

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Lexington County

Honorable Donald B. Hocker, Circuit Court Judge

MARION WADE FRYE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001406

APPENDIX

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1 MR. BELL: Your Honor, only administratively.
2 After the conclusion of Mr. Ross, we would try to
3 get two more witnesses up, both who are out of
4 county. One is Heather Clary, who shouldn't take
5 too long, and the other would be Dr. Ross, for
6 examination of the victim.

7 THE COURT: All right.
8 Anything, Mr. Mauldin?

9 MR. MAULDIN: No, Your Honor.
10 (The jury enters the courtroom at 3:52 PM.)

11 THE COURT: All right. Our jury is back.
12 Mr. Mauldin?

13 CROSS-EXAMINATION

14 BY MR. MAULDIN:

15 Q. Now, Mr. Ross, you testified on direct for the
16 solicitor a lot of places where you did not see
17 blood; is that correct?

18 A. Yes, sir.

19 Q. That would be, in pointing to State's Exhibit
20 123, this area of the kitchen here in the corner?

21 A. Yes, sir.

22 Q. And also in the vehicle and down -- further
23 down the hallway going to the back door; is that
24 right?

25 A. Yes, sir.

1 Q. You say you didn't visually see any blood with
2 your eyes?

3 A. No, sir.

4 Q. So to be able to see blood, they'd have to be
5 bleeding enough to actually have drops hit the
6 ground or hit or smear up against an item of that
7 sort for you to be able to see it; is that right?

8 A. It would have to be visible, yes, sir.

9 Q. But the injury would have had to be bad enough
10 for the blood to fall down and touch the ground?

11 A. Yes, sir, there would have to be bloodletting
12 is what it's called.

13 Q. And there are means of determining the presence
14 of blood that is not immediately visually apparent,
15 aren't there?

16 A. Yes.

17 Q. And it's using items like a black light or some
18 other --

19 A. Yes, sir, and chemical treatments and things of
20 that nature.

21 Q. And you did not use any of those in this case?

22 A. No, sir, we didn't.

23 Q. Now, I'll show you State's Exhibit 64. That's
24 the projectile that you had numbered as number six;
25 is that correct?

1 A. Yes, sir.

2 Q. And that was located here on State's Exhibit
3 123 in the kitchen close to the wall at the back of
4 the trailer; is that correct?

5 A. Yes, sir.

6 Q. Were you able to determine any location in the
7 trailer where a projectile may have struck the
8 building?

9 A. You mean an impact point?

10 Q. Yes, an impact point.

11 A. No, sir, we did not find any impact point of
12 that projectile or another projectile.

13 Q. Anywhere in the trailer?

14 A. We did not find.

15 Q. And that includes ceiling, floor?

16 A. We did not find one, and that scene was held
17 until after autopsy and went back through and there
18 was still not one found.

19 Q. I'll show you State's 59. And this is a photo
20 of the kitchen where you discussed some of the
21 damage to certain items; is that right?

22 A. Yes, sir.

23 Q. There's a pot and some other items here on the
24 floor that were broken?

25 A. Yes, sir.

1 Q. And there are plenty of items up in this area
2 here next to this toaster oven that are broken as
3 well; is that right?

4 A. Yes, sir.

5 Q. And there's an outlet at this point, is there
6 not?

7 A. Yes, sir.

8 Q. And I'm going to --

9 MR. MAULDIN: May I approach the witness, Your
10 Honor?

11 THE COURT: Yes, sir, of course.

12 BY MR. MAULDIN:

13 Q. It appears that items are plugged in in both of
14 those sockets on that picture?

15 A. Yes, sir.

16 Q. It may not be immediately apparent due to
17 the --

18 A. Yes, sir.

19 Q. And it may be hard to see here, but both of
20 those outlets are --

21 A. Yes, sir.

22 Q. I'll refer you to State's Exhibit 38. And
23 again, that's a picture of the kitchen from another
24 angle; is that right?

25 A. Yes, sir.

1 Q. And that's the pot and the items on the floor
2 we were discussing before?

3 A. Yes, sir.

4 Q. And over here on the floor is an item, like a
5 microwave or something of that nature; is that
6 right?

7 A. Yes, sir.

8 Q. I'll refer you to State's 46. That is a
9 picture of the window that leads into the kitchen
10 area?

11 A. Yes, sir.

12 Q. Okay. And the blinds are not all the way open,
13 but they're not shut, are they?

14 A. It's partial.

15 Q. Partial. And it's partial, but you could see
16 darkness outside; is that right?

17 A. I can see some darkness, yes, sir.

18 Q. And some of these slats are angled downward; is
19 that correct?

20 A. Yes, sir.

21 Q. Referring to State's 43, this is the window
22 right here?

23 A. Yes, sir.

24 Q. And you can see light coming through the
25 window?

1 A. You can see some light.

2 Q. But from the position that you took the
3 picture, you can't really see in; is that right?

4 A. No, it's fairly dark in that shot because it's
5 to the side.

6 Q. Were you aware at the time of taking these
7 pictures the ability -- that the ability to view in
8 that window may be an issue?

9 A. No, sir.

10 Q. If you were aware of that -- referring to
11 State's 35 here, another picture of the window, if
12 you were aware of that, somebody in this location or
13 around here may have looked through that window, you
14 would have tried to take a picture from the location
15 where that person was at to determine whether or not
16 they could actually see in the window?

17 A. I could have done that, yes, sir.

18 Q. But you weren't aware that was an issue at that
19 time?

20 A. No, sir.

21 Q. When did the solicitor's office first bring
22 this up as an issue to you?

23 A. We had a meeting last week in reference to just
24 the case in general.

25 MR. MAULDIN: No further questions, Your Honor.

1 THE COURT: Redirect?

2 MR. BELL: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. BELL:

5 Q. You were questioned about bleeding and I think
6 you described it as a letting wound; is that right?

7 A. Yes. There's a difference between scratches --
8 you all know what scratches are and then
9 bloodletting, where you have clear blood coming out
10 of it. That's the difference. You can have
11 scratches and no bloodletting; then you can have
12 bloodletting where it's coming from the wound
13 itself, dripping.

14 Q. And I may have misunderstood you a moment ago,
15 but when you were testifying about bloodletting,
16 were you just indicating that if someone is
17 scratched and it's not bleeding, then there won't be
18 a blood trail? Is that accurate?

19 A. Yes, sir.

20 Q. Did you have an opportunity to examine the
21 pants the defendant was arrested in in this case?

22 MR. MAULDIN: Objection, Your Honor; beyond the
23 scope of cross.

24 THE COURT: Overruled by 611.

25 THE WITNESS: No, sir.

1 BY MR. BELL:

2 Q. You said no, sir?

3 A. No, sir.

4 Q. And to clarify, I'm not talking about the night
5 of the scene, but at any time during the
6 investigation, did you have an opportunity to
7 examine the defendant's pants?

8 A. During our meeting the other week, last week.

9 Q. And when you examined the pants, did you see
10 anything that you thought was significant or
11 indicated any blood?

12 A. There were droplets that could be consistent
13 with blood.

14 MR. MAULDIN: Objection, Your Honor. These
15 pants aren't in evidence. It's not determined how
16 these are the defendant's pants. He's just asking
17 this question. They haven't laid the foundation to
18 ask this question.

19 THE COURT: Step up here a minute.

20 (Sidebar conference.)

21 THE COURT: Rephrase.

22 MR. BELL: Yes, sir.

23 BY MR. BELL:

24 Q. To be clear, are you a DNA analyst?

25 A. No, I am not.

1 Q. Or a serologist?

2 A. No, I am not.

3 Q. Did you have an opportunity to inspect a pair
4 of pants that were represented to you as being what
5 the defendant was wearing when he was arrested?

6 A. Yes, sir.

7 Q. In reference to those pants, did you see spots
8 that looked like it may be blood?

9 A. They looked like they could be consistent with
10 what blood looked like, yes, sir.

11 Q. And the pattern that you saw, did it appear to
12 be bleeding that came from the defendant himself or
13 another source?

14 MR. MAULDIN: Objection, Your Honor.

15 THE COURT: I will sustain that.

16 BY MR. BELL:

17 Q. Ultimately, are you aware if those pants were
18 submitted to be tested for DNA and so forth?

19 A. I believe they were.

20 Q. And could that person better testify to that?

21 A. Yes, they could.

22 Q. The night that you were taking all the pictures
23 that we've laboriously gone through, and the window
24 the defense has questioned you about, could you see
25 in that window to the kitchen?

1 A. I don't believe so. It would be more like
2 shadow puppets you would do for a child with a
3 sheet.

4 Q. Were those blinds completely open?

5 A. No, it was partially closed. You can see in
6 another photograph where it's partially opened and
7 partially closed.

8 Q. Do you recall what part of the window was
9 partially closed?

10 A. If you're standing outside looking at the
11 window, it was to your left, but if you're inside,
12 it would be to your right.

13 Q. And would that be the top or bottom portion of
14 the window?

15 A. Middle to the top, I believe that's right.

16 Q. Thank you.

17 THE COURT: Thank you, Solicitor.

18 Recross, Mr. Mauldin?

19 MR. MAULDIN: No further questions.

20 THE COURT: All right. Thank you for being
21 with us today. You may step down.

22 Solicitor, you may call your next witness.

23 MS. MAYES: At this time, the State would call
24 Ms. Heather Clary. And I believe they're retrieving
25 her from across the hall.

1 HEATHER CLARY

2 being first duly sworn, testified as follows:

3 THE WITNESS: I swear.

4 THE CLERK: Have a seat, ma'am. Once you're
5 seated, state your full name, spelling your last,
6 please.

7 THE WITNESS: Heather Clary, C-L-A-R-Y.

8 DIRECT EXAMINATION

9 BY MS. MAYES:

10 Q. Tell us a little about yourself. Where are you
11 currently employed?

12 A. Greenwood County Sheriff's Department.

13 Q. What are you doing in Greenwood County?

14 A. Patrol deputy.

15 Q. And prior to your work in Greenwood, where were
16 you employed?

17 A. Lexington County Sheriff's Department.

18 Q. And in what job capacity?

19 A. Crime scene investigator.

20 Q. How long did you work in Crime Scene?

21 A. Three years.

22 Q. Can you tell us whether or not that included
23 work in homicide cases?

24 A. Yes.

25 Q. I want to take you back to an investigation

1 regarding a homicide at [REDACTED] Marty Lane.

2 A. Okay.

3 Q. Did you work that case?

4 A. Yes.

5 Q. Do you have with you any records affiliated
6 with your role in that?

7 A. Yes.

8 Q. What records do you have?

9 A. I have the official case file from the Crime
10 Scene Unit as well as a couple copies of the reports
11 and the crime scene log.

12 Q. Now, in addition to going to the crime scene --
13 did you go to the crime scene?

14 A. Yes.

15 Q. All right. Who was actually the chief officer
16 working the crime scene?

17 A. Crime Scene Investigator Glenn Ross.

18 Q. All right. And did you also have the
19 opportunity to take photographs during your
20 involvement?

21 A. Yes.

22 Q. And then what about the autopsy that's done on
23 a victim of a homicide, who attends that?

24 A. Another crime scene investigator. In this
25 case, that would be me.

1 Q. So is that routine to have a crime scene
2 investigator at the autopsy?

3 A. Yes.

4 Q. What was the date of the autopsy, Ms. Clary?

5 A. October 2nd, 2015.

6 Q. All right.

7 A. Yes.

8 Q. So that would be the day after?

9 A. Correct.

10 Q. Now, do you actually obtain any type of
11 clothing after a homicide?

12 A. Yes.

13 Q. And do you also work to obtain any type of
14 blood standards?

15 A. Those are collected by the pathological staff
16 and given to the coroner's office.

17 Q. All right. When you say it's given to the
18 coroner's office, is it routinely collected at
19 autopsy by the pathologist?

20 A. Yes.

21 Q. All right. Now, in a case like this when
22 you're attending the autopsy, are you actually able
23 to watch the proceedings?

24 A. Yes.

25 Q. And in this case, did you watch and observe

1 what was taking place?

2 A. Yes.

3 Q. Having done that, did you also have the
4 opportunity to take photographs during the course of
5 the autopsy?

6 A. Yes.

7 Q. I'm going to show you some photographs and ask
8 you whether or not you recognize them.

9 A. Yes.

10 Q. Okay. At any point in time, if the doctor
11 performing the autopsy notes anything of
12 significance, what would you do?

13 A. We would notate that in our notes as well.

14 Q. What if you notate anything of significance
15 during the course of your observations?

16 A. It is brought to the attention of the
17 pathologist for them to investigate further.

18 Q. And would you also photograph that?

19 A. Yes.

20 Q. Ms. Clary, during the course of the autopsy on
21 Joshua Prine, at any point, did you observe any cuts
22 or lacerations on his hands?

23 A. No.

24 Q. And you've seen the photographs which are
25 State's Exhibits 122, 121, 120, 119, 118 and 117?

1 A. Yes.

2 Q. Are these a fair and accurate representation of
3 the autopsy as you recall it to be?

4 A. Yes.

5 Q. And of the victim's hands?

6 A. Yes.

7 MS. MAYES: We'd offer these as evidence at
8 this time, Your Honor.

9 MR. MAULDIN: No objection, Your Honor.

10 THE COURT: What numbers, Solicitor?

11 MS. MAYES: 121, 120, 119, 118, 117, and 122.

12 THE COURT: As noted by the Solicitor, State's
13 Exhibits in evidence without objection.

14 (State's Exhibit Nos. 117 through 122 admitted
15 into evidence.)

16 BY MS. MAYES:

17 Q. Now, was this the first autopsy you've
18 attended?

19 A. No.

20 Q. You've attended others?

21 A. Yes.

22 Q. When a victim of a homicide is on the ground at
23 any location, whether inside or outside, and when
24 blood is disbursed, can you tell us whether or not
25 it's common to pick up dirt and other particles from

1 the ground?

2 A. Yes.

3 Q. Other than dirt and other particles from the
4 ground, did you see any cuts or lacerations on the
5 hands of Joshua Prine?

6 A. No.

7 MS. MAYES: Nothing further at this time, Your
8 Honor.

9 THE COURT: Mr. Mauldin?

10 MR. MAULDIN: I have no questions.

11 THE COURT: Thank you. You may be excused.

12 All right. Solicitor, you may call your next
13 witness.

14 MS. MAYES: The State calls Dr. Janice Ross.
15 May we approach?

16 THE COURT: Yes, ma'am.

17 (Sidebar conference.)

18 (State's Exhibit Nos. 103 - 116 marked for
19 identification.)

20 THE COURT: All right. Doctor, if you'd come
21 around and be sworn for us, please.

22 JANICE ROSS

23 being first duly sworn, testified as follows:

24 THE WITNESS: I do.

25 THE CLERK: Have a seat. Once you're seated,

1 state your full name, spelling your last, please,
2 ma'am.

3 THE WITNESS: Janice Edwards Ross, R-O-S-S.

4 MS. MAYES: And I beg the Court's indulgence.
5 Pursuant to our conversation at the bench, we will
6 bring in some exhibits.

7 THE COURT: Thank you, Solicitor.

8 DIRECT EXAMINATION

9 BY MS. MAYES:

10 Q. Now, Dr. Ross, can you give us some information
11 about yourself? I want to ask you a little bit
12 about where you are employed and what type of work
13 you do.

14 A. I'm employed at Newberry Pathology Associates
15 in Newberry, South Carolina. We do forensic
16 autopsies for the county coroners in South Carolina.

17 Q. Tell us a little bit about being a forensic
18 pathologist. If you could take us through your
19 educational background and training.

20 A. Yes, I did four years of college at the
21 University of South Carolina and four years of
22 medical school. I transferred to Upstate Medical
23 Center in Syracuse, New York, where I received my
24 M.D. There, I did my training in pathology. The
25 field of pathology as opposed to surgery and

1 pediatrics trains us to do autopsies, to use
2 laboratory work to identify and diagnose diseases
3 using a microscope. I did further training in the
4 area of forensic pathology where we learn how to do
5 a forensic autopsy and identify patterns of injury,
6 such as gunshot wounds and stabbings and suicides,
7 accidents. So I'm board certified in three areas of
8 pathology.

9 Q. And specifically, are you board certified in
10 the field of forensic pathology?

11 A. Yes.

12 Q. How much additional training does it take to
13 become a forensic pathologist beyond just regular
14 medical school and certification in general
15 pathology?

16 A. Depending on how you do it, it's, at least, one
17 year and sometimes five.

18 Q. All right. How many years specifically have
19 you focused in the field, intensely in the field of
20 forensic pathology?

21 A. 41 years.

22 Q. Dr. Ross, is it possible for you to estimate
23 how many autopsies you have conducted over the
24 course of your career as a forensic pathologist?

25 A. Over 11,000.

1 Q. Can you tell us whether or not that includes
2 homicide cases?

3 A. Yes.

4 Q. Is it possible to estimate how many homicide
5 autopsies you have conducted prior to your
6 involvement in this case in 2015?

7 A. Probably ten percent of the total.

8 Q. Over a thousand?

9 A. Correct.

10 Q. Now, Dr. Ross, tell us a little bit about the
11 field of forensic pathology. Are you also trained
12 in the subfields, such as trajectory and the
13 ballistics aspects of gunshot wounds?

14 A. Yes.

15 Q. Is that something you've been familiar with
16 over the course of your career as a forensic
17 pathologist?

18 A. Yes.

19 Q. Is that something you continue to be educated
20 on and updated about along with your peers?

21 A. Yes, that's part of identifying patterns of
22 injury, yes.

23 Q. Have you testified previously in homicide cases
24 that involve gunshot wounds?

25 A. Yes.

1 Q. Have you been qualified as an expert in the
2 field of forensic pathology, including gunshot
3 wounds?

4 A. Yes.

5 MS. MAYES: Your Honor, at this time, the State
6 would offer Dr. Janice Ross as an expert in the
7 field of forensic pathology.

8 MR. MAULDIN: No objection, Your Honor.

9 THE COURT: Thank you, Solicitor.

10 Thank you, Mr. Mauldin.

11 Mr. Foreman, ladies and gentlemen of the jury,
12 the rules of evidence ordinarily do not permit
13 witnesses to testify to opinions or conclusions.
14 Normally, a witness must testify as to either what
15 they saw, heard, sensed by smell or something of
16 that nature. However, there is an exception to this
17 rule for witnesses that we call expert witnesses. A
18 witness who by education, experience, who has become
19 an expert in some art, science, profession, field or
20 craft may testify to opinion testimony as to
21 relevant and material matter in which the witness
22 claims to be an expert and may also state the
23 underlying reasons or basis for holding those
24 opinions. This witness, Dr. Janice Ross, will be
25 qualified as an expert in the field of forensic

1 pathology to testify to in that field and to testify
2 to the basis of holding opinions she may have.

3 Thank you, Solicitor. You may continue.

4 MS. MAYES: Yes, sir, Your Honor.

5 BY MS. MAYES:

6 Q. Dr. Ross, is it possible to estimate how many
7 times you've been qualified as an expert in the
8 State of South Carolina?

9 A. About 200 times.

10 Q. Does that include here in Lexington County?

11 A. Yes.

12 Q. I want to ask you about your involvement in an
13 autopsy on an individual by the name of Joshua
14 Prine.

15 A. Yes.

16 Q. When was that autopsy conducted?

17 A. October 7th -- 2nd. October 2nd, 2015.

18 Q. And what was the age of Mr. Prine?

19 A. Twenty-seven.

20 Q. And do you also record his height and weight?

21 A. Yes. We measured him at 70 and a half inches,
22 which is five feet, 10 and a half inches. And we
23 don't have a scale in the morgue, but we estimated
24 his weight at about 165 pounds.

25 Q. All right. Five feet, 10 and a half inches?

1 A. Correct.

2 Q. I'm going to put 10.5 to avoid any confusion
3 there, but five foot, ten and a half. And weight?

4 A. Approximately 165 pounds.

5 Q. Okay. Now, Dr. Ross, during the course of your
6 autopsy, do you examine the body in its entirety?

7 A. Yes, the patient comes to us in a body bag. We
8 open, we identify clothing, do an inventory of the
9 clothing. In this case, we identified a gunshot
10 wound, so we do X-rays to see if there's any -- if
11 the bullet is still inside of him.

12 Q. What did you determine in that regard in
13 relation to the gunshot wound to Mr. Prine?

14 A. He had what we call a perforating gunshot
15 wound, which means it went in and came out, so there
16 was no bullet or fragment left in him.

17 Q. How many gunshot wounds did he have?

18 A. One.

19 Q. What, ultimately, did you determine to be the
20 manner of death?

21 A. Homicide.

22 Q. What was the cause of death?

23 A. Exsanguination, which means to bleed out. And
24 it was due to laceration of the lung from gunshot
25 wound to the back.

1 Q. Are you able to make a determination to a
2 reasonable degree of medical certainty as to how
3 long that takes from the point of the gunshot wound
4 to death?

5 A. It takes minutes, maybe up to five or six
6 minutes.

7 Q. All right. In this particular case, Dr. Ross,
8 upon examining the body of Joshua Prine, did you see
9 any evidence of him being involved in a physical
10 altercation or fistfight?

11 A. There are no injuries to his face or arms or
12 hands, no.

13 Q. Is that something that you are trained to look
14 for in the field of forensic pathology?

15 A. Yes.

16 Q. If you had made any such notations, would you
17 have photographed that?

18 A. Correct, yes.

19 Q. Would your report also indicate that?

20 A. Yes.

21 Q. I'm going to show you some photographs.

22 A. Okay. These are photographs of Joshua Prine
23 before there -- some of it was cleaned off.

24 Q. All right. And Dr. Ross, when someone falls
25 and bleeds out as you indicated from the

1 exsanguination, can the blood accumulate on any
2 parts of their body?

3 A. It depends on where it is. Most of his
4 bleeding was inside, but with a hole in the --
5 because it was perforating, there was a hole in the
6 front and back and some blood could have leaked out
7 one of those holes.

8 Q. And would that include him sustaining
9 bloodstain on his body?

10 A. Yes.

11 Q. All right. And when someone is found on the
12 ground, whether inside or outside, can you tell us
13 whether or not it's common to accumulate particles
14 or dust or things of that nature?

15 A. Whatever he's lying on, yes.

16 Q. Okay. And having viewed these photographs,
17 Dr. Ross, did you see any indication of laceration
18 or injury to the hands of Joshua Prine?

19 A. No, I did not.

20 Q. You see a scalpel here, Dr. Ross. What is that
21 instrument used for?

22 A. No, that's a clamp. It's just to keep the flap
23 of the body bag from falling on the floor.

24 Q. And again, Dr. Ross, other than ordinary dirt
25 or particles, did you see any indication of injury

1 to the hands of Joshua Prine?

2 A. That has a lot of blood on it, but when we
3 cleaned off the blood, there were none.

4 Q. Okay. And then what about to a patient's face,
5 do you also look for any indication of injury
6 consistent with a fistfight?

7 A. Yes.

8 Q. Such as bloody nose or busted lip or anything
9 of that nature?

10 A. Correct, yes.

11 Q. Were there any indications of injury to the
12 face of Joshua Prine?

13 A. No.

14 Q. Would that have also been noted in your report?

15 A. Yes.

16 Q. Now, in the field of forensic pathology,
17 Dr. Ross, what is meant by the term stippling?

18 A. Stippling has to do with the range of the
19 gunshot. When a bullet comes out of the barrel of a
20 gun, so does powder and soot, but the soot and
21 powder only go a certain distance depending on the
22 type of gun, the type of caliber, the type of
23 bullet. So if there's soot on the skin, we'll see
24 that. If there's stippling, stippling has to do
25 with particles hitting the skin and leaving little

1 red marks. If we don't see any of that, then we can
2 pretty much say that the range of the bullet was, at
3 least, two feet; the range of the gun from the
4 target was, at least, two feet or more away.

5 Q. So two feet would be the minimum?

6 A. 18 inches to 24 inches, yes.

7 Q. Would be the minimum, just to clarify?

8 A. Correct.

9 Q. All right. I'm going to show you some
10 photographs and ask you whether or not you recognize
11 them.

12 A. Yes. These are photographs from the autopsy of
13 Joshua Prine.

14 Q. All right. And can you tell us whether or not
15 the entrance wound is noted in those photographs?

16 A. Yes, it's number 116 and 104.

17 Q. Okay. And the entrance wound to the gunshot
18 wound of Joshua Prine was located where on his body?

19 A. In his back, close to the spinal cord and just
20 to the right of the spinal canal and between the
21 shoulder blades.

22 Q. All right. Now, you mentioned that it's
23 located in the back. Can you tell us what, if any,
24 impact that bullet had to Josh's spinal cord?

25 A. When it went in, it hit one of the vertebra and

1 fractured it and caused some damage to the cervical
2 spine, so that would cause him to become -- to have
3 no innervation from that point down. So that would
4 cause him to drop to the ground, floor, wherever he
5 was.

6 Q. All right. And specifically, which vertebra
7 was struck by that bullet that hit him in the back?

8 A. T6, thoracic cord -- thoracic vertebra number
9 6.

10 Q. Okay. I want to follow up on this a little
11 more. When that T6 vertebra is fractured, how does
12 that impact the spinal cord itself?

13 A. The spinal cord was lacerated by the fracturing
14 and by the bullet.

15 Q. So it's actually a spinal cord laceration?

16 A. Correct.

17 Q. And as a result, would he have been paralyzed?

18 A. Yes.

19 Q. And when someone is paralyzed at the T6 level,
20 what motor functions have they lost?

21 A. From T6 downward, so mostly his -- obviously,
22 his legs.

23 Q. Okay. I'm going to show you a diagram and ask
24 you what we're looking at?

25 A. That displays the vertebrae of the body.

1 There's seven cervical vertebrae and there's 12
2 thoracics, so when we say T6, we're talking about
3 thoracic vertebra number 6.

4 Q. Okay. Is this a fair and accurate
5 representation of the human anatomy as the spinal
6 column is concerned?

7 A. Yes.

8 MS. MAYES: This would be State's Exhibit for
9 evidence.

10 MR. MAULDIN: No objection, Your Honor.

11 THE COURT: What number was it, please?

12 MS. MAYES: This would be 125, Your Honor.
13 126, I'm sorry.

14 (State's Exhibit No. 126 admitted into
15 evidence.)

16 BY MS. MAYES:

17 Q. Dr. Ross --

18 MS. MAYES: Your Honor, if the witness may have
19 permission to step down?

20 THE COURT: Yes, Doctor.

21 BY MS. MAYES:

22 Q. Dr. Ross, if you could, tell us what we are
23 looking at here.

24 A. That's the vertebral column of the backbone of
25 a person.

1 Q. Can you show us on this diagram where T6 would
2 be located?

3 A. Right here.

4 Q. So this is T1, T2, T3, T4, T5, T6, again, could
5 you show us in which region?

6 A. Right here.

7 Q. And Dr. Ross, when the bullet strikes there,
8 how long does it take for the paralysis to set in?

9 A. It's pretty much immediate. It's like having a
10 concussion. If you hit your head and you black out.

11 Q. So with that being immediate, what response
12 would you expect in a patient who is hit with the
13 gunshot?

14 A. He would collapse.

15 Q. And to a reasonable degree of medical
16 certainty, would that be immediate?

17 A. Yes.

18 Q. All right. Now, I want to ask you next about
19 any measurements you did regarding Joshua as to the
20 location of that gunshot wound from the top of the
21 head.

22 A. We measure from the top of the head to the
23 wounds, and then from the middle of the body,
24 whether it's right or left.

25 Q. I'm going to scoot this over, Dr. Ross, so you

1 can see from where you are. I just need you to keep
2 your voice up for the court reporter. I want to
3 look now at State's 104. If you could, show us
4 where that gunshot wound is here.

5 A. The wound is here in the back; it's nice and
6 round. And we measured from the top of the head.
7 It measured about 13 and a half inches below the top
8 of the head.

9 Q. Next photo I'm going to show you, State's
10 Exhibit 116.

11 A. That's a close-up of the entrance wound and you
12 can see around the edge, there's like an abrasion.
13 When the bullet goes in, it pushes the skin in and
14 abrades the edge of it.

15 Q. All right. And how, Dr. Ross, do you go about
16 distinguishing the entrance wound from the exit
17 wound?

18 A. Just like that. Now, sometimes an exit wound,
19 if it's against something, we call it a shored exit
20 wound, and it might be round like that. But when
21 you compare the two, you'll be able to see the
22 difference.

23 Q. Ask you what we're looking at here in State's
24 113.

25 A. That's the upper torso of the patient. And you

1 can see the exit wound in the right chest.

2 Q. All right. And now I'm going to put up 107,
3 which gives you a better view.

4 A. This is the exit wound in the chest and you can
5 see it's irregular and it has no abrasion around it
6 and it's consistent with a bullet that has hit part
7 of a piece of bone and it might -- was probably
8 misshaped a little bit when it came out.

9 Q. Looking here at State's 104, that location
10 there, according to your testimony, would be the
11 entry wound which strikes the T6 vertebra?

12 A. Correct.

13 Q. This would be the exit wound. Now, how do you
14 go about, Dr. Ross, measuring the angle of any
15 bullet and looking at the trajectory of that gunshot
16 wound?

17 A. Again, we measure from the top of the head.
18 And the exit wound measured, I think, 14 and a half
19 inches below the top of the head and one and a half
20 inches right of midline. So the trajectory is going
21 back to front, slightly to the right and very
22 slightly downward.

23 Q. All right. Did you have the opportunity to
24 make those findings or mark those findings in
25 addition to in your report on a forensic mannequin?

1 A. Yes.

2 Q. I'm going to show you this item and ask you
3 whether or not you recognize it.

4 A. Yes, I do.

5 Q. How so?

6 A. Yes, these are my marks. So it goes in the
7 back and comes out the front.

8 Q. And when you mentioned that you measure from
9 the top of the head downward, how is that done in
10 forensic pathology?

11 A. Well, from the top of the head. In this case,
12 the head was back a little more from rigor mortis,
13 so it may be off a little bit, but pretty much went
14 straight through and very, very slightly downward.

15 Q. So the entry wound to the back you measured at,
16 what was the distance?

17 A. 13 and a half inches from the top of the head.

18 Q. And the exit wound at what distance?

19 A. 14 and a half inches from the top of the head.

20 Q. And you said it's an angle that's slightly
21 downward?

22 A. Correct.

23 Q. Right?

24 A. Yes.

25 Q. Dr. Ross, when we're looking at an angle such

1 as this that's slightly downward and that strikes at
2 this level, which is below the top of the head, how
3 many inches would that be from the floor up for that
4 entry wound?

5 A. 70 and a half -- 57 and a half for the entry
6 wound.

7 Q. All right. So he's 70 and a half inches tall?

8 A. Yes.

9 Q. And then we're subtracting the distance between
10 the top of the head and the entry wound?

11 A. Yes.

12 Q. And that leaves you at approximately the 56
13 inches?

14 A. 57 for the entrance wound and 56 for the exit
15 wound.

16 Q. All right. Glad you clarified that. Okay. So
17 57 for the entrance wound, 56 for the exit wound.

18 Dr. Ross, you mentioned before about the stippling.

19 Was there any evidence of stippling on Joshua

20 Prine's body?

21 A. No.

22 Q. Of course, you're looking at a body that was
23 shirtless, so you're looking just at the skin. If
24 stippling had been present, would you have expected
25 to see it?

1 A. If he had a shirt on, there might have been
2 some powder on the shirt, but we didn't have a
3 shirt.

4 Q. When someone is not wearing a shirt, when
5 someone is not wearing a shirt, would you expect to
6 see it on their skin?

7 A. Correct, yes.

8 Q. And was there any evidence of stippling on the
9 skin of Joshua Prine?

10 A. No, there was not.

11 Q. All right. What, if anything, does that tell
12 you as a forensic pathologist about the distance
13 between the shooter and the victim?

14 A. The muzzle of the gun, the end of the gun would
15 have to be 18 to 24 inches away plus.

16 Q. And when you say plus, we're talking about a
17 minimum of 18 inches to two feet?

18 A. Yes.

19 Q. But it could be as much as five feet or six
20 feet or seven feet?

21 A. Correct.

22 Q. But it was not a close-range shot?

23 A. Correct.

24 Q. And, Dr. Ross, if a shooter is six foot tall
25 and standing straight up and pointing a gun into a

1 victim who is five foot, 10 and a half, what type of
2 trajectory would you expect?

3 MR. MAULDIN: Objection, Your Honor, 704.

4 THE COURT: Overruled.

5 BY MS. MAYES:

6 Q. I'll that again, Dr. Ross. To a reasonable
7 degree of medical certainty, if a six-foot shooter
8 is pointing a gun straight out and strikes a victim
9 who is five foot, 10 and a half, what type of
10 trajectory would you expect?

11 A. One such as we have here, back to front, maybe
12 slightly downward.

13 Q. And this is slightly downward?

14 A. Yes.

15 Q. Dr. Ross, if someone were shooting from a low
16 angle such as this, several feet downward, what type
17 of angle would you expect? What type of trajectory
18 would you expect?

19 A. I would expect it to go upward.

20 Q. And when you say upward, would that be a
21 significant degree of upward?

22 A. Depending on how low the gun is.

23 Q. When we're talking about this particular
24 scenario, Dr. Ross, can you tell us whether or not
25 it's consistent with a shooter standing straight up

1 firing into a person who is also straight up?

2 A. That's consistent.

3 MS. MAYES: Nothing further on this matter.

4 You may return to your seat.

5 THE COURT: All right. Mr. Mauldin?

6 MS. MAYES: Your Honor, I had one more
7 question.

8 BY MS. MAYES:

9 Q. Do you also collect blood standards for
10 potential DNA?

11 A. Yes, I do.

12 Q. Were they collected in this case?

13 A. Yes.

14 Q. Do you mark those -- do you make those
15 collections yourself?

16 A. Yes.

17 Q. Do you mark those collections with your
18 initials?

19 A. Yes.

20 Q. And do you seal those collections?

21 A. Yes.

22 Q. Does anyone else, Dr. Ross, interfere with that
23 blood collection once you have sealed it other than
24 the State Law Enforcement Division?

25 A. No. They -- this one, the toxicology was --

1 Q. Let me ask you like this: Once you do the
2 collection and seal it, you seal it for the purpose
3 of going to what lab?

4 A. SLED.

5 Q. All right. Do you allow for anyone other than
6 SLED to unseal your blood standards?

7 A. No. Once it's out of the morgue, it's out of
8 my hands.

9 Q. But you do seal it?

10 A. Correct.

11 Q. And Dr. Ross, based on your findings of this
12 autopsy on Joshua Prine, the gunshot wound that
13 entered his back and lacerated the spinal cord,
14 would you expect any significant movement from him
15 after that spinal cord was lacerated?

16 A. He could move his arms.

17 Q. Below his waist?

18 A. No, I would not.

19 Q. Okay. Would he have the ability to run or walk
20 or anything else at that point?

21 A. No.

22 MS. MAYES: Nothing further, Your Honor.

23 THE COURT: Thank you, Solicitor.

24 Mr. Mauldin?

25 MR. MAULDIN: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. MAULDIN:

3 Q. Dr. Ross, you said you've done over 11,000
4 autopsies?

5 A. Yes, sir.

6 Q. How many do you think you do a year?

7 A. Last year, it was over a thousand.

8 Q. A thousand?

9 A. 900 to a thousand.

10 Q. That's almost three a day?

11 A. Correct.

12 Q. Now, the State showed you some pictures, but
13 those weren't all the pictures taken of Mr. Prine,
14 were they?

15 A. No, they're not.

16 Q. Dr. Ross, I'm going to show you a series of
17 photos marked as Defendant's 1 through 6 and ask you
18 to take a look at them.

19 A. These are similar pictures that I took of
20 Joshua Prine at the autopsy.

21 Q. Do they fairly and accurately represent his
22 body at the time of the autopsy?

23 A. Yes.

24 MR. MAULDIN: Defense would move 1 through 6
25 into evidence.

1 MS. MAYES: No objection other than what we
2 addressed.

3 THE COURT: So no objection to 1 through 6; is
4 that correct?

5 MR. MAULDIN: Your Honor, we'll approach real
6 quick.

7 (Sidebar conference.)

8 THE COURT: Defendant's 1 through 6 in evidence
9 without objection.

10 (Defendant's Exhibit Nos. 1 through 6 admitted
11 into evidence.)

12 BY MR. MAULDIN:

13 Q. This is Defense 1. That's a picture of
14 Mr. Prine's back; is that correct?

15 A. Correct.

16 Q. It appears you're measuring the size of the
17 bullet wound; is that correct?

18 A. That looks like a law enforcement photograph,
19 but yes, that's the purpose of the measurement
20 there.

21 Q. Okay. And this Defense Exhibit 2 is a picture
22 of Mr. Prine's front?

23 A. Correct.

24 Q. And Defendant's 3 is another picture of the
25 back. And the wound is here at the bottom of the

1 picture?

2 A. Yes, sir.

3 Q. Defense 4 is another picture of the wound in
4 the front?

5 A. Correct.

6 Q. Defense 5 is another picture of the wound in
7 the front?

8 A. Correct.

9 Q. Now, there's some markings here. What do you
10 attribute those to?

11 A. Those are abrasions. They're not specific.
12 There's no specific pattern. Could be from bumping
13 up against something, could be from fingernails.
14 There's nothing specific about them, but they are
15 abrasions, yes.

16 Q. And going back to 4, what do you attribute
17 these markings to?

18 A. That may be another abrasion. I don't know
19 that I have that.

20 Q. And Defense 6, again, that's another picture of
21 the exit wound at the front of the body; is that
22 correct?

23 A. Correct.

24 Q. Now, looking at that picture versus this
25 picture, doesn't it appear that the entrance wound

1 is lower in the body than the exit wound?

2 A. It appears that way, but my measurements were
3 different. Like I say, because of rigor mortis and
4 the shape of the head, it could have been very
5 close.

6 Q. There's a picture of the front and a picture of
7 the back. Is it possible that you could have -- did
8 you take a picture of the -- you were measuring the
9 wound from the top of the head?

10 A. No.

11 Q. Did you take any photos of that measurement?

12 A. No, I did not.

13 Q. And you say you do over three autopsies a day?

14 A. Right. But when there's a homicide, we do only
15 one at a time.

16 Q. Is it possible you could have juxtaposed those
17 two numbers and that the 14 and a half --

18 A. It's possible, but it's also possible it would
19 be very little difference.

20 Q. And if that is true, it would be an upward
21 trajectory instead of a downward trajectory?

22 A. Very slightly.

23 MR. MAULDIN: No further questions, Your Honor.

24 THE COURT: Redirect?

25 MS. MAYES: Yes, sir, Your Honor.

REDIRECT EXAMINATION

2 BY MS. MAYES:

3 Q. Just to clarify, Dr. Ross, you did the
4 measurements yourself?

5 A. Yes.

6 Q. By hand?

7 A. Yes.

8 Q. And when we're looking at this diagram of the
9 vertebra, your testimony was it actually fractured
10 T6?

11 A. Correct.

12 Q. Is T6 located above the nipple line?

13 A. Yes.

14 Q. So the point of impact is above the nipple line
15 of the victim?

16 A. Correct.

17 Q. And your report and your measurements indicate
18 that's a downward angle?

19 A. Slightly, yes.

20 Q. And Dr. Ross, that's consistent with the victim
21 being struck at the T6 level above the nipple and
22 then the exit wound also above the nipple line?

23 A. Yes.

24 Q. Dr. Ross, whether it's slightly upward or
25 slightly downward, were your findings and is this

1 trajectory consistent with the shooter standing
2 behind the victim firing into the victim?

3 A. It's consistent with that, yes.

4 Q. If someone is shooting from a very low angle,
5 how would that trajectory change and be different
6 from what we see here?

7 A. Depending on how low they are, it would be
8 going considerably upward.

9 Q. When you say considerably upward, if I'm down
10 here and that gun fires from two feet below the
11 victim, it would be a trajectory almost up to the
12 throat, wouldn't it?

13 A. Well, it would be more upward, yes.

14 Q. All right. Considering, Dr. Ross, that a
15 shooter may be six foot and, again, the victim is
16 five foot, 10 and a half, are your findings
17 consistent with someone firing directly into the
18 back of the victim?

19 A. It is consistent.

20 MS. MAYES: Nothing further.

21 THE COURT: Recross, Mr. Mauldin?

22 MR. MAULDIN: Thank you, Your Honor.

23 RE CROSS-EXAMINATION

24 BY MR. MAULDIN:

25 Q. All you know is that from where the gun was

1 shot, it was more than 18 inches away from the body?

2 A. Correct.

3 Q. You have no idea how far away the gun could
4 have been discharged. You just examined the body;
5 is that correct?

6 A. That's correct.

7 Q. And you have no -- and the further -- on a
8 downward trajectory, the further away they are, the
9 higher up the gun would have to be to cause the
10 angle; is that correct?

11 A. Yes, I believe so.

12 Q. If the trajectory is going downward, the
13 further away -- I mean, it's going slightly upward,
14 but the further away, the gun would have to be
15 higher up in the air or higher up off the ground?

16 A. Yes.

17 Q. And, similarly, if it was upward trajectory,
18 the further away the gun was, the lower to the
19 ground?

20 A. Yes.

21 MR. MAULDIN: No further questions, Your Honor.

22 THE COURT: Thank you, Mr. Mauldin.

23 Thank you, Doctor. Thank you for being with us
24 this afternoon. You may step down. You may be
25 excused.

1 Solicitor, you may call your next witness.

2 MS. MAYES: An additional witness would be
3 lengthy at this time, Your Honor.

4 THE COURT: Say again.

5 MS. MAYES: An additional witness would be
6 lengthy at this time. May we approach?

7 (Sidebar conference.)

8 THE COURT: Mr. Foreman, ladies and gentlemen,
9 perhaps now would be a good time to take our evening
10 recess. Please remember my instructions to you. Do
11 not discuss the case with anyone. Do not read,
12 watch, listen to any news accounts about the case,
13 should there be any. Do not do any independent
14 investigation or investigation on the internet or
15 otherwise. Remember to keep an open mind. Do not
16 begin your deliberations until you've heard all the
17 evidence, all the testimony, closing arguments by
18 the attorneys, instruction on the law by the Court
19 and then directed by the Court to begin your
20 deliberations with your fellow jurors in your jury
21 room.

22 All right. 9:30 in the morning. I hope y'all
23 have a pleasant evening and see y'all promptly at
24 9:30 in the morning.

25 (The jury exits the courtroom at 5:04 PM.)

1 THE COURT: Mr. Mauldin, would you and your
2 client come around, please.

3 MARION WADE FRYE

4 being first duly sworn, testified as follows:

5 THE DEFENDANT: I swear.

6 THE COURT: Tell me your full name, please.

7 THE DEFENDANT: Marion Wade Frye, Jr.

8 THE COURT: Take your hands out of your pocket,
9 please.

10 How old are you?

11 THE DEFENDANT: Thirty-one.

12 THE COURT: How much education do you have?

13 THE DEFENDANT: GED, sir.

14 THE COURT: I need to go over some things with
15 you. I do this with everyone who is on trial and I
16 require their responses to be under oath. That's
17 why I had you placed under oath.

18 Probably midmorning tomorrow, the State will
19 rest. Your side, the defense, would have the
20 opportunity to present evidence for the jury to
21 consider. Of course, your attorney, you've already
22 presented Defense 1 through 6 for the jury to
23 consider. Do you understand where we're at in the
24 trial?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: In that regard, once the State has
2 rested, you may call witnesses to testify on your
3 behalf. And if you choose to testify yourself, you
4 may do so. Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: No one can force you to testify.
7 You have the absolute right to remain silent. And
8 if you choose not to testify, I will tell this jury
9 that they cannot hold your silence against you in
10 any way. I will tell them that they are not to even
11 discuss the fact that you did not testify in the
12 jury room. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Solicitor, Mr. Mauldin, does
15 Mr. Frye have any criminal history that would
16 subject him to impeachment under Rule 609?

17 MS. MAYES: Your Honor, I can say he's got two
18 drug convictions, both of which carry more than a
19 year.

20 MR. MAULDIN: I would say that under the case
21 law, they would not come in, Your Honor.

22 THE COURT: Y'all explain a little bit more to
23 me. More than a year or?

24 MS. MAYES: They both carry zero to three
25 years, Your Honor. And one is a possession of

1 controlled substance for which he was convicted of
2 12 months upon 18 days suspended for 24 months and
3 that was in 2015.

4 The other is a possession of cocaine or --
5 cocaine base or methamphetamine and that was 12
6 months suspended to 24 months' probation, also in
7 2015.

8 THE COURT: All right. Mr. Mauldin?

9 MR. MAULDIN: Thank you, Your Honor. I believe
10 the drug convictions are not probative of the
11 truthfulness. I think that credibility is an issue
12 here as far as the sobriety of the witnesses. And I
13 think the prejudice of a drug conviction, which is
14 not probative of truthfulness, would outweigh the
15 prejudicial value of the State seeking to introduce
16 it.

17 THE COURT: Solicitor?

18 MS. MAYES: We leave this in the Court's
19 discretion, Your Honor.

20 THE COURT: I think they're admissible against
21 the accused as far as convicted of such a crime,
22 such a crime being a crime punishable by, among
23 other things, imprisonment in excess of one year and
24 within the appropriate time frame shall be admitted
25 if the Court determines the probative value of

1 admitting the evidence outweighs its prejudicial
2 effect.

3 As to facts specific in this case, I find the
4 probative value -- redacting what the offenses were
5 as far as drug convictions if that -- if the
6 question then becomes were you convicted of a felony
7 offense or whatever it may be on a certain date and
8 time that that probative value would outweigh its
9 prejudicial effect, so I would not let the
10 substantive part of the drug conviction come in for
11 impeachment purposes. But I would let the fact that
12 he has convictions in excess of one year of whether
13 it's a felony or misdemeanor.

14 So you understand if you take the stand,
15 Mr. Frye, the solicitor could ask you on
16 cross-examination if you have been convicted of -- I
17 don't know whether it's a felony or misdemeanor; I
18 apologize I don't know that -- at a certain date and
19 time?

20 MS. MAYES: Crime more than a year, Your Honor;
21 that's how we would pose it.

22 THE COURT: They could ask if you were
23 convicted of a crime that carries imprisonment for
24 more than one year on a particular date. And since
25 you have two of them, they could ask you about both

1 of them, but could not bring out the fact under my
2 ruling that they were drug convictions. You
3 understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, the decision about whether or
6 not you testify is your decision to make and yours
7 alone. I expect you to confer with your attorneys
8 and, perhaps, others whose opinion you value on
9 life's important decisions, but the decision about
10 whether you testify or not is your call to make,
11 your decision. Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Today, are you under the influence
14 of any drug, alcohol, medication or anything that
15 negatively affects your thinking ability?

16 THE DEFENDANT: No, sir.

17 THE COURT: Has anyone exercised any undue
18 influence over you to get you to choose to testify
19 or not testify?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you suffer from any physical or
22 emotional problems that affect your thinking today?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right. I'm going to give you
25 the overnight recess to think about your decision

1 about whether you choose to testify or not testify
2 and I will readdress it tomorrow. All right? Thank
3 you, Mr. Frye.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Anything else from the
6 State before we take our recess?

7 MS. MAYES: Nothing from the State, Your Honor.

8 THE COURT: From the defense?

9 MR. MAULDIN: No, Your Honor.

10 THE COURT: All right. Court will be in recess
11 until 9:30 in the morning.

12 (The following proceedings were held February
13 8, 2018.)

14 THE COURT: Anything from the State before we
15 bring in our jury, Solicitor?

16 MR. BELL: Your Honor, Suzanne and I were
17 meeting last night. We do believe it would be
18 appropriate to call Agent Rusty Rentz to the stand
19 in limine to proffer testimony about the probation
20 status of the defendant at the time of this act.

21 THE COURT: All right. Call your witness.

22 MR. BELL: Your Honor, at this time, the State
23 would call Agent Rusty Rentz to the stand.

24 RUSTY RENTZ

25 being first duly sworn, testified as follows:

1 THE WITNESS: Yes.

2 THE CLERK: Have a seat. Once you're seated,
3 state your full name, spelling your last.

4 THE WITNESS: Rusty Rentz, R-E-N-T-Z.

5 (Court's Exhibit No. 2 marked for
6 identification.)

7 DIRECT EXAMINATION

8 BY MR. BELL:

9 Q. Agent, who are you employed by?

10 A. South Carolina Department of Probation and
11 Parole.

12 Q. And what is your role at the Department of
13 Probation and Parole?

14 A. I'm a senior agent, but my primary position is
15 to work general sessions court, guilty pleas
16 primarily.

17 Q. And were you working in that capacity back in
18 July of 2015?

19 A. I was.

20 Q. And did you have reason to create and maintain
21 the probation case of Marion Wade Frye, Jr.?

22 A. I did. He pled, and we did our paperwork here
23 and went over conditions of probation with him and
24 instructed him when to report to our office.

25 MR. BELL: Permission to approach the witness,

1 Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. BELL:

4 Q. Agent, I'm showing you what's been marked as
5 Court's Exhibit 2. Would you look at both of those
6 sheets and tell me if you recognize them?

7 A. These are copies from the sentence sheets from
8 July 16th of 2015.

9 Q. What are the indictment numbers on both of
10 those sentencing sheets?

11 A. 2015-GS-32-01781 and 2015-GS-32-01782.

12 Q. And does the sentence that he was given carry,
13 at least, a year or more?

14 A. It does.

15 Q. And was he placed on probation as a part of
16 pleading to both of those indictments?

17 A. He was.

18 Q. And is that probation -- was that probation
19 managed by the department that you work for?

20 A. It was, the Lexington County office.

21 Q. When would that probation have officially
22 begun?

23 A. 7/16 of '15.

24 Q. And do you know when it would have expired?

25 A. 7/15 of '17.

1 Q. So would it have still been active October 1st
2 of 2015?

3 A. It would have.

4 Q. When someone is placed on probation, do you
5 have them sign a sheet indicating what rights
6 they're giving up?

7 A. Well, we have them sign a sheet of probation
8 conditions.

9 Q. Do you have a copy of that sheet with you
10 today?

11 A. I do.

12 (Court's Exhibit No. 3 marked for
13 identification.)

14 BY MR. BELL:

15 Q. I'm handing you what's been marked as Court's
16 Exhibit 3. Can you identify that piece of paper?

17 A. I can. It's the one that Mr. Frye signed on
18 July 16th of 2015 when he received probation.

19 Q. And that's related to two indictments you just
20 testified to?

21 A. It is.

22 Q. And referring specifically to condition number
23 four on that probation agreement, will you read that
24 into the record?

25 A. Condition four states that I shall not possess

1 or purchase any firearms or other dangerous weapons
2 and I shall not associate with any person who has a
3 criminal record or any other person with whom my
4 agent has instructed me to avoid.

5 Q. So at the time of October 1st, 2015, would he
6 have been allowed to legally possess a firearm?

7 A. No, he would not.

8 Q. And does that apply whether he's in his own
9 house or another's house?

10 A. It applies anywhere. He's not allowed to have
11 a firearm.

12 Q. Are there any exceptions that you're aware of
13 to owning a firearm or possessing a firearm lawfully
14 while on probation?

15 A. No, he's not allowed to have a firearm and we
16 go over that with him explicitly.

17 MR. BELL: Thank you, Judge.

18 THE COURT: Mr. Mauldin.

19 MR. MAULDIN: I don't have any questions, Your
20 Honor.

21 THE COURT: Thank you.

22 What were the charges, Mr. Rentz?

23 THE WITNESS: Your Honor, the charges were
24 possession of less than one gram of meth or cocaine
25 base and possession of narcotics in Schedule I, B,

1 C, LSD, and Schedule II, first offense, and in
2 parentheses, it has possession of oxycodone.

3 THE COURT: Thank you, Mr. Rentz. Thank you
4 for being with us this morning.

5 THE WITNESS: Thank you, Judge.

6 THE COURT: All right, Solicitor.

7 MS. MAYES: Your Honor, may we approach?

8 THE COURT: Yes, ma'am.

9 (Sidebar conference.)

10 THE COURT: Thank you. I'm going to step out
11 until about 10:00. Court will be in recess until
12 10:00. Thank you very much.

13 (Short break.)

14 THE COURT: All right, Madam Clerk.

15 THE CLERK: Indictment 2016-GS-32-01113, State
16 vs. Marion Wade Frye, indicted for murder. He is
17 pleading to voluntary manslaughter under North
18 Carolina vs. Alford. It is signed and properly
19 attested to.

20 Raise your right hand, please, sir.

21 MARION WADE FRYE

22 being first duly sworn, testified as follows:

23 THE DEFENDANT: I swear.

24 THE COURT: Mr. Mauldin, you represent Marion
25 Wade Frye, Jr.?

1 MR. MAULDIN: Yes, Your Honor.

2 THE COURT: Have you explained to him the
3 charge of voluntary manslaughter, the possible
4 punishment and his constitutional rights, including
5 his right to a jury trial?

6 MR. MAULDIN: I have, Your Honor.

7 THE COURT: In your opinion, does the defendant
8 understand the charge, the punishment and his
9 rights?

10 MR. MAULDIN: Yes, Your Honor.

11 THE COURT: How does the defendant indicate he
12 wishes to plead to voluntary manslaughter?

13 MR. MAULDIN: Guilty under North Carolina vs.
14 Alford, Your Honor.

15 THE COURT: From your investigation of the
16 facts and circumstances of this case, Mr. Mauldin,
17 do you feel that the State could produce sufficient
18 evidence to convince a jury of the defendant's guilt
19 beyond a reasonable doubt to voluntary manslaughter?

20 MR. MAULDIN: Yes, Your Honor.

21 THE COURT: Has the defendant been ordered to
22 submit to a mental examination to determine his
23 competency to stand trial?

24 MR. MAULDIN: No, Your Honor.

25 THE COURT: Do you have any concern whatsoever

1 concerning his competency to stand trial?

2 MR. MAULDIN: No, Your Honor.

3 THE COURT: Are you Marion Wade Frye, Jr.?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Speak up for me, please.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Before I can accept your plea of
8 guilty to voluntary manslaughter under North
9 Carolina vs. Alford, it is necessary for me to make
10 sure that that plea is made freely and voluntarily;
11 therefore, I need to ask you some questions. If you
12 do not understand my questions, please let me know;
13 I'll try to explain them to you. If at any time you
14 need to talk with your lawyer, please let me know
15 and I'll allow you to do so. Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: How old are you?

18 THE DEFENDANT: 31, sir.

19 THE COURT: How much education do you have?

20 THE DEFENDANT: GED, sir.

21 THE COURT: What type of work did you do prior
22 to being incarcerated?

23 THE DEFENDANT: Construction, sir.

24 THE COURT: Today, are you under the influence
25 of any medication, drugs or alcohol?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you aware of any physical,
3 emotional or nervous problem that keeps you from
4 understanding what you're doing today? Are you
5 aware of any physical, emotional or nervous problem
6 that keeps you from understanding what you're doing
7 today?

8 THE DEFENDANT: No, sir.

9 THE COURT: You've heard your attorney tell me
10 that he has explained to you the charge of voluntary
11 manslaughter, the possible punishment and your
12 constitutional rights and that you understand those
13 things; is that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I've been handed up indictment
16 2016-GS-32-01113. It basically reads that you did
17 in Lexington County on or about 1-October 2015
18 unlawfully kill one Joshua Prine with malice
19 aforethought either expressed or implied, to wit,
20 did shoot the victim, Joshua Prine, with a firearm
21 resulting in his death in violation of 16-3-10 of
22 the South Carolina code of laws 1976, as amended.
23 That is an indictment for murder. It appears that
24 you're entering a plea to voluntary manslaughter
25 under North Carolina vs. Alford. Do you understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, a plea under North Carolina
3 vs. Alford -- and I want you to listen very
4 carefully as I ask your attorney.

5 What did you explain to him, Mr. Mauldin,
6 concerning a plea of guilty under North Carolina vs.
7 Alford?

8 MR. MAULDIN: That specifically he's not
9 admitting guilt to the offense, that we've reviewed
10 the evidence the State intends to pursue at trial
11 and from the review of the evidence, he believes he
12 could be convicted of the charge at trial, that a
13 benefit is being offered from the State and he would
14 rather take advantage of that benefit than go to
15 trial.

16 THE COURT: Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that I will
19 sentence you as if you have entered a plea of
20 guilty? The sentence will be the same as if you
21 entered a plea of guilty or if you enter a plea of
22 guilty under North Carolina vs. Alford.

23 THE DEFENDANT: As far as what the --

24 MR. MAULDIN: Under the sentencing --

25 THE COURT: I will get to plea negotiations

1 further in my conversation with you.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: But guilty under North Carolina vs.
4 Alford, I will sentence you the same as if you pled
5 guilty.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And as your attorney says, there's
10 a plea offer that has been accepted and it will be
11 up to me to whatever sentence I impose, but you've
12 reviewed the evidence with your attorney. You think
13 the evidence that the State has thus far and
14 evidence that they would continue to submit to the
15 jury is such that a jury could find you guilty
16 beyond a reasonable doubt and that you want the
17 benefit of that plea negotiation. Do you
18 understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: The maximum penalty for voluntary
21 manslaughter is up to 30 years. Do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: When you plead guilty or guilty
24 under North Carolina vs. Alford, you give up certain
25 very important constitutional rights; first, you

1 give up your right to remain silent, that is your
2 right against self-incrimination, your right to say
3 nothing at all. You cannot be compelled to testify
4 against yourself. Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Second, you give up your right to
7 have or continue to have a jury trial. That is your
8 right to have a jury decide whether or not you are
9 guilty beyond a reasonable doubt. The jury would
10 base their decision upon evidence which the State
11 has presented and on evidence you might wish to
12 introduce. In a trial, as you know, you would be
13 presumed to be innocent and the State would have to
14 produce evidence that would convince all 12 members
15 of the jury that you were guilty beyond a reasonable
16 doubt. Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Third, you give up your right to
19 confront and be confronted by the witnesses against
20 you, which has already been exercised up to the
21 witnesses that have already been presented, but any
22 other witnesses that may be presented against the
23 State. That would be your right to see, hear and
24 cross-examine any witnesses that may be called
25 additionally against you during the trial and the

1 right to subpoena and call witnesses in your own
2 behalf. Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand the very
5 important constitutional rights that I've just
6 explained to you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand by entering this
9 plea of guilty under North Carolina vs. Alford, you
10 give up these very important constitutional rights?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Is that what you want to do?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You understand we will not continue
15 your jury trial if you enter this plea of guilty
16 under North Carolina vs. Alford?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Understanding the nature of the
19 charge against you to which you are pleading under
20 North Carolina vs. Alford, do you still wish to
21 enter a plea of guilty under North Carolina vs,
22 Alford to this charge of voluntary manslaughter?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You understand with the plea given,
25 you waive your right to continue your jury trial.

1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You may have defenses to the charge
4 against you. I don't know whether you do or not.
5 Do you understand that entering the plea of guilty
6 under North Carolina vs. Alford, you waive or give
7 up any defenses you may have?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Plea negotiations, Solicitor?

10 MS. MAYES: Yes, sir, Your Honor. In
11 consideration of plea negotiations, he is pleading
12 to the charge of voluntary manslaughter with a
13 maximum exposure of 22.

14 THE COURT: Is that the full and complete plea
15 negotiation, Mr. Mauldin?

16 MR. MAULDIN: Your Honor, there are two other
17 pending charges, possession of a weapon during a
18 violent crime and the unlawful conduct toward a
19 child that was mentioned pretrial. Those are being
20 dismissed.

21 THE COURT: Is that the full and complete plea
22 negotiation, Solicitor?

23 MS. MAYES: Yes, Your Honor.

24 THE COURT: Mr. Mauldin?

25 MR. MAULDIN: Yes, sir.

1 THE COURT: Is that your understanding,
2 Mr. Frye?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You still wish to enter a plea of
5 guilty under North Carolina vs. Alford to voluntary
6 manslaughter?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Frye, has anyone promised you
9 anything or held out any hope of reward to get you
10 to plead guilty?

11 THE DEFENDANT: No, sir.

12 THE COURT: Has anyone threatened you or used
13 force to get you to plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: Has anyone used any pressure or
16 intimidation to cause you to plead guilty?

17 THE DEFENDANT: No, sir.

18 THE COURT: And I use the term guilty. I
19 understand it's guilty under North Carolina vs.
20 Alford.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you had enough time to make up
23 your mind as to whether or not you want to enter
24 this plea of guilty under North Carolina vs. Alford?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Are you pleading guilty under North
2 Carolina vs. Alford of your own free will and
3 accord?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: It is your decision?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I want to ask you about
8 Mr. Mauldin. Are you satisfied with the manner in
9 which your lawyer has advised you and represented
10 you?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. You may return to your
13 seat.

14 All right. Solicitor, anything before we bring
15 in our jury?

16 MS. MAYES: No, sir, Your Honor.

17 THE COURT: Mr. Mauldin -- step up here a
18 minute, Mr. Mauldin, Madam Solicitor.

19 (Sidebar conference.)

20 THE COURT: All right. Mr. Mauldin, you may
21 have 15 minutes to talk with your client.

22 Court will be in recess 15 minutes.

23 (Short break.)

24 THE COURT: We need your folks, Solicitor.

25 MS. MAYES: Yes, sir, Your Honor.

1 We'll proceed on, Your Honor.

2 THE COURT: All right. Thank you.

3 I believe I stood Mr. Frye aside with the
4 response to the question, are you satisfied with the
5 manner in which your lawyer has advised you and
6 represented you. Can you enlighten me on that,
7 Mr. Mauldin?

8 MR. MAULDIN: Your Honor, there were some
9 issues with the witnesses at trial and witnesses
10 that we may call. And I've explained to him that
11 the strategy is mine and that we've handled it
12 properly. That some of those issues are collateral
13 to the legal issues that may be a pitfall to
14 Mr. Frye and he understands that and is willing to
15 proceed, Your Honor.

16 THE COURT: Can you, Mr. Frye, explain to me in
17 your own words the response to that question "no"?
18 Without violating any confidences with your
19 attorney, but can you explain that response to me?

20 THE DEFENDANT: The expert witnesses that was
21 presented, I would like for a second -- not a second
22 opinion, but a second voice on what they -- or what
23 they know as far as her expertise.

24 THE COURT: Her, being Dr. Ross?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Well, of course, I would tell the
2 jury as to expert witnesses and all witnesses, the
3 believability and the credibility of the witnesses,
4 whether they be expert or not, is entirely up to the
5 jury panel.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: They can believe all of what a
8 witness says, none of what a witness says, or part
9 of what a witness says. You understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: So just because a witness may
12 testify to a particular fact, a particular issue,
13 again, whether that witness is an expert witness or
14 not, the believability is up to the 12 folks that
15 sit on the jury panel. You understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: So whether you believe it or not or
18 anyone else, or me, the judges of the facts are
19 these 12 folks over here in this jury box. And
20 circling back a little bit, you're giving up your
21 right to continue with a jury trial. You
22 understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, Mr. Mauldin asked you that
25 question. I'm going to ask you again, are you

1 satisfied with the manner in which Mr. Mauldin has
2 advised you and represented you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have you talked with Mr. Mauldin as
5 often and for as long as you feel necessary for him
6 to properly represent you?

7 THE DEFENDANT: No, sir. I don't feel as --

8 THE COURT: Explain that response to me now,
9 Mr. Frye.

10 THE DEFENDANT: As far as this man coming to
11 see me and the amount of time, I know he's a public
12 defender and he has a lot clients and cases to
13 handle. I feel like the amount of time he should
14 have given to my case, no, sir. I feel like he
15 could have spent more time investigating the case,
16 yes, sir. And the amount of hours spent that I've
17 seen this man face to face at the most was the week
18 before trial.

19 THE COURT: Well, I'm going to circle back to
20 Monday of this week when the case was called for
21 trial. I asked Mr. Mauldin two questions, if his
22 client was present. And of course, I can see that
23 the client is present. I do that to put notice on
24 the record that the client is present and it's not
25 being a trial in the person's absence and if they're

1 ready for trial.

2 Mr. Frye, I'm not going to in no way talk you
3 into or out of entering a plea if that's what you
4 want to do. If that's what you want to do, I'll
5 accept the plea; if it is not, I won't accept the
6 plea. The plea has got to be given freely and
7 voluntarily of your own free will and accord. I'm
8 not telling you how to answer questions or not, but
9 you have some hesitancy about it. If you don't want
10 to enter the plea, that's your decision. If you
11 want to enter the plea, that's your decision. It's
12 entirely up to you. It's your call.

13 You know, I never -- I didn't hear anything
14 before now that you hadn't had adequate time to talk
15 with your lawyer. Just like yesterday, I think
16 before we broke, I discussed with you your right to
17 testify or not testify and gave you the overnight
18 hours to think further about that decision -- or to
19 make that decision. I didn't even ask if you had
20 made the decision.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Sometimes it helps to sleep on it.
23 And I'm not -- I appreciate the position you're in.
24 So when I say sleep on it, perhaps you don't get the
25 opportunity to sleep on it, just to dwell on it.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: I understand that. But,
3 ultimately, it's your decision.

4 The case has been called for trial. I'm either
5 going to continue the case with the calling of
6 witnesses, presentation of your case, if your side
7 chooses to call witnesses. I was informed this
8 morning that there was a potential to enter a plea
9 to voluntary manslaughter. I can only accept those
10 pleas, any guilty plea, if it's being given freely
11 and voluntarily with adequate understanding of the
12 law, the potential punishment, your constitutional
13 rights, what you're giving up, and satisfaction with
14 your attorney.

15 THE DEFENDANT: I wish to move forward.

16 THE COURT: All right. Thank you very much,
17 Mr. Frye. You may return to your seat.

18 Anything before we bring in the jury panel?

19 MS. MAYES: No, sir, Your Honor. The State is
20 ready to proceed.

21 THE COURT: Mr. Mauldin?

22 MR. MAULDIN: Your Honor, I don't think we
23 finished addressing the issue with Rusty Rentz and
24 the purpose of it.

25 MS. MAYES: And, Your Honor, in that regard, we

1 do expect one additional witness, which we will
2 proffer before the State rests. And that's going to
3 be a witness to validate that this does, in fact,
4 constitute a federal felony. And that's important
5 or necessary for the State's presentation of facts
6 before we rest because it does go into a lot of the
7 case law out there regarding both accident and
8 involuntary manslaughter that potentially -- well,
9 under the law, he would not be entitled to those
10 charges having been engaged in felony criminal
11 behavior.

12 THE COURT: Tell me why the testimony of Agent
13 Rentz -- tell me about that, Solicitor.

14 You object to that, Mr. Mauldin?

15 MR. MAULDIN: Your Honor, I think as far as it
16 being a violation of probation, it's not -- they're
17 not charging him with it being against the law; it's
18 just a violation of probation. As far as not
19 reporting to the probation office, that's not a
20 violation of the law; it's a violation of probation.
21 The violation of the law is the underlying charge
22 that they're on probation for. There are plenty of
23 conditions on probation that they have, and if they
24 don't comply with, it's not a violation of the law,
25 in the general sense of the word.

1 THE COURT: All right. Solicitor, do y'all
2 intend to offer Mr. Rentz's testimony during your
3 case in chief?

4 MS. MAYES: Your Honor, I believe that's going
5 to be a legal issue more than a factual issue for
6 the jury. I think there has to be evidence on the
7 record for the Court's consideration prior to
8 determining what charges are appropriate in this
9 case. But because it deals with a matter of law and
10 Your Honor ultimately makes those determinations
11 about a matter of law and what charges to submit to
12 the jury, I believe we're okay to do this in camera.
13 I believe that that would be sufficient. And we're
14 going to have additional testimony as well at some
15 point prior to resting our case on the fact that it
16 does constitute a felony.

17 So to answer your question, Your Honor, at this
18 time, I do not foresee putting that testimony in
19 front of the jury. I believe that the evidence on
20 the record in camera is sufficient for the Court's
21 consideration in determining ultimately what charges
22 are applicable.

23 THE COURT: All right. You're then ready for
24 the jury?

25 MS. MAYES: Yes, sir, Your Honor.

1 THE COURT: Mr. Mauldin?

2 MR. MAULDIN: Yes, Your Honor.

3 (The jury enters the courtroom at 11:15 AM.)

4 THE COURT: Good morning, ladies and gentlemen.
5 Good morning. Being true to form, I apologize for
6 the delay. It was not the fault of either the State
7 nor the defense, or Mr. Frye. I know you won't hold
8 it against anybody. If you do, please hold it
9 against me. Our goal is still a fair and impartial
10 trial for both Mr. Frye and the State. Again, I
11 apologize to you for the delay.

12 Over the evening hours, we have lost one of our
13 number because of family emergency. Therefore,
14 we're going to have a very forensic scientific
15 election to promote one of our fine alternates to
16 the primary jury. And the way that is conducted is
17 we put names in a cup and we have our Clerk of Court
18 pick one of those names out. The first alternate is
19 not necessarily the first one who goes to the jury
20 panel, or second or third. It could be any one of
21 the three.

22 So, Madam Clerk, will you please conduct the
23 election process and notify the winner.

24 THE CLERK: Number 208, Gary Watts.

25 THE COURT: 208, you have now been promoted to

1 the primary jury.

2 JUROR WATTS: Can I sit here? I like this
3 seat.

4 THE COURT: Yes, sir. I think you can sit
5 there. Thank you very much.

6 We are continuing the trial of the case by the
7 presentation of testimony and evidence by the State
8 in its case in chief.

9 Solicitor, you may call your next witness.

10 MS. MAYES: The State calls Benjamin Booth.

11 THE COURT: All right. If you'd come around,
12 Detective Booth.

13 BENJAMIN BOOTH

14 being first duly sworn, testified as follows:

15 THE WITNESS: Yes, ma'am.

16 THE CLERK: Once you're seated, state your full
17 name, spelling your last, please.

18 THE WITNESS: Benjamin Booth, B-O-O-T-H.

19 DIRECT EXAMINATION

20 BY MS. MAYES:

21 Q. Good morning. Tell us a little bit about
22 yourself. Where are you currently employed?

23 A. At Lake Murray Environmental.

24 Q. And what do you do there at Lake Murray
25 Environmental?

1 A. I manage new home construction debris removal.

2 Q. How long have you been employed in that
3 capacity?

4 A. Since November of last year.

5 Q. Where were you employed previously?

6 A. Lexington County Sheriff's Department.

7 Q. Can you tell us a little bit about why you
8 decided to have a change in your career?

9 A. Family time and less rotation of schedules.

10 Q. And about that, previously, what division of
11 the Sheriff's Department were you employed in?

12 A. Major Crimes Special Victims Unit.

13 Q. And as a detective with the Major Crimes Unit,
14 what kind of hours were you working?

15 A. There would typically be three days -- I mean,
16 three weeks of Monday through Friday, 8:00 to 4:30.
17 But it -- if one of your cases went to midnight or
18 after hours, you would have to stay and keep working
19 it. There would be a fourth week of on call, 2:00
20 in the afternoon to 10:30 at night. You may be up
21 for a day or two or longer, 16-hour days working on
22 cases.

23 Q. Did that include sometimes calls in the middle
24 of the night?

25 A. Yes, ma'am, it did.

1 Q. Are you a father?

2 A. Yes, I am.

3 Q. Now, moving back to October of 2015, what type
4 of work were you doing there for the Sheriff's
5 Department?

6 A. I was working the Special Victims Unit with the
7 child abuse, child molestation and vulnerable
8 adults, anything that happened with them. But while
9 we were on call, we would have a day call week and a
10 night call week, and any time during your window of
11 being on call, any type of case that came out, you'd
12 be working it.

13 Q. And that includes homicides?

14 A. Yes, ma'am.

15 Q. So did you have occasion to be involved in the
16 homicide investigation regarding the defendant in
17 this case, Marion Wade Frye, Jr.?

18 A. Yes, ma'am, I did.

19 Q. And Detective Booth, I'm going to move forward
20 now. We have heard testimony already that the
21 defendant was apprehended in Richland County by the
22 Richland County Sheriff's Department and,
23 ultimately, transported over to the Lexington County
24 Sheriff's Department. Who had contact with him once
25 he was transported to the Lexington County Sheriff's

1 Department?

2 A. Myself and the transporting officer, Mr. Smith.

3 Q. All right. And what was the process or
4 procedure once he arrived there at the Sheriff's
5 Department?

6 A. I talked with him -- or we had escorted him to
7 an interview room and then we sat down and just
8 began the interview.

9 Q. All right. And can you tell us whether or not
10 that's normal protocol once someone has been
11 apprehended and has been served with warrants or is
12 getting ready to be served with warrants in a case
13 such as this?

14 A. Yes, ma'am.

15 Q. So at this point in time, was Mr. Frye in
16 custody?

17 A. Yes, ma'am.

18 Q. I'm going to show you a document and ask you
19 whether or not you recognize it.

20 MS. MAYES: Your Honor, if I may approach the
21 witness?

22 THE COURT: Yes, ma'am.

23 THE WITNESS: Yes, ma'am, I do.

24 BY MS. MAYES:

25 Q. How so?

1 A. This is my form.

2 Q. All right. Is that a copy of your original
3 form that was used regarding Mr. Frye?

4 A. Yes, ma'am, it is.

5 Q. All right. Now, what is the process in terms
6 of advising one of their Miranda rights? Who does
7 that?

8 A. One of the officers speaking with them.

9 Q. All right. In this case, who was responsible
10 for that?

11 A. Me.

12 Q. All right. Do you see anywhere on this
13 document your signature?

14 A. Yes, ma'am, I do, at the bottom where it says
15 witness.

16 Q. All right. And do you see anywhere the date
17 and time that this occurred?

18 A. Yes, ma'am.

19 Q. What is that date and time?

20 A. October 2nd, 2015, at 521 Gibson Road, the
21 address of the Sheriff's Department. The time began
22 at 6:28 p.m.

23 Q. All right. And, Detective Booth, I'll need you
24 to speak up a little louder.

25 MS. MAYES: Your Honor, having identified this

1 form, the State would offer this as Exhibit 127.

2 MR. MAULDIN: No objection, Your Honor.

3 THE COURT: State's 127 in evidence without
4 objection.

5 (State's Exhibit No. 127 admitted in evidence.)

6 BY MS. MAYES:

7 Q. Now, Detective Booth, with 127 being in
8 evidence, do you have a copy of this form? I'm
9 going to show you a form and ask you whether or not
10 you recognize it.

11 A. Yes, ma'am, same thing.

12 Q. Can you tell us whether or not that's a true
13 and accurate representation of State's 127?

14 A. Yes, ma'am, it is.

15 Q. Now, I want to start at the top of this form
16 and begin with what the process is when you're
17 advising someone of their rights.

18 A. I go over this form with everybody I speak
19 with. It lists the date and time. It also provides
20 their personal information to include name, the
21 address you currently reside at, or they currently
22 reside at. Where they were born, what day they were
23 born, what grades were completed and if you can read
24 and write. Also, provide an alternate contact
25 person and phone number. And then I also identify

1 myself again and I provide my name. I also provide
2 that I'm a deputy sheriff with the Lexington County
3 Sheriff's Department.

4 I then advise them of their rights. I read it
5 in its entirety. It's labeled 1 through 5. And
6 then once I read the entire portion of it, I'll go
7 line by line, read each line, and before I go on to
8 the next line, I'll have that individual initial
9 each line.

10 Q. So we'll start here at the beginning. Did he
11 provide you his address at which he was currently
12 residing?

13 A. Yes, ma'am, [REDACTED] Kitty Drive.

14 Q. All right. Did he also provide his date of
15 birth?

16 A. He did.

17 Q. All right. You identified yourself as
18 Detective Booth?

19 A. Yes, ma'am.

20 Q. I want to start here and have you read into the
21 record slowly for the purposes of the court reporter
22 exactly what rights you advised Mr. Frye of.

23 A. Just past my name it says: Duly warned and
24 advised me that. I then read: I have the right to
25 remain silent, telling him that he has the right to

1 remain silent. He then initialed by it. I then
2 read: Anything I say can and will be used against
3 me in a court of law. Then I give him the
4 opportunity to initial it.

5 Q. All right. So just to clarify, whose initials
6 are here?

7 A. Marion Wade Frye's.

8 Q. And whose initials are here?

9 A. Same.

10 Q. So after you read each of his Miranda warnings
11 or Miranda rights, what do you observe him doing?

12 A. Initialing each line.

13 Q. All right. Please continue.

14 A. I have the right to talk to a lawyer for advice
15 before answering any questions and to have him or
16 her present with me during questioning. Then I have
17 another initial. I have no money for lawyer fees,
18 the Court will -- if I have no money for lawyer
19 fees, the Court will appoint one to me without cost
20 to me if I wish, then initial. If I decide to
21 answer questions now without a lawyer present, I
22 will still have the right to stop answering
23 questions at any time. I also have the right to
24 stop answering questions at any time until I talk
25 with a lawyer, and then another initial. Then the

1 last line is, I have read the statement of my
2 rights. I understand what my rights are, and then
3 an initial.

4 Q. All right. Now, at this point in time, is
5 Mr. Frye in the custody of a law enforcement?

6 A. Yes, ma'am, he is.

7 Q. He's been placed under arrest?

8 A. Correct.

9 Q. At any point in time, Detective Booth, did you
10 threaten Mr. Frye in any way to have him participate
11 in an interview with you?

12 A. No, ma'am, absolutely not.

13 Q. Did you promise him anything in exchange for
14 participating in an interview with him?

15 A. No, I did not.

16 Q. Did he appear to understand each of those
17 rights as you read them to him?

18 A. Yes, ma'am.

19 Q. He was able to communicate with you?

20 A. Yes, ma'am, he was.

21 Q. Did he appear to be incapable of communicating
22 in logical discussion?

23 A. No, ma'am, he appeared to have conversation
24 pretty well.

25 Q. All right. And was he denied at any point in

1 time any fundamental rights, such as the right to
2 use the restroom or the right to eat or drink if
3 necessary?

4 A. No, ma'am, we even offered him coffee.

5 Q. And can you tell us, Detective Booth, after
6 having advised him of each of these rights and
7 having witnessed his initials with an understanding
8 of each right, did he appear to freely and
9 voluntarily waive those rights and participate in an
10 interview with you?

11 A. Yes, ma'am, he did.

12 Q. Now, in addition to yourself, can you tell us
13 whether or not any other detectives or sergeants
14 were involved in the interview process?

15 A. Yes, ma'am, Lieutenant Laintz, at the time,
16 Sergeant Laintz was present for a good portion of
17 it.

18 Q. All right. Having waived his rights, Detective
19 Booth, can you tell us whether or not you took notes
20 during the course of that interview?

21 A. Yes, ma'am, I did.

22 Q. And what was his reaction as you would take
23 notes along the way?

24 A. While I was speaking with him and I would start
25 writing, he would stop talking to me. And then I

1 would stop writing in the middle of what I was
2 writing and look up and continue engaging in
3 conversation.

4 Q. If someone appears to be inhibited during the
5 note-taking process, what's your normal response or
6 reaction?

7 A. Let the secondary officer take notes.

8 Q. I'm going to ask you to refer to your notes.

9 A. Yes, ma'am.

10 Q. Do your notes indicate whether or not he made
11 any statements regarding the confrontation?

12 A. Yes, ma'am, he did.

13 Q. And do your notes indicate whether or not that
14 statement is in quotes?

15 A. Yes, ma'am, it is in quotes.

16 Q. What does that indicate?

17 A. It reads: I confronted the dude, I shot him.

18 Q. And that's the portion that's in quotes?

19 A. Yes, ma'am.

20 Q. Now, the fact that that's in quotes, why did
21 you put that in quotes?

22 A. That would have been the exact words that were
23 uttered out of his mouth.

24 Q. All right. I confronted the dude, I shot?

25 A. Yes, ma'am.

1 Q. So the words "I shot" would have been directly
2 from whose mouth?

3 A. Marion Wade Frye, Jr.

4 Q. All right. Now, did he indicate, if you could
5 look at your notes, how many times he shot?

6 A. He shot twice.

7 Q. That's indicated in your notes?

8 A. Yes, ma'am, it is.

9 Q. In addition to that, can you tell us whether or
10 not he indicated anything to you about the events
11 that occurred?

12 A. The events of what, ma'am?

13 Q. The events that occurred.

14 A. Yes, ma'am.

15 Q. And are you using that in your words or in his
16 words?

17 A. His words.

18 Q. All right. What, if anything, did he say in
19 his words regarding the events?

20 A. He stated he had been at the house all day and
21 got court paperwork, got clothes, went back to Ray's
22 house. And it was on a Wednesday, slept at
23 2:00 a.m., woke up and \$500 were missing and that he
24 had confronted someone.

25 Q. And he also told you he confronted the dude I

1 shot?

2 A. Yes, ma'am.

3 Q. I want to move to the bottom of your notes.

4 What, if anything, did he state there regarding the
5 events that led to the shooting?

6 A. Prior to that day or just before?

7 Q. If you look at the bottom of your notes, can
8 you tell us whether or not he discussed the incident
9 itself?

10 A. Yes, ma'am.

11 Q. All right.

12 A. He bowed up.

13 Q. And when he made that statement he bowed up,
14 what's your understanding of who he was referring
15 to?

16 A. Joshua Prine.

17 Q. All right. He bowed up.

18 A. I turned around, crouched.

19 Q. All right.

20 A. Grabbed gun, put on left side.

21 Q. Okay.

22 A. And three jumped him.

23 Q. And three jumped him?

24 A. Yes, ma'am.

25 Q. Okay.

1 A. Started shooting twice.

2 Q. Now, in addition to the interview process, can
3 you tell us whether or not you played a role in the
4 booking process?

5 A. I did, yes, ma'am.

6 Q. All right. The photographs that were taken
7 during the booking process were taken by who?

8 A. I did.

9 Q. Detective Booth, did he have any apparent
10 injuries consistent with a fistfight?

11 A. Not to my knowledge.

12 Q. Did you see any black eyes, bloody nose,
13 swollen lips?

14 A. No, ma'am.

15 Q. And then in addition to that, what was done
16 with his clothing?

17 A. They were submitted into evidence.

18 Q. By who?

19 A. Myself.

20 Q. And that would have been the clothing he wore
21 at what time?

22 A. When he was picked up by Richland County
23 Sheriff's Department.

24 Q. All right. Okay. Would have been the clothing
25 he was wearing at booking. Now, during the course

1 of the investigation, was a surveillance videotape
2 also reviewed from the day before?

3 A. Yes, ma'am.

4 Q. And what can you tell us in that regard?

5 A. He was at the Village store off of Platt
6 Springs Road and he was wearing the identical
7 clothing -- appeared to be the identical clothing.

8 Q. And that was on the day of the shooting?

9 A. Yes, ma'am, earlier that day.

10 Q. So based on your investigation, he's wearing
11 this clothing the day before the shooting as well as
12 when he's arrested?

13 A. Yes, ma'am.

14 Q. Let me clarify: The day of the shooting as
15 well as when he's arrested?

16 A. Yes, ma'am.

17 Q. Let me show you this item and ask you whether
18 or not you recognize it.

19 A. Yes, ma'am, I do.

20 Q. Now, the pen markings on this would have been
21 made by what agency?

22 A. I believe SLED.

23 Q. In other words, they weren't made by you?

24 A. No, ma'am, I don't write on clothes.

25 Q. You recognize both of these items?

1 A. Yes, ma'am.

2 MS. MAYES: This would be State's 128 and 129
3 for evidence, Your Honor.

4 MR. MAULDIN: No objection.

5 THE COURT: State's 128 and 129 in evidence
6 without objection.

7 (State's Exhibit Nos. 128 and 129 admitted into
8 evidence.)

9 MS. MAYES: For the record, we'll mark the
10 shirt as 128 and the pants as 129.

11 BY MS. MAYES:

12 Q. Now, were the warrants for murder and
13 possession of a weapon during the commission of a
14 violent crime served on Mr. Frye during the booking
15 process?

16 A. Yes, sir -- I mean, yes, ma'am, they were.

17 MS. MAYES: Nothing further of this witness,
18 Your Honor.

19 THE COURT: Thank you, Solicitor.

20 Mr. Mauldin?

21 CROSS-EXAMINATION

22 BY MR. MAULDIN:

23 Q. During your testimony, the solicitor had you
24 refer to some notes; is that right?

25 A. Yes, sir.

1 Q. Did you prepare a more detailed report about
2 the conversation with Mr. Frye?

3 A. I did.

4 Q. What happened to that report?

5 A. It was deleted.

6 Q. Along with how many pages of your report?

7 A. It was approximately seven and a half to eight
8 pages.

9 Q. And the notes you have wouldn't fill up one
10 page; is that right?

11 A. Correct. About that interview, yes, sir.

12 Q. And the testimony you gave, the I confronted
13 the dude I shot was in quotes, meaning that was a
14 direct quote from him?

15 A. Correct.

16 Q. And the rest of it is notes that you took, but
17 they aren't a direct quote because you didn't put
18 them in quotes?

19 A. Correct. What I did is wrote down as quickly
20 as possible what I could of what he said and then I
21 had him go back and clarify, reiterate what he said.

22 Q. And you tried to get him to talk about other
23 times, but he kept skipping back and forth in time;
24 is that right? It was a little confusing?

25 A. What we try to do is get a chronological event

1 of what you did the day before leading up to the
2 event and then what you've done since until we were
3 with you.

4 Q. Right. But it was a little difficult to do at
5 that time because he kept jumping back and forth and
6 it was a little confusing?

7 A. Correct. He kept going back to the incident.

8 Q. Okay.

9 MR. MAULDIN: No further questions, Your Honor.

10 THE COURT: Redirect?

11 MS. MAYES: Yes, sir, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. MAYES:

14 Q. Just to clarify, what do you mean by deleted,
15 that your summation was deleted?

16 A. When I tried to save it and then add it into
17 the system, I wrote it in Word, and to transfer it,
18 it disappeared. I did not intentionally delete it.

19 Q. Okay. And the -- can you tell us whether or
20 not any other persons involved in that interview
21 process also prepared a separate and independent
22 supplemental report?

23 A. Yes, ma'am.

24 Q. Who was that person?

25 A. Sergeant Laintz.

1 Q. You've had a chance to review his report?

2 A. Yes, I have.

3 Q. Can you tell us whether or not that's a fair
4 and accurate reflection --

5 MR. MAULDIN: I object, Your Honor. That's not
6 his report.

7 THE COURT: Sustained.

8 BY MS. MAYES:

9 Q. You have reviewed Sergeant Laintz's report?

10 A. Yes, ma'am.

11 Q. All right. And in addition, Detective Booth, I
12 know Mr. Mauldin was asking you about the first part
13 is in quotes. The second part is not in quotes, but
14 the terms he bowed up and I turned around, are
15 those -- whose words are those?

16 A. Those are Mr. Frye's.

17 MS. MAYES: Nothing further.

18 THE COURT: Recross?

19 MR. MAULDIN: No, Your Honor.

20 THE COURT: Thank you, Detective Booth. You
21 may step down.

22 You may call your next witness.

23 MS. MAYES: State calls Lieutenant Jesse
24 Laintz.

25 JESSE LAINTZ

1 being first duly sworn, testified as follows:

2 THE WITNESS: Yes, ma'am.

3 THE CLERK: Once you're seated, state your full
4 name, spelling your last, please.

5 THE WITNESS: Jesse Laintz. Last name is
6 L-A-I-N-T-Z.

7 DIRECT EXAMINATION

8 BY MS. MAYES:

9 Q. Lieutenant Laintz, you've testified previously
10 in the case already?

11 A. Yes, ma'am.

12 Q. I want to refer you to the interview process
13 that has been testified to, the interview process
14 that followed the waiver of the Miranda rights at
15 6:28 p.m. on October 2nd.

16 A. Yes, ma'am.

17 Q. What was your involvement in that?

18 A. I actually came in after the advisement was
19 done. I came in and looked at it, saw that the
20 initials were different, they were actually in two
21 different color pens, and realized the advisements
22 had been given and then I started with the interview
23 process.

24 Q. And during the course of the interview process,
25 did you also prepare notes that were converted to a

1 supplemental or did you ultimately prepare a
2 supplemental --

3 A. Yes, ma'am.

4 Q. -- about that interview process?

5 A. Yes, ma'am, I wrote a supplemental report.

6 Q. Do you have a copy of that with you today?

7 A. Yes, ma'am.

8 Q. During the course of --

9 MR. MAULDIN: Your Honor, may we approach?

10 THE COURT: Yes, sir.

11 (Sidebar conference.)

12 THE COURT: Thank you, Mr. Mauldin.

13 Thank you, Solicitor.

14 BY MS. MAYES:

15 Q. Now, during the course of your involvement in
16 this interview process, Lieutenant, at any point in
17 time, was Mr. Frye threatened in any way to
18 participate in this interview?

19 A. He was not.

20 Q. Was he promised anything in exchange for the
21 interview?

22 A. No, ma'am.

23 Q. Was he denied any fundamental or constitutional
24 rights based upon your observation?

25 A. No, he was not.

1 Q. Did he appear to be able to communicate with
2 you and Detective Booth freely?

3 A. He was able to carry on a logical conversation,
4 yes.

5 Q. Based upon all of your observations under those
6 circumstances, did it appear that his waiver of
7 those rights was freely and voluntarily given?

8 A. It did.

9 Q. You mentioned that you had prepared a
10 supplemental report?

11 A. Yes, ma'am.

12 Q. Can you tell us whether or not the supplemental
13 report reflects the content of the interview?

14 A. It does.

15 Q. How do you go about documenting what someone
16 has said to you during the course of a verbal
17 interview?

18 MR. MAULDIN: Your Honor, can we approach?

19 THE COURT: Yes, sir.

20 (Sidebar conference.)

21 THE COURT: Step out momentarily, please,
22 ladies and gentlemen. Do not discuss the case
23 during this brief recess.

24 (The jury exits the courtroom at 11:46 AM.)

25 THE COURT: Step right up to the podium for me,

1 please, Mr. Frye.

2 Madam Clerk, would you place Mr. Frye under
3 oath for me, please?

4 MARION WADE FRYE, JR.

5 being first duly sworn, testified as follows:

6 THE DEFENDANT: Yes, I swear.

7 THE COURT: Do you have something you would
8 like to explain to me, Mr. Frye?

9 THE DEFENDANT: Yes, sir. When I said I wished
10 to proceed, I didn't know you meant proceed in the
11 trial. I was under the -- my understanding, it was
12 the plea that was going forward with and not the
13 trial. I didn't --

14 THE COURT: You want to go forward with your
15 plea of guilty to voluntary manslaughter under North
16 Carolina vs. Alford?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is that what you're telling me?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And if I misunderstood what you
21 said, I apologize to you for that, Mr. Frye. I'll
22 certainly go back and review the record at the
23 appropriate time to correct any misunderstanding I
24 may have had.

25 Solicitor, do you have any position in this?

1 MS. MAYES: We believe this is a matter in the
2 Court's discretion and purview, Your Honor. At this
3 point, you were about three-quarters of the way
4 through the qualification process.

5 THE COURT: Lieutenant, you may step down
6 during this. Thank you. Do not discuss your
7 testimony with anyone.

8 THE WITNESS: Yes, sir.

9 THE COURT: All right. Mr. Frye, I'm going
10 back to the section that we were at and I'm going to
11 explain it in as much detail as I think is
12 appropriate. If you have any questions whatsoever,
13 you do not understand my questions, at any time, you
14 wish to talk with your attorney, please let me know
15 and I'll be glad to do so. Do you understand,
16 Mr. Frye?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And the caption of this section is
19 called satisfaction with attorney. That's the
20 section we were at.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you satisfied with the manner
23 in which Mr. Mauldin, your attorney, has advised you
24 and represented you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you talked with your lawyer as
2 often and for as long as you feel necessary for him
3 to properly represent you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, previously, you had told me
6 no, sir.

7 THE DEFENDANT: I know.

8 THE COURT: This is not a trick question. None
9 of these are trick questions. Explain to me why you
10 said at one time no, sir, I haven't talked to him as
11 often and for as long as I feel necessary for him to
12 properly represent me. You answered that no. And
13 now you're telling me yes, you have. Explain that
14 to me, Mr. Frye.

15 THE DEFENDANT: I felt as there should be more
16 time investigated in the case and that certain
17 things that -- as much time as I know he has on his
18 case and caseloads of people he represents, I felt
19 like more time should be invested in the case being
20 the case is a high-profile case.

21 MR. MAULDIN: In the past couple of weeks, Your
22 Honor, I've talked to Mr. Frye for well over 12
23 hours. He was in jail two years, probably had 10
24 visits with him during that course of time as well
25 as bond hearings and all that.

1 THE COURT: Are you entering a plea of guilty
2 under North Carolina vs. Alford with any
3 dissatisfaction whatsoever with your attorney?

4 THE DEFENDANT: No, sir.

5 THE COURT: The talks you've had with your
6 attorney, have you understood them?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you feel like your attorney has
9 done everything he could have done or should have
10 done in representing you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you think Mr. Mauldin has done
13 anything in the case that he should not have done?

14 THE DEFENDANT: No, sir.

15 THE COURT: Do you have any complaints you want
16 to make about Mr. Mauldin, the solicitor or any
17 officers involved in your case?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you want to enter a plea of
20 guilty to voluntary manslaughter under North
21 Carolina vs. Alford in this case?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: That's what you want to do?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And that's your decision?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Made freely and voluntarily?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Standing here right now,
5 understanding the offense, the plea, the potential
6 punishment, are you satisfied with the manner in
7 which your lawyer has advised you and represented
8 you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have any complaints you want
11 to make about Mr. Mauldin?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you have any questions you would
14 like to ask me about the entry of your plea? You
15 want to ask me any questions?

16 THE DEFENDANT: It's up to your discretion?
17 No, sir.

18 THE COURT: You want to ask me any questions?

19 THE DEFENDANT: No, sir.

20 THE COURT: Anything you don't understand?

21 THE DEFENDANT: No, sir, I understand.

22 THE COURT: And you've understood my questions?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And nothing you want to ask me
25 about?

1 THE DEFENDANT: No, sir.

2 THE COURT: Anything additional you would like
3 me to ask Mr. Frye, Mr. Mauldin?

4 MR. MAULDIN: No, Your Honor.

5 THE COURT: Anything additionally you would
6 like me to ask Mr. Frye, Solicitor?

7 MS. MAYES: No, sir, Your Honor.

8 THE COURT: And again, Mr. Frye, you understand
9 if I accept the plea, the jury trial has ended;
10 you've waived that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Won't go forward, you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And it would just be up to me.
15 You've heard the plea negotiations to sentence you
16 to voluntary manslaughter; you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: That's what you want to do?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Solicitor, at this point, as far as
21 an adequate factual basis, I will take into account
22 the record that has already been placed into
23 evidence by the witnesses that have testified both
24 in direct, cross, redirect, recross, in some
25 instances, and find that there is a substantial

1 factual basis and would allow you to supplement, if
2 you will, the record if I accept the plea and once
3 I've released the jury panel.

4 MS. MAYES: Yes, sir, Your Honor. And Sergeant
5 Laintz -- or Lieutenant Laintz, we were in the
6 middle of his testimony. There was also going to be
7 additional statements that he recorded made from
8 Mr. Frye that would amount potentially to evidence
9 on the record of legal provocation or sudden heat,
10 certainly in support of a voluntary manslaughter
11 charge ultimately.

12 THE COURT: And further, I will release the
13 jury prior to accepting or reception of any victim
14 impact statement and the prior record of Mr. Frye,
15 if any, after I release the jury.

16 Before I accept this plea, again, Mr. Frye, do
17 you have any questions you want to ask me?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you have any complaints you want
20 to make about your lawyer, Mr. Mauldin?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you totally and completely
23 satisfied with your lawyer's services?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Any complaints you want to make

1 about the solicitors or any officers involved in
2 your case?

3 THE DEFENDANT: No, sir.

4 THE COURT: You have understood my questions?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You have no questions you wish to
7 ask me?

8 THE DEFENDANT: No, sir.

9 THE COURT: And I believe you told me
10 previously you were 31 years old and had a GED and
11 can -- and was a construction worker prior to being
12 incarcerated; is that correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have all your responses been
15 truthful?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you're entering this plea
18 freely and voluntarily?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And that's your call to make and
21 that's the call you're making?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Understanding your constitutional
24 rights?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Understanding you're waiving those
2 rights?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I find there is a substantial
5 factual basis for Mr. Frye's plea of guilty to
6 voluntary manslaughter under North Carolina vs.
7 Alford. I find that Mr. Frye is intelligent, has
8 understood my questions, has a GED education,
9 responds and tracks appropriately, that although
10 there was some ambiguity in some answers as to
11 satisfaction with his attorney, he has clarified
12 those responses and now says he is satisfied totally
13 and completely with the services of his attorney,
14 that his plea of guilty as he has entered under
15 North Carolina vs. Alford is freely, voluntarily,
16 knowingly, and intelligently made, that he has, in
17 this Court's opinion, had the advice and counsel of
18 a very competent, experienced attorney with whom he
19 now says he is totally and completely satisfied.
20 His plea of guilty to voluntary manslaughter under
21 North Carolina vs. Alford is therefore accepted.

22 Thank you, Mr. Frye. You may return to your
23 seat.

24 Since I have now accepted that plea as freely
25 and voluntarily given, I'm going to release the jury

1 panel.

2 Any objections to that, Solicitor?

3 MS. MAYES: None from the State, Your Honor.

4 We also have four agents present with the State Law
5 Enforcement Division. We will release them at this
6 time as well.

7 THE COURT: And any objections, Mr. Mauldin, to
8 releasing the jury at this time?

9 MR. MAULDIN: No, Your Honor.

10 (The jury enters the courtroom at 12:02 PM.)

11 THE COURT: Welcome back, ladies and gentlemen.
12 There had been some issues that I had to address
13 earlier this morning. That's why you were held
14 captive by me in your jury room, your temporary
15 home. In your absence, this most recent recess,
16 Mr. Frye has entered of a plea of guilty to
17 voluntary manslaughter.

18 When an individual enters a plea of guilty, I
19 have to ask certain questions to determine if that
20 plea is being given freely and voluntarily, which I
21 have conducted that procedure and I have accepted
22 Mr. Frye's plea of guilty to voluntary manslaughter.
23 And shortly, probably about 1:30, I will sentence
24 Mr. Frye after I hear from both the victim's family
25 and Mr. Frye and any members -- any family members

1 or any other people that may be here to testify on
2 his behalf. In other words, I'll hear whatever
3 aggravating circumstances there may be or any
4 evidence in mitigation, and I will do the
5 sentencing.

6 Voluntary manslaughter, you start with murder
7 and then there's a theory in the law with lesser
8 included offenses. And going down the ladder, so to
9 speak, the next level down is voluntary
10 manslaughter. It's a killing done in sudden heat of
11 passion without sufficient legal provocation,
12 basically. And the old law used to talk about it in
13 the terms of presence or absence of malice, malice
14 being murder, but that law has -- well, every time I
15 think I learn it, they change it. But that law has
16 developed differently. And then, of course, under
17 that, depending on the facts, if there's a
18 self-defense issue, of course, it would have been
19 instructed. And depending on the law of a
20 particular case, I may even would charge involuntary
21 manslaughter or accident. And all of that would
22 kind of be part and parcel to the total picture.

23 A plea of voluntary manslaughter has been
24 entered and I've accepted it. Mr. Frye has been
25 explained his rights to continue -- his

1 constitutional right to continue with the jury
2 trial. He has waived that and has submitted himself
3 to the Court for sentencing.

4 Several things to know: Sometimes offers are
5 made pretrial, sometimes much in advance of trial
6 and not accepted and maybe there are negotiations
7 during the trial. This is both in civil court and
8 criminal court. I have found in life, in general,
9 and in the courtroom specifically, everything in
10 life is timing. Sometimes it's good; sometimes it's
11 bad. It's a serious case and serious consequences
12 for Mr. Frye. And sometimes, the timing is not
13 right until the jury has been seated in the jury box
14 and until evidence has been presented and such.
15 Again, that's part of the system.

16 And the case would not be resolved without your
17 participation. Whether it goes on to being
18 submitted to you or not, it would not have been
19 resolved without you 12 folks. This happens each
20 and every week in however many counties, 46
21 counties. I don't know how many have terms of court
22 each week, but Lexington County has about 43 terms
23 of court a year. And the other counties, Edgefield
24 may not have as many and Richland may have more.
25 But we can't do it without your participation.

1 I do thank you for your patience with the Court
2 and your focus and attention. I'm not much of a
3 jury watcher, but the times I do look over there,
4 y'all have paid attention, leaning up in the seats,
5 looking at the displays on the screens, and such as
6 that. Our justice system, of course, not perfect
7 because it's man or woman made, but it's certainly
8 the best in the world. It's been my pleasure and
9 privilege to be with y'all, a moment of privilege on
10 the bench, so to speak. My last day on the bench
11 will be 30 June of this year and I'm going to miss a
12 lot because I've been in about 41 or 42 of the
13 counties. But really what I'm going to miss is
14 working with people and working with y'all. I trust
15 the American people.

16 Thank y'all for being here. You're excused.
17 You don't have to come back this year to this
18 courtroom and you never have to sit in a jury trial
19 again with me presiding. Y'all have a great time
20 and, again, my heartfelt thanks.

21 Solicitor, I'm going to be in recess until 1:30
22 this afternoon. Thank you.

23 (Court in recess 12:11 PM - 1:38 PM.)

24 THE COURT: All right. Come around, please,
25 Mr. Frye.

1 Anything further from the State?

2 MS. MAYES: Yes, sir, Your Honor. You've
3 heard, obviously, the testimony from two
4 eyewitnesses who were present for the shooting,
5 Katie Vinson, the girlfriend of Joshua Prine, as
6 well as his friend and roommate, Raymond Boyer, who
7 witnessed the entire event.

8 There is no doubt, based on the facts presented
9 by the State, Your Honor, that the defendant
10 intentionally went to that residence to confront,
11 first, Joshua Prine's girlfriend, Katie Vinson, and
12 then, ultimately, Joshua Prine, with the belief that
13 they may have stolen money from him. I'm going to
14 add a little bit more to that. I think it goes to
15 the issue of intent and the defendant's actions
16 here.

17 As we know, the defendant was on probation for
18 drug charges. He still chose to carry on with
19 illegal drug activity, which led to this senseless
20 act of violence. When I say he was still engaged in
21 illegal drug activity, we had testimony yesterday
22 from Matthew Bowers, who was under federal proffer,
23 possession with intent to distribute
24 methamphetamine. He has acknowledged to us that he
25 would supply Wade Frye with drugs and that he had

1 actually fronted him some ice, which led to,
2 ultimately, the loss of this money.

3 In addition, Your Honor, the defendant's
4 girlfriend, Katelyn Turner, also known as Katie
5 Campbell, she gave statements to police. And in a
6 written statement to police following the shooting,
7 she acknowledged -- the question was: Does Wade
8 carry anything to deal drugs with? The answer was:
9 No. He just had a purple Crown Royal bag.

10 That is the bag that, according to witnesses,
11 he claimed he was missing, also leading to evidence
12 that this was drug-related activity.

13 We also know that from testimony the defendant
14 had access to multiple firearms that week. I
15 believe a question solicited by Mr. Mauldin during
16 testimony with Mr. Boyer is: Well, what happened to
17 the 380 earlier in the week? And Mr. Boyer said
18 that he had given the defendant a 380 firearm at
19 some point earlier that week. And then, of course,
20 on the day of the shooting, we know that he took a
21 gun from Ryan Boulware that, according to him, would
22 be collateral for the missing money until it turned
23 up.

24 Also in that statement from the defendant's
25 girlfriend, Katelyn Turner, she addresses that

1 event. She was questioned: Does Wade carry any
2 guns, known to carry? Her answer was: Wade was
3 pissed off someone had taken money from him and Ryan
4 gave him a gun that day to make up for the missing
5 money to try to solve their issue. She reported
6 that that was around 1:00 p.m. prior to the
7 shooting. Of course, any information she had in
8 that regard would have come directly from her
9 boyfriend, the defendant.

10 In addition, his girlfriend, Katelyn Turner,
11 acknowledged to the Department of Social Services,
12 after her three children all tested positive for
13 drugs, and that included children testing positive
14 for methamphetamine and cocaine, that her boyfriend
15 Wade Frye was a drug dealer.

16 And then finally, Your Honor, in her
17 description of his state of mind that day around
18 noon, she had him -- these are my words based on her
19 description is what I would term violent and
20 aggressive. She stated that he struck her in the
21 face during an argument. Also, there is a neighbor
22 by the name of Hannah Montgomery that had contact
23 with him that day as well. When Hannah was
24 questioned by the officer, do you think Wade could
25 have killed Josh? Her answer was: From how he was

1 acting this morning, I wouldn't put it past him.
2 Wade told me this morning someone stole \$500 from
3 him and he was going to find them.

4 Your Honor, you heard the testimony, of course,
5 from the forensic pathologist. We know that the
6 shot that struck Joshua Prine would have been a
7 minimum of 18 to 24 inches away. There's no
8 evidence of stippling, but the blood pool found and
9 documented by CSI Officer Glenn Ross is, at least,
10 seven feet away from where the defendant would have
11 been around that kitchen cabinet. We know that
12 because of the injury to his spinal cord, he would
13 have dropped immediately, would not have had the
14 opportunity to run and end up there. That is where
15 he was shot and, of course, he was shot in the back.

16 I'm going to go ahead and submit up to Your
17 Honor a booklet with the final autopsy report of Dr.
18 Ross as well as the photograph submitted from the
19 family of Joshua Prine, 27 years old. Your Honor,
20 throughout the trial, present in the courtroom have
21 been his mother, his sister and, of course, his
22 girlfriend, Katie Vinson, as well as numerous other
23 friends and family members. Your Honor, at the time
24 that you deem appropriate, they do wish to address
25 Your Honor.

1 THE COURT: Thank you, Solicitor.

2 Before I hear from the victim's family, will
3 you tell me the prior criminal history again of Mr.
4 Frye?

5 MS. MAYES: Yes, sir, Your Honor. Mr. Bell
6 will present that information.

7 THE COURT: Thank you, Mr. Bell.

8 MR. BELL: Your Honor, NCIC does show numerous
9 arrests; however, convictions come down to a 2004
10 assault and battery third degree, a 2013 hit and run
11 resulting in property damage, and a series of
12 narcotics charges, which you've heard testimony
13 about from Agent Rentz. In 2015, he pled guilty to
14 possession of hydrocodone, possession of
15 methamphetamine, and possession of controlled
16 substance. Your Honor, he entered that plea on July
17 16th of 2015. He would have been placed on
18 probation approximately two and a half months
19 leading up to this incident.

20 THE COURT: All right. Thank you.

21 And Solicitor, I'll hear from anyone you'd like
22 me to hear from.

23 MS. MAYES: At this time, Your Honor?

24 THE COURT: Yes, ma'am.

25 Yes, ma'am, tell me your name, please.

1 MS. COLEBURN: My name is Rose Coleburn.

2 THE COURT: Yes, ma'am, I'll be glad to hear
3 from you.

4 MS. COLEBURN: Edie Sheldon, Joshua's mother,
5 is my best friend for over 30 years, so I've had the
6 honor and pleasure of being around the Prine and
7 extended family for many years. Enjoyed many
8 holidays, volleyballs, cookouts together. I've
9 watched Joshua grow up from such a beautiful young
10 man into a man that I was very proud of. He was
11 always kindhearted, the biggest heart, would do
12 anything for you.

13 On October 1st, 2015, Mr. Frye took his life
14 and, at that point, he also took a part of my friend
15 Edie's life, and her daughter, the rest of their
16 family, and me, that we can never get back.
17 Mr. Frye is able to stand here and Joshua is not.

18 I pray that you would take all these things
19 into consideration and give him the maximum that you
20 can to help this family heal. My friend has been
21 through an emotional shit hole, excuse me, for the
22 last two years. She's not been able to work. She's
23 had anxiety that you cannot imagine, nightmares that
24 we wouldn't want to imagine, and just endured so
25 much pain because of one man's stupid actions over

1 an unnecessary stupid thing, for \$500. I just pray
2 that you would consider those things and have
3 justice served for him.

4 THE COURT: Thank you for being here.

5 MS. MAYES: Your Honor, Katie Vinson. I know
6 during pretrial proceedings, we addressed the fact
7 that there was drug use involved with people and
8 family. I want to go ahead and advise the Court
9 that when we first met with Ms. Vinson, she had just
10 completed an inhouse drug treatment program that has
11 taken about a year of her life to go through and to
12 process. She is completely clean now. She is
13 working a full-time job at Lizard's Thicket. She is
14 living with her parents in a very controlled
15 environment with her children, and it's tremendous
16 how far along she has progressed.

17 THE COURT: Thank you, Solicitor.

18 Congratulations, Ms. Vinson.

19 MS. VINSON: Thank you.

20 THE COURT: Be glad to hear from you.

21 MS. VINSON: Your Honor, this hits -- when
22 Joshua died, it took everybody's sparkle away. And
23 it -- his poor mama, it takes everything she has to
24 get up out of bed in the morning, even myself. And
25 this man is allowed to breathe, eat, hug his

1 girlfriend, his sister. We don't get to do that
2 anymore. He's gone forever. I just hope that you
3 give him the maximum penalty, please. Thank you.

4 THE COURT: Thank you, Ms. Vinson.

5 MS. MAYES: Your Honor, the second to last
6 photograph in the book we submitted is a photo of
7 Josh with Katie and of her young son.

8 THE COURT: Yes, sir, your name, please, for
9 the record.

10 MR. HENDRON: Yes, sir, Your Honor. My name is
11 Daniel Hendron. I was Josh's best friend from the
12 time I met him in early middle school when I first
13 moved to South Carolina in 2001.

14 Joshua was a really good man. He was very
15 close to my family; I was very close to his. We
16 spent most years in each other's homes, raised by
17 each other's parents. No one is perfect, but Joshua
18 had a kind heart. He has been there for my
19 daughter. He was there for the birth of my son. He
20 sat and watched me rock my children to sleep and
21 asked me major things about being a parent. And
22 just prior to his murder, we had a very long talk
23 about being a father and what life prevails and the
24 things in life. And he was on a path to change and
25 he wanted to do better and surround himself with

1 better people, such as myself and follow the
2 positivity that I followed in my life.

3 And for the sake of my feelings and his mother
4 and his sister and his entire family's feelings,
5 sir, I ask that you find it in your heart to give
6 this gentleman the maximum penalty that you can in
7 this court.

8 THE COURT: Thank you.

9 MS. MAYES: Your Honor, this is Nicole Prine,
10 his sister.

11 THE COURT: Tell me your name, please.

12 MS. PRINE: Nicole Prine.

13 THE COURT: I'll be glad to hear from you.

14 MS. PRINE: Joshua is my brother and he was my
15 everything until I had my own child. And then he
16 was the second best thing in the world to me. They
17 showed pictures of his body and you can see tattoos
18 on his arms. Those were my initials and my
19 daughter's initials.

20 I hate that he isn't here with me to grow old
21 with me because all I can see are pictures of us
22 when he was 27 and younger. And I look at those
23 pictures and it just breaks my heart to know that I
24 won't be able to see him as an old man. And one
25 day, Wade will be able to walk out of the Department

1 of Corrections and be with his loved ones and Joshua
2 will never be able to do that. And it just really
3 breaks my heart that because somebody decided to
4 take another life that he has ruined his life, my
5 brother's, my family's and his family's. And I just
6 pray that you will give him the max sentence that he
7 is able to have for justice for my brother and also
8 for him to realize and to maybe change his life
9 around and help other ones that have witnessed all
10 this to change their life around. Thank you.

11 THE COURT: Thank you. Yes, ma'am.

12 MS. MAYES: Your Honor, this is Edie Sheldon,
13 his mother.

14 THE COURT: Tell me your full name for the
15 record.

16 MS. SHELDON: Edith Miles Sheldon.

17 THE COURT: Yes, ma'am, I'll be glad to hear
18 from you.

19 MS. SHELDON: I am Joshua Miles Prine's mother.
20 He's my second child. He was murdered three days
21 before his 28th birthday. He would have turned 28
22 on the [REDACTED] of October. He never had any children.
23 This man has got six children and has nothing to do
24 with them. My child never had the chance to be a
25 father. This is what he wanted; he wanted a little

1 girl. He wanted a little girl so he could be a
2 better person. I have a letter he had wrote saying
3 he was changing his life to be a better person, to
4 get away from people that destroyed other people.

5 I had plotted to commit suicide. I had to
6 commit myself in the state hospital to keep from
7 killing myself. I tried to OD on pills. I think --
8 I didn't care whether I woke up or not. It didn't
9 matter because my daughter and my son made me a
10 whole, and now half of me is gone because of this
11 person because of stupidity. And I pray with
12 everything in me that you give him the max that you
13 can give him so he can never get out and do to other
14 people what he has done to my entire family, how he
15 has affected my entire family. Joshua's daddy
16 couldn't even be here because the pain is so bad for
17 him.

18 I just pray that you don't show him any mercy.
19 He doesn't deserve mercy.

20 MS. MAYES: In addition, Your Honor, Lieutenant
21 Laintz also will address the Court on behalf of the
22 Lexington County Sheriff's Department. I'm going to
23 pass up, in addition to the photos we already have,
24 a photo taken during the autopsy, which shows the
25 point of impact. Of course, we're talking about a

1 situation where an unarmed man was shot in the back
2 in his own home. The testimony was he had worked
3 all day, as he normally does, at Lucas Septic Tank,
4 and came home and was sitting on the couch when the
5 defendant came into his home and accosted him.

6 THE COURT: Yes, sir, Lieutenant, I'll be glad
7 to hear from you.

8 LIEUTENANT LAINTZ: Yes, Your Honor. I didn't
9 know Joshua. What I've learned is what we've
10 learned from this investigation. But coming from
11 the sheriff's department, Ben Booth and others,
12 we've put a lot of time and work into this. But
13 unfortunately, drugs and meth have become an uphill
14 battle for us. It's something that we -- it's very
15 hard to fight. It's been just over a year, I've
16 been here four times for somebody dying and three of
17 those are directly related to meth, and this is one
18 of those.

19 I don't know the answer to it, I wish I did,
20 but the best I can do is look out for the people in
21 the county and try our best to put bad people in
22 jail. This is one of those situations. Joshua was
23 never given the opportunity, but Wade was. Two and
24 a half months out on probation and he's right back
25 to the exact same things he was doing when he was

1 given that chance to do right to make himself better
2 and he didn't take that opportunity.

3 He armed himself with a gun, went to start a
4 confrontation over drug money that he owed Bowers
5 and he ended up taking someone's life. Like I said,
6 I don't know Joshua, but I'm pretty sure he didn't
7 deserve to die over \$500. It's a battle that we're
8 doing our best to fight. Three out of four in just
9 over a year that we've been up here have been
10 related directly to meth. We would ask for the max
11 just to help put some muscle behind what we're
12 trying to do. That's all, Your Honor.

13 THE COURT: Thank you, Lieutenant. Thank you
14 for being here.

15 MS. MAYES: Mr. Prine's biological father is in
16 the courtroom now as well, Your Honor. The State
17 has nothing further at this time, Your Honor.

18 THE COURT: Thank you.

19 Mr. Mauldin.

20 MR. MAULDIN: Thank you, Your Honor. In the
21 courtroom with Marion are his sisters, Melinda and
22 Jodie Frye, Katelyn Turner, Daniel Tucker, another
23 friend, and another friend named Amanda. He spent
24 762 days incarcerated in jail from October 2nd of
25 '15 to November 1st of '17. He's 31 years old. He

1 was 29 when he was arrested. He went through tenth
2 grade at White Knoll High School. He played
3 football for them for a period of time. He
4 eventually did get his GED. He went to St. Andrews
5 Middle School taking classes and the test there.
6 He's mainly worked construction business doing floor
7 covering and wall covering. His father, Aaron
8 Price, Sr., does that and he worked with his dad.
9 His dad does subcontracting and he's been doing that
10 for most of his work history.

11 He's married, but separated. He's been
12 separated about four years. He has six children,
13 Your Honor, ranging between the ages of 15 and the
14 youngest one is somewhere between two and three
15 years. He was born sometime in 2015.

16 Your Honor, in Detective Booth's notes that the
17 solicitor mentioned during his testimony, at the
18 very top of that is, I'm worried about the boy that
19 got shot. That was the very top of it. Mr. Frye
20 has no ill-will towards Mr. Prine. He's sorry that
21 he's dead.

22 When he went to the house that time, he didn't
23 have any idea who would be in the house that day.
24 Obviously, there's an undercurrent of drug
25 involvement in this. The information provided by

1 the State stated that Raymond Boyer was involved in
2 the activity. Obviously, he had cameras all around
3 his house, padlocks on all the doors.

4 Marion had gone earlier that day. There was a
5 padlock and he went back because he'd been wearing
6 the same clothes for several days and he wanted to
7 get some of his things. He saw that everybody was
8 there. He saw -- says he saw a gun and he armed
9 himself. And even according to Marion's story, he's
10 not lawfully to have possession of a firearm, it
11 would have been unlawful at that point in time. He
12 says he took it because that Ryan Boulware fellow
13 was right there next to it and he was going to ask
14 him about it because the testimony that somebody
15 said that somebody said he looked like a ghost when
16 he left. And talk of that, that somebody and
17 somebody that said were also in the room and then
18 accusations went around and people got upset.

19 There's been testimony that there was cussing
20 going on, bowing up, lunging, rushing at him.
21 Mr. Frye says that Mr. Prine did try to assault him,
22 at which point, he grabbed the weapon. If he didn't
23 have the weapon and the weapon was there and he got
24 assaulted first and then grabbed the gun, it might
25 be another story entirely. But that's not the way

1 that events went down.

2 Your Honor, obviously Mr. Frye had a drug
3 problem. Everyone has testified about the sores and
4 that kind of thing that a drug user would have as
5 well. You know, the damage to the items in the
6 house describes a confrontation that I think is a
7 little bit more than what Mr. Boyer described during
8 his testimony and maybe more in line of what
9 Mr. Frye described as far as three people being
10 around him. But he shouldn't have done it. He
11 shouldn't have injected himself in there like that.
12 And he's sorry that Mr. Frye is dead.

13 And you know, the money -- well, he talks about
14 the source of the money, whether it was from drugs
15 or whatever, that was the source of the issue. But
16 Your Honor, they had other money. There's testimony
17 he had \$400 on him. There was 200 in the car. I
18 think he went in with the intent to get his stuff
19 and then saw the people there and then what happened
20 happened. I don't even think he would have known
21 who was in the house at the time he pulled up with
22 his girlfriend and his sister, Melinda.

23 That's all I have. If Mr. Frye or any of his
24 relatives wish to speak, I'll allow them.

25 THE COURT: Anyone you want me to hear from,

1 Mr. Mauldin?

2 Mr. Frye, anything you'd like to say?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Speak up where I can hear you,
5 please.

6 THE DEFENDANT: To me, it was an accident, sir.
7 I was only trying to get the weapon off of me. I
8 even tried to turn away from them after the man
9 jumped on me and tried to grab the weapon from me.
10 As I was fighting over that weapon, that's how
11 Mr. Prine was shot. As I ran out the house, as you
12 see in the statements, I said I was sorry for what
13 happened. I couldn't believe what happened because
14 it was a shock to me how it happened. But it was in
15 everybody's hands on what happened and how it
16 happened.

17 They're saying he went out the back door,
18 turned around to look for Katie Vinson. I don't
19 know because I was hunched over and down like I
20 claimed to be. But I guarantee you, her with my
21 sister and my girlfriend running through that door
22 that he turned around, we were fighting over that
23 gun and he got shot. Like I said, I'm very sorry of
24 what happened. I hate that it happened. I take
25 responsibility for my actions. I wish everybody

1 would take responsibility for their own actions that
2 led up to this point. That's it.

3 THE COURT: Thank you, Mr. Frye.

4 Anyone else, Mr. Mauldin?

5 MR. MAULDIN: Yes, Your Honor, this is Jody
6 Frye. She's Marion's sister.

7 MS. ROBERTS: Roberts.

8 MR. MAULDIN: Roberts. I'm sorry.

9 THE COURT: Your full name, please?

10 MS. ROBERTS: Jody Roberts.

11 THE COURT: I'll be glad to hear from you,
12 Ms. Roberts.

13 MS. ROBERTS: I'm his sister. And first, I
14 want to apologize to the family and friends because
15 it's never easy when you lose a loved one. It's
16 going to be hard going home and telling his daughter
17 that's been asking for him that he's going to be
18 gone for a long time. And I feel like I'm going to
19 lose him, too. This isn't an easy situation, no
20 matter what. He put himself in a bad situation by
21 making bad decisions.

22 And I wish I could go back to that day and have
23 talked him into coming to stay with me. I wanted
24 him away from all the people he was with. We have
25 fought for four years now because of this. And I

1 just want you to think that there's other people's
2 life -- he took a life and he's affected them and
3 he's affected us. And I wish the whole situation
4 was different, but he does have kids and he does
5 have family, too.

6 THE COURT: Thank you. Anything else,
7 Ms. Roberts?

8 MS. ROBERTS: No, sir.

9 THE COURT: Thank you.

10 MR. MAULDIN: Your Honor, this is Katelyn
11 Turner.

12 THE COURT: Tell me your full name, please.

13 MS. TURNER: Katelyn Turner.

14 THE COURT: I'll be glad to hear from you,
15 Ms. Turner.

16 MS. TURNER: I'm Wade's girlfriend. And I came
17 here thinking that we were going to get justice and
18 to me, justice is telling the truth and I feel
19 like --

20 THE COURT: Justice is what? I couldn't quite
21 understand you.

22 MS. TURNER: For the truth to be out, for
23 everyone to know the truth of what happened and I
24 feel like that never was accomplished here. And I
25 am kind of upset with him because he chose to take a

1 plea. But we never went there with the intentions
2 of any of this happening. He was going to come
3 home. All he needed was clothes. And my kids were
4 in the car. We never went there with any intentions
5 of any of this.

6 And Raymond Boyer, all of them, I have known
7 Raymond Boyer for 15 years. And it is a shame that
8 this is going down like this. And it really hurts
9 me to see this man I love and he's going to go to
10 prison over something like this. I understand what
11 happened with Josh and he is dead; I understand
12 that. It's terrible, but this was never supposed to
13 go down like this.

14 And I wanted the truth to come out today and it
15 doesn't look like I'm going to get that. I hope you
16 can take it easy on him because he does have a life
17 and he does have family and he's got kids. And he
18 also has me and he has all of them right there.
19 They were supposed to be our friends and none of
20 this was supposed to happen. That's all I got to
21 say.

22 THE COURT: Thank you. Thank you, Ms. Turner.

23 MR. MAULDIN: Your Honor, I've also been
24 dealing with Mr. Frye's father. He's been here a
25 couple days during the trial, but he's been upset

1 and he couldn't come back for it.

2 THE COURT: Thank you. Anything further,
3 Mr. Mauldin?

4 MR. MAULDIN: No, Your Honor.

5 PROBATION AGENT: Judge, could we entertain the
6 probation violation?

7 THE COURT: You also want me to take up the
8 probation violation at this time, Mr. Mauldin?

9 MR. MAULDIN: Yes, sir.

10 THE COURT: Tell me about it, Agent Rentz.

11 PROBATION AGENT: Your Honor, Mr. Frye pled
12 July 16 of 2015 in front of Judge Griffith. He pled
13 to possession of meth and possession of oxycodone.
14 On each indictment, he received a sentence of 12
15 months. He was given credit for 18 days and that
16 was suspended to 24 months' probation.

17 Judge, the violation -- we issued a warrant and
18 served it and it's based on the murder charge.

19 THE COURT: Thank you. I find that Mr. Frye
20 has willfully and intentionally violated the terms
21 and conditions of his probation.

22 Solicitor, would you please hand me Mr. Frye's
23 wallet?

24 MS. MAYES: Yes, sir, Your Honor.

25 THE COURT: Would you also hand me the

1 photograph of the interior of the Cadillac Escalade?

2 MS. MAYES: Yes, sir, Your Honor.

3 THE COURT: With the wallet and other items in
4 plain view.

5 Thank you, Solicitor.

6 MS. MAYES: Your Honor, one more thing, if we
7 can add, for the record. In speaking to Ryan
8 Boulware, that gun that he transferred to Mr. Frye
9 earlier that day was, in fact, a nine millimeter.
10 He described it as a black nine millimeter
11 consistent with Brandy Slusher's description of the
12 gun that the defendant had. And, of course, the
13 missing homicide weapon is a nine millimeter.

14 THE COURT: Thank you, Solicitor.

15 Where is the murder weapon, Mr. Frye?

16 THE DEFENDANT: Sir, I threw it back on the
17 counter when I left out that home, and that's the
18 God's honest truth.

19 THE COURT: Where is the Crown Royal bag?

20 THE DEFENDANT: I found it in the back yard of
21 that home earlier that morning when I woke up.

22 THE COURT: So it was not your habit and custom
23 for you to secure your items in a Crown Royal bag?

24 THE DEFENDANT: The money that I had was money
25 from the lottery --

1 THE COURT: That wasn't my question. Was it
2 your habit to carry your items in a Crown Royal bag?

3 THE DEFENDANT: Not particular, just the money
4 I used for lottery.

5 THE COURT: So the bag -- was the \$500 in the
6 Crown Royal bag?

7 THE DEFENDANT: Yes, sir, inside of a lock box.

8 THE COURT: And that Crown Royal bag, you found
9 in the back yard?

10 THE DEFENDANT: I found in the back yard. Not
11 only was it a Crown Royal bag, but it had an NBA
12 mark on it. That's their special edition. That's
13 how I knew which bag it was. All Crown Royal bags
14 come in velvet purple with the Crown Royal across
15 it, but this one had an NBA symbol on the back of
16 it. I knew it wasn't just any bag. You understand
17 what I'm saying? When I woke up that morning and I
18 walked outside after I realized the money was
19 missing, I seen the bag on the ground on the other
20 side of a trailer at Mr. Boyer's that was on the
21 ground right there plain as day in my sight. It was
22 on the ground. I just left it there. I was
23 aggravated at that point.

24 THE COURT: Did you make that \$500 from selling
25 drugs?

1 THE DEFENDANT: No, sir. That money was from a
2 lottery ticket. I had also cashed a \$10,000 check
3 from a wreck I was in to Wells Fargo within a month
4 prior to this. Their accusations of the drug money,
5 I'm not going to deny that I did sell drugs. The
6 main thing that I dabbled and dabbled with was
7 marijuana; it wasn't methamphetamines.

8 THE COURT: So you had \$500?

9 THE DEFENDANT: Off of a lottery ticket that I
10 cashed in at the Village Store.

11 THE COURT: A lottery ticket in a lockbox in
12 the Crown Royal bag, am I tracking it right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And then you had another --

15 THE DEFENDANT: That lockbox is still in that
16 Escalade.

17 THE COURT: And you had another \$482 at the
18 time you were arrested?

19 THE DEFENDANT: Sir, actually, I had over \$700
20 in my possession. You heard him say he pulled \$400
21 out of my pocket. If you go on your record and
22 look, he said he pulled money out of my wallet, too.
23 \$380 came out of my wallet. \$402 came out of my
24 front pocket.

25 THE COURT: So you didn't have all your money

1 together?

2 THE DEFENDANT: No, sir, I did not.

3 THE COURT: You had some in a lockbox in a
4 Crown Royal bag that you found; is that right?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you had some in your pocket?

7 THE DEFENDANT: Yes, sir. And the money, that
8 \$380 that was in my wallet, Katelyn had given to me
9 that day. She had -- I had given her some money and
10 I asked her for it back that day because she had
11 cashed a check from her attorney because she was
12 also in the same wreck that I was in. Her attorney
13 gave her an advancement on the money that was coming
14 in two days later. That's how she got bonded out of
15 jail. But she got an advancement and I asked her
16 for the money back and she give me the money.
17 That's the money that was in my wallet.

18 THE COURT: Let me make sure I'm tracking the
19 timeline. The homicide occurred at around 7:25 --
20 7:30. I think the 911 call was made on the evening
21 of 1 October 15?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Is that right? And how long -- how
24 many nights before that had you stayed at the house?

25 THE DEFENDANT: Only the night that I moved my

1 stuff and fell asleep on the couch. But I had asked
2 Mr. Boyer -- he owed me a few hundred dollars.

3 THE COURT: So you had only stayed there one
4 night?

5 THE DEFENDANT: One night after I moved all my
6 stuff into the house.

7 THE COURT: But you came over the last day of
8 September?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Stayed that night. And then the
11 first day of October, you found your money missing?

12 THE DEFENDANT: I woke up that morning --

13 THE COURT: Found your money missing?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And then it was 7:30 that night
16 approximately when the homicide occurred?

17 THE DEFENDANT: But I been back and forth
18 throughout the day.

19 THE COURT: I understand. I don't mean you
20 stayed there continuously, but it was only one night
21 you stayed there?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now let me ask you something:

24 Describe for me your mental state after the
25 shooting.

1 THE DEFENDANT: I was shocked. I didn't know
2 what to do and I couldn't believe that this actually
3 occurred, how it happened. I never expected this
4 ever to happen. It took everybody to put their
5 hands in what happened and how it happened. I
6 understand how it happened as far as the crowd I was
7 surrounding myself around, the things I was doing in
8 my life that had this happen.

9 If I was more involved in making sure I was
10 going to work 9 to 5 every day and I was making sure
11 I was going to church every Sunday, I probably would
12 haven't been around this type of stuff to begin
13 with, alcohol. There was drugs that was involved,
14 but not as far as drugs involved in this situation,
15 but drugs with me doing drugs myself and things like
16 that. That's the truth. I understand the -- it
17 wasn't just me. Everybody in that home was doing
18 the same thing that I was doing, if not everybody in
19 the neighborhood.

20 THE COURT: So you were upset that Mr. Prine
21 had been shot?

22 THE DEFENDANT: Yes, sir. Yes, sir. Not only
23 was I -- I was in tears; my sister and them was in
24 tears, too. It's in there, they're saying I cannot
25 believe this happened. Oh, my God. It was an

1 accident. There's a video of the little girl
2 saying -- I don't know if she said the same thing,
3 but this was an accident, sir. It took to a point
4 where I turned away from them that they all jumped
5 on top of me that we started struggling over that
6 weapon and it shot. That's why I was upset earlier
7 as far as the -- Ms. Ross, the way she explained
8 that as far as what she said, because I know I was
9 down and they was on top of me.

10 THE COURT: You're talking about Dr. Ross?

11 THE DEFENDANT: Yes, sir. The way they
12 explained it, I did it on purpose. It was not on
13 purpose. When I turned around, Mr. Boyer rolled him
14 over. I turned around, pretty much freaked out,
15 threw the weapon back on the counter, and ran out
16 the door. That's why Mr. Boyer -- well, there's
17 parts of that mostly that says another guy that I
18 had the -- sir, this is why I pushed the issue --

19 THE COURT: Sir?

20 THE DEFENDANT: I said, sir, this is why I
21 asked him to push the issue of Mr. Boulware not
22 being there on the scene at the time, being it was
23 his weapon, he left the scene, and it was hours
24 later before he came back. Because another guy told
25 on him in his statement about him being there.

1 THE COURT: Where did you go when you left
2 Mr. Boyer's residence?

3 THE DEFENDANT: When I left? I went to my
4 father -- there's a guy that works for my father. I
5 went to his house to contact my father and to turn
6 myself in. When we got up to the McDonald's on
7 Number 6 up here and Katelyn had called and told me
8 to hold on a second, wait before you go, we'll go
9 together. When I got there, she said, well, please
10 just one more night. Can we stay just one more
11 night before we go turn ourselves in? She asked me
12 if we could go talk to her attorney, the one I'm
13 telling you about that gave her an advancement on
14 the check. I left the hotel that morning and when
15 we left, it wasn't -- I stopped at the store.
16 Before I could go anywhere, we was apprehended.

17 THE COURT: What hotel?

18 THE DEFENDANT: It was the one behind --
19 Scottish Inn, I believe it is, over there on Bush
20 River Road.

21 MS. MAYES: One of the statements indicated the
22 Palmetto Inn, Your Honor.

23 THE COURT: I want to hear it from him.

24 THE DEFENDANT: It's the one she's talking
25 about.

1 THE COURT: So y'all wanted to have, for
2 whatever purpose, one more night before you turned
3 yourself in?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And as Lieutenant Laintz is calling
8 Ms. Turner, y'all did not respond to that request to
9 turn yourself in or those multiple requests?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Where did you buy this ticket on
12 October 2nd at 12:42, this lottery ticket?

13 THE DEFENDANT: I think that's the Stop and Go,
14 at the place we got apprehended.

15 THE COURT: Stop and Go?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Where is that Stop and Go located?

18 THE DEFENDANT: At Kay Street and Beatty Road.

19 THE COURT: On Broad River Road.

20 THE DEFENDANT: Beatty Road.

21 THE COURT: In Richland County?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Were you on your way to turn
24 yourself in?

25 THE DEFENDANT: We was going to talk to her

1 attorney before I went and turned myself in.

2 THE COURT: Where was her attorney's office at?

3 THE DEFENDANT: Columbia. I don't know the
4 exact address.

5 THE COURT: Who is her attorney?

6 THE DEFENDANT: Mark Hardy.

7 THE COURT: I would imagine Mr. Prine would
8 have liked one more night.

9 You were placed on probation July 16th or July
10 15th of 2015, some four months prior to this, which
11 you know, I -- I do probation violations tomorrow.
12 My theory of probation is the individual who's
13 placed on probation has the keys to the jailhouse in
14 his pocket and one foot already in the jail. Why
15 did you squander that opportunity, Mr. Frye?

16 THE DEFENDANT: I guess the money.

17 THE COURT: Money?

18 THE DEFENDANT: The only source of income money
19 that -- I don't have no excuse. There is no excuse.

20 THE COURT: Money to do what? I don't
21 understand. I'm just asking.

22 THE DEFENDANT: To make sure I was able to
23 provide. I mean, that's all I can say.

24 THE COURT: Are you saying that probation costs
25 so much money --

1 THE DEFENDANT: It does cost money.

2 THE COURT: I know it does. I've never put
3 anybody in jail for not having any money on
4 probation violations ever. Now, if they got a
5 pocket full of money and they're not paying their
6 obligations, I'll put them in jail. But I'll have
7 probation and parole do a financial examination to
8 see if they do or don't.

9 What gun was it that you had when you were seen
10 by Mr. KM and Mr. Gunter behind The Barn, or
11 at The Barn?

12 THE DEFENDANT: That 380, that silver-and-black
13 gun.

14 THE COURT: Why did you have it?

15 THE DEFENDANT: I always toted one with me,
16 sir.

17 THE COURT: So you didn't care a thing about
18 the rules of probation, nothing?

19 THE DEFENDANT: Yes, sir, I did. That's why I
20 went and put it up, put the gun up. After that, the
21 police got called, I went and put it up. Yes, I
22 carried, but I guess you could say I was
23 hard-hardheaded and part of me didn't care. I did
24 care. I knew the consequences behind it, but...

25 THE COURT: People in this courtroom that's

1 been here before are probably getting tired of the
2 things I say because they hear it so often. I wish
3 we lived in a world where I didn't have to say it at
4 all. But I think I kind of agree with you a little
5 bit, Mr. Frye. I think the worst crime anybody can
6 commit is stealing. I really do.

7 THE DEFENDANT: I don't like a liar. I don't
8 like a thief.

9 THE COURT: Me and you agree on that. I think
10 theft is the worst thing anybody can do.

11 THE DEFENDANT: Can I say something, sir?

12 THE COURT: Yes, sir.

13 THE DEFENDANT: I didn't intentionally steal
14 that man's life.

15 THE COURT: If you steal from somebody, you
16 steal their property. If you lie to somebody, you
17 steal the truth from them. They don't have the
18 ability of having full knowledge of making proper
19 decisions. You murder or kill somebody, you steal
20 their life. Everything to me is founded on theft,
21 the whole basis of our law.

22 Nobody has a right, except for the natural
23 right we all have to defend our own life or, in
24 certain circumstances, defend a third party's life
25 whose shoes we can step in, in certain situations.

1 Nobody has a right to steal another person's life.

2 We're all part of a whole.

3 You stole Joshua's life, the future life he
4 would have with his mother, with his father, with
5 his sister, with Ms. Vinson, with children and all
6 those landmarks. It doesn't make -- all these -- so
7 many of these cases, not all, unfortunately, many of
8 them are domestic and others, but just like
9 Lieutenant Laintz said, so many of these cases are
10 just woven, glued together by drugs. Sometimes
11 they're legal drugs being used illegally; most of
12 the time, they're not legal drugs. And I've heard
13 mothers come up in here pleading on behalf of their
14 children for me not to put them in jail or put them
15 in the jail for minimum amounts of time saying he or
16 she was running with the wrong crowd. Well, every
17 mother that comes up here is going to blame it on
18 the other mama's baby. It -- that's not taking
19 responsibility, personal responsibility for our own
20 conduct.

21 In my day -- maybe they still do, I don't know,
22 I don't keep up with modern terms -- they used to
23 call it peer group pressure. Well, if you're going
24 to fold to peer group pressure, you better be very
25 careful what peer group you're in. Like that old

1 thing they used to tell me: Son, if somebody else
2 jumps off the cliff, you going to jump off the cliff
3 with him? I learned pretty quick I'm going to call
4 911 for him. I ain't going to be at the bottom of
5 that cliff with him. And now, I guess the bottom
6 line is, I don't believe you, Mr. Frye.

7 THE DEFENDANT: As far as what, sir?

8 THE COURT: I know it's not an accident. I sat
9 up here and researched and sat in the back and
10 researched the elements of accident and looked up
11 several cases and read them. For homicide to be
12 excusable on the ground of accident, it must be
13 shown that the killing was unintentional and the
14 defendant was acting lawfully and that due care was
15 exercised in the handling of the weapon. Although I
16 might have given the jury that option based on some
17 other research I did, I don't believe it was an
18 accident. I do not believe it was self-defense.

19 I think you were bent on recovering your money
20 and Mr. Prine's life was not worth as much to you as
21 your \$500. You can replace \$500. I've lost \$500 on
22 the way to work or spent it foolishly. That can be
23 replaced.

24 THE DEFENDANT: Can I say something, sir?

25 THE COURT: Don't interrupt me no more. I've

1 heard enough. But a life can't be replaced. And
2 I'm not saying -- I don't judge people for being --
3 it's not against the law to be a bad person. I
4 don't think you're a bad person. I don't label
5 people good or bad. I judge behavior, just pure and
6 simple behavior. Behavior has consequences. All
7 behavior has consequences. Good behavior has good
8 consequences, hopefully; bad behavior has bad
9 consequences. It's not that complicated to me. I
10 think you were going to use whatever means necessary
11 to recover your \$500, which, quite frankly, \$500
12 ain't worth \$500 and certainly not worth a human
13 life.

14 I cut you off a minute ago. I'll hear anything
15 you want to tell me, Mr. Frye.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Anything you want to say?

18 THE DEFENDANT: Yes, sir. When the man hit me,
19 when the weapon came off of me, the weapon was
20 falling and I was trying to attempt to keep them
21 from continuing to attack me. When Mr. Boyer jumped
22 at me, I did everything I could to try to prevent
23 the struggle and I turned all the way around. At
24 that point, all three of them jumped on top of me.
25 Now, after that, it was an accident. I did not

1 intentionally shoot him or anyone or try to shoot
2 that weapon. It was fighting over possession of
3 that weapon that that weapon was discharged.

4 THE COURT: Well, again, I don't believe you.
5 I don't think Mr. Boyer was your enemy. I think if
6 Mr. Boyer had got the gun, this wouldn't have
7 happened. I don't think this would have happened.
8 I just don't. I mean, he let you stay there. Most
9 times, your enemies don't let you stay with them.

10 THE DEFENDANT: Can I --

11 THE COURT: I just don't think he's your enemy.
12 I don't believe you and I don't think the jury would
13 have believed you. I don't know. I can't predict
14 the future, and sometimes I can't predict the past.

15 THE DEFENDANT: Your Honor?

16 THE COURT: Yes, sir.

17 THE DEFENDANT: I have videos, that will show
18 different, in my possession. I would love before
19 you made a decision to, at least, watch these videos
20 to make a decision.

21 THE COURT: Mr. Mauldin, what's he referring
22 to?

23 MR. MAULDIN: He's describing an incident with
24 Mr. Boyer and some other individuals who had --

25 THE DEFENDANT: Mr. Prine.

1 MR. MAULDIN: Who had beat up a fellow named
2 Joseph Strickland over some drug debt or missing
3 drugs.

4 THE COURT: That wouldn't even be admissible
5 under State vs. Clinkscales. If you're talking
6 about prior difficulty between a witness whose house
7 he was at and third party wouldn't be admissible.
8 Am I tracking that right?

9 MR. MAULDIN: Yes, sir. It's a third party,
10 Your Honor. And it was investigated, but
11 Mr. Strickland, I think, declined to cooperate in
12 the prosecution of the matter. No arrests were
13 made. The video was recorded on a cell phone.

14 THE COURT: All right. 2016-GS-32-01113, State
15 vs. Marion Wade Frye, having entered a plea of
16 guilty under North Carolina vs. Alford to voluntary
17 manslaughter, taking all the totality of the facts
18 and circumstances into account, both during the
19 trial until the plea was offered, during both the
20 aggravation presented and the victim impact
21 presented by the State and the prior criminal
22 history, Mr. Mauldin's presentation, statements on
23 behalf of Mr. Frye, all that Mr. Frye has said
24 before the Court, the defendant is committed to the
25 State Department of Corrections for a determinate

1 term of 22 years. Credit for all time served. No
2 contact with any member of the victim's family.
3 Good luck to you, Mr. Frye.

4 THE DEFENDANT: Yes, sir.

5 MS. MAYES: Thank you, Your Honor.

6 THE COURT: As to the family of Mr. Prine, I'm
7 sorry for your loss.

8 Probation is revoked, credit for time served.

9 MS. MAYES: Thank you, Your Honor.

10 THE COURT: Thank you.

11 Thank you, Mr. Mauldin.

12 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

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STATE OF SOUTH CAROLINA

8

COUNTY OF LEXINGTON

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I, the undersigned, Bethanie K. Creppon, Circuit

11

Court Reporter for the Second Judicial Circuit of

12

the State of South Carolina, do hereby certify that

13

the foregoing is a true, accurate and complete

14

transcript of record of all the proceedings had and

15

the evidence introduced in the trial of the

16

captioned cause, relative to appeal in the Criminal

17

Court for Lexington County, South Carolina, on the

18

5th, 6th, 7th, 8th of February, 2018.

19

I do further certify that I am neither of kin,

20

counsel, nor interest to any party hereto.

21

22

May 22, 2019

23

24

s/ *Bethanie K. Creppon*

25

Bethanie K. Creppon

Circuit Court Reporter

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The South Carolina Court of Appeals

The State, Respondent,

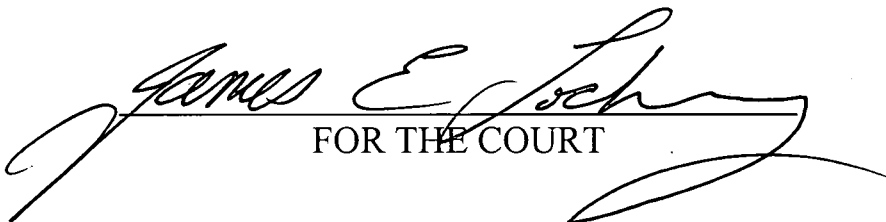
v.

Marion Wade Frye, Appellant.

Appellate Case No. 2018-000239

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Laura Suzanne Mayes, Esquire
Robert Michael Dudek, Esquire
David Michael Mauldin, Esquire

FILED

March 30, 2018



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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FAX: (803) 734-1839
www.sccourts.org

April 17, 2018

The Honorable Lisa M. Comer
205 East Main Street
Suite 128
Lexington SC 29072

REMITTITUR

Re: The State v. Marion W. Frye
Lower Court Case No. 2016GS3201113
Appellate Case No. 2018-000239

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Marion Wade Frye, 375354
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Laura Suzanne Mayes, Esquire
Robert Michael Dudek, Esquire
David Michael Mauldin, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTONMARION WADE FRYE

Plaintiff(s)

vs.

THE STATE, LEXINGTON

Defendant(s)

Submitted By: Marion Wade FryeAddress: Litcher Correctional Institute136 Wilborn Ave.Ridgeville, South Carolina 29472653
IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP-

2019 CP 3200710

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 <u>-NI-</u>
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Incapacitated Adult Settlement (790)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: Marion Wade FryeDate: February 5, 2019

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM-5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF)

Full name and prison number (if any) of Applicant.)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention _____
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) _____
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) _____
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
 (b) _____
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed: _____
- i. _____
 ii. _____
 iii. _____
 iv. _____
- (c) the disposition thereof:
- i. _____
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

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

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STATE OF SOUTH CAROLINA)

County of Lexington)

VERIFICATION

I, MWF, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Marion Wade Faye

SWORN to and subscribed before me this 5th
day of February, 2019.

John K. Brown (L.S.)
Notary Public

My Commission Expires: 6-20-26

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

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

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

I, MWF, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Marion Wade Trapp
Applicant

SWORN or affirmed to and subscribed before me this

5th day of February, 2019

[Signature]
Notary Public

My Commission Expires: 6-20-26

2019CP3200710

p. #1

MARION WADE FRYE SCDC # 375354-AA-54

Question Answers to PCR application (p. 1-5)

1. Lieber Correctional Institution
136 Wilborn Ave.
Ridgville, SC 29472
2. Court of General Sessions
205 East Main Street #146
Lexington, SC 29072
3. KATELYN Erin Turner
4. A) 2016GS-32-1113
B)
5. February 8, 2018, Voluntary Manslaughter, 22 years
6. B
7. YES
8. A) The South Carolina Court of Appeals
B) The court remittitur the case to a lower court
C) April 17, 2018
D) The order shows the appellant failed to provide a sufficient explanation as required by rule 203(d)(1)(B)(iv)

FILED
2019 FEB 15 AM 11:24
CLERK OF COURT
J. ED. VOTER: SC

p. #2

9. N/A

10. A) Ineffective Assistance of Counsel
B) due process / Prejudice
C) Prosecutorial misconduct

11. A) Ineffective Counsel created by deficient acts of Counsel
Created prejudice and because of Counsel's deficient performance the outcome of the case and trial would have been different U.S.C.A. Const. Amend 6
1 after V. Cooper 132 S. Ct. 1316 (2012)

Counsel's performance fell below an objective standard of reasonableness representation, so inadequate and deficient that it denies the defendant's Sixth Amendment rights.

Preparations and presentations of Counsel were deficient and insufficient time to prepare for trial because of short consultation with his client before trial.

Counsel failed to file pretrial motions and argue for an immunity in relation to the case and evidence.

Counsel failed to obtain discovery, "in whole", to review with client, resulted in insufficient time to prepare for trial.

Counsel failed to utilize an investigator, and proper expert witnesses, and call / subpoena witnesses about conflicting evidence to present at trial, or investigate the circumstances at defendant's request. Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum include interviewing

p.#3

potential witnesses and making an independent investigation of the facts and circumstances of the case

U.S.C.A. Const. Amend. Sixth

11. B) Due process - unfair trial and unfair evidence the defendants were not given a fair trial, the defence counsel did violate the defendant's Constitutional fifth, sixth, and fourteenth amendments, the defence was in the position to properly scrutinize what was being introduced that didn't have miscarriage of justice has occurred the defence didn't discretion to exclude unfair hearsay or evidence. Constitutional put the Confrontation Clause as a safeguard to promote fairness in the criminal justice system. Section 78 of the Police and Criminal Evidence Act (1984) (PACE) was never introduced.

C. Prosecutorial misconduct - the prosecutor has introduced false evidence and violated the professional rules as well that conduct the witness tampering, they encouraging the witnesses to make false statements under oath and offering up evidence that knowingly is false. The prosecutor engaging in misconduct and in violation of ethics rules.

12. A) Yes - South Carolina Court of Appeals
 B) No
 C) No
 D) Yes - South Carolina Court of Appeals

p. #4

13. A) Notice - of intent to appeal - April 17, 2018

Letter to Letter - April 19, 2018

Notice of motion - April 26, 2018

Motion to be relieved on bond - April 26, 2018

Letter to Letter May 7, 2018

Appeal / Appeal May 7, 2018

B) General Sessions

205 East Main Street #146

Lexington, SC 29072

C) disposition - unknown

D) February 8, 2018 is the date to all the nature there of or.

E) unknown

14. Yes, the defendant was not pleased with Counsel's conduct and preparation and presentation before and during trial and was requesting to change Counsel to the Judge during trial and the Judge refused to replace ineffective Counsel, and Stated would over all continue to proceed with the trial.

15. The trial Judge violated the defendant's rights by not removing the ineffective Counsel and rescheduling trial date until proper Counsel could be assigned to the defendant.

P. 5

16. A) Due process - the defendant's Counsel never raised the issues of violations of the fifth, sixth, and fourteenth amendments

B) Prosecutorial misconduct was never raised by defence Counsel

17. David Michael Mauldin
eleventh circuit public defender

A-E Answer to 17.) Yes

18. A) David Michael Mauldin

202 East Main Street

Lexington, South Carolina 29072

B) at trial, Sentencing, and appeal

19. to challenge the Conviction and obtain relief from the Sentence handed down, Show the fundamental miscarriage of Justice exception and also show new evidence, New evidence not obtained by defence and raise the issues about ineffective Counsel, Due process, Prosecutorial misconduct, and also the violations of the fifth, sixth, and fourteenth amendments

20. No, not to my knowledge

SCDC

Marion Wade Foy 375354

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Wade Marion Frye, SCDC #375354,	)	
	)	Case No. 2019-CP-32-00710
Applicant,	)	
	)	
v.	)	RETURN, AND PARTIAL MOTION TO
	)	DISMISS, AND MOTION FOR A MORE
State of South Carolina,	)	DEFINITE STATEMENT
	)	(COUNSEL APPOINTED)
Respondent.	)	
	)	
	)	

In response to the post-conviction relief action commenced by Marion Wade Frye (Applicant) on February 15, 2019, the State makes this return:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Lexington County Clerk of Court. Applicant was arrested on October 2, 2015, following an investigation into the shooting death of Joshua Prine. During the July 2017 term, Applicant was indicted by the Lexington County Grand Jury for one count of murder (2016-GS-32-01113) and one count of possession of a weapon during the commission of a violent crime (2017-GS-32-2551).

On February 5, 2018, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Assistant Public Defender David Mauldin of the Eleventh Circuit Public Defender's Office represented Applicant. Assistant Solicitors Suzanne Mayes and Gill Bell of the Eleventh Circuit Solicitor's Office prosecuted the case. During the trial, Applicant decided to plea pursuant to *North Carolina v. Alford*¹ to the lesser-included offense of voluntary manslaughter. Applicant

¹ 400 U.S. 25 (1970)

entered his *Alford* plea pursuant to a negotiated plea agreement, which provided the State would drop the firearm charge and a separate child neglect charge, and Applicant would face a maximum exposure of twenty-two years imprisonment. Judge McMahon accepted Applicant's *Alford* plea, finding there was a substantial factual basis to support Applicant's *Alford* plea and finding the plea was freely and voluntarily made. (Plea Tr. 605). Judge McMahon sentenced Applicant to twenty-two years' imprisonment with credit for time served. Because Applicant was on probation at the time of the shooting, Judge McMahon found Applicant in willful violation, revoked his probation, and sentenced Applicant to serve the original twelve-month sentence to run concurrent with the new sentence.

Applicant's counsel subsequently filed a timely notice of appeal. On March 30, 2018, the South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation as to why his appeal from a guilty plea should proceed. *State v. Frye*, S.C. Ct. App. filed March 30, 2018. The remittitur was returned to the circuit court on April 17, 2018. Applicant timely commenced this post-conviction relief action on February 15, 2019.

II. STATEMENT OF THE FACTS

On September 29, 2019, Applicant moved his things into a friend's mobile home, where the victim also resided. (Tr. 171). Applicant woke up on the morning of October 1, 2015, and realized he was missing \$500. (Tr. 171). Applicant first accused Ryan Bouleware, another resident of the home, of stealing his money. (Tr. 304). The two got into an argument, but Bouleware eventually offered Applicant his firearm as collateral for the missing money. (Tr. 304–305). Applicant agreed, and put the firearm in the waistband of his pants. (Tr. 305). Applicant then left the residence. (Tr. 305).

Applicant's girlfriend and children were in the car when Applicant returned to the residence later that evening. (Tr. 171). His intention was first to confront Prine's girlfriend, and then Prine, about the missing money. (Tr. 610). By that point, Prine was home from work, and Applicant began questioning him. (Tr. 270). The two started arguing, and the altercation quickly escalated. (Tr. 310–312). However, the altercation did not get physical until Applicant pulled the gun out of his waistband. (Tr. 271, 313). Bouleware and another friend grabbed Applicant's arm in an attempt to disarm him. (Tr. 313, 319). Prine then began to turn around when Applicant broke free and shot Prine in the back, killing him (Tr. 165, 321). Applicant then ran out of the house, got in the car with his girlfriend and children, and drove away. (Tr. 323).

III. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Preparations and presentations of counsel were deficient and insufficient time to prepare for trial because of short consultation with his client before trial"
 - b. "Counsel failed to file pretrial motions and argue for an immunity in relation to the case and evidence"
 - c. "Counsel failed to obtain discovery 'in whole' to review with client, resulted in insufficient time to prepare for trial"
 - d. "Counsel failed to utilize and investigator, and proper expert witness, and call/subpoena witnesses about conflicting evidence to present at trial, or investigate the circumstances at defendants request"
2. "Due process/prejudice"
 - a. "Unfair trial and unfair evidence the defendants were not givin [sic] a fair trial, the defense counsel did violate the defendants Constitutional fifth, sixth, and fourteenth amendments, the defense counsel was in the position to properly scrutinize what was being introduced that

didn't have miscarriage of justice has occurred the defense didn't discretion to exclude unfair hearsay or evidence"

3. Prosecutorial misconduct

- a. "The prosecutor has introduced false evidence and violated the professional rules as well that conduct the witness tampering, they encouraging the witness to make false statements under oath and offering up evidence that knowingly is false. The prosecutor engaging in misconduct and in violation of ethics rules"

In response to question fourteen as to whether any of his claims have been previously presented to this or any other court, Applicant states the following:

"Yes, the defendant was not pleased with counsels conduct and preparation and presentation before and during trial and was requesting to change counsel to the judge during the trial and the judge refused to replace ineffective counsel, and stated would over all continue to proceed with the trial."

In response to question fifteen, asking Applicant to identify (a) which grounds have been previously presented and (b) the proceedings in which each ground was raised, Applicant states the following:

"The trial judge violated the defendants' rights by not removing the ineffective counsel and resetting trial date until proper counsel could be assigned to the defendant."

In response to question nineteen as to requested relief, Applicant states the following:

"to challenge the conviction and obtain relief from the sentence handed down, show the fundamental miscarriage of justice exception and also show new evidence, new evidence not obtained by defense and raise the issues about ineffective counsel, due process, prosecutorial misconduct, and also the violations of the fifth, sixth, and fourteenth amendments"

Based on these responses and Applicant's failure to state these claims enumerated grounds for relief, it is unclear whether Applicant is asserting either a claim of trial court error, or newly-discovered evidence, or both. The State requests Applicant, through his counsel, clarify whether he intends to proceed forward on these allegations. However, out of an abundance of caution, the State is interpreting Applicant's response to question nineteen as an allegation that newly-discovered evidence exists in his case and questions fourteen and fifteen as allegations of trial court error.

Attached herewith and incorporated by reference are the Lexington County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the combined plea and trial transcript, and the records of the current post-conviction relief action. The State reserves the right to amend this return upon receipt of any relevant materials.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

The State submits Applicant's allegations of ineffective assistance of counsel are without merit. However, it is impossible for the State to adequately respond to Applicant's allegations because Applicant has completely failed to provide any specific facts to support such claims. The State requests Applicant, through counsel, provide specific claims and facts to support these vague allegations. *See* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to "specifically set forth the grounds upon which the application is based"); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRPC (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRPC ("Counsel shall insure

that all available grounds for relief are included in the application and shall amend the application if necessary.”).

A. Ineffective Assistance of Counsel, Generally

The Sixth Amendment to the United States Constitution guarantees the Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 100, 665 S.E.2d 164, 167 (2008). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973). In order to determine whether a guilty plea was taken in accordance with constitutional standards, the PCR judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); *State v. Pendergrass*, 270 S.C. 1, 4, 239 S.E.2d 750, 751 (1977). The applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland*, 466 U.S. at 686; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The reviewing court must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct. *Strickland*, 466 U.S. at 690. Thus, a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the

circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Id.* at 689.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's "assistance was so ineffective as to require reversal" of the applicant's sentence. *Strickland*, 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.*; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In order to prove deficient performance under the first prong of *Strickland*, the applicant must show that counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Thus, in adjudicating a claim of actual ineffectiveness of counsel, the reviewing court must presume that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* See also *Strickland*, 466 U.S. at 690 (noting that a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, *Wiggins v. Smith*, 539 U.S. 510, 526–527 (2003), neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the

exclusion of others reflects trial tactics rather than "sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. *Strickland*, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. *Id.* at 688; *See also Harrington v. Richter*, 562 U.S. 86 (2011).

In order to prove prejudice under the second prong of *Strickland*, an applicant must demonstrate that counsel's deficient performance 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. This reasonable probability must be "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." *Id.* at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* at 687; *See Harrington*, 562 U.S. 86.

"Surmounting *Strickland*'s high bar is never an easy task." *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010), and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *United States v. Timmreck*, 441 U.S. 780, 784 (1979). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial. Therefore, the *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. *Strickland*, 466 U.S. at 689-690. Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the

record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." *Id.* at 689. The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. *Id.* at 690.

In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. *Wong v. Belmontes*, 558 U.S. 15 (2009); *Strickland*, 466 U.S. at 693. Instead, *Strickland* asks whether it is "reasonably likely" the result would have been different. *Id.* at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." *Id.* at 693, 697. The likelihood of a different result must be substantial, not just conceivable. *Id.* at 693.

The standards, however, do not establish mechanical rules; "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696. Moreover, "there is no reason a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." *Strickland*, 466 U.S. at 697. In particular, the court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Moreover, *Strickland* does not guarantee perfect representation, only a "reasonably competent attorney." 466 U. S. at 687 (*quoting McMann v. Richardson*, 397 U.S. 759, 770 (1970)). Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Id.* at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. *Id.*

Hill v. Lockhart extended the two-part *Strickland* test "to challenge guilty pleas based on ineffective assistance of counsel." 474 U.S. 52, 58 (1985); *accord Stalk v. State*, 383 S.C. 559, 561–62, 681 S.E.2d 592, 594 (2009). The analysis of counsel's performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; *accord Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

The second, or "prejudice," however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Hill*, 474 U.S. at 58–59. In other words, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pled guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999). Requiring a "prejudice" showing from defendants who seek to challenge the validity of their guilty pleas on

the ground of ineffective assistance of counsel “will serve the fundamental interest in the finality of guilty pleas.” *Hill*, 474 U.S. at 58.

Because “[a] guilty plea is a solemn, judicial admission of the truth of the charges against an individual,” an Applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” *Id.*

B. Failure to Investigate, Review Discovery and Prepare for Trial

“There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). When there is evidence counsel met with Applicant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective. *Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

Thus, “a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. “[T]he court should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” *Id.*

A criminal defense attorney “has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary.” *Bagwell v. State*, 410 S.C. 259, 265,

763 S.E.2d 630, 633–34 (Ct. App. 2014) (citing *Strickland*, 466 U.S. at 691). “[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). Essentially, counsel must exercise due diligence in its effort to “discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008).

Moreover, counsel’s decision not to undertake a particular investigation should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. *Bagwell*, 410 S.C. at 265, 763 S.E.2d at 633 (citing *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006)). “Counsel’s conversations with the defendant may be critical to a proper assessment of counsel’s investigation decisions.” *Bagwell*, 410 S.C. at 265, 763 S.E.2d at 634. (internal citations omitted).

In order to prevail under *Strickland* based on counsel’s failure to adequately prepare or investigate, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris*, 377 S.C. at 75-76, 659 S.E.2d at 145-46 (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). An applicant must further present evidence to show how these discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an

applicant is not sufficient to support a grant of relief. *Harris*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant first alleges counsel failed to spend adequate time preparing for trial and reviewing discovery with Applicant. Applicant specifically alleges counsel had insufficient time to prepare for trial due to the brevity of the pre-trial consultation with Applicant. *See Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012) (explaining that the brevity of time spent in consultation, without more, is not indicative of inadequate trial preparation).

Mr. Mauldin informed the court he had spoken with Applicant for well over twelve hours in the two weeks leading up to the trial. (Plea Tr. 599). During the two years Applicant was in jail, Mr. Mauldin told the court he probably visited Applicant ten times to discuss the case. (Plea Tr. 599). Mr. Mauldin also consulted with Applicant during bond hearings, and throughout the four-day trial. (Plea Tr. 599). During the plea colloquy, Applicant indicated to the plea court he had reviewed the evidence and talked with his Mr. Mauldin for as often and as long as he felt necessary for Mr. Mauldin to properly represent him. (Plea Tr. 561, 599).

Applicant further asserts plea counsel “failed to utilize an investigator, and proper expert witness, and call/subpoena witnesses about conflicting evidence to present at trial, or investigate the circumstances at defendants request.” However, as discussed above Applicant has completely failed to set forth facts and circumstances on which these claims are based, including what plea counsel failed to investigate, and what evidence any additional investigation would have uncovered. Applicant’s claim that counsel failed to interview or call witnesses is also without merit—Applicant has failed to identify these witnesses nor has he provided any evidence that testimony from these witnesses would have resulted in a different outcome.

The only somewhat specific claim in Applicant's application is that "counsel failed to file pretrial motions and argue for an immunity in relation to the case in evidence." However, the record reflects the court did in fact conduct hearings on pretrial motions filed by Mr. Mauldin. Specifically, Mr. Mauldin challenged the admissibility of the State's evidence that was harmful to Applicant's case through a motion in limine and a *Jackson v. Denno* hearing. (Tr. 72-125; 128-153). As to the immunity claim, Applicant has failed to provide any specific facts to support this allegation.

C. Conclusion and Action Requested

The State contends Applicant cannot meet his burden; however, the allegations of ineffective assistance of counsel probably raise questions of fact the record does not conclusively refute. Accordingly, the State requests an evidentiary hearing to fully resolve this issue and will file an amended return to address the merits of his underlying claims. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court"). However, as discussed above, it is impossible for the State to adequately address Applicant's allegation of ineffective assistance of counsel because Applicant has failed to provide any specific facts to support his allegations. The State requests Applicant, through counsel, provide specific claims and facts to support this vague allegation.

V. RESPONSE TO ALLEGATION OF PROSECUTORIAL MISCONDUCT

Applicant alleges the State knowingly introduced false evidence, tampered with witnesses, and used perjured testimony in prosecuting the case against him. However, Applicant has made only vague assertions regarding these claims and has provided little detail to support his claims.

Applicant does not identify the evidence he believes to be false, why he believes it is false, or on what basis he believes the prosecution knew or should have known it to be false. Applicant further fails to identify the witnesses he believes were tampered with or which testimony he believes was perjured.

A. Conclusion and Action Requested

Applicant has failed to present any evidence tending to establish bad faith or intent on the part of the prosecution. *See Alabama v. Smith*, 490 U.S. 794 (1989) (finding that, with regard to prosecutorial misconduct, the burden is on the defendant to prove actual vindictiveness). However, it is impossible for the State to adequately respond to Applicant's claim of prosecutorial misconduct because Applicant has completely failed to provide any specific allegations or facts to support such this claim. The State moves for Applicant, through his appointed counsel, to amend this allegation to include sufficient, specific facts to support his claim of ineffective assistance of counsel. *See* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to "specifically set forth the grounds upon which the application is based"); *see also Welch*, 246 S.C. at 260, 143 S.E.2d at 456 (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRCPP (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRCPP ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.").

VI. RESPONSE TO ALLEGATION OF DENIAL OF DUE PROCESS

Applicant's alleges his due process rights were violated under certain amendments to the United States Constitution. In a PCR action, "when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must

frame the issue as one of ineffective assistance of counsel.” *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (citing *Drayton v. Evatt*, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). Issues which could have been raised at trial or on direct appeal are not cognizable in an action for post-conviction relief. S.C. Code Ann. § 17-27-20(b); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974). Therefore, an applicant who contends his due process rights were violated must show he was deprived of those rights due representation that fell below an objective standard of reasonableness, and 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.

A. Conclusion and Action Requested

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant offers nothing in support of his due process allegation, and does not advance it under the umbrella of ineffective assistance of counsel. As such, the State submits the vague allegation that Applicant’s due process rights were violated fails to state a cognizable claim under to S.C. Code Ann. § 17-27-70, and the claim should be summarily dismissed.

VII. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

The State respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that the State may adequately prepare for an evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing*. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC. *See also* Rules 15(a)-(b), SCRPC; *Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and

not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing.

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC. *See also* Rules 15(a)-(b), SCRPC. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRPC.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VIII. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

[Conclusion and signature on following page]

IX. CONCLUSION

WHEREFORE, having made its return, the State respectfully requests this Court grant its partial motion to dismiss as set forth in section VI and grant its motion for a more definite statement as set forth in sections IV and V. The State requests Applicant, through his counsel, amend the application to provide the required specificity for his allegation of ineffective assistance of counsel. Until Applicant files an amended application, Applicant has not shown sufficient cause to warrant an evidentiary hearing on this application and respectfully requests this Court to only schedule a hearing after an amended application is so filed.

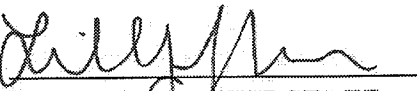
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: 
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

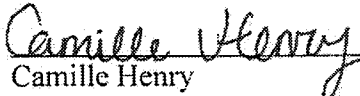
August 22, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2019-CP-32-00710
	)	
MARION WADE FRYE, #375354	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return, and Partial Motion to Dismiss, and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esquire
 McMahan & Taylor, Attorneys, LLC
 Post Office Box 5501
 West Columbia, South Carolina 29169

DATED this 22nd day of August, 2019.


 Camille Henry
 Legal Assistant

McMAHAN & TAYLOR
ATTORNEYS^{LLC}

August 24, 2021

Lisa M. Comer
Lexington County Clerk of Court
ATTN: PCRs
205 East Main Street, Suite 128
Lexington, SC 29072

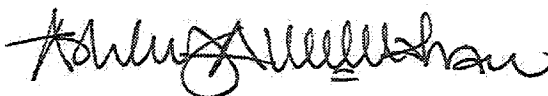
Re: Marion Wade Frye, #375354 vs. State of South Carolina
2019-CP-32-00710

Dear Ms. Comer:

Please find enclosed an Amended PCR Application for filing. Please clock this in and return a clocked copy to me. I have enclosed a return envelope.

Should you have any questions, I can be reached at the number listed below.

Best regards,



ASHLEY A. McMAHAN
ATTORNEY AT LAW

AAM
Enclosures

cc: Marion Wade Frye, #375354
AAG Lilliam Meadows

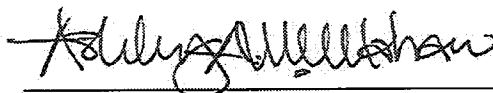
STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 11 th JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	Case No.: 2019-CP-32-00710
	)	
Marion Wade Frye, #375354	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on or about February 15, 2019, to add the following:

1. Ineffective Assistance of Counsel as to Assistant Public Defender David M. Mauldin:
 - a. Applicant's attorney did not obtain all discovery available to him. Had Mr. Mauldin given the Applicant all of the Discovery available to review, Applicant would not have pleaded guilty.
 - b. Attorney failed to call expert witnesses and other witnesses to counter conflicting evidence at trial. Attorney did not interview witnesses or make an independent investigation of the facts of the case. Applicant contends that had the Attorney conducted an adequate investigation of the facts and circumstances, the Attorney would have discovered the witness' false testimony and would have been able to defend the Applicant during the witness interviews. Moreover, this investigation would uncover the availability of Applicant's immunity claim.
 - c. Violation of the Professional Rules of Conduct by encouraging false testimony, false evidence, and prosecutorial misconduct. Applicant requested new counsel during the trial, which was denied.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

McMAHAN & TAYLOR ATTORNEYS, LLC

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803-219-1110

ashley@mcmahantaylor.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

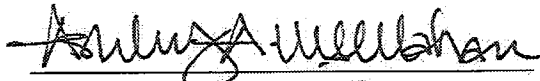
August 24, 2021

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Lillian Meadows
Assistant Attorney General
lillymeadows@scag.gov

This 24th Day of August, 2021.



ASHLEY A. MCMAHAN, ESQUIRE

Attorney for Applicant

State of South Carolina)	In the Court of Common Pleas
)	Eleventh Judicial Circuit
County of Lexington)	2019-CP-32-00710

Marion Wade Frye,	)	
	)	
Applicant,	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

September 1, 2021
 HEARING CONDUCTED REMOTELY
 VIA WEBEX VIDEOCONFERENCE

B E F O R E:

The Honorable Donald B. Hocker, Judge

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

Ashley A. McMahan, Esquire
 Attorney for Applicant

Lillian L. Meadows, Assistant Attorney General
 Attorney for Respondent

Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
 Circuit Court Reporter
 Certified Verbatim Reporter - Master
 Certificate of Merit
 Realtime Verbatim Reporter - Master

I N D E X

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David Mauldin, Esq.,

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Cross-Examination by Ms. McMahan 63

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
A-1	Diagram		84

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 2:36 p.m.)

THE COURT: Okay. We are on the record this afternoon in the case of *Marion Wade Frye, Inmate No. 375354, v. the State of South Carolina*. Case number is 2019-CP-32-00710. The applicant petitioner is represented by Ashley McMahan. And the State of South Carolina is represented by Lilly Meadows.

And, Ms. McMahan, I'll -- I'll let you proceed unless, Ms. Meadows, you need something you need to put on the record at the beginning.

MS. MEADOWS: No, sir. I don't think so.

THE COURT: Okay. All right.

Ms. McMahan, I'll turn it over to you, ma'am.

MS. MCMAHAN: Mr. Frye, can you hear me?

THE APPLICANT: (No audible response.)

MS. MCMAHAN: I think he needs to be unmuted, Your Honor.

THE COURT: I got it.

MS. MCMAHAN: Okay. Can you hear me now?

THE APPLICANT: Yes, ma'am.

MS. MCMAHAN: Okay. And you -- did you file this PCR application?

THE APPLICANT: Yes, ma'am.

MS. MCMAHAN: And do you understand that if you are

1 successful, you start over from the beginning as if you
2 were just arrested and that the Court cannot provide you
3 with a time cut to your sentence?

4 THE APPLICANT: Yes, ma'am.

5 MS. MCMAHAN: And you still wish to go forward today?

6 THE APPLICANT: Yes, ma'am.

7 MS. MCMAHAN: Okay.

8 THE COURT: Okay. Let me -- let me go and swear him
9 in and let him confirm that.

10 Mr. Frye, would you raise your right hand, please,
11 sir.

12 THE APPLICANT: (Complied.)

13 MARION FRYE, having been first duly sworn,
14 testified as follows:

15 THE COURT: Okay. You can put your hands down.
16 Concerning your responses to Ms. McMahan's questions, were
17 those truthful responses that you just gave?

18 THE APPLICANT: Yes, sir.

19 THE COURT: Okay. All right. Ms. McMahan?

20 DIRECT EXAMINATION

21 BY MS. MCMAHAN:

22 Q All right, Mr. ---

23 THE COURT: Proceed.

24 Q All right, Mr. Frye. Let's -- let's just begin with
25 what you have initially as your allegations in your first

DIRECT EXAMINATION BY MS. MCMAHAN - MARION FRYE

6

1 PCR application, and then we'll just go from there and kind
2 of go down the line, the issues that you and I have talked
3 about.

4 A Yes, ma'am.

5 Q Okay. So first is, obviously, ineffective assistance
6 of counsel of Mr. Mauldin, who is present right now
7 virtually, listening to all this. And in the application,
8 you talk about how he wasn't prepared and didn't file any
9 pretrial motions, obtain discovery, and utilize a
10 investigator. So tell the Court about all of that today.

11 A All right. Well, I -- from the beginning I felt like
12 he's -- I guess, because he's a public defender, that his
13 caseload was -- he was overloaded to give my case the --
14 the -- I guess the time that it needed. Certain things
15 that I would request, like I -- I would ask for -- like, I
16 -- before I even bonded out, I went up there to give a
17 blood sample willingly. I asked Solicitor Suzanne Mayes:
18 "Y'all do GSR testing?"

19 Because I was -- they -- the way that they was
20 explaining on Dr. Ross, that the bullet was going up. And
21 I'm saying it's going -- or I'm saying it's going up.
22 She's saying it's going down. And the -- the GSR can prove
23 that where the -- I guess, the proximity to where the fire
24 -- the weapon was fired, that it was under my arm and not
25 facing straight out.

1 Like, she -- and I got a piece of the motion -- piece
2 in the Rule 5 discovery motion that I haven't seen before
3 with the picture that states what I'm saying. If I
4 would've had this at trial, I would present this at trial.

5 At trial when I asked David what was his defense, what
6 was his presentation, he didn't have no presentation. He
7 had three witnesses that I brought to put on the stand. I
8 was, like: "Well, what about these other witnesses" ---

9 Q Okay. Well, let's -- let's just hang on for one
10 second.

11 A Yes, ma'am.

12 Q So you're talking about the GSR. So one of the issues
13 you have is that he either didn't get GSR testing or didn't
14 present GSR testing ---

15 A Because ---

16 Q --- is that ---

17 A --- Suzanne -- yes, ma'am. Because Suzanne Mayes
18 wasn't going to provide that.

19 Q Okay. So Ms. Mayes -- you mean the test or the
20 testing results?

21 A Well, I -- I -- when they had -- well, they asked me
22 to go up to the courthouse and give a DNA sample, which I
23 did. And at the same time, I asked them: "Will y'all
24 please sample my shirt?" And that's -- I didn't even know
25 that the one shirt was missing until I just got this

1 discovery the other day in the mail.

2 Q Okay. So what -- we'll get to that. But let's kind
3 of go in order a little bit.

4 A Yes, ma'am.

5 Q So -- all right. So the first thing you were talking
6 about, you didn't think he was prepared. And part of the
7 reason why you didn't think he was prepared was because of
8 the GSR testing, correct?

9 A One of the reasons. Yes, ma'am.

10 Q Okay. So what's this -- what is another reason that
11 he wasn't prepared?

12 A Did not give me my motion in full. It -- I -- I
13 received it in bits and pieces in the county. But when I
14 got out of the county -- it was, like, that Friday; I
15 believe it was the 5th or -- that -- we went to trial
16 Monday. That ---

17 Q Uh-huh.

18 A --- Friday the solicitor's office was printing in
19 pieces of the Rule 5 motion of discovery. And I had never
20 seen and did not get to go over it. I didn't even look at
21 it. Like I said, I didn't -- there's pieces that you sent
22 me that I'm first -- this is the first I've seen this
23 stuff.

24 Q Okay. And so one of the those was what you had
25 alluded to earlier, which was -- shows the angle or the

1 placement of the gun of how far away it was?

2 A Yes, ma'am. So I didn't -- you can see this right
3 here. And it -- (audio loss) -- it reads "from front" -- I
4 meant, "from back to front." All right. From back, if you
5 can see closer, there's a line. If it's to a back, it's at
6 the bottom. And the front with the -- the lines that top
7 -- I'm saying it's going upward.

8 And I can show you, when the first motion of
9 discovery, when I got it in the county, where it states
10 that it -- it goes back to front at a downward angle.
11 Well, that -- that just proves what I'm saying altogether.
12 And you got a expert witness telling that this is what the
13 facts state. And I'm telling you: No. I'm, like, it's up
14 -- while it was three guys who were beating me, that we're
15 fighting over this gun. The bullet had ---

16 Q Okay.

17 A --- to go up -- the bullet had to go up, not down.

18 Q Okay. Hold on a second. Let me just clarify for the
19 Court where you just showed everybody, okay?

20 A Yes, ma'am.

21 Q So you showed what's page No. 24 in additional
22 discovery from October 31st, 2017. And it's a picture of
23 the two bodies.

24 MS. MCMAHAN: And, Your Honor, I'm happy to provide
25 this to you. I believe Ms. Meadows and I both have this.

DIRECT EXAMINATION BY MS. MCMAHAN - MARION FRYE 10

1 A Read ---

2 MS. MCMAHAN: And I ---

3 A --- gunshot -- read gunshot wound ---

4 THE COURT: Wait -- wait a minute, Mr. Frye. Hold on.
5 Hold on.

6 THE APPLICANT: Yes, sir. I'm sorry.

7 THE COURT: That's all right.

8 Yeah. If you could provide it and send it to the
9 court reporter so we can have it marked as an exhibit.

10 MS. MCMAHAN: Yes, Your Honor. If you're going to get
11 -- if I -- if it's okay with you, I'll get to all that once
12 we get to the end of the hearing, because I have to pull
13 these out of some bigger PDFs ---

14 THE COURT: Okay.

15 MS. MCMAHAN: --- to save them into smaller ones.

16 THE COURT: Sure. Not a problem.

17 MS. MCMAHAN: So the first exhibit, Your Honor, we'd
18 ask to -- for the Court to -- to move into evidence is the
19 one I was just referencing was the two pictures -- the
20 picture of the two bodies that I just showed you.

21 THE COURT: Okay.

22 Q Okay. All right, Mr. Frye. Now, so we talked about
23 that was the first time you saw that piece of paper with
24 the two bodies, reflecting the distance of the guns.

25 A The -- the -- what -- what Ms. Ross or whoever signed

1 and that was sent to me. Yes, ma'am. That's the first
2 time I seen it.

3 Q Okay. So let's -- so what else did Mr. Mauldin fail
4 to do or was he not prepared on?

5 A Well, you -- he only came a few times to come see me
6 in the county upon my request. I would call every other
7 day. I -- I mainly lost trust in him when I asked for a
8 motion for bond. He told me I couldn't go back up for bond
9 again; that I read the statute. And the statute states, I
10 guess -- I think -- I believe it was either every 90 days
11 or every 180, you could set motions set for bond.

12 When he lied to me and told me that, I kind of lost
13 faith into him. But I -- my -- the -- the first
14 investigator, Ms. Donna, she -- I would -- I -- I would,
15 like -- I had a cell phone with videos of these guys
16 beating another guy at gunpoint, holding him at kidnap,
17 okay? I got this evidence for David Mauldin.

18 Q Uh-huh.

19 A But -- but my private investigator, she told me that
20 Mr. Mauldin said that I couldn't -- I could not talk to her
21 unless I talk to him first. I could never even talk to
22 David. I could only leave him voice messages, and he would
23 come barely see me in the county, maybe three or four times
24 in two years I was there.

25 Q Okay. So let's just kind of clarify that a little

DIRECT EXAMINATION BY MS. MCMAHAN - MARION FRYE 12

1 bit. So Donna was the investigator that would come and see
2 you, correct?

3 A She came and seen me, like, two/three times. And when
4 I requested, she told me she couldn't come see me until
5 David approved it.

6 Q Okay. And -- but you provided Donna with some cell
7 phone video of the other people involved in your case
8 getting in a fight with each other.

9 A Yeah.

10 Q Okay.

11 A It's with the best -- the best that -- that I could do
12 to help for my case and to -- to show the type of people
13 that I'm -- that we're -- I'm trying to explain. Yes,
14 ma'am.

15 Q Okay. Did you -- were you ready to go to trial when
16 you were going to trial? Did you ---

17 A No, ma'am.

18 Q --- feel like personally you were ready?

19 A No, ma'am. I thought he would at least show me a
20 presentation of what we was going -- what he was going to
21 do. I was wondering where the witnesses that -- why he
22 didn't subpoena. You got one witness's -- one witness name
23 Ryan Anthony -- Anthony Ryan Boulware, who's in a Shock
24 program in SCDC, and I'm -- I had requested before we even
25 went to trial to make sure he's a witness or -- or -- or

1 subpoenaed to court. I ---

2 Q Okay. Well ---

3 A --- had witnesses.

4 Q Let me back up one second. So did you try to obtain a
5 different attorney prior to your trial?

6 A I -- I called John Delgado and left messages on his
7 voice mail before I even went to trial and said I did not
8 feel comfortable ---

9 Q With his ---

10 A --- going to trial with David Mauldin.

11 Q Okay. And so -- and another reason why you didn't
12 feel comfortable was because you asked him to subpoena some
13 witnesses, specifically Ryan, the guy that was involved ---

14 (Indistinguishable cross-talk)

15 A There's more than that. That -- that's just an
16 example of many.

17 Q Okay.

18 A That's just one person that gave a -- a statement -- a
19 verbal -- oh, not a verbal -- a written statement. I -- I
20 wanted to subpoena some of these witnesses.

21 (Indistinguishable cross-talk)

22 A Go ahead. I'm sorry.

23 Q Well, I'm just trying -- or I'm trying to do this is
24 in a -- in a succinct sort of time line. So we're going to
25 cover everything.

DIRECT EXAMINATION BY MS. MCMAHAN - MARION FRYE

14

1 A Yes, ma'am.

2 Q But if I'm going back and ask you questions, that's
3 why. So -- okay. And I know I have some other topics to
4 hit regarding Mr. Mauldin and his lack of preparedness. So
5 we'll go back to that in a second.

6 But you have also about -- you have issues with him
7 not filing for an immunity because to -- you felt like the
8 castle doctrine applied.

9 A Yes -- yes, ma'am. I thought before, with a stand-
10 your-ground hearing, that you would have a hearing before
11 you got to endure a lengthy trial. That I requested for --
12 I -- I requested for a speedy trial. I requested for the
13 hearing.

14 But none of this was -- his excuse was that this was
15 his strategy. And I -- I feel like this is my life. If I
16 -- I -- I tried it like the -- the -- they tried to say
17 that the \$500 ticket was \$500. I'm trying to tell them the
18 -- the ticket that I -- what I paid for it, then girl that
19 sold it to me and cashed it in, all of that.

20 But they didn't -- they failed to go get the video to
21 prove exactly what I'm saying. I have ---

22 (Indistinguishable cross-talk)

23 Q So -- so that's another issue, is that he did not get
24 the video from the place where the lottery ticket was ---

25 (Indistinguishable cross-talk)

1 A Purchased and -- and -- and cashed in. Yes, ma'am. I
2 mean, I tried to be as helpful as I could.

3 Q Okay. So -- and you requested a stand-your-ground
4 hearing, but you didn't get one.

5 A Yes, ma'am.

6 Q Okay. And you asked for a speedy-trial hearing. Did
7 you get that one?

8 A If -- after two years went by, I bonded out and waited
9 on trial. I mean, I guess time will reveal what really
10 happened. I don't -- I -- I don't have -- can't answer
11 that.

12 (Indistinguishable cross-talk)

13 A I don't know the specific time of a speedy trial. I
14 know I requested for one.

15 Q Okay. But you know -- you don't recall going to the
16 courthouse and standing there for a speedy-trial motion, do
17 you?

18 A No, ma'am.

19 Q Okay. So you were in the detention center for two
20 years. How long were you out on bond before your trial?

21 A I -- I actually -- they set bond and -- from February
22 -- or was it February 2007 -- I think '18 ---

23 Q Uh-huh.

24 A --- '17. I'm sorry. He set the bond for two years or
25 24 months at October 31st. I posted bond October 31st. I

1 had a child support bench warrant. I paid my child
2 support. And I was out on ankle monitor November the 1st,
3 2017.

4 Q So for about a month you were out?

5 A For 98 days.

6 Q Okay.

7 A I was out until I went to trial.

8 Q Okay. So then, you also have -- we talked about the
9 discovery that you never got in hold or review with the
10 client. And we'll come -- go back and touch base on that
11 one in a minute.

12 You talked about the investigator failed to utilize
13 the investigator and expert witnesses. Tell me what you
14 guys talked about in regards to expert witnesses, you and
15 Mr. Mauldin.

16 A The blood-spatter analyst, because I know I had blood
17 -- my blood that was on the front of my pants, they said I
18 didn't -- I know -- I did not know that he had -- his blood
19 was on the back of my pants. But if you could tell that I
20 was halfway down like this right here with the three guys
21 beating on -- on my back, that we was fighting over this
22 gun, I did not -- I mean, I didn't know there was blood on
23 my back.

24 But if it was a blood-spatter analyst can tell that --
25 the way the blood or -- they tried to say he turned around

1 and run out the back door. Well, the man -- the -- it's
2 the -- this -- the lady said that he was paralyzed from
3 when the bullet hit him. So it -- to me, you fell exactly
4 where you landed.

5 Q Uh-huh.

6 A If the guy would've never shot, I'll -- the -- if we
7 -- if -- it took everybody what happened for what happened.
8 I -- I didn't mean for no one to get shot. I was not even
9 trying to shoot nobody personally at all.

10 (Indistinguishable cross-talk)

11 Q --- talked about you felt like it was a lack of intent
12 to charge you with what you were initially charged with?

13 A Well, I -- that's what I explained to him when I read
14 the definition. Definition -- to -- to -- to my
15 understanding, definition of murder is malice aforethought
16 before there's a plan to go do something. All right. And
17 then, I understand voluntary manslaughter is like a heat-of
18 passion: if me and you was to get into a fight, I hit you
19 and I got mad and couldn't control myself and I -- I shot
20 this person.

21 Q Uh-huh.

22 A But what -- what -- what happened with me is what -- I
23 grabbed the weapon off of the counter in front of Ryan
24 Boulware. Before -- before addressing -- I -- I -- I know
25 Ryan, okay? I know his reputation. I know his character.

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1 He's not -- we're not the -- these are not the best people.
2 Okay? I'm not a angel. But I'm -- I'm a good person at
3 heart.

4 I -- I detained the weapon for my own -- for my own
5 security measure before me and him got into debating over
6 the money. When I just -- when the girl -- and it's in my
7 trial transcript, the girl Katie Vinson had told me that
8 morning that her boyfriend went to the store and came back
9 and that Ryan looked like a ghost and left.

10 I got back that afternoon. I done been back and forth
11 at the house throughout the day. When I got back and
12 everybody was present, I -- all right -- Jesus -- he --
13 like Jesus says, Ask -- seek not. I'm -- I'm -- I'm
14 looking by that -- at no harm -- I didn't wish no harm for
15 nobody.

16 I asked Ryan about the money situation. After I
17 detained this weapon at my waist, that's when Josh -- Josh
18 jumped up off the couch and came with me into the kitchen.
19 And he said: "You think I -- he think -- you think I stole
20 your effing money? Do something about it, then."

21 I said: "Hold -- whoa, whoa. That's not what your
22 girl told me when I woke up this morning."

23 That's when he hit me. When he hit me, I grabbed the
24 weapon. I used the weapon for my protection and used it as
25 a escape tool to try to get out the door because I was

1 surrounded by three guys. Ray went to jump on top of me,
2 and I turned to try to keep -- keep them from getting the
3 gun from me. All three of them went to jumping on me. We
4 was fighting over the gun with a ---

5 MS. MEADOWS: Judge, I'd object. I don't know what
6 allegation this pertains to.

7 MS. MCMAHAN: Your Honor, I believe this pertains to
8 what he discussed with Mr. Mauldin about why he did not
9 have malice aforethought and it should've been a different
10 charge.

11 THE COURT: All right. I'll allow it. But just try
12 to -- just try to, you know, center your testimony related
13 to the questions that your lawyer is asking you as to the
14 various grounds that you have raised in your application,
15 okay?

16 THE WITNESS: Yes, sir.

17 (Indistinguishable cross-talk)

18 Q So -- okay. Mr. Frye, let's just kind of pause there
19 for a minute. So you're telling Mr. Mauldin all of this.
20 And -- and so you -- you had a conversation with him about
21 why you felt like this was not a situation with malice
22 aforethought; is that correct?

23 A Yes, ma'am.

24 Q Okay. In the -- the mobile home, were you living
25 there temporarily at the time this issue -- this situation

1 happened?

2 A At the time that I moved my stuff in the night before,
3 I offered to pay Ryan to -- I offered Josh to pay him to
4 use his flatbed truck. I offered Ryan to help me move my
5 stuff into that middle room because I -- me and Katie had
6 got into a argument.

7 I was leaving her. I want -- I wanted to go home. My
8 grandma, my aunt, and my cousin with her two kids was
9 living in my mobile home. So I was kind of left in a bind
10 where I couldn't -- my trailer was full. I couldn't go
11 nowhere.

12 I -- Ray owed me some money. And I asked Ray:
13 "Instead of me -- instead of you paying me that money, let
14 me rent that middle room till I figure out what I can do."
15 Q Okay. So you had -- you were on your way or had
16 already moved in ---

17 (Indistinguishable cross-talk)

18 A --- stuff into the house. Yes, ma'am.

19 Q Okay. So at that point you were temporarily residing
20 there, right?

21 A Yes, ma'am.

22 Q Okay.

23 A I -- my -- my -- my glass-top stove is in the yard
24 with my beer on top of it. My -- my bed was under the
25 trailer, because I couldn't fit it in that middle room.

1 Q Uh-huh.

2 A All that stuff was there.

3 Q Okay. So did you ask the judge, like, during or
4 before your trial to remove Mr. Mauldin as your attorney?
5 Did you ever ask the judge that?

6 A The -- I believe it is in the middle of trial.
7 Because -- all right. When I went to trial, I -- I never
8 been through this before. So I didn't know what to expect.
9 I didn't.

10 It ain't till I went through what I've -- what was
11 going through and I was, like, Man, this ain't -- he didn't
12 do no work or -- as far as -- he -- he could've been better
13 prepared.

14 Q Okay.

15 A I -- if I could've done it myself, I could've showed a
16 better presentation than what he did.

17 Q Okay. So -- so you did ask, during the middle of the
18 trial ---

19 A I -- I asked in the middle of the trial. Yes, ma'am.
20 I -- I don't feel like -- it -- when I -- when I said at
21 beginning that I did not feel like him being a public
22 defender, he was overloaded with cases, and giving my case
23 the attention it deserved; that this is my life.

24 Q Yes. Okay. So also, you talk about Mr. Mauldin not
25 suppressing statements that were asked by the police before

1 your *Miranda* rights?

2 A All right. Yes, ma'am. All right. When I -- when I
3 did go in there, I'm trying to tell these police what's
4 going on, the same as I'm telling y'all. They're calling
5 me a liar and calling me this. But when I -- I -- I know,
6 when I walked in there, they didn't even have time to put
7 the *Miranda* sheet on the table before I tried to tell them
8 what's going on.

9 It wasn't until they started spelling it out that he
10 kept calling me a liar; that I told him: "Screw it.
11 You're a detective. Do your job. Because you ain't going
12 to get -- I'm trying to tell you what's going on."

13 But they wouldn't want -- they didn't want to hear
14 what I had to say. It's like, as I read my warrants or the
15 paperwork that they prescribed, everything in it says
16 murder, murder, murder, murder. It don't say homicide. It
17 don't say -- you know what I'm saying? It's like y'all
18 convict me before I even get to ---

19 (Indistinguishable cross-talk)

20 Q So they had already written down murder before they
21 even heard whether or not it should be manslaughter?

22 (Indistinguishable cross-talk)

23 A Yes.

24 (Indistinguishable cross-talk)

25 Q And you tried to bring that up with Mr. Mauldin,

1 correct?

2 A Yes, ma'am. Yes -- yes ---

3 Q Can ---

4 A --- ma'am.

5 Q --- can you -- wait. Hold on one second.

6 (Off the record briefly.)

7 THE COURT: That's all right. You may proceed.

8 Q Okay. So also, at some point you talk about not
9 sequestering the witnesses. Did you ask for the witnesses
10 to be sequestered and they weren't?

11 A At the beginning of trial, I asked to sequester the
12 witnesses because I couldn't pull out certain details if
13 they are saying one thing -- I -- I can show you in the
14 statements where the lie -- I don't understand why they're
15 lying. But the reason I -- I can't pull out certain
16 details with one person on the stand listening to the other
17 person if they're willing to get up on that stand and lie.
18 And if they was not on -- in the jury listening to -- or in
19 the audience listening to the other person testimony, then
20 I can ask certain questions that they would not know or
21 they would be caught in their lie.

22 Q So you felt like had the witnesses been sequestered,
23 you could've -- Mr. Mauldin and yourself could've caught
24 them in lies better than you did at the trial?

25 A Yes, ma'am.

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1 Q So let's talk about the trial for a second. What
2 ultimately was the reason you decided to stop the trial and
3 plead guilty to what you pled guilty to?

4 A I had no way to -- all right. Well, even after
5 everything's said and done, a man jumping on me; me
6 fighting over the weapon, that's fine. The point I'm
7 telling you I'm halfway down with these guys beating me,
8 fighting me over this gun, that I'm telling you that bullet
9 had to go up.

10 Q Uh-huh.

11 A Okay. And she's sitting here saying that it going at
12 a downward angle going down, you could -- I can't -- how
13 can I -- how -- I can't -- that's -- that's you saying that
14 these are the facts. So they're going to believe the facts
15 versus anything. I -- I -- it -- there was no picture or
16 nothing in this to disprove what I -- or to prove what I'm
17 saying, period. So you ---

18 Q Okay.

19 A --- you're going with the fact of you're saying I did
20 this. I didn't.

21 Q Okay. So and that was part of the reason why you
22 decided, when you were offered manslaughter ---

23 (Indistinguishable cross-talk)

24 A When I asked David, "What is your -- what is your
25 presentation? What is your defense?" he said: "Okay.

1 Next we're going up with defense. It ain't going take
2 long."

3 "What is your defense?"

4 "Well, I'm going to call you, her, and her."

5 And I -- my sister and Katelyn and me. I -- I -- I
6 brought them with me. He didn't subpoena them. So he
7 didn't subpoena nobody to come up here to court to testify,
8 even the people that wrote statements, that I requested for
9 him to -- to subpoena to court.

10 Q Okay. Tell me about threatening you with a life
11 sentence if you didn't take the plea.

12 A If I didn't -- I -- he was talking about Judge McMahon
13 and how I sat in the county for so long, how he was -- for
14 two years, I've watched this man give out life sentence and
15 30 -- 30 plus life. Or, I mean, if you don't take this
16 plea, you're going -- you're going to might -- you might
17 end up with life and I'd never get out.

18 Q So that was what Mr. Mauldin told you about ---

19 A Yes, ma'am.

20 Q And so that's why you feel like you were ---

21 (Indistinguishable cross-talk)

22 Q --- the plea?

23 A When -- when he explained it to me of a *Alford* plea, I
24 felt like it was a benefit from the state at the time given
25 -- I maintain my innocence. But at the time given, it was

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1 a benefit from the state, but I couldn't prove or disprove
2 what was -- what was being presented up to the jury. I
3 didn't have nothing to -- to show.

4 Q Okay. Okay. Also -- one second.

5 MS. MCMAHAN: Court's indulgence, please.

6 THE COURT: Sure. Take your time.

7 MS. MCMAHAN: I think we've covered all the -- okay.

8 Q Mr. Frye, so also, did Mr. Mauldin sit there and
9 explain to you what the murder -- what murder malice
10 aforethought was when you asked him about it?

11 A Oh, I -- I'm not going to say he didn't, but I -- I
12 understood it before he even explained it to me, that I
13 read the definition in the statute book.

14 Q Okay. So you -- you learned what it meant from
15 reading in the statutes, but not ---

16 (Indistinguishable cross-talk)

17 A Red, thick statute book. Yes, ma'am.

18 Q Okay. Did he explain to you what possible sentences
19 you were facing if you were convicted?

20 A The only sentence that I know was 30 to life.

21 Q Okay. And ---

22 A Day for day.

23 Q So there were some inconsistent statements you were
24 going on about in the witnesses. So one of them was -- was
25 there one about somebody saying they were with Josh all day

1 or Josh was home all day, but then Josh was at work or
2 something to that effect?

3 A Yes, ma'am. All right. It -- one of the state -- all
4 right. The bailiffs -- okay. I believe it's Katie Vinson.
5 Because I -- I ain't even been through this motion. It's
6 been a couple years.

7 Q Uh-huh.

8 A Katie Vinson saying that Josh -- or they saying he
9 just got home from work. Jeffrey Beamer, I believe, had
10 said that they would've been -- he's been hanging out with
11 Josh all day long. Okay.

12 I -- I want to -- I'll -- just looking at pieces of
13 that motion, when we pulled up, I did not see Ray. I seen
14 Ryan and them taking guns and putting it in the back of
15 Ryan's blue car. I asked where Ray was. I thought it was
16 suspicious. Why are y'all taking stuff out of the house
17 and putting it in -- in his car, if Ray's not home.

18 So I go down, two/three houses down to his parents'
19 house, thinking Ray was down there. By the time I came
20 back up there, Ray was outside on the back porch. All
21 right.

22 In their testimony or their statements, they saying I
23 was already inside arguing with Josh. I was not arguing
24 with Josh. I walked in with Ray. I walked up to Ryan.

25 I was debating over the money with Ryan when I seen

1 everybody present. It wasn't until I told Ryan about what
2 Katie Vinson told me about what Josh said. But I didn't
3 say -- I did not say that's what -- all right. When I
4 walked in and said to Ryan, I didn't say that's what Katie
5 said that Josh said.

6 I said, "Well, that's not what Josh said," because
7 assuming what Katie Vinson told me was the truth, that ---

8 Q Uh-huh.

9 A --- her boyfriend went to the store and came back. So
10 I assumed that that was what he said. Now, when I said
11 that, he -- that's when he came -- come up to me: "You --
12 you think I stole your effing money? Do something about
13 it, then."

14 I said, "Whoa, whoa, whoa, whoa."

15 Q Okay. Well, we've already -- you've already explained
16 those ---

17 A Yes, ma'am.

18 Q --- facts already.

19 A Yes, ma'am.

20 Q So when -- did you talk to Mr. Mauldin about the fact
21 that Josh had stated that he had been at the house and that
22 somebody else had said he was at work or vice versa? Had
23 you told Mr. Mauldin about that?

24 A I went over it the best I could. Like I said, and
25 giving him the evidence I could or anything I could to get

1 to David, I tried to do. But the time that I -- I could
2 only catch his voice mail and I couldn't never hardly get
3 an appointment with him when I -- it -- it -- all right.
4 Going through things and shifting through things, sometimes
5 you got to remember it. Like, I have to write stuff down,
6 because I won't remember till after it's said and done.
7 You done came to see me or this -- this -- meetings have
8 happened and gone. I'm, "Oh, I forgot to say this; I
9 forgot to say that."

10 Q I got you. So when you -- when you would try to leave
11 a voice message, you were calling him from the -- the
12 detention center or when you were out?

13 A I called him from the detention center and then had --
14 had people ---

15 Q Okay.

16 A --- contact him for me.

17 Q Okay. So -- and -- and you were using the phone
18 within the detention center that connects to the P.D.'s
19 office?

20 A Yes, ma'am.

21 Q Okay. So you said there were -- also, to -- there
22 were some issues because of the cell phone videos. And you
23 talked earlier about the investigator getting -- you giving
24 them the cell phone video. The ---

25 (Indistinguishable cross-talk)

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1 Q --- conversation with Mr. Mauldin about using those
2 cell phone videos?

3 A All right. I was going to use the cell phones videos
4 as such to show a common scheme or plan, just so show what
5 type of character these -- these -- the -- the -- the --
6 the people that I'm -- are in this situation with the wrote
7 statements and stuff, the type of people they are.

8 I'm not saying -- like I said, I'm not a angel. But I
9 -- I'm good at heart. I do -- I try to do the best. Even
10 -- even when I was doing wrong, I didn't -- I should've
11 been doing some of the wrong. I was trying to do right out
12 of wrong, which I understand now, after being in prison and
13 things, that you should not do wrong, period.

14 But I was doing wrong things I shouldn't have been
15 doing, but trying to do the right thing: taking care of
16 kids and family and -- and everybody ---

17 (Indistinguishable cross-talk)

18 MS. MEADOWS: I object again. I don't ---

19 THE COURT: Yeah.

20 (Indistinguishable cross-talk)

21 THE COURT: Yeah. Mr. Frye, whether or not you're a
22 good person or not is not going to factor in whatsoever
23 with my decision ---

24 THE APPLICANT: Yes, sir.

25 THE COURT: --- in the case, okay?

1 THE APPLICANT: Yes, sir. Yes, sir.

2 THE COURT: All right. You may proceed.

3 Q So let's clarify for a second. You had some cell
4 phone videos. You wanted Mr. Mauldin to try to use them,
5 if he could, to show, I guess, what, the character of these
6 guys that they were dealing with?

7 A Yes. Yes, ma'am.

8 Q Okay. Does ---

9 (Indistinguishable cross-talk)

10 A --- and the -- and the plans and scheme that they --
11 that this is what they do. Like -- audio loss) -- I -- me
12 and Ray went to school for over ten years; that I have
13 friends that we went to school with, he done the same thing
14 too.

15 Q Okay. So -- so you kind of knew their history and
16 background and you had explained this to Mr. Mauldin and
17 wanted to kind of prove it through these cell phone videos;
18 is that a ---

19 A Yes, ma'am.

20 Q --- good summary ---

21 A Yes.

22 Q --- of that?

23 A Yes.

24 Q Okay.

25 A Yes, ma'am.

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32

1 Q And then, what was the issue with the bullets and the
2 measurements?

3 A All right. If I'm -- I mean, I'm not proficient or
4 professional in a autopsy. But if I was -- this is my
5 life.

6 Q Uh-huh.

7 A If I wanted to make certain -- because we are human
8 beings and bound to make mistakes -- that I would video-
9 record and audio-record the -- the -- the -- the autopsy of
10 what she's saying. Because if she made a mistake that --
11 saying that -- or fit -- measurements because she -- take
12 note -- it -- it's -- I think the -- the 2nd, which is on a
13 Friday, and people -- I'm not saying she is, but sometimes
14 people rush. I've made mistakes in my life when I -- just
15 being rush and trying to make it out ---

16 Q Okay. So ---

17 A --- places.

18 Q --- what -- what mistake did she make in the autopsy?

19 A All right. Show you one more time.

20 Q Okay.

21 MS. MEADOWS: Judge, I'd object. Mr. Frye is not an
22 expert.

23 THE APPLICANT: No. I'm -- I'm showing what she
24 wrote.

25 THE COURT: Right. I -- I -- I think it'll go to the

1 weight of his testimony he's already testified to. Is that
2 the body pictures, or is that something else?

3 (Indistinguishable cross-talk)

4 THE APPLICANT: You got ---

5 (Indistinguishable cross-talk)

6 MS. MCMAHAN: --- autopsy report, Mr. Frye?

7 THE COURT: Okay. Autopsy report? Let -- let me hear
8 what he's going to say, and then -- then you can renew your
9 objection, Ms. Meadows, if you want to.

10 A Okay. Can -- can you not -- can you not see that or
11 ---

12 Q Could you -- it's very difficult on ---

13 (Indistinguishable cross-talk)

14 A --- read it?

15 Q Can you just tell me -- just point specifically and
16 read what it is you feel like she made a mistake on. Just
17 very short and concisely, tell us this.

18 A I'm -- I'm just going to read it to you. It's -- it
19 says (as read): "Gunshot wound. There is an entrance
20 gunshot wound in the back, 13 1/2 inches below the top of
21 the head and 5 inches to the right of midline."

22 Q Okay.

23 A (As read): "Measures 0.35 inches in diameter. No
24 soot, no tattooing, no stippling are seen. There is
25 abrasion around the edge of the wound. It continues back

1 to front, slightly downward and slightly to the right to
2 exit the right chest 14 1/2 inches below the top of the
3 head."

4 Q Okay. So is that -- that's -- and that's the issue,
5 was the measurements on -- that she just gave?

6 A If you look at the picture, on back-front you see the
7 dot below the -- the line or right there at the thing in
8 the very top of the right chest?

9 Q Uh-huh.

10 A She said it went at a downward angle. I'm telling you
11 that I was halfway down, fighting over this gun with these
12 people that this guy got shot.

13 Q So you felt it should be an upward angle?

14 A Yes, ma'am.

15 Q Okay. And did you talk to Mr. Mauldin about that?

16 A Yes, ma'am. Me and -- me, David Mauldin, and Brad
17 Kirkland, when Katelyn Turner -- well, Katelyn wasn't in
18 the room when me and Brad and David was talking about this.
19 He can testify that I was sitting here, telling him this
20 before I even seen this picture.

21 Q Okay. Okay. And -- but you had a conversation with
22 Mr. Mauldin about how that couldn't be possible; is that
23 correct?

24 A Yes, ma'am.

25 Q Okay. So I -- I think I've covered all the bullet

1 points that you and I have talked about over time -- or a
2 period of times. Is there anything that I may have missed
3 that you needed to explain to the Court today, just briefly
4 and succinctly?

5 A Just the evidence like my shirt. Like, I didn't get
6 to go -- I didn't see this until the other day that you
7 sent it to me. But I know that I'm missing money out -- I
8 know that I'm -- that shirt that I had on that, that white
9 sleeve -- long-sleeve shirt, I got pictures with -- it's in
10 the motion -- with me in it that y'all -- it's not even in
11 the evidence thing.

12 Q So you're talking about when you went into the
13 detention center, you were wearing two shirts: One was a
14 long-sleeved white shirt, and one was a polo shirt over it,
15 correct?

16 A Just like -- just like this. Yes, ma'am. I had a
17 white shirt and a polo shirt on top of that with some white
18 pants on.

19 Q But -- oh -- the long-sleeved white shirt is basically
20 missing; is that correct?

21 A Yes, ma'am.

22 Q Okay. And so did you have a conversation with Mr.
23 Mauldin about that as well?

24 A I had no knowledge of that -- I didn't have the
25 paperwork that states what -- the evidence that was taken.

1 I didn't know -- in fact, my money's missing. There was
2 four -- I had \$402 in my right pocket. I had 380 in my
3 wallet. They only -- the -- the -- the -- 380 is not
4 there. The -- the white shirt is not there. Like ---

5 (Indistinguishable cross-talk)

6 Q So there's just stuff missing that ---

7 (Indistinguishable cross-talk)

8 Q --- realize was missing until after you looked through
9 the discovery?

10 A And I did not discover this until you sent me -- that
11 I just got the other day -- which is -- I didn't receive
12 this till August 17th, 2021. So I got this the other day.
13 And I didn't get to go through his -- they -- yeah. I --
14 I'm just going through this. One part, I didn't even get
15 to go to. I'm just receiving this today from ---

16 Q And -- and ---

17 A --- SCDC.

18 Q --- that -- okay. And that was what -- that was at
19 least one other thing that you didn't see in the discovery,
20 right?

21 A Yes, ma'am.

22 Q Okay. Is there anything else that you want Judge
23 Hocker to know today about your case and how you felt Mr.
24 Mauldin did not do a good job?

25 A (No audible response.)

1 Q Now is the time to just talk about it.

2 A Yes, ma'am. I'm looking at things I wrote ---

3 Q Oh, there was something. You talked about the
4 prosecutor threatened some of the witnesses or ---

5 A Yeah. All right. This -- I -- this is what I don't
6 understand. And you -- it's parts of this motion of
7 discovery is guys taking up for me. This guy -- well, he's
8 my cousin's -- he's the father of my cousin's child; that
9 he proffered for the feds to get his time cut -- wasn't
10 present, stating something totally different that she can
11 allow this testimony. That testimony is not true.

12 I'm trying to show you that I got this ticket from a
13 \$500 ticket, cashed it out to the -- to the girl, the one
14 I'm trying to send to go get the testimony from; go get the
15 video that she counted me out five \$100 bills. But you
16 sitting here testifying: "Oh, drug money?"

17 I didn't owe nobody no money. I spent that time at --
18 I spent that kind of money every day.

19 Q Okay.

20 A Owed them money for helping me. It wasn't the point
21 of the money.

22 Q I got you. So what -- so how did that relate to Ms.
23 Mayes and prosecutorial misconduct?

24 A Because -- like, even, like, the videos, I tried to
25 give them to them to show them. But they didn't want to

1 accept it. It's like they -- like I said, they convicted
2 me before I even -- wrote murder down on the thing before
3 they even gave me a chance to explain myself.

4 Q So when ---

5 A Or even ---

6 Q --- you say -- when you say "them," you mean ---

7 A The -- the -- the ---

8 Q --- you mean, like, the cops and the solicitor?

9 A Yes, ma'am. The other -- the opposite side, not the
10 defenders, but the solicitors and prosecutors.

11 Q I got you. Okay. Anything else I've forgotten to ask
12 you about that you needed to tell the Court?

13 A Like, okay. The -- I don't know if it makes of any
14 relevance. It was, like, I see a statement in here where
15 the girl -- earlier that day, they try to say I had a
16 weapon. I did have a weapon. But it wasn't -- it's not
17 the weapon that -- it's a .380 weapon that I got from Ray.
18 All right. That -- that woman called the law on a dog that
19 was trying to attack her kids. The kids ---

20 (Indistinguishable cross-talk)

21 Q Let's back up for one second. Let me just explain the
22 issue. You're saying it's simply there are two weapons
23 involved, right? One was silver and one was black?

24 A The .380 ---

25 Q Is that right?

1 A --- the .380 was a silver and black weapon. The 9-
2 millimeter that I picked up off the counter with the serial
3 number scratched off that was in front of Ryan Boulware
4 that night, that's the weapon that I picked up and took it
5 away from Ryan before me and him began debating over the
6 money.

7 Q Okay. And so that was not addressed at all?

8 A I -- I had David ask -- because he asked me in trial,
9 "Was there anything else you want to ask him?"

10 I said, "Yeah. Ask him about that .380 weapon."
11 Because that's ---

12 Q Okay.

13 A --- the weapon -- that's the weapon that Brandy
14 Slusher that -- with the -- the kids; that there is a dog
15 trying to bite them young'uns. I tried to -- to -- to get
16 the kids to go next door to tell the mamas that they were
17 sitting there, crying.

18 I said, "That -- that dog is not going to bite you.
19 I'm not going to get it bite you. Y'all -- y'all walk over
20 there to your mama."

21 Q And -- and so Mr. Mauldin did not adequately address
22 that in the trial?

23 A No. All right. And then, I got a -- I didn't see the
24 statement. But the statement states -- this is over two
25 years later. She wrote a statement and said her son and

1 her got out the car, I threatened to kill him.

2 Q Okay. And -- and that wasn't adequately addressed
3 during the trial as well either?

4 A If you had a 911 call and listen to the lady's
5 statement, the statement that she wrote and the 911 call,
6 two different things. I know so. I ain't heard the 911
7 call. But I'm certain of it.

8 Q Oh, that's the other issue I remember you did bring
9 up, the 911 calls.

10 A Yes, ma'am.

11 Q So there were -- there were multiple 911 calls, but
12 not all of them were used; is that correct?

13 A Yes -- yes, ma'am. Okay. My -- my -- what -- after
14 Josh was shot and they -- that -- they were running to
15 their cars -- and I know these people got weapons. There
16 was kids in our -- there was kids in our car that I was
17 going to get my clothes.

18 When -- so when -- after that happened, I ran out and
19 told that, "We got to go. Get out of here." I call -- I
20 told Katie, "Call 911."

21 Q Okay.

22 A So the -- the boy was shot. And I -- I didn't know
23 what to do ---

24 (Indistinguishable cross-talk)

25 A I mean, only thing I knew to do was to get the boy

1 help.

2 Q So you know Katie called 911, but Katie's 911 call was
3 not ever used; is ---

4 A All right. And -- yes, ma'am. I tried to ask David
5 Mauldin where was her 911 call or everybody else's.

6 Q Okay. I got you. I think that's it, unless you can
7 think of anything else that I missed.

8 A I believe -- just -- yeah. Just that -- besides the
9 -- if -- if I could've had a polygraph, just to test their
10 -- if it is any relevance, to test what they're saying, I
11 was just asking that.

12 Q Okay. And did you ever talk to Mr. Mauldin about
13 polygraphs and how they're not admissible ---

14 A In the ---

15 Q --- in court ---

16 A --- county. Yes, ma'am. In the county. Yes, ma'am.

17 Q Okay. Answer any questions Ms. Meadows may have. All
18 right?

19 THE COURT: All right. Ms. Meadows, any cross-
20 examination?

21 MS. MEADOWS: Just briefly, Judge.

22 CROSS-EXAMINATION

23 BY MS. MEADOWS:

24 Q Mr. Frye, how many times did you say you met with Mr.
25 Mauldin before trial?

1 A He only came vaguely a few times. I could -- at the
2 most, five times -- four or five times.

3 Q And did you ever talk to him on the phone or anything?

4 A Couple times. Yes, ma'am. Very short.

5 Q All right. So you're alleging that Mr. Mauldin failed
6 to obtain all discovery and review it with you. So he did
7 not go over any of the discovery with you?

8 A Yes, ma'am, he did. But some of that discovery was
9 coming in that Friday afternoon -- we had trial Monday --
10 that Friday that the solicitor's office was printing out
11 pieces of discovery that I ain't get to go over and see.

12 Q Okay.

13 A And I thought -- I'm sorry. Well, I thought we went
14 over some type of presentation of the rest of discovery
15 before we even went to trial. I didn't know, when I went
16 to trial, that -- it's my first time. I didn't know how it
17 operates. But I'm shoved in a trial. It ain't no turning
18 back.

19 Q Okay. Now, as far as the expert witnesses, I think
20 you testified that you -- that Mr. Mauldin should've hired
21 a blood-spatter expert; is that correct?

22 A For me to disprove what Dr. Ross for the state and --
23 or that her facts stated, I have no way to disprove an
24 expert witness of what she's stating the facts are. What
25 I'm telling you is one thing, and she's saying another.

1 Her evidence says I'm guilty.

2 And I'm telling -- I'm -- what I'm saying, I'm telling
3 -- I'm being honest truth. That's what I -- what happened.

4 Q Well, Mr. Mauldin cross-examined Dr. Ross, correct?

5 A Yes, ma'am. And she's -- and she state: "Well, I
6 could've been wrong, but she doubts it." I believe she
7 said something like that.

8 She said she could've had the numbers flipped up or
9 something. But we're all human beings; make mistakes.

10 Q Okay. And then, you also allege Mr. Mauldin violated
11 the Rules of Professional Conduct by encouraging false
12 testimony and false evidence. Could you briefly explain
13 what you're referring to?

14 A It's like I just don't understand they could say
15 certain things but I know was a lie. I -- even when I
16 tried to, like, give evidence to show these type -- stuff
17 -- of stuff, but he couldn't -- he wouldn't even allow
18 certain things and wouldn't -- didn't have it to present;
19 didn't have no -- I mean, that -- I -- that's pretty --
20 that's pretty much it.

21 I mean, I couldn't -- I can't -- I could tell you
22 what's wrong, what ain't wrong. And I could try to, like
23 -- like, the -- well, them getting up on the stand and
24 saying what they saying in front of each other. When I
25 tried to prevent -- tactically separate them to show

1 that's interrogation tactic that y'all separate people, put
2 them up there, and that's how you can decipher between
3 them.

4 Q Okay.

5 A If their testimony lines up together, you -- I mean,
6 pretty much you think you know they're telling the truth if
7 they're saying the same things. But if they're not
8 testifying to the same things, well, something's off here.
9 Something ain't right.

10 Q Okay. And you believe that constituted a violation of
11 the Rules of Professional Conduct?

12 A When I want to sequester the witness and -- and
13 separate them, yes, ma'am. Because I can't disprove what
14 they're saying.

15 Q Okay.

16 A I can't -- well, if they're -- I'm sorry. But if one
17 listening to another one testifying and gets up there and
18 says the same thing or even says, "I can't remember," you
19 listen what she's saying. And I asked you to separate them
20 so I can pull -- I can't -- I can't ask specific details of
21 certain questions, especially if they're listening to each
22 other's conversation -- or each other's testimony.

23 Q Okay. All right. And you ultimately chose to plead
24 guilty, correct?

25 A Chose the *Alford* plea. I maintain my innocence. At

1 the time I feel like it's a benefit from the state to take
2 a guilty plea, facing 30 to life. Yes, ma'am.

3 Q Okay.

4 MS. MEADOWS: That's all I have, Judge.

5 THE COURT: All right. Any redirect?

6 MS. MCMAHAN: Just one brief follow-up, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. MCMAHAN:

9 Q So when you were talking to Mr. Mauldin about all
10 these different things that you wanted him to address and
11 possibly bring into trial, did he ever sit down and have a
12 discussion with you about the rules of evidence and how we
13 have -- like, how to comply with them?

14 A No, ma'am.

15 Q Okay.

16 MS. MCMAHAN: I have nothing further, Your Honor. And
17 the applicant rests.

18 THE COURT: Okay.

19 I'm just curious, Mr. Frye. When you decided to plead
20 guilty, had the state completed its case or were they still
21 in the middle of their case? Do you recall?

22 THE APPLICANT: I believe they was about to rest their
23 case and we was about to put up a defense. When I asked
24 David Mauldin what his defense -- he had no presentation.
25 He had my -- me, Katelyn, and my sister, which I brought

DIRECT EXAMINATION BY MS. MEADOWS - DAVID MAULDIN 46

1 with me to court.

2 THE COURT: All right. Thank -- thank you, sir.

3 Ms. McMahan, any -- any other witnesses you want to
4 call?

5 MS. MCMAHAN: No, Your Honor.

6 THE COURT: Okay. All right.

7 Ms. Meadows, the state ready to proceed?

8 MS. MEADOWS: Yes, sir. And the state calls David
9 Mauldin.

10 THE COURT: Okay. Mr. Mauldin, you have been on. If
11 you can cut your video on for us, please.

12 MR. MAULDIN: (Complied.)

13 THE COURT: Okay. Mr. Mauldin, if you would raise
14 your right hand, please, sir.

15 MR. MAULDIN: (Complied.)

16 DAVID MAULDIN, having been first duly sworn,
17 testified as follows:

18 THE COURT: Okay. Thank you.

19 Ms. Meadows, you may proceed.

20 MS. MEADOWS: Okay.

21 DIRECT EXAMINATION

22 BY MS. MEADOWS:

23 Q Mr. Mauldin, how long have you been practicing law?

24 A I was admitted bar in fall of '97.

25 Q Okay. And how much of that has been criminal?

1 A Since about spring of '99.

2 Q Okay. All right. And how'd you become involved in
3 Mr. Frye's case?

4 A I work at the Lexington County Public Defender's
5 Office. And our office was appointed, and the case was
6 assigned to me soon after he was arrested, I reckon ---

7 Q Okay.

8 A --- in October of '15, near ---

9 Q Okay.

10 A --- the beginning.

11 Q And would you mind just giving the Court a brief
12 explanation of Mr. Frye's charges and how they arose?

13 A Well, we're mainly dealing with a murder charge here,
14 possession of a weapon during a violent crime. They had
15 also charged him with unlawful conduct toward a child,
16 because there were some children in a car parked outside.
17 But the state elected not to go to trial on that charge.

18 Q Okay. Okay. And then, how many times did you meet
19 with Mr. Frye over the course of your representation?

20 A Some of my notes are missing. But the notes, when he
21 was in jail, I saw him on October 9th of '15. On December
22 18th of '15, we had a preliminary hearing. I saw him on
23 January 29th of '16.

24 And that afternoon we had another preliminary hearing,
25 because they had served the unlawful conduct, like, a week

1 or so later. So we got to have two separate prelims ---

2 Q Okay.

3 A --- even though they were all part of the same
4 incident. We had a bond hearing on April 5th of '16. And
5 October 24th of '16, I had a lot of notes where I went; we
6 reviewed photos and that kind of thing.

7 I saw him on February 17th of '17; February 23rd of
8 '17. On August 8th of '17, I've got a lot of notes there
9 where we reviewed some photos and had a long visit. I saw
10 him again on October 18th of '17.

11 Somewhere in the interim -- I don't have notes about
12 it -- we had a bond hearing, where the judge said if they
13 didn't try him by a certain period of time, that he'd have
14 a bond of about 100,000, I think it was. And I think that
15 was near the end of October. And they didn't try him, and
16 then he was able to bond out in October.

17 Q Okay.

18 A The trial began in February '18. I know I talked with
19 him on the phone a couple times. And he might've come to
20 the office once or twice. I do remember one marathon
21 meeting with him and Katelyn and Brad Kirkland that lasted
22 about six to eight hours.

23 Q Okay. And Katelyn is Mr. Frye's girlfriend or
24 girlfriend at the time, correct?

25 A She might still be, for all I know.

1 Q Okay. And she -- was she also charged in relation to
2 this incident?

3 A She was. And I think she pled out to an accessory
4 after the fact or something along those lines after Mr.
5 Frye entered his plea. It was -- it might've been the next
6 term or later that week or something like that.

7 Q Okay. And what did this meeting entail between you,
8 her, Mr. Frye, and Mr. Kirkland?

9 A Well, Mr. Kirkland was representing her. He's an
10 attorney; he was representing her. And we were talking
11 about trial strategy. At that point in time, we kind of
12 had a unified strategy.

13 And when we were talking about their testimony,
14 obviously, he was putting forth a -- we were putting forth
15 a self-defense-type case. And we needed to talk to him
16 about that. And she was going to back him up on part of
17 it, although she was outside, I think, during most of the
18 scuffle but might've seen some things in a window.

19 And since a lot of their statements -- or at least her
20 statement to the police had been about where they had gone,
21 here and there, during the day, and also, they had evidence
22 where they had been. Because I think he had pulled his gun
23 out maybe one or two separate occasions during that day,
24 and they wanted to put that evidence in. We were trying to
25 see, you know, if there are any inconsistencies or

1 consistencies in their statements, as far as where they'd
2 been going that day and that kind of thing and, then, you
3 know, reviewing evidence with them, as well as his
4 testimony for trial for the self-defense claim.

5 Q Okay. And were their statements consistent?

6 A No. Often, they -- they weren't consistent with
7 themselves. Separately, they -- they'd have different
8 stories at different times about where they did. And then,
9 we -- we kind of got them together and -- and to see if
10 they could jog each other's memory.

11 And they both couldn't be on the same page and started
12 arguing with each other a bunch. And we had to kind of
13 separate them out again and try to do it separate. And
14 they didn't make very good witnesses, in my opinion.

15 Q Okay. And were you able to obtain discovery in Mr.
16 Frye's case?

17 A Yes. Discovery comes in dribs and drabs. You get a
18 chunk of it first and it seems like you don't get anything
19 for a good, long while. And then, all of a sudden, the
20 week leading up to the trial, the solicitor just decided to
21 work on the case again. And all of a sudden, you're
22 getting a bunch of stuff from the police department.

23 But I tried to forward that to him the best I can. I
24 know, when he came into my office that day, I gave him a
25 huge pack of papers that -- that I -- what I had so far,

1 just so he could review them. I can't remember if he said
2 he lost his discovery from the jail or what.

3 Q Okay.

4 A I've had in my notes where I've gone over pictures
5 with him and that kind of thing.

6 Q Okay. And so even the discovery that didn't come in
7 until, you know, shortly before trial, did you review that
8 with him?

9 A I might -- I don't think I -- I don't know if I gave
10 him the papers, necessarily. But I might've summarized
11 what was in it ---

12 Q Okay.

13 A --- verbally.

14 Q All right. Let's see. And did you do any sort of
15 independent investigation in this case?

16 A Yes. Some -- I hired an investigator, Kyle Smith, and
17 he had a lady working for him.

18 Q Right.

19 A Let me grab that folder real quick.

20 Q Okay.

21 (Off the record briefly.)

22 A Let's see. They met with him at the jail. They
23 reviewed the discovery on their own and gave the little
24 report of their review. They e-mailed me the same things
25 over and over again, so ---

1 Q Okay.

2 A Do, do, do -- they talked to a Raymond Mitchell Callen
3 about some kind of Facebook video that didn't -- I don't
4 think it turned out to be relevant. We'll go into that. I
5 talked to the fellow that was the subject of that fight
6 myself a little later on. We'll get into that in a minute
7 after ---

8 Q Okay.

9 A --- we go through this.

10 Q Okay. Okay.

11 A Let's see.

12 Q Did -- I'm sorry.

13 A Hold on.

14 Q Okay.

15 A They -- (audio loss) -- Melinda Frye on March 26th of
16 '16.

17 Q Okay.

18 A Let's see. They talked with Jennifer Boyer November
19 28th, '16.

20 Q And were the -- do you know if these were witnesses
21 that Mr. Frye gave them or . . .

22 A A lot of them were in the reports and some were that
23 -- ones that Mr. Frye gave them.

24 Q Okay.

25 A They interviewed Amanda Jackson on March 26th of '16;

1 Jacqueline Boyer, March 26th of '16; a Vickie Rich on March
2 26th of '16 -- let's see -- same one again.

3 Q Okay.

4 A I know Mr. Kyle, the investigator and I, went to go
5 see Anthony Boulware at SC Strong. He was at SC Strong
6 program, and we saw him in couple months leading to the
7 trial. He wanted to help out Marion a little bit. But
8 kind of what he said didn't fit in with Marion's story too
9 good, and I didn't think it would be good to call him as a
10 witness.

11 Q Okay. All right. So do you know anything about the
12 cell phone videos that Mr. Frye testified about earlier, or
13 maybe it was a Facebook video you were talking about?

14 A That was a fellow named Justin Strickland.

15 Q Okay.

16 A I had met with him sometime earlier and actually had
17 served him with a subpoena.

18 Q Okay.

19 A But I met with him on October 17th of '17. Now, the
20 thing about that is it would pertain to the self-defense
21 would be that Marion's state of mind, as far as knowing
22 that these were dangerous individuals. And ---

23 Q Okay.

24 A --- as I recollect, a lot of the case law on that, you
25 have to rely on the -- Mr. Frye's recollection of those

1 things, as far as what he knew and -- and about the events
2 and not as far as what other people knew or saw about the
3 events.

4 But I was prepared to put in some extrinsic evidence,
5 if I could. It might not have been admissible, because
6 they have to go off of what the defendant knew, as far as
7 the dangerousness. And I had some of that extrinsic
8 evidence to put in, if I needed to. But I was feeling a
9 bit under 404 that the extrinsic evidence wouldn't come in
10 but his testimony could come in.

11 Q Okay. So he would've had to testify to that.

12 A Oh, yeah. If he wanted ---

13 Q Okay.

14 A --- do a self-defense claim. I don't think, off of
15 the state's case, he would've been able to get a charge on
16 that.

17 Q Okay. And was that -- was part of your trial strategy
18 having Mr. Frye testify?

19 A Both him and Katelyn.

20 Q Okay.

21 A And then, we had other -- you know, I had -- I think
22 we might've subpoenaed Anthony, but we -- it was kind of
23 like in reserve if -- if we needed to throw a Hail Mary or
24 something.

25 Q Okay. And then, as far as the -- his allegation that

1 a more thorough investigation would uncover the
2 availability of his immunity claim, do you believe he
3 could've qualified under the stand-your-ground statute or
4 that that was a possible defense?

5 A Well, I think, as far as everyone was concerned, the
6 deceased, Josh Prine, had been living at the residence for
7 a couple weeks. He wouldn't qualify under Subsection A of
8 the statute because of Subsection B.

9 Q Okay. So since he had -- the victim had a legal right
10 to be there, that would not apply.

11 A And, I mean, even -- you know, and the stories were
12 diametrically opposite, as far as his story and all the
13 state witnesses' stories. And -- and I'm sorry he feels
14 like they lied on him, but I have no control over what they
15 say. But -- no. But you have a number of witnesses
16 talking about him pointing the gun at the guy; the guy
17 rushing him; and then the gun going off, versus his story
18 about the struggle. And I'm ---

19 Q Okay.

20 A And since you have to prove -- you know, you have to
21 prove a case of stand your ground. I think, even if I
22 thought it was a better case for stand your -- stand your
23 ground tactically, I -- I wouldn't have wanted to put him
24 and Melinda up a pretrial hearing. Because I didn't want
25 Suzanne Mayes to get her teeth into him that early and know

1 what's ---

2 Q Right.

3 A --- coming. She probably would've savaged him on the
4 stand then. And if she was unprepared for anything, you --
5 you bet she would've woodshedded it during the trial and
6 been able to do it when the time they eventually testified
7 during the trial.

8 Q Okay. So kind of what was your overall trial
9 strategy, then?

10 A It was basically a self-defense story. I laid ---

11 Q Okay.

12 A --- the groundwork, as far as when they were showing
13 pictures of the residence and the kitchen-nook area where
14 things were all around. And -- and I think the microwave
15 was turned over and -- and there were a lot of things
16 knocked over, as if there had been a struggle in the area
17 to kind of corroborate Mr. Frye's version of events, as
18 well as the fact that I had gone to see Janice Ross, the
19 pathologist, before the trial.

20 I can't remember -- it was like a month or -- it
21 might've been near October before it was going to be tried
22 the first time. And basically, I was able to get her to
23 admit -- the way the state was having it was as if the
24 deceased had been standing straight up when he got shot and
25 Marion was standing straight up. But I got her to admit

1 that if they had been struggling and hunched over, that the
2 same trajectory of the bullet, it -- it could've happened
3 the way Marion said.

4 Q Okay.

5 A But it was about that time that he -- Suzanne Mayes
6 actually started freaking out and was trying to get her, on
7 redirect, that -- to basically discount what I'd gotten her
8 to admit and try to solidify the state's case. And about
9 that time is when Marion started freaking out himself and
10 decided that he wanted a plea.

11 Q Okay. But you were able to elicit testimony from Dr.
12 Ross that basically, it could've happened the way Mr. Frye
13 alleged.

14 A I believe so.

15 Q Okay.

16 A In my opinion, yes.

17 Q Okay. Let's see. And he also alleges that you did
18 not file any pretrial motions. But I believe you did,
19 correct?

20 A I don't know if I filed any. But we made some. There
21 was a *Jackson v. Denno* and ---

22 Q Right.

23 A --- I had made motions regarding certain contents of
24 the statements not coming in. I think I did make a motion
25 to sequester. That might've been on page 151. But the

1 judge denied it.

2 Q Okay.

3 A And so I don't know if that was taken up on appeal or
4 not. There was also the 404 issues regarding him using a
5 gun earlier in the day and -- and flashing around a gun to
6 this dog incident. I think there was some ---

7 Q Okay.

8 A --- incident at a restaurant or a bar or something
9 like that.

10 Q Okay.

11 A I think there was two incidents maybe. I could be
12 wrong on that, but there was definitely one where,
13 apparently, during the day he's having the police called on
14 him for him having a gun.

15 Q Okay.

16 A He says it's a different gun. I think the people in
17 the house were trying to say it was the same gun. But they
18 -- they differed in that opinion.

19 Q Okay. And so did Judge McMahon rule that all of these
20 were admissible?

21 A The 404 things, yes.

22 Q Okay.

23 A He -- I believe so, if I recollect.

24 Q And then, as -- what about the statements at the --
25 regarding the *Denno* hearing?

1 A I can't recall. He might've thrown me a bone here or
2 there about whether or not they could testify about the
3 pill they found on him.

4 Q Okay.

5 A I -- basically, I was trying to make -- you know, this
6 -- these were all drug people. They had been all involved
7 in meth and that kind of thing. And at -- it was hard for,
8 I think, both the state and I whether or not to just let
9 all that in or try to keep -- you know, try to keep it out,
10 you know, because -- because I didn't want it to make it
11 seem like he was a drug dealer or anything. He said that
12 he was missing money and that's what the beef was about.

13 Q Okay.

14 A But I think the state's attitude was that it was money
15 and drugs, or -- or there was some kind of drug money,
16 which he disputed, of course, and he didn't have -- you
17 know, since he pled, he didn't have an opportunity to
18 dispute it himself verbally about the lottery tickets.

19 Q Okay. And then, Mr. Frye also alleges that you
20 violated the Rules of Professional Conduct by encouraging
21 false testimony and false evidence. Do you know what he is
22 referring to?

23 A Well, it seemed to me he -- he was upset that these
24 people were telling lies on him. And I cross-examined
25 them, using statements they had done before and trying to

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1 imply they had a motive to lie. But, I mean, I -- I didn't
2 have some kind of magic wand to make them say what he
3 wanted them to say. So I don't know if that's unethical or
4 not.

5 Q Okay. And do you believe that Ms. Mayes or Mr. Bell
6 committed any sort of prosecutorial misconduct?

7 A Only the shut -- (audio loss) -- side. I couldn't
8 tell you.

9 Q Okay.

10 A They seemed to be operating above board to me.

11 Q Okay. All right. And then, you testified earlier
12 that Mr. Frye kind of decided he wanted to plead guilty
13 after Dr. Ross's testimony, right?

14 A Right. We had some discussions about it a little
15 earlier. And he didn't want to. At a point there, he
16 decided he wanted to. And then the plea broke down in the
17 middle for some reason.

18 Judge McMahon said: "Look, you -- do you want a
19 trial? Do -- do you want to continue?"

20 And he said: "I want to continue."

21 And so we sat back down, and Suzanne kept redirecting
22 Janice Ross. And Marion leaned over to me and said: "When
23 I meant continue, I meant continue with the plea, not the
24 trial."

25 So I had to stop the ---

1 Q Okay.

2 A --- proceedings again, because he was the one that
3 wanted to go up and do the plea.

4 Q Okay. And do you recall what the terms of the plea
5 agreement was -- were?

6 A I think -- no. I -- I -- but he got 22. I think we
7 were -- they wanted 23 and he wanted 20, and we were kind
8 of going back and forth. And I think they finally came
9 down to 22, and then, finally, he -- he had accepted that,
10 I reckon.

11 Q Okay. And was this a negotiated sentence or, I guess
12 -- you know, was it 20 to 25, or what were the terms as far
13 as the sentence?

14 A I don't remember off the top of my head. If it's on
15 the record in the transcript, you could point it to me.
16 That'd be great.

17 Q Okay. Let me see if I can find it.

18 (Off the record briefly.)

19 MS. MEADOWS: All right. Beg the Court's indulgence
20 for just a minute, Judge.

21 THE COURT: Sure. Take your time.

22 (Off the record briefly.)

23 Q All right. I have it in my notes that it was
24 negotiated, but I can't find the page of the transcript.
25 So I'll withdraw that question.

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1 And -- excuse me. And, Mr. Mauldin, did you feel that
2 it was in Mr. Frye's best interests to plead at that point?

3 A I can never say what a jury's going to do. The -- due
4 to his position, I didn't want him to plead guilty. And I
5 actually had to convince Judge McMahon to take an *Alford*,
6 because he was pretty against those on serious-type cases,
7 as a -- maybe an imperfect self-defense or something along
8 those lines.

9 You never know what a jury is going to do. But I
10 didn't think he and Katelyn made great witnesses in that
11 regard. And I think Suzanne would've probably had her way
12 with them.

13 Like I said, I did make some leeway, as far as
14 describing the scene, as far as maybe a fight occurred in
15 the kitchen, the things in disarray, and -- and getting the
16 pathologist to admit the bullet happened. Because the way
17 the state's witnesses were testifying, none of that
18 would've occurred, as far as the kitchen mess.

19 Q Okay.

20 MS. MEADOWS: All right, Judge. I think that's all I
21 have for Mr. Mauldin.

22 THE COURT: Okay. All right.

23 Ms. McMahan, do you want to take a break and talk with
24 Mr. Frye before you begin your cross-examination of Mr.
25 Mauldin, or do you want to do your cross and then take a

1 break and -- and see if there's anything else Mr. Frye
2 wants you to cover? Either way is fine with me.

3 MS. MCMAHAN: I think Mr. Frye wants to talk to me
4 before we talk to Mr. Mauldin. So if we ---

5 THE COURT: Okay.

6 MS. MCMAHAN: --- could just ---

7 THE COURT: All right.

8 MS. MCMAHAN: --- let that happen.

9 THE COURT: Okay. I'm going then instruct everybody,
10 if you would turn your volume off on your computer, and
11 then just -- Ms. McMahan, just let me know when -- when
12 you're ready to go. Okay?

13 MS. MCMAHAN: Okay.

14 (The Court went off the record at 3:41 p.m.)

15 (The Court went on the record at 3:52 p.m.)

16 THE COURT: Okay. We're back on the record. Ms.
17 McMahan, do you want to begin your cross?

18 MS. MCMAHAN: Yes, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. MCMAHAN:

21 Q Mr. Mauldin, the 911 calls -- I don't know if you
22 addressed this or not. But why weren't all of them used or
23 needed for this trial?

24 A Are you talking about the one Katelyn made?

25 Q Yes.

1 A Well, we hadn't put up a defense yet. But had I
2 planned to have her testify about it. And I think I had
3 asked the 911 caller [sic] if she had gotten a 911 call
4 from Katelyn. And rather than -- than -- than going into
5 detail about it, I planned to let the jury know that they
6 testified that she called 911 too. And -- because I don't
7 remember the call being very good or if they preserved it
8 or something like that.

9 But I had elicited the fact that she did call 911.
10 The state hadn't presented it, at least so far. And I had
11 planned to argue to the jury that obviously it was
12 detrimental to them because they did not present it, even
13 though they had it -- or might've had it.

14 Q Okay. So you -- you cross-examined the -- the records
15 person from 911 about the fact that there -- that Katelyn
16 did make a call?

17 A I believe so, near the beginning of the trial.

18 Q And then, had you presented a case, you would have
19 called Katelyn and asked her about that 911 call?

20 A Yes.

21 Q Okay. Did you ever see -- so back to the issues
22 earlier that day, where he was using a gun earlier that
23 day, you alluded to the fact that there were maybe two
24 different guns. Did you guys have a conversation about how
25 one gun was silver and black and one was different or there

1 were two different types of guns at all?

2 A I -- I -- I recall that that was his position. I
3 don't remember exactly how the witnesses in those incidents
4 testified about the appearance of the gun.

5 Q Uh-huh.

6 A So I -- I can't recall if they testified, you know, at
7 this point in time. It's probably in the transcript, if
8 you look at it, whether they described it as black or
9 silver in color.

10 Q And the lottery-ticket video, did you -- were you ever
11 able to try to get that or see it?

12 A I don't think -- I don't think I -- I ever saw that or
13 -- or got it.

14 Q Did you have a conversation with Mr. Frye about that
15 lottery-ticket video?

16 A Can't recall. I can look at my notes. Mr. Frye is
17 very exuberant when he talks, and it's hardly very linear.

18 (Off the record briefly.)

19 A I don't have anything written down on our initial
20 meeting.

21 Q Okay. And so Mr. Frye ---

22 A But he might've said something. I -- I just can't --
23 I can't tell you for sure whether or not he did.

24 Q Okay. He -- Mr. Frye was also talking about there was
25 some discovery coming in the Friday before the trial. Do

1 you remember what he's talking about?

2 A Not exactly. I'm not sure how that -- that one
3 picture would -- would've changed his mind about pleading.
4 But there's always dribs and drabs coming in.

5 Q And the picture you're talking about, that's the
6 pathologist's picture?

7 A Let's see. It's a big file. I'm sorry. I think this
8 is most of the paper discovery that I got on the -- on the
9 case. It's -- it's a good six/seven inches thick.

10 I -- I got some January 25th, '18, via e-mail; January
11 26th, '18, via e-mail. So it -- discovery was coming in
12 toward the -- even toward the -- even toward the eve of --
13 eve of trial. But I don't think it was anything
14 significant enough for me to ask for a continuance or
15 anything.

16 Q Okay. And did you ever threaten him that he was going
17 to get life if he didn't go ahead and take this plea offer?

18 A Well, murder carries 30 to life. And Judge McMahon is
19 a pretty strict judge. I would've said he had good chance
20 at it, but I wasn't going to guarantee it.

21 But, I mean, if he went down, I -- I would use a -- if
22 you go down, Judge McMahon could give you life and he's a
23 pretty tough judge.

24 MS. MCMAHAN: Your Honor, I forgot to state for the
25 record prior to this hearing that I am in no way related to

1 Judge McMahon. Just wanted ---

2 THE COURT: Right.

3 MS. MCMAHAN: --- to put that out there.

4 THE COURT: So noted for the record. And I think we
5 all knew that, but it is noted for the -- for the record.

6 Q And -- and in regards to the plea offer that day, was
7 it -- was it back and forth e-mails or in writing between
8 you and Suzanne? What ---

9 A Well, the plea offer, I think, for 23 had actually
10 been extended before the first trial date in October, which
11 he rejected.

12 Q Okay.

13 A And -- and then, somehow that came up in the middle of
14 trial again. I don't know who initiated it.

15 Q So when you guys were ---

16 A But ---

17 Q --- going back forth ---

18 A --- we were going back and forth then verbally about
19 the number.

20 Q Okay. And -- and did you have conversations with him
21 about bond hearings, about how often you could have a bond
22 hearing?

23 A I don't recollect that. The statute says review every
24 six months or so. They've gotten a lot better around here,
25 but they used to be pretty bad around here about actually

1 scheduling your bond hearings. If you asked for one,
2 they'd drag you and drag you and drag you. And it got to
3 the point where I was actually just sending them to the
4 judge. I'd go: "Look, if you're going to schedule it,
5 I'll let the judge schedule it." And so ---

6 Q Okay.

7 A --- it got a -- a little -- well, they haven't gotten
8 a lot better. They've gotten a little bit better -- better
9 ---

10 Q Okay.

11 A --- about them.

12 Q And -- and back towards sort of the incident and some
13 of the evidence and everything regarding that, so one
14 bullet obviously went into Ryan and killed him. Was there
15 another -- another bullet that had ricocheted off
16 something? And -- and did anybody go view that or find
17 that bullet?

18 A I -- I don't remember.

19 Q Did you ever actually go out to the mobile home to go
20 look at it?

21 A No, I did not.

22 Q And in regard to the trajectory that Mr. Frye contends
23 it was obviously upward versus downward, did you guys have
24 a discussion about that or did you ---

25 A I told him about my discussions with Ms. Ross

1 beforehand. And, you know, I -- I thought I had acted
2 pretty excited about it. And I thought it was pretty
3 exciting at the trial when I got her to admit basically
4 that things could've happened the way he said he did. But
5 he didn't seem to take it that way.

6 Q And so obviously, Dr. Ross was the pathologist
7 performing the autopsy, and the coroner's report is -- is
8 different. Did you read the coroner's report at all?

9 A Well, I probably read the coroner's report. But the
10 coroner -- I don't think he testified, and it's really the
11 pathologist that's the nuts and bolts of that -- that whole
12 operation, as far as the cause of death and trajectory and
13 things of that nature.

14 Q Did you read the part of the report that allegedly
15 says that Ryan actually began fighting with Wade first?

16 THE APPLICANT: Mr. Frye.

17 Q Mr. Frye?

18 A The coroner's report, as far as I know, they just rely
19 on things that were told to them by law enforcement about
20 what happened or if they asked somebody at the scene.
21 They're not witnesses. And I don't know -- I -- you
22 correct me if I'm wrong, but I don't believe the coroner
23 report was admitted into evidence.

24 Q I -- I believe you're correct, Mr. Mauldin. So in the
25 coroner's reports, is your understanding is that the

1 report, when it gets written, is -- it's really based more
2 on third-party information given to them to put in their
3 report and not directly from the source?

4 A That's correct.

5 Q And in situations like this, would you contend the
6 best evidence in this situation would be whoever talked
7 about Ryan started fighting first with Mr. Frye, instead of
8 ---

9 A Well, it would be -- sorry. Go ahead.

10 Q That's all ---

11 A Sorry.

12 Q --- right. I was just going to say, instead of the
13 coroner's report?

14 A Certainly, obviously, eyewitnesses and pathologist
15 testimony would be more determinative of that than a
16 coroner's report, in my opinion.

17 Q Okay. So in -- do you believe that you could've
18 called the coroner to testify about what was in the report,
19 or would it be a situation where whoever gave the coroner
20 this information would have to testify?

21 A I never really thought about it, whether or not that
22 could come in as a -- one of those business documents or
23 documents -- I haven't thought about it.

24 Q Okay.

25 A I really didn't think about that.

1 Q Is it common for either the state or yourself to try
2 to get coroner's reports in, in murder trials?

3 A I can't recollect none. I've tried somewhere between
4 five and ten murders. I can't recollect it. It would seem
5 unusual to me, because the coroner is basically elected guy
6 that -- not a doctor, not -- you know, no medical
7 background. They basically -- old investigator of mine
8 used to call them "body snatchers." They just go pick up
9 the body and do a report and get the body to the funeral
10 home.

11 Q And while Mr. Frye was determining if he was going to
12 go ahead and get up and plead *North Carolina v. Alford*, was
13 he in and out of -- back and forth kind of with you about
14 whether or not he wanted to take the plea or even plead to
15 that?

16 A He was earlier. But then, we were up in front of
17 McMahon and he kind of waffled about whether he thought he
18 was satisfied with me or not. And then McMahon was going
19 to proceed with the plea. And then, it seemed like McMahon
20 understood from him that he didn't want to do the plea and
21 we proceeded with the trial.

22 We proceeded a little bit more with the trial. And
23 then, unsolicited by me, he -- he tapped me on the shoulder
24 and said, "You know, when I said I wanted to continue, I
25 meant continue with the plea." And then I -- we had a

1 sidebar after that.

2 So I was -- I was prepared just to go finish out the
3 trial at that point, though.

4 Q You guys were fairly close to being done; is that
5 correct?

6 A It's hard to say.

7 (Indistinguishable cross-talk)

8 A --- very methodical and she -- I think she tries to
9 put in everything she can to make it look like she's not
10 hiding something, if she can, just so that it doesn't look
11 like she's hiding something from the jury. So she -- I
12 think she tends to over-present a bunch of evidence. So it
13 -- it might've gone on for a bit longer.

14 It's just hard to say. Because it -- their witnesses
15 lists are -- are -- their witness lists are usually, like,
16 really long and you don't know how many of them they're
17 actually going to use. Sometimes they use, like, a third
18 of them; sometimes, a half. Sometimes they, you know ---

19 (Indistinguishable cross-talk)

20 A I'm, like, "Who's testifying next?"

21 And they, like, "Oh, we" -- you know, it's -- it's ---

22 Q Yeah.

23 A --- a bunch of -- (audio loss).

24 Q And -- and you would've gotten that witness list when?
25 Like right at the -- the dawn of the trial?

1 A Sometimes she sends them the week before or something
2 along those lines. But I had the discovery mapped out and
3 -- and -- as far as who I thought were pertinent witnesses
4 and -- and that kind of thing. And I made a -- a notebook,
5 you know, with little -- little sections for each person I
6 thought was going to be a witness.

7 Q Okay. But normally, you don't get the witness list
8 until, you know, like a week or so before ---

9 A It depends on -- depends on the solicitor. Some of
10 them give it to you on the day of trial, you know. But
11 Suzanne usually tries at least -- at least the Friday
12 before, if not the week before.

13 Q And how does she normally give it to you? It, like,
14 by -- like, e-mail or does she hand you a piece of paper or
15 ---

16 A E-mail. E-mail if it's beforehand; piece of paper in
17 the courtroom.

18 Q Okay. And did you ever ---

19 A Usually, on your cases with -- oh. Sorry.

20 Q Oh, I'm sorry. You can ---

21 (Indistinguishable cross-talk)

22 A --- cases with these, with the big, moving parts, they
23 -- they tend -- with a lot of witnesses, they tend to send
24 those out earlier than, say, like a drug case. It's only
25 going be a couple cops and the SLED chemist or something

1 like that.

2 Q Okay. And did you ever talk to Melinda Frye or Renee
3 Boyer?

4 A Oh. Let's see. Melinda, Melinda, Melinda -- let's
5 see. I don't know. I got a bunch of stuff here. Hold on.
6 Melinda is his sister?

7 Q Yes, sir.

8 A Is that the one that attended court with him?

9 Q Yes, sir. It's ---

10 A Okay. I -- I did speak with her a little bit.

11 Q Okay. Were you planning on using her as a witness at
12 all or . . .

13 A Not that I recollect. But anything was possible.
14 Let's see. I've got it all spread out over here. Give me
15 a minute.

16 Q Yeah, no problem.

17 (Off the record briefly.)

18 A Who was the second one?

19 Q Renee Boyer.

20 A Renee Boyer?

21 Q Yes, sir.

22 A I think I met with one of his sisters at the office,
23 because she was in the car or something but just stayed in
24 the car.

25 Q Okay.

1 A Can't recall. It's -- it's really -- but she had no
2 clue as far as what went on inside the house. She did have
3 strong feelings about her brother.

4 Q Strong feelings, good or bad, otherwise?

5 A Well, she loved her brother, and she knew he had been
6 in -- in issues before. If I recall, she was more on the
7 side of him taking the plea than not taking the plea.

8 Q Okay. Any recollection on Renee Boyer?

9 A Let's see. Is that in relation to Ray?

10 Q Yes, sir. That's his sister.

11 (Off the record briefly.)

12 A I can't say if I did or not. I'm not seeing any notes
13 on it, as far as -- all right. Jennifer Boyer or --
14 Jennifer Boyer?

15 Q Yes. Jennifer ---

16 (Indistinguishable cross-talk)

17 A My investigator talked with her or at least said she
18 tried. Let's see.

19 (Off the record briefly.)

20 A Yeah. Yeah. My investigator talked with her -- or
21 the female half of the investigator equation. There was
22 two of them.

23 Q Yeah. It was -- the information that the
24 investigator, would it have been helpful to you or not?

25 A Let's see. See -- she was at her parents' house next

1 door.

2 (Off the record briefly.)

3 A Just that he was at her house, talking about these
4 black guys. It was something to do with the -- the -- one
5 of the pointing where -- one of the alleged pointing-and-
6 presenting incidents beforehand. He was acting kind of
7 frantic about that.

8 Because I think, in his story, he'd been back one time
9 because he wanted to change clothes and get a TV for
10 Katelyn, but there was, like, a lock on the door where his
11 stuff was. So they went away, and then they came back
12 again. And it -- it might've been during that time that
13 she had encountered him.

14 And then, I think the most that she knew, people came
15 out and said that Marion had shot Josh point-blank in the
16 chest. This is my investigator who's talking to her.

17 Q Yeah.

18 THE APPLICANT: That's what Ray's statement stated.

19 A So . . .

20 Q Do you recall if she was ever called as a witness by
21 the state?

22 A No, I do not.

23 Q And had she been called as a witness by the state,
24 would you have attempted to cross-examine her on her
25 statements that she gave not only to your investigator, but

1 to law enforcement as well?

2 A I mean, if they were -- if they were strategic and
3 helped out the case, then I would. But it seemed like she
4 was mainly a hearsay witness, as far as when people came
5 out of the house.

6 Q And -- and the main witness would've been Ray?

7 A Yeah.

8 Q Between the two of them?

9 A (No audible response.)

10 Q Okay.

11 MS. MCMAHAN: I have nothing further, Your Honor.

12 THE COURT: Okay.

13 Ms. Meadows, any redirect?

14 MS. MEADOWS: No, sir.

15 THE COURT: Okay. Ms. McMahan, do you -- do you need
16 to speak with Mr. Frye any more, as far as any additional
17 questioning? I think one time -- yeah, he did -- raise his
18 finger during this -- during your cross of Mr. Mauldin.
19 I'll be more than happy to give you a moment to talk with
20 him, if you like.

21 MS. MCMAHAN: Sure. That'd be great. I appreciate
22 that.

23 THE COURT: All right. Again, I ask everybody if
24 you'd go ahead and mute and just signal, Ms. McMahan, once
25 you're -- you're finished.

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1 MS. MEADOWS: And, Judge, may Mr. Mauldin be excused?

2 THE COURT: Not yet, because she may have another
3 question or two. So ---

4 MS. MEADOWS: Okay. Okay. Got it.

5 (The Court went off the record at 4:13 p.m.)

6 (The Court went on the record at 4:26 p.m.)

7 THE COURT: All right. We are back on the record.
8 And, Ms. McMahan, is there any additional questioning of
9 Mr. Mauldin?

10 MS. MCMAHAN: I just have a couple brief questions.

11 THE COURT: Okay. That's fine.

12 Mr. Mauldin, if you can come back on, please, sir.

13 MR. MAULDIN: (Complied.)

14 THE COURT: There you go.

15 All right. You may proceed.

16 CROSS-EXAMINATION BY MS. MCMAHAN CONTINUED

17 Q Mr. Mauldin, Ray Boyer did testify at the trial and so
18 did Katie Vinson. Do you feel, after reading their
19 statements, that you could've -- I mean -- let me back up.
20 Let me strike that.

21 Ray Boyer and Katie Vinson did testify at the trial.
22 They gave statements to law enforcement, obviously, that
23 the applicant feels were -- were different than what they
24 gave on the stand. Did you cross-examine them about those
25 inadequacies?

1 A Well, I'd have to review the transcripts. So I wish
2 these applications a little bit more definite so I know --
3 (audio loss) --

4 Q Let me reword it a little this way: If Mr. Boyer or
5 Mr. Vinson [sic] had testified to something that was
6 inconsistent with the statement they had given to the
7 police, would you have tried to bring out those
8 inconsistencies in cross-examination?

9 A It would depend on the nature of the inconsistency:
10 if it was something minor versus something irrelevant or if
11 there were enough minor things that it could add up to a --
12 a lack in memory or credibility. It just depends.

13 Q And if they were testifying or one of them was
14 testifying about they forgot how -- they forgot what they
15 gave as a statement on that day, would you have tried to
16 help refresh their recollection with their statement on the
17 stand if you needed to?

18 A Yeah. You could do that. If they adopt it, great.
19 And if they deny it, you can improve it by extrinsic
20 evidence like calling the cop in to testify so ---

21 Q Okay. And if you felt a situation had arisen to that
22 point, would you have tried to impeach them with their own
23 statement and/or call the officer to the stand that took
24 it?

25 A I believe so, if it -- it called for that or if I

1 thought it called for that.

2 Q Okay. And the issue with -- and I don't remember if
3 we talked about this before -- but the issue regarding the
4 items that were no longer at the detention center but were
5 taken from Mr. Frye -- specifically, the long-sleeve shirt
6 -- did you ever address that or have a conversation with
7 him about that?

8 A I'm not sure. I think, by the time he started
9 bringing up GSR, it'd been so long since it happened that
10 there probably wouldn't be any residue left. And
11 typically, if the state isn't doing GSR, I -- I bring up
12 the fact that they could've done it.

13 But it's hard to say. GSR is not -- not terribly
14 exact, as far as where it goes, on your hands or your body
15 or -- you know, I understand and people could have it on
16 their shirt, even if they fire a gun with their arm
17 outstretched. It's fairly inexact. And, of course, if a
18 GSR guy looked at it, I wouldn't know what -- what he'd
19 have to say today to tell you whether or not that would've
20 impacted the trial at all.

21 Q And is it your -- (audio loss) -- that GSR has to be
22 done within a certain time frame or else it sort of
23 dissipates?

24 A Right. Body -- you know, like, if it's on your hands,
25 it's got to be done, I guess, in six hours; and clothes,

1 that it's longer. But I -- I couldn't tell you how long.

2 Q And do you recall if, on the other shirt he was
3 wearing, the polo shirt -- I believe there was some
4 testimony about the victim's blood was on the back of Mr.
5 Frye's shirt. Did you ever have a conversation with him
6 about that?

7 A I don't recall.

8 Q Okay.

9 MS. MCMAHAN: I have no further questions, Your Honor.

10 THE COURT: Okay.

11 Ms. Meadows, anything in follow-up from you?

12 MS. MEADOWS: No, Judge.

13 THE COURT: Okay. All right. Thank you.

14 Mr. Mauldin, you're more than welcome to remain with
15 us, but you're free to go.

16 Does the state have anything further?

17 MS. MEADOWS: Just briefly, Judge, before I rest, I
18 would just move to dismiss the allegation regarding Mr.
19 Mauldin and the solicitors violating the Model Rules of
20 Professional Conduct. There's a Supreme Court case,
21 *Langford v. State*.

22 Supreme Court held that the Rules of Professional
23 Conduct, its purpose is to regulate and guide the legal
24 profession and ethical conduct have no bearing on the
25 constitutionality of a criminal conviction and nothing in

1 the rules should be deemed to augment any substantive legal
2 duty of the lawyers or the extra-disciplinary consequences
3 of violating such duty.

4 And I also just don't believe there's been any
5 testimony presented indicating that those rules were
6 violated.

7 THE COURT: Okay. In your return you also included
8 what you're referring to as a -- a partial motion to
9 dismiss. Is that -- is that addressed in that, what you've
10 just argued?

11 MS. MEADOWS: Let me see. Just one second.

12 (Off the record briefly.)

13 MS. MEADOWS: Judge, I believe that was just regarding
14 the broad due-process-violation claim. So I did not cover
15 the -- that was actually -- that allegation was in the
16 amended ---

17 THE COURT: Okay.

18 MS. MEADOWS: --- application.

19 THE COURT: All right. So specifically, concerning
20 this motion to dismiss, as it related to violation of any
21 code of -- of ethics on the part of either Mr. Mauldin or
22 on behalf of the prosecution; is that correct?

23 MS. MEADOWS: Yes, sir.

24 THE COURT: Okay.

25 Ms. McMahan, do you want to -- to address that or --

1 (audio loss) -- reserve the right to address it in a future
2 response, I'll -- I'll allow you to do that.

3 MS. MCMAHAN: I -- I would like to reserve in a future
4 response, if possible. However, I just want to -- even
5 though *Langford* has been out for a while as a -- you know,
6 as an opinion, it -- a petition for rehearing was actually
7 filed on that and has yet to be ruled on. So my argument
8 would be, is that it's not a final opinion from the Supreme
9 Court.

10 THE COURT: Okay.

11 MS. MCMAHAN: And other than that, I'll -- I'll --
12 I'll reserve, if I have any issues, for a 59(e), if I -- if
13 I feel I need to file one.

14 THE COURT: Okay. All right. Okay. Ms. McMahan, do
15 you have any rebuttal or reply case?

16 MS. MCMAHAN: No, Your Honor. I would just ask that
17 you review the record as a whole. I did, you know, state
18 in my amended application, you know, the *Simpson* case that
19 basically says, you know, we're allowed to have our
20 application basically, you know, amended throughout the
21 process and to conform to the evidence presented at the
22 hearing.

23 THE COURT: Okay.

24 MS. MCMAHAN: So I ask that that be allowed; that you
25 -- you know, obviously, there's an extensive record here --

1 that you review it as a whole and consider Mr. Frye's
2 testimony.

3 THE COURT: Okay. Very good.

4 All right. I'll take it under advisement and -- and
5 allow you, Ms. McMahan, if you do feel compelled, to make
6 any further argument as it relates to the state's motion to
7 dismiss. If you'll -- if you'll do that in -- in ten days
8 and I'll take it under advisement, review everything, and
9 issue a ruling.

10 MS. MCMAHAN: Thank you.

11 MS. MEADOWS: All right. Thank you, Judge.

12 THE COURT: Okay. All right. All right. Thank --
13 thank you very much. And this hearing is adjourned.

14 (Whereupon, the proceeding was concluded at 4:35 p.m.)

15 (Applicant's Exhibit 1 was marked and entered into
16 evidence upon receipt of same from counsel for
17 applicant.)

18 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

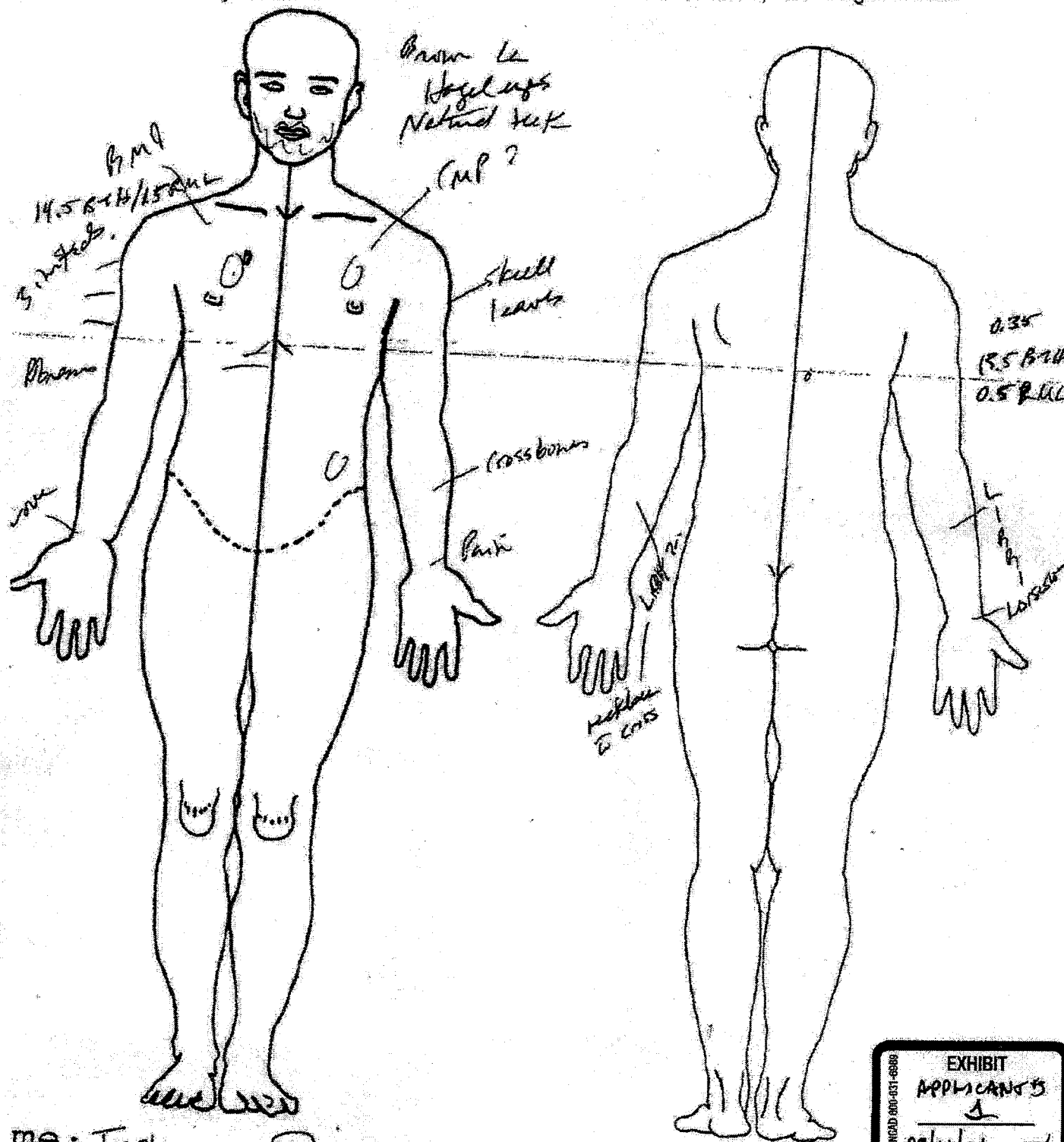
I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, RVR-M, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Lexington County, South Carolina, on the 1st day of September, 2021.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



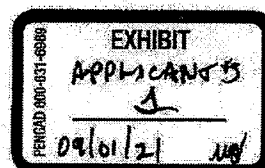
Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Official Court Reporter

West Columbia, South Carolina
March 11, 2022



me: Joshua PRINE
 te: 10-2-15

Necropsy ID: F15-789
 Ht: 5'10 1/2 in Wt: 165 lbs



STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

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IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Marion Wade Frye, SCDC #375354,)
LISA M. COMER,)
CLERK OF COURT,)
LEXINGTON SC) Case No. 2019-CP-32-0710

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

I. INTRODUCTION

This matter comes before the Court by way of post-conviction relief (PCR) action commenced by Marion Wade Frye (Applicant) on February 15, 2019. The State requested an evidentiary hearing through its return on August 22, 2019. Applicant filed an amended application on August 24, 2021.

A hearing into the matter convened before this Court on September 1, 2021, via Cisco WebEx Meetings. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing. The State presented testimony from Applicant's trial counsel, David M. Mauldin, Esquire.

In addition to the pleadings in this action, this Court had before it a copy of the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action.

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After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of trial counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was arrested on October 2, 2015, following an investigation into the shooting death of Joshua Prine. During its July 2017 term, the Lexington County Grand Jury indicted Applicant for murder (2016-GS-32-01113) and possession of a weapon during the commission of a violent crime (2017-GS-32-2551).

On February 5, 2018, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Assistant Public Defender David Mauldin (Counsel) represented Applicant. Deputy Solicitor Suzanne Mayes and Assistant Solicitor Gill Bell of the Eleventh Circuit Solicitor's Office prosecuted the case.

However, during the fourth day of trial, Applicant elected to plead guilty to the lesser-included offense of voluntary manslaughter pursuant to *North Carolina v. Alford*.¹ The negotiated plea agreement provided that Applicant would face a maximum exposure of twenty-two years' imprisonment and the State would drop the firearm charge and a separate child neglect charge. Judge McMahon accepted Applicant's plea and sentenced him to twenty-two years' imprisonment. Additionally, because Applicant was on probation for drug charges at the time of the shooting, Judge McMahon found Applicant in willful violation, revoked his probation, and sentenced

¹ 400 U.S. 25 (1970).

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Applicant to serve the original twelve-month sentence to run concurrent with the voluntary manslaughter.

Applicant filed a timely notice of appeal. On March 30, 2018, the South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation as to why an appeal from his guilty plea should proceed. *State v. Frye* (S.C. Ct. App. filed March 30, 2018). The case was remitted back to the circuit court on April 17, 2018. Applicant timely commenced this post-conviction relief action on February 15, 2019.

III. STATEMENT OF FACTS

On September 29, 2019, Applicant moved his belongings into a friend's mobile home, where the victim, Joshua Prine, also resided. (Tr. 171). Applicant woke up on the morning of October 1, 2015, and realized he was missing five-hundred dollars. (Tr. 171). Applicant first accused Ryan Bouleware, another resident of the home, of stealing his money. (Tr. 304). The two got into an argument, but Bouleware eventually offered Applicant his firearm as collateral for the missing money. (Tr. 304–305). Applicant agreed, and put the firearm in the waistband of his pants. (Tr. 305). Applicant then left the residence. (Tr. 305).

Applicant's girlfriend and children were in the car when Applicant returned to the residence later that evening. (Tr. 171). His intention was first to confront Prine's girlfriend, and then Prine, about the missing money. (Tr. 610). By that point, Prine was home from work, and Applicant began questioning him. (Tr. 270). The two started arguing, and the altercation quickly escalated. (Tr. 310–312). However, the altercation did not get physical until Applicant pulled the gun out of his waistband. (Tr. 271, 313). Bouleware and another friend grabbed Applicant's arm in an attempt to disarm him. (Tr. 313, 319). Prine then began to turn around when Applicant broke free and shot

Prine in the back, killing him (Tr. 165, 321). Applicant then ran out of the house, got in the car with his girlfriend and children, and drove away. (Tr. 323).

IV. ISSUES BEFORE THIS COURT

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (verbatim):

1. "Ineffective assistance of counsel"
 - a. "Preparations and presentations of counsel were deficient and insufficient time to prepare for trial because of short consultation with his client before trial"
 - b. "Counsel failed to file pretrial motions and argue for an immunity in relation to the case and evidence"
 - c. "Counsel failed to obtain discovery, 'in whole,' to review with client, resulted in insufficient time to prepare for trial"
 - d. "Counsel failed to utilize and investigator, and proper expert witness, and call/subpoena witnesses about conflicting evidence to present at trial, or investigate the circumstances at defendants request"
2. "Due process/prejudice"
 - a. "Unfair trial and unfair evidence the defendants were not givin[sic] a fair trial, the defence[sic] counsel did violate the defendants Constitutional fifth, sixth, and fourteenth amendments, the defense counsel was in the position to properly scrutinize what was being introduced that didn't have miscarriage of justice has occurred the defense didn't discretion to exclude unfair hearsay or evidence"
3. "Prosecutorial misconduct"
 - a. "The prosecutor has introduced false evidence and violated the professional rules as well that conduct the witness tampering, they encouraging the witness to make false statements under oath and offering up evidence that knowingly is false. The prosecutor engaging in misconduct and in violation of ethics rules"

Pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended his application to include the following allegations:

1. Ineffective Assistance of Counsel as to Assistant Public Defender David M. Mauldin

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- a. Applicant's attorney did not obtain all discovery available to him. Had Mr. Mauldin given the Applicant all of the Discovery available to review, Applicant would not have pleaded guilty.
- b. Attorney failed to call expert witnesses and other witnesses to counter conflicting evidence at trial. Attorney did not interview witnesses or make an independent investigation of the facts of the case. Applicant contends that had the Attorney conducted an adequate investigation of the facts and circumstances, the Attorney would have discovered the witness' false testimony and would have been able to defend the Applicant during the witness interviews. Moreover, this investigation would uncover the availability of Applicant's immunity claim.
- c. Violation of the Professional Rules of Conduct by encouraging false testimony, false evidence, and prosecutorial misconduct. Applicant requested new counsel during the trial, which was denied.

V. STANDARD OF REVIEW

An applicant may seek post-conviction relief on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. 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;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

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Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a

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probability “sufficient to undermine confidence in the outcome.” *Id.* However, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696.

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’ ” *Dunn v. Reeves*, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. See *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant

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must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, ___, 137 S. Ct. 1958, 1966 (2017). However, the applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. Judges must "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Lee*, 582 U.S. at ___, 137 S. Ct. at 1967. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres v. Leake*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Surmounting *Strickland*'s high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. at ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. *Hill*, 474 U.S. at 58

(“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies.” *Lee*, 582 U.S. at ____, 137 S. Ct. at 1967. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—*not* whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

VI. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State’s return, this Court proceeds to the claims raised in the amended applications and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

A. Failure to Investigate, Review Discovery, and Prepare Defense

Applicant makes a series of claims alleging trial counsel was ineffective in his investigation, preparation, and overall performance prior to his trial and ultimate guilty plea. Specifically, Applicant alleges Counsel was ineffective for spending insufficient time preparing for trial, failing to review discovery with him, failing to adequately investigate, and failing to

request a pretrial immunity hearing under the Protection of Persons and Property Act.²

This Court disagrees, and finds Applicant failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*, 466 U.S. 668). This Court finds credible and persuasive the testimony of Counsel, who presented well-recollected testimony of the events leading up to Applicant’s plea. Applicant’s own testimony, although predominantly incredible, established he met with Counsel to discuss his case and review discovery several times before his trial. Judge McMahon specifically advised Applicant that by pleading guilty, he would waive any defenses he may have. (Tr. 564). Applicant told the plea court he understood, and wished to waive that right in order to plead guilty. Further, Applicant failed to present evidence of any viable defense, investigative tactic, or alternate strategy Counsel should have explored which would have helped Applicant’s case or affected his decision to plead guilty.

1. Discovery

At the outset of the PCR hearing, Applicant testified he believed Mauldin was “overloaded from being a public defender” and therefore was not able to give his case the time it deserved. To this effect, Applicant recalled several instances where he believed that Mauldin failed to allocate adequate time to his case. First, Applicant noted that despite his repeated request for Mauldin to visit him in jail, Mauldin only visited four or five times. During his visits, Applicant believes that Mauldin never provided him with a complete version of the discovery. Consequently, there were several exhibits Applicant was not able to review before the State introduced them at trial.

² The Protection of Persons and Property Act, S.C. Code Ann. §§ 16-11-410 to 450, codified the common law Castle Doctrine, “which recognizes that a person’s home is his castle.” S.C. Code Ann. § 16-11-420.

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At the PCR hearing, Mauldin stated that some of his notes were missing regarding some of the dates he met with Applicant; however, he named approximately ten specific dates and times he visited him at the jail. Mauldin further stated they met in his office for about six to eight hours before trial and spoke on the phone several times. Regarding Applicant's claim trial counsel failed to provide him with a copy of all the discovery, Mauldin explained that he received a significant portion of the discovery right before the trial. Although he may not have been able to physically send Applicant copies of the new discovery, Mauldin credibly testified that he summarized the new discovery to Applicant verbally. He specifically recalled reviewing pictures with Applicant that he received right before trial. However, Mauldin did not believe the late discovery was significant enough to request a continuance.

This Court finds Applicant failed to establish trial counsel was ineffective for failing to adequately review the discovery with him. Although Applicant believes Mauldin did not spend enough time discussing the discovery with him, "[t]he brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012). An applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 500–01, 745 S.E.2d at 382 (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)). The fact that Applicant was not able to review some of the discovery materials that were provided at the last minute is not the fault of trial counsel. Moreover, Counsel credibly testified he spoke with Applicant about these materials, and explained what they were. Applicant nonetheless failed to identify what, if anything, could have been

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achieved had trial counsel spent more time with him in consultation regarding the contents of his discovery. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

2. Preparation and Investigation

Applicant further alleges Mauldin was ineffective in his investigation and preparation for trial. For example, Applicant testified Mauldin failed to ensure that a gunshot residue test was conducted. Applicant believed this was essential to his representation because he doubted that the expert's theory on the trajectory of the bullet. According to Applicant, the bullet's trajectory would prove that the gun was not under his arm. He stated Mauldin should have hired a blood spatter expert. Applicant further testified he told Mauldin he wanted to polygraph Katie Vincent, Raymond Boyer, and other eyewitnesses. Mauldin told him that polygraph results are not admissible in court.

Applicant further stated he was not prepared for trial because Mauldin did not go over what he planned on presenting at trial. To the best of Applicant's knowledge, the only trial preparation Mauldin shared with him was his request for Ryan Boulware to be testify on his behalf. Applicant testified to a laundry list of items that he believed Mauldin should have completed and witnesses Mauldin should have subpoenaed.

Mauldin thoroughly summarized the extent of his investigation. At the outset of the case, Mauldin hired an investigator who reviewed the discovery independently and met with Applicant in jail. Throughout the investigation, the private investigator spoke with several witnesses identified in both the incident report and by Applicant. In the meantime, Mauldin subpoenaed witnesses, created a list of potential backup witnesses, and determined what evidence, if any, he would enter into evidence.

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While Mauldin did not go to the site of the crime, he reviewed the bullet trajectory and the coroner's report. Likewise, he did not call the coroner to testify because coroners receive no medical training, their report is based on information from other witnesses whom he preferred to call instead, and he was unsure whether the coroner's report would come in under a hearsay exception. Mauldin reinforced the numerous individuals he and his private investigator spoke with including Applicant's sister, Jennifer Boyer, and Nate Boyer. Mauldin testified that he called the witnesses he believed necessary to support the self-defense theory and knew it was possible to call the others as witnesses if needed. Regarding the gunshot residue test, Mauldin informed the court that gunshot residue had to be tested within a certain period of time or else it dissipates. In this case, Mauldin believed that by the time Applicant requested the test, it likely had been too long to find any gunshot residue.

This Court finds Applicant failed to establish trial counsel was ineffective in either his investigation or preparation for trial. "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691.

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 597 ("Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation."). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U.S. at 690–91; *see Byram v. Ozmint*, 339 F.3d 203, 210 (4th Cir. 2003) (" '[T]he reasonableness of an investigation, or a decision by counsel that forecloses the need for an investigation, must be considered in light of the scarcity of counsel's time and resources in preparing for a sentencing hearing and the reality that counsel must concentrate his efforts on the strongest arguments in favor of mitigation.' ") (quoting *McWee v. Weldon*, 283 F.3d 179, 188 (4th Cir. 2002)). Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

Here, Counsel's credible testimony indicates he met with Applicant prior to trial, reviewed the discovery materials with him, and discussed his case with him at length. Counsel further testified about his thorough investigation, addressed each of the matters Applicant claimed he failed to investigate, and explained why he did not include them in his preparation. Applicant failed to present any evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson*, 329 S.C. at 353–54, 495 S.E.2d at 772), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836

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(2018). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Accordingly, Applicant's claims pertaining to trial counsel's failure to adequately investigate and prepare for trial are **DENIED**.

3. Defense Strategy

Applicant further claims trial counsel was ineffective for failing to file certain pretrial motions, failing to call expert witnesses, and failing to adequately cross-examine fact witnesses regarding inconsistencies in their testimony. Additionally, at the PCR hearing, Applicant testified at the PCR hearing that he believed Mauldin did an insufficient job presenting the evidence to the court. Specifically, Applicant believed the expert's testimony regarding the bullet trajectory was incorrect. He introduced a diagram from the autopsy report³ that he contends supports his version of events, and testified he pointed this out to Mauldin. However, he ultimately acknowledged that Mauldin cross-examined the State's expert and that she admitted on the stand that she could have been wrong about the bullet trajectory.

Applicant further testified Mauldin failed to cross-examine Katie Vinson regarding inconsistencies in her testimony and the statement she gave to law enforcement. Likewise, he stated Mauldin did an insufficient job in reviewing missing evidence, such as the white t-shirt he was wearing on the night in question and over \$700. Applicant further complained that he never heard all of the 9-1-1 calls and was disappointed that his girlfriend's 9-1-1 call was not used. Regarding pretrial motions, Applicant testified he was denied his right to a stand your ground

³ This page from the autopsy report was introduced into evidence as Applicant's Exhibit #1.

hearing, a speedy trial hearing, and that Mauldin failed to file a motion to suppress Applicant's statements to law enforcement.

Prior to trial, Mauldin testified he made several pre-trial motions, including a motion to sequester; however, they were denied by the trial judge. Regarding Applicant's claim Mauldin should have pursued a stand your ground defense, Mauldin explained that Applicant would not qualify because the victim had been living in the home for several weeks, and therefore had a legal right to be there. Regarding the 9-1-1 calls, Mauldin testified that he planned on playing the recording of Turner's 9-1-1 call during his closing argument. His strategy was to argue in closing that the State failed to present the 9-1-1 call because it was detrimental to their case. Mauldin was nonetheless able to elicit testimony to the effect that Applicant's girlfriend called 9-1-1 despite the State not admitting into evidence.

Regarding trial strategy, Mauldin testified that initially they discussed a unified strategy between Applicant and Applicant's girlfriend, Katelyn Turner. Brad Kirkland represented Turner. Mauldin testified that he and Kirkland first developed a trial strategy of self-defense. However, when the four of them met at Mauldin's office, Applicant and Turner's statements were inconsistent and they repeatedly fought with each other about what to say. At one point, Kirkland and Mauldin even had to separate them. Consequently, he was concerned about calling Turner as a witness, but felt that pursuing a self-defense strategy was the best option.

To this effect, he managed to get the State's expert to admit that the bullet trajectory could be interpreted to match Applicant's allegation. However, the fact that there were multiple eyewitnesses clearly hurt Applicant's case significantly. Mauldin testified that Applicant's story was wholly inconsistent with what the eyewitnesses reported. Moreover, he was concerned about Applicant's testimony, which was required in order to argue self-defense.

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DJA

Mauldin testified that after Applicant heard the expert's testimony on re-direct examination, he decided to plead guilty. When asked about the Applicant's decision to plead guilty, Mauldin testified that "you never know what a jury will do," but he did not believe that his two primary witnesses would have been good witnesses nor was he confident how they would react to the State's aggressive cross-examination. He therefore believed it was in Applicant's best interest to plead guilty.

This Court finds Applicant failed to demonstrate trial counsel's strategic decisions fell below an objective standard of reasonableness. "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.").

"Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." *Dunn*, 594 U.S. ___, 141 S. Ct. at 2410 (quoting *Harrington*, 562 U.S. at 106–107). "Such decisions are particularly difficult because certain tactics carry the risk of 'harm[ing] the defense' by undermining credibility with the jury or distracting from more important issues." *Id.* (quoting *Harrington*, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to

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reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*'s deferential standard.

Here, Applicant failed to overcome the presumption that trial counsel's strategic decisions fell below an objective standard of reasonableness. Mauldin explained that his strategic options were limited given the multiple eyewitnesses to the shooting and the inconsistent statements of Applicant and Turner. *See Curtis v. State*, 500 S.W.2d 478, 481–82 (Tex. Crim. App. 1973) (“[The appellant] tendered his lawyer an extremely weak hand to play in his defense, but it was well played A lawyer cannot be expected to win a hopeless case.”); *Rockwood v. State*, 524 S.W.2d 292, 293–94 (Tex. Crim. App. 1975) (“There are some cases that cannot be won. An attorney must appraise a case and do the best he can with the facts.”). Further, Mauldin correctly assessed the implausibility of pursuing a stand your ground defense. S.C. Code Ann. § 16-11-440(B)(1) (“The presumption [of reasonable fear of imminent peril when using deadly force against another] does not apply if the person . . . against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle.”

Applicant further failed to demonstrate a reasonable probability that, but for trial counsel's errors, he would not have pleaded guilty,” and would have continued with his trial. *Hill*, 474 U.S. at 59. Applicant even admitted he pleaded guilty “to get the deal.”

Accordingly, Applicant's claims pertaining to counsel's trial strategy and decisions related thereto are **DENIED**.

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DBA

B. Violation of the Rules of Professional Conduct

This Court further finds Applicant's claim that trial counsel and the solicitors violated the South Carolina Rules of Professional Conduct "by encouraging false testimony, false evidence, and prosecutorial misconduct" is patently meritless. At the PCR hearing, Applicant was asked specifically how either Mauldin or the solicitors did that encouraged false evidence. Applicant responded that he "does not understand how [the eyewitnesses] can say certain things that they know are lies." He further stated these witnesses "were saying stuff in front of each other" and that "they should have been separated." As aforementioned, Mauldin's motion to sequester the witnesses was denied. Mauldin testified that Applicant was essentially frustrated that he could not make the witnesses say what Applicant wanted them to say on the stand. He further testified that he had no reason to believe either Deputy Solicitor Mayes or Assistant Solicitor Bell committed any sort of misconduct or ethics rules violations.

Our Supreme Court has unequivocally held that the Rules of Professional Conduct, whose purpose is to regulate and guide the legal profession in ethical conduct, "have no bearing on the constitutionality of a criminal conviction" and "[n]othing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such duty." *Langford v. State*, 310 S.C. 357, 360, 426 S.E.2d 793, 795 (1993) (emphasis added) (citing Rule 407, SCACR); *see* Rule 407, Scope of RPC ("Violation of a Rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached."); *see also Nix*, 475 U.S. at 165 (breach of ethical standard not tantamount to denial of defendant's Sixth Amendment rights); *Whelchel v. Bazzle*, 489 F. Supp. 2d 523, 535 (D.S.C. 2006) ("[P]rofessional conduct rules have no bearing on whether a criminal conviction is constitutional . . ."); *Moss v. United States*, 323 F.3d 445, 449 (6th Cir. 2003) (noting that that the Sixth

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10/2/19
2019-CP-32-0710

Amendment constitutional analysis is independent of attorney rules of professional conduct); *Lambert v. Blodgett*, 393 F.3d 943, 986 (9th Cir. 2004) (“[T]he Supreme Court has never applied the ethical imputed disqualification rule in Sixth Amendment analysis.”).

Notwithstanding the fact that the South Carolina Rules of Professional Conduct have no bearing on the constitutionality of a conviction, Applicant failed to provide any evidence that either trial counsel or the solicitors violated ethics the rules. Accordingly, Applicant’s request for relief by way of purported ethics rules violations is **DENIED**.

VII. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

VIII. CONCLUSION

Based on the evidence presented at the PCR hearing and a thorough review of the record, this Court finds and concludes Applicant failed to meet his burden of proof pursuant to *Strickland* and Rule 71.1, SCRCP. Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel’s receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant

has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve *and* file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 5 day of Nov, 2021.



DONALD B. HOCKER
Presiding Circuit Court Judge
Eleventh Judicial Circuit

Laurel, South Carolina

#21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Marion W. Frye, #375354,	)	Case No. 2019-CP-32-0710
	)	
Applicant,	)	
	)	
v.	)	Certificate of Service
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
_____	)	

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), as amended August 27, 2021, "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the **Order of Dismissal** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

Ashley A. McMahan
ashley@mcmahantaylor.com

DATED this 16th day of November, 2021.

s/LillianMeadows
 LILLIAN L. MEADOWS
 Assistant Attorney General
 Office of the Attorney General
 Post Office Box 11549
 Columbia, South Carolina 29211
 (803) 734-3737
 LillyMeadows@scag.gov

WITNESSES

Lexington County Sheriffs Department

B Booth

Law Enforcement Case #: 15019095

LSM

ARREST WARRANT NUMBER

2015A3210201710

ACTION OF GRAND JURY

TRUE BILL

Sheryl B. Ferguson
Foreperson of Grand Jury

Date: *7-10-17*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS3201113
Amended

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2017

THE STATE

vs.

Marion Wade Frye

CDR #: 0116

Indictment for

Murder

§ 16-03-0010

DONALD V. MYERS, SOLICITOR

ATRUE COPY

Lex. Co. C.O.C.R. G.S. & F.O.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Murder

§ 16-03-0010

At a Court of General Sessions, convened on July 2017, the Grand Jurors of Lexington County present upon their oath:

That **Marion Wade Frye** did in Lexington County on or about October 1, 2015, unlawfully kill one Joshua Prine with malice aforethought, either express or implied, to wit: did shoot the victim, Joshua Prine, with a firearm, resulting in his death, in violation of § 16-3-10, Code of Laws of South Carolina, 1976, as amended.

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

Suzanne Mayes
ASSISTANT SOLICITOR

A TRUE COPY

[Signature]
Lex. Co. C.C.O.P., G.S. & F.C.

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Maximum Exposure of ~~28~~ yrs (Negotiated cap)
22 ~~28~~

STATE OF SOUTH CAROLINA)
COUNTY OF Lexington)
STATE VS.)
Marion Wade Frye)
AKA:)
Race: Sex: M Age: 31)
DOB: SS#:)
Address:)
City, State, Zip: West Columbia, SC 29170-3417)
DL#: SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐)
In disposition of the said indictment comes now the Defendant who was
TO: Manslaughter / Voluntary manslaughter

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS3201113
A/W#: 2015A3210201710
Date of Offense: 10/1/2015
S.C. Code § : 16-03-0010
CDR Code #: 0116

SENTENCE SHEET

Under Alford

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

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

ATTEST: K. Smay 6491 Marion Wade Frye 12682 14074
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS

PTUP
days/hours Public Service Employment

Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning

Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund
Other: NO CONTACT WITH

ANY MEMBER OF
VICTIM'S FAMILY
☐ Appointed PD or appointed other counsel,
§Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge
Judge Code:
Sentence Date: 8 Feb 2018

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (DUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$

TOTAL \$125
Clerk of Court/Deputy Clerk
Court Reporter
Sec. of State