 arguing. Arguably, the prejudice would have been
22 that the defendant would have gotten a lesser
23 included charge and/or a self-defense charge, which
24 you all are saying that you didn't want, but you
25 would have been prejudiced by it, and also asking

1 the Court to bring the jurors back in or give her a
2 new trial because the jurors wanted to consider,
3 based on the defense's view of this, a lesser
4 included.

5 **MS. SAMPSON:** Well, Your Honor, my point is
6 about the charges, I didn't know what I would have
7 said -- which charge it would have been. You're
8 telling me now it probably would have only been
9 involuntary or accident, or for all I know, it would
10 have brought up voluntary, I didn't know. And
11 whatever I said, I was limited. And I did not know,
12 based on what you said, you would have allowed me to
13 come back and argue. They would have, to me, gotten
14 a charge with no explanation from the attorneys on
15 either side why it did or did not meet those factors
16 as far as those charges. And there's no way for me
17 to have known that you would have let me gotten back
18 up and say something else.

19 But taking all of that into consideration and
20 then what they did do as far as bringing in the
21 extraneous information, I would just again argue
22 that she should get a new trial based on all of
23 that, Your Honor.

24 **THE COURT:** Mr. Meadors, anything else that you
25 wanted to add?

1 **MR. MEADORS:** No, sir.

2 **THE COURT:** Okay. I'll carefully consider the
3 standards on these issues employed by the Fourth
4 Circuit in some of our surrounding states. I just
5 want to make sure that it is close enough,
6 analogy-wise, to the standard that our own Supreme
7 Court has imposed and issue an order, a written
8 order, for both sides on that so that the record is
9 complete.

10 **MR. MEADORS:** Judge, just on that last point of
11 talk, I know this wasn't a point of this hearing so
12 I've been careful, but, obviously, I think she could
13 argue that the elements weren't met, but I think my
14 objection was, and she said just a minute ago, we're
15 going to say, well, it's something else, but not
16 this. Well, I think that's, respectfully, one of
17 the objections I have of giving examples of
18 something else it couldn't be when they chose just
19 to go for this one thing and that's different from
20 arguing the elements themselves, just saying it wasn't
21 malicious, and that was my objection. That's all.
22 Thank you.

23 **THE COURT:** I understand the defense's
24 continued point about that. And I'll make sure
25 y'all have a written order so the record is complete

1 on my findings on this issue as well. Thank you,
2 counsel.

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END OF PROCEEDINGS

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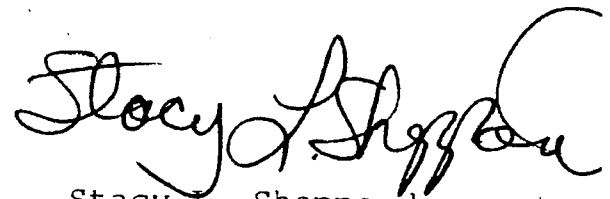
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Richland County, South Carolina, on the 15th of August, 2005.

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

February 27, 2007


Stacy L. Sheppard
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
The State of South Carolina	)	Indictment Number: 03-GS-40-3439
	)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANT'S MOTION FOR A NEW
	)	TRIAL
Sharon Smith,	)	
Defendant.	)	

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TO: THE HONORABLE JUDGE REGINALD I. LLOYD
Cc: John Meadors, Deputy Solicitor

The Defendant, Sharon Smith, moves that the Court for order a new trial. Specifically, the Defendant moves the court to find invalid the guilty verdict rendered by the jury on June 23, 2005, on the basis that extraneous prejudicial information was improperly brought to the jury's attention during their deliberation in violation of the Defendant's right to a fair trial by a panel of impartial and indifferent jurors granted to the Defendant by the Sixth and Fourteenth Amendments

FACTUAL BACKGROUND

On June 20, 2005, the above-referenced case was called to trial. The Defendant was tried for murder. During the trial, the State, by and through Deputy Solicitor John Meadors, requested that the Honorable Reginald I. Lloyd charge the jury on the law of voluntary manslaughter. The Defendant, by and through her attorney, April Sampson, opposed this request. Furthermore, the Defendant requested that, if the Honorable Judge Lloyd granted the State's request to charge on voluntary manslaughter, he also charge the jury on involuntary manslaughter and accident. After much argument and deliberation,

the Honorable Judge Lloyd denied the State's request and ruled that the jury would only be charged on the law of murder. Both sides gave closing arguments, followed by the Honorable Judge Lloyd's jury instructions, on June 22, 2005. Due to the lateness of the day, the Honorable Judge Lloyd gave the jury the option of deliberating that evening, or returning in the morning to deliberate. The jury decided to return in the morning to deliberate. On June 23, 2005, the jury found the Defendant guilty of murder and she was sentenced to forty-eight years in the South Carolina Department of Corrections.

On June 24, 2005, the Defendant's attorney spoke with some of the jury members, who had been dismissed from service for the week, by telephone. During these conversations, it became known to Mrs. Sampson that one of the jurors had done independent legal research and brought the results of his research to the jury deliberation room. Specifically, juror #145, Mark Pleasant, went on the Internet after being dismissed for the day on June 22, 2005, to research the law on voluntary and involuntary manslaughter, and first and second degree murder, and he printed out the definitions of each. On June 23, 2005, the jury requested to hear the charge of murder again. After being read the charge again by the Honorable Judge Lloyd, Mr. Pleasant discussed his problems with the definition his belief that the State had not appropriately charged the Defendant. He showed the printouts he had produced from the Internet to the other jurors, and the jury discussed all of the definitions, as well as whether or not the Defendant was guilty of these charges instead of murder. Specifically, the jury discussed how the Defendant did not act with premeditation, but that her acts were intentional and done in the heat of passion. Mrs. Sampson was told by 4 jurors that they discussed these other definitions in detail, and were confused by them. After discussing their views on

this, some of the jurors agreed that the Defendant was guilty of the lesser charges. However, since they could not find her guilty of the lesser charges, they agreed to find her guilty of murder. The Defendant has attached an affidavit from Mr. Pleasant as proof of the Defendant's allegations of misconduct.

ARGUMENT

Because extraneous prejudicial information was improperly brought to the jury's attention during their deliberation in this case and resulted in prejudice to the Defendant, the verdict is invalid and the Defendant should be granted a new trial.

The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors. State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998) (citing Estelle v. Williams, 425 U.S. 501, 96 S.Ct. 1691, 48 L.Ed.2d 126 (1976), Irvin v. Dowd, 366 U.S. 717, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961)); *see also* S.C. Const. art. I, § 3 & 14. It has been established by South Carolina courts as well as other courts that it is unquestionable misconduct for a juror to conduct independent legal research. *See* Matters v. State, 120 Neb. 404, 232 N.W. 781 (1930); *see also* State v. Harris, 340 S.C. 59, 530 S.E.2d 626 (2000). Furthermore, Rule 606(b), SCRE allows juror testimony to be admitted to prove external prejudicial information or improper outside influence. *See* State v. Hunter, 320 S.C. 85, 463 S.E.2d 314 (1995). In this case, it is clear that misconduct occurred when Mr. Pleasant went on the Internet on his own and researched the law on various charges that were not presented to the jury for their consideration. The Defendant has presented two affidavits as evidence of the misconduct. In cases such as Matters and its progeny, the jurors had looked up definitions in the dictionary, and the courts continuously ruled that

such action was misconduct. Therefore, the actions taken by Mr. Pleasant of looking up legal definitions on the Internet were clearly improper.

Mr. Pleasant's action in going on the Internet to research the law in the case was clearly misconduct, which he compounded by disseminating the information to the other jurors. Mr. Pleasant presented to all of the jurors definitions of charges that weren't even before the jury and some that don't even exist in South Carolina. The Defendant was prejudiced because not only was the jury presented with this evidence, but they discussed it and were influenced by its dissemination. The Court has ruled that when determining whether outside influences have affected the jury, relevant factors include (1) the number of jurors exposed, (2) the weight of the evidence properly before the jury, and (3) the likelihood that curative measures were effective in reducing the prejudice. Kelly, 331 S.C. at 141-42, 502 S.E.2d at 104. External influence on a jury involves situations where jurors receive information during deliberations from some outside source. See State v. Robinson, 336 N.C. 78, 443 S.E.2d 306, (1994) (external influences defined as information dealing with the defendant or the case which is being tried, which information reaches a juror without being introduced into evidence). It is clear that this case involves external influences as the information was not introduced at trial and was obtained by the juror over the Internet. Furthermore, all of the jurors were exposed to the extraneous evidence, as it was discussed during their deliberation. No curative measures were given in this case, as the only charge given to the jury was that of murder. The Honorable Judge Lloyd instructed the jury on two separate occasions what the law was, the jury had been told on numerous occasions that the only law they were to consider was that given by the Honorable Judge Lloyd, yet Mr. Pleasant still did his own research and

the jury still discussed the erroneous and improper information. Based on all of this, it is clear that error occurred.

Lastly, having shown that misconduct occurred, the verdict should be dismissed and the Defendant granted a new trial because she was clearly prejudiced by the misconduct. Courts have almost unanimously found no prejudice when the extraneous evidence presented to the jury did not vary from the definition or instruction given by the trial court. See, e.g., State v. Harris, 340 S.C. 59, 530 S.E.2d 626 (2000); State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998); State v. Messenger, 221 Mich.App 171, 561 N.W.2d 463 (1997). However, when the extraneous evidence was different from the information properly before the jury, the courts have granted new trials. See Harris 530 S.E.2d 626 at 628, citing Allers v. Riley, 273 Mont. 1, 901 P.2d 600 (1995) and Jordan v. Brantley, 589 So.2d 680 (Ala.1991). In this case, not only was the jury presented with evidence that had not been properly introduced to them, they were also presented with the definitions of first and second degree murder, which we do not even have in South Carolina. It is clear from the conversations had between the jurors and Mrs. Sampson and the affidavit presented to this Court that not only was the extraneous information discussed and considered by the jury, but also some of the jurors relied on the information to come to their decision. At least some of the jurors, including Juror Pleasant, discussed the definition of voluntary manslaughter and felt that it was the appropriate charge. However, since they could not find her guilty of that, they agreed to find her guilty as charged because that felt she did intentionally stab the victim. Had they not known the definition of the lesser charges or discussed at all whether she was guilty of those charges, they may have come to a different decision. This is a case of first impression in

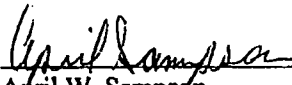
South Carolina, as there is no case directly on point where the jurors have discussed definitions of lesser offenses and charges that do not even exist in South Carolina. However, in Allers v. Riley, 273 Mont. 1, 901 P.2d 600 (1995), cited by our Court in Harris, 530 S.E.2d 626 at 628, the Court stated "the prejudice to a party occasioned by the jurors taking it upon themselves to redefine a term or act in a critical jury instruction from their review of extraneous materials can hardly be measured...The only cure for such mischief and for the potential prejudice and injury resulting therefrom is to grant a new trial." *Id.*, at 605. In this case, the jurors not only had their own erroneous definition of murder, they had definitions of lesser charges that were not even before them for consideration.

CONCLUSION

The Court should order verdict of the jury invalid and grant the Defendant a new trial.

IT IS SO MOVED.

Respectfully Submitted,


April W. Sampson
Attorney for Defendant
Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This 8th day of July, 2005

AFFIDAVIT OF MARK PLEASANT

As a juror for the trial of the State of South Carolina vs. Sharon Smith, the following is my account of the process that was followed to arrive at our verdict:

After hearing all of the testimony and closing arguments, it was agreed that our first step would be to take a vote without discussion to determine our initial collective opinions on the charge of murder. The majority of the jury felt that Ms. Smith was guilty, a lesser number of jurors had not yet decided on the charge, and few of the jurors felt that she was not guilty.

Following the initial vote, the forelady asked each juror to share their views and opinions on the testimony and evidence. In my opinion, the majority of the jury did not think Ms. Smith intended to kill the victim. However, most of the jury did feel that she deliberately stabbed the victim. The ensuing discussion focused on Ms. Smith's account of what took place and the apparent inconsistencies with her story and the State's evidence and testimony.

As we began to focus on the charge of murder, there were several questions regarding the legal definition of murder and the term of malice aforethought. The jury requested that the judge again read the full charge to clarify the definition.

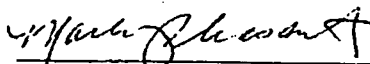
As we continued our deliberation, I expressed my personal concerns regarding the appropriateness of the murder charge. I shared several definitions that I printed from the internet regarding first degree and second degree murder, voluntary and involuntary manslaughter. I shared my belief that the action took place without premeditation and without the intent to kill, but that her actions happened in the heat of passion as the result of a physical and verbal altercation. In my opinion, many of the jurors agreed, but we all recognized that as jurors we did not have discretion to find her guilty of a lesser charge.

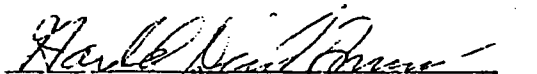
Our discussion ultimately focused on the definition of malice. Based on our understanding of the State's definition of malice and our common believe that she intentionally stabbed the victim, all of the jurors felt that we had no alternative but to find Ms. Smith guilty. On either the second or third vote, we all agreed to the charge of murder.

SWORN TO AND SUBSCRIBED BEFORE ME

Respectfully Submitted

THIS 1 day of JULY, 2005


Mark Pleasant
Juror #145


Notary Public for South Carolina
My Commission Expires: _____

Date: 7/11, 2005

My Commission Expires May 2, 2016

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
GENERAL SESSIONS

CRIMINAL
JUDGMENT IN A CIVIL CASE

CASE NO. 03-06-40-3439

STATE

SHARON SMITH

PLAINTIFF(S)

DEFENDANT(S)

BOOK 197 PAGE 776

CHECK ONE

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

MOTION FOR NEW TRIAL DENIED.

Dated at COLUMBIA, South Carolina, this 2 day of FEBRUARY, 2006.

[Signature]
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

LUCK CAMPBELL

APRIL SAMPSON

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

SCRPC APP-24

FORM 4 (Revised 5/00)

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Reginald I. Lloyd, Circuit Court Judge

Indictment Number: 2003GS403439

The State,.....Respondent,

v.

Sharon L. Smith,.....Appellant.

AMENDED NOTICE OF APPEAL

This Amended Notice of Appeal is filed to correct certain information in both earlier filed Notices; each of which contained an incorrect indictment number and an incorrect sentence date.

Sharon L. Smith appeals her conviction and sentence in this case. The sentence was imposed by the Honorable Reginald I. Lloyd on June 23, 2005. On July 1, 2005 Defense counsel filed a Motion for a New Trial. Counsels argued this matter in open court before Judge Reginald I. Lloyd on August 15, 2005. A Form 4 was filed from the Honorable Reginald I. Lloyd on February 2, 2006 denying the motion.

February 13, 2006



April Sampson
Attorney for Defendant
Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Other Counsel of Record:
Deputy Solicitor John Meadors
Office of the Solicitor, Fifth Judicial Circuit
Attorney for the Respondent

RECEIVED
FEB 14 2006
SC Court of Appeals
FILED
FEB 14 AM 11:20
SCOTT

The South Carolina Court of Appeals

The State,

Respondent,

v.

Sharon L. Smith,

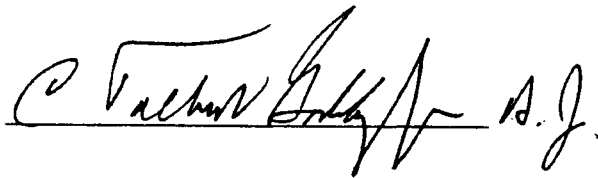
Appellant.

The Honorable Reginald I. Lloyd
Richland County
Trial Court Case No. 2003-GS-40-03439

ORDER

On June 30, 2005, Appellant Sharon L. Smith appealed her murder conviction. The day after filing her appeal, Appellant filed a motion for a new trial. The above-captioned appeal is from the denial of her motion for a new trial. However, because our court already assumed jurisdiction over the appeal from Appellant's murder conviction, the trial court did not have jurisdiction to entertain a motion for a new trial. See Rule 205, SCACR. Accordingly, the order denying the motion is a nullity, and the above-captioned appeal is dismissed.

AND IT IS SO ORDERED.

 C. Victor Bullock, Jr.

Columbia, South Carolina

May 5, 2008

5/5/08 dlp

The South Carolina Court of Appeals

The State,

Respondent,

v.

Sharon L. Smith,

Appellant.

The Honorable Reginald I. Lloyd
Richland County
Trial Court Case No. 2003-GS-40-03439

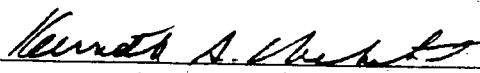
REMITTITUR

No Petition for Reinstatement having been filed in the above matter since issuance of this Court's Order dated May 5, 2008,

IT IS SO ORDERED that the above appeal be and hereby is remitted to the Clerk of Court for Richland County.

KAYE G. HEARN, CHIEF JUDGE

BY


Clerk

Columbia, South Carolina

May 27, 2008

Original to: The Honorable Barbara Scott

cc: Deputy Chief Appellate Defender for Capital Appeals Robert M. Dudek
Assistant Attorney General S. Creighton Waters
The Honorable Reginald I. Lloyd

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Sharon Smith, Inmate # 0030885
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Camille Griffin Graham Correctional Institution
2. Name and location of Court which imposed sentence Richland County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2003GS4003439
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 23, 2005- 48 years

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. South Carolina Court of Appeals
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. Denied
- iii. _____
- (c) the date of each such result:
- i. May 22, 2007
- ii. May 5, 2008
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2007-UP250
- ii. Unknown
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____

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

- (a) See Memo to Follow
- (b) _____
- (c) _____

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

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

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. Motion For A New Trial
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Richland County General Sessions
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. Denied

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. February 2, 2006

ii. _____

iii. _____

iv. _____

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

i. Unknown

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Ineffective Assistance of Counsel is an issue for Post-Conviction Relief.

(b) _____

- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? No
 - (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
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. David W. Farrell, 2229 Bull Street, Columbia, South Carolina 29201
 - ii. April Sampson, Law Office of Richard J. Breibart, LLC, Post Office Box 310, Lexington, South Carolina 29071
 - iii. Robert M. Dudek- South Carolina Commission on Indigent Defense- Appellate Defense Division- Post Office Box 11433, Columbia, South Carolina 29211-1433
 - (b) the proceedings at which each such attorney represented you:
 - i. Bond
 - ii. Trial; Motion for a New Trial
 - iii. Appeal
19. State clearly the relief you seek in filing this application:
Sentence vacated and a new trial granted/ordered
20. Are you now under sentence from any other court that you have not challenged?
No.

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, Sharon L. Smith, 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.

Sharon L. Smith

SWORN to and subscribed before me this 2nd
day of March, 2009.

[Signature] (L.S.)
Notary Public

My Commission Expires: 9-25-2016

JEANETTE W. McBRIDE
C.C.P. & G.S.

2009 MAR -6 PM 12:59

RICHLAND COUNTY
CLERK

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Smith, Sharon, #0030885,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2009CP4001565

RETURN AND MOTION TO
DISMISS

In response to the post-conviction relief application filed March 6, 2009, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. At trial, the Applicant was represented by April Sampson and Debra Ahrens of the Public Defender's Office. On June 23, 2005, following trial by jury, the Honorable Reginald I. Lloyd sentenced the Applicant to the following:

Case	Number	Charge	Offense	Disposition
11-03	2003GS4003439	0116 16-03-0020 * 30 - L/D * Murder / Murder (victim: Charles Gibson)		38 No
NOTES				TOTAL: POSSIBLE:

The Applicant filed a timely notice of appeal on June 30, 2005. Following an Anders brief, the South Carolina Court of Appeals dismissed the Applicant's direct appeal, State v.

Sharon Smith, Op. No. 2007-UP-250 (S.C. Court of Appeals, filed May 22, 2007, remittitur date July 12, 2007).¹ Anders v. California, 386 U.S. 738 (1967).

Simultaneously, the Applicant pursued a motion for new trial at the circuit level. The trial court conducted a hearing on August 15, 2005 and then denied the motion by written order on February 2, 2006. The Applicant appealed the denial of the motion for new trial by filing a notice of appeal the next day. The South Carolina Court of Appeals dismissed the "2nd appeal" because it was a nullity:

The South Carolina Court of Appeals

The State,

Respondent,

v.

Sharon L. Smith,

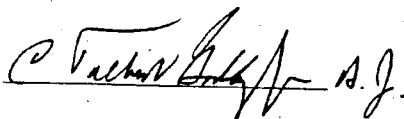
Appellant.

The Honorable Reginald I. Lloyd
Richland County
Trial Court Case No. 2003-GS-40-03439

ORDER

On June 30, 2005, Appellant Sharon L. Smith appealed her murder conviction. The day after filing her appeal, Appellant filed a motion for a new trial. The above-captioned appeal is from the denial of her motion for a new trial. However, because our court already assumed jurisdiction over the appeal from Appellant's murder conviction, the trial court did not have jurisdiction to entertain a motion for a new trial. See Rule 205, SCACR. Accordingly, the order denying the motion is a nullity, and the above-captioned appeal is dismissed.

AND IT IS SO ORDERED.

 C. Tucker Ely, Jr.

Columbia, South Carolina

May 5, 2008

¹ The dismissal by the South Carolina Court of Appeals references a *pro se* response to the Anders brief.

The remittitur for the "2nd" appeal [from the nullity] is dated May 27, 2008.

The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

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

- (a) Ineffective Assistance of Counsel
- (b)
- (c)

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

- (a) See Memo to Follow
- (b) _____
- (c) _____

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

Sentence vacated and a new trial granted/ordered

III.

The 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). The Applicant was convicted of the offense(s) she challenges in this Application on June 23, 2005 and the remittitur was sent to the lower court, following the Applicant's appeal, on July 12, 2007. The Applicant was therefore required to file her application before July 14, 2008.² **This Application was filed on March 6, 2009, which was 235 days beyond the time that the statutory filing period had expired.**

The Respondent submits that because the South Carolina Court of Appeals found the "2nd" appeal to be a "nullity," the statute of limitations is calculated from the appeal that actually exists, i.e. the July 12, 2007 date. The Respondent submits that allowing the Applicant to, in essence, renew the statute of limitations by pursuing something that does not exist [a nullity] would defeat the very purpose of the statute of limitations.

[S]tatutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system. Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct.App.1996) (citing C.S.J. Limitations of Actions § 2 (1989)).

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of

² July 12, 2008 is a Saturday. Rule 6(a), SCRCP

limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation. *Id.*

Pelzer v. State, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (S.C. App. Ct. 2008).

In response to any attempted claim that the Applicant is entitled to equitable relief from the statute of limitations, the Respondent submits that equitable tolling for the purposes of S.C. Code § 17-27-45(A) has not been approved; and there are no allegations of any wrong doing by the State to warrant the extraordinary remedy of equitable tolling. *See Pelzer* at 520 – 521.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). 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.” 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.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired.

Respectfully submitted,

HENRY D. MCMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

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

By:


Attorneys for the Respondents

July 2, 2009

1 State of South Carolina)

In the Court
Of Common Pleas

2 County of Richland)

3 Docket No. 2009-CP-40-0156

4
5
6 Sharon Smith,)
Applicant)

7
8 vs.)

Transcript of Record

9
10 State of South Carolina,)
Respondent.)

11
12 October 21, 2010
13 Columbia, South Carolina

14
15 B E F O R E:

16 The Honorable L. Casey Manning, Judge.

17
18 A P P E A R A N C E S:

19 Maura Dawson, Esquire
20 For the Applicant

21 Brian T. Petrano, Assistant Attorney General
22 For the Respondent

23
24 Reported by: Crystal Holmes
25 Transcribed by Brenda J. Sigwald, Circuit Court
P.O. Box 206, Jackson, South Carolina 29831

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2009-CP-400-1565

Sharon Smith, 030885

Applicant,

vs

State of South Carolina,

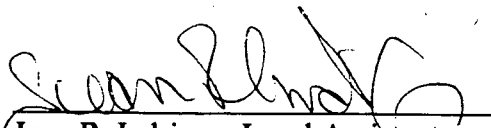
Respondent.

)
)
)
) 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:

Maura Dawson, Esquire
Post Office Box 310
Lexington, South Carolina 29071

DATED this 6th day of July, 2009.



Jean R. Indriago, Legal Assistant
For Respondent

I N D E X

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Cross-Examination by Mr. Petrano.....	20
April Sampson	
Direct Examination by Ms. Dawson.....	27
Certificate of Reporter.....	70

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>

(There were no exhibits entered
during this hearing.)

1 **THE COURT:** All right, sir.

2 **MR. PETRANO:** Thank you, Your Honor. This is
3 Ms. Sharon Smith, 2009-CP-40-01565. It was a PCR
4 application filed March 6th, 2009. It's a Richland County
5 case.

6 Your Honor, just first off, I saw you opening your
7 packet. You're going to see two remittiturs in there. I
8 just want to explain that.

9 **THE COURT:** Yes, sir.

10 **MR. PETRANO:** There's somewhat of an awkward
11 procedural history. They filed a notice of appeal -- well,
12 first of all, this was a jury trial in front of Judge
13 Lloyd, June 23rd, 2005. It was a murder case. She got
14 thirty-eight years. They filed a notice of appeal right
15 after the trial. There was an Ander's Brief. The
16 applicant filed as a pro se; but while that's pending,
17 there's some issues regarding the jury and potential
18 behavior. There's a motion for a new trial. That is held.
19 That is -- there's an order from Judge Lloyd denying that.
20 They then appealed that.

21 Well, the Court of Appeals says, No, we're not
22 accepting that appeal because that never actually happened.
23 That motion for a new trial was annulity, that's their word
24 annulity.

25 **THE COURT:** Because an appeal had already been

1 filed?

2 MR. PETRANO: The appellate court had jurisdiction.

3 THE COURT: All right.

4 MR. PETRANO: We're talking one ball, someone's got
5 it, you can't split it.

6 THE COURT: Yeah.

7 MR. PETRANO: So in your packet, you'll also see a
8 return motion to dismiss and an additional order of
9 dismissal signed by Judge Barber in his capacity acting as
10 Chief Admin Judge for Common Pleas. When I got the app,
11 all I saw was the first remittitur and the PCR application
12 and I'm like, Oh, this is untimely, I'll move to dismiss
13 it, the COD gets -- what happens is ultimately, it's
14 explained that there was a second remittitur. The State's
15 position was, Well, that didn't really matter. That's by
16 definition annulity, the application is still untimely.
17 Judge Barber denied that and ordered that this case go
18 forward.

19 I'm not renewing that, he's made his ruling. I
20 don't think you could overrule him if you wanted to. I
21 think that would be improper. But anyways, just trying to
22 explain all that. Ultimately, there was an Anders Opinion,
23 that's 2007-UV-250. That was remitted on.

24 THE COURT: Bob --

25 MR. PETRANO: I believe --

1 MS. DAWSON: Yes, Your Honor.

2 THE COURT: All right.

3 MR. PETRANO: And I think Savitz did the brief for
4 the appeal that never happened, the second one. That was
5 on July 12, 2007.

6 In your box, you'll have the transcript from the
7 trial, you'll have the Ander's brief, the pro se brief and
8 the Ander's Opinion and remittitur from the first appeal.
9 You will also have the transcript from the motion for a new
10 trial, the brief from trial counsel to support that motion,
11 the affidavit from the jury foreman -- no, the juror,
12 Mr. Pleasant -- the juror, Mr. Pleasant, who was ultimately
13 the source of the potential problem.

14 THE COURT: Okay.

15 MR. PETRANO: And then an order denying that motion
16 for a new trial and then the brief and the remittitur for
17 that second appeal; and then, of course, the PCR pleadings
18 that I just referenced, the COD and whatnot.

19 I just wanted to explain that it is the State's
20 position, ultimately, that the juror affidavit is improper,
21 that it should not be submitted under Rule 606(b), but not
22 trying to make the argument, I just wanted to explain it.
23 I got that from the clerk's file a couple of hours ago, so
24 it is properly before the Court. I just didn't want the
25 Court to think that I submitted it. I'm just trying to

1 explain everything. That's what's in your box and with
2 that we'll turn it over to Ms. Maura Dawson. Maura Dawson
3 soon is the Counsel of Record. Thank you.

4 THE COURT: Yes, ma'am?

5 MS. DAWSON: Thank you, Your Honor, may it please
6 the Court. I would also like to add to what Mr. Petrano
7 was just saying. We both have filed a memorandum in
8 support of the application for Post Conviction Relief.
9 Your Honor, I think has a copy of that with the other
10 material. Included in that memorandum is not only case law
11 that we cited, but also a copy of the affidavit that
12 Mr. Petrano has mentioned as well as a copy of the
13 affidavit that --

14 THE COURT: Mark Pleasant, Juror 145.

15 MS. DAWSON: Yes, sir.

16 THE COURT: Okay.

17 MS. DAWSON: As well as Hope Derrick who was the
18 forewoman of that jury.

19 THE COURT: All right.

20 MS. DAWSON: Your Honor, at this time --

21 THE COURT: Now, before we get started, I think we
22 need the place on the record any waivers. You and
23 Ms. Sampson worked together for Richard Breibart over in
24 Lexington County in or around -- is she's specially
25 waiving -- I'm not saying there is a conflict, but it could

1 be. It looks like it might be a potential conflict. It's
2 her right to waive it or not waive it, so...

3 MS. DAWSON: Yes, Your Honor.

4 THE COURT: If you'd come around. You're Sharon
5 Smith; is that correct.

6 MS. SMITH: Yes, Your Honor. Come around Ms. Smith
7 and have a seat.

8 THE COURT: And I think Ms. Sampson's
9 representation predated her employment with Richard
10 Breibart.

11 MS. DAWSON: Yes, Your Honor.

12 THE COURT: That would be my observation just from
13 being here so long. So there's no misunderstandings, no
14 mistake, I will let you examine Ms. Smith to see whether or
15 not she, in fact, wants to waive any potential -- I say --
16 I emphasize the word Potential conflict because I know as
17 the trial judge, Ms. Smith didn't know about it, but for
18 about seventeen years that -- Ms. Sampson was with the
19 public defender's office at the time she represented you.
20 She subsequently took a job with Richard J. Breibart over
21 in Lexington where the two -- both of them worked for a
22 period of time, three or four years.

23 Yes, ma'am?

24 MS. DAWSON: Yes, Your Honor.

25 Ms. Smith, could you please state your name for the

1 record.

2 THE COURT: Let me ask you to raise your right
3 hand, first.

4 SHARON SMITH,
5 having been duly sworn, testified as follows:

6 THE COURT: Thank you. Go ahead.

7 MS. DAWSON: Ms. Smith, when we met in February of
8 2009, were you informed that April Sampson and I worked for
9 the law office of Richard J. Breibart?

10 MS. SMITH: Yes, ma'am.

11 MS. DAWSON: And at that time, did we discuss that
12 there was a potential conflict of interest and that
13 conflict would be that we currently worked together and she
14 had previously represented you at your trial.

15 MS. SMITH: Yes, ma'am.

16 MS. DAWSON: And at that time did you waive your
17 potential conflict of interest?

18 MS. SMITH: Yes, ma'am.

19 MS. DAWSON: And have we talked about that again
20 today?

21 MS. SMITH: Yes.

22 MS. DAWSON: And is it still your position that you
23 waive your potential conflict of interest?

24 MS. SMITH: Yes, ma'am.

25 MS. DAWSON: Thank you.

1 THE COURT: All right. Anything else on this
2 point?

3 MR. PETRANO: No.

4 THE COURT: Now, this is your decision and your
5 decision alone? It's your decision?

6 MS. SMITH: No, sir.

7 THE COURT: I'm going to ask you to take a seat for
8 a minute. Let me see Mr. Petrano outside half a second.
9 We'll be right back -- unrelated to this case.

10 MS. DAWSON: Thank you, Your Honor.

11 (WHEREUPON a recess was observed.)

12 THE COURT: So you may proceed.

13 MS. DAWSON: Thank you, Your Honor. We would like
14 to call Sharon Smith to the stand.

15 THE COURT: Come around, Ms. Smith.

16 SHARON SMITH,

17 having been duly sworn, testified as follows:

18 THE COURT: All right. Please take your seat,
19 Ms. Smith. Tell us your full name and spell your last name
20 for the record.

21 THE WITNESS: Sharon Smith, S-M-I-T-H.

22 MS. DAWSON: Thank you, Your Honor. May it please
23 the Court?

24 THE COURT: Yes, ma'am.

25 ///

Sharon Smith - Direct Examination by Ms. Dawson

DIRECT EXAMINATION

1
2 BY MS. DAWSON:

3 Q Ms. Smith, I'm going to stand over here so I know
4 if I can hear you Mr. Petrano and the judge can hear you,
5 but if you can't hear me, please let me know, okay?

6 A Yes.

7 Q Ms. Smith, can you please tell us where do you
8 currently reside?

9 A At Camille Griffin Graham.

10 Q And what -- do you have any job duties there, any
11 responsibilities?

12 A Presently I'm a chaplain's clerk.

13 Q And do you participate in any programs at Camille
14 Griffin?

15 A Yes, ma'am. Participate in praise dancing, the
16 choir, church services, and we have -- we have a lot of
17 programs --

18 Q Okay.

19 A -- and the chaplain's office is over them, so I
20 attend most of them.

21 Q And you've earned certifications from some of these
22 programs?

23 A Yes, ma'am. Recently, we got the Hospice Program
24 and we just got certified on Tuesday.

25 Q Okay. Congratulations.

Sharon Smith - Direct Examination by Ms. Dawson

1 A Thank you.

2 Q Have you had any disciplinary infractions since
3 you've been in Camille Griffin?

4 A No, ma'am.

5 Q Okay. Now, we're going to go back in time now and
6 get a little bit of your background. Can you tell me what
7 sentence are you currently serving?

8 A I received a forty-eight year sentence for murder.

9 Q Thank you. And who was your trial attorney at the
10 time of your case?

11 A April Sampson.

12 Q And is she in the courtroom today?

13 A Yes, ma'am.

14 Q Okay. And was April the -- Ms. Sampson the lead
15 counsel of your case?

16 A Yes, ma'am.

17 Q Was anyone else helping her in the case?

18 A Yes, ma'am.

19 Q Do you remember who that was?

20 A I know her name was Ms. Debra.

21 Q Okay. But you primarily worked with Ms. Sampson in
22 your case?

23 A Yes, ma'am.

24 Q Okay. Thank you. How many times did you meet with
25 Ms. Sampson prior to your trial?

Sharon Smith - Direct Examination by Ms. Dawson

1 A I would say maybe about four times.

2 Q And do you remember what your meeting -- what
3 happened in your meetings?

4 A I'm sorry, could you repeat that?

5 Q Yes, ma'am. What happened when you met with
6 Ms. Sampson? Could you tell us a little bit about those
7 meetings?

8 A Well, the first time I met with Ms. Sampson, she
9 wanted us to go -- she asked me to tell her what happened.

10 Q Okay.

11 A The second time I met with her she was kind of --
12 gotten some information back and she kind of went over some
13 of these things, but she was pregnant at the time. So then
14 she went out on a leave I believe after that.

15 Q And when you say she went over some information
16 with you, does -- do you understand what the term discovery
17 is?

18 A Yes, ma'am.

19 Q Discovery from your case?

20 A (Witness nodded head.)

21 Q Was that the discovery that you were going over in
22 your case?

23 A Yes, ma'am. Because the first time she hadn't
24 gotten the discovery yet.

25 Q Okay. Thank you. And when was the next time you

Sharon Smith - Direct Examination by Ms. Dawson

1 met with Ms. Sampson?

2 A Then the next times was closer when I was getting
3 ready to come to trial.

4 Q And at that point, did you learn anything more
5 about your case?

6 A No, not really.

7 Q Okay. And then you met with her one final time
8 before your case to prepare?

9 A Yes, ma'am.

10 Q Did you go over what your testimony was going to be
11 in your case?

12 A No, ma'am. Ms. Sampson said she didn't want to do
13 that because it seems like she was preparing me on what to
14 say. She don't like to do that with clients.

15 Q Okay. And were there any particular issues with
16 your case that you talked to her about when you were
17 talking about what happened?

18 A Yes, ma'am. I had asked her to talk with the
19 neighbors as far as the -- excuse me -- I had asked her to
20 speak with the neighbors as far as the conduct of Charles,
21 the victim, and I had asked her when she had gotten the
22 discovery, far as like the stab wounds and see if she could
23 get an expert about that to, you know, to prove, you know,
24 how it was done.

25 Q Now, let's go back to your neighbors for a moment.

Sharon Smith - Direct Examination by Ms. Dawson

1 What did you think your neighbors could have told

2 Ms. Sampson about your case?

3 A Well, I know I had two neighbors in particular that
4 I was speaking of. One could speak of the conduct when I
5 pulled up to my home that day and, you know, the conduct of
6 Mr. Gibson and then my other neighbor, he was at home, you
7 know during the times when, you know when I was coming home
8 and that Mr. Gibson wasn't no longer in the home.

9 Q Okay. So you -- and did you provide her with that
10 contact information?

11 A Yes, ma'am.

12 Q Okay. Did did you provide her contact information
13 for any of your other witnesses?

14 A Yes, ma'am.

15 Q Who else did you ask her to speak with?

16 A Patrice Parks, Eddie Fogle.

17 Q Okay. Do you know if she ever spoke with your
18 step-father?

19 A Oh, and Daniel Parker.

20 Q Okay. And why did you want her to speak with your
21 step-father?

22 A Because he was there during that time of the crime
23 and he was there -- he came when I was on the phone with
24 EMS and he also could dispute what the EMS was saying about
25 the body temperature because he had spoke with Charles and

Sharon Smith - Direct Examination by Ms. Dawson

1 he wasn't yet deceased yet.

2 Q So when your step-father arrived, he was still
3 about the speak with Mr. Gibson?

4 A Yes, ma'am.

5 Q Okay. And as far as you know, Ms. Sampson never
6 spoke with your step-father?

7 A I don't know.

8 Q Okay. Did your step-father testify at your trial?

9 A , ma'am.

10 Q Okay. Now, when you spoke with Ms. Samson about --
11 you told what happened that day, did y'all ever talk about
12 whether it was an accident?

13 A I always -- when we spoke at first about what made
14 it not self defense -- I don't remember -- accident.

15 Q Okay.

16 A I had spoke about it -- was more an accident than
17 it was self defense.

18 Q That was what you had told Ms. Sampson?

19 A Yes, ma'am.

20 Q Okay. And when you were meeting with Ms. Sampson,
21 did you ever talk about Mr. Gibson's health?

22 A I -- I did tell her that he was on high blood
23 pressure meds an he had told he that he had an enlarged
24 heart.

25 Q Now, I'm going to ask you to talk a little bit

Sharon Smith - Direct Examination by Ms. Dawson

1 about what happened during the trial itself; and for
2 purposes of the record, Ms. Smith, I just want to make sure
3 that you understand today that we're talking about any
4 errors that may have taken place in your case that could
5 have affected the outcome of your trial. That's what our
6 focus is here today; is that your understanding?

7 A Yes, ma'am.

8 Q Okay. Now, during the trial and -- actually,
9 leading up to the trial, did you and Ms. Sampson ever talk
10 about that you were attending nursing school?

11 A , she would see me come in my uniform a lot.

12 Q And do you remember speaking with her in detail
13 about where you were in the training at the time of the
14 incident?

15 A No, I don't think-- no.

16 Q And when you testified in your trial, do you
17 remember if Ms. Sampson asked you to go over your nursing
18 training?

19 A I believe she did.

20 Q And did you explain to the jury how far you were
21 along in your training at the time of the incident?

22 A No, ma'am.

23 Q Okay. Now, during the trial -- or prior to the
24 trial, did Ms. Sampson and you ever talk about the pros and
25 cons of testifying?

Sharon Smith - Direct Examination by Ms. Dawson

1 A No, ma'am, but I did tell her that I wanted to
2 testify because I wanted Christian to know what happened
3 with her father.

4 Q Okay. Now, in the middle of the trial, you know
5 there are lots of moments where the attorneys go up and
6 speak with the judge. Did Ms. Sampson ever come and talk
7 to you about what jury charge or jury instructions the
8 Court was discussing with her?

9 A I don't remember, no, ma'am.

10 Q Do you remember if Ms. Sampson ever asked you
11 whether or not you wanted to have an accident instruction
12 given to the jury?

13 A No. I remember -- I remember her coming back and I
14 asked her what were they saying because I didn't understand
15 because I did here him say accident, but I thought we had
16 spoken and they said the only charge that would be brought
17 forth was voluntary manslaughter.

18 Q Okay. So you heard the judge talk about accident
19 but you and Ms. Sampson and you didn't talk about it?

20 A No, ma'am.

21 Q Okay. Now, did Ms. Sampson ever talk to you about
22 character evidence? Is that the term she spoke with you
23 about before?

24 A I don't recall.

25 Q Okay. Do you remember if Ms. Sampson asked you

Sharon Smith - Direct Examination by Ms. Dawson

1 questions about your family while you were on the stand?

2 A I don't recall. I know she asked about the
3 nursing.

4 Q About the nursing. Did she ever ask you about the
5 jobs you were working?

6 A I don't remember.

7 Q Okay. Did she ask you any questions about your
8 personal background as far as what your moods are like, how
9 you respond to stressful situations?

10 A No, ma'am.

11 Q Okay. Is there any other moments in the court --
12 during the court trial that you can think of that
13 Ms. Sampson had not explained to what you was going on?

14 A It -- I mean, It was so much going on in the
15 courtroom that I didn't understand because I never been in
16 the courtroom. So -- and I don't feel like she had all the
17 opportunities to come over. She was kind of responding to,
18 you know, what was going on with the prosecutor and the
19 judge.

20 Q Okay. Did Ms. Sampson ever explain to you what
21 rebuttal testimony is?

22 A No.

23 Q Okay. And did she ever talk with you about the
24 testimony of the EMS supervisor in terms of Mr. Gibson's
25 body temperature?

Sharon Smith - Direct Examination by Ms. Dawson

1 A No, ma'am.

2 Q Is there anything else you would like the Court to
3 know about your trial?

4 A As far as with Ms. Sampson?

5 Q Yes, ma'am.

6 A With my lawyer? I just feel that she was -- you
7 know, she was expecting -- she was pregnant, she had just
8 had a child and I just feel she did try to do the best she
9 could at that time.

10 Q Do you feel though that if you had been asked
11 questions about the accident charge would have wanted an
12 accident charge given to jury?

13 A Yes, I feel like that was the first thing that I
14 kind of -- that was the only thing that I agreed to. I did
15 not think that voluntary manslaughter was truthful
16 because -- well the terms that was explained to me, it
17 didn't apply to the case.

18 Q And we've talked about what happens here today at
19 the PCR hearing. Can you tell the judge what relief you
20 would you like from the Court today?

21 A I would like a new trial because I felt like murder
22 was the wrong charge. I did not murder Charles Gibson.
23 When truly -- for me kicking him, I did probably cause his
24 injury for his death though, when I kicked him and pushed
25 him. You know when he collapsed, by me thinking something

Sharon Smith - Cross-Examination by Mr. Petrano

1 was going on because I didn't see any blood and I started
2 doing measures for CPR, I did probably -- I did cause the
3 death.

4 Q Now -- but did you intend to?

5 A No. There was no intention.

6 Q And in the event that the Court cannot give you a
7 new trial, we've talked about what the appellate court can
8 do. Do you understand that there would still need to be a
9 hearing on your motion for a new trial?

10 A Yes.

11 Q And would you like the court to hear that?

12 A Yes.

13 Q Okay. Thank you.

14 MS. DAWSON: At this time Your Honor, I don't have
15 any further questions of Ms. Smith.

16 Ms. Smith, please answer any questions that Mr.
17 Petrano has for you.

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Mr. Petrano.

20 **CROSS-EXAMINATION**

21 **BY MR. PETRANO:**

22 Q Ma'am, one of things you said just a few minutes
23 ago caught my attention. You said that you wanted your
24 trial attorney to get an expert to evaluate the stab
25 wounds?

Sharon Smith - Cross-Examination by Mr. Petrano

- 1 A (The witness nodded head.)
- 2 Q Ma'am?
- 3 A Yes, sir.
- 4 Q What do you mean by that?
- 5 A Because I -- well, I'm not very knowledgeable, but
- 6 things I have seen on TV, I felt like they could have shown
- 7 that it had been a accident.
- 8 Q What struck me is you used wounds, plural?
- 9 A Oh.
- 10 Q Okay.
- 11 A Okay.
- 12 Q So are there more than one -- did you stab him more
- 13 than once?
- 14 A I didn't stab him at all, sir.
- 15 Q Okay. Walk us through what happened, please. You
- 16 can start wherever you want.
- 17 A Okay. Well, It was Mother's Day it was May the
- 18 11th, 2003. The day before I had been out drinking, had
- 19 been going to a club, and so I was coming back because
- 20 Mr. Gibson had brought a lot of things over to Mr. Fogle's
- 21 house. So -- and I needed to go -- I had a great aunt that
- 22 was having a birthday party at the church, which I was
- 23 supposed to attend church that that day, but I wasn't going
- 24 to make it because it already had passed the hour to go to
- 25 church.

Sharon Smith - Cross-Examination by Mr. Petrano

1 So I was leaving Mr. Fogle's house because
2 Mr. Gibson had brought lot of things of mine over there,
3 but not shoes or my makeup or the gifts for my mother. So
4 as I came into the yard he was coming out of the yard --
5 coming out of the house; and he was -- he seemed to still
6 be angry. And I should have none then to have left, but I
7 did not. And I continued to proceed and as I came into the
8 gate -- because he came to look at the car because I kind
9 of tipped the car. I was driving Mr. Fogle's car and as I
10 was trying to run into the home, he was running behind me
11 and he pushed me into the home; and when I fell coming in
12 by one of the TV's; and then I got up. Then I continued to
13 proceed to say some things to him as far as he had cooked a
14 meal. I was asking why would he do that, why he hadn't
15 gotten his things and left.

16 And so we began to argue and fight again that was
17 like in the -- like a living room area. And when I fell
18 there my dress kind of went up in the air and the --
19 whatever, it was a sharp object. When I fell he was
20 telling me to blank on it or something. He was saying some
21 very provocative things. And after that I just kind of had
22 a moment with me and the Lord and I seen where -- I
23 wasn't -- some of the things he was saying was very true
24 because of the life I was living, and I was just -- I mean
25 it was just a very quiet moment. I don't feel like it last

Sharon Smith - Cross-Examination by Mr. Petrano

1 that long; but only thing I do remember is when I came out,
2 I kind of -- I kicked him and I ran in the room.

3 When I got in the room, I was looking for the phone
4 and when I got to the phone, I was calling my cousin
5 Patrice, but the phone just kept ringing. She didn't
6 answer the phone. And then that's when Charles walked into
7 the room; and that's when he was saying that I had stabbed
8 him. He said, You stabbed me, and by not seeing any blood
9 because there was a mirror on the dresser where I was
10 standing, I was just looking at him and as he proceeded to
11 come forward, I pushed him. And then Patrice answered the
12 phone and when I pushed him, he fell, he collapsed.

13 And I was looking and I was like, Oh, Lord. And
14 she was saying what's wrong, what's going on. So I
15 proceeded to tell her. She was like how the MF. When I
16 got down beside him and I started -- I felt his temperature
17 and he was -- you know he was cool to touch then. I was
18 like something is going on, but I did not see any blood
19 present. And so I started -- I thought that maybe he's
20 having a heart attack and I started doing compressions and
21 when I started doing the compressions, that's when I seen
22 the blood.

23 Q You never saw the knife?

24 A I could say something probably was in his hand, but
25 it wasn't like I really seen it at the time, no, sir. I

Sharon Smith - Cross-Examination by Mr. Petrano

1 can't say I seen it, seen it.

2 Q Okay. Now, I'm going to move on. After the
3 conviction, after you were sentenced, first there was --
4 and stop me if I'm being confusing here because I don't
5 mean to be. There was the appeal and then there was a --
6 there was an Ander's Brief?

7 A Yes, sir.

8 Q And then they asked you if you wanted to write a
9 reply, did you want to write your own brief, correct?

10 A Yes, sir.

11 Q And you did that, right?

12 A Yes, sir.

13 MR. PETRANO: Your Honor, can I approach?

14 THE COURT: Yes, sir.

15 BY ME PETRANO:

16 Q And that's this, correct?

17 A Yes, sir.

18 Q Okay. And tell us, in the timeline, when did you
19 write that? Was that after the hearing with the juror and
20 all that stuff?

21 A (Witness nodded head.)

22 Q And, in fact, you mentioned that as one of the
23 issues, right?

24 A Yes, sir.

25 Q And you presented that to the Court?

Sharon Smith - Cross-Examination by Mr. Petrano

1 A Yes, sir.

2 Q Okay. And ultimately they reject all of the
3 issues, don't they?

4 A Yes, sir.

5 Q Now, the issue that your attorney did brief on the
6 Ander's Brief, that was the accident charge and how the
7 charges were all supposedly inappropriate, right?

8 A Could you repeat that?

9 Q I'm sorry, I should -- what was the issue that you
10 saw that your attorney did argue in that first Ander's
11 Brief?

12 A He told me you couldn't argue anything.

13 Q But he did argue something, didn't he?

14 A No, he told me that's what the Ander's Brief meant,
15 that they didn't find anything that the Court could have
16 done wrong and that I would have better -- a better chance
17 with a PCR.

18 Q Okay. And when you talked about -- I'm going to go
19 back to -- you said you did have a discussion with your
20 attorney, that you told her you wanted to testify that you
21 could explain things better than your family. Was one of
22 the concerns with you taking the stand whether your prior
23 record would come out?

24 A No.

25 Q Okay. And so that -- the check -- the check

Sharon Smith - Cross-Examination by Mr. Petrano

1 forgery and the lying to the police, you weren't worried
2 about that coming out?

3 A No, sir.

4 Q Okay. And how long did you get for the false
5 statement to the police?

6 A I didn't get any time.

7 Q It wasn't thirty days?

8 A No, sir.

9 Q You didn't spend any time in at all?

10 A No, sir.

11 Q Okay. How long after you got off the phone until
12 you called EMS?

13 A Right afterward.

14 Q Well, no you were doing compressions right
15 afterwards?

16 A Yes.

17 Q So how long did you do those?

18 A I did them -- I don't know. I mean I didn't time
19 it.

20 Q Okay. You don't time your compressions?

21 A No, sir.

22 Q That's not part of the CPR procedure?

23 A I don't know, but I didn't time it, no sir.

24 Q Thank you.

25 MR. PETRANO: Nothing further.

April Sampson - Direct Examination by Ms. Dawson

1 **THE COURT:** Anything on redirect?

2 **MS. DAWSON:** No, Your Honor.

3 **THE COURT:** All right. You may step down.

4 **THE WITNESS:** Yes, sir.

5 **THE COURT:** Anything further.

6 **MS. DAWSON:** Your Honor, we'd call April Sampson to
7 the stand.

8 **THE COURT:** All right. Come around, Ms. Sampson.

9 **MR. PETRANO:** Your Honor, I'll just walk up and get
10 the paper I left.

11 **THE COURT:** That's fine.

12 **MS. SAMPSON,**

13 having been duly sworn, testified as follows:

14 **THE COURT:** All right. Please have a seat. Tell
15 us your full name and spell your last name for the record.

16 **THE WITNESS:** April Sampson, S-A-M-P-S-O-N.

17 **DIRECT EXAMINATION**

18 **BY MS. DAWSON:**

19 **Q** Good afternoon.

20 **A** Good afternoon.

21 **Q** Ms. Sampson, at the time of the trial, where were
22 you working?

23 **A** At the public defender's office.

24 **Q** And what was your position there?

25 **A** I believe -- I'll have to look at her actual trial

April Sampson - Direct Examination by Ms. Dawson

1 date because I don't remember. I either was deputy or was
2 about to become deputy. I can't remember.

3 Q How long had you worked there at that time?

4 A Four years.

5 Q Okay. And at that point, how many trials would you
6 estimate you had tried?

7 A At that time, probably somewhere around thirty to
8 thirty-five.

9 Q And how many of them were either capital offenses
10 or serious offenses?

11 A Twenty-five to thirty. Most of the cases I ever
12 handled were either most serious offenses or capital -- not
13 capital, I didn't want a capital case.

14 Q And prior to working at the public defender's
15 office, did you do any other attorney work?

16 A I graduated from law school in '98. Between '98 --
17 I had a baby that same year. So in '99, I worked a little
18 bit for some victim advocate's group and then came to the
19 public defender's office in '99. I left in 2001 and was in
20 private practice for a year and came back in 2002.

21 Q Okay. And when were you assigned Ms. Smith's case?

22 A In 2003 is when I first got it. Right after she
23 got charged.

24 Q Okay. And how many times did you meet with
25 Ms. Smith before going to trial?

April Sampson - Direct Examination by Ms. Dawson

1 A I have -- I think she's right, four or five tops.
2 I would have to look to be for sure, but we had a couple of
3 phone conversations, but we didn't have to -- we didn't see
4 each other that much.

5 Q What do you remember about the discussions at these
6 meetings?

7 A I agree with what she said. The first meeting we
8 went over what had happened and I had some discovery, but
9 not all of the discovery. So we reviewed it a little bit.

10 Q Uh-huh.

11 A And then I got pieces of discovery, which is not
12 unusual. Usually you get a chunk and then as they're
13 investigating and getting more, they will send you more.
14 For example, the 9-1-1 tape, I didn't get until almost the
15 day of trial. Then the problem with her case -- one of the
16 problems was I didn't get one piece of discovery until the
17 day of trial.

18 Q Okay. And I'm going to ask you a few questions
19 about that in a moment, but is it fair to say that during
20 your meetings -- in your conversations with her was the
21 incident itself?

22 A Correct.

23 Q Did you speak with her about her background?

24 A A little. I mean she told me that she had kids,
25 and that her relationship between herself and the victim,

April Sampson - Direct Examination by Ms. Dawson

1 Mr. Gibson and -- I'll call him Eddie because I get the
2 last names confused.

3 THE COURT: Gibson was the victim.

4 THE WITNESS: Gibson was the victim, but Eddie was
5 her friend, she would always say, but always the father of
6 her child. And so we talked about that a little bit and I
7 knew she was a nursing student and she graduated by the
8 time we went to trial because clearly it took two years for
9 this to go to trial, so we talked about that a little bit.
10 But most of the time, we focused on the case and the facts
11 and whether it was -- that was what happened or not.

12 BY MS. DAWSON:

13 Q Were -- and just so we can be very clear about
14 everything, do you remember or what do you remember as far
15 as what her training was at the time of the incident?

16 A I believe she'd just started school, if I remember
17 correctly, at the time of the incident. But by the time we
18 got through trial, she had just graduated. So she might
19 have had a year, tops, of nursing school when it happened.

20 Q Was her -- was her background an issue in the
21 trial?

22 A It became one, but it wasn't something that I
23 thought would ever be an issue at trial.

24 Q Can you please explain to the Court what that issue
25 was.

April Sampson - Direct Examination by Ms. Dawson

1 A I had just asked her, because I would ask any
2 person I put up -- I want the jury to understand something
3 about them, so I would ask them are you married; do you
4 have kids; what do you do for a living. So of course, by
5 the time we go the trial, she is a nurse.

6 Q Uh-uh.

7 A And so she talks about that -- that. But I never
8 emphasize it, I moved on to the rest of the case. But the
9 prosecutor -- and I'd have to look at the whole record
10 again to remember. I don't think he really asked her that
11 much when he questioned her. It wasn't until closing that
12 he made a big deal out of it, that the jury should infer
13 malice from the fact that she would know how to stab him.
14 He basically was stating that because she's a nurse, she
15 would know exactly what one wound it would take to kill
16 you.

17 Q And actually, would it help you remember if you had
18 the record to look at?

19 A I mean, I can look at it. It would take a while if
20 I had to look at every specific thing, but what -- my
21 remembrance of it -- and I will look at it. That would
22 help.

23 MS. DAWSON: May I approach, Your Honor?

24 THE COURT: Yes, ma'am.

25 THE WITNESS: My remembrance is he didn't ask her a

April Sampson - Direct Examination by Ms. Dawson

1 whole lot of questions about it during his cross of her,
2 but he really made a big deal about it in his closing.

3 BY MS. DAWSON:

4 Q And actually, if you turn to page 532.

5 A Which one? The big one?

6 Q The big one.

7 A Okay.

8 Q I'll help you out a little.

9 A Please do because it's quite a big transcript. All
10 right, 531.

11 Q I believe that about halfway down, it begins
12 with -- that is --

13 A That's one reason I'm going to ask you to infer
14 malice?

15 Q Uh-huh.

16 A His statement was, That is one reason I'm going to
17 ask you to infer malice, but not the biggest reason. The
18 biggest reason, as I'll get to later, is this licensed
19 practical nurse let him sit there and bleed to death. I
20 think there's overwhelming evidence of that. That's true
21 malice, the true meanness in this case.

22 He didn't do that during his questioning. So that
23 sort of was like something I couldn't really fix that
24 section because by -- he closes after me, so...

25 Q And when you were direct examining her, you didn't

April Sampson - Direct Examination by Ms. Dawson

1 go through the different stages of her training and
2 different skill sets?

3 A I did not make it clear. I don't -- I can
4 confidently say I didn't make it clear that at the time of
5 the incident she did not have this knowledge, that that
6 knowledge was gained in the last two years since the
7 incident had occur.

8 Q Okay. And along the lines of your duty to
9 investigate, which you're aware as an attorney, you're
10 obligated, what did -- when you're meeting with Ms. Smith,
11 what actions did she ask you to take? What did she ask you
12 to do to prepare her trial?

13 A She did ask me to talk to the neighbors. Now, I
14 can't -- now I looked at my notes to see, I didn't write
15 down that she said specific ones. I'm not saying she
16 didn't. I'm saying I didn't write it down. But oftentimes
17 a defendant will want us to bring in character witnesses
18 just to say I'm a great person. I wouldn't do this. So I
19 might not have thought too much about the neighbor that
20 might have just seen her hanging out with Mr. Gibson or
21 whatever.

22 As far as one seeing her that day, she had talked
23 to me about talking to Eddie and talking to Patrice and had
24 they're contact information. To be quite -- I just
25 didn't -- I did not -- I just didn't. I can't even give

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1 you a good excuse other than I didn't think it was as
2 important as it ended up being.

3 Q And as far as the neighbors go on that particular
4 day, did she tell you that one of them saw the little
5 fender bender that took place? Do you remember?

6 A My remembrance is she thought somebody had seen
7 what was going on. But was unsure as to how much they
8 actually saw.

9 Q And did you send an investigator out to go speak
10 with the neighbors?

11 A The only -- we did send an investigator to speak to
12 someone, but not that neighbor. We sent an investigator to
13 find her landlord because Sharon wanted -- her bigger issue
14 about what the fight was about was that Mr. Gibson was
15 trying to kick her out of the house and she wanted to prove
16 that he couldn't kick her out of the house because he's not
17 on the lease. It was a rental property and she -- they
18 had -- initially he was on the lease and then when she
19 renewed the lease he was not on it.

20 And so she wanted to show him, you can't kick me
21 out, you get out sort of thing. And so she wanted to bring
22 in the landlord to show that she -- that that was proof
23 of -- she wasn't mad at him, why would she want to kill
24 him. She could just kick him out sort of thing.

25 Q Okay. But going back to the neighbors for just one

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1 more minute. At no time -- you didn't have an investigator
2 try to find any of the neighbors?

3 A No. And she had some of their information, but we
4 just didn't focus on that.

5 Q Okay. For any particular reason?

6 A No. To be honest, Sharon tells what happened and
7 tells it well, usually, and she was the only real person
8 who was involved in the incident that was alive and so I
9 had confidence, in hindsight, too much confidence in her
10 ability to convey it.

11 Q And in terms of what neighbors may or may not have
12 seen that day, did it become a problem in Ms. Smith's case
13 that there was no one to speak to what they saw?

14 A I mean, I guess as far as the time, the timing of
15 did she sit around and wait for him to bleed to death, that
16 kind of thing. There was nobody to kind of give the good
17 timeline; and also as far as that there was an abusive
18 situation going on that this wasn't just one day these two
19 get into a fight. They'd had these constant physical
20 confrontations before and some serious arguments prior to
21 that that could have been testified to by neighbors to
22 support that she didn't start fights with him, he started
23 fights with her.

24 Q Well -- and along those lines, was there any
25 information about her demeanor that you could have --

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1 A I could have -- now I know I could have presented
2 evidence as far as her character and her character for not
3 just peacefulness, but just her general good character and
4 good reputation. I did not know at that time there was a
5 charge you could even request if you put up that type of
6 evidence, the good character charge. That was unbeknownst
7 to me back in 2005.

8 Q Okay.

9 THE COURT: What was unbeknownst to you?

10 THE WITNESS: That there's a charge, good character
11 charge, if you put up evidence to the defendant's good
12 character or good reputation. I didn't know at the time
13 that you could -- in fact, I thought it was the opposite,
14 that you couldn't raise character evidence unless there
15 was --

16 THE COURT: It was one of my cases, Grooms. And
17 then -- State v Harrison --

18 THE WITNESS: One of your many cases. At the time,
19 I didn't know and so it wouldn't -- it did not occur to me
20 to bring the neighbors just to talk about -- or even her
21 family and friends to talk about how she's a church goer
22 and the good things in her nature, the schooling and those
23 kind of things. I didn't know I could even do that.

24 Q Now, how long did you have her case before it went
25 to trial?

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1 A She came to the public defender's office in
2 November of 2003. There was a little bit of hesitancy to
3 take her case because she had made a \$75,000 bond and in
4 order to have a public defender, you have to be indigent,
5 so we had to have her fill out a form about whether she
6 truly was indigent or not and once that got cleared up, it
7 was assigned to me. So I had it maybe two weeks after she
8 came in and then she went to trial in -- June of 2005?
9 Yes.

10 Q So in over a year and a half time -- and I know as
11 a public defender you were very busy, but you then made a
12 priority in interviewing the witnesses she requested?

13 A No, not at all. She's right. Just for the record,
14 I left the office to have a baby. I left the office -- I
15 went on bedrest July of 2004 and I came back in October of
16 2004. So I wasn't gone that long, but I was gone.

17 Q Now, you mentioned the good character charge. Were
18 there any other jury charges that became an issue in the
19 case?

20 A Yes. At some point we were almost done and trials
21 have a -- you know kind of like a roller coaster, up and
22 down, up and down. It was going pretty well going up and
23 it just sort of crashed and then we had to sort of deal
24 with the fallout. At some point, we had the charge
25 conference and at that time the State asked for a voluntary

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1 manslaughter. I didn't -- we had discussed this, we didn't
2 want any other lesser-included charges, none. Not
3 voluntary manslaughter, not involuntary, we wanted it to be
4 murder or nothing because in my mind and it was Debra
5 Ahrens, by the way, A-H-R-E-N-S, was the other attorney and
6 we had discussed that with Sharon a little bit as far as
7 why you didn't want lesser-includes because a jury
8 listening to her would have a harder time finding her
9 guilty of murder, we thought, than if we gave them lessers
10 where they don't know what they mean, necessarily. It
11 starts to muddy up the water and so it makes it a little
12 easier to convict her of something, and so we just -- we
13 didn't want the lessers.

14 When the State requested manslaughter, we fought
15 hard to not have either manslaughter. At that time, Judge
16 Lloyd brought up did I want accident. Not having the time,
17 at that minute, I had to make a decision of did I want
18 accident or not. I didn't go look it up. I didn't know
19 what the accident charge entailed. You can't just get
20 charges because you want them. The evidence has to
21 require -- meet that. And also they say certain things. I
22 had no idea what accident charge meant and I said, I don't
23 want accident; and he said, Well, if you get accident, I'll
24 give them manslaughter and I knew I did not want them to
25 have manslaughter, so I just went straight to the ball with

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1 not wanting manslaughter and just, No, I don't want
2 accident.

3 Q Did you ask at that time for a recess so you could
4 discuss this with Ms. Ahrens?

5 A If my memory serves me, Ms. Ahrens was in the room.
6 We did the charging conference in chambers, which is not
7 unusual. You will often go in before closings or sometimes
8 even before the defense is finished, but right at the end
9 of the day maybe before you think you're going to close,
10 you will go talk to the judge about charges. So we were in
11 his chambers discussing doing this. So Ms. Ahrens was with
12 me, but neither of us left the room to go look up accident.
13 We just kept arguing about why we didn't want the lesser
14 includes. So, therefore, we didn't want accident.

15 Q Have you looked at the accident charge since that
16 time?

17 A Yes.

18 Q Would you have wanted the accident charge?

19 A Yes. In hindsight, we would have wanted the
20 accident charge. It fit. It at least was something the
21 jury could look at to give her defense as to what happened.
22 I can't sit here and say we could meet every element, but
23 we probably could have had I known about it.

24 Q And in terms of the conversation that took place in
25 that bench conference, did you put any of your concerns on

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1 the record when you returned?

2 A Yes. If my memory serves me, we came back either
3 that day or it might have been the next morning and put on
4 the record what had happened in the charge conference and
5 that basically -- we put again on the record why I didn't
6 think manslaughter or either manslaughter because we had
7 voluntary and involuntary manslaughter and he was saying he
8 would give both. And so I argued as to why neither would
9 fit this particular case. Manslaughter because again
10 there's -- even though they were having an argument, she
11 didn't -- as she said up here, she didn't intend to stab
12 him. She doesn't even remember doing it, so how can I say
13 it was an intentional act in the heat of passion if she
14 didn't intend to do it. Or involuntary manslaughter, you
15 still have had to have acted.

16 And again, she's saying she didn't act. So how can
17 it be involuntary manslaughter? And so we went back and
18 forth and back and forth about that. We put it on the
19 record, but it still came out that the only way we would
20 get the accident charge is if they got the lesser
21 manslaughters and I just wasn't dealing with that.

22 Q Did you make any objection to that?

23 A No, I did not object to them -- I called it tit for
24 tat, but I don't know what the proper term is. In exchange
25 for lessers included he would give me a defense. I didn't

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1 object to that, no. I should have, but I didn't.

2 Q And again, as you're about to begin the jury
3 charges, did you go back on the record and make any
4 objection to the accident charges, to the discussions
5 regarding that?

6 A To the best of my memory, I just kept saying I
7 don't want accident, I don't want any lesser included.

8 Q Did you ask Ms. Smith or explain to Ms. Smith what
9 accident was or could have been?

10 A No, I don't remember us having much time to do
11 that. Literally we came out and he was again asking, are
12 you sure you don't want accident and I didn't have time to
13 really go talk to her and say, Here's why we don't want it.
14 We just said you don't want it and moved on. I never had
15 the opportunity -- I shouldn't say never, if I'd asked for
16 time, he would have given it to me, to go look up accident,
17 but I didn't ask.

18 Q Okay. And again, the jury charge came out during
19 closing. Can you tell us a little bit about what happened
20 during closing?

21 A As I said, this trial started to tank and it tanked
22 bad once it did. We were in closings and I don't think I'd
23 gotten two sentences in, but maybe I'd gotten a little bit
24 further than that, and the prosecutor, Mr. Meddors, I was
25 giving the jury the example of I had had a car wreck

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1 earlier that year. If you ask me about it I would tell you
2 it was my fault. I'd say I had an accident, it was my
3 fault. But if you let me explain I'd tell you why it
4 really wasn't my fault, it was the person in front of me's
5 fault for stopping in the road and that being what Sharon
6 was saying, when she first gets arrested she tells them I
7 did it, but then when she has time to explain, she explains
8 what happens and that's why you can't take the I did it out
9 of context.

10 That was what my example was going to be. But the
11 minute I think I said accident instead of car wreck,
12 Mr. Meddors objected to when I said the word accident. And
13 I guess he thought I was going to call what happened here
14 an accident. I wasn't. But I assume that's why he
15 objected.

16 We go have a little bench conference that's not on
17 the record and the judge says, Why did you say the word
18 accident, I thought you didn't want an accident charge. I
19 said, I don't want an accident charge, I'm not calling this
20 an accident, I'm just using that as an example. And he
21 said, Well depending on what you say, Ms. Sampson, I may
22 change the charges. He did not clear up what he meant by
23 that. He just said depending on what you say, I may give
24 the charges, go do your closing; and so I had absolutely no
25 idea what to say.

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1 On top of that, he had never -- before we started
2 closings, we didn't know when we went to close what the
3 charges were going to be. He had not made that decision
4 yet. Normally, you would get the charges and then you
5 would take a break so you'd have time to prepare your
6 closing. Sometimes it's overnight, sometimes it's over
7 lunch, there's usually a break though. In this particular
8 case, there wasn't. He just said I'm going to take a break
9 and decide what the charges are.

10 So all we could do was, I had to prepare a closing
11 for if we got the lessers and I had to prepare closings for
12 if they didn't get the lessers; and then in the middle of
13 the closing I was doing, he said, Depending on what you
14 say, I'm going to change the charges. But he doesn't say
15 what I can or can't say, gives me no guidelines. I didn't
16 know what to do, so I just closed as best I could, but I
17 should have probably asked for time, asked for a break,
18 objected, something, but I didn't.

19 I didn't go over and ask Ms. Smith what she wanted
20 me to do, I didn't go ask Ms. Ahrens what I should do, my
21 co-counsel. I didn't know what to do, so I just closed as
22 best I could, but the problem is I was hamstrung. I could
23 not say what I planned to say because I was afraid suddenly
24 the involuntary manslaughter would show up or the voluntary
25 manslaughter would show up, based on what I said.

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1 Knowing now what I know, that would have been
2 reversible error had he changed the charges, if he'd done
3 that, but I didn't know that standing up there, so I just
4 went ahead. I should have just done the closing I'd
5 prepared and if he changed the charges, we would have had a
6 new trial and wouldn't be sitting here right now.

7 Q Now, going back, I think we've covered everything
8 with the accident charge. Going back to the trial, there
9 was a mention that there was some late-produced discovery
10 you received the day of the trial?

11 A Correct.

12 Q Please tell the Court about that discovery?

13 A The morning of or the day -- I can't remember if it
14 was morning or afternoon we picked the jury, I still don't
15 remember. But right before we picked the jury, they hand
16 me a sheet of paper. And that sheet of paper is the EMS
17 report, which I had asked if they had an EMS report and was
18 told I would get it and never got it until that day. I
19 objected to the introduction of that evidence in trial
20 because I had just got it. Judge Lloyd asked them what
21 they were using it for and we were told it was just going
22 to be used to verify that EMS had come, which we weren't
23 denying -- we weren't disputing he was stabbed, we weren't
24 disputing that she did it, we weren't disputing time, so I
25 argued it was irrelevant. Who cares what time they showed

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1 up, we admitted that they showed up.

2 So he said, Well, you'll have overnight to look at
3 it. They can't use it until you have an opportunity to
4 look at it. Well, we're picking a jury, we're preparing --
5 I looked at it but I didn't thoroughly look at it and at
6 the very bottom of it, it talks about his body temperature,
7 with their first EMS people, they don't mention it, the
8 people who actually come and look at him. There's no
9 mention, but in rebuttal, they called their supervisor to
10 testify to his body temperature to show that -- to try to
11 show that she let him lay there. And had I had an
12 opportunity to review that and actually study it, I could
13 have and would have called someone to discuss how your body
14 temperature doesn't necessarily go down at a certain rate,
15 especially if he's laying under an air conditioner, the
16 different ways that your body temperature can be reduced.

17 Q And these are all things that you're aware of
18 today, but did you know those at the time --

19 A I was aware that you could call an expert about
20 body temperature, I did not know that body temperature was
21 even at issue because I didn't have an opportunity to
22 review the discovery properly.

23 Q When they introduced Lieutenant Fortner to the
24 Court, did you have any objections to his being considered
25 an expert in pre-hospital med?

1 A I think I did. I cannot remember. I might not
2 have. I would have to look at the transcript to know for
3 sure.

4 Q And when he took the stand -- had you anticipated
5 at all any of the issues that he was going to testify
6 about?

7 A I had no idea why they called that man until they
8 asked him questions.

9 Q And how did that become a problem in closing?

10 A Then they used that to say the malice, that she sat
11 around as a nurse, stabbed him directly in the heart
12 because she knew where it was and then waited for him to
13 get too -- to be dead before she called 9-1-1 and did
14 anything about it.

15 Q And as you stated, and I want to make sure we're
16 very clear, in that overnight period, you didn't ask -- you
17 didn't get in touch with the pathologist, you didn't
18 contact any kind of expert --

19 A I should have asked for a continuance. I think we
20 did initially when we first got the sheet of paper. I did
21 it kind of in rote because we had just gotten new
22 discovery, but once they started actually using the new
23 discovery, I should have either asked for a continuance or
24 a mistrial at that point and I didn't.

25 Q Did you have the opportunity to recross or cross-

1 examine the medical examiner as to his body temperature?

2 A No, he'd already been called. It was never brought
3 up with him. The only questions I asked him about was
4 there was just one stab wound, straight to the chest and I
5 had asked him could her version of events -- I asked him --
6 I had talked to him before trial and asked him if her -- I
7 didn't ask him her version, but I said could that stab
8 wound have come from being pushed, and he said, I won't --
9 I can't say that it did, but I can't say that it didn't. I
10 can just tell you that there was some sort of force because
11 it had to go through bone. I mean -- if I remember
12 correctly, it chipped the bone or it went through a rib in
13 order to get to his heart. It wasn't just that it pierced
14 straight through him. And so it would have had to have
15 some force to it.

16 But he wasn't a bad witness for us. He wasn't
17 saying that she definitely stabbed him. Based on that, I
18 chose not to hire my own expert, which again was probably
19 not the smartest move in that if I'd had someone else look
20 at it they could have, maybe, could have definitively told
21 me, yes it was from a stab or no it could have been from a
22 push. And knowing now what I know about Clay Nichols, I
23 wouldn't trust him to bring me a glass of water, but back
24 then, I did not know how bad of a pathologist he could be.
25 And I say that with lots of experience at this point.

1 Q Now, just a little bit about what happened after
2 the trial.

3 A I need to put on the record before I forget that
4 during the trial, most of this was going on at that minute
5 and as I saw it going bad, I started trying to make the
6 record clear that I was becoming ineffective; that I could
7 not make decisions that fast, but that I was having to,
8 being stopped in the middle of closing and then the charges
9 being changed and all of that. So I tried to put that on
10 the record.

11 When she received -- when she got the sentence, as
12 I normally do, I called the jurors after wards. Once the
13 jurors are released, they can speak to you as far as what
14 happened in trial and whatnot. I was pretty upset about
15 what had happened. It did not dawn on me whether it's
16 arrogance, over confidence, whatever you want to call it, I
17 thought Sharon had a really good case. It did not dawn on
18 me it would go as bad as it did. So I don't know if she
19 remembered or not, but I was crying when she got her
20 sentence and she was not and I wasn't going to jail but she
21 was and so I was very upset.

22 So when I started calling the jurors to find out
23 kind of how did it go so south so quick, I determined that
24 one juror had gone and looked up charges and brought them
25 into the jury room on the internet. Now, back in 2005,

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1 judges did not tell the jurors not to go on the internet.
2 They would tell them not to talk to each other; they would
3 tell them not to look at the news, not to read the paper
4 about the case, but they never told them not to look on the
5 internet. This juror had gone and looked up first-degree
6 murder, second degree murder, both kinds of manslaughter,
7 how much time you could get for those things, and what did
8 they mean. We don't even have degrees of murder in South
9 Carolina. Not only did he look at all that, he printed
10 them and brought them into the jury room and discussed with
11 the other jurors why they couldn't find her guilty of these
12 things.

13 So the jurors were all confused, apparently, and I
14 have my notes here. I talked to one, two, three, four,
15 five, six jurors and started freaking out that we had a
16 problem. And so at that point, I requested -- the first
17 thing I do when I -- I need the backtracked a little bit.
18 The first thing you do when you have a client convicted at
19 trial is you file a motion -- a notice of appeal. It's
20 just a sheet of paper that says they had a trial on this
21 date, they got convicted on this date we are requesting an
22 appeal.

23 That's pretty automatic in the public defender's
24 office. My paralegal does it, I sign it, we send it off.
25 We do it quickly because you only have ten days so if you

1 forget, it's done for. So you have to do it kind of fast.
2 And the unfortunate thing in the public defender's office,
3 I have one trial, I could have another one the next day.
4 And if I remember correctly, I had Sharon's trial, the next
5 week I was in trial again. So we did that, then on that
6 Friday is when I start finding out the jurors, all this
7 stuff had gone on. We had already filed the notice of
8 appeal. Then I filed the notice for a motion for a new
9 trial, based on the juror misconduct and I sent my
10 investigator to go get affidavits from the jurors we could
11 find that would do them.

12 Q And what jurors did your investigator contact?

13 A He contacted the one that brought in the
14 information, Mark Pleasant and Hope Derrick.

15 THE COURT: That was him that actually brought in
16 the information about voluntary and involuntary?

17 THE WITNESS: No, the juror Mark Pleasant was his
18 name.

19 THE COURT: Okay. Go ahead.

20 THE WITNESS: I'm pretty sure. I'll look, but I
21 thought it was Mark Pleasant.

22 THE COURT: Well, double check. I think it was
23 Hicks.

24 THE WITNESS: Which ever one it was. He --

25 THE COURT: Hicks went on the internet and brought

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1 in the information on voluntary and involuntary.

2 THE WITNESS: He brought --

3 THE COURT: I'm just saying that's what I read in
4 the transcript.

5 MR. PETRANO: I thought it was Mark Pleasant.

6 THE COURT: All right.

7 THE WITNESS: But either way, a juror brought in
8 the stuff that he'd looked up and we were able to get his
9 affidavit and I have a copy of the original -- I have the
10 original of Hope Derrick's. Let me see. Hope Derrick was
11 definitely the foreperson and she was one of the ones
12 and -- you have a copy of the other one. I thought it was
13 Mark Pleasant.

14 MS. DAWSON: May I approach, Your Honor?

15 THE COURT: Yes, ma'am.

16 BY MS. DAWSON:

17 Q Can you please describe that to --

18 A This is -- I'm sorry -- is a copy of his affidavit
19 and it's Mark Pleasant; and he stated that after hearing
20 all of the testimony and the closing arguments, they --
21 they agreed that at first they would take a vote without
22 discussion to determine initial collective opinions on the
23 charge of murder. The majority of the jury felt that
24 Ms. Smith was guilty of something -- a lesser number of
25 jurors had not yet decided and a few jurors felt that she

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1 was not guilty.

2 I'm trying to read it and talk. As we continued
3 our deliberations I expressed my personal concerns
4 regarding the appropriateness of the murder charge. I
5 shared several definitions that I printed from the internet
6 regarding first-degree and second degree murder, voluntary
7 and involuntary manslaughter and I shared my belief that
8 the action took place without premeditation and without the
9 intent to kill and that her actions happened in the heat of
10 passion as a result of the physical and verbal altercation.

11 In my opinion, many of the jurors agreed but we all
12 recognized, we could not have discretion -- we could not
13 have discretion to find her guilty of a lesser charge. He
14 is describing specifically what -- the definition of
15 voluntary manslaughter. The only reason he had the
16 definition of voluntary manslaughter is because he went and
17 looked it up on the internet. That was the whole reason we
18 didn't want any definitions. So that's Mark Pleasant's --

19 **THE COURT:** You were right. I was thinking about
20 Hicks. It was Pleasant. Derrick gave an affidavit that
21 Pleasant was the one. Sorry.

22 **THE WITNESS:** That's okay. I just didn't want to
23 mess up anything.

24 So based on all of that, we did a motion for a new
25 trial, which didn't get heard for a while. We filed the

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1 motion right after we found out and then I did a memo about
2 a month later to Judge Lloyd. It wasn't heard until August
3 15th and he didn't -- he didn't deny it until February 2nd,
4 so it took a while for all that to go on. But, what I,
5 again messed up -- I'm not an appellate lawyer. I have no
6 idea what -- I do know what may do, but that's not what I
7 do. When I filed the notice of appeal that was the next
8 day. I had no information about this jury misconduct.
9 When I found out about the juror going on the internet,
10 what I should have done was withdrawn the notice of intent
11 to appeal. I didn't know I needed to do that. So I went
12 ahead and filed the motion for a new trial and then when we
13 didn't get that, I filed another notice for an appeal so
14 that they would have the entire record.

15 Apparently by not withdrawing that first notice of
16 intent to appeal, I took away the Court's jurisdiction to
17 even hear anything about the jury misconduct. But we had
18 the hearing, Judge Lloyd gave a ruling. None of us knew
19 that we weren't even supposed to be having that hearing
20 because he didn't have jurisdiction to do anything about
21 it. But I did not know that.

22 Q What happened with the second notice of appeal that
23 you sent?

24 A I sent it, went on about my business. I left the
25 public defender's office in October of 2006 knowing that

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1 her appeal was out there, I called the public defender --
2 not the public defender, appellate defense, I called
3 appellate defense to see who had her case. I was told Bob
4 Dudek had her case, so I talked to Bob and I said, So what
5 about the juror misconduct issue and he asked me, What are
6 you talking about. That's when it became clear he didn't
7 have the entire record and that's when I learned that
8 because I did not withdraw that first one, he didn't even
9 know about the second -- what had happened.

10 So then he filed another motion to try to get the
11 Court to look at that particular issue. So that's where
12 the whole confusion of two notice, two appeals, to
13 remittiturs, all of that comes up because he didn't even
14 know about it himself because when he ordered the
15 transcript -- the record from trial, they only gave him
16 from the notice of appeal back. Well, the motion hearing
17 wasn't for a month after the notice of appeal, so he didn't
18 have that record.

19 Q And what happened -- what did the Court decide in
20 the second --

21 A Which court?

22 Q The Court of appeals, excuse me.

23 A They would not hear -- as you said earlier, they
24 decided it was annulity because he didn't have jurisdiction
25 to do what he did any way. Problem being, nobody can ever

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1 hear it now. I guess if she's granted -- I guess -- I
2 don't know. I don't know if anyone has authority to make
3 the court hear -- we'd have to have a whole new trial, I
4 guess, on that issue of whether she could have a trial
5 because it never was properly heard by a court that has
6 jurisdiction. And I don't know if that can ever be fixed
7 because I didn't withdraw the notice of intent to appeal.

8 Q Is there anything else you would like to add, Ms.
9 Sampson?

10 A I'm trying to remember. I mean, based on the
11 testimony that Ms. Smith gave at the time and the way that
12 everything went down, I do think that the accident charge
13 would have given the jury the ability to come to a
14 different decision because accident charge covers what she
15 did. You know, so that would have given the opportunity.
16 I just -- in terms of the how it went down, it wasn't that
17 I was trying to be ineffective or trying not to do my job,
18 Sharon's case was just one of the first ones where -- and I
19 still have problems with her case because I don't think it
20 was properly handled by myself.

21 Normally I do a good job. Normally I'm here at the
22 PCR's telling how I did a great job and you know, Sorry,
23 but that's what happened. In Sharon's case, it's the exact
24 opposite and that would be why you're handling it because I
25 felt so bad about what ended up happening that I wanted

April Sampson - Direct Examination by Ms. Dawson

1 somebody to try and fix it and I can't fix it. Whether
2 it's arrogance or stupidity, I screwed up. That's the best
3 I can say.

4 Q How has it affected how you practice law?

5 A Oh, I do a lot better now.

6 MR. PETRANO: I object to that.

7 THE COURT: Sustained (laughter.)

8 Let's take a quick break.

9 (WHEREUPON a recess was observed.)

10 THE COURT: Anything further?

11 MS. DAWSON: Your Honor, we don't have any further
12 questions. I would like to make an argument in closing.

13 THE COURT: Okay. You may step down.

14 MS. DAWSON: Your Honor, based on Ms. Sampson's
15 testimony, the record that you have in your hand, there are
16 several mistakes that were made that have an effect on the
17 outcome of Ms. Smith's trial.

18 THE COURT: Well, maybe you were correct.

19 Go ahead.

20 MS. DAWSON: Ms. Sampson has testified that some
21 decisions were made based on lack of knowledge. She didn't
22 have the time to go look things up. Based on the duties of
23 counsel, you're supposed to fight to have that time.
24 You're supposed to have the proper time to investigate.
25 She had the case for over a year. Even considering the

1 time, you know, in terms of the background, she didn't
2 anticipate that the education was going to be such an issue
3 which was really prejudicial for Ms. Smith. It wasn't
4 clear to them -- it could have been clarified to the jury
5 that Ms. Smith didn't have the level of knowledge at that
6 time that she did on that day in terms of court.

7 You know, in terms of duty to investigate,
8 Ms. Sampson also had plenty of time and opportunity to try
9 to track down potential witnesses in the case who may or
10 may not have seen Mr. Gibson that day. For Your Honor's
11 knowledge, I attempted to get in touch with these people,
12 but due to passage of time and not having the current
13 information, I was unable to track down the --

14 **THE COURT:** The witnesses?

15 **MS. DAWSON:** Yes, sir.

16 **THE COURT:** All right. I understand.

17 **MS. DAWSON:** In terms of making the appropriate
18 jury charges, you know, and knowing about good character,
19 that was State v Harrison, where if there's an opportunity
20 to have character brought in, the reason why we bring that
21 up to the Court's attention is, she was testifying about
22 what happened. She's the only one that can say who, what,
23 when, where, why, how. The fact that the jurors had some
24 issues with her -- having testimony from people who knew
25 her character would have been helpful, could have been

1 helpful, especially if the accident charge, as Ms. Sampson
2 testified today that she didn't know at the time how
3 beneficial the accident charge could have been for
4 Ms. Smith.

5 THE COURT: Well, isn't that the trial judge's
6 responsibility to determine the charges based on the
7 evidence and the record, not on the questions at all.

8 MS. DAWSON: We would agree, and the fact that
9 Ms. Sampson argued and kept fighting against it.

10 THE COURT: Well, that had nothing to do with it.
11 It's the judge's responsibility, not the lawyers, to
12 determine what charges he should give. If there's
13 evidentiary basis or not. I'm actually helping you. There
14 was a basis that the charge be considered.

15 MS. DAWSON: Yeah.

16 THE COURT: All right.

17 MS. DAWSON: In addition to that, Your Honor, she
18 should have objected when there was a little bit of the
19 quid pro quo in the change of the charge. There was an
20 opportunity for her to try to get an expert to look over
21 the forms so she would have had better prepared --

22 THE COURT: You're just repeating most of the
23 arguments she made in her testimony.

24 MS. DAWSON: Yes, Your Honor.

25 THE COURT: Okay. That's in the record.

1 MS. DAWSON: Yes, Your Honor, all of these
2 arguments are in the record.

3 THE COURT: All right.

4 MS. DAWSON: And I just -- the only thing that we
5 would add in terms of belief, you know, of course,
6 Ms. Smith would like the opportunity to have a new trial.
7 If Your Honor is not in the position to decide to grant
8 that, we would ask that this case be returned to the
9 circuit court in order to have the opportunity for the
10 motion for a new trial to be heard. At that time the order
11 that we had is annulity. The Court of appeals hasn't
12 actually addressed the issue of the jury misconduct.

13 You can look at the record and see the affidavits.
14 It's pretty glaring what the jurors did was inappropriate
15 and finally, Your Honor, we would ask for an opportunity
16 for a belated appeal, if nothing else.

17 THE COURT: Thank you.

18 MS. DAWSON: Thank you, Your Honor.

19 THE COURT: Mr. Petrano?

20 MR. PETRANO: Your Honor, we've heard a lot here
21 today about the accident charge. I've got several layers
22 that would apply to that. Nothing wrong happened.

23 Judge, first of all, let's go into the appeal
24 itself, the Ander's appeal. That was all about the judges
25 threat to change the jury charge and what she objected to

1 when she wanted to about the accident. That -- she
2 preserved that fairly well. I'm looking at page 636. They
3 could have briefed anything they wanted.

4 **THE COURT:** Let the record reflect that Bob Dudek
5 has been with Appellate Defense for over twenty years.

6 **MR. PETRANO:** That's right, Judge.

7 Beyond that, even if he just briefed something
8 else -- in this situation, we have the Ander's appeal. The
9 Court, at that point takes the opportunity to look at the
10 entire record and see if they see any issues. They didn't
11 see any issues with this. Those issues are preserved, they
12 are there.

13 Now, is there a problem? No. The State submits
14 there wasn't a problem. That's probably why the Court of
15 Appeals didn't pick it up. Meaning, if you look at all the
16 accident cases, they're all struggles over a weapon.
17 There's no struggle over a weapon here. She says she
18 didn't even know there was a weapon. The accident is not
19 an a defense in the classical sense. What it is, is it's
20 is absence of malice, in the case for a murder charge.
21 That's what the argument was. That's what it all was.
22 That's why she wanted murder or nothing the whole case was
23 to explain how there wasn't malice. If they were able to
24 sell the jury on that, that there wasn't malice, then there
25 would have been an acquittal, which would have been the

1 exact same thing as an accident charge. The accident.

2 THE COURT: It was a tactical decision that didn't
3 pan out.

4 MR. PETRANO: It was a strategic decision that
5 didn't pan out and I don't want to say it didn't pan out
6 was to not go to voluntary or involuntary. She explained
7 that. But what she wanted to say is she wanted accident
8 and in hindsight she should have asked for accident. She
9 did. Accident was argued. It was the State's version to
10 prove the malice. If malice didn't exist, i.e. accident,
11 there wouldn't have been a murder conviction. That was all
12 done. There really was no issue there. Plus that was an
13 argument on appeal.

14 Now, I'm going to go through some of the issues in
15 the trial and I'll save the juror misconduct for last.
16 Some of the suggestions is that she should have gotten some
17 other witnesses. Well, and I understand the argument is
18 there's been a passage of time and she cannot get those
19 witnesses. That was for the character witnesses the
20 neighbor or whatnot. That's totally speculation as to what
21 they would testify too. They have to bring them here to
22 PCR to satisfy their burden to show that that would have
23 made a difference.

24 Another one was -- I don't know, the forensic
25 expert or whatnot to explain differences of body

1 temperature. They could have gotten anybody here to come
2 and say that. There's no one here to explain those away.
3 Although --

4 THE COURT: Well, she had the right to
5 cross-examine.

6 MR. PETRANO: Ms. Sampson did do a very good job
7 explaining some of cause with the air conditioner you would
8 expect the body temperature to cool with that. I get all
9 that. But as far as making the claim that she was
10 ineffective for not calling an expert, we have no expert
11 here so they can't testify that way.

12 One of the suggestions was not going through her
13 educational background because the solicitor argued, Well
14 she's here, a licensed LPN, I guess that's -- this LPN here
15 let him bleed to death. What he said was correct. LPN
16 here -- at that point in time, she was an LPN. That was a
17 reasonable inference to put on the record. He didn't say
18 anything improper there. There was nothing to counter
19 that. And to suggest that you could have argued that away
20 and focused that she only had a year of nurse training, I
21 don't think that would have helped. That would have --
22 Well, you only had a year, you discussed the rib, where the
23 heart is and everything. That's also -- she knew that he
24 had an enlarged heart.

25 Let's go to the juror misconduct. No relief here.

1 The motion for a new trial that happened, never happened.
2 That annulity. That's a fact. So we get to act here as if
3 that never happened. So we end up coming into a PCR as if
4 there never was that prior hearing. To give them another
5 hearing in this case, a first hearing, I know that sounds
6 dumb, I'm sorry. You would have to decide that there's
7 prejudice, that there's something to warrant the motion for
8 a new trial.

9 Judge, there's nothing in there that says the
10 jury's deliberations were affected. If you look at
11 everything, and I'm going to sound just like Meddors, well,
12 don't read the transcript, just read the affidavits. If
13 you want to read the transcript, go ahead, it's still part
14 of the record, although it never really happened, which is
15 odd. But nothing prejudicial happened because there was a
16 curative instruction. No one asked for a curative, but
17 there was a pseudo curative instruction. They get this
18 information -- they want to talk about these lesser charges
19 being charged or whatnot. They call back, they want to be
20 recharged. The judge recharges them perfectly.

21 One of the things he said, this is on 620 and 621,
22 he says, Whatever you think about the law or you think you
23 might know about the law, you must abandon all that.
24 Listen to the law as I give it to you and he gives the
25 correct charge that doesn't include all the heat of passion

1 stuff. That was all corrected. They issued their verdict
2 a few minutes after that.

3 So even if the juror internet information had come
4 in and been brought up, it was effectively cured by that
5 subsequent recharge.

6 Now, what's the difference if people go back in
7 this jury room -- I'm sure it's happening right now on the
8 second floor and, of course, people, ordinary people,
9 jurors have an idea of heat of passion. It's not
10 automatically a legal term. One of the jurors says, Hey,
11 what about -- what if she was angry, what if this is heat
12 of passion. That's not saying anything improper happened,
13 they're just shooting the breeze during the deliberations.
14 That's what they do. We're not supposed to disturb that.

15 There's no grounds here for a new trial based on
16 what we have. Nothing really negatively affected the
17 deliberations. At best, they were looking for something to
18 give her lesser which would have been an acquittal in this
19 case. Ultimately they found she did have malice and even
20 if you do read these affidavits, they said they all agreed
21 she went to stab him and ultimately they would have had to
22 have found malice to convict her of the murder, so there's
23 nothing to warrant a new trial.

24 I have one other point, Your Honor.

25 THE COURT: I heard some testimony here today that

1 Ms. Gibson -- she had been the victim of abuse. And that's
2 exactly what -- the statute -- I made a copy -- grooms.

3 MR. PETRANO: Evidence in Grooms has to be clear
4 and convincing.

5 THE COURT: No, it's by a preponderance of the
6 evidence.

7 MR. PETRANO: Okay.

8 THE COURT: But it's my opinion, that's why I bring
9 it up. But anyway, if, in fact, even if she's convicted --

10 MR. PETRANO: Your Honor, that wasn't a claim until
11 a few hours ago.

12 THE COURT: I'll give you chance to address it any
13 way.

14 MR. PETRANO: Okay. I don't think there's any real
15 evidence. The State submits there is not a
16 preponderance --

17 THE COURT: Well, Ms. Sampson testified that she
18 didn't know about it. If she'd known about it, Grooms,
19 under the statute, passed by over in Kershaw County, maybe
20 she would have, or should have presented evidence that
21 Mr. Gibson had been convicted of domestic abuse. That was
22 found by a preponderance of the evidence by the trial judge
23 after the information whether it was a trial or guilty
24 plea. She would have had a right to present evidence.

25 MR. PETRANO: No, Your Honor. Grooms is an

1 intentional act.

2 THE COURT: You don't understand my point about
3 Grooms. It's my case, I'm telling you.

4 MR. PETRANO: Yes, sir.

5 THE COURT: It doesn't matter about guilt or
6 innocence, it matters about whether or not the defendant
7 was a victim of domestic abuse and if there's a finding by
8 the trial judge whether it's a trial or a guilty plea, then
9 she will be eligible for parole after serving one fourth of
10 her term rather than whatever it is she got, forty-five
11 years or...

12 MR. PETRANO: Your Honor, if I --

13 THE COURT: That's all right.

14 MR. PETRANO: No --

15 THE COURT: I'll give you time to submit it.

16 MR. PETRANO: If I'm misreading this, I'll correct
17 that later, but Grooms was all about -- the lady finally
18 snaps and kills him. That was an intentional act. This
19 was an accident. You can't claim --

20 THE COURT: Well, accident -- they convicted her of
21 murder.

22 MR. PETRANO: She's claiming it was an accident
23 well.

24 THE COURT: No, no, no, no, no -- no stop.

25 MR. PETRANO: She has --

1 THE COURT: Listen to me carefully. She was
2 convicted of murder.

3 MR. PETRANO: Yes, sir.

4 THE COURT: That's an intentional act.

5 MR. PETRANO: Yes, Your Honor.

6 THE COURT: All right. So I'm not yelling at you,
7 you know it's not anything personal.

8 MR. PETRANO: I'll stand down.

9 THE COURT: No, no. It doesn't matter whether it
10 was intentional or not intentional. It's the conviction
11 that's important. And after you're convicted, then if you
12 know about Grooms, then maybe you shouldn't have -- I know
13 Ms. Sampson felt that way. I'll let you finish your point.
14 I'm not going to make a decision here anyway. I'll give
15 you both a chance to convince me later on either side is
16 right. And like I -- like I say take back -- you know.

17 MR. PETRANO: That's fine, Judge. I haven't heard
18 an explanation as to how they were --

19 THE COURT: Okay.

20 MR. PETRANO: I'll leave it at that.

21 Anything further?

22 MS. DAWSON: Your Honor, just very briefly that the
23 only thing I would add, the jurors affidavit itself
24 recounts voluntary manslaughter and the elements. What I
25 say, I bring that up because once the bells been rung, you

1 can't unring it. The jurors had heard what the other
2 charges could have been, not necessarily. Had there been --
3 if there is another motion for a new trial, the Court would
4 have the opportunity to actually bring back the jurors.
5 They could talk about what happened. If -- granted time
6 has passed, but the Court has the ability to subpoena the
7 jurors; and then again as far as Grooms goes, she has shown
8 there was an occasion. He pushed her. They had previously
9 lived together and Ms. Sampson addressed that she had
10 spoken with the landlord to show that they had lived
11 together. She was trying to get him moved out.

12 **THE COURT:** Yes, sir?

13 **MR. PETRANO:** Just briefly, Your Honor, the fight
14 that causes the death is not a history of domestic
15 violence. That's what Grooms was about.

16 **THE COURT:** That's right.

17 **MR. PETRANO:** That's my main point and then the
18 bell, you can unring the bell, Your Honor, was an argument
19 just a moment ago. If that was the --

20 **THE COURT:** But you're telling them to disregard
21 the sound -- go ahead.

22 **MR. PETRANO:** The de facto rule, Judge, there would
23 be no point to give instructions.

24 **THE COURT:** All right. Thank you both. I will
25 think about this case. I invite you both to send in

1 proposed orders. So that concludes this here.

2 MR. PETRANO: Thank you Your Honor.

3 MS. DAWSON: Thank you Your Honor.

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5 * * * * * END OF TRANSCRIPT * * * * *

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF AIKEN)

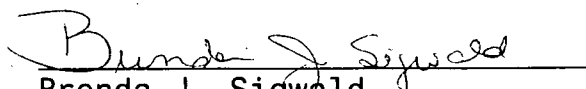
) CERTIFICATE OF TRANSCRIPTION

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, do hereby
7 certify that I transcribed the proceedings in the captioned
8 case that were reported by Crystal Holmes, Circuit Court
9 Reporter for the State of South Carolina, in the Court of
10 Common Pleas in and for the State of South Carolina on the
11 Brenda J. Sigwald.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 1 through 69, constitute a true, accurate and
14 complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 1st day of December, 2012.

19
20 
21 Brenda J. Sigwald,
22 Court Reporter and
23 Notary Public for the
24 State of South Carolina
25 My commission expires
January 4, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	2009CP4001565
Smith, Sharon, 00309885,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

PROCEDURAL HISTORY

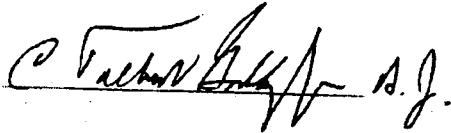
This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 6, 2009.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. At trial, the Applicant was represented by April Sampson and Debra Ahrens of the Public Defender's Office. On June 23, 2005, following trial by jury and conviction for murder, the Honorable Reginald I. Lloyd sentenced the Applicant to forty-eight (48) years for the murder of Mr. Charles Gibson (2003GS4003439).

The Applicant filed a timely notice of appeal on June 30, 2005. Following an Anders brief, the South Carolina Court of Appeals dismissed the Applicant's direct appeal, State v. Sharon Smith, Op. No. 2007-UP-250 (S.C. Court of Appeals, filed May 22, 2007, Remittitur date July 12, 2007).¹ Anders v. California, 386 U.S. 738 (1967). Simultaneous to her direct appeal, the Applicant pursued a motion for new

¹ The dismissal by the South Carolina Court of Appeals references a *pro se* response to the Anders brief. *Smith, Sharon, 00309885 - Order of Dismissal - 2009CP4001565*
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trial at the circuit level. The trial court conducted the post-trial hearing on August 15, 2005 and then denied the motion by written order on February 2, 2006. The Applicant appealed the denial of the motion for new trial by filing a notice of appeal the next day. The South Carolina Court of Appeals dismissed the "2nd appeal" because it was a "nullity":

The South Carolina Court of Appeals	
The State,	Respondent,
v.	
Sharon L. Smith,	Appellant.
 The Honorable Reginald I. Lloyd Richland County Trial Court Case No. 2003-GS-40-03439	
 _____ ORDER _____	
On June 30, 2005, Appellant Sharon L. Smith appealed her murder conviction. The day after filing her appeal, Appellant filed a motion for a new trial. The above-captioned appeal is from the denial of her motion for a new trial. However, because our court already assumed jurisdiction over the appeal from Appellant's murder conviction, the trial court did not have jurisdiction to entertain a motion for a new trial. <u>See</u> Rule 205, SCACR. Accordingly, the order denying the motion is a nullity, and the above-captioned appeal is dismissed. AND IT IS SO ORDERED.  C. Tucker Columbia, South Carolina May 5, 2008	

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The Remittitur for the "2nd" appeal [the "nullity"] is dated May 27, 2008.

The PCR application was filed on March 6, 2009. On July 6, 2009, the Respondent in this matter filed a *Return and Motion to Dismiss* and a proposed *Conditional Order of Dismissal* (COD) arguing that the Application was not timely filed.

Initially the Chief Administrative Judge for the Court of Common Pleas for the Fifth Judicial Circuit [The Honorable James R. Barber, III] agreed, and on July 8, 2009 issued a COD finding:

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). The Applicant was convicted of the offense(s) she challenges in this Application on June 23, 2005 and the remittitur was sent to the lower court, following the Applicant's appeal, on July 12, 2007. The Applicant was therefore required to file her application before July 14, 2008.² This Application was filed on March 6, 2009, which was 235 days beyond the time that the statutory filing period had expired.

This Court finds that because the South Carolina Court of Appeals found the "2nd" appeal to be a "nullity," the statute of limitations is calculated from the appeal that actually exists, i.e. the July 12, 2007 date. The Respondent argues that allowing the Applicant to, in essence, renew the statute of limitations by pursuing something that does not exist [a nullity] would defeat the very purpose of the statute of limitations – this Court agrees.

² July 12, 2008 is a Saturday. Rule 6(a), SCRCP

(July 8, 2009 Conditional Order of Dismissal p. 4).

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On July 16, 2009, the Applicant replied to the COD:

Rule 71.1(b) of the South Carolina Rules of Civil Procedure states that an applicant cannot bring a post-conviction relief action while an appeal from the conviction or sentence is pending or during the time which an appeal may be perfected. In this case,

the Applicant essentially filed two appeals from her trial and conviction, one filed on July 1, 2005, and one filed on February 3, 2006. The remittitur for the later appeal is dated May 27, 2008. Therefore, the applicant could not file an action for post conviction relief until after May 27, 2008, as that was when the remittitur was sent to the lower court.

The Respondent argues that because the South Carolina Court of Appeals found the later appeal to be a "nullity," the statute of limitations should be calculated from the time of the remittitur of the first appeal, which was July 12, 2007. However, the Court did not find the appeal to be a nullity, but found the decision of lower court to be a nullity. There is nothing in the Court's ruling that states that the Applicant's appeal was improper or untimely. It is clear from the statutes and rules that a PCR application cannot be filed until the appellate court has ruled on an appeal, and because the Court of Appeals did not rule on the Applicant's appeal until May of 2008, the Applicant was well within the statutory time period by filing her application in March of 2009. Therefore, the Respondent's Motion to Dismiss should be denied.

(July 16, 2009 Reply to Conditional Order of Dismissal p. 2-3).

Judge Barber issued an order on February 4, 2010 vacating the COD and ordering that the case be set on the active PCR roster.

The Applicant filed a *Memorandum in Support of Application for PCR* on October 21, 2010. Later that same day this Court convened an evidentiary hearing into the matter at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Maura Dawson, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on her own behalf. The Applicant's trial counsel, April Sampson, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, the transcript and materials from the post-trial hearing, the records from the Applicant's direct appeal(s), and the Applicant's records from the South Carolina Department of Corrections.

In the PCR Application the Applicant alleged the following:

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

custody unlawfully:

(a) Ineffective Assistance of Counsel

(b)

(c)

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

(a) See Memo to Follow

(b) _____

(c) _____

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

Sentence vacated and a new trial granted/ordered

The day of the PCR hearing the Applicant filed her *Memorandum in Support of PCR* and raised the following issues with considerable detail:

- A. Trial Counsel Was Ineffective Assistance of Counsel for Failing to Investigate**
 - a. Trial Counsel Did Not Thoroughly Investigate Ms. Smith's Background**
 - b. Trial Counsel Did Not Interview Prospective Witnesses**
- B. Ineffective Assistance of Counsel for Failing to Request Proper Charges**
- C. Ineffective Assistance of Counsel for Failing to Object to Threat to Change the Jury Charge After Trial Counsel's Closing Argument**
- D. Ineffective Assistance of Counsel for Failure to Advise Client**
- E. Ineffective Assistance of Counsel for Failure to Request a Continuance to Review Discovery Produced During Trial**
- F. Ineffective Assistance of Counsel for Failure to Call Expert Witness**
- G. Ineffective Assistance of Counsel for Failure to Follow Post-Trial Procedure²**

At the evidentiary hearing, the Applicant proceeded, generally, on the allegations stated in the memorandum. Additionally, this Court, *sua sponte*, inquired into the potential applicability of S.C. Code § 16-25-90 and State v. Grooms, 343 S.C. 248 (2000).³ The issues, as presented, were somewhat overlapping and are addressed so below.

² The Applicant also requested that she be allowed to [re]visit her motion for new trial via a belated appeal under White v. State, 263 S.C. 110 (1974).

³ This Court notes that her PCR counsel and her trial counsel worked at the same law office for a period; the Applicant waived any conflict(s).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

The Applicant testified regarding her present status within SCDC, that her disciplinary record is positive, that she is a Chaplin's Clerk, etc. The Applicant explained that she met with trial counsel at least four (4) times prior to the trial and that although they discussed her testimony, trial counsel did not want to "coach" her. The Applicant testified that she requested that trial counsel interview her neighbors about the conduct of the victim. The Applicant explained that she also wanted trial counsel to speak with her step-father. The Applicant testified that she wanted an expert regarding the stab wound. The Applicant explained that her step-father and an expert could rebut the State's version of the time of death. The Applicant explained that the victim's death was an accident, not really self-defense. The Applicant explained that one of the reasons she told trial counsel she wanted to testify was so she could explain to the victim's daughter what happened. The Applicant testified that trial counsel never discussed the victim's body temperature.

The Applicant testified that an accident charge was appropriate because she never intended to kill the victim. The Applicant explained that the day of the

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victim's death was mother's day and that she drove to the scene from her friend's house. She explained that the victim was coming out of the house as she walked into it. She explained that when she got to a gate the victim chased her and pushed her. The Applicant testified that she fell and her dress came up. The Applicant explained that the victim said something provocative (because her dress had come up) and she kicked him. The Applicant testified that she did not know he had a knife behind his lunch plate, when she kicked him the knife went into his chest, and he collapsed. The Applicant testified that the victim was cool to the touch and that blood was coming out of the wound.⁴

Trial counsel testified that she had been at the public defender's office for about four (4) years at the time of the Applicant's trial. Trial counsel explained that she had done about thirty (30) trials at that time and the majority were capital cases. Trial counsel explained that she agreed for the most part with the Applicant's testimony from the PCR hearing, that they met four (4) or five (5) times, that the Applicant shared her version of events, and that they reviewed the discovery as the case developed. Trial counsel testified that she knew the Applicant had starting nursing school at the time of the crime but had graduated nursing school by the time of the trial. Trial counsel explained that as the nurse training came out during the trial and the Solicitor spun it to suggest that the Applicant had the knowledge of a nurse, i.e. knew where to stab the victim and then let him die from his wounds.

⁴ The Applicant's relevant trial testimony is pages 402 – 417. The Applicant's original statement to law enforcement is part of the record on appeal. (ROA p. 656 – 659).

Trial counsel testified that she did not go through the details when the Applicant testified at trial to explain that she had graduated at the time of the crime. Trial counsel explained that often times clients want character witnesses and that this Applicant did tell her about Eddie and Patrice. Trial counsel explained that she just did not consider the character evidence important because she was the only witness of the stabbing.

Regarding the charge, trial counsel explained that they wanted murder or nothing. Trial counsel explained that self-defense did not work because it was not intentional, similarly, voluntary manslaughter did not work because it was not intentional. Trial counsel explained involuntary manslaughter also did not necessarily fit because that required an affirmative act. Trial counsel explained that the judge made it clear that if she got an accident charge then the court was going to also charge manslaughter.⁵ Trial counsel explained that when the Solicitor objected to her use of the word "accident" during her closing argument she was only trying to relay a car wreck story. Trial counsel also explained that the morning of the trial the State provided her the EMS report. Trial counsel explained that she objected because she thought it was irrelevant, i.e. what time the ambulance arrived. She explained that she did not notice that on the very bottom it indicated the body temperature of the victim. Trial counsel explained that she should have asked for a continuance.

⁵ See also p. 597 - 611 of the transcript.

Trial counsel testified that after the trial she telephoned the jurors and found out that one of the jurors went on the internet; counsel explained that back then it was not routine to instruct jurors not to research the case on the internet.⁶ Trial counsel explained that immediately after the conviction they filed the Notice of Appeal and that it was only after the Notice of Appeal was filed that they learned of the jury issue. Counsel explained that she did not know she should have moved to withdraw the original notice of appeal to properly handle the post-trial juror issue.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive

⁶ Trial counsel's dealings with the jurors are fully explained in the [nullified] transcript of the August 15, 2005 post trial proceedings. See also, opinion, briefs, and ROA from 2nd appeal [dismissed May 5, 2008].

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relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Even when there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. As discussed, the Applicant has failed to carry her burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that she was prejudiced by counsel's performance.

Jury Charge/Accident

The Applicant claims that trial counsel was ineffective for failing to request an accident charge. The trial court made it clear that if the Applicant argued accident then he would charge it. (ROA p. 598 L. 10 – 12). This Court notes that the jury charge issue(s), including *accident*, was an issue on direct appeal and was denied. See July 19, 2006 *Final Anders Brief of Appellant* and *Pro Se Anders Brief*.⁷ The charge issue exists throughout the trial. (ROA, p. 485 – 507, 539 – 546). The trial court explained that based on the charge conference (both on the record and in chambers), the evidence, and the arguments, it was clear that self-defense, accident, involuntary, and voluntary would NOT be charged – that it was a simple “murder or no murder” case. (ROA p. 506). At the PCR hearing trial counsel explained that she wanted murder or nothing. This was also articulated during trial. (ROA p. 485 – 507, 607, 609).

During trial, counsel argued in her closing that there was no malice. (ROA p. 518 – 519). Because the strategy was murder or nothing, the approach was obvious - that if the element of malice was negated then the Applicant would be acquitted. The trial court instructed the jury that the state was required to prove (beyond a reasonable doubt) the element of malice. (ROA p. 627 L. 21 - 23).⁸

There is no evidence that there was a struggle over the knife. The Applicant explained (both at trial and at the PCR hearing) that she did not even know he had

⁷ The issues were properly preserved. (ROA p. 646 L. 22 – 25).

⁸ On the final day, the trial court recharged the jury following their overnight break. (ROA p. 616).

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a knife behind his plate. (ROA p. 326 – 328, 414). The interplay of the different levels of homicide are not always readily apparent when considering what to charge; “[w]e acknowledge courts have also struggled with the interplay of murder and involuntary manslaughter, especially when there is evidence of self-defense or accident.” State v. Starnes, 388 S.C. 590 n.5 (2010).

If a killing is unintentional and occurs “while the perpetrator [is] engaged in a lawful enterprise, and [is] not the result of negligence, the homicide will be excused on the score of accident.” State v. Brown, 205 S.C. 514, 521, 32 S.E.2d 825, 828 (1945) (involving involuntary manslaughter relating to the negligent operation/upkeep of a motor vehicle). In the Applicant’s case, accident may not apply because of the potential negligence in how the Applicant pushed/kicked the victim without knowing he had a knife in his hands. It is clear to this Court that the parties, and the trial court, specifically discussed accident and were certainly concerned with how it may or may not apply to the facts at hand. (ROA p. 496, 498 L. 17 – p. 499 L. 3, p. 506, p. 538 – 544, 595 – 611, 638, 641).

The Respondent argues, and this Court agrees, that (even absent a potentially applicable *accident* charge) the defense’s theory of the case was nevertheless properly presented to the jury.⁹ While the trial court may not have used the word “accident,” the jury was clearly instructed that the State had to prove that the killing was intentional. *Accident* is not an affirmative defense. State v.

⁹ The simple fact that the trial court refused to employ the language suggested by a party does not render the charge ineffective. State v. Burkhart, 350 S.C. at 261, 565 S.E.2d at 303 (2002) (“The substance of the law must be charged to the jury, not particular verbiage.”).

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McDaniel, 68 S.C. 304, 47 S.E. 384 (1904). The Applicant was charged with murder. Murder requires that the State prove beyond a reasonable doubt that the Applicant killed the victim with malice aforethought. (ROA p. 627 L. 20 – 24). “[Malice] is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury...” (ROA p. 628 L. 1 - 3 (emphasis added)).¹⁰ The defendant testified/argued that she did not intend to kill/stab the victim that she did not even know he had a knife behind his plate when she pushed him. (ROA p. 514 – 519). If the jury believed the Applicant did not intentionally stab the victim then (as per the defense strategy) they could not have convicted her of murder because there would have been no malice, i.e. intentional act and requisite intent.¹¹ In this case, the jury only needed to find that the State proved that she deliberately stabbed the victim, once done malice could be inferred by the use of the knife. Sellers v. State, 362 S.C. 182, 607 S.E.2d 82 (2005) (ruling malice may be inferred from the use of a deadly weapon).¹² (ROA p. 629).

The Applicant claims counsel specifically should have requested an *accident* instruction and that had it been requested it would have been given and it would

¹⁰ S.C. Code § 16-3-10; State v. Johnson, 291 S.C. 127, 128, 352 S.E.2d 480, 481 (1987) (“Murder is the unlawful killing of another with malice aforethought, express or implied.”)

¹¹ As stated, trial counsel specifically articulated her strategy of murder or nothing – if the jury believed the Applicant then it would be full acquittal rather than a conviction for a possibly applicable lesser included offense (ROA p. 518 – 519, 538 – 546, 607). Counsel specifically explained that she knew involuntary manslaughter was potentially applicable but that she wanted murder or nothing and that only if the court granted the State’s request for voluntary did she want involuntary. (ROA p. 496, 502 – 505, 507). *See also*, Rule 20(a), SCRCrimP. Our courts are understandably wary of second-guessing defense counsel’s trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel’s choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003).

¹² State v. Belcher, 385 S.C. 597(2009) does not apply because the direct appeal in this case was not pending at the time of the decision in Belcher, i.e. October 12, 2009.

have changed the outcome of the trial. However, *accident*, as a defense to homicide is typically regarding a struggle or other non-negligent handling of a gun.¹³ There are a few non-gun *accident* cases. In State v. Brown, the issue was *accident* as it related to a charge of involuntary manslaughter associated with the use of a vehicle.

Where the death of a human being is the result of accident or misadventure, in the true meaning of the term, no criminal responsibility attaches to the act of the slayer. If it be shown that the killing was unintentional; that it was done while the perpetrator was engaged in a lawful enterprise, **and was not the result of negligence**, the homicide will be excused on the score of accident.

State v. Brown, 32 S.E.2d 825, 828 (S.C. 1945) (emphasis added).

Nevertheless, the absence of negligence, i.e. due care, is required for *accident* to apply. *Accident* as it relates to homicide was recently addressed in State v. Wharton.

For a homicide to be excusable on the ground of accident, it must be shown that the killing was unintentional, the defendant was acting lawfully, **and due care was exercised in the handling of the weapon**. *State v. Burriss*, 334 S.C. 256, 259, 513 S.E.2d 104, 106 (1999). Evidence of an accidental discharge of a gun will support a charge of

¹³ State v. Goodson, 312 S.C. 278 (1994) (holding accident not applicable for accidental discharge because defendant was not acting lawfully in self defense); State v. McCaskill, 300 S.C. 256 (1990) (homicide is excusable when defendant acting lawfully in self-defense and victim is shot though unintentional discharge of the gun); State v. Burriss, 513 S.E.2d 104 (1999) (for a homicide to be excusable on the ground of accident, it must be shown the killing was unintentional, the defendant was acting lawfully, and due care was exercised in the handling of the weapon); State v. Crosby, 584 S.E.2d 110 (2003) (to satisfy the legal defense of accident in homicide case, it must be shown that the defendant used due care in the handling of the weapon); State v. Wharton, 672 S.E.2d 786 (2009) (evidence of an accidental discharge of a gun will support a charge of accident where the defendant lawfully arms himself in self-defense); State v. Chatman, 519 S.E.2d 100 (1999) (homicide will be excusable on the ground of accident when: (1) the killing was unintentional; (2) the defendant was acting lawfully; and (3) due care was exercised in the handling of the weapon); State v. Tucker, 478 S.E.2d 260 (1996) (homicide will be excusable on ground of accident when killing was unintentional, defendant was acting lawfully, and due care was exercised in handling of weapon); State v. Harris, 382 S.C. 107 (S.C. App. 2009) (accidental discharge of gun warranted accident charge); State v. Jones, 101 S.C. 111 (1915) (overruled on other grounds by State v. Belcher, 385 S.C. 597 (2009) (accident charge not warranted in homicide case when no struggle over a gun when defendant deliberately struck victim with a post but did not intend to kill)); State v. Brown, 205 S.C. 514 (1945) (requiring due care in handling of car); State v. Commander, 384 S.C. 66 (S.C.App. 2009) (*certiorari pending*) (accident charge not warranted in homicide case when no gun and evidence was simply that the victim hit the defendant with a stick and the defendant fell on the victim and suffocated her).

accident where the defendant lawfully arms himself in self-defense. *Tisdale v. State*, 378 S.C. 122, 126, 662 S.E.2d 410, 412 (2008). *State v. Wharton*, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009) (emphasis added).

This Court concludes that *accident*, as it relates to a murder charge, generally requires a struggle or other non-negligent handling of a gun. There is no gun in this case (related to the victim's death) and, because there is no evidence that the Applicant handled the knife with due care – or was even aware of the knife; there certainly is no evidence that there was a struggle over the knife. Accordingly, there is no evidence to support the Applicant's claim that she is entitled to PCR relief because: counsel did not specifically request an accident instruction, and that she was entitled to one based on the facts, and that she was prejudiced.

To be clear, this Court has analyzed the claim from several perspectives. Because of the prejudice prong of the Strickland test this Court must engage in some speculation as to what difference(s) may or may not have occurred had counsel done or not done something. The allegation here is that trial counsel should have requested an accident charge. The analysis is multilayered. The allegation first assumes that (1) counsel's performance was deficient for not requesting an accident charge because the facts supported one. If requested, the trial court could have (2) given the charge or (3) denied the request.¹⁴ As it relates to (2) and (3), the question for this Court becomes (2) whether the outcome of the trial would have been

¹⁴ See Rule 20, SCRCrimP. No further objection would be necessary if counsel had properly requested an accident charge and the judge refused. *State v. Johnson*, 333 S.C. 62 (1998).

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different if *accident* was charged. Alternatively, (3) if an *accident* charge request was denied would the appellate court have concluded that the trial court abused his discretion in denying the charge.¹⁵ Because this Court concludes that the facts do not fully support an *accident* charge in the traditional sense, counsel's performance was not deficient (despite her own claim at the PCR hearing that she was deficient). The alternative analysis (assuming for a moment that counsel's performance was deficient for not doing so) is whether the outcome would have been any different had an accident charge been requested. This Court does not find that the outcome would have been different, i.e. an acquittal.

As explained throughout, *accident*, for the purposes of a murder charge, merely means that the victim's death was unintentional, i.e. a lack of malice. As part of its case in chief, the State was required to prove the element of malice; "[Malice] is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury..." (ROA p. 628 L. 1 - 3 (emphasis added)).¹⁶ The State needed to prove the lack of accident, i.e. the State needed to prove malice – that she intentionally stabbed the victim with "evil intent". (ROA p. 628). The defense in this case was to put the Applicant on the stand and have her explain that she never intended to kill the victim that she did not even know he was holding a knife behind his plate. The defense was based on her credibility. By finding the

¹⁵ Because this Court concludes that the facts do not fully support an *accident* charge in the traditional sense, this Court is not going to speculate beyond a finding that the appellate court would not have found the trial court to have abused his discretion if he would have rejected a request for an *accident* charge.

¹⁶ S.C. Code § 16-3-10; *State v. Johnson*, 291 S.C. 127, 128, 352 S.E.2d 480, 481 (1987) ("Murder is the unlawful killing of another with malice aforethought, express or implied.")

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Applicant guilty of murder, the jury found that she acted with malice and therefore, by definition, did not think the stabbing was not intentional.

The remaining portion of this Court's analysis for this allegation is Tisdale. The Applicant argued that Tisdale v. State, 378 S.C. 122 (2008) fully supports their argument that counsel was ineffective for failing to request an accident charge. At first blush, Tisdale does appear similar. In Tisdale, our Supreme Court reversed the denial of PCR when counsel failed to request charges on accident and/or involuntary manslaughter. In fact, our Supreme Court appears to specifically reject an argument made by the State in Tisdale that is similar to this Court's findings – that because the jury found all the elements of murder (malice) they did not agree that the killing was an accident:

Without citation of authority, the State argues that because the jury rejected petitioner's claim of self-defense and found him guilty of murder, the jury must have found malice and therefore petitioner cannot show prejudice from the failure to submit involuntary manslaughter. We disagree. The State's argument essentially suggests that if a defendant is found guilty of the greater offense, he can never challenge the failure to submit a lesser offense because the jury must have found all the elements of the greater. To the contrary, the relevant test is whether there is *any* evidence that the defendant committed the lesser rather than the greater offense.

Tisdale v. State, 378 S.C. 122, 126, 662 S.E.2d 410, 412 (2008) (emphasis added).

The logic of the above cited portion of Tisdale completely supports this Court's findings. This portion of Tisdale is expressly limited to *lesser included offenses*. *Accident* is not a lesser included offense to murder; *accident* is an excuse, i.e. an acquittal. State v. Burriss, 513 S.E.2d 104 (1999).

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Additionally, unlike Tisdale, this Applicant has never argued that counsel should have argued for a charge of involuntary manslaughter. As to *accident*, this Court does not find Tisdale applicable. As mentioned earlier, Tisdale is fact based regarding homicide involving a gun. In Tisdale the defendant lawfully armed himself in self-defense and the gun supposedly accidentally discharged. There are no similarities to the case at hand, the Applicant did not lawfully arm herself in self-defense – she (at best) did not even know about the knife. In addition, completely unlike a gun, a knife cannot accidentally discharge. Tisdale simply does not apply because *accident* is not a lesser included offense to murder and there was no accidental discharge of a gun following a struggle over it.

Applicant's nursing background

The Applicant claims counsel was ineffective for failing to object to the State's purported "mischaracterization" of the Applicant's background and experience when during closing argument the Solicitor stated "[t]hat' s one reason I am going to ask you to infer malice but not the biggest reason. The biggest reason ... is this licensed practical nurse let him sit there and bleed to death." (R. App. 531). At the PCR hearing, the Applicant explained that had counsel and the Applicant discussed her educational background counsel would have known that the Applicant had only completed some schooling and her knowledge and experience were limited.¹⁷

¹⁷ The allegation is virtually frivolous because trial counsel did explore her background, this is on the record. (ROA p. 388).

According to the testimony, she had only completed about a semester's worth of classes. She apparently remained on bond after she was charged with the victim's death and completed her degree/classes.

This Court does not find that the Applicant is entitled to relief on this allegation. The solicitor's statement was perfectly correct when he (presumably pointed) and said "this licensed practical nurse." At the time of the trial, what the Solicitor said was correct. A solicitor's "argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it." State v. Rudd, 355 S.C. 543, 549, 586 S.E.2d 153, 156 (Ct.App.2003). "The appropriate determination is whether the solicitor's comment so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. at 550. The Solicitor's comment was obviously nothing more than a reasonable inference to the record and a comment on the credibility of the Applicant's story that the stabbing was accidental when she waited to call 911 perhaps while she cleaned the knife and/or changed her clothes, etc. (ROA p. 527 - 536, 549 - 573). The Solicitor is clearly referring to the Applicant's testimony during cross examination. (ROA p. 438 - 439). Because the Applicant was a LPN or RN at the time of the trial (and she was a nurse at the time of the crime), she has failed to satisfy her burden of proof and demonstrate that counsel should have objected to the Solicitor's comment. She has also failed to demonstrate any prejudice. Beyond the Applicant's allegation, the record suggests that the Applicant did represent

herself as a "licensed practical nurse" not during trial, but as early as her arrest. (ROA. p. 238).

Failure to investigate and present testimony from other witnesses

The Applicant did not present the testimony of any additional witnesses at the PCR hearing to support this allegation. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence."). The Applicant's defense was that she did not intend to stab the victim, purported abuse would tend to negate that defense. The Applicant admitted at the trial that she was not acting in self-defense. (ROA p. 517 – 518). The Applicant has failed to satisfy her burden of proof and demonstrate that counsel should have called additional witnesses and that if counsel had done so the outcome of the trial would have been different.¹⁸ This Court applies the same logic to the Applicant's claim regarding good character witnesses. The Applicant did not address this issue in the same detail (if at all) but nonetheless similarly failed to satisfy her burden of proof and present testimony/evidence of her supposed good character.

¹⁸ The applicability of S.C. Code § 16-25-90 as it relates solely to sentencing is addressed separately.
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Ineffective Assistance of Counsel for Failing to Object to Threat to Change the Jury Charge After Trial Counsel's Closing Argument

Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant argues that counsel was ineffective for failing to preserve the trial judge's error regarding the charge issue as it arose during the defense's closing argument. (ROA p. 518). This issue(s) was the issue on direct appeal and it was denied. See July 19, 2006 *Final Anders Brief of Appellant and Pro Se Anders Brief*. The charge issue exists throughout the trial. (ROA, p. 485 – 507, 539 – 546). The issues were properly preserved. (ROA p. 646 L. 22 – 25). This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). The Applicant raised this issue at trial and on appeal. Therefore, this argument for post-conviction relief is without merit.

Failure to Request a Continuance to Review Discovery Produced During Trial and Failure to Call Expert Witness

This issue(s) has to do with the body temperature of the victim. The Applicant claims that counsel was ineffective for failing to request a continuance when the Solicitor produced a last minute EMS report that indicated the time EMS arrived and the body temperature of the victim. This issue extends to an allegation that counsel should have requested such a continuance so that she could procure an expert to refute the State's argument(s) regarding the body temperature. The Applicant argues that an expert could explain away the State's arguments regarding how the Applicant must have waited to call 911 based on the drop in the victim's body temperature by the time EMS arrived and measured it. This argument has no merit because the Applicant has failed to satisfy her burden of proof and demonstrate that an expert could refute the State's arguments. Simply

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put, the Applicant cannot speculate as to what an expert would have testified to had only counsel got a continuance and procured such an expert.¹⁹ In addition, beyond the purported last minute EMS report with the body temperature, the State had a reply witness, First Responder Marvin C. Fortner, who clearly testified that the body was cool to the touch at 2:15 – 2:20P.M. and he estimated the victim had been dead for approximately twenty (20) minutes. (ROA p. 480).

This Court finds that it was incumbent upon the Applicant to provide this Court with evidence, such as witnesses, expert reports, etc. in order to demonstrate that she was prejudiced by the absence of such. The Applicant did not meet her burden to prove that trial counsel was deficient and that the result of his trial would have been different but for this alleged deficiency. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding that where contents of challenged documents were not presented at the PCR hearing, defendant failed to present any evidence of probative value demonstrating how counsel's failure to obtain the unproduced documents in a more timely fashion prejudiced his defense); cf. Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) Harris v. State, 659 S.E. 2d 140 at 146, Op. No. 26458 (March 10, 2008). Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy her burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.

¹⁹ This Court is ignoring the extensive layered speculation required to address the prejudice analysis if counsel had requested a continuance but it was denied by the trial court and to how that would potentially prejudice the Applicant a theoretical appeal issue.

Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Accordingly the allegation(s) are without merit.

Ineffective Assistance of Counsel for Failure to Follow Post-Trial Procedure

The Applicant claims that trial counsel was required to assist her in perfecting her appeal and that trial counsel's handling of the post-trial juror issue was defective. The Applicant claims that the appellate court was never aware of the supposed post-trial juror issue because counsel was defective and that she is entitled to have that issue addressed.

First, the Court does not necessarily agree that trial counsel (Ms. Sampson) was the Applicant's attorney when the post-trial juror issue was discovered. Trial counsel explained that the Notice of Appeal was filed prior to discovery of the juror issue. Rule 602(e)(3), SCACR provides that upon conviction and filing of a Notice of Appeal the Public Defender is automatically relieved and the Office of Appellate Defense shall thereafter represent the convicted. Accordingly, the supposed post-trial juror issue needed to be raised by the Applicant's appellate attorney and a motion made to the appellate court to remand the case to the circuit court. Rule 205, 240(a), SCACR; Rule 29(b), SCRCrimP. Because the Applicant's trial counsel was automatically relieved when the Notice of Appeal was filed there can be no deficient performance by trial counsel because she no longer represented the Applicant. Whether appellate counsel's performance was deficient not an issue presented by the Applicant.

The Applicant claims that the appellate court was not aware of post-trial issue. (Memorandum p. 12). This is incorrect. The appellate court was certainly

aware of the post-trial juror issue (during the 1st appeal) because the Applicant herself included that issue in her *pro se* Anders brief. The Applicant's *pro se* Anders brief was submitted to the appellate court and she explained the post-trial juror issue. Appellate counsel was also obviously aware of the issue as well because of the Applicant's *pro se* brief:

A. JERS RESPONSE BRIEF	
<u>Pro Se Brief</u> Sharon L. Smith Appellant	RECEIVED SEP 11 2006 SC Court of Appeals
<u>ARGUMENT</u>	ATTORNEY GENERAL'S OFFICE 9-5-06
I, Sharon L. Smith, should be granted a new trial on the grounds involving <u>ineffective counseling</u>: failure to bring substantial evidence to attention of the court and denial of <u>constitutional</u> right in due process to a fair trial. I ask that mercy of the court be granted towards my lack of legal knowledge as I make an effort to bring forth relevant facts involving the injustice found in this appeal.	
<u>Relevant facts</u> I hereby bring to the attention of the court my motion denied involving jurors searching on the internet comparing first degree murder laws and instructions to North Carolina's laws. First, North Carolina's laws differ completely than South Carolina's involving first degree murder. Second, the act of the jurors bringing in this information to discuss is not permissible. It is actually a law against committing such an act. However, such an act, establishes there was a lack of understanding of the instructions given to the jurors by the trial judge. Jurors held into consideration laws involving the lesser charges but not solely that there was no "malice aforethought" for the conviction of murder indicating a guilty verdict without reasonable doubt. Defense counsel, April Sampson witnessed a majority of the jurors lack of understanding when she spoke with them after the trial was over. Ineffective counseling hindered my right to a fair trial. My defense counsel, April Sampson admits to her fear of the court's threat to change instruction which caused a "chilling effect" to her closing argument. This "chilling effect" enabled her to bring forth the closing argument she had prepared. She also	

Rather than remand the case to resolve the post-trial juror issue raised in the Applicant's *pro se* Anders brief, the appeal was dismissed by the appellate court:

PER CURIAM: Appellant, Sharon L. Smith, was indicted for and convicted of the murder of Charles Gibson. The trial judge sentenced Smith to forty-eight years imprisonment. Smith's counsel attached to the brief a petition to be relieved as counsel, stating that he had reviewed the record and concluded this appeal lacks merit. Smith filed a separate *pro se* brief. After a thorough review of the record pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ the appeal and grant counsel's petition to be relieved.

State v. Sharon Smith, Op. No. 2007-UP-250 (S.C. Court of Appeals, filed May 22, 2007, Remittitur date July 12, 2007).

By doing so, the South Carolina Court of Appeals reviewed the *pro se* Anders brief and found "no issues of arguable merit." State v. Lyles, 673 S.E.2d 811, 813 (2009), citing State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991).

Accordingly, the Applicant has not demonstrated any deficiency by trial counsel regarding the post-trial juror issue. As discussed below, there has been no demonstration of prejudice.

As explained above, this Court does not find any deficient performance by counsel, the issue at this point is (for the sake of argument) prejudice.²⁰ The Applicant claims that she was prejudiced because the post-trial juror issue was not properly presented to the [trial] court and she was not able to properly appeal the post-trial juror issue. This Court is confronted with an awkward scenario. Because

²⁰ Once again, Strickland requires a showing of deficient and prejudice.

Smith, Sharon, 00309885 – Order of Dismissal - 2009CP4001565
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the appellate court clearly found the post-trial hearing by the circuit court to be a "nullity," the question is whether this Court can review those documents (particularly the transcript). Nullity is defined as "[s]omething that is legally void." Black's Law Dictionary (9th ed. 2009). Accordingly, because the post-trial hearing had no effect whatsoever it should not be considered. Regardless of the defects in how it has been raised (at trial, on appeal, or in PCR), the affidavit from the juror is the issue in this allegation:

[Image inserted on next page]

AFFIDAVIT OF MARK PLEASANT

As a juror for the trial of the State of South Carolina vs. Sharon Smith, the following is my account of the process that was followed to arrive at our verdict:

After hearing all of the testimony and closing arguments, it was agreed that our first step would be to take a vote without discussion to determine our initial collective opinions on the charge of murder. The majority of the jury felt that Ms. Smith was guilty, a lesser number of jurors had not yet decided on the charge, and few of the jurors felt that she was not guilty.

Following the initial vote, the forelady asked each juror to share their views and opinions on the testimony and evidence. In my opinion, the majority of the jury did not think Ms. Smith intended to kill the victim. However, most of the jury did feel that she deliberately stabbed the victim. The ensuing discussion focused on Ms. Smith's account of what took place and the apparent inconsistencies with her story and the State's evidence and testimony.

As we began to focus on the charge of murder, there were several questions regarding the legal definition of murder and the term of malice aforethought. The jury requested that the judge again read the full charge to clarify the definition.

As we continued our deliberation, I expressed my personal concerns regarding the appropriateness of the murder charge. I shared several definitions that I printed from the internet regarding first degree and second degree murder, voluntary and involuntary manslaughter. I shared my belief that the action took place without premeditation and without the intent to kill, but that her actions happened in the heat of passion as the result of a physical and verbal altercation. In my opinion, many of the jurors agreed, but we all recognized that as jurors we did not have discretion to find her guilty of a lesser charge.

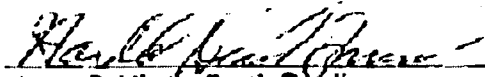
Our discussion ultimately focused on the definition of malice. Based on our understanding of the State's definition of malice and our common belief that she intentionally stabbed the victim, all of the jurors felt that we had no alternative but to find Ms. Smith guilty. On either the second or third vote, we all agreed to the charge of murder.

SWORN TO AND SUBSCRIBED BEFORE ME

Respectfully Submitted

THIS 1 day of JULY, 2005


Mark Pleasant
Juror #145


Notary Public for South Carolina
My Commission Expires: _____

Date: 7/1, 2005

~~My Commission Expires May 8, 2011~~

This Court will only consider the extent of the juror affidavit that does not violate Rule 606(b), SCRE.²¹ Essentially, the affidavit should be limited to the fact that a juror (the foreman) printed some information from the internet regarding different degrees of murder/homicide – the internal deliberation commentary cannot be considered. Shumpert v. State, 378 S.C. 62, 661 S.E.2d 369 (2008). The admission of jury misconduct testimony is “quite rare.” Id. at 372 citing State v. Pittman, 373 S.C. 527 (2007).

The Applicant has failed to satisfy her burden of proof and demonstrate that she was prejudiced by the fact that a juror may have discussed a version of the law different from what the trial judge instructed.²² While the trial court was not aware of the juror’s out of court research, the jury did ask to be recharged on the morning of the second day of deliberations (which was after the juror’s internet research); the conviction was about an hour later. (ROA p.630 L. 8, p. 631 L. 11). Following the juror’s internet research the trial court instructed the jury with the following:

If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon your idea about the law because under your oath as jurors in this case you are sworn to accept and apply the law exactly as I state it to you.

(ROA p. 620 – 621).

²¹ This Court notes that the Rules of Evidence went into effect on September 3, 1995, some of the cases cited in this section are prior to the rules, but the cases are cited with authority within cases after the rules came into effect.

²² There is no evidence that the juror/jury looked into extrajudicial fact issues, it was just the law. For instance, they did not read newspaper articles about the particular case, read about the Applicant’s prior record, found out what the potential sentence would be, etc.

Accordingly, there can be no prejudice because the jury was instructed to ignore whatever preconceived ideas they had about what the law may or may not be as it applied to the case at hand.

Both Strickland and jury misconduct precedent require that it is the Applicant/defendant's burden of proof to demonstrate jury misconduct. State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999). Misconduct is not enough, it must undermine the verdict.

Misconduct that does not affect the jury's impartiality will not undermine a verdict. Harris, 340 S.C. at 63, 530 S.E.2d at 627. In determining whether outside influences have affected the jury, relevant factors include: (1) the number of jurors exposed, (2) the weight of the evidence properly before the jury, and (3) the likelihood that curative measures were effective in reducing the prejudice. *Id.*

Vestry and Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc., 384 S.C. 441, 682 S.E.2d 489 (2009) *citing* State v. Kelly, 331 S.C. 132 (1998) and State v. Harris, 340 S.C. 59 (2000).

While the above cite is from a civil case, the approach is the same for criminal.

"In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences." State v. Cooper, 334 S.C. 540, 551, 514 S.E.2d 584, 590 (1999). However, "[u]nless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict." *Id.* "The general test for evaluating alleged juror misconduct is whether or not there in fact was misconduct and, if so, whether any harm resulted to the defendant as a consequence." State v. Zeigler, 364 S.C. 94, 108, 610 S.E.2d 859, 866 (Ct. App. 2005).

State v. Bantan, 387 S.C. 412, 692 S.E.2d 201 (Ct. App. 2010).

Accordingly, the Applicant has not met her burden of proof and demonstrated any prejudice regarding this issue. At best, the affidavit indicates the foreman went home the first night of deliberations and lookup up some definitions. The very next

morning the trial [again] court instructed the jury to ignore any preconceived definitions of the law that they may have had and to only accept the law as given by the judge. (ROA p. 620 – 621). The jury convicted the Applicant shortly thereafter.

This Court does not agree with the Applicant that the internal deliberations of the jury should be analyzed; however, the PCR claims are just that. To fully address the Applicant's claims in light of S.C. Code § 17-27-80 - despite the above explained limitations to juror testimony - this Court finds the following: As discussed throughout, if the jury was struggling with whether there was malice then they would have acquitted her of murder because that was the only charge – as was the trial strategy. Whatever hesitation the foreman (juror #145) had with malice/intent was ameliorated when he was re-charged. This is evident by his finding the Applicant guilty of murder. (ROA p. 634 L. 19 – 23). “[M]ost of the jury did feel that she deliberately stabbed the victim.” (Juror affidavit). If he did not find that the State proved malice beyond a reasonable doubt then he would have voted not guilty. *See also State v. Harris*, 340 S.C. 59, 530 S.E.2d 626 (2000) (holding that juror's misconduct in consulting legal dictionary for definitions of “malice aforethought” and “manslaughter” did not entitle defendant to new trial).

Trying to decipher what the jury or jurors may have thought should not be undertaken but in the rarest of cases when serious issues of prejudice (such as race) are involved.

But let it once be established that verdicts solemnly made and publicly returned into court can be attacked and set aside on the testimony of those who took part in their publication and all verdicts could be, and

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many would be, followed by an inquiry in the hope of discovering something which might vindicate the finding. Jurors would be harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct ... [and] the result would be to make what was intended to be a private deliberation the constant subject of public investigation....

Shumpert v. State, 378 S.C. 62, 70, 661 S.E.2d 369, 373 (2008) *citing* McDonald v. Pless, 238 U.S. 264, 35 S.Ct. 783 (1915).

This issue is therefore without merit. Trial counsel was not deficient (trial counsel not longer represented the Applicant when the post-trial juror issue arose). Even if there was deficient performance by counsel (trial or appellate), the Applicant has not demonstrated any prejudice.

S.C. Code § 16-25-90 and State v. Grooms, 343 S.C. 248 (2000)

The remaining issue is the applicability of S.C. Code § 16-25-90. As this Court explained, this issue was not raised by either party but was raised by this Court *sua sponte*. Lorenzen v. State, 376 S.C. 521 (2008) (while ultimately rejected, a PCR issue raised *sua sponte* by the PCR court was addressed on PCR appeal).

S.C. Code § 16-25-90 provides:

Parole eligibility as affected by evidence of domestic violence suffered at hands of household member.

Notwithstanding any provision of Chapters 13 and 21 of Title 24, and notwithstanding any other provision of law, an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post-conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member. This section shall not affect the provisions of Section 17-27-45.

§ 16-25-20 states:

[i]t is unlawful to: (1) cause physical harm or injury to a person's own household member, (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril."

§ 16-25-10 defines "household member":

- (1) a spouse;
- (2) a former spouse;
- (3) persons who have a child in common; or
- (4) a male and female who are cohabiting or formerly have cohabited.

These sections were addressed by the Court in State v. Grooms, 343 S.C. 248, 540 S.E.2d 99 (2000) and by the Court of Appeals in State v. Blackwell-Selim, 385 S.C. 394, 684 S.E.2d 208 (Ct. App. 2009) rehearing denied. The cases explain that it is the convicted that needs to demonstrate, by a preponderance of the evidence, there was a "history of criminal domestic violence." The term "history" is not defined. In construing a statute, its words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Rowe v. Hyatt, 321 S.C. 366, 468 S.E.2d 649 (1996). "Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning." Lee v. Thermal Eng'g Corp., 352 S.C. 81, 91-92, 572 S.E.2d 298, 303-04 (Ct. App. 2002). "History" is generally defined as "events of the past." Merriam-Webster's Collegiate Dictionary.²³

The Applicant cannot simply testify that she suffered a history of criminal domestic violence at the hand of her victim. She must persuade this Court that her evidence is "reliable." Grooms, at 101. Because a plain reading of the statute requires a "history" of supposed domestic violence, the Applicant's explanation that she and the victim were fighting *at the time of the murder* is irrelevant. To satisfy the statute the Applicant must prove that there was more than supposed domestic violence at the time of the murder; otherwise, the word "history" would have no effect. Had the legislature intended early release to apply to crimes that are

²³ <http://www.merriam-webster.com/dictionary/history>

committed by a defendant while the victim was simultaneously committing crimes of domestic violence [against the defendant] then the legislature would have not included the phrase "of a history." A plain reading of the statute indicates that the Applicant needs to establish a past history of criminal domestic violence to be eligible for early release as provided by S.C. § 16-25-90.²⁴ Compare State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002) (holding the legislature would not have included anything beyond the phrase "while alleging, either by action or words, he was armed" if they intended that words alone [no weapon] were sufficient for armed robbery). The Applicant presented little more than hearsay with few specific details regarding a supposed history of domestic violence at the hands of the victim. Accordingly, she has not satisfied her burden of proof and S.C. § 16-25-90 is not applicable.

²⁴ S.C. Code § 16-25-90 does not limit what the underlying offense must be. Therefore, without the history element there would be a paradox in the sense that if two household members were convicted of simultaneously committing criminal domestic violence on each other than neither could receive more than one quarter (1/4) of the applicable sentence.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant her application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in her application at the hearing and has, thereby, waived them. 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 Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet her burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional

relinquishment of her right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the Applicant that she must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this ____ day of _____, 2010.

The Honorable L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

_____, South Carolina.

From: Brian Petrano
To: Maura Dawson; cmanninglc@sccourts.org
Date: 12/21/2010 5:19 PM
Subject: Smith, Sharon - proposed Order of Dismissal (2009CP4001565).DOCX; Smith, Sharon - proposed Order of Dismissal (2009CP4001565).PDF
Attachments: Smith, Sharon - proposed Order of Dismissal (2009CP4001565).DOCX; Smith, Sharon - proposed Order of Dismissal (2009CP4001565).PDF

Mr. Walker:

As per His Honor's request, please accept the attached proposed Order of Dismissal for Ms. Sharon Smith (2009CP4001565) in pdf form. I have also included a Word version in the event you need to edit the proposed order.

As discussed at the hearing, this Order addresses His Honor's *sua sponte* issue regarding the applicability State v. Grooms. In addition, the Order has been crafted in such a way that Ms. Sampson has NOT been found to have rendered deficient performance.

This Order is quite lengthy, but I trust you will find that it thoroughly addresses all of the issues.

On a final note, I received opposing counsel's proposed order a few days ago, as is my policy I have not read it yet.

Please let me know if you need anything further.

Thanks,
Brian

cc. Maura Dawson.

Brian T. Petrano
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Assistant Attorney General
Office of the Attorney General
State of South Carolina
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Columbia, SC 29211-1549
803.734.3731
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Current Roster:
<http://scag.gov/inside/pdf/5th.pdf>

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

Sharon #0030885 Smith

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2009CP4001565

State of S C

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs are available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 18 September 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Richard J. Breibart

Maura Dawson

Brian T. Petrano

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBridge

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Sharon Smith, 0030885

Petitioner

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO: 2009-CP-40-1565

ORDER GRANTING POST-CONVICTION
RELIEF

FILED
2012 SEP 14 PM 12:51
JANET E. W. McBRIDE
C.C.P. & G.S.

THIS MATTER comes before the Court by way of an Application for Post-Conviction Relief filed March 6, 2009. The State made its Return and Motion to Dismiss on or about July 9, 2009. The Honorable James R. Barber III granted a Conditional Order of Dismissal on July 10, 2009, which was vacated on February 4, 2010. An evidentiary hearing was convened in this case on October 21, 2011. The Applicant was present and was represented by Maura Dawson, Esquire. The State was represented by Brian T. Petrano, Assistant Attorney General.

**I.
PROCEDURAL HISTORY**

Applicant Sharon Smith, is currently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Ms. Smith was indicated for Murder pursuant to S.C. Code Ann. §16-3-20. Applicant was represented by April W. Sampson, Esquire, and Debra Ahrens, Esquire, both of the Richland County Public Defender's Office. Ms. Smith's case proceeded to trial by jury in June 2005, and she was convicted of Murder on June 23, 2005. Thereafter, she was sentenced by the Honorable Reginald L. Lloyd to forty-eight (48) years for murder.

On June 30, 2005, Applicant filed a timely notice of appeal (the "first appeal"). The South Carolina Court of Appeals dismissed Applicant's first appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967) on May 22, 2007. The Court of Appeals issued its remittitur on July 12, 2007.

Following the filing of her first appeal, counsel for Applicant learned of, and investigated, potential juror misconduct. Based on the information of juror misconduct, Applicant filed a Motion for a New Trial on July 1, 2005. Counsel failed to seek leave from the appellate court to file this motion. A hearing on Applicant's Motion for New Trial was heard on August 15, 2005, and denied by written order dated February 2, 2006. Applicant filed an appeal of the trial court's denial of her post-trial motion (the "second appeal"). The South Carolina Court of Appeals dismissed the second appeal on May 5, 2008, on the grounds that the trial court lacked jurisdiction to hear the post-trial motion since the Court of Appeals had assumed jurisdiction of the case pursuant to the first appeal.

Applicant filed her Application for Post-Conviction Relief. For the reasons more fully detailed below, this Court grants post-conviction relief and orders that this case be remanded for a new trial.

II. ALLEGATIONS RAISED

In her Application for Post-Conviction Relief, the Applicant alleged that she is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.

Prior to the start of her post-conviction relief evidentiary hearing, Applicant presented a *Memorandum in Support of PCR* which outlined the following issues:

1. Ineffective assistance of counsel for failing to investigate:

a. Ms. Smith's background

b. Prospective witnesses

2. Ineffective assistance of counsel for failing to request proper jury charges;
3. Ineffective assistance of counsel for failing to object to threat to change the jury charge after trial counsel's closing argument;
4. Ineffective assistance of counsel for failing to advise client;
5. Ineffective assistance of counsel for failure to request a continuance to review new discovery produced before trial;
6. Ineffective assistance of counsel for failure to call an expert witness;
7. Ineffective assistance of counsel for failure to follow post-trial procedures.

This Court accepts those allegations contained in her *Memorandum* as amendments to her Application for Post-Conviction Relief. See *Simpson v. Moore*, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006); Rule 15(b), SCRPC.

Additionally, the Court raised the issue, and includes that issue in its ruling, of the applicability S.C. Code Ann. § 16-25-90 and *State v. Grooms*, 343 S.C. 248 (2000)

III. EVIDENCE BEFORE THE COURT

At the Post-Conviction Relief hearing held in this case on October 21, 2011, the Applicant presented her own testimony. The Court also heard testimony from April Sampson, Esquire. In addition to this testimony, this Court has before it a transcript of the trial and post-trial proceeding, a copy of Applicant's appellate records, a copy of the records of the Richland County Clerk of Court regarding the subject conviction, and a copy of the Applicant's records with the South Carolina Department of Corrections. What follows below are the findings of fact and rulings of law made by this Court in accordance with the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160 (Supp. 2003).

As a threshold matter, this Court would note that the Applicant was represented by an experienced attorney who is well regarded for her competence and experience. On the facts of this case, however, this Court finds that the combined effect of her errors and omissions was such that the Applicant was deprived of effective assistance of counsel and a fair trial. Specifically, this Court finds a reasonable probability that but for counsel's errors and omissions, the outcome of the trial, post-trial motions, and appeal, would have been different. For that reason, this Court finds that trial counsel failed to provide the Applicant reasonable, professional assistance of counsel.

IV. STANDARD OF REVIEW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. 668, 104 S.Ct. 2052 (1984). The Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient.

Under this prong, the court measures an attorney's performance by its "reasonableness under

professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant has raised several specific allegations of ineffective assistance of counsel. These arguments are: (1) that counsel was ineffective for failing to investigate both Applicant’s background and prospective witnesses prior to trial; Smith’s background; (2) that counsel was ineffective for failing to request proper jury charges; (3) that counsel was ineffective assistance for failing to object to the trial court’s threat to change the jury charge after trial counsel’s closing argument; (4) that counsel was ineffective for failing to advise client; (5) that counsel was ineffective for failing to request a continuance to review new discovery produced before trial; (6) that counsel was ineffective for failing to call an expert witness; (7) that counsel was ineffective for failing to follow post-trial procedures; and (8) that counsel was ineffective for failing to present credible evidence of a history of criminal domestic violence against the household member against whom Applicant allegedly committed the crime for which she was convicted pursuant to S.C. Code Ann. § 16-25-90, and thus depriving her of a meaningful opportunity to receive parole eligibility.

This Court has heard the testimony of Applicant and trial counsel and finds the testimony of both to be credible.

1a. Trial Counsel Provided Ineffective Assistance of Counsel for Failing to Investigate Applicant's Background

Trial counsel was ineffective in failing to investigate Applicant's background. This failure to investigate resulted in the solicitor being allowed to make an objectionable comment during closing statements that has counsel been properly prepared, would have drawn an objection. The solicitor's mischaracterization of Applicant was of such a nature that a reasonable jury could have been persuaded by the argument and but for counsel's failure to object, the jury had the opportunity to consider this mischaracterization.

Ms. Sampson and Applicant had approximately four meetings prior to her trial. These meetings were focused on the discovery received from the State. During these meetings, Ms. Sampson and Applicant did not thoroughly discuss her background, particularly her education. By failing to investigate Applicant's background, Ms. Sampson did not address her lack of knowledge and skills at the time of the incident.

During the State's closing, the Solicitor said "...[t]hat's one reason I am going to ask you to infer malice but not the biggest reason. The biggest reason...is this licensed practical nurse let him sit there and bleed to death." (R. App. 531). A solicitor's "argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it." *State v. Rudd*, 355 S.C. 543, 549, 586 S.E.2d 153, 156 (Ct.App.2003). "The appropriate determination is whether the solicitor's comment so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Id.* at 550

Here, Ms. Sampson's unfamiliarity with her client resulted in her failure to catch an otherwise objectionable comment during closing argument. Additionally, not only did Ms. Sampson not object to the mischaracterization of Applicant's knowledge and experience, she failed to address

this critical point in the trial of the case.

If Ms. Sampson had spent more time with Applicant, she would have learned that Applicant had only completed her first semester of schooling and that at the time of the incident Applicant's medically related knowledge and experience were very limited. Ms. Sampson could have questioned Applicant about her experience more thoroughly, which would have countered the State's emphasis on Applicant's experience as it related to her abilities to help Mr. Gibson. This omission was critical to the State's attempt to meet its burden of proving malice in their case in chief.

Accordingly, this Court finds that counsel was ineffective in failing to investigate Applicant's background, and as such, she is entitled to a new trial.

1b. Trial Counsel Provided Ineffective Assistance of Counsel for Failing to Investigate Prospective Witnesses

Counsel was ineffective in failing to investigate prospective witnesses. Applicant requested that Ms. Sampson speak with her neighbors, who, in all likelihood, heard Mr. Gibson and witnessed his attempts at removing Applicant's belongings from the home. She also asked Trial Counsel to speak with the two witnesses who were with Applicant the night before and morning of the incident.

Applicant had contact information for all of these witnesses and not only would have provided it to Ms. Sampson had she requested, in some instances, she did provide this information to Ms. Sampson.

Applicant's neighbors were not contacted by anyone from Ms. Sampson's office, nor did anyone from Trial Counsel's office interview the potential witnesses that Applicant identified. Additionally, during her trial, Applicant testified as to the abusive relationship between her and the victim and to both parties' demeanors prior to the incident. These potential witnesses could have testified to what they overheard in the past and what they may have witnessed the morning of the

incident

Additionally, since the only living witness to the crime was Applicant, it was important to hear from witnesses who could testify about her demeanor prior to the altercation and her relationship with the victim. If the additional witnesses had confirmed the Applicant's testimony about her abusive relationship with the victim, there is a reasonable likelihood the result of the trial would have been different, which is a factor the court must consider when determining whether Trial Counsel was ineffective. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007).

A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State. *Nance v. Ozmint*, 367 S.C. 547, 557 n. 8, 626 S.E.2d 878, 883 n. 8(2006) (*quoting Wiggins v. Smith*, 539 U.S. 510, 524-25, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003)). In *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007), the Court stated that although "the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Id.* 372 S.C. at 331-32, 642 S.E.2d at 597.

The Court has found counsel ineffective where the attorney failed to subpoena and call witnesses who could have supported the Applicant's testimony. *Lounds v. State*, 380 S.C. 454, 670 S.E.2d. 646(2008). Applicant's neighbors were aware of the issues between Applicant and Mr. Gibson. Moreover, Applicant requested that Ms. Sampson speak with the neighbors. Trial counsel had a duty to investigate potential witnesses who could support the Applicant's case, and Trial Counsel failed to do any investigation.

Furthermore, even if not interviewing the witnesses was a strategic choice by trial counsel,

the Court has continuously recognized that strategic choices made by counsel after an incomplete investigation are reasonable "only to the extent that reasonable professional judgment supports the limitations on the investigation." *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004) (quoting *Wiggins v. Smith*, 539 U.S. 510, 533, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003)); See also *McKnight v. State*, 378 S.C. 33, 661 S.E.2d 354 (2008).

A different verdict may have been reached by the jury had they known the Applicant was not a licensed practical nurse at the time of the offense. Clearly, no malice could be inferred from any medical knowledge Applicant had after one semester of schooling. Furthermore, considering Ms. Sampson had time and opportunity to interview the witnesses and was provided with the contact information for these witnesses, it clearly was unreasonable for Ms. Sampson not to speak with these witnesses prior to trial.

A different verdict may also have been reached had the jury known the abusive history between the Applicant and the victim and the Applicant's demeanor prior and during the altercation. This is especially important in this case considering that the only real question before the jury was whether Applicant acted with malice and intended to kill the victim. Applicant's intent and mental state were the only issues in the case, which makes her demeanor and relationship with the victim the most essential element in the case.

Furthermore, testimony was presented that Applicant was a mother; a nursing student, an active church member, and a loving daughter who regularly visited her parents. As stated above, had Trial Counsel done a more thorough investigation, she could also have had witnesses to provide even more details about Applicant's good character and reputation.

Even if the abusive history did not sway the jury, then this history could have impacted the sentence

imposed by the Trial Court. If the Trial Court had been presented with an abusive history, the trial court could have taken this history into account and included in Applicant's sentence that she could be parole-eligible. *State v. Grooms*, 343 S.C. 248, 540 S.E.2d 99 (2000).

Accordingly, this Court finds that counsel was ineffective in failing to interview and present testimony of witnesses whose testimony could have been favorable to Applicant. As such, Applicant is entitled to a new trial.

2. Ineffective Assistance of Counsel for Failing to Request Proper Charges

This Court finds that counsel was ineffective in failing to request proper jury charges be presented to the jury following closing argument. In preparation for trial, Ms. Sampson never investigated whether the charges of "accident" or a charge regarding Applicant's "good character and reputation" were applicable to Applicant's case, even though Applicant stated that the death was the result of an accident, and evidence was presented as to her good character and reputation. The transcript shows that during her testimony, Applicant stated that she did not intend to stab the victim. Applicant stated that the victim had the knife, and that during their confrontation over whether Mr. Gibson should move out of her home, Applicant pushed the victim in response to him approaching her in a threatening manner.

"Accident"

Ms. Sampson was ineffective for failing to examine whether "accident" was an instruction that should have been given in the Applicant's case. Trial Counsel stated, "I haven't looked up accident to make sure that it even applies in this case, to be quite honest, Your Honor."

The defense of "accident" requires showing that the harm caused was unintentional, the defendant was acting lawfully at the time of the incident, and due care was exercised in handling the weapon.

State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994). Based on the testimony given at trial, it is clear that the charge of "accident" should have been given, especially in light of Judge Lloyd's asking Ms. Sampson whether she wanted the jury to be instructed on the defense of "accident" (R. App. 498).

The Court has found counsel ineffective for failing to request an "accident" charge when the evidence supports the request. See *Tisdale v. State*, 378 S.C. 122, 662 S.E.2d 410(2008). Based on Applicant's testimony, it is plausible the jury could reasonably have determined the incident was an accident and found Applicant not guilty.

"Good Character"

This Court further finds that counsel was ineffective in failing to request a jury charge regarding Applicant's "good character." In *State v. Harrison*, 343 S.C. 165, 539 S.E.2d 71 (2000), the Court stated that it is reversible error to deny a request to give an instruction of "good character" when character evidence has been introduced by the defendant. In *Harrison*, the Court concluded it was reversible error not to give the good character and good reputation charge when the only evidence of guilty was one officer's version of events versus the defendant's version of the events. In *Harrison*, the defendant was charged with possession of drugs. The defendant admitted that he had come to a location to buy drugs, but he testified that he never completed the transaction, nor did he have possession or control over the drugs. An officer watching the transaction testified he saw the defendant drop the drugs on the ground. The defendant had introduced evidence of his counseling adolescents in the community, his volunteer activities with his church, and his allowing two single mothers to live in his home until they could find work and their own places to live. The Court stated:

A different verdict might have been reached if the jury had been instructed that evidence of good character and good reputation may in and of itself create a doubt as to guilt and should be considered by the jury, along with all the other evidence, in determining the guilt or innocence of the defendant. The State did not present overwhelming evidence of Harrison's possession of cocaine, and did not try him for attempting to possess cocaine. Thus, the refusal to charge the requested instruction regarding evidence of good character and reputation was not harmless, but was reversible error.

Id. at 175, 539 S.E.2d at 76.

In the case at hand, Applicant is the only witness to the incident. Therefore, the only evidence as to whether malice existed comes from her words and actions, so her good character and reputation is even more important than that of Harrison in his case. As with *Harrison*, had the jury been aware that they could consider Applicant's character and reputation when determining guilt, it is reasonable to conclude that the jury would have reached a different verdict.

This notion is further supported by the jury's request to hear the instructions again and the fact that one juror was wrestling so much with the question of Applicant's guilt that he did his own research on the law, even though the introduction of extraneous evidence was improper. Therefore, the granting of Applicant's request for post conviction relief based on ineffective assistance of counsel for failing to request a charge on good character and reputation is proper.

3. Ineffective Assistance of Counsel for Failing to Object to Trial Court's Suggesting A Change to the Jury Charge Based Upon Trial Counsel's Closing Argument

During Ms. Sampson's closing argument, counsel for the State objected when Ms. Sampson stated, "Ladies and gentlemen, it was an accident." (R. App. 518). As a result, there was a bench conference among the Court, Ms. Sampson, and the State. At that time, the Court instructed Ms. Sampson that he would give the State a Voluntary Manslaughter charge if she continued to use the

word "accident" in her closing. Ms. Sampson's first error was not putting this instruction on the record. Second, Ms. Sampson erred by not objecting to the Trial Court's instruction.

The decision to alter a charge, after closing argument, is fundamentally unfair. *See United States v. Kostoff*, 585 F.2d 378 (9th Cir.1978) In *State v. Jones*, 343 S.C. 562, 541 S.E.2d 813 (2001), the Court ruled that it is error for a judge to change the jury charges after counsel has finished closing arguments. Had the Trial Court changed the charges, it would have been reversible error. However, Ms. Sampson was unaware of the case law and continued with her closing, not knowing what she could say and unsure of exactly what would trigger the changing of the charges. In effect, Ms. Sampson was "hamstrung" in what she could say in closing, and this also is reversible error. *See State v. Day*, 341 S.C. 410, 535 S.E.2d 431 (2000). Furthermore, by never objecting to the Trial Court's threat to change the charge after she finished her closing, Ms. Sampson precluded Applicant's Appellate Counsel from arguing that the Court's actions were error.

Accordingly, Applicant is entitled to a new trial based on ineffective assistance of counsel for failing to object to the threat to change the charge after closing argument is proper.

4. Ineffective Assistance of Counsel for Failure to Advise Client

During the course of the trial, including the closing, Ms. Sampson did not confer with Applicant regarding an "accident" charge or the other charges at that time and the threat of changing the charge.

Trial counsel has a duty to communicate offers to his or her client. *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009). Similarly, Trial Counsel should have conferred with her client regarding choices presented to Trial Counsel that directly affected the client and her case. Ms. Sampson did not speak with Applicant about the Trial Court's questioning of an "accident" charge. Applicant

wanted an "accident" charge in this matter. Applicant maintains this incident was an accident and would want an "accident" charge.

Because Ms. Sampson failed to confer this choice to Applicant, Applicant is entitled to a new trial and post conviction relief for ineffective assistance of counsel is granted.

5. Ineffective Assistance of Counsel for Failure to Request a Continuance to Review Discovery Produced During Trial

On the first day of Applicant's trial, the State produced to Ms. Sampson a DHEC Patient Form, which was used in rebuttal testimony by the EMS supervisor. Prior to jury selection, Ms. Sampson objected to the introduction of the document, but she did not request a continuance in order to confer with any experts as to what, if any, significance the information contained.

Because Ms. Sampson did not request additional time to review the material, she was not adequately prepared to cross examine the State's rebuttal witness and did not anticipate the issues this witness brought to the jury's attention. The State argued they mentioned the form to Ms. Sampson during the week prior to trial and that they may call the EMS employee as a witness at trial. Ms. Sampson remarked, "My only concern, Your Honor, is if he does call him I would like time just to question him, because I didn't know his name. I'm not blaming anybody. I just didn't know - I guess I should have called him and figured out through EMS who responded to this particular location. But since he was dead on arrival, I assumed, they weren't going to call anyone because we aren't contesting that at all."

When the State called Lieutenant Marvin Fortner, the supervising paramedic, to the stand, Ms. Sampson did not renew her objections and there was no further discussion regarding the admissibility of the DHEC Patient Form. Lieutenant Fortner was qualified, without objection, as an

expert in "pre-hospital medicine." Lieutenant Fortner testified that the core body temperature for the victim was cool and based on this assessment, he estimated the victim had been deceased "at least 30 minutes" when he touched him.

In order for Ms. Sampson to properly cross-examine the State's expert, she should have requested a continuance in order to have the time to properly investigate the information in the form. Ms. Sampson asked a few questions with the most notable question being whether it was Lieutenant Fortner's job to decide the time of death. Here, counsel made no meaningful challenge to the evidence of body temperature and time of death presented by the State. Counsel's failure to do so was ineffective, denying Applicant of a fair trial. *See Ard*, 372 S.C. at 332-333, 642 S.E.2d at 597.

Counsel's ineffectiveness is further demonstrated in the State's closing argument. In closing, the State used the drop in body temperature to bolster its position that the delay in time between death and when Applicant called 911 proved malice. This evidence became critical to Applicant's case and Ms. Sampson's failure to demand the time to investigate the information prejudiced Applicant's case, as she was unprepared to address the State's contention.

Because Ms. Sampson did not renew her objection and had not properly reviewed the document, she was unable to address the issues this document presented and the related testimony. As the issue of body temperature was a instrumental in the State's closing argument, Ms. Sampson's lack of preparation was detrimental to Applicant. Accordingly, counsel was ineffective for failing to request a continuance to review discovery produced during trial is proper, and thus Applicant is entitled to a new trial.

6. Ineffective Assistance of Counsel for Failure to Call Expert Witness

As stated above, Ms. Sampson did not request a continuance to review the DHEC Patient

Form or have an expert review the material so as to potentially testify. Because Ms. Sampson had not reviewed the material adequately, she was not prepared and did not anticipate this line of questioning regarding body temperature.

Ms. Sampson did not ask the Medical Examiner, during her cross, any questions related to body temperature or how Mr. Gibson's heart conditions could have affected how he felt to the touch. As previously stated, the State argued the victim's body temperature in relation to the time of the 911 call proved malice. Because Ms. Sampson did not meet her duty to investigate and request the time to review the material and, as was necessary, seek an expert, Ms. Sampson could not effectively cross examine the Medical Examiner regarding Mr. Gibson's body temperature or present testimony that could counter Lieutenant Fortner's testimony.

In *Ard*, the Court found it was ineffective assistance of counsel where the State's emphasis in closing on the issue of gunshot residue showed how critical the issue was for the defense to investigate and present an independent defense expert. *Ard*, 372 S.C at 334-335, 642 S.E.2d at 598.

Similarly, the State's emphasis Mr. Gibson's body temperature shows how critical it was for Ms. Sampson to thoroughly investigate the issue and present a defense expert on this topic. Therefore, Trial Counsel's failure to call an expert witness prejudiced the Applicant and the granting of post conviction relief is proper.

7. Ineffective Assistance of Counsel for Failure to Follow Proper Post-Trial Procedure

The Notice of Appeal was filed by Trial Counsel on June 30, 2005. Shortly after filing the Notice of Appeal, Ms. Sampson became aware that a juror presented additional charges to the other jury members, which grossly affected jury deliberations. This juror went on the Internet during the overnight break, researched degrees of murder, voluntary manslaughter, involuntary manslaughter,

and brought his research into the jury room. The next morning this juror discussed those other potential charges with the remaining jurors. Ms. Sampson subsequently filed a Motion for a New Trial, which the Trial Court denied.

Ms. Sampson filed a Notice of Appeal on February 7, 2006, in response to the Court's denial of a Motion for a New Trial. An Amended Notice of Appeal was filed on February 14, 2007. The Court of Appeals denied the Amended Notice of Appeal because the Trial Court's Order Denying the Motion for a New Trial was a "nullity" as the Trial Court lost jurisdiction once Ms. Sampson filed the Notice of Appeal and did not withdraw.

Ms. Sampson had the duty to assist Applicant in properly perfecting her appeal. *Frazier v. State*, 306 S.C. 158, 161, 410 S.E.2d 572, 574 (1991). Because Ms. Sampson was not aware that the Trial Court lost jurisdiction, the issue of jury misconduct and the Trial Court's denial of Applicant's Motion for a New Trial were not included in the record. Under *Foye v. State*, 335 S.C. 586, 518 S.E.2d 265 (1999), an Applicant may present issues that were raised on direct appeal but were disposed of because they were not preserved. Therefore, it is proper for Applicant to raise this issue at this time.

Counsel's failure to preserve this issue, and failure to alert appellate counsel, so fundamentally undermined our system of fairness in jury trials that Applicant was deprived the opportunity of a fair trial. This Court is further dumbfounded that counsel's motion, for which the trial court believed it had jurisdiction, was denied. It is impossible to imagine a more unfair deliberation than when a juror voluntarily does his or her own research, presents that research to the remaining jurors, and poisons the jury's mind with information that is both incorrect and prejudicial.

Accordingly, Applicant is entitled to a new trial on the grounds that counsel was ineffective in failing to properly preserve the issue of juror misconduct for review. As such, Applicant is entitled to a new trial.

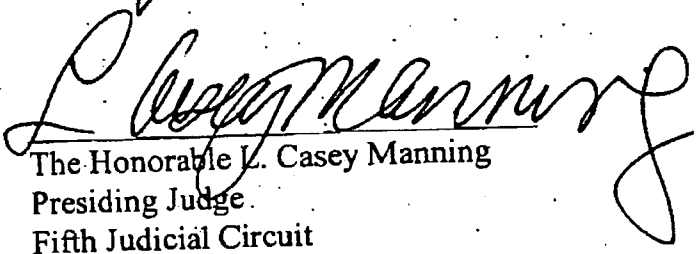
VII. CONCLUSION

The Court may question the impact of any one issue, and the Court may also consider the cumulative effect of Ms. Sampson's errors in this matter. In *Simpson v. Moore*, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006), the Supreme Court stated: "[w]hen counsel's deficiency is so pervasive as to render a particularized prejudice inquiry unnecessary, a defendant may be relieved of his burden to show prejudice. *Green v. State*, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002). Whether several errors, which are independently found not to be prejudicial, may cumulatively warrant relief is an unsettled question in South Carolina. *Id.* at 197, 569 S.E.2d at 324-25." For the reasons set forth above, this Application for Post-Conviction Relief is granted. Applicant shall be returned the custody of Richland County and shall be retried.

IT IS THEREFORE ORDERED that: --

1. The Application for Post-Conviction Relief is Granted;
2. Applicant is entitled to a new trial;
3. Applicant is remanded to the Richland County Court of General Sessions for a new trial; and

AND IT IS SO ORDERED this 17 day of Sept, 2012.


The Honorable L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

Coler

, South Carolina.

1600

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.

Sharon Smith

AKA: _____
Race: B Sex: F Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip _____
DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

2005 JUN 28 AM 11:07

INDICTMENT/CASE#: 3439

AW#: H380727
Date of Offense: MURDER
S.C. Code §: 16-3-10
CDR Code #: 0 1 1 1 1 6
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: MURDER
in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 6
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

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

ATTEST: John P. Meador Solicitor Apul Hampton Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 48 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of proba which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the St Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPS _____

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

Recipient: _____ \$
*Fine: _____ \$
§14-1-206 (Assessments 107.5%) \$100 \$
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$
§14-1-211(A)(2) (DUI Surcharge) \$12 \$
§56-5-2995 (DUI Assessment) \$500 \$
§ 35.13 (Public Def/Prob) \$25 \$
§73.3, 1B TP (Law Enforce. Funding) \$100 \$
§33.7, 1B TP (Drug Court Surcharge) \$50 \$
§50-21-114(BUI Breath Test Fee) \$40/ea \$
§56-5-2942(J) (Vehicle Assessment) \$ 3.75 \$
3% to County (if paid in installments) \$128.75 \$
TOTAL

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Barbara A. Scott JPF
Clerk of Court/ Deputy Clerk
Court Reporter: J. Williams

PRESIDING JUDGE [Signature]
Judge Code: 2 1 1 1 3 1
Sentence Date: 6-23-05

DOCKET NO. 2003-GS-40-3439

WITNESSES

(S) M.W. Vinson, CPD

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2003

52

THE STATE
vs.

SHARON SMITH

ARREST WARRANT NUMBER

H380727

871

ACTION OF GRAND JURY

TRUE BILL

Forfeiture of Grand Jury NOV 19 2003

Date:

VERDICT

Forfeiture of Petit Jury

Date:

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

Defendant

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

Defendant

Witness:

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

Indictment for

MURDER

SC Code: 16-3-10

CDR Code: 0116

Class FEL/EXM(V)

653

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on November 19, 2003, the Grand Jurors of Richland County present upon their oath:

MURDER

That Sharon Smith did in Richland County on or about May 11, 2003, feloniously, willfully and with malice aforethought, kill one Charles Gibson by means of stabbing the victim with a knife and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10.

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

Warren B. Giese
Warren B. Giese, SOLICITOR

COLUMBIA S.C. POLICE DEPARTMENT
STATEMENT FORM

056

Page 1 of 4

Date: 051103 Time: 1725 Place: 1 Justice Sq

I am Sharon Lisa Smith My birthday is 081371

My address and phone number are: 4107 Mildred Ave. 929-0975

I am giving this statement concerning stabbing of Charles Wilson
to M.W. Wilson who has identified himself as a police officer

struggled from arrival in door. stabbing occurred during dispute. Charles had knife
in hand. Knife punctured me a little. Did not know puncture was as severe. I called 911
when I realized what was happening. Police officer and step father present afterwards.

Q. What was the original argument about?

A. it was about the lease and last night

Q. Who told you they saw him at a club with
another woman?

A. Roslyn Boyles.

Q. What happened earlier at Eddie Eagle's house?

A. He brought my clothes over there. I told
him there wasn't any reason for that
because Charles wasn't on the lease.

Q. What happened from the time you got home
around 2:00 pm?

A. When I pulled up in Eddie's car, Charles

Sworn and subscribed to me this
11 day of May 2003

ISI [Signature]

NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: 2-5-11

ISI

Sharon Smith

received a copy of this statement consisting of 4 page

from M.W. Wilson

ISI x [Signature]

COLUMBIA S.C. POLICE DEPARTMENT
STATEMENT CONTINUATION

657

came out. He said I wasn't going to come in. I bumped into his rental car with Eddie's car. He had been standing in the back doorway. He came out after I bumped the car. I walked past him into the house. He was trying to pull me out. He was behind me and I fell down. I fell 3 or 4 times before I got up. I was trying to get to the bedroom to show him the lease. He was behind me holding on to me. I was struggling knocking his arms away. I never saw a knife in his hand. I was going through drawers in the bedroom looking for the lease. I had already opened drawers in the kitchen looking for the lease. When I was in the bedroom he said "You know you done stabbed me." He fell back on the floor. I already had Patrice Parks on the phone while I was looking for the lease and when he told me I had stabbed him she told me to hang up and call 911. I hang up and dialed 911. I thought at

Sworn and subscribed to me this
day of May 2005
in Col. SC
NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: 2-5-11

ISI Sh...

ISI

received a copy of this statement consisting of _____ page
from _____ ISI _____

COLUMBIA S.C. POLICE DEPARTMENT
STATEMENT CONTINUATION

1058

3

First he was just have breathing problems because he does have them. My step-father got there around that time. I changed clothes because I know we were going to have to go to the hospital.

Q. Who did that pistol belong to?

A. Charles.

Q. Where is it kept at?

A. On the shelf where I keep my books.

Q. Did you see Charles with it today?

A. No.

Q. Do you know how it ended up underneath him?

A. No.

Q. Was he cooking when you got there?

A. Yes. One officer cut the stove off. I assumed he was cooking because of the food on the site.

Sworn and subscribed to me this

4 day of May 2003

NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: 2-5-11

ISI

ISI

received a copy of this statement consisting of _____ page:

from _____ 875 ISI _____

COLUMBIA S.C. POLICE DEPARTMENT
STATEMENT CONTINUATION

659

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Q. Did you ever have the knife in your hand?

A. I picked up the knife off the floor when it was by him. I didn't want to step on it.

Q. Did you hold the knife in your hand and stab Charles?

A. No.

Sworn and subscribed to me this
11 day of May 2003
M.W. [Signature]
NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: 2-5-11

ISI

ISI

_____ received a copy of this statement consisting of _____ pages
from _____

ISI

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD SUMMARY REPORT DATED 04/30/09

SMITH, SHARON - FBI # 5470AB8 SID# SC01011117 SCDC # 309885
OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... GRAHAM CORR INST
SECURITY/CUST.: 3 MINIMUM IN
CURR INCARC SENT...: 48 YRS 0 MOS 0 DYS
CENTRAL MONITORING.: YES
SOCIAL SECURITY #...: 1247314842

DORM.....: DNA0248A
RACE.....: B SEX.....: F
PROJ MAXOUT DATE: 06/10/2053
PROJ PAROLE DATE: 00/00/0000
EWC JOB...: PROFESSIONAL PERSON
EDUC PGM.: NO CURR EDUC PROGRAM
EWC LEVEL: 3F5 EEC LEVEL:
ASSIGNMENT...: CLERK

CURRENT PROGRAM...: NO CURRENT PROGRAM
AGE...: 37 DATE OF BIRTH...: 8/13/71

PREVIOUS NUMBERS:
** NO PREVIOUS NUMBERS **

CURRENT OFFENSES
MURDER

SENTENCE
YRS MOS DYS COUNTY
48 0 0 RICHLAND

SENTENCE
START V/VU CATEG
6/22/20 5 U 5

PRIOR COMMITMENTS OVER 90 DAYS:
MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):
NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:
NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:
NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

8/15/ 5	GRAHAM CORR INS	INCARCERATED
8/15/ 5	RICHLAND CO	AUTH ABSENCE (AUL)
7/26/ 5	GRAHAM CORR INS	INCARCERATED
6/24/ 5	GRAHAM RAE	INCARCERATED
6/24/ 5	KIRKLAND	INCARCERATED

RETURN FROM COURT
TO COURT
ADMINISTRATIVE
RAE PROCESSING
NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
PROFESSIONAL PERSONNEL	GENERAL WORKER	08/10/06	07/01/07		YES
		07/28/05	8/ 9/ 6	PROMOTION	YES

HISTORY OF EARNED EDUCATION CREDITS:

DESCRIPTION	START DATE	END DATE	TERMINATION REASON
NO SCHOOL ASSIGNMENTS			

***** END OF REPORT *****

CMTI330D

OMCOMITA

SCDC# > 309885

SMITH, SHARON -

OFFENDER TYPE.... ADULT-STRAIGHT SENTENCE

SCDC OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN

04/30/09

C040481

LOC: GRAHAM CORR

SCDC CLASSIFICATION... VIOLENT

SEXUAL REGISTRY... N

SEXUAL PREDATOR... NOT APP

DNA STATUS..... N/A

GPS REQUIREMENT... N

PREA DECISION.....

CONSECUTIVE SENTENCE ... N

CURRENT SENT START DATE: 06/22/2005

CURRENT SENTENCE: 048-00-000

048-00-000

PROJECTED COMPLETION DATES

MAXOUT DATE 06/10/2053

YOA SIX YEAR DATE: / /

INITIAL PAROLE DATE: 00/00/0000

CURRENT EWC .. 3 F 5

CURRENT EEC .. NOT CURRENTLY EARNING EEC

NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED 000000

TOTAL EARNED WORK CREDITS ... 000330

TOTAL EDUCATION CREDITS 000000

TOTAL EXTRA EARNED CREDITS .. 000

TOTAL SERVICE TIME EARNED ... 001388

LABOR CREW/WORK PROG DATE: 99/99/9999

LABOR CREW DISQ REASON:

CATEGORY 4 OR 5 OFFENSE

PFKEYS:

5:HISTORY OF DATE CHANGES

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SCDC1341

3/11

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.Sharon Smith

AKA:

Race: B Sex: F Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip _____

DL# _____ SID# _____

INMATE # _____
2005 JUN 28 AM 11:07

INDICTMENT/CASE#:

GS- 40 - 3439AW#: H380727Date of Offense: MURDERS.C. Code §: 16-3-10CDR Code #: 0 1 1 1 1 6☐ CASE RESTORED
SENTENCE☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: MURDERin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 6☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John P. Meador
Solicitor

Defendant

April Danner
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 48 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ ☒
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$ ☒
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>
TOTAL		\$ <u>128.75</u>

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2 1 1 3 1 3Sentence Date: 6-23-05

Clerk of Court/ Deputy Clerk

Court Reporter: J. Williams