

STATE OF SOUTH CAROLINA
In the South Carolina Supreme Court

RECEIVED

JUN 30 2021

S.C. SUPREME COURT

Appeal from Dorchester County
The Honorable Diane S. Goodstein

Appellate Case No. 2020-1390

The State of South Carolina, ..., Respondent,

v.

Tiffany Ann Sanders, ..., Petitioner.

APPENDIX

/s/Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
2725 Devine Street
Columbia, South Carolina 29205
elizabeth@franklinbestlaw.com
(803) 331-3421

Counsel for Petitioner

Other Counsel of Record:
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549

Attorney for Respondent

INDEX

MOTION FOR A NEW TRIAL	6
MOTION FOR NEW TRIAL HEARING BEFORE JUDGE GOODSTEIN (MAY 30, 2017)	22
ORDER DENYING MOTION FOR NEW TRIAL (FEBRUARY 5, 2018)	66
AMENDED PETITION FOR WRIT OF CERTIORARI (DECEMBER 31, 2018)	68
ORDER DENYING MOTION FOR RETRIAL (JANUARY 22, 2015)	94
<i>TIFFANY SANDERS V. STATE</i> , 2014-MO-049(DECEMBER 17, 2014)	95
APPENDIX	98
AMENDED PETITION FOR POST-CONVICTION RELIEF (AUGUST 8, 2011) .	100
RETURN (NOVEMBER 10, 2011).....	107
INDICTMENT 2007-GS-18-1206 (SEPTEMBER 8, 2008).....	112
INDICTMENT 2010-GS-18-707 (MAY 6, 2010).....	114
SENTENCING SHEET.....	116
ORDER GRANTING <i>WHITE V. STATE</i> REVIEW AND DISMISSING OTHER CLAIMS (JULY 27, 2012)	117
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING (MAY 24, 2012)	129
TIFFANY SANDERS	
Direct Examination	132
Cross Examination	145
Re-direct Examination.....	164
AMANDA FENDER	
Direct Examination	166
Cross Examination	173

LINDA BREMENOUR	
Direct Examination	182
MICHAEL O'NEAL	
Direct Examination	190
Cross Examination	205
Re-direct Examination.....	213
HARRISON BELL	
Direct Examination	218
Cross Examination	219
SUPPLEMENTAL APPENDIX	223
TRIAL TRANSCRIPT (AUGUST 3-5, 2010)	226
DETECTIVE DAVID WATSON	
Direct Examination	345
KEVIN KING	
Direct Examination	355
Cross Examination	376
Re-direct Examination.....	380
DAVID HUGHEY	
Direct Examination	380
Cross Examination	391
BRANDON FRYE	
Direct Examination	396
Cross Examination	407
Re-direct Examination.....	412
Re-cross Examination.....	414
JESSICA HANS	
Direct Examination	418
DEJUAN JENKINS	
Direct Examination	423
Cross Examination	432
Re-direct Examination.....	435

DETECTIVE JAMES STURKIE	
Direct Examination	436
MOTION FOR DIRECTED VERDICT	450
STATE'S CLOSING ARGUMENT	471
DEFENSE'S CLOSING ARGUMENT	488
JURY CHARGES	497
TRIAL EXHIBITS	
State's Exhibit 1- Crime Scene Photo	558
State's Exhibit 2- Crime Scene Photo	559
State's Exhibit 3- Crime Scene Photo	561
State's Exhibit 4- Crime Scene Photo	563
State's Exhibit 5- Aerial Photo	565
State's Exhibit 6- Miranda Rights Waiver (June 9, 2007)	567
State's Exhibit 7- Statement of Tiffany Sanders (June 9, 2007)	568
Court's Exhibit 1- Stipulation	570
Court's Exhibit 2- Miranda Rights Waiver and Statement of Tiffany Sanders (June 9, 2007)	571
Court's Exhibit 3- Jury Request to Replay Testimony of Kevin King and Jessica Hans	574
Court's Exhibit 7- Jury Question Regarding Law	575
Court's Exhibit 8- Jury Question Regarding Law	576
Court's Exhibit 8 [sic] Jury Question Regarding Law	577
Verdict Form- Accessory Before the Fact	578
Verdict Form- Murder	584

PETITION FOR WRIT OF CERTIORARI	588
<i>STATE V. TIFFANY ANN SANDERS</i> , OP. NO. 2014-MO-045 (DECEMBER 17, 2014)	611
ORDER DENYING PETITION FOR REHEARING (JANUARY 22, 2015).....	614
Petition for Rehearing	616
Order Denying Petition for Rehearing	632

1 Once the closing arguments are finished, there will be
2 a very short break that will be self explanatory. When we
3 reach that point, I will then deliver the charge or the
4 instruction on the law to you. And then there will be
5 another very short break that I will explain to you when we
6 reach that point. And then you will receive this case for
7 your deliberations.

8 Ladies and gentlemen, at this time I ask that you
9 please draw close as we listen to the closing arguments of
10 our attorneys.

11 Mr. Bell.

12 MR. BELL: Thank you, Your Honor. If it please the
13 Court?

14 THE COURT: Yes.

15 MR. BELL: Mr. O'Neal.

16 MR. O'NEAL: Yes, sir.

17 MR. BELL: Madam Forelady, ladies and gentlemen of the
18 jury, Jessie Ham never had a chance on the night of October
19 8th -- June 8, 2007. He was lured to an ambush that
20 resulted in his murder on that night. Lured by the
21 defendant.

22 But for her actions on that night, Jessie Ham would
23 not have been murdered. If it wasn't for her, he would not
24 have been murdered.

25 Remember what the testimony was from the State's

1 witnesses. Number one, she happened upon somebody she
2 knew, Brandon Frye, and a group of boys. And she knew that
3 Jessie Ham was one of them. How did she know?

4 Don't you remember the testimony that Jessie Ham never
5 revealed his identity until right before he got in the car
6 to go with her. She knew who she was looking for, who she
7 had found that night, Jessie Ham. And she knew what to do
8 with that information. She got in communication with Sean
9 Kammerer, the person who Jessie Ham had -- had had an
10 ongoing problem with, and let him know that I was with
11 Jessie.

12 And what happened? They agreed, they planned to bring
13 Jessie Ham over to Tire Kingdom to have an altercation.

14 After that, she knew right where to find Jessie. She
15 went to Brandon's house. Straight to Brandon's house, blew
16 the horn, got Brandon and David Hughey to come around. And
17 what did she want? She wanted to see Jessie. She wanted
18 to see the other guy.

19 And then Jessie and Kevin King came around; they
20 played to be Benjamin and Kyle. She kept saying, "You're
21 Jessie, you're Jessie." He was like, "No, I'm not Jessie."

22 She was on the phone with somebody. You remember
23 Kevin King said he heard a male voice on the phone. And
24 then she lured him to get him to go to McDonald's. "I've
25 got a girl you want to meet. I know this girl, and she

1 wants to meet you. She's in McDonald's. Come on, come
2 with me. I'll take you to McDonald's to meet her."

3 She lied to him. Lied to him to get him in the car to
4 take him to Sean Kammerer. Sean had told her bring him to
5 Tire Kingdom. That's in her statement: Bring him to Tire
6 Kingdom.

7 So, they get in the car. They finally get in the car
8 after all this urging by her, all this offer by her to meet
9 this girl. They get in her car. She tries to pull off.
10 You remember what Kevin King said. And he jumped in the
11 car with them, because he wanted to go with his friend. He
12 thought the whole thing was kind of hinky. He thought it
13 was a setup in his mind. That's what he testified to you
14 yesterday, ladies and gentlemen. He got in the car with
15 his friend.

16 And guess what? They did go to McDonald's. They did
17 one lap around McDonald's. There was no girl there. And
18 then they started off across the parking lot, over to Tire
19 Kingdom.

20 And you remember what Kevin King said. He said, yeah
21 he heard that she was saying about she couldn't get behind
22 Tire Kingdom because there was a truck blocking the way.

23 And what did Jessica Hans tell you? She was there.
24 She was a Publix employee. Yeah, there was a Papa John's
25 truck blocking that cut-through between the businesses.

1 So, they go over to a specific place at Tire Kingdom
2 and they parked in the dark, turns the engine off. Kevin
3 King says, "Why don't we go over there where the light is?"
4 "No, we're staying right here."

5 And then what's the next thing? Kevin King gets
6 really, really hinky, and he goes to get out of the car and
7 there's Sean Kammerer, ambushing him. Both of them.

8 Don't you remember there was a struggle with Kevin
9 King, two shots fired in the ground? He took off. And
10 then, as we learned, Jessie Ham was murdered: Three shots
11 to the back and one to the neck.

12 She knew that Sean wanted to harm Jessie from her
13 statement. Her statement was, "I was going to a fight."
14 She knew that there was bad blood between them. Again, see
15 her statement. After she says, "I took him to a fight. I
16 knew because Sean or Jessie had beat Sean with a baseball
17 bat." She knew that a weapon had been involved in the
18 prior altercation. That's from her statement that she gave
19 to the police the day after this happened.

20 Then she drove off at some point. You heard Kevin
21 King he -- he was gone. You heard DeJuan Jenkins say that
22 she drove off when the -- when she saw -- saw them drove
23 when the shooting started. Where'd she go? She went to
24 Brandon Frye's house. Why did she do that? Why did she go
25 to Brandon Frye's house? She says in her statement she

1 went to Brandon Frye's house. Brandon says she came up
2 said, "Something bad's happened." In her statement she
3 says, "Somebody" -- or she told Brandon also that somebody
4 came out of the woods. Well, we know who came out of the
5 woods, Sean Kammerer.

6 She also said, when she was driving over, in her
7 statement that she wanted to show the wood line. But what
8 did Brandon Frye tell you? He said that they came in, rode
9 around McDonald's, went down the Publix parking lot, and
10 then went back to his house. They didn't go over to the
11 wood line, because I guarantee you, if they went to the
12 wood line, Brandon Frye would have seen Jessie Ham over in
13 the far corner in front of the Tire Kingdom.

14 But they didn't even get close. You heard what
15 Brandon Frye said. They just kind of went down in front of
16 the Publix and then left. She was trying -- she was trying
17 to cover her tracks. She was trying to make it look like
18 she was upset. And what did Brandon Frye say? "Alligator
19 tears." He said he didn't think she was serious because
20 she had "alligator tears" I think is what his quote was.
21 Trying to cover her tracks because of what had happened.

22 And as we know from both Kevin and Brandon, there was
23 bad blood between Sean Kammerer and Jessie Ham. Both of
24 them said they knew that Sean had said he was going to kill
25 Jessie. That was common knowledge. Both of them asked --

1 asked on direct and cross.

2 And Kevin said they'd had some prior altercations.
3 And this was common knowledge. This was common knowledge.
4 And as I said earlier, and I'll keep saying it, she
5 acknowledges she knew about this bad blood in her
6 statement. Just this little blurb. And I guarantee you
7 she knew more about that than just that baseball bat.

8 Let's look at her statement, which is probably the
9 most damning piece of evidence in this case. First off,
10 remember that she lied to Jessie about taking the girl --
11 going to see the girl at McDonald's.

12 She lied to Brandon about what had happened: Some guy
13 came out of the woods. Didn't even take him near where
14 this happened, where she had been previously, 20 minutes
15 before time.

16 But her statement, she says that she -- Sean calls
17 asking where she is, she's with Jessie. Wanted to get
18 Jessie over to the Publix. They went over there and Sean
19 then shoots -- as soon as they did, Sean ran up to Kevin,
20 pushed him, Jessie screamed "drive off," and took off and
21 went to Brandon's house.

22 . Again, why do you go to Brandon's house? What
23 purpose? Why didn't you call the police? If that wasn't
24 supposed to go down like that, call the police.

25 Brandon doesn't say she called -- she called the

1 police when he was with her when she came back. Police
2 weren't there. They didn't find anything. Why? Why go to
3 Brandon's house. For what purpose?

4 She says (as read): "I have no knowledge of a gun
5 until I heard the shot. After me and Brandon didn't see
6 anyone, Brandon said, all right, you can take me home. I
7 dropped Brandon off and went home and tried to call Sean.

8 "I had no knowledge of a gun being present to take a
9 life. The only knowledge that I had was Sean wanting to
10 fight Jessie because of Jessie's beating Sean in the head
11 with a baseball bat."

12 That's what she knew and that's what convicts her of
13 this crime, ladies and gentlemen.

14 Remember the plan wasn't between Sean, DeJuan, and
15 Tiffany, but between Sean and Tiffany. DeJuan came up here
16 and testified for you. He was convicted of accessory after
17 the fact, because he saw what happened and he -- all he did
18 -- didn't call the police. He took Sean home. Helped him
19 get away. And he didn't want -- he didn't want to be in
20 harm's way. You remember that's what he said, he didn't
21 think he'd be in trouble, but he was. All he said was,
22 "Sean said my girlfriend called; gonna meet her over at
23 Publix or over at the McDonald's."

24 And then when we got over there he said, we're gonna
25 meet her over at the Tire Kingdom, my girlfriend. He kept

1 saying, "my girlfriend" as relating to Sean.

2 And then what did he say when he got over there, all
3 of a sudden Sean got out, went around, and they starting
4 firing -- started firing shots. He was running back
5 towards me. Jessie was running back towards me. I ducked
6 in my truck and saw him kill him. That's what DeJuan said.

7 The law in this case, ladies and gentlemen, is this:
8 The defendant's been charged with accessory before the
9 fact, which says (as read): "To -- it's a crime to aid,
10 abet, join or procure, counsel, or otherwise join with a
11 purpose or plan to commit a crime, then a crime is
12 committed" -- and we know that, for a fact, that the crime
13 was committed, and we know that she joined. Even her
14 statement, if you believe her statement, that, you know,
15 she's talking to the police trying to minimize her role,
16 she's going to take Jessie Ham to a fight, to an assault,
17 which is a crime in the State of South Carolina. Take him
18 to a crime.

19 A crime is committed. How do we know this? We know
20 this because Sean Kammerer has pled guilty and admitted
21 that he murdered Jessie Ham. By the principal: Sean
22 Kammerer is the principal.

23 The defendant is not present: It's up to you to
24 decide whether she was present, ladies and gentlemen. Was
25 she still around when the murder occurred or had she taken

1 off at that time? That's a jury question. That's a
2 factual question that you must decide out of the evidence
3 that you heard in this case.

4 (As read) "And that the crime committed, while not
5 originally planned, is a probable or natural consequence of
6 the planned crime." What that simply means is, two people
7 can plan on doing something else, plan on doing a crime,
8 say for instance an armed robbery, and when they go there,
9 the person that stayed out in the car is not doing
10 anything, but the guy that goes in with -- with the weapon
11 goes in and robs them and shoots somebody, murder or armed
12 robbery is a natural consequence.

13 You have a fight. At the bare minimum, if you believe
14 her statement that it's just a fight -- even though she
15 knew about this bad blood -- it was just a fight, a natural
16 probable consequence of a fight is somebody dying. Quite
17 honestly. Even in a fist fight.

18 Next, we have murder. Now, we know that a murder
19 occurred in this. Sean Kammerer admitted to it, pled
20 guilty to it. (As read) "It's the unlawful killing of
21 another with malice aforethought, either expressed or
22 implied."

23 We know that malice was involved in the killing of
24 Jessie Ham because Sean Kammerer admitted that there was
25 malice by admitting to murder. And what is malice? It's

1 either doing of a wrongful act intentionally and without
2 just cause or excuse; the wrongful intent to injure
3 another; a wicked or depraved spirit intent on doing wrong.
4 Those are some definitions of malice.

5 She took Jessie Ham, again at the bare minimum if you
6 believe her statement trying to look good for the police,
7 she was going -- he was going there to be injured, to a
8 fight. He was going there to do a wrongful act, an
9 assault. That's what the plan -- she planned on doing
10 that. That's malice. You can take the malice from Sean.
11 You can take the malice -- you can find malice in her heart
12 as well.

13 And what she's charged with as far as murder is the
14 "hand of one." Where a crime is committed by two or more
15 people who are acting together in committing a crime, the
16 act of one, is the act of all. It's a person who aids,
17 abets, counsels, or joins with another to accomplish an
18 illegal purpose, is criminally responsible for everything
19 done by the other person which occurs as a natural or
20 probable consequence of the acts done in carrying out the
21 common plan or purpose.

22 Again, natural consequence. And when they do that,
23 it's said they act as the hand of one.

24 And I will tell you, ladies and gentlemen, that you
25 can sit there and decide between murder, accessory before

1 the fact. If you find that she wasn't present, I urge you
2 to convict her, because the State has given you more than
3 enough evidence beyond all reasonable doubt that she was
4 involved; that she was involved in this plan to kill Jessie
5 Ham.

6 And if you find that she's not present, I urge you to
7 convict her of accessory before the fact. If you find that
8 she was present, I urge you to convict her of murder under
9 the "hand of one, hand of all" theory. She was involved.
10 She was in the middle of it. As I said earlier, but for
11 her actions that murder would not have happened that night.

12 Now, the other law that you will be charged, ladies
13 and gentlemen, reasonable doubt. I think Counsel talked a
14 little bit about reasonable doubt in his opening statement
15 that one definition is reasonable doubt is a doubt that
16 leaves a -- let's a juror or a reasonable juror to hesitate
17 to act in his or her most important affairs.

18 Well, there are other definitions. Most notably one
19 definition that -- that I would urge you to consider about
20 reasonable doubt is that proof beyond a reasonable doubt is
21 proof that leaves a juror firmly convinced of the
22 defendant's guilt. I think you will be charged with that
23 under the law from Judge Goodstein.

24 I will say this with reasonable doubt, that you can
25 have reasonable doubt as to certain facts throughout the

1 case. You can have a reasonable doubt as to one or two
2 facts. But just because you have reasonable doubt as to a
3 particular fact does not necessarily mean you -- you --
4 that negates reasonable doubt as to whether the crime was
5 committed.

6 You can think about that. I mean you can have
7 reasonable doubt about the truth about what somebody said.
8 And you can reject part of it, but that doesn't necessarily
9 affect whether you find that there's reasonable doubt of a
10 person committing a crime.

11 You will also be charged, ladies and gentlemen, about
12 direct and circumstantial evidence. Direct and
13 circumstantial evidence is, I guess, two types of evidence
14 and they carry the same weight. There's no difference
15 between them.

16 And direct evidence is evidence that a person senses
17 with their five senses, that is they see something, they
18 hear something, they smell something, they taste something,
19 they touch something, and they report it. You know, I saw
20 so-and-so do this; I heard so-and-so do that. That's
21 basically what direct evidence is. They experience it.

22 Circumstantial evidence, on the other hand, is a chain
23 of facts that you take and you can put together. And by
24 putting them together you can infer another fact or
25 conclusion.

1 For example, you're up here in court, you're back in a
2 room in the jury room that doesn't have any windows. When
3 you came in, say yesterday morning, it was sunny.
4 Everything was dry. Your sidewalk was dry, your car was
5 dry. You were sitting in the jury room late yesterday
6 afternoon, ready to go. You hear a rumble outside. You go
7 outside everything's wet. You go to your car, your car's
8 wet. You didn't see it rain. You don't have direct
9 evidence that it rained. But putting all those facts
10 together, you can say it probably rained. That's
11 circumstantial evidence.

12 Now, ladies and gentlemen, since I don't have the
13 opportunity to come back up and rebut anything the Defense
14 says in this case after their argument, I have to kind of
15 anticipate. And I have to anticipate kind of some of what
16 the defenses are.

17 First one that I -- I -- I think, I don't know, she
18 didn't know he -- the Defense says that she didn't know he
19 was going to kill Jessie, that Sean was going to kill
20 Jessie. Well, we talked about that. We've talked about
21 her statement. We've talked about her knowledge. We've
22 talked about the common knowledge of the bad blood.

23 She was involved up to her shoulders in this thing,
24 ladies and gentlemen. This just wasn't, "Oh it was a fight
25 and oh, my god, there was a gun. And if there wasn't a

1 gun, I wouldn't have been involved."

2 Hindsight's 20/20, ladies and gentlemen. If you want
3 to minimize your -- you can't believe that. But I still
4 say if she wasn't up -- if she wasn't -- didn't know what
5 was going on, why did she run to Brandon's house? That's --
6 -- that's what has puzzled me. Why? If it was such a
7 terrible thing, why didn't she call the police? Why didn't
8 -- why did she go to Brandon's house and get Brandon or
9 tell Brandon to call the police? That didn't happen.

10 Also, that what happened is a natural and probable
11 consequence of what they planned. Very easily you can find
12 that. A fight can certainly turn into murder in a -- in a
13 second unfortunately, as we've found out in our society.

14 I think it was mentioned that, well, she -- the State
15 alleges she had malice. She didn't have any malice towards
16 Jessie. Well, I think I covered that a little bit earlier.

17 But first of all, Sean had malice and she -- she
18 planned together with Sean, so she took Sean's malice.
19 Sean wanted to kill Jessie. Sean admitted his malice by
20 pleading guilty.

21 She had malice, too, because she wanted to see or she
22 planned on seeing that Jessie Ham had harm do him -- or
23 come to harm or be injured. That's a -- the definition for
24 malice. She was doing a wrongful act, a wrongful act,
25 because she was taking him with a plan to have him -- harm

1 come to him.

2 There was no agreement. She can't be part of this
3 because DeJuan came up and testified, "Well, there was no
4 agreement between Sean and Tiffany and me." Well, again, I
5 covered that too. There wasn't. It was an agreement
6 between Tiffany and Sean. DeJuan was the means of Sean to
7 get to the location and to help him get away.

8 Nothing serious was going to happen because Kevin King
9 got in the car and didn't have a weapon, and he went along
10 with his friend Jessie Ham. Well, first of all, they
11 weren't at either one of their's house. They weren't at
12 Jessie or Kevin's house. They were at somebody else's
13 house. I -- I mean, if they had a weapon, you would think
14 they would have it at their house and not on them. And
15 there's been no testimony that either Jessie or Kevin had a
16 weapon.

17 What did he say? He very simply said, I went with him
18 because he was my friend. He was my friend. But then the
19 Defense says, "Oh, but when the shooting started, you ran
20 away." Well, I think that when shooting starts, it's kind
21 of every person for themselves at that point. And that's
22 human nature.

23 The State didn't call Sean Kammerer. That's
24 reasonable doubt because we left out a witness. Well,
25 what's Sean going to say? I mean he's the one that

1 murdered Jessie, he's the one that had bad blood. What's
2 he -- what -- what's he going to say for the State?

3 But -- but he did testify, I keep saying, because he
4 admitted his guilt, that he murdered Sean -- excuse me --
5 that he murdered Jessie with malice aforethought. So, he
6 did in fact testify through that stipulation at the
7 beginning of the trial. That's all he needs to say in this
8 case, because we have evidence of what Tiffany's role was
9 in at that time.

10 As I said, ladies and gentlemen, Jessie Ham would not
11 have died on June 8, 2007 if not for her act. She was
12 integral to this thing. She was in the middle of it.
13 She's the one that got Jessie over there. She's the one
14 that found him. She's the one that told Sean she was with
15 him. She's the one that drove him over there. She's the
16 one that knew what was going on. She knew there was a
17 plan. There was a plan. And wouldn't even leave, wouldn't
18 even move the car when Kevin got antsy and he was like, can
19 you move to the light. Oh, no, no, not moving. And
20 there's Sean.

21 Also, ladies and gentlemen, don't be fooled that she
22 was just an old acquaintance or prom date or whatever.
23 First of all, would somebody, just a passing acquaintance,
24 an old acquaintance, go to this much trouble to help
25 somebody? Would she go to that much trouble to help Sean

1 if they were just an old fling? Don't buy that, ladies and
2 gentlemen.

3 Because remember, remember what DeJuan said. He
4 talked about Sean talking to his girlfriend, not once, but
5 a couple of times during his testimony. Remember that
6 testimony.

7 Now, as I said, I won't get a chance to get up after
8 this, after Mr. O'Neal gets up. He gets to rebut what I
9 say; I don't get a chance to rebut what he says. You
10 remember my arguments. You remember the evidence the State
11 has presented to you of her involvement in the death of
12 Jessie Ham.

13 Ladies and gentlemen, as I've said, Jessie Ham didn't
14 have a chance that night. He's been dead for three years.
15 He hasn't had the chance to have a marriage or have a child
16 in these three years, nor will he ever. The State has
17 given you more than enough evidence to convict the
18 defendant of either accessory before the fact of murder, or
19 murder.

20 All the State asks of you, ladies and gentlemen, is to
21 take those facts, apply the law that the Judge gives you.
22 And in the end, to do justice; do justice for the State of
23 South Carolina, for Dorchester County, for Jessie Hams's
24 grandfather, Mr. Mac Ham, and for the Ham family. Find her
25 guilty of accessory before the fact of murder, or of

1 murder. Thank you.

2 THE COURT: Thank you, Mr. Bell. Mr. O'Neal.

3 MR. O'NEAL: Please the Court, Your Honor. Mr. Bell.

4 THE COURT: Yes, sir.

5 MR. O'NEAL: That's what Mr. Bell says his evidence
6 should convince you of. That's the story, that's the facts
7 that he says his evidence supports. It doesn't. There are
8 holes in the State's case. The State has not proven their
9 case.

10 I told you when we first started that your job
11 consisted of evidence put up by the State, burden of proof
12 is on the State -- Judge is going to tell you that --
13 burden of proof's on the State, no burden on the defendant
14 to prove that she's not guilty. The State has to prove
15 that she is, if they can.

16 And I told you that you'd get testimony, you'd get
17 evidence from the State. Once all that evidence is in
18 front of you, then you have to figure out what happened, if
19 you can figure out what happened. Once you figure out what
20 happened, take the law as the Judge gives it to you, apply
21 it to the facts, and see whether or not, first, a crime was
22 committed, second of all, whether or not Tiffany did it.
23 That's exactly what you got to do here. And there are
24 holes in the State's case.

25 First thing is, Mr. Bell would have you believe that

1 it was some kind of nefarious or -- or mean spirited
2 agreement between Sean Kammerer and Tiffany about trying to
3 get Jessie over there to the Publix, over there behind the
4 Tire Kingdom. Well, you could have had evidence. You
5 could have had proof. You could have had something that
6 you could rely on to figure out what, if any kind of
7 agreement, was between Sean Kammerer and Tiffany if Sean
8 Kammerer had come and taken the stand. You all know it, it
9 was already established he's in jail. He's in jail for the
10 rest of his life. He's in the Department of Corrections,
11 in the control of the State. Mr. Bell knows where he is.
12 Mr. Bell could send an order up there, bring that guy down
13 here and put him on the stand.

14 Now, let me just tell you, if Sean Kammerer would say
15 -- if he would say, "Oh yeah, I told Tiffany that I wanted
16 to kill Jessie Ham. I told Tiffany to do whatever she had
17 to do to get Jessie up there. I told Tiffany that I had a
18 gun, that I was going to keep it secret from everybody,
19 nobody would know about it. I told her to park in a
20 certain spot, make sure it was dark; and that I was going
21 to come running up to the car and shoot Jessie Ham to
22 death."

23 If he was going to say that, don't you think he would
24 have been in that witness stand? Remember the burden of
25 proof is on the government. Sean Kammerer, the murder, is

1 in the control of the solicitor's office. They got to make
2 a phone call to get him down here and put him up, and they
3 didn't do it. You know why? Because that's not what Sean
4 Kammerer says.

5 What does he got to lose? What are they going to do
6 if he doesn't tell the truth, put him in jail? He's got no
7 reason to lie. And the reason he's not here is because if
8 he was here, he would tell you, "I asked Tiffany to get him
9 up there; she didn't know what the purpose was for."

10 Now, that goes to malice --

11 MR. BELL: I'm going to object, Your Honor. That
12 wasn't testified -- there's no testimony to that.

13 THE COURT: Ladies and gentlemen, you will make the
14 findings of fact. It is for you to determine what
15 testimony was in this matter, and for you to make findings
16 of fact.

17 You may proceed.

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

19 The point is the Judge is going to tell you, you can
20 make your decision based on the testimony that you heard,
21 and you can make your decision based on the failure of the
22 State to produce testimony to prove their case.

23 Now, let's talk about malice. You heard from the
24 State's witnesses that Jessie and Sean used to be friends.
25 You heard from the State's witnesses that Jessie and Sean

1 quit being friends and started being enemies over something
2 stupid like a pair of shoes. You heard from the State's
3 witnesses that they fought in public, off and on, for two
4 years. You heard from the State's witnesses that at one
5 point Jessie -- Sean spit on Jessie's girlfriend's car and
6 Jessie got out of the car with a little souvenir baseball
7 bat, hit Sean with it. Not a baseball -- not a Louisville
8 Slugger, major-league size, but a little one.

9 Point is, there's no evidence from the government that
10 anybody ever got hurt as a result of those fights or that
11 anybody much less got killed as a result of those fights.
12 That's the State's evidence. They put that in and it's
13 before you produced by the government.

14 Now, whether or not there was malice on the part of
15 her part, the State didn't bring Sean down here to tell you
16 about whether or not he planned anything at all further
17 than just bringing Jessie up there to where he was located,
18 where he got killed by Sean Kammerer. As far as malice in
19 Tiffany's heart toward Jessie, she had no idea who Jessie
20 was. This particular evening was the first time she ever
21 met him.

22 Now, she determined who he was, somebody on the phone
23 told her who he was. We don't know who that was. It might
24 have been Sean, it might have been somebody else. If Sean
25 was here, he could have told us, but he never made it. He

1 never got brought down here by the solicitor's office.

2 She had no reason to hurt Jessie. She had no reason
3 to want Jessie to befall harm. She had no reason for
4 Jessie to get injured. Now, Mr. Bell tells you, you can
5 infer malice. Sure, Sean Kammerer had malice toward
6 Jessie. He shot him to death with a handgun. No question
7 there. But does that malice reach to Tiffany? No.
8 There's no proof. There's no proof before you that she
9 felt any malice at all toward Jessie.

10 Did Sean ask her to bring him up there to talk -- I
11 mean to bring Jessie up there to talk? Did Sean ask her to
12 bring Jessie up there so they could fight? You don't know,
13 because there's no proof before you. Remember, they've
14 been fighting for two years off and on. Nobody ever got
15 killed. Nobody ever even got hurt. The State has not
16 provided you with any proof that anybody ever got hurt.

17 Now, let's look at Tiffany. Let's look at what
18 happened. She's in the car with her sister. She rides
19 around with her sister a lot. Rode by to talk to these
20 guys. She knew Brandon; she knew David.

21 All right. She's talking with them. They're out
22 there drinking beer, doing whatever, you know. Who knows?
23 They're talking back and forth. At some point, Jessie gets
24 in the car with her.

25 Now, let's look at it this way: If you look at her

1 statement and figure, yeah, I think she figured they were
2 going to fight. And that's what I'm thinking that -- you
3 know, I think the State's proven that, that she brought him
4 up there so that Jessie and Sean could fight. Jessie
5 brought reinforcements. That guy, King -- Kevin King got
6 into the car with them. Was there any testimony from
7 anybody that Tiffany said, "Oh, wait. No, no, Jessie. You
8 can't bring that guy. Unh-unh. This girl won't like it if
9 you bring a friend. Oh, no, no. Don't bring that guy,
10 he's too big, he's too strong"? No. Nothing like that.
11 He got in the car, too.

12 Tiffany then drove to the location of the murder with
13 her sister in the car. Now, has the government proved that
14 she was so depraved and so mean spirited that she wouldn't
15 care what happened to her sister or even to herself if she
16 knew she was taking Jessie to be shot to death by Sean?
17 It's unbelievable.

18 Now, let's talk about what happened after. She drives
19 him up there, she parks, they get out of the car, somebody
20 comes out of the wood line, she hears shots, she drives
21 away. I guess Mr. Bell's right, I guess if you hear
22 gunshots every -- every human's normal reaction is to leave
23 the area. All right.

24 Now, where'd she go? Seems to me, if she had
25 conspired to murder Jessie or even just to watch him get

1 beat up, that she could have driven on home. Just driven
2 away. Forgot all about it. You know, find out about it
3 later. She was just as shocked and scared as everybody
4 else, because nobody but Sean Kammerer knew there was going
5 to be gunplay. Not even his bud, Mr. Jenkins, who was with
6 him for three weeks driving him around in his mom's car
7 because he didn't have a driver's license. He said, "I had
8 no idea that Sean had a gun, until he pulled it out of his
9 pants pocket and he was walking over there."

10 Nobody, nobody except for Sean Kammerer knew there was
11 going to be gunplay. Did Sean tell Tiffany, "I'm going to
12 have a gun and I'm going to shoot Jessie"? We don't know,
13 because Sean never took the stand to testify, even though
14 he was in -- within the State's ability to bring him over
15 here.

16 She's not guilty of murder. I'm telling you that
17 right now. The evidence is not there. I told you there
18 was going to be holes in the State's case. I told you when
19 I first spoke to you, that you've got to figure out what
20 happened, then apply the law to it.

21 Now, you guys don't know what happened, you can't
22 figure out what happened, because the State has failed in
23 their burden of proof.

24 Let's talk again about Tiffany. She didn't run away.
25 She went back to Brandon's house. She knows Brandon from

1 the neighborhood. And said, "Let's go back up there and
2 see what's up. Let's go back up there and see what's going
3 on." She knew something had gone wrong. She knew
4 something bad had happened. All right. She didn't know
5 that Sean Kammerer had shot Jessie to death. If she did,
6 would she -- would she bring Brandon up there? Would she
7 bring her sister back up there? No. There's no way.

8 She had no idea what Sean was getting ready to do.
9 She had no malice in her heart towards Jessie. You know,
10 maybe she thought it was a game. Maybe the agreement was
11 that he was just going to talk with Jessie. We don't know,
12 because the State failed to prove it.

13 Now, the Judge is going to tell you what the law is.
14 And if I say anything different from what the Judge tell
15 you, if I put anything up on the screen, which I ain't
16 going to do, different than what the Judge tells you, you
17 listen to the Judge. Don't listen to me, don't listen to
18 Mr. Bell on what the law is. Take it as she gives it to
19 you.

20 But I know she's going to tell you that the burden of
21 proof is on the government to prove her guilt beyond a
22 reasonable doubt if they can. She's going to tell you the
23 definition of reasonable doubt is the kind of doubt that
24 would cause a reasonable person to hesitate to act.

25 She's going to tell you that Tiffany is presumed

1 innocent and stays innocent until -- and you always hear
2 it, until proven guilty by a court of law. I always want
3 to put in there until and unless proven guilty by a court
4 of law. It's not inevitable. Every trial doesn't end up
5 with a guilty verdict. Some trials, where the government
6 fails to satisfy their burden of proof, end up with a not
7 guilty verdict.

8 What is boils down to is this: If you are sure, if
9 you are confident that she's guilty of murder, then you
10 should find her guilty of murder. If you are sure, if you
11 are confident that she's guilty of accessory before the
12 fact of murder -- remember they've got to prove malice in
13 both cases, there is none -- then you should vote guilty.

14 But if you're not, if you're wondering where Sean is,
15 why isn't he here; if you're wondering, well, the State
16 never did really prove why she drove -- why Tiffany drove
17 Jessie up there. If you're wondering where's the malice, I
18 mean, these guys had been fighting for two years, nobody's
19 gotten hurt yet or much less killed; even if you figure
20 that she knew she was taking him up there to fight with
21 Jessie, she didn't try to stop Jessie from bringing
22 somebody to help him.

23 If you're not convinced that she's guilty, the Judge
24 is going to tell you you got to vote not guilty. You bring
25 back a verdict that speaks the truth. That is what it

1 means in Latin, the truth. And the truth is, she's not
2 guilty. Thank you.

3 THE COURT: Thank you, Mr. O'Neal.

4 (Addresses jury) Just stand up where you are. This is
5 that first break I was talking about. Seriously. Stand
6 up, we can just stretch a minute. Why do I want you to do
7 this? Because I want you fresh and paying attention. So I
8 want -- I want to get a little bit of oxygen going. So,
9 ladies and gentlemen, that -- that's why we take this
10 little break right now.

11 Counsel, let me see you.

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

13 THE COURT: And y'all just stretch. No, we're not
14 going to do calisthenics. No, no, no, no.

15 (Bench conference.)

16 THE COURT: (Addresses jury) And when you're ready to
17 be -- now, y'all think, can we sit down? Yeah, you can sit
18 down. Absolutely.

19 All right. Madam Presiding Juror, ladies and
20 gentlemen of our jury, in this case there are two
21 indictments. One of the indictments charges the defendant
22 Ms. Hecksher with accessory before the fact of murder, and
23 murder.

24 I remind you that the fact that the defendant was
25 arrested, charged, and indicted in this case is not

1 evidence in this case, and cannot be considered by you as
2 evidence of guilt in this case; nor does it create any
3 presumption or inference of guilt.

4 These documents are simply the formal written
5 instruments which contain the charges made by the State
6 against the defendant. They are the formal documents by
7 which cases are brought into this court. They are the
8 notice documents. The indictments in this case allege the
9 two offenses: accessory before the fact, in the first
10 indictment; and the second, one murder.

11 Each indictment charges a separate and distinct
12 offense. You must decide each indictment separately on the
13 evidence and the law applicable to it, uninfluenced by your
14 decision as to the other indictment.

15 The defendant may be convicted on one of these
16 indictments or neither of these indictments. You will be
17 asked to write a separate verdict of guilty or not guilty
18 with regards to each indictment.

19 Ladies and gentlemen, Ms. Hecksher has pled not guilty
20 to these indictments, and that plea places the burden on
21 the State of South Carolina to prove her guilty. A person
22 charged with committing a criminal offense in the State of
23 South Carolina is never required to prove himself or
24 herself innocent. The burden of proof is and remains on
25 the State of South Carolina.

1 I charge you that it is an important rule of the law
2 that a defendant in a criminal trial, in a criminal matter,
3 no matter the seriousness of the charge, will always be
4 presumed innocent of the crimes or crime for which the
5 indictment was issued, or for which the indictments were
6 issued, unless guilt has been proven by evidence satisfying
7 you of that guilt beyond a reasonable doubt.

8 The presumption of innocence doesn't end when you
9 begin your deliberations, but it accompanies the defendant
10 throughout the trial until you reach a verdict of guilt
11 based on evidence satisfying you of that guilt beyond a
12 reasonable doubt. The presumption of innocence is like a
13 robe of righteousness placed about the shoulders of the
14 defendant, which remains with her until it has been
15 stripped from her by evidence satisfying you of the
16 defendant's guilt beyond a reasonable doubt.

17 The presumption of innocence, ladies and gentlemen, is
18 not a mere legal theory and it is not just a legal phrase.
19 But it is a substantial right to which every defendant is
20 entitled unless you, our jury, are satisfied from the
21 evidence of the defendant's guilt beyond a reasonable
22 doubt.

23 What then is reasonable doubt in the law? A
24 reasonable doubt is the kind of doubt that would cause a
25 reasonable person to hesitate to act. The State and the

1 State alone has the burden of proving the defendant guilty
2 beyond a reasonable doubt.

3 Some of you -- and I did not ask this earlier when we
4 did our qualifications. But some of you may have served as
5 jurors in civil cases where you were told the burden of
6 proof was by the greater weight or the preponderance of the
7 evidence; that it was only required that the plaintiff, the
8 person who brings the civil action, prove that a fact is
9 more likely true than not true.

10 Ladies and gentlemen, in criminal cases, the State's
11 proof must be powerful than that. It must be beyond a
12 reasonable doubt. Proof beyond a reasonable doubt is proof
13 that leaves you firmly convinced of the defendant's guilt.
14 There are very few things in this world that we know with
15 absolute certainty. And in criminal cases the law does not
16 require proof that overcomes every possible doubt.

17 If, based on your consideration of the evidence, you
18 are firmly convinced that the defendant is guilty of the
19 crime that you are considering, you must find the defendant
20 guilty. If, on the other hand, you think there was a real
21 possibility that the defendant is not guilty, you must give
22 the defendant the benefit of the doubt and find her not
23 guilty.

24 You will do this determination, ladies and gentlemen,
25 independently and with regards to each of these two

1 indictments.

2 I remind you that during this trial you and I have had
3 certain duties to perform. As the trial judge, it is my
4 responsibility to preside over the trial of this case and I
5 also have the duty to rule on the admissibility of the
6 evidence offered during this trial. You are to consider
7 only the competent evidence before you. You are to
8 consider only the testimony which has been presented from
9 this witness stand, any exhibits which have been admitted
10 into evidence, and any stipulations of counsel.

11 I have the additional duty to charge you the law
12 applicable to this case. As the presiding judge, I am the
13 sole judge of the law of this case. And it is your duty as
14 jurors to accept and apply the law as I now state it to
15 you.

16 If you already have any idea as to what the law is or
17 what it ought to be, and it should disagree -- if it should
18 not agree with what I tell you the law is, you are, by your
19 oath, sworn to set your preconceived ideas aside, because
20 you are bound now by your duty as jurors to accept and
21 apply the law exactly as I give it to you.

22 I oft times tell jurors if I should tell you the law
23 is a certain way and you disagree with that, maybe that's a
24 topic for your legislator some other time. But for our law
25 to work appropriately, you must accept and apply the law

1 exactly as I state it to you.

2 Now, as we talked yesterday morning, in every case
3 tried in this case -- in this court before a jury -- in
4 every case tried in this court before a jury, the jury
5 becomes the sole, the only, and the exclusive judge of the
6 facts. A trial judge, under our law cannot intimate,
7 state, comment, or make any statement to a trial jury about
8 the facts in a case.

9 Since you the jury are the sole judges of the facts in
10 this case, you are not to infer from what I have said
11 during the progress of this trial in ruling on the
12 admissibility of evidence or otherwise, or anything that I
13 say to you now in the course of this instruction being
14 given, that I have any opinion about the facts. I have no
15 opinion regarding these facts. The law does not allow me
16 to have an opinion. This is a matter solely for you to
17 determine.

18 As jurors, it is your duty to determine the effect,
19 the value, the weight, and the truth of the evidence
20 presented during this trial.

21 Now, ladies and gentlemen, normally there are two
22 types of evidence which are generally presented during a
23 trial. One is called "direct evidence," and the other
24 "circumstantial evidence."

25 Direct evidence is the testimony of a person who

1 claims to have actual knowledge of a fact, such as an
2 eyewitness. It is evidence which immediately establishes
3 the main fact to be proved.

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

10 The law makes absolutely no distinction between the
11 weight or value to be given to either direct or
12 circumstantial evidence. Nor is a greater degree of
13 certainty required of circumstantial evidence than of
14 direct evidence. You should weigh all the evidence in the
15 case. After weighing all the evidence, if you are not
16 convinced the guilt of the defendant beyond a reasonable
17 doubt, you must find the defendant not guilty.

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

23 In determining the believability of witnesses who have
24 testified in this case, you may believe one witness over
25 several witnesses, several witnesses over one witness.

1 You may believe a part of the testimony of a witness
2 and reject the remaining part of the testimony of that same
3 witness. You may believe the testimony of a witness in its
4 entirety, or you may reject the testimony of a witness in
5 its entirety.

6 You may consider whether any witness has exhibited to
7 you any interest, bias, prejudice, or other motive in this
8 case. You may also consider the appearance and the manner
9 of the witness while on the witness stand.

10 Ladies and gentlemen, these are simply examples of the
11 types of things that you may consider. They are not, of
12 course, an exclusive list.

13 Ladies and gentlemen, I instruct you and I emphasize
14 that the fact that the defendant did not testify is not, is
15 not a factor to be considered by you in any way in your
16 deliberations and in your consideration on whether the
17 defendant is guilty or not guilty. The fact that the --
18 that the defendant did not testify must not be considered
19 by you in any manner whatsoever. A defendant has the
20 constitutional right to remain silent, and the assertion of
21 this right must not be considered by you in your
22 deliberations.

23 I repeat, under your oath, you are to draw no
24 conclusion whatsoever from the fact that the defendant in
25 this case did not testify. The fact that this defendant

1 did not testify, ladies and gentlemen, should not -- should
2 not even be discussed in your jury room.

3 The burden of proof is and remains on the State of
4 South Carolina. As I have stated to you and I state again,
5 a defendant in a criminal case is not required to prove his
6 or her innocence. They are not required to prove that they
7 are not guilty. The burden of proof is and remains solely
8 on the State of South Carolina to prove guilt beyond a
9 reasonable doubt.

10 Now, ladies and gentlemen, I want to -- I want to step
11 back just for a moment, because I want to give you -- you
12 know, we talked about -- we've talked about a number of
13 things. But I want to step back for just a moment and I
14 want to talk about direct and circumstantial evidence for
15 just a moment. Because I forgot to give you my favorite --
16 my favorite example of direct and circumstantial evidence.

17 Because the explanation of what is direct and
18 circumstantial evidence can certainly appear -- well, I
19 think it -- I think that your understanding is assisted by
20 an example.

21 I used to give an example involving Clemson and
22 Carolina. But my jurors got -- you know, got too active
23 about all that. You could see people moving around and you
24 could tell who was a Clemson fan and who was a USC fan and
25 who didn't care about either one. It was really marvelous.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Dorchester County
The Honorable Diane S. Goodstein

Appellate Case No. 2018-000210

RECEIVED

JAN 10 2019

SC Court of Appeals

The State of South Carolina, ..., Respondent,

v.

Tiffany Ann Sanders, ..., Appellant.

**RECORD ON APPEAL
VOLUME II OF II**

ALAN WILSON
Attorney General
W. JEFFREY YOUNG

Chief Deputy Attorney General
DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

Samuel M. Bailey
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

Elizabeth Franklin-Best
Blume Franklin-Best & Young, LLC
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201
(803) 765-1044
betsy@blumelaw.com
Counsel for Appellant

INDEX

MOTION FOR A NEW TRIAL	1
MOTION FOR NEW TRIAL HEARING BEFORE JUDGE GOODSTEIN (MAY 30, 2017)	17
ORDER DENYING MOTION FOR NEW TRIAL (FEBRUARY 5, 2018)	61
AMENDED PETITION FOR WRIT OF CERTIORARI (DECEMBER 31, 2018)	63
ORDER DENYING MOTION FOR RETRIAL (JANUARY 22, 2015)	89
<i>TIFFANY SANDERS V. STATE</i> , 2014-MO-049(DECEMBER 17, 2014)	90
APPENDIX	93
AMENDED PETITION FOR POST-CONVICTION RELIEF (AUGUST 8, 2011)	95
RETURN (NOVEMBER 10, 2011)	102
INDICTMENT 2007-GS-18-1206 (SEPTEMBER 8, 2008)	107
INDICTMENT 2010-GS-18-707 (MAY 6, 2010)	109
SENTENCING SHEET	111
ORDER GRANTING <i>WHITE V. STATE</i> REVIEW AND DISMISSING OTHER CLAIMS (JULY 27, 2012)	112
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING (MAY 24, 2012)	124
TIFFANY SANDERS	
Direct Examination	127
Cross Examination	140
Re-direct Examination	159
AMANDA FENDER	
Direct Examination	161
Cross Examination	168

LINDA BREMENOUR	
Direct Examination	177
MICHAEL O'NEAL	
Direct Examination	185
Cross Examination	200
Re-direct Examination	208
HARRISON BELL	
Direct Examination	213
Cross Examination	214
SUPPLEMENTAL APPENDIX	218
TRIAL TRANSCRIPT (AUGUST 3-5, 2010)	221
DETECTIVE DAVID WATSON	
Direct Examination	340
KEVIN KING	
Direct Examination	350
Cross Examination	366
Re-direct Examination	375
DAVID HUGHEY	
Direct Examination	376
Cross Examination	386
BRANDON FRYE	
Direct Examination	391
Cross Examination	402
Re-direct Examination	407
Re-cross Examination	409
JESSICA HANS	
Direct Examination	413
DEJUAN JENKINS	
Direct Examination	419
Cross Examination	427
Re-direct Examination	430

DETECTIVE JAMES STURKIE	
Direct Examination	432
MOTION FOR DIRECTED VERDICT	445
STATE'S CLOSING ARGUMENT	466
DEFENSE'S CLOSING ARGUMENT	483
JURY CHARGES	492
TRIAL EXHIBITS	
State's Exhibit 1- Crime Scene Photo	548
State's Exhibit 2- Crime Scene Photo	549
State's Exhibit 3- Crime Scene Photo	551
State's Exhibit 4- Crime Scene Photo	553
State's Exhibit 5- Aerial Photo	555
State's Exhibit 6- Miranda Rights Waiver (June 9, 2007)	557
State's Exhibit 7- Statement of Tiffany Sanders (June 9, 2007)	558
Court's Exhibit 1- Stipulation	557
Court's Exhibit 2- Miranda Rights Waiver and Statement of Tiffany Sanders (June 9, 2007)	561
Court's Exhibit 3- Jury Request to Replay Testimony of Kevin King and Jessica Hans	564
Court's Exhibit 7- Jury Question Regarding Law	565
Court's Exhibit 8- Jury Question Regarding Law	566
Court's Exhibit 8 [sic] Jury Question Regarding Law	567
Verdict Form- Accessory Before the Fact	568

Verdict Form- Murder	574
PETITION FOR WRIT OF CERTIORARI	578
<i>STATE V. TIFFANY ANN SANDERS</i> , OP. NO. 2014-MO-045 (DECEMBER 17, 2014)	601
ORDER DENYING PETITION FOR REHEARING (JANUARY 22, 2015)	604
CERTIFICATE OF COUNSEL	605

1 We're not going to talk about that.

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

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

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

1 went.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (Bench conference.)

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

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

25 (No audible response.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 together for you to deliberate.

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

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

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

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

13 JURORS: Yes.

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

16 JUROR: John Garofalo.

17 THE COURT: Yep.

18 JUROR: Rhonda Snipe.

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

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

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

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

14 THE COURT: Exceptions?

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

16 THE COURT: Additions?

17 MR. BELL: None from the State.

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

20 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the case law that we went over yesterday --

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

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

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

6 THE COURT: *State vs. Peterson*?

7 MR. BELL: Yes, ma'am.

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

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

10 THE COURT: Okay.

11 MR. BELL: It's here somewhere.

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

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

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

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

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

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

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

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

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

5 (Bench conference.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 THE COURT: Huh?

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

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

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

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

13 COURT SECURITY: Yes, ma'am.

14 THE COURT: Stay tuned.

15 (Brief pause due to technical difficulty.)

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

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

19 MR. BELL: No.

20 MR. O'NEAL: No.

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

22 (Bench conference.)

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

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

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

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

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

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

12 THE COURT: Very well.

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

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

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

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

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

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

25 First intent: In order to establish criminal

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

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

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

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

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

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

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

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

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

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

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

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

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

17 THE COURT: Any exceptions or additions?

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

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

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

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

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

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

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

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

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

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

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

11 THE COURT: What?

12 MR. O'NEAL: May we approach?

13 THE COURT: Yeah.

14 (Bench conference.)

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

17 THE COURT REPORTER: Number 7.

18 THE COURT: Okay. Number 7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Please retire and continue to deliberate your verdict

1 -- or I should say, verdicts.

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

3 THE COURT: Exceptions?

4 MR. BELL: None from the State.

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

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

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

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

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

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

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

(No audible response.)

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

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

MR. BELL: Nothing from the State.

THE COURT: From the Defense?

MR. O'NEAL: Nothing, Your Honor.

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

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

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

PRESIDING JUROR: Yes, ma'am.

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

(The presiding juror complies.)

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

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

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

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

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

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

12 (All jurors comply.)

13 COURT CLERK: Thank you.

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

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

17 THE COURT: All right. From the Defense?

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

20 THE COURT: Very well.

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

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

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

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

4 All right. David Villinger.

5 (The juror stands.)

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

7 JUROR: Yes, ma'am.

8 THE COURT: Is it still your verdict?

9 JUROR: Yes, ma'am.

10 THE COURT: Thank you, sir.

11 Ms. Donna Gore.

12 (The juror stands.)

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

15 JUROR: Yes, ma'am.

16 THE COURT: Is it still your verdict?

17 JUROR: Yes, ma'am.

18 THE COURT: Very well. Thank you.

19 Shannon Guilford.

20 (The juror stands.)

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

23 JUROR: Yes, ma'am.

24 THE COURT: Is it still your verdict?

25 JUROR: Yes, ma'am.

1 THE COURT: Ms. Christina A. Willis.

2 (The juror stands.)

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

4 JUROR: Yes, ma'am.

5 THE COURT: Is it still your verdict?

6 JUROR: Yes, ma'am.

7 THE COURT: Ms. Huger.

8 (The juror stands.)

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

10 JUROR: Yes, ma'am.

11 THE COURT: Is it still your verdict?

12 JUROR: Yes, ma'am.

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

14 And Ms. Brenda L. McCoil.

15 (The juror stands.)

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

17 JUROR: Yes, ma'am.

18 THE COURT: Is it still your verdict?

19 JUROR: Yes, ma'am.

20 THE COURT: Thank you.

21 Thomas M. Armstrong.

22 (The juror stands.)

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

25 JUROR: Yes, ma'am.

1 THE COURT: Is it still your verdict?

2 JUROR: Yes, ma'am.

3 THE COURT: You may be seated.

4 John E. Blanchard.

5 (The juror stands.)

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

8 JUROR: Yes, ma'am.

9 THE COURT: Is it still your verdict?

10 JUROR: Yes, ma'am.

11 THE COURT: Mr. Ronnie L. Stone.

12 (The juror stands.)

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

14 JUROR: Yes, ma'am.

15 THE COURT: Is it still your verdict?

16 JUROR: Yes, ma'am.

17 THE COURT: Ms. Iluminada Nettles.

18 (The juror stands.)

19 THE COURT: Did I do that okay?

20 JUROR: Uh-huh.

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

22 JUROR: Yes, ma'am.

23 THE COURT: Is it still your verdict?

24 JUROR: Yes, ma'am.

25 THE COURT: And Ellen L. Cone.

(The juror stands.)

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

JUROR: Yes, ma'am.

THE COURT: Is it still your verdict?

JUROR: Yes, ma'am.

THE COURT: And Homer J. Roberts.

(The juror stands.)

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

JUROR: Yes, ma'am.

THE COURT: Is it still your verdict?

JUROR: Yes, ma'am.

THE COURT: Very well. You may be seated.

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

Anything further at this time?

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

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

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

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

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

11 JUROR: I already called.

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

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

19 MS. SALISBURY: I think so.

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

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

23 THE COURT: Yeah.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 THE COURT: Yes.

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

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

4 THE COURT: Very well.

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

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

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

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

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

14 (Bench conference.)

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

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

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

18 THE COURT: Yes, sir?

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

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

1 She had family in here with her.

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

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

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

9 (Mr. Ham complies.)

10 MR. BELL: Say your name first.

11 MR. HAM: Good afternoon, Your Honor.

12 THE COURT: Good afternoon.

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

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

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

1 should never have happened, but it did.

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

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

6 All right. Anything further?

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

8 THE COURT: All right.

9 MR. BELL: Nothing from the State.

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

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

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

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

16 (The Court Clerk complies.)

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

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

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

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

25 Therefore, I commit you to the State Department of

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

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

4 MR. BELL: Thank you, Your Honor.

5 THE COURT: All right.

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

7 THE COURT: Of course.

8 (Bench conference.)

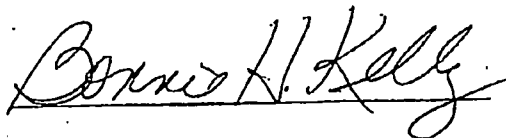
9 (Off the record at 5:00 p.m.)

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

CERTIFICATE

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

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

14 

15 BONNIE H. KELLY,

16 COURT REPORTER

17 COLUMBIA, SOUTH CAROLINA

18 DECEMBER 25, 2010

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

EXHIBITS

Plaintiff(s) State of S.C.

vs.

Defendant(s) Tiffany Ann Sanders

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

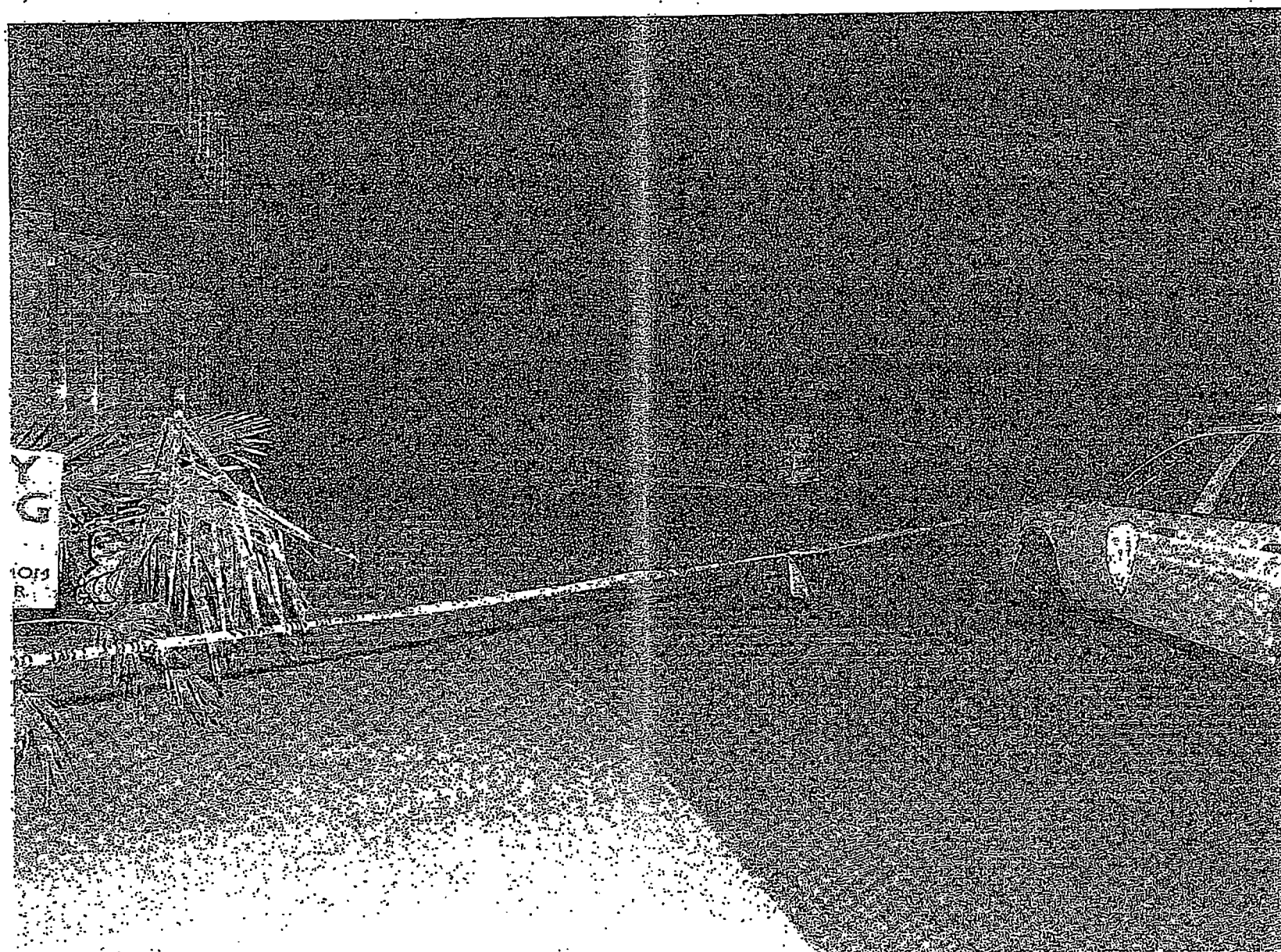
Court
Reporter

Clerk of Court

Bonnie H. Kelly
Gregory H. Jones

8-3-10 -

8-3-10 - 8-5-10



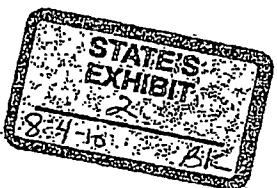
000548

328



330

000549



331

560

000550



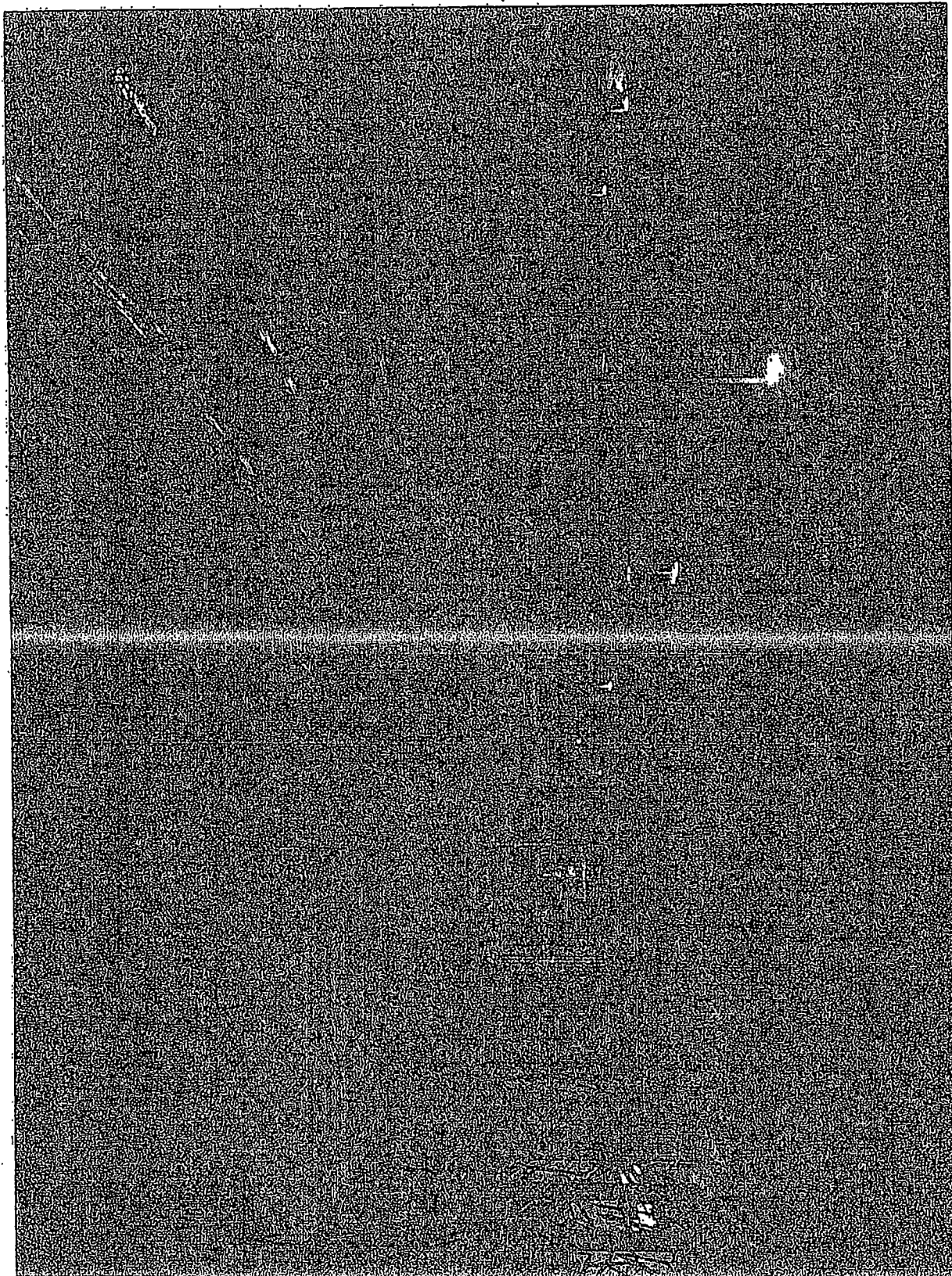
332

000551

333



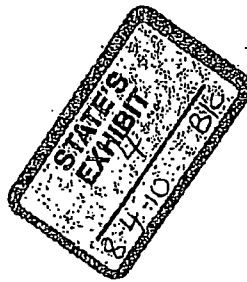
000552



334

563

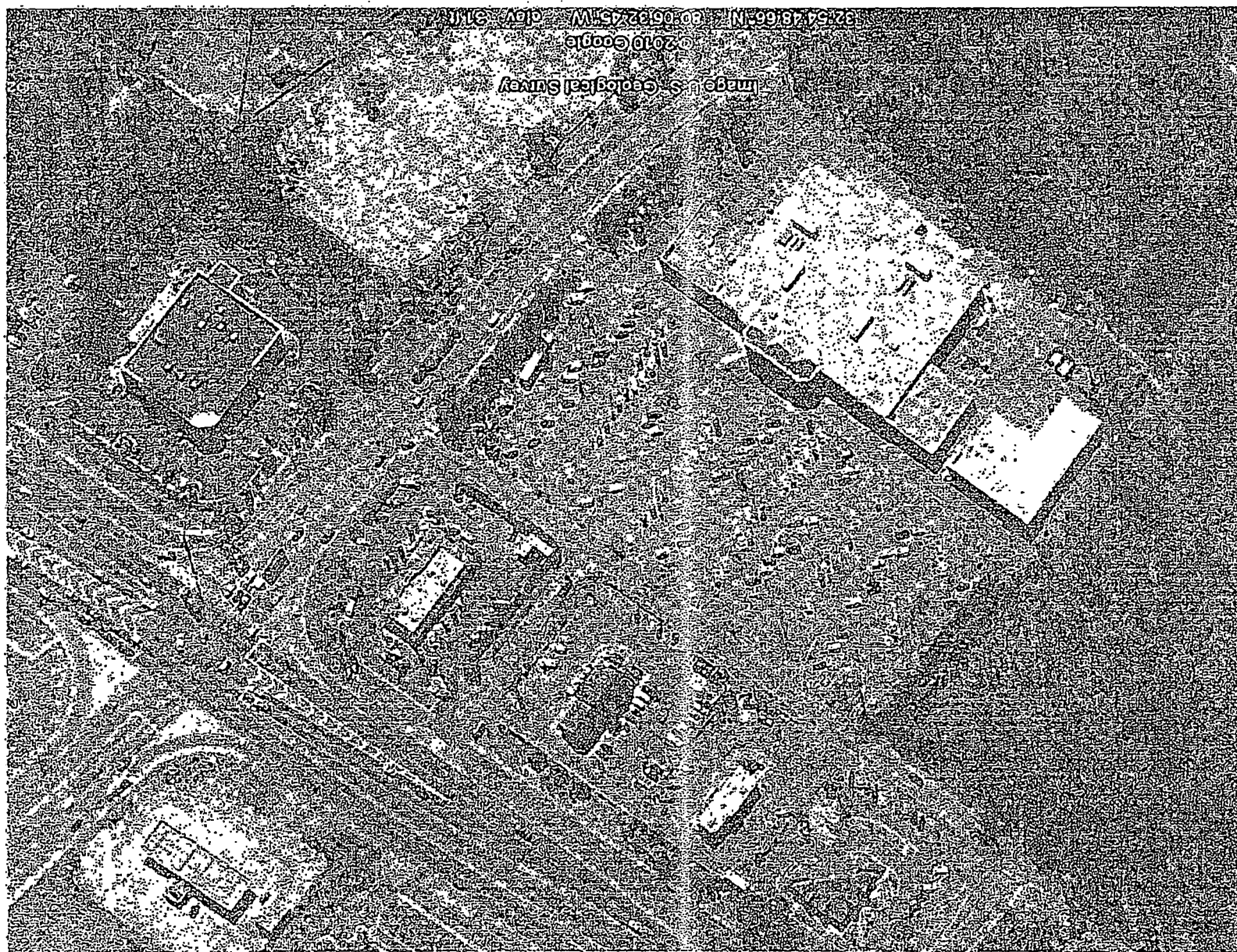
000553



335

564

000554



336

000555



337

566

000556

NORTH CHARLESTON POLICE DEPARTMENT



COMPLAINT # 2006024114

ADVICE OF CONSTITUTIONAL RIGHTS

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

OF THE NORTH CHARLESTON POLICE DEPARTMENT THAT:

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

I FULLY UNDERSTAND EACH OF THESE RIGHTS EXPLAINED TO ME.

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

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

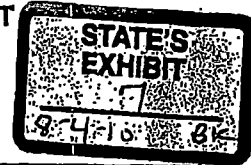
CHARGE OF Murder NO THREATS, FORCE OR PROMISES OF ANY KIND HAVE BEEN MADE TO ME BY ANYONE TO CAUSE ME TO WAIVE THESE RIGHTS AND/OR ANSWER QUESTIONS.

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

NCPD-008

NORTH CHARLESTON POLICE DEPARTMENT

DEFENDANT STATEMENT



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

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

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

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

WITNESS: [Signature]WITNESS: [Signature]SIGNATURE: [Signature]

pg 12 of 10

DN 2001029117

the head with a baseball bat. If I had known
Chris would have been involved I would
have kept Jessi & Kevin at Brandon's house

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

WITNESS:

WITNESS:

SIGNATURE:

340

569

000559

STIPULATION---TIFFANY ANN SANDERS

THE STATE AND DEFENDANT STIPULATE TO THE FOLLOWING FACTS:

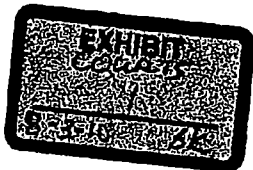
JESSIE HAM, THE VICTIM WAS KILLED BY FOUR SHOTS, THREE IN THE BACK AND ONE TO THE NECK

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

SEAN KAMMERER FIRED THOSE FOUR SHOTS

SEAN KAMMERER WAS CONVICTED BY HIS PLEA OF GUILTY TO MURDER

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



NORTH CHARLESTON POLICE DEPARTMENT



COMPLAINT # 200702411

ADVICE OF CONSTITUTIONAL RIGHTS

FULL NAME Sanders, Tiffany ANN DATE OF BIRTH [REDACTED]
AGE 18 GRADE COMPLETED IN SCHOOL 12 I, Tiffany Ann Sanders
HAVE BEEN ADVISED BY Det. J. Sturkie
OF THE NORTH CHARLESTON POLICE DEPARTMENT THAT:

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

I FULLY UNDERSTAND EACH OF THESE RIGHTS EXPLAINED TO ME.

WITNESS: [Signature] SIGNATURE: [Signature]
WITNESS: [Signature] DATE: 06-09-07 TIME: 01:15 p.m.

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

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

WITNESS: [Signature] SIGNATURE: [Signature]
WITNESS: [Signature] DATE: 06-09-07 TIME: 01:17 p.m.

NORTH CHARLESTON POLICE DEPARTMENT

DEFENDANT STATEMENT

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

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

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

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

WITNESS:

D. D. [Signature]
0 1 01 1

P. 1 - 11 1

17 02-11 02

2007024114

the head with a baseball bat. If I had known
guns would have been involved I would
have kept Jess & Kevin at Branders house

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

WITNESS:

WITNESS:

SIGNATURE:

344

573

000563

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

[Handwritten signature]



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

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

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

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



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

Do you mean you wish to
rehear their testimony?

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

Only one or neither

David J. Ford



W. J. Ford

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

Alger



STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF GENERAL SESSIONS
OF THE FIRST JUDICIAL CIRCUIT

Indictment No. 07-GS-18-1206

STATE OF SOUTH CAROLINA,)

VERDICT FORM

vs.)

~~FKA~~
Tiffany Ann Hecksher, ~~nee~~ Sanders,)
Defendant.)

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

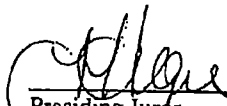
1. AS TO THE INDICTMENT ALLEGING ACCESSORY BEFORE THE FACT TO A
FELONY, WE THE JURY UNANIMOUSLY FIND THE DEFENDANT

GUILTY

NOT GUILTY

STOP AND END YOUR DELIBERATIONS

Please sign and date.


Presiding Juror

8/5/10
Date

GENERAL SESSIONS DOCKET REPORT FOR DORCHESTER COUNTY

REPORT RUN DATE 7/03/2007

INDICTMENT #: ~~00000010~~ ²⁰⁰⁷⁻¹²⁰⁶ ENTRY DATE: 7/03/2007 LAST UPDATE: 7/03/2007
DEFENDANT NAME: SANDERS, TIFFANY ANN AKA:
ADDRESS: 4606 BATTERY RANGE CITY: N CHARLESTON STATE: SC ZIP: 29420
SOCIAL SECURITY NUMBER 888888888 SEX: F FEMALE RACE: W WHITE
DATE OF BIRTH: [REDACTED] DRIVERS LICENSE STATE / NO.: SC / [REDACTED]
WARRENT OR TICKET #: K269532 COUNTS: 00001 OFFENSE CODE: 2414
NO WARRANT 00001 NAME OF OFFENSE: Murder / Murder
DATE OF ARREST: 6/26/2007 DATE REC BY CLERK: 7/02/2007 SUMMARY JUDGE: 000
RESTORE DATE: 0/00/0000
DISP DATE: 0/00/0000 DISP TYPE: 8/5/10
DISP TYPE EXPLANATION:
JUDGE CODE/NAME: Goodstein COURT REPORTER: B. Kelly
CONVICTION: CTS: OFFENSE:
SENTENCE:
DEFENSE ATTORNEY: Michael O'Neal ^{CP06422} PROSECUTING ATTORNEY:
H. Bell

Trial - not Guilty

WITNESSES

J. Jellico

North Charleston Police Department

07-024114

ARREST WARRANT NUMBER

K269532

Arrested: June 26, 2007

ACTION OF GRAND JURY

TRUE BILL

DATE

9/4/08

Foreperson of Grand Jury

Date: September 08, 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007GS18-1206

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

September 08, 2008 TERM

THE STATE

vs.

Tiffany Ann Sanders

Indictment for

**ACCESSORY BEFORE THE FACT TO A
FELONY**

SC Code: 16-1-40

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

Defendant

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

Defendant

Witness:

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

000570

351

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

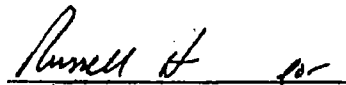
INDICTMENT
2007GS18-1206

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

ACCESSORY BEFORE THE FACT TO A FELONY

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

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



B. Bell, Solicitor

07-024114

ARREST WARRANT

K- 269532

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
DORCHESTERTHE STATE
against

SANDERS, TIFFANY ANN

Address: 4606 BATTERY RANGE

N. CHARLESTON SC 29420-7211

Phone: SSN:

Sex: F Race: W Height: Weight: 000

DL State: SC DL#:

DOB: Agency ORI#: NCPD

Prosecuting Agency:

Prosecuting Officer: JELICO, DET. SGT. J

Offense: MURDER

Offense Code: 116

Code/Ordinance Sec: 16-3-10

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

Signature of Judge (LS.)

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Tiffany A. Sanders

on 6-26-2007

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

90:4 WD 2-70

RECEIVED

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of
DORCHESTER)

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618Personally appeared before me the affiant JELICO, DET. SGT. J. who
being duly sworn deposes and says that defendant SANDERS, TIFFANY ANN
did within this county and state on 6/08/2007 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)
In the following particulars: VIOLATION SECTION 16-3-10 OF SC CODE OF LAWS
DESCRIPTION OF OFFENSE: MURDERI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
Accessory before the fact (Common Law) of Murder

SEE ATTACHED AFFIDAVIT

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

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of
DORCHESTER)

Affiant's Address

4900 LACROSS ROAD

Affiant's Telephone

N. CHARL S.C. 29418
554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 6/08/2007 defendant SANDERS, TIFFANY ANN

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE:

VIOLATION SECTION 16-3-10 OF SC CODE OF LAWS
MURDERHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 6-26-07

Signature of Issuing Judge

Judge Code: 034

ORIGINAL

Judge's Address

212 Deming Way, Box 10

Summerville

SC 29483-0000

Judge's Telephone

(843) 832-0370

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

000572

353

K269532

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER
CITY OF NORTH CHARLESTON

OCA# 2007024114
Det D. D. Watson
Sergeant Jellico

Personally appeared before me, a magistrate of this County, one
who first being duly sworn, deposes and says that (name of the defendant)

Tiffany Ann Sanders

did within this County and State on **June 8, 2007**
violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

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

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

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

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

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

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

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

[Signature of Judge]
Signature of Judge

[Signature of Affiant]
AFFIANT
Address: 4900 Lacroix Road
Phone: 554-4700

AFFIDAVIT
JUN 11 2 27 PM '07
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF GENERAL SESSIONS
OF THE FIRST JUDICIAL CIRCUIT

Indictment No. 10-GS-18-0707

STATE OF SOUTH CAROLINA,)

VERDICT FORM

vs.)

Tiffany Ann Hecksher, ^{FKA} Sanders,)

Defendant.)

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

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

→ GUILTY

NOT GUILTY

STOP AND END YOUR DELIBERATIONS

Please sign and date.


Presiding Juror

8/5/10
Date

WITNESSES

J. Jellico

North Charleston Police Department

ARREST WARRANT NUMBER
2010DOR08

Arrested: 0, 0

ACTION OF GRAND JURY

TRUE BILL

DATE 5/6/10

Foreperson of Grand Jury
Date: May 6, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS18-0707

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

May 17, 2010 TERM

**THE STATE
vs.**

Tiffany Ann Sanders

Indictment for

MURDER

SC Code: 16-3-10

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

Defendant

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

Defendant

Witness:

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

RECORDED
2010 MAY -6 AM 10:41
CHERYL B. A. A. M.
CLERK OF COURT
DORCHESTER COUNTY

000576

357

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

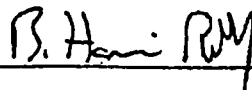
INDICTMENT
2010GS18-0707

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

MURDER

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

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


Harrison Bell, Solicitor

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

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

Case No. 2011-CP-18-1497

Tiffany Sanders, ...

Petitioner,

vs.

State of South Carolina

Respondent,

PETITION FOR WRIT OF CERTIORARI

June 10, 2013

Dale T. Cobb # 1291
Thomas R. Goldstein #2186
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Appellant
P. O. Box 711121
N. Charleston, South Carolina 29415-1121
(843) 554-4291 (843) 554-5566 (fax)
E-mail: tgoldstein@cobblaw.net

TABLE OF CONTENTS

Table of authorities	3
Statement of issues on appeal	4
Statement of case from the trial (guilty verdict appealed simultaneously with this petition)	5
Statement of case from P.C.R. hearing held by Judge Benjamin	7
Introduction/Standard of Review	8
Arguments	
(Direct Appeal—filed separately)	
I. Did the trial court err in failing to grant the appellant a new trial when the overwhelming evidence is that her trial counsel deviated from the minimum Standard of care by failing to interview or call material witnesses?	9
A. Trial Counsel Failed to Interview Witnesses	9
B. Trial Counsel Failed to Call Available Witnesses	15
II. Did the trial judge err in failing to grant the appellant a new trial when the overwhelming evidence is that her trial counsel deviated from the minimum standard of care by failing to cross examine the eyewitness on the scene, Jessica Hans?	20
Conclusion	23

TABLE OF AUTHORITIES

CASES:

<i>Edwards v. State</i> , 392 449, 456, 710 S.E.2d 60, 64 (2011).....	9
<i>Franklin v. Catoe</i> , 346 S.C. 563, 552 S.E.2d 718 (2001).....	9
<i>Lowry v. State</i> , 376 S.C. 499, 657 S.E.2d 760 (2008).....	8
<i>Sigmon v. State</i> , ___ S.C. ___, ___ S.E.2d ___ (Opinion No. 27233, March 20, 2013)..	9
<i>Sosebee v. Leeke</i> , 293 S.C. 531, 362 S.E.2d 22 (1987).....	8
<i>State v. Martin</i> , ___ S.C. ___, ___ S.E.2d. ___ (Ct. App. 2013, Opinion No. 5125).....	18
<i>Davis v. Sparks</i> , 235 S.C. 326, 111 S.E.2d 545 (1959).....	19
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674, (1984) ...	8, 9

STATUTES AND OTHER AUTHORITIES:

U. S. Constitution, Amendment VI.....	8
S. C. Constitution, Article I § 14.....	8

STATEMENT OF ISSUES ON APPEAL

APPEAL FROM JUDGE DIANNE GOODSTEIN

(Trial judge)

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

- I. Did the trial judge award fail to direct a verdict of acquittal when there was no evidence to establish the necessary elements for the crime of murder? (filed separately as direct appeal)
- II. Did the trial judge err in failing to instruct the jury that the killer's malice cannot be transferred to the appellant without some evidence that the appellant demonstrated malice? (filed separately as direct appeal)

APPEAL FROM JUDGE DEANDRE G. BENJAMIN

(Denial of Relief from PCR judge)

ARGUMENTS

- I. Did the Court of Common Pleas err in failing to grant the appellant a new trial when the overwhelming evidence is that her trial counsel deviated from the minimum standard of care by failing to interview or call material witnesses? 9
 - A. Trial Counsel Failed To Interview Witnesses 9
 - B. Trial Counsel Failed To Call Available Witnesses 15
- ✓ II. Did the trial judge err in failing to grant the appellant a new trial when the overwhelming evidence is that her trial counsel deviated from the minimum standard of care by failing to cross-examine the eyewitness on the scene, Jessica Hans? 20
- Conclusion 22

STATEMENT OF THE CASE¹

(TRIAL)

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

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

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

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

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

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

7. James Sturkie (North Charleston Police Detective)

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

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

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

STATEMENT OF THE CASE
(POST-CONVICTION RELIEF)

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

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

Introduction/Standard of Review

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

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

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

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

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

Argument I

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

A.

Trial Counsel Did Not Interview Witnesses.

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

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

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

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

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

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

Appendix page 95 [tr. Page 66])

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

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

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

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

Appendix at page 88 [transcript page 59])

Thus, the appellant suffered prejudice at the time of trial because when appellant's counsel conceded that he never interviewed the most critical witness to his defense, he conceded falling below an objective standard of competency. The failure to attempt to interview Kammerer is a critical deviation from the minimum standard of care that directly prejudiced the petitioner and denied her a fair trial. As the lower court noted in the Order under review: "Where counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. *Watson v. State*, 370 S.C. 68, 634 S.E.2d 642 (2006). Second counsel's deficient performance must have prejudiced the Applicant such that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. Where counsel articulates a valid reason for employing a particular trial strategy, counsel's conduct will not be determined ineffective assistance of counsel. *Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006). This Court finds that all allegations with the exception of the appeal to be without merit and are denied and dismissed as set forth below." (Order at page 4, Appendix at page 21) It is one thing to make a strategic trial decision not to call a witness, but it is quite a different thing to neglect to interview him, thus preventing any meaningful analysis of such a decision. This failure is alone sufficiently prejudicial to deprive the appellant of any hope of a fair trial, and especially so when the failure is combined with the failure to call an available witness in the courtroom, Amanda Fender.

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

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

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

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

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

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

(emphasis added)

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

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

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

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

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

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

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

Q. Okay.

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

Q. Okay. And--

A. Because they were drinking that night and—

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

A. Yes, sir.

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

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

Q. You weren't drinking?

A. No.

Q. Were y'all shooting baskets with them?

A. No.

Q. Were you listening to music?

A. No.

Q. O.K.

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

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

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

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

Q. You left?

A. Yes, sir.

Q. Where were you sitting then?

A. I was still in the back seat.

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

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

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

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

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

A. No, sir.

Q. Did you hear them talk about any guns?

A. No, sir.

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

A. We went to Brandon's house.

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

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

Q. Could you hear everything that was going on?

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

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

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

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

Argument II.

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

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

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

crucial point is well below the standard of care for effective representation. The P.C.R. court missed the legal issue. The Order under review recites: "Applicant failed to present Hans as a witness at the post-conviction relief hearing to establish whether beneficial information could have been elicited other than that obvious from a review of Hans' testimony on direct examination." (Order at page 8-9, pages 24-25 of Appendix) This is a correct statement of law and a correct statement of fact, but it misses the essential point of the petitioner's application. Officer Hans's testimony was crucial to the elements of the petitioner's defense of murder. She was not present. Officer Hans's testimony demonstrates that at the time of the murder, the petitioner was not present. At the post-conviction relief hearing, the petitioner did not need more evidence from Officer Hans—all she needed to demonstrate was that her trial counsel failed to follow up with a single cross-examination question that amplified and emphasized the Officer's critical defense testimony. As the trial transcript makes clear, Officer Hans offered the petitioner an alibi, and her trial counsel did not ask a single question to follow up or amplify. This failure is the deficient performance that prejudiced the petitioner and prevented her from receiving anything close to a fair trial. The jury convicted the petitioner of murder despite Officer Hans establishing she was not present. Therefore, she was critically prejudiced by her counsel's failure to amplify and augment Officer Han's testimony.

CONCLUSION

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

Respectfully submitted,

June 12, 2013

Dale T. Cobb, # 1291
Thomas R. Goldstein, #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
Charleston, S. C. 29415-1121
(843) 554-4291
dtcobbblaw@hotmail.com

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

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

Tiffany Sanders, Petitioner,

v.

State of South Carolina, Respondent.

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

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

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

AFFIRMED

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

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

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

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

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

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

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

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

AFFIRMED.

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

The Supreme Court of South Carolina

Tiffany Sanders, Petitioner,

v.

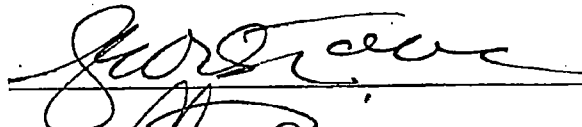
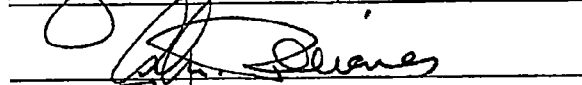
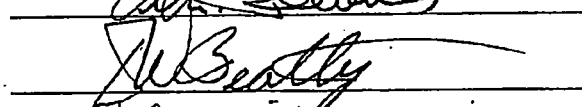
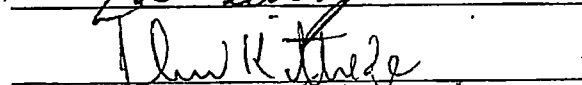
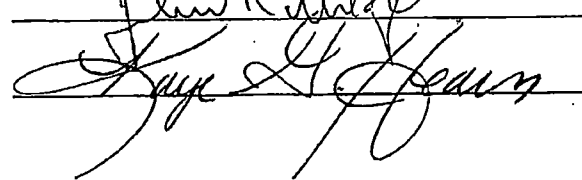
State of South Carolina, Respondent.

Appellate Case No. 2012-212858

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

ORDER

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

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

Columbia, South Carolina

January 22, 2015

cc:

Dale T. Cobb, Jr., Esquire

Salley W. Elliott, Esquire

Thomas R. Goldstein, Esquire

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Dorchester County
The Honorable Diane S. Goodstein

Appellate Case No. 2018-000210

RECEIVED
JAN 10 2019
SC Court of Appeals

The State of South Carolina, ..., Respondent,

v.

Tiffany Ann Sanders, ..., Appellant.

CERTIFICATE OF COUNSEL

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



Elizabeth Franklin-Best
Blume Franklin-Best & Young, LLC
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201
(803) 765-1044
betsy@blumelaw.com
Counsel for Appellant

January 10th, 2019.

RECEIVED

Aug 21 2020

THE STATE OF SOUTH CAROLINA SC Court of Appeals
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY COURT OF GENERAL SESSIONS

Diane S. Goodstein, Circuit Court Judge

Case No. 2018-000210

Tiffany Ann Sanders Appellant,

v.

State of South Carolina.....Respondent.

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant respectfully requests that the Court grant rehearing in this matter. Petitioner submits that the Court overlooked or misapprehended the following points:

- I. The trial court erred by denying Sanders' motion for a new trial based on after-discovered evidence pursuant to South Carolina Rules of Criminal Procedure, Rule 29(b) because Sean Kammerer's testimony, that Sanders was not aware of, nor did she participate in the murder of the victim, was not available until this proceeding, and could not have been obtained at any earlier point.
- II. The trial court should have found that Sean Kammerer's affidavit constitutes after-discovered evidence, and granted Sanders a new trial.

STATEMENT OF THE CASE

Tiffany Sanders was tried before the Honorable Diane S. Goodstein and a jury between August 3-5, 2010 in Dorchester County, South Carolina. She was

represented by Michael O'Neal, Esquire. The State was represented by Harrison Bell and Mandy Kimmons. She was convicted of murder and sentenced to 30 years in prison. She did not initially appeal her conviction and sentence. She then filed an application for post-conviction relief on August 3, 2011 and an Amended application on August 24, 2011. After an evidentiary hearing on May 24, 2012 at the Orangeburg County courthouse, the Honorable Deandrea G. Benjamin granted her a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), but dismissed her other claims. That order was filed on August 3, 2012. Sanders was represented by Dale T. Cobb and Thomas R. Goldstein for the hearing and subsequent appeal.

Sanders then filed a petition for writ of certiorari from the denial of her PCR. On December 17, 2014, the South Carolina Supreme Court issued its memorandum opinion in *Tiffany Sanders v. State*, Op. No. 2014-MO-049. Sanders filed a petition for rehearing that was then denied on January 22, 2015.

Sanders then filed a Motion for a New Trial Based on After-Discovered Evidence on March 21, 2017. After a hearing on May 30, 2017 during which Judge Goodstein did not hear any testimony, she denied the motion on February 5, 2018.

This Court affirmed Sanders conviction and sentence by an unpublished opinion, *Tiffany Ann Sanders*, Unpublished Opinion No. 2020-UP-237 (filed August 12, 2020). This petition for rehearing timely follows.

ARGUMENTS

- I. The trial court erred by denying Sanders' motion for a new trial based on after-discovered evidence pursuant to South Carolina Rules of Criminal Procedure, Rule 29(b) because Sean Kammerer's testimony, that Sanders was not aware**

of, nor did she participate in the murder of the victim, was not available until this proceeding, and could not have been obtained at any earlier point.

The critical issue in this appeal is whether Sean Kammerer was available to testify at any earlier point prior to Sanders' motion for a new trial filed in March of 2017. Kammerer's testimony is the sole piece of evidence upon which Sanders relies in her motion for a new trial based on newly-discovered evidence. Judge Goodstein found, in her order, that he was. She found, in pertinent part:

Mr. Kammerer's testimony is not necessary to decide this issue because it does not fit within the definition of newly-discovered evidence. Kammerer was known to the Defendant at least since their arrest in 2007. While the Defendant may be correct in her assertion that Kammerer would not have wanted to testify at her PCR hearing while he was pursuing his own legal remedies through the PCR process, that fact does not mean that Kammerer was unavailable at the time. The Defendant had the means to subpoena Mr. Kammerer's testimony pursuant to Rule 45 of the SC Rules of Civil Procedure.

ROA 61-62.

This ruling is inaccurate, and the Court should reverse the order and find that Sean Kammerer's testimony is properly considered as newly-discovered evidence.

According to Rule 71.1(a), Post-Conviction Relief Actions, the procedure for post-conviction relief is provided by the Uniform Post-Conviction Procedure Act (Act), *S.C. Code Ann.* §§ 17-27-10 to -120 (1985). The South Carolina Rules of Civil Procedure shall apply to the extent that they are not inconsistent with the Act.

South Carolina Code Ann. §17-27-150, Discovery in post-conviction relief proceeding, provides: (a) A party in a noncapital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South

Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise.

The trial court is inaccurate when it finds that PCR counsel could have subpoenaed a co-defendant to testify at a PCR hearing without a judge's express permission to do so because the rules do not allow it. It would have been improper for PCR counsel to subpoena Kammerer without the court's permission. But also, it is highly unlikely that a judge would have given permission to do so since Sean Kammerer, at the time of Sanders' PCR hearing, was pursuing his own statutory legal remedies and thus could not have been forced to testify at his co-defendant's PCR hearing by way of a subpoena.

Relevant Dates

The following are dates relevant to consideration of this issue.

- Sean Kammerer pleaded guilty to murder on March 24, 2008 and was sentenced to 34 years in prison.
- Kammerer filed a post-conviction relief application on January 26, 2009.
- Sanders was tried before Judge Goodstein and a jury between August 3-5, 2010 in Dorchester County, South Carolina.
- Sanders's PCR hearing was held on May 24, 2012 (she was granted a belated appeal pursuant to *White v. State*)
- Kammerer's PCR application was dismissed on June 14, 2013. He did not appeal.
- The South Carolina Supreme Court issues an unpublished opinion in *Tiffany Sanders v. State of South Carolina*, Opinion No. 2014-MO-049 on December 17, 2014 denying relief.
- Kammerer executes declaration on January 7, 2017.

The trial court's order finds that PCR counsel could have properly subpoenaed Kammerer to Sanders' PCR hearing and forced him to testify on Sanders's behalf while he was pursuing his statutory right to challenge his own conviction. The court did not address the fact that contacting a witness who is represented by counsel would have been improper. *See* Rule 4.2 of the Rules of Professional Conduct, Communication with Person Represented by Counsel. *And see Smith v. State*, 404 S.C. 493, 745 S.E.2d 378 (Ct. App. 2012) (acknowledging that Rule 4.2 imposed an impediment on trial counsel contacting a witness represented by counsel).

But also, the court found that, since Kammerer pleaded guilty, he could have been compelled to testify at Sanders's trial, even though he had already filed a PCR application and was represented by counsel:

As is the case for all guilty pleas, Mr. Kammerer was advised that he was surrendering his right to remain silent and his right against self-incrimination. Thus, he no longer enjoyed the privilege of refusing to testify upon the Court's acceptance of his plea. Therefore, at the time of her trial, Kammerer was available for Defendant to subpoena and attempt to interview... Due to Defendant's knowledge of Mr. Kammerer and the available legal means for obtaining his testimony at the time of trial, the testimony cannot be newly discovered evidence under the relevant definition.

ROA 62 (emphasis in original).

If the court's reasoning is allowed to stand, it will mean that criminal defendants, who plead guilty, effectively waive their rights to avail themselves of post-conviction relief remedies because they can be compelled (by virtue of their guilty pleas) to testify at a co-defendant's PCR hearing. Kammerer exercised his legal statutory rights to collaterally challenge his conviction. Given that he was pursuing

these remedies, there is no reason to think he would have willingly implicated himself in the murder that he was challenging and seeking to overturn. It would have been improper to then subpoena him at the trial, or the PCR hearing, to have him invoke his Fifth Amendment right not to incriminate himself. *See State v. Hughes*, 328 S.C. 146, 153, S.E.2d 821, 824 (1997) (witness may not be called solely for the sake of having witness invoke privilege against self-incrimination, for the purpose of permitting the jury to infer wrongdoing from that assertion). The trial court's ruling would effectively gut post-conviction relief for defendants who plead guilty, an action that would not be proper unless undertaken by the legislative branch.

II. The trial court should have found that Sean Kammerer's affidavit constitutes after-discovered evidence, and granted Sanders a new trial.

Relevant Facts

The essential facts of this case are not complex. Tiffany Sanders encountered Jesse Ham (the decedent), Brandon Frye, David Hughey, and Kevin King on June 8, 2007 in a neighborhood near where she lived as she was out driving with her disabled sister. While she was with these young men, she spoke to Sean Kammerer, a friend of hers, on the phone. Shortly afterwards, she drove Jesse Ham to a shopping center area near a Tire Kingdom in North Charleston, SC. After they arrived, Sean Kammerer shot and killed the victim.

The State's theory of the case, as Bell outlined in his opening argument, was that Tiffany lured the victim, J.H., to the area so that Sean Kemmerer could kill him. The State prosecuted the case under the theory of "the hand of one is the hand of all." ROA 329. As the State argued to the jury:

The difference between accessory before the fact of murder and murder is that you have to determine whether she was present or not. She was in her car when the murder happened outside the car. At some point she left the scene. It's up to you to decide if she was present or not.

If she was not present at the scene, you can find her guilty of accessory before the fact. If she was present at the scene, you can't find her guilty of accessory before the fact, but you can find her guilty of murder, because she aided and abetted and helped and joined in with this crime.

ROA 329-30.

At the conclusion of the opening argument, the State asked the jury to find her guilty "of either murder or accessory before the fact of murder." ROA 330.

But what the jury did not hear because it is only now being revealed, is that Tiffany Sanders had absolutely no knowledge that Sean Kammerer had a gun that night, or that he intended to shoot and kill Jesse Ham. Indeed, Sean Kammerer's affidavit is wholly consistent the version of events that Tiffany gave to law enforcement when this happened as discussed below.

At trial, the State elicited the following testimony from its witnesses:

David Watson, a special investigator with the Ninth Circuit Solicitor's Office, testified. At the time J.H. was killed, he was a detective with the North Charleston Police Department. He was dispatched to an area near a Tire Kingdom in North Charleston at approximately 11:15- 11:20pm on June 8, 2008. This area was on the corner of Ashley Phosphate and Dorchester Road. There is an "infamous" Rock-n-Roll McDonald's restaurant on the corner. When he arrived, he saw the victim on the ground. ROA 345. This witness identified a number of photographs that were admitted into evidence.

Kevin King also testified for the State. He was a friend of J.H.'s from the neighborhood. ROA 350. They lived in Forest Hills neighborhood off Dorchester Road. ROA 351. On the night of the shooting J.H. came by King's house with another friend, and they decided to hang out. ROA 352. J.H.'s friend was "Brandon." ROA 353. They went back to a house right behind the Rock-n-Roll McDonald's. They hung out and "had a beer or two." ROA 353. Present were J.H., King, and another male.

Bored, they decided to walk around the neighborhood. ROA 353. While they were walking, a female drove into the neighborhood. The young men waved her down and she pulled up to them. They asked her what she was doing, and she said "Nothing with ya'll" and drove away. ROA 354. They walked back to the house. King testified this happened around 7:30 or 8:00pm. Back at the house, they sat in the backyard. They heard a loud horn. Brandon and the "other guy" went to the front of the house. King and J.H. stayed in the backyard. ROA 355. Brandon then came to the back yard and said "Hey, this girl wants to talk to you" referring to J.H. ROA 355. According to King, the girl asked them their names and they lied to her about them. ROA 355. He said they stood there talking for at least 30 to 45 minutes. ROA 355. King testified that she said she had a friend from the neighborhood who knew J.H. and wanted to meet him at the Rock-n-Roll McDonald's. While they were talking, she spoke on the cell phone. King testified he put his ear to the phone and heard a guy's voice. ROA 356.

King testified that J.H. was hesitant to go, but that eventually he went. King got into the backseat. He said he got into the car because J.H. was "his friend." ROA

357. She drove to the McDonald's, drove around it one time, and then pulled into a Publix parking lot. There was a delivery truck between the buildings, so she drove up to the wood line and backed in. ROA 357. There were four of them in the car—Tiffany, J.H. in the passenger seat, King, and then Tiffany's older, disabled sister next to King. ROA 358.

King testified that something did not seem right to him, and he wanted to get out of the car. As he was doing so, Sean came running up to the car with a gun and put it into King's stomach. King pushed him down and then ran. ROA 359. He ran between the buildings where the delivery truck was parked.

King testified that he knew Sean; that they grew up together and attended school together. ROA 360. As King ran, he continued to hear shots. ROA 360. He then took off through the woods behind the Publix because he knew the area. He called his dad to come and pick him up. ROA 361.

Later that morning, detectives got in touch with King and they told him that he needed to speak to them. ROA 362.

King described that Sean and J.H. used to be friends but that they had a fight over shoes. ROA 363. This argument happened two or three years before the shooting, but apparently they held grudges. The two of them "fought a lot." ROA 364. J.H. got tired of it and hit Sean with a bat. ROA 364. King's testimony was conflicting as to the seriousness of their problems. He testified that Sean had screamed, in connection with the bat incident, that he would kill J.H. But then he stated there were other incidents, but they were not "too serious." ROA 364.

King admitted that he did not run into Publix to seek help for his friend. He testified, implausibly, that he tried to call 911 on his phone while he was in the woods, but that because he had a long distance phone, it would not call 911.

David Hughey also testified for the state. At the time of his testimony, he was employed by the U.S. Army. He lived down the street from Brandon and was friends with J.H. That night they were hanging out at Brandon's house. They were drinking and talking. ROA 377. While they were hanging out, Tiffany pulled up in her car. Hughey knew her before that night because they attended middle school together. ROA 378. They asked her what she was doing, and she said "nothing." Then she pulled off. ROA 379. After that, they returned to Brandon's house, and drank some more. According to Hughey, Tiffany then returned to the house. Hughey said that she was "trying to find out who Jessie was." ROA 381. She talked on her cell phone. Hughey testified that he thought she already knew who J.H. and Kevin were. ROA 382. Hughey testified that she said that a girl wanted to meet J.H. ROA 383. J.H., King and Tiffany, along with her sister, drove away. ROA 383. After they left, Hughey stayed at the house with Brandon for another 10 or 15 minutes, and then left. ROA 384.

Later that night, Brandon called Hughey and told him they needed to go to McDonald's to look for J.H. They rode their bikes there. There were police on the scene, so they went back home. Brandon spoke to the police. ROA 385.

Hughey admitted on cross-examination that he knew "a little bit" about the history between Sean and J.H. ROA 387. He never saw them fight. ROA 388. When

he and Brandon went back up to the Publix area, Hughey took his gun. ROA 389. After encountering the police and not being searched for weapon, he rode his bike and then threw the gun into a ditch to get rid of it. ROA 390.

Brandon also testified for the State. ROA 391. He lived in the area behind the Rock-n-Roll McDonald's. Generally, Brandon corroborated King and Hughey's accounts. He stated that Kevin and J.H. were "hollering" at Tiffany and that she drove off. ROA 393. They asked her if she wanted to hang out with them, and she said no. ROA 395. After she, her sister, King and J.H. went to Publix, Tiffany returned about 15 minutes and said that "something happened." They drove back up there together. They did not see anything. They drove to the McDonald's and Publix parking lots. ROA 397. Brandon testified that she was acting like she was scared but that "you could tell it was an act." ROA 398. Brandon testified that Tiffany brought him back to his house and then left. He then called Hughey and they biked up there to check on J.H. ROA 399. They saw the police there. Brandon tried to leave, but he was chased down by a police officer who found marijuana on him. ROA 399-400. The next day he found out that J.H. had been killed. ROA 400.

Brandon had prior convictions of assault and battery of a high and aggravated nature. He also suffers from an anoxic brain injury that causes memory loss and makes him "slower." ROA 401.

Brandon testified he knew both Sean and J.H. and knew that they did not like one another. He never saw them fight in public. He testified that he heard Sean talk about killing J.H. ROA 403.

Jessica Hans, another State's witness, worked for Publix Supermarkets. She testified that as she and another co-worker were standing outside, they heard several loud pops. She looked over to the Papa John's/ Tire Kingdom area and saw a person firing a gun. After the shot was fired, the person with the gun ran to the other side of Tire Kingdom and then disappeared behind a building. She estimated that about 30 seconds later, she saw a Jeep Cherokee speed off in another direction. ROA 416. She and her co-worker then drove over to that area and found the victim on the ground. They called 911.

DeJuan Jenkins then testified for the State. He lived in Forest Oak, a neighborhood off Dorchester Road in Dorchester County. He testified that he had been with Sean Kammerer since 3 o'clock or 4 o'clock on the day that J.H. was killed. They had been at the mall; Jenkins had driven Sean's mother's car. Around 9 o'clock that evening, they returned back to Sean's house. He testified that around 10 o'clock, he and Sean went to the McDonald's. They parked in the Tire Kingdom parking lot. According to Jenkins, they were going to meet Sean's "girlfriend" there. Jenkins testified that once the "girlfriend" arrived, he observed Sean walk over to the car and open up the passenger door. As he did so, someone exited the car. Sean then pulled out a gun. The victim then exited the car and tried running away. Sean started shooting at him. After he shot him, Sean got back into the car and told Jenkins to take him to his brother's house. Instead, he took him home.

Jenkins testified that he did not see Sean with a gun prior to being in the Tire Kingdom parking lot. Kammerer disputes this, and claims that Jenkins gave him the

gun that night. At trial, Jenkins denied he gave the gun to Kammerer. Jenkins acknowledged that he did not call the police. Later, he pleaded guilty to accessory after the fact of murder and received a youthful offender sentence. Jenkins testified that Tiffany Sanders had not been present at the scene when the murder occurred—"She been left since—since he first started shooting and she leave." Jenkins testified that he did not know of any problems between Sean and J.H. ROA 426.

Detective James Sturkie was employed with the City of North Charleston Police Department. He spoke to Tiffany Sanders at the police station, and he recounted their interview during the trial. Her statement was admitted into evidence without objection. ROA 443. Her statement said:

Riding around with my sister, my parents called and said they was almost home. Rode to my neighborhood. Was riding through; seen Brandon, David, Jessie, and Kevin. I knew David and Brandon before.

Sean calls and asks who I'm with, then asked me to bring Jessie up to Publix. Kevin, Jessie, my sister and I ride to Publix.

Kevin and Jessie wanted to get out of the car, and as soon as they did Sean ran up to Kevin, pushed him and Jessie screamed "drive." And I took off and went to Brandon's house.

Went to Brandon's house, got Brandon, went back up there to see if any—if they ducked in the woods. I had no knowledge of a gun until I heard the shot.

After me and Brandon didn't see anyone, Brandon said, "All right you can take me home." I dropped Brandon off and went home. Tried to call Sean, no answer.

I had no knowledge of a gun being present to take a life. The only knowledge that I had was Sean wanting to fight Jessie because of Jessie beating Sean in the head with a baseball bat. I had—if I had known guns would have been involved, I would have kept Jessie and Kevin at Brandon's house.

ROA 443-44.

The newly discovered information presented in Sean Kammerer's affidavit is so critical to this case because the State conceded how weak its case was during the trial. The State clearly indicated they did not have any proof that Tiffany possessed any malice on the night this happened.

MR. BELL: Well, Your Honor, I think that malice exists from the fact that the principle in this case has admitted and pled guilty to murder. So, malice does exist. She is here as a person that aided, abetted under the "hand of one, the hand of all." I don't know that we have to assume that she had malice, but that malice existed in the commission of the crime...It's up to the jury to decide whether that the murder was the probable or natural consequence of this fight that she—that she gave in her, you know, self-serving statement....

And her part is either she was present or not present, thus accessory before the fact of murder or murder. The malice is certainly there. It's not necessarily her malice, but all it says is "malice." It doesn't say it has to be that person's malice, but that malice existed before somebody was killed.

The information contained in Sean Kammerer's affidavit is newly discovered evidence that proves that Tiffany Sanders is not guilty of murder.

In *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993), the S.C. Supreme Court held that to obtain a new trial based on after discovered evidence, the party must show that the evidence:

- (1) would probably change the result if a new trial is had;
- (2) has been discovered since the trial;
- (3) could not have been discovered before trial;
- (4) is material to the issue of guilt or innocence; and

(5) is not merely cumulative or impeaching.

And see *McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623 (2013); *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993).

Additionally, the PCR Act provides that "[a]ny person who has been convicted of, or sentenced for, a crime and who claims . . . that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice" is entitled to seek post-conviction relief. *S.C. Code Ann.* § 17-27-20(A)(4) (2014).

The information contained in Kammerer's affidavit is after-discovered evidence that entitles Ms. Sanders to a new trial. This information—that Tiffany Sanders was unaware of the existence of a gun, or that Kammerer had any intention of killing Jesse Ham prior to his actually doing so—would have changed the outcome of the trial since the State's entire theory of the case was that she did know about Kammerer's plans that night. But as Kammerer admits, not only was Tiffany Sanders unaware of his plans, but the gun was not even present at the scene until after Kammerer and Tiffany Sanders spoke that night. DeJuan Jenkins pulled out the gun and handed it to Kammerer once they arrived at the scene of the shooting. This information was discovered after trial, and could not have been discovered before trial by counsel because Sean Kammerer was pursuing his own legal remedies. This information is material to the issue of guilt or innocence because Tiffany Sander's knowledge of the existence of the gun constitutes an element of the offense. And also, this information is not merely cumulative or impeaching since it is information that

has not been revealed, in any manner, until now. Judge Goodstein erred when she found that this evidence did not constitute newly-discovered evidence, and she should have granted Sanders a new trial.

CONCLUSION

This Court should grant rehearing.

Respectfully submitted,

/s/ Elizabeth Franklin-Best
Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
2725 Devine Street
Columbia, South Carolina 29205
(803) 331-3421

August 21, 2020.

CERTIFICATE OF SERVICE

Counsel hereby certifies that she has served a copy of this petition for rehearing by sending it via email to Mr. Samuel Bailey of the South Carolina Attorney General's Office at SBailey@scag.gov

/s/ Elizabeth Franklin-Best

RECEIVED

Aug 21 2020

SC Court of Appeals

The South Carolina Court of Appeals

The State, Respondent,

v.

Tiffany Ann Sanders, Appellant.

Appellate Case No. 2018-000210

ORDER

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

Thomas C. Huff

J.

Paul C. Thomas

J.

Stephanie P. McDonald

J.

Columbia, South Carolina

cc:

Elizabeth Anne Franklin-Best, Esquire

Alan McCrory Wilson, Esquire

Melody Jane Brown, Esquire

Samuel Marion Bailey, Esquire

W. Jeffrey Young, Esquire

FILED

Sep 22 2020

Donald J. Zelenka, Esquire
The Honorable Diane Schafer Goodstein