

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

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S.C. Supreme Court

ERIC BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000001

APPENDIX

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STATE OF SOUTH CAROLINA)

COURT OF GENERAL SESSIONS

COUNTY OF DORCHESTER)

STATE OF SOUTH CAROLINA,)

Plaintiff,)

-vs-)

ERIC L. BROWN,)

Defendant.)

03-GS-18-013

November 2, 2004

Before the Honorable
Steven H. John

APPEARANCES:

For the State:

Jennifer Porter, Esquire

For the Defendant:

Marva Hardee Thomas, Esquire

Hilda M. Jordan, CVR
Circuit Court Reporter

1 THE COURT: Yes, ma'am, Solicitor?

2 MS. PORTER: Thank Your Honor. We're on the
3 record in the State verses Eric Brown. He is charged with
4 murder on Indictment -- do you have the indictment?

5 THE COURT: I've got the indictment. Yes, ma'am,
6 I've got the original indictment. Yes, ma'am.

7 MS. PORTER: Thank you. It's indictment 2003-GS-
8 18-0013. He's indicated he wishes to plead guilty, Your
9 Honor. The State is allowing him to plead guilty to
10 voluntary manslaughter on this charge.

11 THE COURT: All right, ma'am. And, as I
12 understand it, that is -- you've allowed him plead guilty
13 to voluntary manslaughter, that is without further
14 negotiations or recommendations; is that correct?

15 MS. PORTER: That is correct, Your Honor.

16 THE COURT: All right.

17 Is that your understanding, also, Ms. Thomas?

18 MS. HARDEE THOMAS: Yes, Your Honor.

19 THE COURT: All right. Thank you.

20 All right, Mr. Brown. If you would, put your left
21 hand on the Bible and raise your right hand, sir.

22 MR. BROWN: Yes, sir.

23 THE COURT: Do you solemnly swear or affirm to
24 tell the truth, the whole truth, and nothing but the truth,
25 so help you God?

1 MR. BROWN: Yes, sir.

2 THE COURT: All right, sir.

3 Now, you come before the Court to tender your plea of
4 guilty to voluntary manslaughter; is that correct?

5 MR. BROWN: Yes, sir.

6 THE COURT: You understand the potential sentence
7 in this matter could be up to 30 years; do you understand
8 that?

9 MR. BROWN: Yes, sir.

10 THE COURT: Sir?

11 MR. BROWN: Yes, sir.

12 THE COURT: All right, sir.

13 Do you further understand that this is a lesser
14 included offense, the offense for which you're -- you're
15 actually indicted for murder by action of the Dorchester
16 Grand Jury on or about January 13, 2003; is that correct?

17 MR. BROWN: Yes, sir.

18 THE COURT: Do you further understand that this
19 matter other than the reduction of the charge from murder
20 to voluntary manslaughter comes to the Court without
21 negotiations or recommendations as to the sentence by the
22 State; do you understand that?

23 MR. BROWN: Yes, sir.

24 THE COURT: All right, sir.

25 You also understand that voluntary manslaughter is

1 considered and classified as a violent and a most serious
2 offense; do you understand that?

3 MR. BROWN: Yes, sir.

4 THE COURT: And you have discussed the
5 implications of that with your attorney; is that correct?

6 MR. BROWN: Yes, sir.

7 THE COURT: You understand that if the Court takes
8 the plea and imposes a sentence upon your release from jail
9 whenever that might be, if you are convicted of another
10 offense within this category the punishment would be life
11 without parole; do you understand that?

12 MR. BROWN: Yes, sir.

13 THE COURT: No matter what the statutory
14 punishment, because this one is classified as violent and
15 most serious. If you had another one violent or most
16 serious you would be subject to the sentence of life
17 without parole no matter what that crime would be; do you
18 understand that?

19 MR. BROWN: Yes, sir.

20 THE COURT: All right, sir.

21 Knowing all these matters we just talked about, do you
22 want to go forward with your guilty plea?

23 MR. BROWN: Yes, sir.

24 THE COURT: Are you currently under the influence
25 of any drugs or intoxicants of any kind or have them in

1 your system?

2 MR. BROWN: No, sir.

3 THE COURT: Are you suffering from any kind of
4 physical, mental, or emotional problem that would keep you
5 from understanding what we're doing here today?

6 MR. BROWN: No, sir.

7 THE COURT: When you plead guilty you give up
8 certain constitutional rights. Among those are the right
9 to remain silent. By speaking with me you're giving that
10 right up; do you understand that?

11 MR. BROWN: Yes, sir.

12 THE COURT: Other rights would be the presumption
13 of innocence, the right against self-incrimination at a
14 trial. The State has to prove your guilt beyond a
15 reasonable doubt. When you plead guilty you give those
16 rights up; do you understand that?

17 MR. BROWN: Yes, sir.

18 THE COURT: You're entitled to a jury trial.
19 Twelve men and women would look at the facts presented by
20 the State to see if there's indeed sufficient facts to
21 prove you guilty beyond a reasonable doubt. When you plead
22 guilty you give that right up; do you understand that?

23 MR. BROWN: Yes, sir.

24 THE COURT: In that jury trial you have the right
25 to confront your accusers. With your attorney you can

1 question the witnesses and the evidence presented by the
2 State and if you wanted to you could present a defense.
3 When you plead guilty you give those rights up; do you
4 understand that?

5 MR. BROWN: Yes, sir.

6 THE COURT: Now, you've come before the Court to
7 tender a plea of guilty to voluntary manslaughter?

8 MR. BROWN: Yes, sir.

9 THE COURT: Are you doing so freely and
10 voluntarily?

11 MR. BROWN: Yes, sir.

12 THE COURT: Of your own free will and accord?

13 MR. BROWN: Yes, sir.

14 THE COURT: Are you pleading guilty to this
15 offense because you are guilty of this offense?

16 MR. BROWN: Yes, sir.

17 THE COURT: Did anybody promise you anything,
18 threaten you, force you, coerce you in any way to get you
19 to plead guilty?

20 MR. BROWN: No, sir.

21 THE COURT: Now, you're standing here and you've
22 been represented in this matter by Ms. Thomas; is that
23 correct?

24 MR. BROWN: Yes, sir.

25 THE COURT: Have you told her everything you need

1 to tell her about this case?

2 MR. BROWN: Yes, sir.

3 THE COURT: Have you had enough time to talk to
4 her?

5 MR. BROWN: Yes, sir.

6 THE COURT: Do you need any more time to talk to
7 her?

8 MR. BROWN: No, sir.

9 THE COURT: Has she done everything that you
10 expected of her, that you wanted her to do to try to help
11 you in this case?

12 MR. BROWN: Yes, sir.

13 THE COURT: Are you satisfied with her help?

14 MR. BROWN: Yes, sir.

15 THE COURT: Any complaints about her
16 representation?

17 MR. BROWN: No, sir.

18 THE COURT: Ms. Thomas, you represent the
19 interests of Mr. Brown in this matter?

20 MS. HARDEE-THOMAS: I do, Your Honor.

21 THE COURT: He comes before the Court to enter his
22 plea of guilty to voluntary manslaughter; do you concur?

23 MS. HARDEE-THOMAS: I do.

24 THE COURT: And do you believe he's come before
25 the Court of his own free will and accord?

1 MS. HARDEE-THOMAS: He does.

2 THE COURT: Have you explained to him his
3 constitutional rights, any defenses that he might have, as
4 well as, the information and the evidence in the possession
5 of the State?

6 MS. HARDEE-THOMAS: I have, Your Honor.

7 THE COURT: Thank you very much.
8 Solicitor?

9 MS. PORTER: Thank you, Your Honor.

10 May it please the Court. On the night of November 9th
11 of 2002, the Defendant, at sometime during that evening --
12 who lived in a mobile home with the victim Stacy Fogle and
13 her children, sometime that night, Your Honor, the
14 Defendant shot Ms. Fogle with a 20-gauge shotgun in her
15 face. Five of her six children were in the mobile home
16 when she was killed. Her two-year-old was in the same room
17 with her, in the room that she died in, Your Honor.

18 Officers went to the scene that night and found the
19 Defendant about two and a-half to three miles away from the
20 scene. He -- they picked him up, took him back to the
21 scene, and at the scene, Your Honor, at that time, the
22 Defendant gave several different statements as to what
23 happened. Later that night the Defendant was interviewed
24 again by the Detective Van-Doren and Detective Marshall of
25 the Dorchester County Sheriff's Department. And also at

1 that time gave several different conflicting statements as
2 to what happened, Your Honor.

3 Again, on November 13th, the Defendant was interviewed
4 and gave a statement, again on November 26th, he was
5 interviewed and gave another statement. Finally, on
6 December 3rd, the Defendant gave a statement conflicting
7 with all the other statements that he previously had given,
8 Your Honor.

9 When -- I believe it was Detective Van-Doren why he
10 just didn't tell the truth he ended the interview saying
11 that if I told you the truth, Your Honor, it wouldn't make
12 it no better.

13 I believe, Your Honor, this case is one that shouts
14 out for the maximum sentence. The family and friends of
15 the victim, Stacy Fogle, are in the courtroom at this time.
16 I believe they would like to address the Court.

17 THE COURT: I'll be glad for them to do so at the
18 appropriate time. If I take the plea, then I will hear
19 from them at that time.

20 MS. PORTER: Your Honor, if I didn't say so, this
21 happened on Raspberry Road, here in Dorchester County.

22 THE COURT: All right.

23 All right, Mr. Brown, you heard those facts stated by
24 the Solicitor and further in the indictment, I understand
25 you're pleading guilty to voluntary manslaughter, but you

1 understand in the indictment it says that the Defendant,
2 Eric Lester Brown, did in Dorchester County, on or about
3 November 9th, 2002, with malice aforethought, kill one
4 Stacy Fogle by means of shooting the victim in the face and
5 the said victim did die as a proximate result thereof.
6 This being a violation of the laws of the State of South
7 Carolina.

8 Understanding you're pleading guilty to voluntary
9 manslaughter are the facts set forth by the Solicitor and
10 in the indictment true and correct?

11 MR. BROWN: Yes, sir.

12 THE COURT: I'm sorry. I did not hear you, sir?

13 MR. BROWN: Yes, sir.

14 THE COURT: All right, sir.

15 You understood when you committed this act you were
16 committing a extremely serious and violent crime; you
17 understood that?

18 MR. BROWN: Yes, sir.

19 THE COURT: All right, sir.

20 Have you understood my questions here today?

21 MR. BROWN: Yes, sir.

22 THE COURT: Have all your answers been the truth?

23 MR. BROWN: Yes, sir.

24 THE COURT: Anybody tell you how to answer my
25 questions?

1 MR. BROWN: No, sir.

2 THE COURT: You understand you have the right to
3 appeal your guilty plea within 10 days?

4 MR. BROWN: Yes, sir.

5 THE COURT: I find there's been a substantial
6 factual basis for the plea. I find the Defendant's
7 decision to plead guilty has been done freely, voluntarily,
8 knowingly, and intelligently made. He's had the advice of
9 competent counsel with whom he's satisfied, therefore, Mr.
10 Brown's decision to plead guilty to voluntary manslaughter
11 is accepted.

12 Yes, ma'am, Ms. Thomas?

13 MS. HARDEE-THOMAS: Yes, Your Honor.

14 Before you you have Eric Brown. He is presently 25
15 years of age. He has one child who is a female. His
16 mother and father are from the Dorchester County area or
17 Dorchester area and he has grand -- excuse me -- he has a
18 mother, grandmother, brother and sister that also live
19 there.

20 Your Honor, he has worked as a brick mason by trade
21 and before he was arrested he was working for the tree
22 nursery with Wayne Dukes.

23 We're asking the Court for leniency in this matter,
24 Your Honor. I believe he wanted to say something to the
25 family in this particular time.

1 THE COURT: All right.

2 Mr. Brown, I'll be glad to hear from you. Just
3 address the Court. I'll be glad to hear from you.

4 MR. BROWN: Yes, sir.

5 THE COURT: Speak directly to me, is what I'm
6 saying.

7 MR. BROWN: Okay.

8 I've been planning how to say this since 2002, since I
9 was arrested for this. I was going to say that I know I
10 hurt y'all family deeply. I practicing this, how I'm going
11 to face y'all, how's I was going to face y'all. That's why
12 I don't want to go through with this trial. I don't want
13 to put y'all through no more trouble, no more harm. I hope
14 y'all find it in your heart any way possible to forgive me
15 for -- just forgive me for how I ruin y'all family, how I
16 ruin my family.

17 I made a mistake. I made a mistake. And I paid for
18 it whether I'm on the street or in prison. I pay for it
19 the rest of my life. Since that day my life has never been
20 the same and I know y'all won't never be the same neither.

21 For the kids, I still love y'all dearly. I still love
22 y'all dearly. And I wish I -- I know there's nothing I can
23 do, nothing I can say to bring your mother back, but please
24 just find it -- the most important thing is just find it in
25 your heart to forgive me, please. Just find it in your

1 heart to forgive me.

2 I'm not worrying about the Court term, just -- I just
3 want y'all to forgive me, because I didn't mean to do that.
4 I didn't mean to do that. That's all I'm asking is y'all
5 forgiveness. And y'all -- I wish y'all the best. Y'all
6 can carry on with your life. For them kids, I wish y'all
7 the best in life. I hope everything work out for y'all.

8 THE COURT: Thanks.

9 Did anyone else on behalf of Mr. Brown wish to address
10 the Court?

11 MS. HARDEE-THOMAS: State your name?

12 MS. BROWN: My name is Daisy Brown. I'm Eric
13 Brown mother. And all I had was my three boys. I've been
14 mother and father to them all my life. And they've been
15 good boys. I took them to church, and I tried to teach
16 them to treat people right. I done my best. I'm still
17 trying to do my best. He was a very, very, good young man.
18 He helped me out. They even give me my medicine so I
19 wouldn't be sick and they would take turns to give me my
20 medicine and make sure I take it, and make sure I be
21 healthy and stuff. He was very, very good. I brought them
22 up in the church. Little boys -- I used to buy them little
23 books in the yard sales to read to them about church and
24 stuff so they would come up with church in their mind and
25 body. And I am so sorry that this happened, and I have

1 loved that child just like she was one of my own. And I
2 love them children just like they my own grandchildren. I
3 hope that they forgive us. Forgive us, please, because I
4 love them. God knows I love them and that is the truth.
5 Honestly.

6 THE COURT: Thank you, ma'am.

7 Anything else, Ms. Thomas?

8 MS. HARDEE-THOMAS: That's it from the Defense,
9 Your Honor.

10 THE COURT: All right.

11 All right, Ms. Porter, I'll be glad to hear from any
12 members of the victim's family that wish to address the
13 Court at this time.

14 MR. RASPBERRY: Your Honor, my name is Cleveland
15 Raspberry. I am the victim's uncle. I just want to say to
16 Mr. Brown that I've already forgiven you. The Lord has
17 forgiven you, but justice has to be served. It may not be
18 what we want, but justice has to be served.

19 You have done harm to a family of six children. The
20 youngest one at that time was, I think, four. The two
21 little ones -- you've separated a family, really, because
22 they're all separated now. The two little ones -- it's
23 very hurting, because the two little ones had just seen
24 each other for the first time in about three months, maybe
25 four, and it was just so touching. They're only six and

1 five right now. They didn't want to leave each other. And
2 that's a hurting feeling.

3 Like I said, the Lord has already forgiven you, I've
4 forgiven you, but justice has to be served.

5 They say that thou shall not kill. And that's one of
6 the Ten Commandments. I set here and I listen to mother
7 talk about bring you up in church. My mother and father
8 brought me up in the church too. Right now, I'm a deacon
9 in the church. I'm 37 years old and it's not how -- your
10 mother and father bring you up right, but it's your mind
11 set to get you where you want to be. Nobody can't tell you
12 what to do. It's your mind. Nobody has to make up your
13 mind for you to do this, and you did it, and I hope that
14 justice will be served in a very respectable way.

15 I think you, Your Honor.

16 THE COURT: Thank you, sir.

17 Yes, sir?

18 MR. FOGLE: My name is Purnell Fogle.

19 THE COURT: Yes, sir.

20 MR. FOGLE: I'm Shequan, Alicia, Daniel and
21 Purnell father.

22 THE COURT: Yes, sir.

23 MR. FOGLE: I feel that justice has to be served,
24 too. Everyday I look at these kids, I think back through
25 that they parents -- I mean, they mother and the hurt

1 they're going through. I see a big change in their lives.
2 Like Cleveland said, the two younger ones, he separated
3 them -- they don't get to spend much time with each other.

4 I also feel that what he done he should have walked
5 away. You can walk away any time.

6 THE COURT: Take your time, sir. I'll be glad --
7 you take your time.

8 Thank you.

9 MS. FOGLE: My name is Alicia Fogle. And the only
10 thing I want to say is that my mama was a good lady and she
11 never did no harm to nobody. And I just want to let Eric
12 know that I forgive him for what he did to our mama.

13 MR. BROWN: I'm so sorry. So sorry.

14 THE COURT: Thank you.

15 All right. Madam Solicitor, is there any other
16 members of the victim's family that wish to address the
17 Court at this time?

18 MS. PORTER: I don't believe so, Your Honor.

19 THE COURT: All right. Anything else that you
20 would like to say, ma'am?

21 MS. PORTER: Yes, sir. The Defendant, at this
22 time, was on parole for unlawful possession of a firearm by
23 a person under 21. He had received a suspended YOA for
24 this and he had violated probation previously on that
25 offense. He had served 10 months and was out on parole

1 when this happened, Your Honor, and there was an
2 outstanding warrant for his parole violation at the time
3 that he killed Ms. Fogle, Your Honor. He wasn't even
4 supposed to be in possession of a gun at all. I just
5 wanted to reiterate the fact, Your Honor, that -- just that
6 he wasn't even supposed to have a gun and he had violated
7 parole and probation.

8 THE COURT: Thank you, ma'am. Madam Solicitor, so
9 that the Court has a full understanding of this situation,
10 is it correct that the Solicitor's Office, in the past, had
11 made an offer to the Defendant regarding a guilty plea
12 regarding a sentence of 25 years; is that correct?

13 MS. PORTER: There's a little bit more to it.

14 THE COURT: Yes, ma'am.

15 MS. PORTER: There was a lot more negotiations. I
16 believe that it was 25 consecutive to his YOA.

17 THE COURT: Which now he has already served?

18 MS. PORTER: Yes, sir, but at the time he had not.

19 THE COURT: But at the time he had not?

20 MS. PORTER: Yes, sir.

21 THE COURT: All right, ma'am.

22 Mr. Brown, before the Court imposes sentence, I talked
23 to you about this being a violent and most serious offense,
24 and the fact that if there was any offense in the future it
25 would subject you to life in prison. Regarding this

1 particular offense, it being classified as a violent and
2 most serious offense, it's my understanding that you have
3 talked to your attorney and that you understand that
4 whatever sentence the Court imposes that you must serve at
5 least 85 percent of that amount; is that correct?

6 MR. BROWN: Yes, sir.

7 THE COURT: All right, sir.

8 Now, that does not mean that the minimum is the amount
9 that you would serve. It just means you have to serve that
10 amount. It could be all the way up to the maximum time
11 that the Court gives you; you understand that?

12 MR. BROWN: Yes, sir.

13 THE COURT: All right, sir. I just wanted to make
14 sure that was clear.

15 Anything else further from the Defense?

16 MS. HARDEE-THOMAS: Nothing further from Defense.

17 THE COURT: Anything further from the State?

18 MS. PORTER: Nothing further from the State, Your
19 Honor.

20 THE COURT: Thank you.

21 I'll say that anything this Court does in this case
22 cannot rectify what you have done, Mr. Brown.

23 MR. BROWN: Yes, sir.

24 THE COURT: I only hope that you have now some
25 appreciation of the serious injury that you have impacted

1 the victim's family with, regarding the violent and the
2 serious crime that you committed.

3 MR. BROWN: Yes, sir.

4 THE COURT: 2003-GS-18-013, State of South
5 Carolina, County of Dorchester, Eric L. Brown, regarding
6 voluntary manslaughter. Sentence of the Court is Defendant
7 is committed to the State Department of Corrections
8 determinate term 25 years. Defendant is given credit for
9 the time that he has served on this offense to be
10 calculated according to the Department of Corrections
11 regulations.

12 Thank you.

13 MR. BROWN: Thank you.

14 MS. PORTER: Thank Your Honor.

15 (This proceeding was concluded.)

November 2, 2004

APPEARANCES:

For the State:

Jennifer Porter, Esquire

For the Defendant:

Marva Hardee-Thomas, Esquire

Guilty Plea

NO EXHIBITS WERE MARKED TO THIS PROCEEDING.

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CERTIFICATE

This is to certify that the foregoing matter, State v. Eric L. Brown, 03-GS-18-013, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said proceeding was reported by the method of Stenomask with backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.



Hilda M. Jordan, CVR
Circuit Court Reporter
June 23, 2006

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

County of Dorchester)Eric L. Brown, #272336)2005-CP-18- 1566)

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

APPLICATION FOR)

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution; P.O. Box 205
Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Dorchester County Court
of General Sessions, St. George, S.C. 29477
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) #2003-GS-18-0013; Manslaughter

(b) N/A

(c) N/A

5. The date upon which sentence was imposed and the terms of the sentence:

(a) November 2, 2004; 25 Years

(b) N/A

(c) N/A

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes

(b) after a plea of not guilty No

(c) after a plea of nolo contendere No

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) NONE

(b) N/A(c) N/A

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

(a) See Page 8, TABLE OF CONTENTS(b) See Page 8, TABLE OF CONTENTS(c) N/A

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

(a) See Page 8, TABLE OF CONTENTS(b) See Page 8, TABLE OF CONTENTS(c) N/A

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/Aii. N/Aiii. N/Aiv. N/A

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

i. N/Aii. N/Aiii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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) S.C. Code Ann. §17-27-20(a) and (b)

(b) S.C. Code Ann. §17-27-20(a) and (b)

(c) N/A

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

(a) your arraignment and plea? YES

(b) your trial, if any? NO, involuntary and unintelligent plea

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered Ayes@ to one or more parts of (17), list:

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

i. Marva A. Hardee-Thomas, Esq.

P.O. Box 50503; Summerville, S.C. 29485

ii. N/A

N/A

iii. N/A

N/A

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

i. Guilty plea and sentencing

N/A

ii. N/A

N/A

iii. N/A

N/A

19. State clearly the relief you seek in filing this application:

Guilty plea revoked and indictments remanded to Court of General Sessions
for Vacation of conviction; other relief as proper

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA

County of Dorchester

VERIFICATION

I, Eric L. Brown, #272336, 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.

Li Bhang

SWORN to and subscribed before me this
day of Aug, 2005.

Notary Public (L.S.)

My Commission Expires: 7/15/05

28

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

FILED-RECORDED
2005 OCT 11 PM 2:00

CLERK OF COURT
BRISTOL COUNTY

I, Eric L. Brown, #272336, 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.

Eric L. Brown

Applicant

SWORN or affirmed to and subscribed before me this

7 day of Oct, 2005.

[Signature]
Notary Public

My Commission Expires:

12/05/05

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STATEMENT OF THE CASE

The Applicant, Eric L. Brown, SCDC #272336, is presently incarcerated within the South Carolina Department of Corrections pursuant to the Dorchester County Clerk of Court's Order of Commitment. During the January 2003 Term of General Sessions Court, the Dorchester County Grand Jury indicted the Applicant for the offense of Murder (§16-3-10) by Indictment #2003-GS-18-0013.

On November 2, 2004, the Applicant pled guilty to the offense of Voluntary Manslaughter before the Honorable Judge Steven H. John. Upon acceptance of Applicant's plea, Judge John sentenced Applicant to a term of twenty-five (25) years. The Applicant was represented by Marva A. Hardee-Thomas, Public Defender, and the State was represented by Jennifer C. Porter, Assistant Solicitor for the First Judicial Circuit in Dorchester County. The Applicant, herewith, alleges an illegal conviction and sentence through several errors and omissions by Counsel Hardee-Thomas prior to, and during, Applicant's guilty plea for which a remedy through an action of Post-Conviction Relief (PCR) is sought.

10(a) GROUNDS: The Applicant was unduly prejudiced by the ineffective assistance of counsel's representation provided prior to, and during, the guilty plea, in violation of the Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution, and State law requiring fundamental fairness.

10(b) GROUNDS: The Applicant was unduly denied Due Process by the Court's lack of subject matter jurisdiction, in violation of the Fifth and Fourteenth Amendments of the U.S. Constitution, and State law requiring fundamental fairness.

The United States Supreme Court enunciated the principles governing ineffective assistance of counsel claims in *STRICKLAND v. WASHINGTON*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To establish such a claim, Applicant must satisfy a two prong test: first, counsel must have made errors so profound that the performance dropped below a constitutional minimum standard; and second, there must be a reasonable probability that but for counsel's errors, the result would have been different. When challenging a guilty plea on collateral review, Applicant must demonstrate that but for counsel's alleged errors, Applicant would not have pled guilty, but would have insisted upon proceeding with trial.

A "reasonable probability" ultimately determines whether the proceeding was fair enough to instill confidence in the outcome.

As STRICKLAND makes clear, there is a wide range of assistance that is reasonable and acceptable in any given case. Because of this, a heavy measure of deference is accorded counsel. Judging reasonableness involves looking at the conduct from counsel's perspective at the time, in light of all the circumstances, and does not involve vigorous second-guessing, scrutinizing hindsight, or exaggerated appraisal of every mistake. Indeed, most errors will not support an ineffective assistance of counsel claim, even if the errors are unreasonable, for most errors will not prejudice the defense to the point where the result can be questioned.

The United States Supreme Court has not enunciated a fixed set of rules or guidelines for a criminal defense attorney to follow. However, Applicant contends South Carolina has enunciated a fixed set of rules and guidelines within the Rules of Professional Conduct, Rule 407, SCACR. These rules should be interpreted with reference to the purposes of legal representation and of the law itself. Some of these rules, i.e., rules of competence, scope of representation, diligence, and communication, are imperatives, cast in the term "shall" so as to define proper conduct for purposes of professional discipline.

Applicant submits, based on the aforementioned STRICKLAND test, Applicant's issues present a factual existence of errors and omissions so profound that Counsel Hardee-Thomas' performance dropped below an objective standard of reasonableness for attorneys in criminal cases. Applicant submits further there is a reasonable probability that but for Counsel Hardee-Thomas' errors and omissions, Applicant would not have pled guilty, but would have insisted on proceeding with a trial by jury.

SCOPE OF EFFECTIVE REPRESENTATION

1.

Counsel shall request a timely hearing that seeks to grant leave for the conduction of discovery, and investigative, expert, and other resources required to develop and prove the issues of Applicant.

2.

Counsel shall subpoena necessary witnesses to present and preserve all issues fully and to preclude the delay or loss of issues and relevant facts.

3.

Counsel shall perfect the notice of appeal for issues dismissed, denied, not addressed, and for those raised or presented insufficiently to be granted relief, any motions seeking a new hearing, or amend or correct an issued final order.

4.

Counsel shall present sufficient controlling authority of all issues presented herein to the Court, and shall not fail to submit any issue unless a written decision is made by Applicant following an informed consultation with Counsel.

STATEMENT OF THE FACTS

A.

The record reveals that at the time of the alleged crime, defendant (Applicant), age 24 and married with five children, resided in a mobile home in Branchville, S.C. Applicant was employed by a local tree nursery, while his wife, Stacey D. Fogle (Victim) was unemployed and stayed home to care for the children.

B.

On the morning of November 9, 2002, Applicant and the Victim's brother, Thomas Murray, went to Max's to purchase shotgun shells for an Ithaca .20 ga. shotgun the Victim had recently allowed Applicant to purchase as a birthday gift for Applicant, and for one owned by Thomas Murray. The two men also went to Car Quest to purchase a belt for Thomas Murray's car.

1.

Later that same day, Applicant and Mr. Murray took their shotguns down the road from Applicant's home shooting birds, trees, etc. When they returned to Applicant's home, Applicant let some of the kids shoot the shotgun at a blue barrel behind the home. Applicant was holding the shotgun, and allowing the kids to pull the trigger; except the oldest child, Shaquain Fogle, age 12, who shot the shotgun on his own. Applicant, the Victim, the children, and Mr. Murray spent the rest of the day cooking out and playing with the kids.

2.

Around 6 p.m. that evening, Applicant, the Victim, and Mr. Murray were sitting in the living room while the Victim was taking down her hair. All three adults were drinking beer. The shotgun was breached between Applicant's legs. As the Victim began yanking on her hair to get the braids out, Applicant pointed the breached shotgun towards the Victim, in a playful manner, and stated, "I got a better way. I could shoot that shit out". All three adults laughed in response to Applicant's comments.

3.

Afterwards, Applicant, the Victim, and Mr. Murray were on the porch discussing plans of fixing up their home. Applicant told the Victim that Applicant wanted to go to St. George, S.C. that night to see if Applicant could get up some money. The Victim then went to the kitchen to wash dishes, and then cooked again. Mr. Murray left shortly thereafter around 8 p.m. to go to the fair in Ladsen, S.C.

4.

That night, Applicant had some E&J brandy to drink. Applicant then realized Applicant's family was at home, so Applicant asked the Victim to go to her grandfather's house to call Applicant's brother. When the Victim returned, the Victim asked Applicant to put the shotgun up. Instead, Applicant decided to load the shotgun with buck shot, hoping to shoot a deer in the back yard, placed the shotgun behind their bedroom door, and closed the door. Applicant then returned to the living room.

5.

When the Victim was getting ready to go to bed, Applicant told the Victim the Sheriff's Office had a tip about his location as an excuse to leave the home for a couple of days. Applicant was wanted for violating parole. In truth, Applicant was only wanting to make some fast money for Applicant's family.

6.

Concerned that Applicant would get back in trouble, the Victim asked Applicant not to leave. When Applicant refused to stay, and began expressing Applicant's purpose for leaving as wanting to make some money, the Victim got upset. Both argued briefly, and Applicant walked out to the front porch to wait for Applicant's brother. While on the porch, Applicant heard the Victim say something to the effect of, "you're going back out there to get in trouble, knowing they don't care about you". After returning to the living room, Applicant further heard the Victim state, "you don't give a damn about me either then. Well, hell, you would not care if I was to kill myself". After hearing this, Applicant remembered leaving the loaded shotgun in their bedroom behind the door.

7.

While going to their bedroom to retrieve the shotgun to unload it, the Victim stated, "you care more about hunting than me". Applicant picked the shotgun up, and was exiting the room when the Victim further stated, "how would you like it if someone would shoot you? (referring to the deer)". Applicant turned back towards the Victim, while pointing the shotgun in a playful manner, and said, "how would you like it if someone shot you?". As Applicant was leaving the bedroom, while at the same time attempting to disengage the hammer, the Victim suddenly grabbed at the barrel of the shotgun, and it fired accidentally.

8.

Surprised by what had happened, and in a state of panic, Applicant dropped the shotgun at first, but then picked it up off the Victim, breached it, and threw the shotgun to the side. Applicant attempted to pick the Victim up by both arms, but then realized the Victim had been shot in the face. Since Applicant's home was without electricity, Applicant was unable to initially see the Victim had been shot. Applicant panicked, and ran next door and told the Victim's grandfather the Victim had shot herself. Applicant then ran back to Applicant's home, and told the children to go to their grandfather's house (Roosevelt Rasberry).

9.

When Applicant went back outside, Mr. Rasberry was on the porch calling 911. Applicant told Mr. Rasberry, "I'm in trouble with the law, they are already looking for me". Mr. Rasberry responded by saying, "don't run, you're going to make matters worse". Applicant stated, "I'm on parole I've got to go".

10.

Applicant, still in a state of panic, ran down the road. I the distance, Applicant seen the responding vehicles approaching, and heard their sirens. Applicant decided to take Mr. Rasberry's advice, so as not

to make the situation worse than it already appeared. When the responding vehicles approached, Applicant stood in the road waving his hands so they would stop. Applicant recognized two police officers as Chief Samuel Smith (St. George P.D.), and Dep. M.T. Bowen (DCSO).

11.

After getting in the back of the vehicle, Applicant informed Chief Smith that Applicant was wanted for violating parole. Chief Smith responded by saying, "don't worry about that right now". When they drove back to Applicant's home, Applicant was told to wait in the vehicle. Shortly thereafter, Dep. Bowen told Applicant that Applicant was under arrest for violating parole. Neither Chief Smith, Dep. Bowen, or the other responding officer, Dep. B. Allston (DCSO), advised Applicant of his Miranda rights.

C.

Following the above events, Applicant was later questioned at the Dorchester Co. Sheriff's Office at 12:30 a.m. after being advised of Applicant's Miranda rights. This conversation was tape recorded, but not reproduced to written verbatim and included within Applicant's discovery file.

1.

Because Applicant was scared, due to Applicant's prior history of misdemeanor gun charges, Applicant initially told Det. T. Marshall and Det. T. Van Dorn that the Victim shot herself. After the detectives told Applicant that blood was found on Applicant's shoes, Applicant changed Applicant's story by explaining Applicant had been running down the hallway towards the Victim when the gun fired. After Det. Marshall informed Applicant they would test the shotgun for fingerprints, Applicant changed Applicant's story again by saying, "she was going to kill herself, and held the gun to her face. I was just about to knock the gun away when it went off". Applicant further explained the shooting was an accident.

D.

On November 13, 2002, Applicant was questioned again by Det. Marshall and Det. Van Dorn after being advised of Applicant's Miranda rights. Applicant apologized for not explaining the whole truth earlier, and explained Applicant's reason as being due to Applicant's prior history of misdemeanor gun charges. Applicant explained Applicant feared Applicant would not be believed that the shooting was an accident if the police knew Applicant was holding the shotgun when it fired. Applicant told Det. Marshall and Det. Van Dorn that when Applicant picked the shotgun up, the Victim grabbed at the barrel, and the shotgun fired accidentally.

E.

On November 22, 2002, Det. Marshall went to the solicitor's office to speak with Solicitor Bell about the case. Solicitor Bell and Solicitor Bailey asked Det. Marshall to question Applicant again to see if Applicant changed Applicant's story.

1.

On November 25, 2002, Det. Marshall spoke to Det. Van Dorn about the

solicitor's request. Both Det. Marshall and Det. Van Dorn spoke to Det. Stephenson about "setting up" another interview.

F.

On November 26, 2002, Det. Marshall, Det. Van Dorn, and Det. Stephenson went to St. George LEC to interview Applicant. Upon Det. Stephenson's request, Lt. Green brought Applicant to St. George LEC for the interview. After being advised of Applicant's Miranda rights, Applicant spoke to the detectives.

1.

Applicant told Det. Stephenson, "this whole thing was an accident. I didn't do anything wrong". Det. Stephenson asked Applicant why Applicant gave three different stories. Applicant responded by explaining Applicant's prior history of misdemeanor gun charges, and said, "I was scared".

2.

Applicant explained Applicant went to the bedroom to get the shotgun so Applicant could unload it. Applicant further explained the shotgun had been loaded earlier, the hammer pulled back, to have it ready in case a deer came in the back yard. Applicant picked the shotgun up, with Applicant's thumb over the hammer, and was attempting to disengage the hammer while walking out of the bedroom. Applicant stated, "I thought the safety was on". As Applicant was leaving the bedroom, the Victim suddenly grabbed at the barrel of the shotgun, and it fired. Applicant explained to Det. Stephenson, "I didn't mean for this to happen. It was an accident".

G.

On December 3, 2002, Det. Marshall and Det. Van Dorn served a warrant charging Applicant with Murder. After the bond hearing, Applicant was taken to St. George LEC to be interviewed. Applicant was advised of Applicant's Miranda rights.

1.

At the St. George LEC, Applicant was upset, and stated, "I didn't murder her". When confronted by Applicant's prior explanations of what happened, Applicant stated, "I pointed the shotgun at her, but it was an accident. She grabbed it, and it went off". Det. Marshall responded by saying, "Why don't you tell the truth". Applicant, feeling frustrated, replied, "if I told you the truth it wouldn't make it no better".

H.

On January 21, 2003, the Dorchester County Grand Jury convened, and presented upon their oath an indictment (#2003-GS-18-0013) formally charging Applicant with the offense of Murder (§16-3-10).

1.

Attorney Marva A. Hardee-Thomas, appointed counsel to represent Applicant, represented Applicant in all phases of the criminal case. Solicitor Jennifer C. Porter represented the State, and intended to

present evidence of prior inconsistent statements by Applicant.

2.

Applicant maintains his actual innocence pertaining to the alleged crime, and has identified several material, specific errors and omissions by Counsel Hardee-Thomas that denied Applicant a fair trial by undermining the confidence of the outcome of the proceedings within a reasonable probability.

CLAIM 1: INEFFECTIVE ASSISTANCE OF COUNSEL

10(a)FACTS: The Applicant's supporting facts for this claim are shown below and within each claim's designations of facts for each ISSUE below.

ISSUE I.

COUNSEL WAS INEFFECTIVE FOR FAILING TO INTERVIEW POTENTIAL WITNESSES WHO HAD KNOWLEDGE OF THE EVENTS PRIOR TO, AND DURING, THE ALLEGED CRIME.

A.

A competent attorney's duty is to utilize every voluntary effort to persuade a witness who possesses material facts and knowledge of an event to testify and then, if unsuccessful, to subpoena the witness in order to allow the judge to use his/her power to persuade the witness to present material evidence.

1.

Counsel must engage in a reasonable amount of pretrial investigations, and, at a minimum, interview potential witnesses. Not every mistake of judgment or misconception of law made by counsel will deprive a defendant of a constitutional right. The test is whether that which was or was not done made the proceedings a farce and a mockery of justice, shocking to the conscience of the court.

B.

In order to support a claim that counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. The Applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the Applicant's burden of showing prejudice by a preponderance of the evidence.

1.

In order to establish prejudice, an applicant must demonstrate that, but for counsel's errors or omissions, there is a reasonable probability the result of the proceedings would have been different.

C.

Applicant contends that Det. M.D. Miller interviewed the Victim's son, Shaquain Fogle, on November 12, 2002. During this interview,

Shaquain told Det. Miller he and his younger brothers, along with Applicant, were shooting the shotgun on the afternoon of November 9, 2002. As to the events on the evening of November 9, 2002, Shaquain further stated, "me and my other brothers were asleep in the living room. I was awakened by the sound of the shotgun blast".

1.

Applicant asserts Shaquain's knowledge that, "I was awakened by the sound of the shotgun blast" refutes the State's theory Applicant was involved in a heated argument with the Victim prior to the shooting incident. Although Applicant admitted to "arguing" with the Victim prior to the shooting incident, Applicant explained to the detectives it was a mere disagreement. Applicant further explained the Victim was "nagging me" because Applicant wanted to go to St. George with Applicant's brother that night. Although it was a mere disagreement, Applicant never had any intentions of shooting anyone; especially not Applicant's newly wedded wife.

2.

Had Counsel Hardee-Thomas interviewed and called Shaquain Fogle as a witness, Applicant would have had a reasonable opportunity to refute the State's theory Applicant acted with malice, and intentionally shot and killed his wife during a heated argument. In addition, Shaquain's testimony would have demonstrated there was no animosity between Applicant and the Victim.

3.

Applicant further asserts Shaquain's testimony would have provided a reasonable degree of doubt for the jury to consider as to the State's theory Applicant willfully, intentionally, and with malice aforethought, shot and killed the Victim. Since Shaquain, as well as the other four children, were not "awakened" until AFTER the shotgun blast, and not DURING the State's alleged heated argument, Shaquain's testimony would have provided corroborative evidence to support Applicant's claim the Victim was merely "nagging" Applicant prior to the accidental shooting. The absence of Shaquain's testimony prejudiced Applicant by depriving Applicant of a reasonable method of establishing the shooting incident was not intentional, deliberate, or provoked during an argument with the Victim, but instead was an unintended accident.

D.

Applicant contends Det. Miller also interviewed the Victim's brother, Thomas Murray, who was also present in Applicant's home prior to the shooting incident. This interview by Det. Miller revealed the Victim didn't "hate guns". To the contrary, Mr. Murray indicated the Victim knew how to shoot a ".22 cal. rifle and handgun". This evidence demonstrates the Victim didn't "hate guns", but was, instead, not particularly fond of shotguns.

1.

In addition, Mr. Murray was present when Applicant pointed the breached shotgun at the Victim when the Victim was taking her braids down. Mr. Murray explained the shotgun was pointed "in a playful manner",

and that all three adults "laughed about it". This testimony by Mr. Murray would have revealed further evidence there was no animosity between Applicant and the Victim. Most importantly, it demonstrates the Victim didn't feel threatened by Applicant's behavior. Moreover, had the Victim felt threatened, it would be logical to conclude Mr. Murray would have intervened in some way.

2.

Had Counsel Hardee-Thomas interviewed and called Thomas Murray as a witness, Applicant would have had a reasonable opportunity to refute the State's theory Applicant intended to shoot and kill the Victim. Most notably, although Mr. Murray had been with Applicant all day, Det. Miller's investigative report is void of any facts that would even suggest there was any animosity between Applicant and the Victim.

3.

The absence of Thomas Murray's testimony prejudiced Applicant by depriving Applicant of a reasonable opportunity to demonstrate there was no animosity between Applicant and the Victim. Moreover, it would have provided corroborative testimony to support Applicant's contention the Victim was merely "nagging" Applicant about going to St. George with Applicant's brother; not a heated argument under the State's theory.

E.

Applicant contends Counsel Hardee-Thomas further failed to interview and call the Victim's grandfather, Roosevelt Rasberry, as a witness. Although Mr. Rasberry was not physically present at the scene at the time of the shooting incident, Mr. Rasberry's knowledge was based on events intimately connected to the shooting incident itself. Mr. Rasberry called 911 dispatch after meeting Applicant at Mr. Rasberry's back door after Mr. Rasberry "heard a gunshot".

1.

Moreover, Mr. Rasberry's testimony would have provided corroborative evidence of the Victim's demeanor prior to the shooting incident when the Victim used Mr. Rasberry's phone to call Applicant's brother. Had there been any animosity between Applicant and the Victim, or if the Victim had felt threatened by Applicant's behavior in any way, the Victim would have had a reasonable opportunity to express such concerns to Mr. Rasberry when the Victim used Mr. Rasberry's phone. At a minimum, Mr. Rasberry would have confirmed the call to Applicant's brother was made by the Victim at Mr. Rasberry's home shortly before the shooting incident.

2.

The absence of Mr. Rasberry's testimony prejudiced Applicant by depriving Applicant of a reasonable opportunity to demonstrate there was no animosity between Applicant and the Victim prior to the shooting incident. In addition, the absence of Mr. Rasberry's testimony deprived Applicant of a method of demonstrating Applicant ran from the scene because Applicant was wanted for violating parole, and was scared; not because Applicant was attempting to separate himself from the scene of a crime Applicant intentionally committed.

F.

Applicant contends Counsel Hardee-Thomas further failed to interview and call Applicant's brother, Reshell Brown, as a witness. The record reveals Mr. Brown was never interviewed about Mr. Brown's knowledge of the conversation the Victim had with Mr. Brown on the phone just prior to the shooting incident; not even by the detectives assigned to the case. Mr. Brown would have been able to provide testimony the Victim was not angry or upset at Applicant when the Victim called Mr. Brown.

1.

The absence of Mr. Brown's knowledge or testimony concerning the phone call made by the Victim prejudiced Applicant by depriving Applicant of a material witness to convey knowledge about the mere disagreement between Applicant and the Victim. This error, by Counsel Hardee-Thomas, as well as the detectives, prejudiced Applicant by depriving the record of any facts to corroborate Applicant's claim the conversation between the Victim and Mr. Brown took place; aside from Mr. Rasberry's mere contention the Victim called someone.

G.

Upon agreeing to represent a client, an attorney impliedly represents they possess the requisite degree of learning, skill, and ability necessary to the practice of the profession, and that the attorney will exercise reasonable and ordinary care and diligence in the use of those skills and in the application of the attorney's knowledge to the cause of the client. In short, it is incumbent upon the attorney to act with the utmost good faith and loyalty while representing a client.

1.

An attorney should neither do anything nor leave undone anything which tends to bring the profession into disrepute, or to lessen in any degree the public's confidence in the profession. As stated above, the errors and omissions by Counsel Hardee-Thomas were detrimental to Applicant's available defense theories by leaving the theories void of any corroborative evidence and testimony.

2.

Counsel Hardee-Thomas' failure to interview and call the above witnesses would have further prejudiced Applicant at trial, since Applicant's credibility would have been an issue during cross-examination if Applicant chose to testify without the benefit of the above witnesses. Due to Applicant's prior inconsistent explanations about the details of the shooting incident itself, aside from the fact Applicant has asserted since the onset it was an accidental shooting, Applicant's available defense theories would have been void of any corroborating evidence to establish the shooting was an accident; absent any witnesses to testify thereto.

3.

Any error or omission which substantially damages or infringes upon the Applicant's credibility cannot be held harmless where such credibility is essential to Applicant's defense. Had Counsel

Hardee-Thomas interviewed and called the above witnesses for trial, Applicant would have had a reasonable opportunity to meet the State's case against Applicant. These errors and omissions by Counsel Hardee-Thomas were directly attributable to and binding on Applicant when Counsel Hardee-Thomas advised Applicant to plead guilty to an offense Applicant did not commit. Without such errors and omissions, Applicant would not have pled guilty, but would have insisted on proceeding with the trial.

ISSUE II.

COUNSEL WAS INEFFECTIVE FOR ADVISING APPLICANT TO PLEAD GUILTY TO THE OFFENSE OF VOLUNTARY MANSLAUGHTER, DESPITE THE EXISTENCE OF A VIABLE DEFENSE OF ACCIDENT.

A.

In this issue on collateral review of Applicant's guilty plea, the first prong of the STRICKLAND test inquires into whether Counsel Hardee-Thomas' failure to pursue a defense of accident was reasonable under the circumstances. Foremost, the Court must consider the fact Counsel Hardee-Thomas is an experienced criminal defense attorney. Therefore, Counsel Hardee-Thomas' decision to forego the defense of accident should get the almost unassailable presumption of reasonableness accorded to experienced attorneys.

B.

The record reflects that on December 3, 2002, Applicant was charged with the murder of his wife, Stacey D. Fogle (Victim), based on the events that occurred at their residence on November 9, 2002. Subsequently thereafter, the record further reflects the Dorchester County Grand Jury presented upon their oath an indictment which formally charged Applicant with the offense of Murder (§16-3-10) by Indictment #2003-GS-18-0013 on January 21, 2003.

1.

The offense of Murder is defined as "the killing of any person with malice aforethought, either express or implied". The term "malice" is defined as "the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong". In essence, by charging Applicant with the offense of Murder, the State assumed the burden of proving beyond a reasonable doubt that Applicant unlawfully, intentionally, and with malice aforethought, committed the offense of Murder on November 9, 2002.

C.

Applicant contends that during his first meeting with Counsel Hardee-Thomas, Applicant explained the reason for fleeing the scene was due to the fact Applicant had a history of prior gun charges, Applicant was then wanted for violating parole, and Applicant feared law enforcement would not believe the shooting was an accident. Simply

because Applicant panicked, and was terrified at the tragedy before him, Applicant initially alleged the Victim committed suicide.

1.

Applicant further advised Counsel Hardee-Thomas that, aside from Applicant's initial explanation the Victim committed suicide, Applicant consistently maintained the shooting was an accident; even after the detectives questioned Applicant several times.

2.

Applicant expressed his concerns to Counsel Hardee-Thomas about the detectives attempting to portray the shooting incident as one Applicant intentionally committed while engaged in an argument with the Victim. Although Applicant admitted there was an argument, Applicant never intended to shoot anyone; especially not Applicant's newly wedded wife. Instead, as Applicant explained to Counsel Hardee-Thomas, the shotgun fired accidentally while Applicant was attempting to disengage the hammer because the Victim suddenly grabbed at the barrel. Applicant further stated, "I thought the safety was on".

3.

Following this conversation with Counsel Hardee-Thomas, Applicant was informed by Counsel Hardee-Thomas that, "there is no way this is murder!". Applicant responded by saying, "I didn't mean for this to happen. It was an accident".

D.

Counsel Hardee-Thomas advised Applicant that, upon a conviction for Murder, Applicant was potentially confronted with the real possibility of receiving a sentence of life without the possibility of parole. Counsel Hardee-Thomas further advised Applicant that the State would have to prove beyond a reasonable doubt that Applicant intentionally committed the offense of Murder.

1.

In response, Applicant informed Counsel Hardee-Thomas the shooting was an accident. Applicant conceded to the fact Applicant was arguing with the Victim that night, but explained further the Victim was "nagging" Applicant about wanting to go to St. George with his brother. In addition, Applicant explained to Counsel Hardee-Thomas that the Victim "nagging" him had nothing to do with the shooting incident itself.

2.

During a subsequent meeting with Counsel Hardee-Thomas, Applicant was informed the State had offered a plea agreement. According to Counsel Hardee-Thomas, the plea offer of Voluntary Manslaughter was "the best possible deal" Applicant could receive.

E.

In this issue on collateral review of Applicant's guilty plea, the second prong of the STRICKLAND test inquires into whether Applicant was prejudiced by Counsel Hardee-Thomas' failure to pursue a defense of

accident. In this inquiry, the Court must ultimately determine whether Counsel Hardee-Thomas' decision to forego the defense of accident would not have been declined by professionally competent counsel. There must be a reasonable probability that but for Counsel Hardee-Thomas' errors, Applicant would not have pled guilty, but would have insisted on proceeding with a trial by jury.

F.

The record reflects Counsel Hardee-Thomas consulted a firearms examiner, Kelly Fite, to determine if the shotgun was in good working order, and capable of functioning as designed. Kelly Fite also compared the test patterns fired by the shotgun with the autopsy photographs and determined the muzzle to target distance was between 3 and 4.5 feet.

1.

This conclusion by Kelly Fite would normally exclude the possibility of a struggle over the weapon resulting in an unintentional discharge. However, as a firearms examiner, Kelly Fite was not qualified as an expert by knowledge, skill, experience, training, or education in the field of forensic pathology. Most notably, though, SLED's report of gunshot residue on the Victim's hands raised a reasonable probability the Victim grabbed at the shotgun in the manner Applicant described.

2.

Although the State's forensic pathologist, Dr. Inas Z. Yacoub, rendered the opinion the gunshot wound was not self-inflicted, the most crucial of physical evidence of injury observed by Dr. Yacoub was the pathological evaluation of the gunshot wound itself. Dr. Yacoub determined that, after penetrating the skin, the bulk of the gunshot passed "upward, backward, and to the right". Applicant asserts this physical evidence demonstrates the gunshot was not a goal-oriented shot, but, instead, a shot fired with the stock of the shotgun angled at a lower position than that of the muzzle.

3.

Although Counsel Hardee-Thomas reviewed Dr. Yacoub's autopsy report, Counsel Hardee-Thomas never discussed the pathological findings with Applicant. According to an investigative report by Det. Marshall, Dr. Yacoub informed Det. Marshall the Victim "could have grabbed the barrel", which would be consistent with Applicant's claim the shooting was an accident. Furthermore, Dr. Yacoub's autopsy report is void of any physical evidence of abrasions, contusions, hematomas, lacerations, fractures, or partial dislocations which would be consistent with evidence of domestic spouse abuse. Although all of this favorable physical evidence was available, Counsel Hardee-Thomas never pursued the theory of accident.

G.

Had Counsel Hardee-Thomas advised Applicant that by raising the defense of accident, Applicant would have had a reasonable opportunity to demonstrate the shooting incident was a mere physical happening not

reasonably foreseen as a natural or probable result of the events that occurred in Applicant's home on November 9, 2002. Applicant asserts a homicide is excusable on the ground of accident when the killing was unintentional, the Applicant was acting lawfully, and due care was exercised in the handling of the weapon.

1.

Since Applicant admitted to inadvertently pointing the shotgun at the Victim while the Victim was "nagging" the Applicant about hunting deer, it would be speculative to assume Applicant did not exercise due care while handling the shotgun since the shotgun was loaded with the hammer cocked; absent a reasonable showing to the contrary. Applicant asserts Applicant informed the detectives, as well as Counsel Hardee-Thomas, that Applicant was attempting to disengage the hammer when the Victim suddenly grabbed at the barrel. Applicant further stated, "I thought the safety was on".

2.

A more compelling attempt to demonstrate Applicant exercised due care while handling the shotgun is found within the physical evidence of the gunshot wound itself. Dr. Yacoub's expert opinion the bulk of the gunshot passed "upward, backward, and to the right" demonstrates the gunshot was not goal-oriented. This evidence supports Applicant's explanation the shotgun was merely pointed in the Victim's general direction; not aimed from Applicant's shoulder. Most importantly, this physical evidence is consistent with Applicant's claim the Victim grabbed at the barrel while Applicant was attempting to unload the shotgun; which undercut the State's theory Applicant intentionally took aim, and shot the Victim in the face.

H.

In the alternative to the defense of accident, Counsel Hardee-Thomas failed to advise Applicant of the lesser included offense of Involuntary Manslaughter. In South Carolina, Involuntary Manslaughter is defined as "the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm, or the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others".

1.

In this inquiry, Applicant asserts that since the State conceded the shooting was the result of a "sudden heat of passion upon sufficient legal provocation" stemming from the argument, the State also conceded "malice" did not exist in Applicant's mind at the time of the shooting. Therefore, the question becomes, was Applicant engaged in a lawful or unlawful activity at the time of the shooting?

2.

At worst case scenerio, Applicant contends Applicant's activities were lawful with reckless disregard for the safety of others. Although Applicant was alleged to have been acting unlawfully at the time, due to Applicant's violation of parole, Applicant asserts a violation of parole does not naturally tend to cause death or great bodily harm.

3.

Since Applicant's activities were clearly lawful on November 9, 2002, the question then becomes, was Applicant acting with reckless disregard for the safety of others? Because Applicant admitted Applicant was attempting to disengage the hammer of the shotgun when the victim suddenly grabbed at the barrel, it would seem questionable whether Applicant was acting with reckless disregard for the safety of others since the shotgun was loaded. And, although Applicant stated, "I thought the safety was on", Applicant also admitted he had been drinking on November 9, 2002. Still, the State never established whether Applicant was intoxicated to the point it would render Applicant incapable of being conscious of his actions. Therefore, a determination of whether Applicant's actions were in reckless disregard for the safety of others remains worthy of judicial inquiry before a jury because it raises a question of law deserving of some investigation and discussion, or a real controversy as to real facts arising from conflicting or doubtful evidence.

4.

Counsel Hardee-Thomas' failure to advise Applicant of the elements of Involuntary Manslaughter prejudiced Applicant by exposing Applicant to an additional twenty (20) years Applicant would not otherwise be exposed to if Applicant either stipulated a plea to the lesser offense of Involuntary Manslaughter, or proceeded with a trial by jury and requested the charge of Involuntary Manslaughter as a lesser included offense where a conviction was more probable, if at all.

5.

Applicant asserts Counsel Hardee-Thomas' failure to pursue the defense of accident and/or advise Applicant of the elements of the lesser included offense of Involuntary Manslaughter when the above facts were known to Counsel Hardee-Thomas suggesting that the defense may be meritorious or a conviction was more probable does not constitute "reasonably effective assistance" when judged "under prevailing professional norms". A meritorious defense need not be perfect nor one which can be guaranteed to prevail at trial, and the harmless error analysis is inappropriate where there is evidence from which the jury could find Applicant guilty of a lesser offense.

I.

Applicant asserts and submits, based on the factual basis of this issue on collateral review, the errors and omissions by Counsel Hardee-Thomas prejudiced Applicant to a reasonable extent that had Applicant been afforded effective assistance of counsel there is a reasonable probability the outcome would have been different.

ISSUE III.

COUNSEL WAS INEFFECTIVE FOR FAILING TO OBTAIN AN INDEPENDENT FORENSIC PATHOLOGICAL EVALUATION OF THE AUTOPSY.

A.

In this issue on collateral review of Applicant's guilty plea, the first prong of the STRICKLAND test inquires into whether Counsel Hardee-Thomas' failure to obtain an independent forensic pathological evaluation of the autopsy was reasonable under the circumstances. Foremost, the Court must consider the fact Counsel Hardee-Thomas is an experienced criminal attorney. Therefore, Counsel Hardee-Thomas' decision to forego an independent forensic pathological evaluation of the autopsy should get the almost unassailable presumption of reasonableness accorded to experienced attorneys.

B.

In this case, the record reflects Counsel Hardee-Thomas consulted a firearms examiner, Kelly Fite, to determine if the shotgun was in good working order, and capable of functioning as designed. Kelly Fite concluded the shotgun to be in good working order, capable of functioning as designed, and that it took a force of "approximately 4.25 pounds to pull the trigger single action".

1.

Kelly Fite also compared the test patterns fired by the shotgun, at distances of 2, 3, 4.5, and 6 feet, with the autopsy photos and determined the muzzle to target distance was between 3 and 4.5 feet. This conclusion would normally exclude the possibility of a struggle over the weapon resulting in an unintentional discharge. However, SLED's report of gunshot residue on the Victim's hands raised a reasonable probability the Victim grabbed at the barrel in the manner Applicant described.

2.

Most notably, since there were no injuries to the Victim's hands, it remained questionable whether the Victim's hands were raised in a defensive posture, or whether the Victim grabbed at the barrel in the manner Applicant described. However, as a firearms examiner, Kelly Fite was not qualified as an expert by knowledge, skill, experience, training, or education in the field of forensic pathology. Therefore, Kelly Fite was not qualified to make such determinations in response to this question, and was otherwise incapable of rendering any expert opinions of the pathological findings. So, the question becomes, was Counsel Hardee-Thomas' failure to obtain an independent forensic pathological evaluation of the autopsy unreasonable "under prevailing professional norms"?

C.

Under autopsy protocol, the State's forensic pathologist, Dr. Inas Z. Yacoub, examined the Victim and determined the Victim's eyes revealed no connective spotting of bleeding under the skin, or any bleeding in the

white visible portion of the eyeballs. In addition, Dr. Yacoub's examination of the Victim's nose, mouth, ears, head, neck, chest, abdomen, genitalia, extremities, and back revealed "no remarkable findings". Most notably, there were no masses, scars or curvilinear abrasions, and no recent contusions, lacerations, bite marks, fractures, or partial dislocations observed.

1.

Apart from blood aspirated in the airways, the cartilage-like structure that overhangs the windpipe (epiglottis), vocal cords and larynx (voicebox) were also otherwise unremarkable. In essence, Dr. Yacoub's examination revealed no physical evidence indicative of a struggle, assault, or sexual or domestic spouse abuse prior to the Victim's demise.

2.

However, Dr. Yacoub's most obvious evidence of injury consisted of a single gunshot wound to the Victim's face, which was centered 6.5" below the top of the head, and 3" to the left of the anterior midline plane. The gunshot wound measured 2" in width and 1.5" in length. The stippling and gunpowder tattoos were concentrated on the left cheek of the face, and were fewer as they extended upward on the left upper eyelid, down to the chin and on the right side of the face.

3.

The most crucial of physical evidence of injury observed by Dr. Yacoub was the pathological evaluation of the gunshot wound itself. Dr. Yacoub determined that, after penetrating the skin, the bulk of the gunshot passed "upward, backward, and to the right". This physical evidence demonstrates the gunshot was not a goal-oriented shot, but, instead, a shot fired with the stock of the shotgun angled at a lower position than that of the muzzle.

D.

The shotgun was test fired by SLED at distances ranging from 2 to 6 feet (muzzle to target). These patterns were compared to the gunshot wound on the Victim's face. Although the wound pattern was consistent with the pattern obtained when the shotgun was fired 4.5 feet from the muzzle's tip to the target, the density of the gunpowder and filler obtained when the shotgun was fired at 2 and 3 feet from the target was also consistent with the gunpowder density around the gunshot wound on the Victim's face. Based on this analysis, Dr. Yacoub rendered the opinion the gunshot wound to the Victim's face was most consistent when the shotgun was fired from a range of 2 to 4.5 feet.

1.

Dr. Yacoub also determined the distance from the shotgun's trigger to it's muzzle measured 28". And, the distance from the gunshot wound to the tip of the left middle finger measured 34". Based on this analysis,

along with Dr. Yacoub's analysis of the shotgun test fire patterns, Dr. Yacoub rendered the opinion the gunshot wound was not self-inflicted; foreclosing any claim the Victim committed suicide. Although Dr. Yacoub informed Det. Marshall the Victim "could have grabbed the barrel", which would be consistent with Applicant's claim the shooting was an accident, and further consistent with the pathological evaluation of the angle of the gunshot wound itself, Dr. Yacoub rendered the opinion "the manner of death was best classified as homicide".

E.

In this issue on collateral review of Applicant's guilty plea, the second prong of the STRICKLAND test inquires into whether Applicant was prejudiced by Counsel Hardee-Thomas' failure to obtain an independent forensic pathological evaluation of the autopsy. In this inquiry, the Court must ultimately determine whether Counsel Hardee-Thomas' decision to forego this plausible line of investigation would not have been declined by professionally competent counsel. There must be a reasonable probability that but for Counsel Hardee-Thomas' errors, Applicant would not have pled guilty, but would have insisted on proceeding with a trial by jury.

F.

Simply because the most crucial of physical evidence of injury observed by Dr. Yacoub demonstrated the gunshot was not a goal-oriented shot, but, instead, a shot fired with the stock of the shotgun angled at a lower position than that of the muzzle, Applicant contends Counsel Hardee-Thomas had a genuine reason to consult with an independent forensic pathologist to pursue the theory the shooting was accidental as Applicant alleged. Based on the integrity and direction with which the gunshot penetrated the skin, as well as Dr. Yacoub's inability to foreclose Applicant's contention the Victim grabbed at the barrel, an independent forensic pathological evaluation producing an expert opinion the gunshot was not a goal-oriented shot, but, instead, a shot fired with the stock of the shotgun angled at a lower position than that of the muzzle, would have substantially undercut the State's theory Applicant intentionally took aim, and shot the Victim during an argument in a sudden heat of passion upon sufficient legal provocation.

1.

In addition, since Dr. Yacoub's examination produced no physical evidence of a struggle, assault, or sexual or domestic spouse abuse prior to the Victim's demise, an independent forensic pathological evaluation producing an opinion the gunpowder residue found on the Victim's hands was more consistent with the Victim's attempt to grab the barrel would have substantially proposed a reasonable doubt that Applicant intentionally took aim, and shot the Victim during an argument in a sudden heat of passion upon sufficient legal provocation.

G.

In this case, Applicant asserts there is sound scientific authority based on facts to support Applicant's proposed theories within this issue on collateral review of Applicant's guilty plea. Had Counsel Hardee-Thomas pursued an independent forensic pathological evaluation of the autopsy, there is a "reasonable probability" Applicant would have been able to propose a theory of innocence plausible enough to raise a reasonable doubt.

1.

Counsel Hardee-Thomas' failure to obtain an independent forensic pathological evaluation of the physical evidence observed by Dr. Yacoub prejudiced Applicant by depriving Applicant of an expert to render an opinion the physical evidence supported the theory the shooting was accidental.

2.

Applicant asserts and submits, based on the factual basis of this issue on collateral review, the errors and omissions by Counsel Hardee-Thomas prejudiced Applicant to a reasonable extent that had Applicant been afforded effective assistance of counsel there is a reasonable probability the outcome would have been different.

ISSUE IV.

COUNSEL WAS INEFFECTIVE FOR ADVISING APPLICANT TO PLEAD GUILTY TO THE OFFENSE OF VOLUNTARY MANSLAUGHTER, DESPITE THE EXISTENCE OF A VIABLE DEFENSE OF LACK OF INTENT.

A.

For the specific facts to support this issue on collateral review of Applicant's guilty pleas, see CLAIM 1: ISSUES I., II., AND III., above.

B.

In this case, Applicant asserts there is exculpatory witness testimony, and sound scientific authority based on facts, to support Applicant's proposed theories of defense within CLAIM 1 of the issues on collateral review of Applicant's guilty plea. Had Counsel Hardee-Thomas investigated the circumstances and facts surrounding Applicant's case, there is a "reasonable probability" Applicant would have been able to propose a viable defense of lack of intent plausible enough to raise reasonable doubt.

1.

Counsel Hardee-Thomas' failure to interview and call available witnesses who had knowledge of the events prior to, and during, the alleged crime, deprived Applicant of a reasonable opportunity to propose a theory of lack of intent plausible enough to raise a reasonable doubt.

2.

Counsel Hardee-Thomas' failure to pursue a defense of accident deprived Applicant of a reasonable opportunity to propose a theory of lack of intent plausible enough to raise a reasonable doubt.

3.

Counsel Hardee-Thomas' failure to obtain an independent forensic pathological evaluation of the physical evidence observed by Dr. Inas Z. Yacoub deprived Applicant of a reasonable opportunity to propose a theory of lack of intent plausible enough to raise a reasonable doubt.

4.

Applicant asserts and submits, based on the factual basis of this issue on collateral review, the errors and omissions by Counsel Hardee-Thomas prejudiced Applicant to a reasonable extent that had Applicant been afforded effective assistance of counsel there is a reasonable probability the outcome would have been different.

CLAIM 2:

SUBJECT MATTER JURISDICTION

10(b)FACTS: The Applicant's supporting facts for this claim are shown below and within each claim's designations of facts for each ISSUE below.

ISSUE V.

COUNSEL WAS INEFFECTIVE FOR FAILING TO ADVISE APPLICANT THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO ACCEPT APPLICANT'S GUILTY PLEA, BECAUSE THE STATE FAILED TO CHARGE THE ESSENTIAL ELEMENTS OF MURDER IN THE INDICTMENT, AS MANDATED BY S.C. CODE ANN. § 17-19-30.

A.

In this issue on collateral review of Applicant's guilty plea, the first prong of the STRICKLAND test inquires into whether Counsel Hardee-Thomas' failure to timely make a motion to the Court to quash the indictment was reasonable under the circumstances. Foremost, the Court must consider the fact Counsel Hardee-Thomas is an experienced criminal defense attorney. Therefore, Counsel Hardee-Thomas' decision to forego presenting a timely motion to the Court to quash the indictment should get the almost unassailable presumption of reasonableness accorded to experienced attorneys.

B.

The record reflects that on December 3, 2002, Applicant was charged with the murder of his wife, Stacey D. Fogle (Victim), based on the events that occurred at their residence on November 9, 2002. Subsequently thereafter, the record further reflects the Dorchester County Grand Jury presented upon their oath an indictment which formally charged Applicant with the offense of Murder (§16-3-10) by Indictment #2003-GS-18-0013 on January 21, 2003. Applicant's indictment for Murder reads as follows:

"THE DEFENDANT, ERIC LESTER BROWN, DID IN DORCHESTER COUNTY ON OR ABOUT NOVEMBER 9, 2002, WITH MALICE AFORETHOUGHT, KILL ONE: STACEY FOGLE, BY MEANS OF SHOOTING VICTIM IN THE FACE, AND THE SAID VICTIM DID DIE AS A PROXIMATE RESULT THEREOF. THIS OFFENSE BEING IN VIOLATION OF SECTION 16-3-10 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED".

C.

Applicant contends the indictment is the charge of the State, the pleading by which he is informed of the fact, and the nature and scope of the accusation. When the indictment is presented, the accusation made, the pleading filed, Applicant has two courses of procedure available. Applicant may question to propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined; or, waiving them, Applicant may put in issue the truth of the accusation, and demand the judgment of his peers on the merits of the charge.

1.

An indictment is sufficient if the offense is stated with sufficient certainty and particularity to enable the Court to know what judgment to pronounce, and the Applicant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and, whether it apprises Applicant of the elements of the offense that is intended to be charged.

2.

Therefore, Applicant contends Counsel Hardee-Thomas was ineffective for failing to advise Applicant the Court lacked subject matter jurisdiction to accept Applicant's guilty plea because the indictment failed to charge the essential elements of "feloniously" and "wilfully", as required by S.C. Code Ann. §17-19-30, as follows:

"EVERY INDICTMENT FOR MURDER SHALL BE DEEMED AND ADJUDGED SUFFICIENT AND GOOD IN LAW WHICH, IN ADDITION TO SETTING FORTH THE TIME AND PLACE, TOGETHER WITH A PLAIN STATEMENT, DIVESTED OF ALL USELESS PHRASEOLOGY, OF THE MANNER IN WHICH THE DEATH WAS CAUSED, CHARGES THAT THE DEFENDANT DID FELONIOUSLY, WILFULLY, AND OF HIS MALICE AFORETHOUGHT KILL AND MURDER THE DECEASED". (EMPHASIS ADDED)

D.

In this issue on collateral review of Applicant's guilty plea, the second prong of the STRICKLAND test inquires into whether Applicant was prejudiced by Counsel Hardee-Thomas' failure to timely make a motion to the Court to quash the indictment. In this inquiry, the Court must ultimately determine whether Counsel Hardee-Thomas' decision not to timely make a motion to the Court to quash the indictment would not have been declined by professionally competent counsel. There must be a reasonable probability that but for Counsel Hardee-Thomas' errors, Applicant would not have pled guilty, but would have insisted that a timely motion be presented to the Court to quash the indictment.

E.

The offense of Murder is defined as "the killing of any person with malice aforethought, either express or implied". The term "malice" is defined as "the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong". In essence, by charging Applicant with the offense of Murder, the State assumed the burden of proving beyond a reasonable doubt that Applicant unlawfully, intentionally, and with malice aforethought, committed the offense of Murder on November 9, 2002.

1.

The "elements" of a crime are terms used in the common law to refer to each component of the actus reus (the guilty act), causation (the means by which the guilty act was brought into existence), and the mens

rea (guilty mind / intent). These necessary elements of the crime must not only be proved, before a person accused may be lawfully convicted, but they must also be alleged in the indictment returned against the accused by the Grand Jury. The provisions of the Constitution, recognizing and following the principles of the common law, require the indictment to contain allegations to those effects.

2.

In criminal statutes, the term "feloniously" means the unlawfulness of the act committed, and done without excuse or color of right. When used to convey the idea of legal malice, the term "feloniously" denotes the act proceeds from an evil heart or purpose. The term "wilfully" means a voluntary, intentional violation of a known legal duty in bad faith or with evil purpose. When used to convey the idea of legal malice, the term "wilfully" denotes a deliberate, intentional purpose to commit the act itself.

3.

In a general sense, "purpose" corresponds loosely with the common law concept of specific intent. In a criminal statute, a specific intent is taken to mean a required mental state for a particular crime. It denotes an intent to do the crime at a particular time and place, as opposed to an undetermined occasion.

F.

What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Statutes are presumed to be constitutional, and will be construed so as to render them valid. When the terms of a statute are clear and unambiguous, the Court must apply them according to their literal meaning.

1.

The plain language of the statutes governing acceptance of guilty pleas, S.C. Code Ann. §17-23-130 to -140, together with case law regarding guilty pleas, requires preparation of a formal indictment as a condition precedent to a valid waiver of presentment. Accordingly, as no indictment was properly prepared charging Applicant with Murder, as required by S.C. Code Ann. §17-19-30, no valid waiver of presentment to the Grand Jury could have been accomplished, and, in turn, the trial court was without jurisdiction to accept the guilty plea.

2.

Since it is basic canon of statutory construction that the use of the term "shall" indicates a mandatory intent, the plain and ordinary language of S.C. Code Ann. §17-19-30 must be strictly construed, and should not be interpreted to extend or limit criminal liability beyond or beneath that which the legislature has plainly and unmistakably proscribed as a sufficient and valid indictment for the offense of Murder, "good in law". And, since the legislature undertakes to legislate

within the scope of a constitutional source of power, it must clearly appear that S.C. Code Ann. §17-19-30 is a fair application of the constitutional language. Therefore, the Court's equitable powers must yield in the face of an unambiguously worded statute.

G.

Viewing the indictment with a "practical eye", had Counsel Hardee-Thomas presented a timely motion to the Court to quash the indictment, due to the State's failure to charge the essential elements as required by S.C. Code Ann. §17-19-30, before the jury was sworn, there is a reasonable probability the Court would have ultimately determined Applicant's indictment for Murder was insufficient to convey subject matter jurisdiction upon the Court. Furthermore, upon rendering a determination the indictment for Murder was insufficient, there is a reasonable probability Applicant would have been acquitted of the offense of Murder; thus, procedurally barring the State from further prosecution for an offense established by the same alleged act under the provisions of the Double Jeopardy Clause.

1.

As to the prejudicial nature of Counsel Hardee-Thomas' failure to present a timely motion to the Court to quash the indictment, this error was directly attributable to and binding on Applicant when Counsel Hardee-Thomas advised Applicant to plead guilty under an indictment deemed insufficient by law, in violation of S.C. Code Ann. §17-19-30, and was subsequently sentenced to a term of twenty-five (25) years. Neglecting to timely accomplish such a necessary component of criminal defense litigation in the best interest of Applicant demonstrates an intolerable degree of ineptitude and indifference. This error by Counsel Hardee-Thomas is, thus, so profound, and unreasonable under prevailing professional norms of competent representation.

2.

Applicant asserts and submits, based on the factual basis of this issue on collateral review, the errors and omissions by Counsel Hardee-Thomas prejudiced Applicant to a reasonable extent that had Applicant been afforded effective assistance of counsel there is a reasonable probability the outcome would have been different.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2005-CP-18-1566

Eric L. Brown, #272336,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

Respondent, making its Return to the application for post conviction relief (PCR) filed October 11, 2005, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was indicted at the January 2003 term of the Dorchester County Grand Jury for Murder (03-GS-18-0013). Marva Hardee-Thomas, Esquire, represented him. On November 2, 2004 Applicant pled guilty to Voluntary Manslaughter. He was sentenced by the Honorable Steven H. John to confinement for a period of twenty-five (25) years. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Dorchester County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any of the above not so attached will be forwarded upon receipt.

II.

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

1. Ineffective assistance of counsel; and
2. Lack of subject matter jurisdiction.

III.

In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant has claimed that the trial court lacked subject matter jurisdiction. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter

jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. *See Gentry, supra; Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. *See S.C. Code §§ 17-27-45 and -90* (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” *Gentry, supra*, 610 S.E.2d at 499; *See also S.C. Const. Art. V, § 7*. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine

issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

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

VII.

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

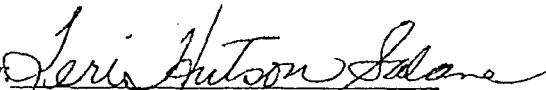
Respectfully submitted,

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By 
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May 17, 2006.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE # 2005-CP-18-1566
	)	
ERIC BROWN, #272336,	)	
	)	
APPLICANT,	)	
	)	APPLICANT'S STATEMENT
Vs.	)	OF THE ISSUES
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	
	)	

Applicant, Eric Brown, is presently confined in the South Carolina Department of Corrections pursuant to an order of commitment of the Dorchester County Clerk of Court. Mr. Brown was indicted at the January 2003 term of the Dorchester County Grand Jury for Murder (03-GS-18-0013). Ms. Marva Hardy Thomas represented Mr. Brown. On November 2, 2004, Mr. Brown offered a guilty plea, which he now alleges to be involuntary, to Voluntary Manslaughter. He was sentenced by the Hon. Steven H. John to confinement for a period of twenty-five (25) years. Mr. Brown did not appeal his conviction or sentence. This PCR was filed on October 11, 2005, within one year of his sentencing. The facts of the case relate to the death of Stacy Fogle, who died on November 9, 2002 in her home. Eric Brown lived with Stacy Fogle on her family's property in Branchville. Stacy Fogle died as a result of a gunshot wound to the head from a 20 gauge shotgun..

Eric Brown offers the following grounds for Post Conviction Relief, all as set forth with great particularity in his application:

1. Ineffective assistance of counsel in failing to investigate and interview fact and expert witnesses. Evidence will show that there were witnesses to the *sounds, or lack thereof*, before the incident which tend to show that the shooting was accidental, and without malice. The State's theory that the shooting was the result of a heated argument could have been refuted through investigation and interviews. Mr. Brown will show these failure's prejudiced him when relatives and neighbors of Stacy Fogle testify under subpoena at the PCR hearing that they heard no sounds of arguing before hearing the gunshot, and that they knew of no reason or motive as to why Eric Brown would intentionally murder Stacy Fogle. These witnesses were available prior to Mr. Brown's plea to Voluntary Manslaughter and could have raised a reasonable doubt as to malice or heat of passion, opening an opportunity for a determination of Involuntary Manslaughter which carries a much shorter sentence.

2. Ineffective assistance of counsel in advising Mr. Brown to plead guilty to Voluntary Manslaughter without discussing the defense of "accident" or the lesser included charge of Involuntary Manslaughter with Mr. Brown, or investigating facts which could have lead to a reasonable doubt on the charge of Voluntary manslaughter. Prejudice to Mr. Brown will be shown by the same evidence as set forth in issue number 1, above.

3. Ineffective assistance of counsel in failing to consult with an expert to investigate and report upon the finding's of the State's forensic pathologist. No forensic pathologist was consulted by defense counsel to obtain an independent evaluation of the autopsy. The

State's expert stated that the gun was pointed "upward, backward and to the right" at the time of the discharge. This statement could have assisted defense counsel, as such an angle is not consistent with the leveling of a gun before a shot. No expert was retained by defense counsel to point out the lack of other physical injuries to Stacy Fogle, and the lack of defensive wounds to her hands and arms. The lack of defensive wounds or other physical injuries to Stacy Fogle tend to prove that there was no indication of assault or domestic violence and that the weapon may have been fired by accident. Defense counsel did consult with Kelly Fite, a "firearms" expert, who stated in his report, "[The SLED] report of gunshot residue on Stacy Fogle's hands does not negate the possibility that there was a struggle over the weapon resulting in an unintentional discharge." This statement, and the other findings of the autopsy, is consistent with Mr. Brown's version of the facts that the gun was discharged by accident. Indeed, the State's expert told Detective Marshall that the victim "could have grabbed the barrel." If the proper expert had been retained, these facts could have raised reasonable doubt on the charges of Murder and Voluntary Manslaughter, and could have lead to a jury charge on the issue of Involuntary Manslaughter or the defense of "accident." According to Mr. Brown, Kelly Fite, applicant's "expert," was not in the courtroom when 3 juries were struck before Mr. Brown's plea. Mr. Brown does not believe that Mr. Fite was subpoenaed to testify at the trial by defense counsel or if he was even going to attend the trial to put forth the possibility of an "unintentional discharge." If Mr. Fite had attended the trial, there may have been doubts as to his qualifications, as he was not a forensic pathologist, and the weight of his testimony. Additionally, Kelly Fite's report was dated December 19, 2003.

Defense counsel had almost 11 months before Mr. Brown's plea to pursue the issue of an accident discharge of the weapon through the use of an independent forensic pathologist.

4. The trial court lacked subject matter jurisdiction to try Mr. Brown for Murder based upon a failure to charge all of the essential elements of murder pursuant to S. C. Code Ann. §17-19-30 which requires that the allegation of murder state that it was committed "feloniously and willfully." Since there was no proper indictment charging Mr. Brown for murder, since the words "feloniously" or "willfully" do not appear in the indictment, there could be no valid presentment of the indictment to the Grand Jury. In turn, the trial court was without jurisdiction to accept Mr. Brown's plea. Defense counsel failed to move the court to quash the indictment.

As a result, Applicant requests this court to grant his application for Post Trial Conviction Relief; to find that his guilty plea is revoked and rendered involuntary as a result of ineffective assistance of counsel and a lack of subject matter jurisdiction; and to vacate the Applicant's conviction; and to order that Applicant be released from confinement pending further action, if any, by the State of South Carolina.

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ATTORNEYS FOR APPLICANT
ERIC BROWN

Charleston, South Carolina
3rd day of March, 2010

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF DORCHESTER) 2005-CP-18-01566

ERIC BROWN,)

PLAINTIFF,)

VS.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,)

DEFENDANT.)

MARCH 3, 2010

ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

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

DONALD J. BUDMAN, ESQ.

ATTORNEY FOR THE PLAINTIFF

MARY S. WILLIAMS, ESQ.

ATTORNEY FOR THE DEFENDANT

BONNIE H. KELLY

CIRCUIT COURT REPORTER

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1 MS. WILLIAMS: May it please the Court. Your Honor,
2 this is Eric Brown, 2005-CP-18-1566. Mr. Brown is
3 represented today by Don Budman.

4 He was represented by Ms. Hardy-Thomas on a charge of
5 murder on November 2nd of 2004. He pled guilty to
6 voluntary manslaughter and received a sentence of 25 years,
7 and that was before Judge John. And he did not file an
8 appeal from that, and his PCR application was timely filed
9 on October 11, 2005.

10 THE COURT: Okay.

11 MS. WILLIAMS: Mr. Budman has provided me with his --
12 the applicant's statement of the issues --

13 THE COURT: Yes.

14 MS. WILLIAMS: -- which I'm -- he's notified me of
15 these. And those are ineffective assistance of counsel,
16 failing to investigate interview facts and expert
17 witnesses, and some other allegations. I believe you have
18 a copy of that document as well.

19 THE COURT: Very well. Any preliminary matters, Mr.
20 Budman?

21 MR. BUDMAN: None, Your Honor.

22 THE COURT: All right. If you will call your first
23 witness.

24 MR. BUDMAN: Thank you, Your Honor. I am going to
25 call some witnesses out of order.

26 THE COURT: Sure.

DIRECT EXAMINATION BY MR. BUDMAN - KLEIMAN RASBERRY

5

1 MR. BUDMAN: I have some gentlemen here under
2 subpoena.

3 THE COURT: Sure. Sure.

4 MR. BUDMAN: And we would take -- get them up and
5 down as quickly as we can.

6 THE COURT: Sure, Mr. Budman. Absolutely.

7 MR. BUDMAN: I call Mr. Kleiman Rasberry.

8 THE COURT: All right.

9 KLEIMAN RASBERRY, having been
10 first duly sworn, testifies as follows:

11 THE COURT: State your full name for the record.

12 WITNESS: Kleiman Reynard Rasberry.

13 THE COURT REPORTER: I need you to spell your first
14 name.

15 WITNESS: K-l-e-i-m-a-n.

16 THE COURT: And your -- "Rasberry" like the raspberry?

17 WITNESS: Without the "p"; R-a-s-b-e-r-r-y.

18 THE COURT: And then your last name.

19 WITNESS: That's my last name.

20 THE COURT: "Rasberry's" your last name. All right.
21 Very well. And can you pull that microphone just a tiny
22 bit towards you?

23 WITNESS: (Complies.)

24 THE COURT: Perfect. Thank you. Mr. Budman, your
25 witness.

1 MR. BUDMAN: Thank you, Your Honor.

2 DIRECT EXAMINATION BY MR. BUDMAN:

3 Q Mr. Rasberry, we've met previously. My name is Donald
4 Budman. I represent Mr. Eric Brown in this PCR.

5 First, I'd like to just confirm that you're here by
6 virtue of a subpoena --

7 A Yes, sir.

8 Q -- that I had served upon you.

9 A Yes, sir.

10 Q Is that correct?

11 A Yes, sir.

12 Q All right. I would also like to let you know how
13 terribly sorry I am about the death of your family member,
14 Stacy Fogle. And it is the death of Stacy Fogle that led
15 to the indictment of Mr. Brown on the charge of murder; is
16 that correct?

17 A Yes, sir.

18 Q And how was Stacy Fogle related to you, sir?

19 A She was my niece.

20 Q All right. Do you have some property in Branchville,
21 S. C.?

22 A Well, it's my father's property. I stay -- stay on my
23 father's property, right.

24 Q Do you -- you live on that property?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. BUDMAN - KLEIMAN RASBERRY

7

1 Q And at the time that Stacy Fogle lost her life, did
2 she live on that property as well?

3 A Yes.

4 Q All right. And that was in 2002, if I remember
5 correctly.

6 A Yes, sir.

7 Q So, Stacy Fogle lived on that property as well?

8 A Yes.

9 Q And were there other family members that lived on the
10 property?

11 A Well, my -- my father -- his house and then my house.

12 Q All right. I forgot to ask you: How old are you, Mr.
13 Raspberry?

14 A I am 42.

15 Q 42. So, in 2002, when the incident with Stacy took
16 place, you would have been 34?

17 A Yes, sir.

18 Q Or thereabouts? All right. So, the question is,
19 other than you -- lived on the property with your father
20 and Stacy Fogle lived on the property, are there houses on
21 the property?

22 A No more than our houses. On our road is another --
23 was another mobile home.

24 Q All right.

25 A Further down the road, yes.

1 Q Do you live in a -- in a house or a mobile home?

2 A A mobile home.

3 Q And did Stacy Fogle live in a mobile home?

4 A Yes, sir, a mobile home.

5 Q But two separate mobile homes.

6 A Two separate mobile homes.

7 Q Okay. But both on the same property.

8 A Yes.

9 Q And what would you say the distance is between your
10 mobile home and the mobile home where Stacy Fogle lived?

11 A I can't give a distance, but it -- it's not far.

12 Q Not far?

13 A No.

14 Q Can you see when her lights were -- are on?

15 A Yes, sir.

16 Q Or when somebody was home? Could you hear people
17 talking in her mobile home sometime when things were quiet
18 outside?

19 A Yes, sir.

20 Q All right. Now, of course, the incident where Stacy
21 Fogle lost her life took place in her mobile home; is that
22 correct?

23 A Yes, sir.

24 Q And that was the mobile home that she was at the time
25 sharing with -- with Eric Brown.

DIRECT EXAMINATION BY MR. BUDMAN - KLEIMAN RASBERRY

9

1 A Yes, sir.

2 Q Okay. After Stacy Fogle lost her life, did you have
3 occasion to meet with some sheriff's deputies from
4 Dorchester County who were investigating the shooting of
5 Stacy Fogle?

6 A Yes, sir.

7 Q At any time after Stacy lost her life, did you meet
8 with anyone from Eric Brown's attorney's office, or from
9 any type of private investigator who may have represented
10 that they were working on behalf of Eric Brown's attorneys?

11 A No, sir. I have no recollection of that.

12 Q Did they ever call you on the telephone?

13 A No, sir.

14 Q For the record, I'd point out that Mr. Brown's defense
15 attorney, Marva Hardy-Thomas, is seated at counsel with the
16 white shirt and the dark suit on, Mr. Rasberry. Have you
17 ever seen this lady before?

18 A Yes, sir. I seen her in the courtroom.

19 Q In the courtroom.

20 A Uh-huh.

21 Q Have you ever discussed with her the -- the -- the
22 shooting of Stacy Fogle?

23 A No, sir.

24 Q Now, before Stacy Fogle was -- lost her life, did you
25 ever have the opportunity to see her and Mr. Brown -- Eric

1 Brown together?

2 A Yes, sir.

3 Q And would that have been in the days leading up to her
4 death?

5 A Yes, sir.

6 Q All right. Did you have any information, Mr.

7 Raspberry, that Eric Brown and Stacy Fogle did not get
8 along?

9 A No, sir.

10 Q You -- you thought that they got along just fine,
11 right?

12 A Yeah. I thought they got along just fine.

13 Q Sure. Uh-huh. Did you ever hear them arguing or
14 bickering from their -- from their mobile home?

15 A No, sir.

16 Q Did you ever see Eric Brown get physical with Stacy
17 Fogle?

18 A No, sir.

19 Q Would you say that it's true that Eric Brown was not
20 abusive to her?

21 A I have -- it's hard to say, because I wasn't -- his
22 house was down ---

23 Q Just based on what you know.

24 A Based on what I know, no, I haven't seen him.

25 Q Would you say that they were a happy couple?

DIRECT EXAMINATION BY MR. BUDMAN - KLEIMAN RASBERRY

11

1 A Yes.

2 Q Based on what you knew?

3 A Based on what I knew.

4 Q That they got along well?

5 A Yes, sir.

6 Q Were they a sober couple, in that they -- were they
7 intoxicated all the time, or -- or were there times when
8 they were sober, not intoxicated?

9 A I never knew Stacy to drink, but I seen Eric drink on
10 a couple of occasions.

11 Q Mr. Raspberry, I know this is a kind of a personal
12 question, but how is your hearing? Do you have any hearing
13 problems?

14 A No, sir.

15 Q All right. Now, on the night that Stacy was shot, you
16 heard a gunshot; is that correct?

17 A No, sir. I did not hear the gunshot. My wife and my
18 boys, they heard something. But we heard something, but I
19 thought it was -- the dryer was on in the house, had shoes
20 in the dryer. And I thought it was the shoes hitting the
21 dryer.

22 Q Bumping around in the dryer.

23 A Yes, sir.

24 Q Now -- but -- but you heard some sound.

25 A Uh-huh. But ---

1 Q You were mistaken what the sound was, but you heard
2 some sound.

3 A Yes. I thought it was the shoes.

4 Q And prior to hearing that sound, did you hear any
5 arguing coming from Stacy Fogle's mobile home?

6 A Well, no, sir. Couldn't hear anything, because they
7 had my dryer going.

8 Q All right. Prior to you hearing that sound, did you
9 hear any fussing or screaming coming from the house?

10 A No, sir.

11 Q From Stacy Fogle's home?

12 A No, sir. Like I said, I had my dryer on, so I didn't
13 hear anything.

14 Q Right. But you did say that -- that if there were
15 people having an argument or talking in a very loud voice,
16 that you could hear it from your mobile home.

17 A Yes, sir.

18 Q Thank you, sir. Now, your father's also here.

19 A Yes, sir.

20 Q Mr. Roosevelt ---

21 A Yes, sir.

22 Q --- Raspberry.

23 A Uh-huh.

24 Q So, I'll submit you to cross-examination, if they have
25 any. Then we'll talk to Mr. Roosevelt.

CROSS EXAMINATION BY MS. WILLIAMS - KLEIMAN RASBERRY 13

1 A All right.

2 THE COURT: Thank you. Cross-examination.

3 CROSS EXAMINATION BY MS. WILLIAMS:

4 Q Mr. Rasberry, you live in the mobile home, correct?

5 A Yes.

6 Q Who lives in the cement-block home on that road?

7 A The brick home? My father.

8 Q Your father. Okay.

9 And you said that you could hear people talking in
10 Stacy's trailer?

11 A If they was talking loud enough when it's quiet, you
12 can hear talking.

13 Q Could you hear them from inside your house?

14 A Yes.

15 Q Could you hear them inside -- from inside your house
16 with your dryer on?

17 A No, sir. I mean --

18 Q All right. I think that's it. Thank you.

19 Oh, excuse me. One more question. Did you ever speak
20 to an "Oscar Douglas" to your memory?

21 A Oscar Douglas? No, ma'am. Not that I --

22 Q Not that you recall.

23 A Not that I recall.

24 Q Okay. Thank you.

25 MR. BUDMAN: I have no further questions.

DIRECT EXAMINATION BY MR. BUDMAN - ROOSEVELT RASPBERRY 14

1 THE COURT: And is this witness free to leave?

2 MR. BUDMAN: He is. Thank you very much for coming.

3 THE COURT: (To the witness) Free to go. Free to stay
4 if you wish, but you are free to go.

5 Call your next witness, please.

6 MR. BUDMAN: Your Honor, I would call Mr. Roosevelt
7 Raspberry, please.

8 THE COURT: All right.

9 (ROOSEVELT RASPBERRY, having been
10 first duly sworn, testifies as follows:

11 THE COURT: Your -- and state your full name for the
12 record.

13 THE WITNESS: Roosevelt Raspberry.

14 THE COURT: Roosevelt; Roosevelt, like the president?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Raspberry, like the -- Mr. Raspberry just
17 spelled it?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: All right. Your witness, Mr. Budman.

20 MR. BUDMAN: Thank you.

21 DIRECT EXAMINATION BY MR. BUDMAN:

22 Q Mr. Raspberry, you -- you received a subpoena from me
23 to be here today?

24 A Yes, sir.

25 Q All right, sir. Thank you for coming.

DIRECT EXAMINATION BY MR. BUDMAN - ROOSEVELT RASPBERRY 15

1 Stacy Fogle was your granddaughter?

2 A That's right.

3 Q Were you able to hear what your son Kleimans Rasberry
4 just said from the witness stand, sir?

5 A Yeah.

6 Q Was there anything that he said that you disagree
7 with, or could you say that you agree with everything he
8 said?

9 A Yeah.

10 Q About who lived on the property and --

11 A That's right. Yes.

12 Q All right. Now, how old are you, Mr. Rasberry?

13 A 76.

14 Q All right, sir. You live on a block house -- in a --
15 in a block house on that property?

16 A Well, it's a brick house.

17 Q In the -- in the brick house?

18 A Uh-huh.

19 Q And do you know about how far the mobile home that
20 Stacy Fogle was living in was from your house?

21 A No. But it wasn't very far.

22 Q Was not very far?

23 A No.

24 Q Could you hear people talking in the mobile home if
25 you were in your house or outside?

DIRECT EXAMINATION BY MR. BUDMAN - ROOSEVELT RASPBERRY 16

1 A Yes.

2 Q Did you at any time hear any arguing coming from her
3 house between herself and Mr. Eric Brown?

4 A No.

5 Q Mr. Raspberry, did you ever have occasion to talk with
6 anyone from Eric Brown's attorney's office?

7 A No. No.

8 Q Did you hear the gunshot that came from Stacy Fogle's
9 mobile home?

10 A I heard something. I didn't know what it was.

11 Q Before you heard that noise, did you hear any fussing
12 or arguing, sir?

13 A No, sir.

14 Q Thank you. That's all the questions that I have, Mr.
15 Raspberry. Thank you for coming, Mr. Raspberry. Answer any
16 questions that ---

17 THE COURT: Cross-examination.

18 CROSS EXAMINATION BY MS. WILLIAMS:

19 Q Mr. Raspberry, if you were inside your home, could you
20 hear conversations in Stacy's home?

21 A If it were loud, I could hear.

22 Q If it was loud? Okay. Are there some children that
23 live in that area?

24 A No. Stacy's children.

25 THE COURT: Say that -- I'm sorry, I didn't hear.

CROSS EXAMINATION BY MS. WILLIAMS - ROOSEVELT RASBERRY 17

1 A None but -- any other children beside --

2 Q Stacy's children?

3 A No. None beside Stacy.

4 Q Okay. All right. Thank you.

5 Did you ever speak to anyone named "Oscar Douglas"?

6 A No.

7 Q Not -- but you did speak to a police officer; is that
8 correct?

9 A Yeah.

10 Q Okay. Thank you.

11 THE COURT: Thank you. Re-direct?

12 MR. BUDMAN: No re-direct, Your Honor. I ask that the
13 witness be excused.

14 THE COURT: Very well. Thank you, sir, for being
15 here.

16 THE WITNESS: Okay.

17 THE COURT: You are free to go. You're free to stay,
18 too, if you wish. But you're free to go. You -- you are
19 now in charge of your coming and going, in other words.

20 THE WITNESS: All right.

21 THE COURT: All right, sir.

22 Call your next witness, please.

23 MR. BUDMAN: Call Eric Brown.

24 THE COURT: All right. Yes, sir, Mr. Brown. Come on.

25 Come on around, Mr. Brown, this way.

DIRECT EXAMINATION BY MR. BUDMAN - ERIC BROWN

18

(Mr. Brown complies.)

THE COURT: There you go. And come all the way around here.

ERIC BROWN, having been first duly sworn, testifies as follows:

THE COURT: All right. State your full name for the record.

THE WITNESS: Eric Lester Brown.

THE COURT: Your witness.

MR. BUDMAN: Thank you, Your Honor.

THE COURT: Uh-huh.

DIRECT EXAMINATION BY MR. BUDMAN:

Q Mr. Brown --

A Yes, sir.

Q -- did you file, on October the 18th of 2005, a Summons and Application for Post Conviction Relief?

A Yes, sir.

Q And is your application for post conviction relief some 32 pages long?

A Yes, sir.

Q Have you had the opportunity to review that application before coming to court today?

A Yes, sir.

Q And are you familiar with all of the allegations that are contained in the PCR application?

1 A Yes, sir.

2 Q Do you agree with the facts that were stated in the
3 PCR application?

4 A Yes, sir.

5 Q Are there any facts contained in the PCR application
6 that you disagree with?

7 A No, sir.

8 Q Now, one of the grounds that you raised in your PCR
9 application is a lack of subject matter jurisdiction of the
10 Court as a result of a allegedly defective indictment.

11 A Yes, sir.

12 Q Is that correct?

13 A Yes, sir.

14 Q Could you tell Judge Goodstein what you believe is
15 defective about the -- about the indictment.

16 A Because I was -- I was indicted before -- I plead
17 before the -- before the indictment was stamped.

18 Q All right. Your allegation is that the indictment was
19 stamped after the plea. Okay.

20 Well, besides that, are there anything -- any
21 deficiencies or anything wrong with the indictment?

22 A My subject matter jurisdiction was like -- it was --
23 my -- my -- my understanding was they was talking about at
24 the time of death.

25 Q All right. Were there any words that were missing

1 from the indictment?

2 A Not that I -- not that I know of.

3 Q All right. Well, let's do it this way. Hand you a
4 copy of a document.

5 (Mr. Budman confers with Ms. Williams briefly.)

6 THE COURT: I was going to say, "Do I have a packet?"

7 MS. WILLIAMS: Oh, gosh. Did I not hand it to you?

8 THE COURT: I don't know. There you go. Great.

9 (Brief pause as Ms. Williams hands packet to the Court.)

10 MR. BUDMAN: Your Honor, let the record reflect that
11 I've handed Mr. Brown a copy of his indictment.

12 THE COURT: Okay.

13 (Mr. Budman hands a document to the witness.)

14 DIRECT EXAMINATION BY MR. BUDMAN (CONTINUES):

15 Q Can you see that okay, Mr. Brown?

16 A Yes, sir.

17 Q Do the words "feloniously" or "willfully" appear
18 anywhere in that indictment?

19 A No, sir.

20 Q And is it your allegation that because those words do
21 not appear in your indictment for murder, that that
22 indictment is defective?

23 A Yes, sir.

24 Q All right. Now, Mr. Brown, you were arrested and
25 charged with the murder of Stacy Fogle; is that correct?

DIRECT EXAMINATION BY MR. BUDMAN - ERIC BROWN

21

1 A I was arrested for parole violation.

2 Q All right. But at some point, that led to an arrest
3 for the murder of Stacy Fogle; is that correct?

4 A Yes, sir.

5 Q Right?

6 A Yes, sir.

7 Q All right. And at the time that Stacy Fogle lost her
8 life, were you living with her?

9 A Yes, sir.

10 Q And did the -- the gunshot that took her life occur in
11 the mobile home that you and she lived in?

12 A Yes, sir.

13 Q And was that mobile home on Mr. Rasberry's property?

14 A Yes, sir.

15 Q All right. As -- as he's already testified to.

16 A Yes, sir.

17 Q All right. Now, after you were charged with the
18 murder of Stacy Fogle, who was your attorney?

19 A Ms. Marva Hardy.

20 Q All right. And that's Ms. Hardy-Thomas at the table
21 here, right?

22 A Yes, sir.

23 Q Okay. Now, after you were charged with the murder,
24 did you have occasion to meet with her?

25 A Yeah. I met with her on occasion, but it wasn't about

1 -- it wasn't about this case.

2 Q What was it about?

3 A It was about me pleaing all the time.

4 Q All right.

5 A From -- from the gate, it was about me pleaing.

6 Q Okay. Did you ever discuss with her the facts and
7 circumstances behind how Stacy Fogle lost her life?

8 A On one occasion.

9 Q All right. And when was that in relation to your
10 guilty plea?

11 A I think it was at -- in '03. She -- she brought -- I
12 don't know who it was. I was on a YOA. I was down in
13 Turbeville. She brought some dude to measure my arms and -
14 - and show me a bunch of pictures.

15 Q At that ---

16 A That's about it.

17 Q --- at that point, were you able to discuss with her
18 your version of the facts that occurred?

19 A Not -- not really, because I don't -- I didn't know
20 who the dude was. It was never explained who the man was
21 who came with her.

22 Q Did you, at any time in your discussions with Ms.
23 Hardy-Thomas, discuss your version of how Stacy Fogle lost
24 her life?

25 A No.

DIRECT EXAMINATION BY MR. BUDMAN - ERIC BROWN

23

1 Q Did you ever discuss with Ms. Hardy-Thomas the defense
2 of accident?

3 A We discussed it, but she wasn't -- it -- it was to a
4 minimum. It wasn't -- we didn't -- we didn't really
5 discuss it. I brought it up. It was brought up in
6 briefing.

7 Q Did -- did she request from you the names and
8 addresses of potential witnesses?

9 A No, sir. Matter of fact, I -- I tried to contact Mr.
10 -- Mr. Raspberry. She came, told me I could try to explain
11 to her. I was so nervous at the time, I tried to contact
12 him, let him know, you know, just what it is, you know.
13 She told me don't contact them no more.

14 Q Who told you that?

15 A Ms. Hardy -- Ms. Thomas. And that was the last thing
16 I heard of that.

17 Q Did you explain to her why you wanted to contact Mr.
18 Raspberry?

19 A Yeah. I -- I explained it to her.

20 Q What -- what did you tell her why you wanted ---

21 A I told her because ---

22 Q --- to contact Mr. Raspberry?

23 A I told her because this is -- this -- this is an
24 accident. This was an accident. I just panicked and gave
25 wrong versions of the story, too many versions of the

1 story. It wasn't a violent act.

2 Q Okay. And why did you -- why did you give so many
3 versions of the story?

4 A Nervous.

5 Q Nervous ---

6 A Nervous, scared, and then -- nervous, scared, and
7 didn't know -- didn't know what to do. That's my first
8 time in the situation like that, you know.

9 Q Were you on parole at the time that -- that ---

10 A I was on parole at that time.

11 Q --- Stacy lost her life?

12 A I was on parole at the time.

13 Q Were you married to Stacy Fogle?

14 A We had the marriage license. Yeah. We had the
15 marriage license. We signed the marriage license, but it
16 wasn't completed.

17 Q All right, sir. Now, did you at any time tell Ms.
18 Hardy-Thomas that you -- there were witnesses that could be
19 interviewed to support your version of what happened?

20 A Yes, sir.

21 Q All right. Do you know whether she interviewed the
22 witnesses or not?

23 A She didn't interview them, because -- because they --
24 they -- one of them was -- was Stacy's son. And the other
25 one was my brother.

DIRECT EXAMINATION BY MR. BUDMAN - ERIC BROWN

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1 Q All right. And did Ms. Hardy-Thomas talk to them to
2 your knowledge?

3 A I think she talked to Sean, Sean. That's -- that's
4 about -- no, I mean, no. She didn't talk to them. The
5 detectives on -- for the solicitor talked to them. She
6 didn't talk to them.

7 Q Okay.

8 A I got that mixed up.

9 Q Now, was it -- is it your theory that you didn't
10 intend to shoot Stacy.

11 A No. I -- I don't got no violent charges whatsoever.
12 That's my first charge of that nature, you know.

13 Q Did you talk about what was going on between you and
14 Stacy prior to the gunshot with Ms. Hardy-Thomas?

15 A She didn't -- she -- that was never -- that never came
16 up. The only thing came up was me pleaing.

17 Q All right. Now, did you ever discuss with Ms. Hardy-
18 Thomas an expert witness by the name of Kelly Fite?

19 A Yes, sir. Yeah. That was a -- yeah. He came -- I
20 never talked to him, but I -- I think got some paperwork
21 from him. She sent me some paperwork from him.

22 (Mr. Budman hands documents to Ms. Williams.)

23 MS. WILLIAMS: I don't have any objections.

24 MR. BUDMAN: Okay.

25 Q I'm going to show you a document, Eric, and ask you to

1 identify that document.

2 A Yeah.

3 Q Is that the document that Ms. Hardy-Thomas gave you
4 from Mr. Fite?

5 A Yes, sir.

6 Q All right.

7 MR. BUDMAN: Move to admit it as ---

8 THE COURT: Any objection?

9 MR. BUDMAN: --- Applicant's No. 1.

10 MS. WILLIAMS: There's no objection from the State.

11 THE COURT: Very well..

12 (Marked Applicant's Exhibit No. 1, letter dated 11/19/03.)

13 Q Now, do you know what type of expert Mr. Fite was?

14 A I thought -- I believe a firearms expert.

15 Q Firearms expert?

16 A Yes, sir.

17 Q All right. Now, after receiving this document, which
18 is dated November 19th of 2003, did you ever see or hear
19 from Mr. Fite again?

20 A No, sir. He wasn't even there the day I went to
21 trial.

22 Q Now, in this case, the State -- the State did an
23 autopsy on Stacy, did they not?

24 A Yes, sir.

25 Q All right. And the autopsy was done, I believe, by a

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1 forensic pathologist.

2 MS. WILLIAMS: I'd object to this line of questioning
3 on the basis of personal knowledge. He's testified that he
4 didn't receive any evidence in this case from his attorney,
5 and there's -- the report isn't here.

6 MR. BUDMAN: I'll withdraw the question.

7 THE COURT: All right.

8 Q Did you ever see an autopsy on Stacy Fogle?

9 A Yes, sir. My Rule 5 motions covered it.

10 Q All right. And did you actually review the autopsy
11 result?

12 A Yes, sir.

13 Q All right. Do you know who prepared the autopsy?

14 A Ms. Inez Yaku from Newberry.

15 Q All right. And do you know whether or not she was a
16 forensic pathologist?

17 A I have no idea. I'm sorry.

18 Q Well, let me ask you this: Other than Mr. Fite's
19 letter, do you know whether or not Ms. Hardy-Thomas
20 consulted with any other expert other than a firearms
21 expert?

22 A No. Not -- no.

23 Q All right.

24 A No. She didn't contact nobody.

25 Q Did you ever have a discussion with Ms. Hardy-Thomas

1 regarding the differences between murder, voluntary
2 manslaughter, and involuntary manslaughter?

3 A Yes. She sent me a -- the -- the -- murders carry
4 life sentence automatic; manslaughter carry -- voluntary
5 manslaughter carry, I think, 2 to 30. And involuntary
6 manslaughter I think carry 0 to 5. There was some
7 paperwork about that at Turbeville.

8 As far as explaining it to me, I -- that wasn't
9 explained to me.

10 Q So, she sent you the sentencing --

11 A Yeah. Guidelines.

12 Q -- reports for it, but did you actually discuss what
13 was involved, the legal elements of the different --

14 A No.

15 Q -- charges?

16 A No.

17 Q Did you have any discussion of that nature when the
18 plea was about to take place?

19 A I don't understand your question.

20 Q Okay. When -- when you -- well, let me back up a
21 little bit. Was your case called for trial?

22 A Yeah. I -- I wanted to go to trial.

23 Q Okay. Had you had plea negotiations with the State up
24 to that point?

25 A Thirty years, involuntary manslaughter.

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1 Q Thirty years for voluntary manslaughter?

2 A Voluntary manslaughter.

3 Q Right. And you wanted to go to trial.

4 A Yeah. I wanted to go to trial.

5 Q And did you in fact go to court on the day of your
6 trial?

7 A I went to court. I think -- yeah. I went -- I went
8 to trial.

9 Q All right. And did you pick a jury?

10 A I picked two juries.

11 Q And were those juries dismissed under *Batson* charges?

12 A Yeah.

13 Q All right. And were you about to pick a third jury?

14 A Yes, sir.

15 Q All right. And tell the Court what happened as you
16 were about to pick a third jury.

17 A She -- I heard somebody say that, "He's sitting over
18 there in a suit, but he going to jail today."

19 I was all -- sitting beside her. She gave a notepad,
20 told me to write on it. And -- and at that time, she told
21 me -- she told me that 17 years is what I would get with
22 time served; I already did two years. She told me if I
23 plead, I would get 17 years.

24 Q And what did you say?

25 A I said yeah, I would take that. I would take 17 years

1 with two years for time served for what I already did.

2 Okay. She goes in the back. She goes in the back.

3 No, back up. She came back. She told me -- she said if I
4 go trial today, somebody gonna pay. It's not gonna be the
5 judge; it's not gonna be the solicitor; it's not gonna be
6 the family. That only leave one person: me. That --
7 that's -- that's what she told me.

8 Q All right. So, what happened next?

9 A I -- I try to -- I plea. I plead out. She telling me
10 they about to give me a life sentence. I plea out.

11 Q Who said anything about life sentence?

12 A That's what she told me. She said a life sentence --
13 if -- if we go to trial, I blow trial, she said life
14 sentence.

15 Q So, when you got there to court, did Ms. Hardy-Thomas
16 appear prepared to go to trial?

17 A No, because she was moving so much. I don't think she
18 talked to me 10 minutes.

19 Q All right. Had any of the witnesses that you had
20 suggested to her been subpoenaed?

21 A Never. Never. She showed me -- showed me a list of
22 witnesses. It was all the solicitor witness. The Kelly
23 Fite wasn't there; the lady from the medical examine, Ms.
24 Inez Yaku, she wasn't there; my brother wasn't there, who
25 Stacy talked to five minutes before -- not even five

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1 minutes before this accident took place.

2 I didn't want to put none of the kids. I -- I wasn't
3 going to subpoena -- I -- I want none of the kids to have
4 to testify, you know, I didn't want to put them through
5 that.

6 But the police officers, you know, that -- they wasn't
7 there.

8 Q How bout -- how bout -- how bout Kelly Fite, the
9 firearms expert, was -- he wasn't ---

10 A He wasn't there. When I asked about him, she said he
11 sent the assistant. The assistant wasn't there.

12 Q Now, if you had known that circumstances would be
13 different, other than the 17-year sentence, would you have
14 pled guilty?

15 A I'd have went to trial. For two reasons, I'd have
16 went to trial.

17 Q Tell us those two reasons.

18 A I'd have went to trial because the family would have
19 found out that -- what the medical examiner said that the
20 victim could have had grabbed out, that it was an accident.

21 They -- they never found none of that out, because I
22 plead out. No, sir. They really think I did this, you
23 know.

24 And -- and you know -- and -- and 30 years -- they
25 gave me 25 years. That's a lot of time for an accident,

1 something I didn't do intentionally, you know. They --
2 they didn't -- they didn't find out none of that.

3 None of this paperwork that I did, they -- they didn't
4 see none of this.

5 Q Had there been any investigation into whether it was
6 an accident or not?

7 A No, it wasn't -- no, it wasn't no -- it wasn't --
8 besides what I investigate when I did the PCR.

9 Q All right. Now ---

10 A That's about it.

11 Q Can -- can you read okay?

12 A Yes, sir.

13 Q Read Judge Goodstein the last paragraph of Kelly
14 Fite's report. Can you read that alright?

15 A It saying (as read): "The South Carolina Law
16 Enforcement Division report of gunshot residue on Stacy D.
17 Fogle's hand does not negate the possibility that there was
18 a struggle over the weapon, resulting in an unintentional
19 discharge."

20 Q Now, after having that evidence, was there any further
21 investigation on your behalf into whether it was an
22 unintentional discharge of the gun?

23 A No. And I tried to get her to talk to the -- that the
24 medical examiner said that victim may have grabbed out.
25 That's enough doubt right there. I'd have went to trial if

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1 she'd investigate. None of them people there. I couldn't
2 help but go -- but plea out. I had the paperwork, but I
3 didn't have the actual people there.

4 THE COURT: Have you got the -- the exhibit, Mr.
5 Brown?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Pass that to the --

8 THE WITNESS: (Complies.)

9 THE COURT: (To Court Security) Thanks, Marvin. Thank
10 you.

11 If you need it back, you just let me know.

12 THE WITNESS: I've got a copy.

13 THE COURT: Okay.

14 (Counsel confers.)

15 DIRECT EXAMINATION BY MR. BUDMAN (CONTINUES):

16 Q Mr. Brown, I'm going to show you the transcript of
17 hearing from your plea on November the 2nd of 2004, before
18 Judge John. And in particular page 8, where Judge John
19 asks Ms. Hardy-Thomas (as read): "Have you explained to
20 him" -- meaning Eric Brown -- "his constitutional rights,
21 any defenses that he might have, as well as the information
22 and the evidence in possession of the State?" And Ms.
23 Hardy-Thomas answered (as read): "I have, Your Honor."

24 Mr. Brown, was that true?

25 A No. She ---

1 Q Did she explain to you any defenses that you might
2 have had?

3 A No. Because I told her -- I said it was an accident,
4 and she said -- she says totally different.

5 Q All right. Now, also in the transcript of hearing,
6 Judge Brown [sic] threw a number of questions to you about
7 whether you were entering the plea freely and voluntarily,
8 and whether you were entering the plea of your own free
9 will, etc.; and to all of those questions you answered
10 "yes, sir."

11 A Yeah.

12 Q Was that the truth?

13 A No. Because she told me -- she said -- I'm trying --
14 she say want ---

15 Q Now, wait a minute. Who told you?

16 A Ms. -- Ms. Hardy. I apologize for that. Ms. -- Ms. -

17 -

18 Q All right. And when did she tell you what you're
19 about to say?

20 A About five minutes before I told her I'm not going to
21 no trial, get no life sentence.

22 Q All right. What did she say?

23 A She said that -- she said -- she took my mother, she
24 took a yellow notepad, she took a calculator, she started
25 adding up all these numbers, and said, "Well, 17 years at

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1 85 percent, you got good time here. You've been good
2 here." And she started doing all this to my mama, because
3 she think I'm about to come home. She think I'm going to
4 do a couple of years and come home.

5 Then she say, "Well, don't say nothing to make the
6 judge mad."

7 Q Who did she say that to?

8 A She told me that. She said, "Don't say nothing." She
9 said, "Follow what -- follow -- follow what I say, because
10 -- don't say nothing make the judge mad."

11 Q All right. What -- just so the record is clear, who
12 told you, "Don't say nothing to make the judge mad"?

13 A Ms. -- Ms. -- Ms. Hardy-Thomas.

14 Q And so, when you appeared before Judge John and he
15 asked you questions about whether you were giving this plea
16 freely and voluntarily, were your answers correct?

17 A No. That was her answers. That wasn't my answer.
18 That was -- I said that because I was scared. I don't know
19 what she -- I said what she told me to say.

20 Q And there was a question about whether or not anyone
21 had promised you anything in exchange for your plea. Was -
22 - was your answer to that correct?

23 A No.

24 Q What was your understanding of what you had been
25 promised?

1 A My understanding was if I was to plead, they would
2 come off the -- the original plea was 30. So, I said go to
3 trial. Then she said 25. I said I still want to try the
4 case.

5 She went back -- she came back and she said about the
6 -- about the -- if you do this, if do that, somebody's
7 gonna pay. And she said -- she got the notebook and
8 started writing with the calculator and said, "17 with the
9 -- with time -- the two years I already did." And then she
10 went like, "Don't -- don't say -- you know what I'm saying
11 -- told me, "Don't say nothing out of the way make the
12 judge mad."

13 Q All right. When Judge John announced his sentence,
14 how did you feel?

15 A He -- he gave me 25 years. If I knew that, I'd -- I'd
16 have took the 25 years -- I'd have took the 30 years long
17 as the family would have found out that this wasn't -- this
18 -- this -- this wasn't -- this didn't happen like that, you
19 know what I'm saying? That was my main purpose of going to
20 trial, you know.

21 Q Was to what?

22 A That they're -- to finally let the family know, to let
23 them see this paperwork here that I got that say this was
24 an accident. I didn't intentionally take -- try to take
25 nobody life, you know.

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1 I'd have took the 30 years in exchange for -- for
2 letting them find that out, you know. They never found
3 that out. No, sir. That made me look like a -- like I --
4 I'm abusive, I -- I kill people, you know what I'm saying?

5 That -- that didn't -- that didn't make no sense, you
6 know. So, they still got in their heads stuck a picture of
7 me, of a mad man, that shot an innocent female in front of
8 her kids, when it didn't happen like that.

9 Q All right.

10 A You know?

11 Q Mr. Brown, what could your attorney have done in
12 investigating your case before advising you to plead?

13 A She -- she -- my -- she -- she could -- she could have
14 interviewed potential witnesses. She could have gotten
15 independent -- independent forensic pathologist. She could
16 have -- she could have -- she -- she could have advised me
17 that -- that we could have went to trial. And she could
18 have, you know, instruct the jury -- or actually, the judge
19 instruct the jury involuntary manslaughter.

20 Q Did Ms. Hardy-Thomas do what you had requested that
21 she do?

22 A No. She did totally -- she did totally opposite. She
23 didn't -- she didn't do nothing I request. She did the
24 total opposite.

25 Q Did you ever tell Ms. Hardy-Thomas that you intended

1 to shoot Stacy Fogle?

2 A No. Matter of fact, she told me that -- that she knew
3 it was an accident. She told me that in the visitation
4 room when this first happened, before they shipped me back
5 to Turbeville on a parole violation.

6 She told me that she knew this was an accident. She
7 said, "Oh, I know your family. I know your brother. I
8 know you nothing like that." And still she got me 25
9 years.

10 Q After you pled guilty, Eric, and Judge John announced
11 this 25-year sentence, did you have a conversation with Ms.
12 Hardy-Thomas?

13 A That's when she pat me on the back, told me I was
14 gonna be all right.

15 Q Did she say anything else to you?

16 A No. I asked her could I talk to the family. She told
17 me, "No. It's best you don't say nothing to them."

18 That was my main thing, was to let them know that --
19 you know, my main thing was to let them know that I didn't
20 do this like -- like -- like they say, you know. I was --
21 I -- this didn't happen like -- like it -- like it was
22 played out to be, you know.

23 Q Did she tell you anything about what might have
24 happened had you gone to trial?

25 A No, she didn't tell that. But I could have beat that.

CROSS EXAMINATION BY MS. WILLIAMS - ERIC BROWN

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1 I could have went to trial. I could have won trial. I
2 could have won trial.

3 MR. BUDMAN: All right. That's all the questions that
4 I have of Mr. Brown, Your Honor.

5 THE COURT: Okay. Cross-examination.

6 CROSS EXAMINATION BY MS. WILLIAMS:

7 Q Mr. Brown, at the time of this accident, you weren't
8 supposed to have a gun at your house at all, were you?

9 A No, ma'am. I don't think I was.

10 Q Because you were doing a firearms charge, you were on
11 parole for that; is that correct?

12 A No. I was on a firearms charge for simple possession
13 of a firearm under age of 21.

14 Q Okay. And where did you get this gun that was used in
15 this -- that was -- that killed Ms. Fogle?

16 A Actually, me and her brother -- my birthday was on
17 November 5th. Actually, we went and got it from a store
18 that I asked Ms. Hardy to investigate, Sweatman, like two
19 days -- two/three days before this happened.

20 Q Did you buy it painted or did you paint it?

21 A No. I painted it.

22 Q Okay. Now, you -- you got the transcript there with
23 you; is that correct?

24 A Yes, ma'am.

25 Q Did you tell Judge John that your attorney had

1 explained that this was a most serious offense and
2 understood that you could serve the whole 25, on page 18?

3 A Page 18. Could you repeat that, please?

4 Q Did you tell Judge John that your attorney had
5 explained that this was a violent sentence and most
6 serious, understood that you could have to serve the entire
7 sentence that he gave?

8 A I -- I don't understand your question, ma'am.

9 Q Okay. Let's read together on page 18 (as read):
10 "This particular offense, it being classified as a violent,
11 most serious offense, it's my understanding that you have
12 talked to your attorney ---"

13 THE COURT REPORTER: Ms. Williams, please slow down
14 when you read.

15 MS. WILLIAMS: I'm sorry. I'll start over.

16 Q (As read) " --- it being classified as a violent and
17 most serious offense, it's my understanding that you have
18 talked to your attorney, and that you understand that
19 whatever sentence the Court imposes, that you must serve at
20 least 80 percent of that amount; is that correct?

21 A No, that's not correct.

22 Q So, you lied to Judge John on that occasion?

23 A Yes, ma'am. Because she -- for the simple fact is now
24 they was talking about it was supposed to be 17 years, you
25 know. It was supposed to be 17 years.

1 Q But ---

2 A When I look at the plea papers -- if you look at -- if
3 you go back and look at the plea agreement paper, on the
4 top it says "30 years." I didn't see that.

5 Q Did you hear Judge John tell you that this charge
6 carried 30 years?

7 A Yeah. I think he told me it carried a little more
8 than that, if I -- if I -- if I'm not mistaken.

9 Q Okay. But you're saying that you -- your attorney did
10 not tell you that you must serve at least 85 percent of the
11 sentence.

12 A No. She didn't tell me no 85 percent. I just left a
13 "Y" ---

14 Q So ---

15 A --- I just left YOA. I didn't know nothing about no
16 85 percent.

17 Q So, when you replied to Judge John (as read): "Yes,
18 sir," on page 18, you lied to Judge John; is that correct?

19 A Yeah. If he was talking about the 85 percent she
20 explained to me, yeah, I lied to him, because I didn't know
21 it was -- 85 percent wasn't never explained to me. That's
22 what she told me to say.

23 Q She told you to say that.

24 A She told me to answer the questions -- just "yes" to

1 all the questions. And that she -- that -- don't make the
2 judge angry. Don't make the judge mad. She didn't say
3 "angry." She said don't make the judge mad or she -- he
4 wouldn't take the plea.

5 Q All right. Let's go to page 10, at line 22.

6 A (Complies.)

7 Q Judge John asked (as read): "Have all your answers
8 been the truth?" To which you replied, "Yes, sir."

9 He then asks (as read): "Has anybody told -- tell --
10 anybody tell you how to answer my questions?" Your
11 response is, "No, sir."

12 A Yeah.

13 Q Is that correct?

14 A Yeah, that's correct.

15 Q Is that the truth?

16 A No, that's not the truth. Because I just told you
17 before that, that she told me not to answer the questions.

18 Q Did she tell you to say "yes" to every question?

19 A She didn't say -- directly say "yes." But she say
20 don't make the judge angry. She said just answer the
21 questions like they supposed to be answered. I got enough
22 common sense to know I supposed to say "yeah" instead "no."

23 Q So, you know that lying under oath is perjury; is that
24 correct?

25 A Yes, ma'am. I understand that.

CROSS EXAMINATION BY MS. WILLIAMS - ERIC BROWN

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1 Q Why would a judge be mad at you for telling the truth?

2 A Because she told me if he was -- give me a minute.

3 Let me see how she put this. She said that he would not
4 take the plea and he would go to trial.

5 Q You wanted to go to trial, right?

6 A Yeah. If I -- I wanted to go -- I wanted to go to
7 trial, if she -- but she didn't already threaten me and
8 told me I was going to lose already.

9 Q You just told us you could win.

10 A Yeah. I could have win. That's my first time ever in
11 prison. My first -- that's my second time ever being
12 locked up. I didn't know nothing about the law. Only
13 thing I know what this lady told me, that's it.

14 Q And during this plea, you said that you were pleading
15 because you were guilty of this offense; is that correct?

16 A Yes, ma'am.

17 Q And did you ask her to interview Mr. Raspberry?

18 A Yes.

19 Q But you don't think she did?

20 A No, she didn't. She didn't -- didn't get him. No.

21 Q Okay. Why did you say that she had done everything
22 you expected her to do?

23 A That's ---

24 Q Page 7.

25 A That's what she told me to say.

1 Q So, she -- she told you to say that as well?

2 A She told me to answer all these questions like this.

3 Ma'am ---

4 Q So, she went over every single question before your
5 plea, and told you what to say in response to it.

6 A Excuse me. With all due respect, ma'am, you trying
7 mix me up. I don't understand your questions. You using
8 the same questions. You mixing me up. I can't -- I don't
9 understand your question. You're making me nervous.

10 Q How did Ms. Thomas tell you -- let me start over. You
11 just stated that Ms. Thomas told you how to answer these
12 questions.

13 A Yes, ma'am.

14 Q How did she tell you that? When did she tell you the
15 answers to these questions?

16 A She didn't say word-for-word. She was standing right
17 beside me. I -- I got enough common sense to know that
18 "yes" is good, "no" is bad. I got enough common sense to
19 say that.

20 Q So, you were able to say both "yes" and "no" in this
21 transcript, right?

22 A Yes, ma'am.

23 Q And you would have said anything to take this plea; is
24 that correct?

25 A Yeah. 17 years.

CROSS EXAMINATION BY MS. WILLIAMS - ERIC BROWN

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1 Q You thought you were getting 17 years?

2 A I thought I was getting 17 years.

3 Q Why did you think that?

4 A Because that's what she said.

5 Q So, the piece of paper said -- said 30, the -- the
6 judge told you 30, but you thought 17.

7 A No. Look at the paper.

8 Q Uh-huh.

9 A If you look at -- if you look at the plea agreement,
10 it says -- it got a lot of marks and -- and "Xs" on it.

11 Q Uh-huh.

12 A That wasn't on the paper at first.

13 Q Okay.

14 A That wasn't on the paper.

15 Q Where does that ---

16 A That was on the copy that I got months later.

17 Q Where does that paper say 17?

18 A It don't say 17 nowhere. This would have been an open
19 plea.

20 Q You also told Judge John that the facts that fortified
21 the solicitor in the indictment were true and correct. Do
22 you recall that?

23 A Yes, ma'am.

24 Q Okay. Now, you said you didn't want to put the
25 victim's family through a trial in your PCR application; is

1 that correct?

2 A Repeat -- could you repeat that?

3 Q In your PCR application, did you say you did not want
4 to put the victim's family through a trial?

5 A No. I don't think that's in my PCR.

6 Q Okay. I'll leave that a moment.

7 You -- you -- I want to clarify that. Ms. Marva
8 Hardy-Thomas did show you your discovery material; is that
9 correct?

10 A Yeah. Yeah..

11 Q Did that include statements?

12 A Yeah.

13 Q Did that include statements from witnesses at the
14 scene that the police had taken?

15 A Yes, ma'am.

16 Q Okay. And you also told me that she had showed you a
17 witness list; is that correct?

18 A There was a witness list on the table. Yeah. Yes,
19 she showed me a witness list.

20 Q And on this witness list, did the names "Roosevelt
21 Rasberry," and "Kleiman Rasberry" appear on the list?

22 A I ---

23 Q I can show it to you. I'm sorry.

24 A Yeah.

25 Q Okay. Did you ever meet with Oliver Douglas?

CROSS EXAMINATION BY MS. WILLIAMS - ERIC BROWN

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1 A Who's that? I know -- not that I -- I don't know his
2 name. I don't know his name.

3 Q Okay. Did you ask why the man was measuring your
4 arms?

5 A No. I thought it was somebody to help me. I don't
6 know. I ain't thought I had to ask. I don't know. I
7 don't remember.

8 Q In one of your statements to the police, do you say
9 that you were arguing with Ms. Fogle?

10 A Yeah. I said that in a couple of them. That's --
11 that's why I asked for her son, Shaquan Fogle, to -- to
12 come to court. Because he was in the house. He could have
13 verified that if it was an argument, he'd have woke up.
14 That's why I asked for him to be subpoenaed.

15 Q So, you don't recall a statement being taken by police
16 from one of the children saying that they did hear you
17 argue?

18 A No. It's no statement. I got -- it's no -- it's no
19 statement in that says -- that says that. I know that for
20 a fact. I read that hundreds of times. I know that for a
21 fact there's no statement that say that.

22 Q Okay. And she did send you the paperwork from Kelly
23 Fite?

24 A Yes, ma'am.

25 MS. WILLIAMS: And excuse me. Beg the Court's

1 indulgence for a minute.

2 I think that's all the questions.

3 THE COURT: All right. Yes, sir, Mr. Budman. Re-
4 direct?

5 MR. BUDMAN: Re-direct, Your Honor.

6 Just hold onto that, Eric.

7 THE COURT: That's fine.

8 MS. WILLIAMS: Oh, I'm sorry.

9 THE COURT: That's fine. She'll -- she'll get it in a
10 minute.

11 Listen to Mr. Budman. He's got some questions for
12 you.

13 RE-DIRECT EXAMINATION BY MR. BUDMAN:

14 Q Mr. Brown --

15 A Yes, sir.

16 Q You say you purchased the firearm, the weapon that the
17 gunshot came from, several days before this incident?

18 A It was a birthday gift. Matter of fact, her brother,
19 Thomas Murray -- she gave me the money ---

20 Q Okay. Well, answer my question: Where did you get
21 the money to buy the gun?

22 A From her.

23 Q From who?

24 A From Stacy.

25 Q Did she know what you were going to do with the money?

DIRECT EXAMINATION BY THE COURT - ERIC BROWN

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1 A Yeah. Because her -- her brother just had bought a
2 .410. You can ask him. Her brother just bought a .410
3 from K-Mart like a week earlier.

4 Q Okay. And so, the question is: Who gave you the
5 money for the gun? Who gave you the money for the gun?

6 A Ms. -- Stacy.

7 Q Right. Did she know what the money was for?

8 A Yeah.

9 Q Thank you.

10 MR. BUDMAN: That's all the questions I have, Your
11 Honor.

12 THE COURT: Do you have any re-cross?

13 MS. WILLIAMS: No, ma'am.

14 DIRECT EXAMINATION BY THE COURT:

15 Q I have a question. On your transcript, on page 17,
16 Judge John asks you -- or -- or in speaking rather -- in
17 speaking with the solicitor, this -- this interchange
18 occurs: Judge John says (as read): "Thank you, ma'am.
19 Madam Solicitor, so that the Court has a full understanding
20 of this situation, is it correct that the Solicitor's
21 Office in the past had made an offer to the defendant
22 regarding a guilty plea, regarding a sentence of 25 years?"
23 Is that correct?

24 A Yes, ma'am. It was two.

25 Q Did he say that?

1 A Yes, ma'am.

2 Q All right. There's -- and then Ms. Porter says a
3 little more to it. And then it -- Ms. Porter says (as
4 read): "There was a lot more negotiations. I believe that
5 it was 25, consecutive to his YOA." Right?

6 A (No audible response.)

7 Q Isn't that what it says?

8 A Yes, ma'am.

9 Q Okay. All right.

10 THE COURT: Does that prompt questions from either of
11 you?

12 MS. WILLIAMS: Nothing from the State.

13 THE COURT: Okay.

14 MR. BUDMAN: I -- I have a question.

15 THE COURT: Okay.

16 RE-DIRECT EXAMINATION BY MR. BUDMAN:

17 Q Mr. Brown, now that you see that dialogue pointed out
18 to you by Judge Goodstein, did you hear the Court exchange
19 those words with the solicitor?

20 A Yeah. Because like I told you ---

21 Q Answer my question, now. Did you hear the Court have
22 that exchange with the solicitor that you just read to
23 Judge Goodstein? Did you hear the solicitor say those
24 words (as read): "There was a lot more negotiations. I
25 believe that it was 25, consecutive to his YOA."

RE-DIRECT EXAMINATION BY MR. BUDMAN - ERIC BROWN

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1 A Yeah, I remember that. I remember that, not -- not
2 word-for-word. I'd be lying if I say I remember
3 word-for-word.

4 Q Did anybody look to you to speak at that point?

5 A No, not that I remember.

6 Q Had they, in fact, had negotiations with you about 25?

7 A Yeah. They came 30, then they came 25. Remember I
8 told you that a couple of minutes ago. I said they came
9 with 30, then they came with the 20 -- 25 year plea.

10 Q And at what point did you believe it went down to 17?

11 A When they say if I plea -- an open plea -- go in there
12 with 25, they give me 17. That's why she told me don't say
13 nothing.

14 Q Okay.

15 MR. BUDMAN: Thank you. That's all the questions.

16 RE-DIRECT EXAMINATION BY THE COURT:

17 Q What do you mean when you say "open plea"? What does
18 that mean?

19 A 25 with a cap. I wouldn't get no more than 25.

20 Q Okay.

21 THE COURT: Does that prompt any questions from either
22 of you?

23 (No audible response.)

24 THE COURT: Very well. Thank you so much. Come on
25 back, Mr. Budman, back to your table. And call your next

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 52

1 witness.

2 MR. BUDMAN: Thank you. I'd call Marva Hardy-Thomas.

3 MARVA HARDY-THOMAS, having been
4 first duly sworn, testifies as follows:

5 THE COURT: And when you are seated, if you would
6 state your full name for the record.

7 THE WITNESS: Marva Ann Hardy-Thomas.

8 THE COURT: All right. Your witness, Mr. Budman.

9 MR. BUDMAN: Thank you.

10 DIRECT EXAMINATION BY MR. BUDMAN:

11 Q Good afternoon, Ms. Hardy-Thomas.

12 A Good afternoon, sir.

13 Q Ms. Hardy-Thomas, I show you what has been marked by
14 the Court as the Applicant's Exhibit No. 1.

15 Which I think Your Honor might have?

16 THE COURT: I do have it. Yeah. There it is.

17 MR. BUDMAN: Thank you.

18 Q Do you recognize that document, ma'am?

19 A Yes.

20 Q Did you provide Eric Brown a copy of that document?

21 A Absolutely.

22 Q Subsequent to providing Mr. Brown a copy of that
23 document, did you follow up with Kelly Fite at all?

24 A When you say "follow up" --

25 Q Yes, ma'am.

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 53

1 A -- you mean talk to him?

2 Q Yes, ma'am. Kelly Fite is a "he."

3 A Yes.

4 Q Okay.

5 A When you say "follow up," you mean talk to him.

6 Q Yes, ma'am.

7 A I'm sure I did, sir.

8 Q All right. Would those conversations have been over
9 the telephone?

10 A Yes.

11 Q Did you have conversations with Kelly Fite regarding
12 the last paragraph of his letter which says that he could
13 not exclude an -- he doesn't say it in those words, but he
14 says words to the effect that he could not exclude an
15 unintentional discharge of the firearm?

16 A (As read) "South Carolina Law Enforcement report a
17 gunshot residue..." -- oh. Comparison? I -- I believe
18 you're looking at the last sentences on the -- this sheet.

19 Q Yes, ma'am. Let me ask you a different way. I -- I -
20 - I withdraw that question, and I'll ask you this, Ms:

21 Hardy-Thomas: Did the words in Mr. Fite's report of an
22 unintentional discharge have any meaning to you, perhaps of
23 the defense of accident?

24 A It could have.

25 Q And did you discuss the defense of accident with Eric

1 Brown?

2 A Yes, I did.

3 Q At any time did Eric Brown ever tell you that he
4 intended to shoot Stacy Fogle?

5 A That he intended?

6 Q Yes, ma'am.

7 A He indicated that it was an accident, but he said
8 several things.

9 Q Okay. And so, in following up on that line then, the
10 letter talks about an unintentional discharge. Did you
11 have further discussions with Kelly Fite about the
12 unintentional discharge?

13 A We talked about both scenarios. You -- you're --
14 you're zoning in on one aspect. But the aspect that I was
15 -- I had him hired for is to basically tell me what could
16 have possibly happened in this scenario.

17 And the one that you're not mentioning, with the fact
18 that the -- the last of the -- the second to the last
19 paragraph, with regards to where the gun could have been
20 with regards to being fired, and of course, what you're --
21 you're trying to point towards.

22 Getting both these scenarios to my client, I still
23 have to get an answer from him in regards to what he wants
24 to do based on the information that we have.

25 Q Okay. And did you attempt to do that?

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 55

1 A You said did I "attempt"?

2 Q Did you attempt to do that?

3 A I spoke -- I spoke to Mr. Eric Brown --

4 Q Right.

5 A -- about murder -- voluntary, involuntary -- and he
6 indicated that I sent that to him also.

7 Q You -- you heard Mr. Rasberry -- the two Mr. Rasberrys
8 testify. Did you or anyone on your behalf ever talk to
9 them about the circumstances that they discussed in court
10 today?

11 A No. I didn't personally, but we had a -- an
12 investigator by the name of Oscar Douglas that was hired on
13 -- specifically on this case.

14 Q That's right.

15 A And he basically spoke to witnesses.

16 Q Do you know for a fact that he spoke to Mr. Kleimans
17 Rasberry or Mr. Roosevelt Rasberry?

18 A Directly?

19 Q Yes, ma'am.

20 A I had their names on the list.

21 Q Right.

22 A And I had to have gotten it from someone. I'm not
23 saying that I got it from Mr. Eric Brown, but I had to have
24 gotten it from someone.

25 Q You could have gotten them from Eric?

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 56

1 A I could have, but more than likely, I would have
2 gotten something ---

3 Q Okay.

4 A --- from my investigator.

5 Q All right. Well, let's -- let's just be clear about
6 it. The -- the question is: Do you specifically remember
7 whether your investigator spoke to Kleimans Raspberry or
8 Roosevelt Raspberry?

9 A Specifically, I have nothing paperwork-wise to show
10 the -- the information that he provided to me.

11 Q Right.

12 A But in speaking with him with regards to
13 investigating, he spoke to most of the people that were in
14 the area.

15 Q I understand.

16 A And it -- and it was family members.

17 Q I need to know whether or not you have a specific
18 recollection of whether he spoke to those gentlemen?

19 A I don't have anything in writing.

20 Q Okay. And in fact, we -- we don't have your file, do
21 we?

22 A No. I don't have my file; I have a shell.

23 Q Right. And so, there's really nothing that you can go
24 to, to refresh your recollection exactly what happened.

25 A Based on what I have in my shell.

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 57

1 Q Right. Did you review the indictment for murder?

2 A Yes.

3 Q And did you notice that the words "feloniously" and
4 "willfully" did not appear in the indictment for murder?

5 A Right. I was looking at the warrant, and I -- I saw
6 that it was in there. And I didn't -- I didn't have a
7 problem during that time that it was not specifically in
8 the -- the murder charge based on the case.

9 Q Okay. Did you at any time make a motion to quash the
10 indictment?

11 A No, I didn't. And my question to you -- based on the
12 case during that time, I knew they could re-file and come
13 back. That wasn't the major issue. The major issue was
14 the murder charge.

15 Q To your knowledge, did your investigator investigate
16 the scene where Stacy Fogle lost her life?

17 A It's my understanding that he went to the area.

18 Q How do you know that?

19 A Based on the fact of what he was hired for.

20 Q Do you have any recollection of his report?

21 A No. Just only what he indicated -- he told me ---

22 Q All right. Let's ---

23 A --- in speaking to family members in that area.

24 Q Did he issue a written report?

25 A I don't have it in front of me, so I -- I could not

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 58

1 report to you. I just know that I -- I -- I remember
2 talking to him about things that he did when -- with him
3 with regards to seeing our client. And having him measure
4 Mr. Brown in regards to the gun.

5 Q So, that's who measured Mr. Brown, was Oscar Johnson.

6 A Douglas.

7 Q Oscar Douglas was his name?

8 A Yes.

9 Q Do you know whether Oscar Douglas ever spoke to Stacy
10 Fogle's son Shaquan?

11 A. I don't have it specifically in front of me. It's my
12 understanding he -- he spoke to the family members of the
13 deceased.

14 Q Okay. That's what he told you.

15 A Yes.

16 Q Right.

17 A That's what we discussed.

18 Q Sure.

19 A I got a list in front of me. That's all I have.

20 Q Well, you heard Mr. Rasberry say today that -- that
21 they never discussed anything with anyone on behalf of Eric
22 Brown.

23 A See, this is -- I understand what they are indicating.
24 Mr. Oscar Douglas was a police officer with Charleston
25 County. If they would have gotten it confused -- he -- he

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 59

1 was an investigator, but he's also known as a police
2 officer. So, I don't know if they -- that they knew the
3 difference.

4 Q Right. Okay. I understand. You weren't -- you
5 weren't there --

6 A Right.

7 Q -- so you don't know what Oscar Johnson may have
8 represented to them or not. But certainly it would have
9 been improper for Oscar Johnson to represent himself as a
10 police officer when he, in fact, was working as an
11 investigator for you.

12 A Oscar Douglas.

13 Q Oscar Douglas.

14 A (No audible response.)

15 Q So, we'll assume that Oscar Douglas did things
16 appropriately.

17 A I'm not saying that he did not. I just know that
18 people know of him as a police officer, even though he's an
19 investigator.

20 Q Did you have any witnesses that were prepared to
21 discuss Eric Brown's character and tendencies, or lack
22 thereof, to violence?

23 A Why would I put Mr. Brown's character on issue?

24 Q I'm just asking.

25 A I -- I wouldn't do that, sir, as a defense.

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 60

1 Q Because of his -- because of his parole violation?

2 A Because he had prior --

3 Q Right. And he was on trial for murder, because ---

4 A I understand that, but I ---

5 Q --- I mean to a life sentence.

6 A I wouldn't do that on his behalf, because you're just
7 setting your client up for a big fall. It doesn't ---

8 Q That's a judgement call that you made.

9 A Well, that was my judgement call.

10 Q I understand.

11 A I wouldn't do that.

12 Q All right. But for the purposes of your investigation
13 to try to get to the -- to the truth of what happened, did
14 you talk to anyone about Eric Brown's propensity for
15 violence or lack thereof? Did you talk to his family
16 members? Did you talk to the witnesses that may have been
17 on the property where he and Stacy Fogle were living?

18 A I left that information up to the investigator.

19 Q And you don't recall whether there was a written
20 investigative report.

21 A I -- I do not.

22 Q And so, if that's the case, then do you recall what
23 witnesses the investigator interviewed?

24 A I -- I couldn't tell you that, because I don't have
25 anything in writing.

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 61

1 Q Now, with regard to an expert witness, you consulted
2 with Kelly Fite, a firearms expert; is that correct?

3 A That's correct.

4 Q All right. Did you at any time attempt to consult
5 with a forensic pathologist?

6 A No, I did not.

7 Q All right. And wouldn't you agree with me that a
8 forensic pathologist may have been able to give an opinion
9 regarding whether or not this was an intentional or an
10 unintentional shooting, based on the evidence that was
11 turned up by Mr. Fite and the evidence from the autopsy?

12 A It could, but I don't -- I don't know.

13 Q But the bottom line is that there was no forensic
14 pathologist that was engaged.

15 A I -- I did not get one.

16 Q And I believe that Dr. Yaku, who prepared the autopsy,
17 was a forensic pathologist; is that correct?

18 A (No audible response.)

19 Q Do you know?

20 A You would have to give me the paperwork for me to
21 certify that.

22 Q All right.

23 A And that -- it would speak for itself.

24 Q Sure.

25 A I -- I don't have that knowledge --

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 62

1 Q Right.

2 A -- to say that.

3 Q So then, we can state on the record that at no time
4 did you consult with anyone for the purpose of making an
5 independent forensic investigation into what happened
6 leading up to the death of Stacy Fogle.

7 A I did not consult with a forensic pathologist.

8 Q Did you review the autopsy of Dr. Yaku?

9 A What was provided, I did.

10 Q Do you recall Dr. Yaku's autopsy report stating that
11 the shot was "upward, backward, and to the right" of Stacy
12 Fogle?

13 A I remember reading that, and it was stated in, I
14 believe, the report that we had a copy of.

15 (Counsel confers briefly with each other.)

16 Q You remember seeing the reference to the "upward,
17 backward, and to the right"?

18 A I -- I remember reading that in your -- reminder in --
19 in -- in your ---

20 Q Did that ---

21 A --- this morning.

22 Q --- remind you that you had seen that before?

23 A No. I just remember -- I remember seeing it in your
24 brief.

25 Q Okay. Well, the next question would be ---

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 63

1 MS. WILLIAMS: Your Honor, I would move to strike
2 anything regarding a report, because the report is not
3 here. And a report would need to be introduced in it's
4 completed version in order to discuss, and it's potential
5 value or lack thereof.

6 THE COURT: In other words, you're asking that the
7 witness be shown the report in order to testify from it or
8 regarding it?

9 MS. WILLIAMS: Well ---

10 THE COURT: That it's not in evidence ---

11 MS. WILLIAMS: --- I --- I think ---

12 THE COURT: --- and further, it's not in evidence?

13 MS. WILLIAMS: It's not in evidence. I think also to
14 take ---

15 THE COURT: Okay.

16 MS. WILLIAMS: --- also to take isolated things out of
17 it when it's not here ---

18 THE COURT: I got you. What about that?

19 MR. BUDMAN: I understand. Well --

20 THE COURT: Very well.

21 MR. BUDMAN: -- the -- the point of that is, Your
22 Honor, that -- that the autopsy was evidence of the State,
23 that was -- as I understand it -- provided to defense
24 counsel in the Rule 5 submissions. But Ms. Hardy-Thomas
25 has no file.

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 64

1 I understand from the -- from Ms. Williams that the
2 State's file is not available. And so, I have no way -- no
3 way to get it.

4 MS. WILLIAMS: I can clarify for you.

5 MR. BUDMAN: Okay.

6 MS. WILLIAMS: The solicitor's file -- when I -- I
7 requested that file last week -- I was going to pick it up
8 yesterday -- had been informed that anything prior to
9 Solicitor Pasco, which I believe would be prior to 2005 or
10 4, I'm not sure of the exact date -- it was when this case
11 was there -- would have been destroyed.

12 I did contact Detective Marshall of the -- of the
13 Dorchester County Sheriff's Office. He feels that he would
14 have his file, which would be the original solicitor's file
15 for the most part. He was not able to get that to me by
16 today, but could make it available if we need to get it.

17 It's my understanding that there are documents in the
18 old courthouse that are under -- locked up. So, I would --
19 if it was needed, we could try to find it.

20 THE COURT: Okay.

21 MR. BUDMAN: I -- thank you, Your Honor.

22 DIRECT EXAMINATION BY MR. BUDMAN:

23 Q Well, let me ask you this, Ms. Hardy-Thomas: If --
24 was there anything that you recall in the autopsy report
25 that led you to further -- to -- to want to further examine

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 65

1 the issue of an unintentional shooting?

2 A No. I would have to review that report.

3 Q You don't recall.

4 A No, I do not.

5 Q You recall whether you provided the autopsy report to
6 Kelly Fite?

7 A I provided documents he asked for.

8 MR. BUDMAN: Your Honor, let the record reflect that
9 the Plaintiff's [sic] Exhibit No. 1 says that he referred
10 to the autopsy photographs in making his report.

11 THE COURT: Okay.

12 Q Did you ever interview Dr. Yaku who prepared the
13 autopsy?

14 A I can not remember if I did that or not. I would need
15 my notes.

16 Q Would you have sent your investigator to do that, or
17 is that something that you would have done yourself?

18 A I probably would have called and talked to the person
19 myself with regards to issues of that nature.

20 Q But you don't recall doing that.

21 A No. I can't answer that at this point in time.

22 Q To your knowledge, did the State name any expert other
23 than Dr. Yaku?

24 A I wrote here -- I -- I believe I would have put some
25 of their witnesses. Let me just check one second.

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 66

1 (Brief pause.)

2 A Now, state that question again. If the -- can you
3 please state that again.

4 Q I was planning on my next question, and so I -- I'm
5 not sure that I can.

6 A If the State provided --

7 Q Did the State list -- did the State name any other
8 experts?

9 A I see a Calisha Knutsen.

10 THE COURT REPORTER: I'm sorry. Last name?

11 A K-n-u-t-s-e-n. Charleston Police Department Criminal
12 Investigation Section.

13 Q That would be letter "m"?

14 A Yes.

15 Q Do you know who that is?

16 A Not -- not personally, no.

17 Q This is your voir dire.

18 A Yes, it is. But I -- I would not know who that person
19 was.

20 Q And so, it's your testimony that there's a witness on
21 your witness list that you don't know who it is.

22 A No. I do not -- I couldn't tell you who that person
23 is. But the question that was asked, I don't know who that
24 person would be. But if they were named, there had to be a
25 reason for me to put them -- the name on there.

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 67

1 Q Okay. Of your own independent recollection -- I
2 realize it's been a number of years -- do you recall the
3 State telling you of any other experts?

4 A Not to my knowledge. I can't remember if they did or
5 not.

6 Q Do you recall whether or not in the autopsy report, if
7 there was any evidence -- besides the blast of the gun, was
8 there any other evidence of a struggle?

9 A I would have to see the autopsy ---

10 Q You don't recall?

11 A --- to make a -- a recollection of -- of anything of
12 that nature.

13 Q Okay. So, the question was: Do you recall?

14 A Not without the autopsy.

15 Q Right. Do you recall anything about the autopsy
16 referring or not referring to abrasions on Stacy Fogle?

17 A To this point, no, sir. I would need the report.

18 Q Okay. Do you recall whether the autopsy report said
19 or didn't say anything about defensive wounds?

20 A I would need the report.

21 Q Now, when you were having settlement negotiations with
22 the State before picking jury -- jury No. 3 for Mr. Brown
23 the day of his trial, you heard Mr. Brown testify that you
24 had made some calculations, and had told him that if he --
25 I'm paraphrasing -- that -- that there was -- that he would

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 68

1 get 17 years? Was that true?

2 A I don't remember any of that, sir. I knew that I was
3 getting ready for trial. I don't know where the 17 came
4 from. I just know that we got prepared for trial, we
5 pulled -- I thought it was three juries, because at that
6 point, he pled.

7 Q Was Kelly Fite there?

8 A No. He wouldn't have been. We had two days before,
9 you know, he would have had to have been there if that was
10 the case. But he didn't have to be there at the beginning.

11 Q Okay. Did you have any witnesses there?

12 A At the start?

13 Q Yes.

14 A I don't believe I did.

15 Q Okay.

16 A I think it was -- be the State who would start off
17 first --

18 Q Right.

19 A -- and then the defense comes after that.

20 Q So, were there any discussions about a plea to
21 voluntary manslaughter?

22 A Any discussion for a plea to voluntary?

23 Q Yes.

24 A It's my understanding that there was an offer made,
25 but Mr. Brown wasn't interested in taking the offer.

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 69

1 That's why we got prepared for trial.

2 Q Okay. And so, were there plea negotiations on the
3 date of trial?

4 A If he wanted to go to trial and we started the trial,
5 then he wanted to go forward with the trial.

6 It's my understanding that we got ready for trial and
7 we were trying the matter. It wasn't until the third
8 Batson that Mr. Brown decided that he was going to take the
9 plea.

10 Q Did you have any discussions with him about the plea,
11 About what the plea would mean?

12 A No. I believe he stopped and indicated that he was
13 wanting to take a plea.

14 Q Did you have any discussions with him about the amount
15 of time he was likely to get from Judge John?

16 A No. That's why I didn't understand where the 17 came
17 from.

18 Q Did you have any discussions with him about the
19 possibility that he would receive 25 years?

20 A I remember asking the Court for leniency. If -- if we
21 had a specific amount, then why would I ask for leniency?
22 That's why I didn't understand.

23 Q Well, you heard Mr. Brown testify that you and he had
24 talked about 17 years.

25 A Yeah. I -- I don't remember having any discussion

DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 70

1 with -- with that. From remembering from the transcript, I
2 asked the Court for leniency. If -- if we had a specific
3 amount, like 17, 25, why would I ask for leniency? That's
4 what I'm trying to say.

5 I -- I don't have any -- I don't remember having any
6 discussion of that nature. Why would I ask the judge for
7 leniency?

8 Q So, I -- I just -- I'm sorry. I don't mean to be
9 beating a dead horse or anything. I just need to be clear
10 on what it is that you're telling me.

11 The question was: Do you recall talking about 17
12 years to Eric Brown? And I think your answer was you don't
13 recall.

14 A I'm telling you I don't remember talking to him about
15 17 years, because I would not have asked the judge for
16 leniency if I was talking to him about a specific amount of
17 time.

18 Q Did you -- now, I understand that. Did you have any
19 discussions with him about any specific amount of time: 25
20 year? 30 years?

21 A Well, it's my understanding that if he -- if he wanted
22 to plea, he knew what he would be facing.

23 Q Did you have discussions with him about his -- about
24 what he would be facing?

25 A Before we started this. We -- we talked about murder;

CROSS-EXAMINATION BY MS. WILLIAMS - MARVA HARDY-THOMAS 71

1 we talked about voluntary and we talked about involuntary.

2 He wanted to get involuntary, but that wasn't offered.

3 Q Did you try to get involuntary?

4 A The solicitor wasn't even considering that. That
5 wasn't even a consideration. That's why he went to trial.

6 Q And isn't it true that the solicitor wouldn't consider
7 it because there was no evidence to offer him that this was
8 involuntary?

9 A They indicated to me that they were -- they -- they
10 didn't even -- they were not going to consider involuntary.
11 They didn't go into that why they didn't. They just said
12 that wasn't even a consideration.

13 Q Thank you.

14 MR. BUDMAN: That's all the questions I have, Judge.

15 THE COURT: All right. Cross-examination?

16 CROSS EXAMINATION BY MS. WILLIAMS:

17 Q Now, just to review, you said that you would have
18 explained his right to a jury trial; is that correct?

19 A Yes.

20 Q And you considered the defense of accident?

21 A We talked about it along with the murder, voluntary,
22 involuntary.

23 Q Okay. You had several statements from your client; is
24 that correct?

25 A That is correct. We talked about those also.

CROSS-EXAMINATION BY MS. WILLIAMS - MARVA HARDY-THOMAS 72

1 Q Okay. He had a statement about her committing
2 suicide.

3 A Correct.

4 Q He had a statement about her grabbing at the gun.

5 A Correct.

6 Q Okay. And he did have in one of his statements about
7 an argument; is that correct?

8 A That's correct.

9 Q So, at a trial, did you discuss that you would request
10 those lesser included offenses as a result of those?

11 A If he went to trial, it depends on what was said that
12 we would include -- have that included, or ask the Court to
13 have certain matters included.

14 Q All right. And the State had offered 25 years prior
15 to the trial?

16 A Prior.

17 Q Prior to trial.

18 A Okay.

19 Q So, you had talked about that prior to trial?

20 A Correct.

21 Q Okay. And did you ever tell Mr. Brown how to answer
22 the judge's questions?

23 A Never. No one can tell Mr. Brown how to answer
24 questions.

25 Q And if you had proceeded to trial, would accident have

1 been part of the defense strategy?

2 A Depending on what was said in court to consider that
3 being allowed.

4 Q Thank you.

5 MS. WILLIAMS: I think I -- beg the Court's
6 indulgence.

7 THE COURT: Okay.

8 MS. WILLIAMS: There was a defense voir dire that was
9 handed up earlier. And I wanted to ask Ms. Thomas to
10 identify this document as her voir dire or acknowledge.
11 And I believe that she has a copy of that.

12 A What was the question?

13 Q Was -- was it -- was that the voir dire that you had
14 filed in this case?

15 A Right.

16 MS. WILLIAMS: And I would move that into evidence as
17 State's evidence.

18 MR. BUDMAN: Without objection.

19 THE COURT: Very well.

20 (State's Exhibit No. 1, voir dire document,
21 in evidence without objection.)

22 THE COURT: Any re-direct?

23 MR. BUDMAN: No, Your Honor. Thank you.

24 THE COURT: All right.

25 DIRECT EXAMINATION BY THE COURT:

1 Q Just -- just really two things that -- that I would
2 ask. And please, Counsel, know that if this prompts any
3 questions from you, I certainly want you to ask them.

4 But -- but first of all -- and you -- you're probably
5 not going to remember, but I'm going to ask: Was there --
6 was there gunshot residue test done on the hands of the
7 victim?

8 A I don't know. I remember -- I don't know.

9 Q I can understand why you wouldn't remember.

10 A But I remember something with regards to the -- the
11 gold paint. Because this case was known as the -- the gold
12 -- "golden gun case."

13 Q Uh-huh.

14 A Because I don't remember that. I -- I just don't
15 remember that. I mean, I just don't --

16 Q And obviously if there was ---

17 A Then I would ---

18 Q --- the position of gunshot residue has got a couple
19 of pretty dramatic possibilities; is that right?

20 A That's correct.

21 Q And there could be gunshot -- if there's gunshot
22 residue on the palms of the victim, what does that
23 typically mean?

24 A Defense.

25 Q Defensive, isn't it?

DIRECT EXAMINATION BY THE COURT - MARVA HARDY-THOMAS

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1 A Yes.

2 Q All right. And so -- and if -- if there's no gunshot
3 residue on her palm and it's on the back of the hand, that
4 could mean --

5 A The opposite.

6 Q Yeah. Right.

7 THE COURT REPORTER: I'm sorry?

8 A The opposite.

9 Q The opposite. So, do you have any memory -- so -- so,
10 just by virtue of the fact there's some mention of gunshot
11 residue without more, is very difficult to tell what that
12 means; is that right?

13 A That is correct.

14 Q Okay. And finally, the -- I -- I was just noticing
15 that the -- the affidavit in support of the indictment says
16 that Mr. Brown -- says (as read): "Gave a written
17 statement that details" -- details, it says "detail," --
18 "how the victim and defendant got into an argument
19 concerning hunting and the shotgun. The defendant pointed
20 the shotgun at the victim and said, 'How would you like it
21 if someone shot you?' The defendant admitted he pointed
22 the shotgun at the victim when it discharged, hitting her
23 on the face."

24 What is that? What -- as a defense lawyer, what are
25 you worried about with those kinds of -- that kind of

1 statement from your client? Is that involuntary
2 manslaughter?

3 A No.

4 Q Is that voluntary manslaughter or is that murder?

5 A That's murder.

6 Q Were you worried about a murder conviction?

7 A Correct.

8 Q Okay. The sentence of Judge John is a -- it is a 25-
9 year sentence, and it -- obviously, he's been give -- he's
10 been given credit for the time that he served. Let me look
11 at the transcript real quickly.

12 (Brief pause as the Court reviews document.)

13 Q There -- there -- there isn't any mention of whether
14 this sentence would run consecutive or concurrent with the
15 YOA. Had -- and I guess that would depend on whether the
16 YOA had been revoked at that time.

17 A Right. It's my understanding ---

18 Q No. Actually -- actually, I think Judge John says
19 that he's completed the "Y."

20 A Right.

21 Q Okay. Very well. So, it would not have -- this --
22 this sentence would not have run consecutive to the "Y."

23 A That's correct.

24 Q Okay.

25 THE COURT: Does that prompt questions from anyone?

RE-DIRECT EXAMINATION BY MR. BUDMAN - MARVA HARDY-THOMAS 77

1 MR. BUDMAN: Yes, Your Honor.

2 THE COURT: Okay.

3 MS. HARDY-THOMAS: Seventeen is where it says there
4 was a lot more negotiation if it was 25 consecutive to his
5 YOA.

6 THE COURT: Oh, you gotta slow down.

7 MS. HARDY-THOMAS: Page 17, line 15, Mrs. Porter (as
8 read): "There was a lot more negotiation believing that it
9 was 25 consecutive to his YOA."

10 MR. BUDMAN: With the Court's permission?

11 THE COURT: Sure. Of course.

12 RE-DIRECT EXAMINATION BY MR. BUDMAN:

13 Q Ms. Hardy-Thomas, in response to what the judge asked
14 you, isn't it true that you were worried about a conviction
15 of murder because there was no investigation into the
16 defense of accident by consulting with a forensic
17 pathologist, or interviewing all of the witnesses who were
18 at or near the scene of the shooting?

19 A No. I was concerned about his statements coming in,
20 in regards to the inconsistency in regards to what he
21 indicated happened, if no one else was, you know, possibly
22 there. That was I -- that is what I was concerned with.
23 And him testifying.

24 Q Right. But isn't it true that there was no
25 investigation into the witnesses who were at or near the

1 scene, or consultation with a forensic pathologist who
2 might have assisted you in creating -- or developing the
3 defense as requested by Mr. Brown, on the defense of an
4 unintentional shooting or accident?

5 A There's two questions that you're asking: Was there
6 any investigation with members at the scene. It's my
7 understanding that there was. That's how I got the names.

8 With regards to a pathologist, I did not get a
9 pathologist as I stated before.

10 Q Thank you.

11 THE COURT: Okay. Thank you. Call your next witness.

12 MR. BUDMAN: That's the applicant's case, Your Honor.

13 THE COURT: Thank you. All right. Anything on behalf
14 of the State?

15 MS. WILLIAMS: Nothing from the State, Your Honor.

16 THE COURT: Very well. All right. Anything further
17 in this regard by either side?

18 MS. WILLIAMS: Nothing from the State, Your Honor.

19 MR. BUDMAN: Your Honor, if you want us to pursue
20 trying to -- put our hands on the autopsy report, if you
21 think that ---

22 THE COURT: The autopsy report, let me just -- the
23 autopsy report -- and -- and if I may, you're talking about
24 the gunshot residue?

25 MR. BUDMAN: Yes, ma'am.

1 THE COURT: The way that that would have occurred is
2 that -- I don't -- the pathology report wouldn't have --
3 wouldn't be any more helpful for this reason: Because what
4 the pathologist would have done is swab -- bag and swab the
5 hand. Well, law enforcement would have bagged the hands,
6 the hands would have then been swabbed, and then the
7 results would have gone to SLED.

8 And that would -- those reports clearly would be in
9 the Solicitor's file, and apparently -- it would be in Tom
10 Marshall's file as well, because -- because Dorchester
11 County Sheriff's Department would have requested the SLED
12 report. It would have come back to -- to Tom Marshall.
13 And it clearly would have also gone, you know, to the --
14 Sheriff's Office would have given those reports also to the
15 -- to the Solicitor's Office. But -- but they would be in
16 Tom Marshall's file.

17 It -- it -- I am concerned about the fact that it --
18 the Attorney General asked him to bring that file, that
19 file isn't here. That's, if you will, an additional
20 matter. But if you want that, Mr. Budman, you gonna get
21 it.

22 MS. WILLIAMS: I'd just note, too, that the applicant
23 had put some detailed stuff about what's in that report.
24 And if his application is correct, then apparently he had a
25 -- at some point -- or you know, because he's -- on page

1 21, you can look at it. It's very detailed about what this
2 pathology report --

3 THE COURT: I -- I noticed that, too, Ms. Williams.
4 It looks like -- it looks like he was given copies of his
5 Rule 5, is what that -- all of that looks like, just given
6 the detail. And I notice that he's ---

7 MS. WILLIAMS: And I have no ---

8 THE COURT: --- nodding "yes," also.

9 MS. WILLIAMS: --- problem getting the file. I've
10 offered to do that, too.

11 THE COURT: But in any event --

12 MR. BUDMAN: Well --

13 THE COURT: -- that would -- well -- and the only --
14 and the path report would detail -- path report would
15 detail where the swabs were taken. But those swabs would
16 be placed in the -- you know, in the SLED packet that
17 they've got, those SLED packets. Talk about whether they
18 were palms or whether they were the -- they were the back
19 of the hand. And obviously, that gets to be real important.

20 So, again ---

21 MR. BUDMAN: Well, it would ---

22 THE COURT: --- I don't -- do not at all leaving this
23 record open, Mr. Budman, at all, as long as you need to
24 allow you to -- to get that. If we need to ---

25 MR. BUDMAN: I -- I -- I think that would ---

1 THE COURT: --- get back together, we will.

2 MR. BUDMAN: --- do need to get it, because ---

3 (Counsel talking over each other.)

4 MS. WILLIAMS: I can get it and I have no objection to
5 it. And I had proposed that ---

6 THE COURT: Sure.

7 MR. BUDMAN: Yeah.

8 MS. WILLIAMS: --- before the hearing.

9 THE COURT: And again ---

10 MR. BUDMAN: Yes. Sure.

11 THE COURT: --- I am concerned that the Attorney
12 General asked for it and it wasn't ---

13 MS. WILLIAMS: Let me ---

14 THE COURT: --- it wasn't here.

15 MS. WILLIAMS: --- let me clarify that -- that I had
16 requested the file from the Solicitor's Office late last
17 week, thought that they would have it when I got here.
18 Yesterday, with what was going on, I went to the
19 Solicitor's Office, and she informed me that that file,
20 because of the age, would actually have been destroyed.

21 Because I found that out yesterday, I contacted
22 Detective Marshall yesterday from my cell phone in court,
23 at which time he told me he'd be glad to procure that file.
24 However, he could not get to it by today.

25 And I told him that was absolutely fine, and I

1 understood. And I'll be glad to get it from him and I have
2 no problem doing that, and actually offered to do that
3 prior to the hearing. And I don't have any problem doing
4 it now.

5 MR. BUDMAN: And -- and I ---

6 MS. WILLIAMS: And I have his cell phone number where
7 I can call him.

8 MR. BUDMAN: That's -- that's fine.

9 And so, Your Honor, I would ask you to leave the
10 record open on behalf of the applicant for the purpose of
11 obtaining what Detective Marshall has in his file. And it
12 would be my hope that the Attorney General's Office and I
13 could agree on what further documents should be ---

14 THE COURT: Oh, you will.

15 MR. BUDMAN: --- submitted to ---

16 THE COURT: You will. She's --

17 MR. BUDMAN: --- to supplement the record.

18 THE COURT: She is -- she absolutely will do that.

19 MR. BUDMAN: I agree.

20 THE COURT: There's not a question in my mind. And if
21 we need to get back together, we'll do it in June. How
22 bout that?

23 MS. WILLIAMS: At this point though, the -- it's not a
24 re-trial of the case, but it's the relevancy to the Post
25 Conviction Relief claim, which is that these things have

1 already -- had been seen, had been discussed; that all the
2 defenses were discussed. And you know, I think that it's
3 not necessary to the decision in his claim which is: Did
4 he know what he was doing when he pled guilty?

5 And I'm glad to get the file and come back in June, if
6 that's what you want to do. I can tell by that look.

7 THE COURT: Absolutely.

8 MR. BUDMAN: Yeah.

9 THE COURT: It is a better course of action just given
10 -- given these issues, given the position of the applicant,
11 that distance, since it is available and we obtain it.

12 MR. BUDMAN: Thank you, Your Honor.

13 THE COURT: And then if it's needed, fine; if it's
14 not, fine.

15 MR. BUDMAN: Yeah. And we can let the Court know
16 whether additional argument ---

17 THE COURT: Sure.

18 MR. BUDMAN: --- needs to be had or not.

19 THE COURT: Absolutely.

20 MR. BUDMAN: Or whether the -- just simply provide you
21 with the documents and let you make a decision.

22 THE COURT: Absolutely.

23 MR. BUDMAN: Great.

24 THE COURT: And -- and you all -- I -- I'll be here
25 June the 7th, I hope.

1 MR. BUDMAN: Right.

2 THE COURT: God willing and the creek -- God willing
3 and the creek don't rise.

4 So, if -- if you all want me to do it on -- on just
5 the documents, you'll give those to me.

6 MR. BUDMAN: Right.

7 THE COURT: Otherwise, I'll see you in June.

8 MR. BUDMAN: Great.

9 THE COURT: Terrific.

10 MR. BUDMAN: Thank you, Your Honor.

11 THE COURT: Thank you. All right, Mr. Brown, you take
12 care of you now, all right?

13 MR. BROWN: Yes, ma'am.

14 THE COURT: Okay.

15 MR. BUDMAN: Your Honor, I have one more question.

16 THE COURT: Sure. Of course.

17 MR. BUDMAN: And maybe the -- can help me with this.

18 THE COURT: Yeah. Of course.

19 MR. BUDMAN: But, Mr. Brown didn't have any glasses.
20 And he was having a hard time reading the documents that we
21 were using to prepare for this hearing today.

22 And so, I was able to put my hands on some glasses
23 that are close to his prescription, but not perfect. But
24 close enough where he could finally see better.

25 But I understand that there might be some Department

1 of Corrections' regulations about him -- me giving him
2 something --

3 THE COURT: There is.

4 MR. BUDMAN: -- to go back to the jail.

5 THE COURT: There is.

6 MR. BUDMAN: And I don't know whether this is your
7 concern or not. If it's not --

8 THE COURT: I don't know.

9 MR. BUDMAN: -- I'll -- I'll certainly take it up with
10 them. But is there someone that I could talk to about the
11 fact that I have given Mr. Brown a pair of glasses to take
12 back to the jail?

13 MS. WILLIAMS: My understanding that has to be done
14 through the Department of Corrections internally.

15 MR. BUDMAN: Yeah.

16 MS. WILLIAMS: That there's grievances he can file
17 with regard to any medical issue that he would have; would
18 have to be filed internally.

19 THE COURT: I'll tell you what I'll do, if -- if -- if
20 those are the glasses that you provided to him --

21 MR. BUDMAN: Yes, ma'am.

22 THE COURT: -- if you will retrieve those, and then we
23 will deal with the issue.

24 MR. BUDMAN: Okay. Right.

25 THE COURT: How bout that? If he -- yeah. If you'd

1 be so kind as to just retrieve them. And then once he's --
2 then -- then we'll -- we'll ---

3 (Mr. Budman confers with Mr. Brown.)

4 THE COURT: --- address that with the --

5 MR. BUDMAN: Thank you, Your Honor.

6 THE COURT: Yes.

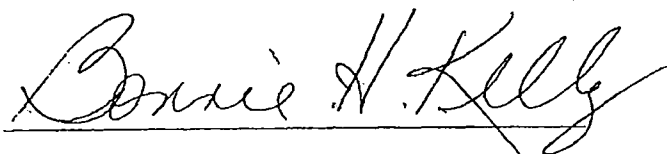
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-- END OF TRANSCRIPT RECORD --

CERTIFICATE

I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL COURT REPORTER FOR THE FIRST 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 DORCHESTER COUNTY, SOUTH CAROLINA, ON THE 3RD DAY OF MARCH, 2010.

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

A handwritten signature in cursive script, reading "Bonnie H. Kelly", written over a horizontal line.

BONNIE H. KELLY,
COURT REPORTER

COLUMBIA, SOUTH CAROLINA

MARCH 30, 2010

December 19, 2003

Ms. Marva A. Hardee-Thomas, Attorney
150 East Richardson Avenue
Summersville, SC 29483

Re: State vs. Eric Lester Brown

On December 18, 2003, I went to the Dorchester County, SC Sheriff's Office and examined the following evidence:

1. Ithaca 70 gauge shotgun, Serial #125158
2. Test shot patterns fired by the shotgun at distances of 2, 3, 4.5 and 6 feet
3. Autopsy photos of Stacey D. Pagle
4. Crime scene photographs

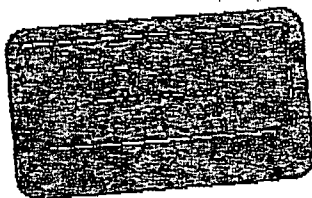
RESULTS:

Examination of the shotgun, Item 1, reveals it to be in good working order and to function as designed. It takes a force of approximately 4.25 pounds to pull the trigger single action.

The shotgun, Item 1, has been spray painted gold. The texture of the paint is rough and the acceptance of a useful latent fingerprint is diminished.

Comparison of the test patterns, Item 2, with the autopsy photographs indicates the muzzle to target distance was between 3 and 4.5 feet.

The SC Law Enforcement Division report of gunshot residue on Stacey D. Pagle's hands does not negate the possibility that there was a struggle over the weapon resulting in an unintentional discharge.

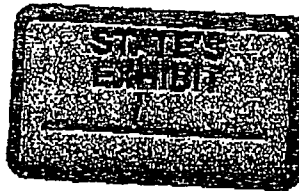


Kathy Fine
Kathy Fine
Firearm Examiner
318 Chambers Way
Lilburn, GA 30047

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
STATE OF SOUTH CAROLINA)
vs)
ERIC LESTER BROWN)
Defendant)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT

Indictment Nos.: 2003-GS-18-0013



DEFENDANT'S REQUESTED VOIR DIRE

Eric Lester Brown, by and through his undersigned attorney, Marva A. Hardee-Thomas, and respectfully moved the Court to propound the following questions to the jury venire:

Introduction - In this case, the State of South Carolina alleges that on or about November 9, 2002, Eric Lester Brown committed the offense: (1) Murder. The prosecution alleges that this offense occurred at Branchville, SC.

1. Have you or any member of your family worked in law enforcement? By law enforcement, I mean agencies such as the Dorchester County Sheriff's Department, Town of Summerville Police Department, the Highway Patrol, the Federal Bureau of Investigations (FBI), the Drug Enforcement Agency (DEA), the Secret Service, the Border Patrol, or any other law enforcement organization. If you have stated in the initial jury qualification that you or your spouse have worked in law enforcement, you do not need to respond again.
(A) If so, when and what area of law enforcement.
2. Do you or any member of your family know any member or any family member of any law enforcement organization, including but not limited to the Dorchester County

Sheriff Department?

- (A) If so, please stand.
3. Are you, any member of your family, or any close friends a member of any group which is affiliated with or supports law enforcement? Examples of such groups include, Mothers Against Drunk Driving (MADD), Students Against Drunk Driving (SADD), Citizens Against Violence (CAVE), People Against Rape (PAR), the Hundred Club.
4. Are you, any member of your family, or any close friends a member of the National Rifle Association?
5. Have you or your spouse ever been in the military?
- (A) If so, when and what branch?
- (B) What was your or your family member's rank at discharge?
6. Have you or any member of your family contributed to the campaign or been involved in the election campaigns of:
- (A) Walter Bailey, the former Solicitor for the First Judicial Circuit;
- (B) Robert D. Robbins, the acting Solicitor for the First Judicial Circuit, who is running for the position of the Solicitor for the First Judicial Circuit;
- (C) David Pascoe, Assistant Solicitor for Richland County who is running for the position of Solicitor for the First Judicial Circuit;
- (D) Ray Nash, Sheriff of Dorchester County;
- (E) L.C. Knight, who ran for the position of Sheriff of Dorchester County, or
- (F) Cheryl Graham, Clerk of Court for Dorchester County?

7. Have you or any member of your family contributed to the campaign or been involved in the campaign of any other circuit solicitor, any other sheriff, or any other law enforcement position?
8. The Defendant in this case is Eric Lester Brown. Mr. Brown's family members include _____

(A) If so, please stand.

[have juror approach and explain the relationship outside the hearing of the remaining jurors]

9. The attorney for Eric Lester Brown is Marva A. Hardee-Thomas of the Dorchester Public Defender's Office. Do you know Mrs. Hardee-Thomas or any member of her family?

(A) If so, please stand.

[have juror approach and explain the relationship outside the hearing of the remaining jurors]

10. The attorney for the State of South Carolina is Jennifer C. Porter of the Office of the Solicitor for the First Judicial Circuit? Do you know Mrs. Porter, B. Harrison Bell, Benjamin LaFond, Maite Murphy, Robby Robbins, or any employee of the Office of the Solicitor for the First Judicial Circuit, or any member of their families? If so, would that affect your ability to give the parties a fair trial?

(A) If so, please explain.

[have juror approach and explain the relationship outside the hearing of the remaining jurors]

11. Do you know any other attorney for a government agency or who has a contract with a governmental entity that prosecutes people accused of committing a crime. By government agency, I mean agencies such as the United States Attorney's Office and the Solicitor's Office for any other county in South Carolina. By the phrase "contract with a governmental entity," I mean private attorney's or private law firms who prosecute cases on a contract basis. For example, (1) the firm of Chellis & Frampton often prosecutes cases in magistrate's court where an agency, such as the animal control department, of Dorchester County is involved, (2) Ellen Steinberg prosecutes cases involving domestic violence that are heard in Dorchester County Magistrate Court, and (3) Jennifer Queen of Troy Knight's law firm is the prosecutor for the Town of Summerville. If so, would that affect your ability to give the parties a fair trial?

(A) If so, please stand.

[have juror approach and explain the relationship outside the hearing of the remaining jurors]

12. The law enforcement officers involved in the investigation and arrest of Eric Lester Brown in this case are Chief Sammy Smith (St. George Police); Deputy Allston, Officer Matt T. Bowen, Detective Mike D. Miller, Det. Van Doran, Det. Tom M. Marshall, Sgt. Alvin Coker, Major Tim Stephenson, Lt. Earl Asbell, and Pfc. Allyson Greer. Do you know them or any member of their families?

(A) If so, please stand.

[have juror approach and explain the relationship outside the hearing of the

remaining jurors]

13. During the course of the trial, you may hear the following name(s) mentioned:

- (A) Chief Sammy Smith - St. George Police
- (B) Deputy Allston - Dorchester County Sheriff Department
- (C) Officer Matt T. Bowen - Dorchester County Sheriff Department
- (D) Detective Mike D. Miller - Dorchester County Sheriff Department
- (E) Det. Van Doran - Dorchester County Sheriff Department
- (F) Det. Tom M. Marshall - Dorchester County Sheriff Department
- (G) Sgt. Alvin Coker - Dorchester County Sheriff Department
- (H) Major Tim Stephenson - Dorchester County Sheriff Department
- (I) Sheriff Ray Nash - Dorchester County Sheriff Department
- (J) Lt. Earl Asbell - Dorchester County Sheriff Department
- (K) Pfc. Allyson Greer - Dorchester County Sheriff Department
- (L) Coroner Chris Nesbitt - Dorchester County Coroner's Office
- (M) Kalisha Knutsen - Charleston Police Department/Criminal Identification Section
- (N) Rosevelt Rasbeberry - victim's grandfather
- (O) Tony Raspberry
- (P) Shaquain Fogle - Victim's son
- (Q) Ellis Raspberry
- (R) Kleman Raspberry
- (S) Thomas Murray
- (T) Wanda Raspberry

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(U) Stacy Fogle - Deceased Victim

(V) Eric Lester Brown - Defendant

Do you know them or any members of their families?

(A) If so, please stand.

[have juror approach and explain the relationship outside the hearing
of the remaining jurors]

14. Do you or does any member of your family belong to any group that supports Southern heritage, such as Sons of Confederate Veterans or Friends of the Hunley?

(A) If so, please stand.

[have juror approach and explain the relationship outside the hearing of the
remaining jurors]

15. As I stated previously, the State of South Carolina is alleging Eric Lester Brown of committing the offense of (1) Murder. If there anything about the nature of these allegations that would prevent your from giving either the State of South Carolina or Eric Lester Brown a fair trial?

(A) If so, please stand.

[have juror approach and explain the relationship outside the hearing of the
remaining jurors]

16. Have you heard or seen anything concerning or relating to this incident on the television or radio? Or have you seen or read anything concerning or relating to this incident from the newspapers or the internet? Or have you discussed this incident with any family members, friends, colleagues, or any one else?

17. Do you have strong feelings about people accused of either using illegal drugs or selling illegal drugs that would make it difficult for you to give Eric Lester Brown or the State of South Carolina a fair and impartial trial?

(A) If so, please stand.

[have juror approach and explain the relationship outside the hearing of the remaining jurors]

18. Have you or a member of your family ever used illegal drugs?

(A) If so, please stand [either after the asking of the question or at the end voir dire to avoid undue embarrassment]

[Have juror approach and explain the abuse outside the hearing of the remaining jurors]

19. Have you ever served on a criminal jury before, including cases heard in magistrate and municipal courts? If so, during your previous experience, did anything happen that might make it difficult for you to serve on this case?

(A) If so, please stand.

[Have juror approach and explain the problem outside the hearing of the remaining jurors]

20. Have you, or any member of your family, been the victim of a crime?

(A) If so, please stand

[Have juror approach and explain the crime outside the hearing of the remaining jurors and inquire as to whether or not the Solicitor's Office for the First Judicial Circuit prosecuted the case]

21. Have you, or any member of your family, ever been arrested or charged with a crime, other than a minor traffic offense, whether or not it resulted in a conviction?

(A) If so, please stand

[Have juror approach and explain the accusation outside the hearing of the remaining jurors]

22. Have you, or any member for your family, ever been convicted of a crime other than a minor traffic offence?

(A) If so, please stand.

[Have juror approach and explain conviction outside the hearing or the remaining jurors]

23. Have you either formed or expressed an opinion as to the guilt or innocence of Eric Lester Brown at this time? If so, please stand and approach.

24. Do you know of any other reason why you could not give Eric Lester Brown or the State of South Carolina a fair and impartial trial? If so, please stand and approach.

Marva A. Hardee-Thomas, Esq.

Marva A. Hardee-Thomas, Esquire
130 East Richardson Avenue
Summerville, SC 29483
Attorney for the Defendant

25 day of October, 2004
Summerville, South Carolina.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE # 2005-CP-18-1566
	)	
ERIC BROWN, #272336,	)	
	)	
APPLICANT,	)	APPLICANT'S SUPPLEMENTAL
	)	STATEMENT OF THE ISSUES
Vs.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	

At the PCR hearing on March 3, 2010, Applicant submitted a "Statement of the Issues" to the court to assist with its understanding of the specific issues which Applicant expected to prove.

After hearing testimony from the Applicant's witnesses, and Applicant, the court heard testimony from Marva Hardee Thomas, Applicant's trial counsel. A letter from defense expert, Kelly Fite, was admitted during the hearing. The basis of Mr. Fite's opinions were not in Ms. Hardee-Thomas' possession. Counsel for the State said that the Dorchester County Sheriff's Department was in possession of its investigative file. Applicant sought permission of the court to review the investigative file. The court granted the request, continued the PCR hearing, and instructed Applicant's counsel to specifically look for any evidence in the file which would shed light on the forensic evidence in the case, as it may relate to any possible defenses.

The investigative file was produced to Applicant's counsel in April 2010. The reconvened PCR hearing is scheduled for December 10, 2010.

There is a significant amount of forensic and exculpatory evidence in the investigative file showing that the wounds to the victim, Stacy Fogle, could have been suffered as a result of an accident or an un-intentional firing of the weapon in this case. A defense of accident, or a reduction to Involuntary Manslaughter, should have been pursued by trial counsel. Applicant pled guilty to the charge of Voluntary Manslaughter when there was competent forensic and witness testimony available to support the lesser charge and defense.

The evidence found in the investigative file showed the existence of forensic and exculpatory findings:

1. There were quantities of metals detected on the palms and backs of both hands of Stacy Fogle, which may be associated with gunshot residue.

Report of SLED Trace Evidence Department January 30, 2003. This supports Kelly Fite's opinion of the possibility "that there was a struggle over the weapon resulting in an un-intentional discharge."

2. The State's pathologist reports that the gun was fired from a distance of 2 - 4 feet. Measurements show that both the trigger on shotgun, and the muzzle to wound are both within that range. Det. Marshall asked Dr. Yacoub, "Could victim have grabbed barrel?" Dr. Yacoub said, "Could have."

Handwritten and typed notes of observation of autopsy dated 11/10/02 - Det. Miller

Investigative report dated 11/21/02 - Det. Marshall

Report of SLED Firearms Department 12/02/02

3. No items of Applicant's clothing or shoes contained blood spatter that would be consistent with "impact spatter."

Report of SLED Latent Prints Department 10/03/03. This shows that Eric Brown was not standing next to the victim at the time of impact.

4. Numerous statements by Applicant and others referencing the unintentional nature of this shooting:

Statement of unknown officer 11/10/02

Statement of Tony Raspberry 11/13/02

Report of Det. Marshall 11/15/02

Supplementary report - Det. Marshall 12/03/02

Statement of Eric Brown 11/26/02

All of these statements refer to the unintentional discharge of the weapon consistent with an accident or involuntary manslaughter. All are made within one month of the shooting which occurred on 11/09/02.

This potential evidence, in combination with the letter of defense firearms expert, Kelly Fite, could have been used to pursue a reduction in charges or defenses for Applicant, Eric Brown. Rather than focusing on what was done for Mr. Brown, the focus should center on what was not done by the public defender.

As Applicant testified to earlier, his attorney had little contact with him prior to jury selection. Applicant has no evidence that his counsel was in contact with Kelly Fite after his letter of December 19, 2003. There is no evidence that his counsel had contact with Dr. Ynez Yacoub, the pathologist that performed the autopsy or that counsel had a copy of the autopsy report. Applicant saw no evidence that Mr. Fite had been subpoenaed for trial; no evidence that a forensic pathologist had been consulted; and no evidence that

any of the witness testimony had been followed up and prepared for trial, such as Tony Raspberry or Thomas Murray.

There was also no evidence that counsel sought to use the exculpatory evidence offered by the Lowcountry Children's Center, who found that there were no allegations of physical abuse by Eric Brown made by the children of Stacy Fogle. Stacy Fogle's relatives testified at the PCR hearing in March 2010 that they were unaware of any violence between Eric Brown and Stacy Fogle, and that they did not hear any arguments on the night of the shooting.

In summary, this evidence contained in the investigative file, provided the basis of a claim for reduced charges of involuntary manslaughter or the defense of accident. But for the inaction of defense counsel, this evidence was never discovered; and if it was discovered there was not any follow-up, all leading to severe prejudice to the Applicant.

SOLOMON, BUDMAN, & STRICKER, LLP



Donald J. Budman
One Poston Road, Suite 315
Charleston, SC 29407
(843) 763-1118
ATTORNEYS FOR PLAINTIFF

St. George, South Carolina
December 10, 2010

December 19, 2003

Ms. Mary A. Hindee-Thomas, Attorney
150 East Richardson Avenue
Summerville, SC 29483

Re: State vs. Eric Lester Brown

On December 18, 2003, I went to the District Attorney's Office, SC Sheriff's Office and examined the following evidence:

1. Ithaca 20 gauge shotgun, Serial #125136
2. Test shot patterns fired by the shotgun at distances of 2, 3, 4, 5, and 6 feet
3. Autopsy photos of Stanley D. Lipe
4. Crime scene photographs

RESULTS:

Examination of the shotgun, Item 1, reveals it to be in good working order and in function as designed. It takes a force of approximately 1.25 pounds to pull the trigger and fire.

The shotgun, Item 1, has been spray painted gold. The texture of the paint is rough and the acceptance of a useful latent fingerprint is diminished.

Comparison of the test patterns, Item 2, with the spray painted gold reveals the muzzle to foot distance was between 3 and 4 feet.

The SC Law Enforcement Disclosure report was forwarded to the SC Dept. of Justice, does not negate the possibility that there was a struggle over the weapon resulting in an unintentional discharge.


Kelly E. Givens
Laboratory Director
SAS Laboratory, W-6
Edinburg, GA 30042



TRACE EVIDENCE DEPARTMENT

Coroner Chris Nisbet
Dorchester County Coroner's Office
212 Deming Way Suite 2
Summerville, SC 29483

January 30, 2003
SLED Lab No: L02-13317
Your Case No: Not Listed
Incident Date: 1/10/02
(V) Fogle, Stacey D.

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item 10: One GSR kit from Stacey D. Fogle

RESULTS:

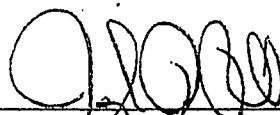
In the samples submitted in the kit labeled "Stacey Denise Fogle", the quantities of metals detected on the palms and backs of both hands may be associated with gunshot residue.

Item 11: Clothing from Stacey D. Fogle

RESULTS:

No lead detected.

These examinations were conducted by Lieutenant Joseph D. Powell, Forensic Trace Evidence examiner with this Division.



Joseph D. Powell
Lieutenant

2-13-03

Date

JDP/cem

cc: Dr. Yacoub

02009534

Stacy Fogle 7/26/73
Autopsy details 11/10/02
Time: arrived 1010 am
Photographs started 1015 am

Powder Tattooing on face 5x7 in
facial wound - Stippling
Size 2x1½

Significant

measurements - tip middle finger to wound 34 inches
Muzzle to trigger 28 inches
ON Shotgun

Felt wadding recovered from facial wound
by Medical Examiner ~~Michael~~ Inas Jacob

Injury full of metal
Medical opinion - buckshot

DORCHESTER COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORT



****CONFIDENTIAL****

CASE NUMBER: 0 2 0 0 9 5 3 4

PAGE 1 OF 1

REPORTING OFFICER: MILLER M. D. DETECTIVE

DISTRICT # _____

DATE/TIME	INVESTIGATIVE ACTION TAKEN
11/10/02 1010AM	PLACE: NEWBERRY MEDICAL CENTER
	EVENT: AUTOPSY
	VICTIM: FOGLE, STACEY B/F DOB:07/26/73
	PATHOLOGIST CONDUCTING AUTOPSY: INAS YACCOUB
	THIS INVESTIGATOR WAS ASSIGNED TO ATTEND THE AUTOPSY OF THE VICTIM, STACEY FOGLE. I TOOK PERTINENT PHOTOGRAPHS OF THE WOUND, FACIAL AREA AND LIMBS. I ALSO PHOTOGRAPHED PROJECTILE FRAGMENTS AND WADDING EXTRACTED FROM THE WOUND AREA BY THE AUTOPSY STAFF IN ATTENDANCE. NOTABLY, THE WOUND AND FACIAL AREA HAD POWDER TATTOOING AND STIPPLING. THE FACIAL WOUND ITSELF WAS MEASURED AS APPROXIMATELY 2X 1 1/2 INCHES. THE POWDER TATTOOING COVER AN AREA AROUND THE FACIAL WOUND ABOUT 5X7 INCHES.
	I HAD THE SUSPECT WEAPON AT THE AUTOPSY FOR COMPARATIVE MEASUREMENTS. THE PATHOLOGIST TOOK A MEASUREMENT OF THE TIP OF THE VICTIM'S MIDDLE FINGER TO THE WOUND AND MEASURED 34 INCHES. A MEASUREMENT OF THE WEAPON'S MUZZLE TO THE TRIGGER WAS 28 INCHES. I PHOTOGRAPHED THE SUSPECT WEAPON WITH THE MEASURING INSTRUMENT, A MEASURING TAPE. THESE NOTES WILL BE INCLUDED IN THE CASE FILE.
	THIS INVESTIGATION IS ON-GOING

DORCHESTER COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORT

CONFIDENTIAL

Page 5 of 5



CASE NUMBER: 02/009534

REPORTING OFFICER: Marshall

DISTRICT#

DATE/TIME	INVESTIGATIVE ACTION TAKEN
11/20/02	THIS TLO found out that SLED had finished test firing the shotgun & fired it from 2, 3, 4, 5 & 6 feet. SLED then asked if someone from Det. office could pick up the gun & the test firing patterns & take them to Newberry for Dr. Youker to look at & say how far away was the gun when it went off.
11/21/02	on this date this TLO sent Det. Miller to SLED HNTs to transport the test firing patterns to Newberry. on this same date this TLO spoke to the Dr. & she said the gun was fired from a distance of 2 feet to 4 feet. She said no further than 4 feet & no closer than 2 feet. THIS TLO ask Dr. Could the shot be fired 3 feet away & Dr. said could have. Dr. was asked could victim have grabbed barrel & Dr. said could have.

**FIREARMS DEPARTMENT**

Sgt. Tom Marshall
Dorchester County Sheriff's Office
212 Deming Way
Summerville, SC 29483

December 2, 2002
SLED Lab No: L02-13317
Your Case No: Not Listed
Incident Date: 11/09/02
(S) Brown, Eric Lester
(V) Fogle, Stacey D

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

- Item 9:** Eighteen (18) possible lead fragments, one fiber over-powder wad, and one fiber filler wad (listed as from autopsy).
- Item 12:** One Ithaca 20 gauge shotgun, Model 66, serial number 125158.
- Item 12.1:** One fired pattern from Item 12 Shotgun - Distance 2 feet.
- Item 12.2:** One fired pattern from Item 12 Shotgun - Distance 3 feet.
- Item 12.3:** One fired pattern from Item 12 Shotgun - Distance 4.5 feet.
- Item 12.4:** One fired pattern from Item 12 Shotgun - Distance 6 feet.
- Item 13:** One possible lead fragment (listed as Photo placard #5 pellet from closet).
- Item 14:** One possible lead fragment (listed as Photo placard #8 pellet from floor).
- Item 18:** One unfired Winchester brand shotshell (listed as from blue cloth bag).
- Item 19:** One unfired Winchester brand shotshell (listed as from blue cloth bag).
- Item 20:** One unfired Winchester brand shotshell (listed as from blue cloth bag).
- Item 21:** One unfired Winchester brand shotshell (listed as from blue cloth bag).
- Item 22:** Metal can containing one white gauze pad (listed as Sample of white round material from door area of bloodspatter).
- Item 23:** One Winchester brand fired shotshell (listed as from front yard by porch).

RESULTS:

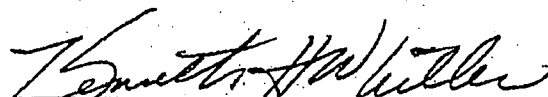
The Item 12 shotgun was examined, test fired, and found to be in working order. The Item 18, 19, 20, and 21 shotshells were the correct gauge and length for use in the Item 12 shotgun, and were used to test fire Item 12. The Item 23 shotshell was microscopically compared to the test fired Item 18 through 21 shotshells, and it concluded that Item 23 was fired by the Item 12 shotgun.

The Item 12 shotgun was test fired at distances of 2, 3, 4½, and 6 feet using the submitted Item 18, 19, 20, and 21 shotshells. The resulting test patterns were labeled as Items 12.1, 12.2, 12.3, and 12.4, and were released to Detective Michael Miller of your Department on 11/21/02.

Item 9 consisted of 18 possible lead fragments, one fiber over-powder wad, and one fiber filler wad. Four of the fragments exhibited pellet characteristics, three of which were most consistent with being from either Number 3 or Number 4 buckshot pellets. The origin of the fourth pellet fragment could not be determined due to damage and mutilation. The remaining 14 fragments bore no pellet characteristics, however, they could have once been parts of buckshot pellets. The physical characteristics of the two fiber wads were consistent with fiber wads loaded into some Winchester brand shotshells. None of the Item 9 fragments or wads bore any marks of value, and all were unsuitable for identification with a specific firearm.

The physical characteristics of the Item 13 possible lead fragments were most consistent with it being from either a Number 3 or Number 4 buckshot pellet. The Item 14 possible lead fragment could have once been part of a lead buckshot pellet, however, in its present condition, Item 14 bore no pellet characteristics. Neither Item 13 or 14 bore any marks of value and both were unsuitable for identification with a specific firearm.

No exam was conducted of Item 22.


Kenneth H. Whittler, Senior Agent



LATENT PRINTS DEPARTMENT

Detective Tom Marshall
Dorchester County Sheriff's Office
212 Deming Way
Summerville, SC 29483

October 3, 2003
SLED Lab No: L02-13317
Your Case No: 02009534
Incident Date: 11/09/02
(S) Brown, Eric Lester
(V) Fogle, Stacey Denise

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item 15: One (1) pair of black in color Reebok Classic shoes, size 10.5, listed as being worn by Eric Brown.

RESULTS:

There were four bloodstains observed on Item 15. These stains were labeled stains 1-4.

Stain #1-This was a medium sized stain on the left shoe-outer side below "Reebok" tag. This was an area of passive flow not consistent with impact spatter.

Stain #2-This was a small sized stain on the left shoe-outer side towards front under "Reebok" tag. This was an area of passive flow not consistent with impact spatter.

Stain #3-This was a medium sized stain on the left shoe-toe area of shoe near beginning of lace line. This was an area of passive flow not consistent with impact spatter.

Stain #4-This was a medium sized stain on the right shoe-toe area near beginning of lace line. This was an area of passive flow not consistent with impact spatter.

Item 16: One (1) black in color Russell jacket with hood.

RESULTS:

No areas of blood observed on this item.

Item 17: One (1) pair of black Fruit of the Loom sweat pants listed as being worn by Eric Brown.

RESULTS:

There were six bloodstains observed on Item 17. These stains were labeled as stains 1,2,6,9,10, and 11. Other areas labeled as stains 3,4,5,7, and 8 were documented but were negative for blood.

Stain #1-This was a large sized stain located on the right leg near the waistband. It was a non-impact area of blood. No impact stains observed at this stain.

Stain #2-This was a large sized stain located on the right leg along the thigh area. This was a non-impact area of blood. No impact stains observed at this stain.

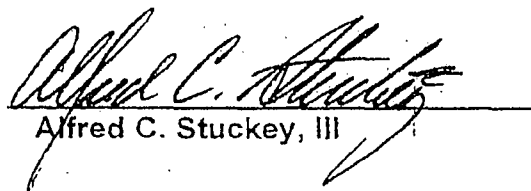
Stain #6-This was a medium sized stain located on the left leg at the thigh area. This was a non-impact area of blood that was a downward continuation of Stain #9. No impact stains observed at this stain.

Stain #9-This was a medium sized stain located on the left leg near the waistband. This was a non-impact area of blood (arc). No impact stains observed at this stain.

Stain #10-This was a large sized stain located on the left leg at the bottom hemline. This was a non-impact area of blood. No impact stains observed at this stain.

Stain #11-This was a small sized stain located on the right leg near the knee area. This was a non-impact area of blood. No impact stains observed at this stain.

These examinations and comparisons were conducted by Senior Agent Alfred C. Stuckey, III, Examiner with this Division.



Alfred C. Stuckey, III

ACS

HOME ADDRESS 100 Sears St. St. George, SC. HOME PHONE [REDACTED]
EMPLOYER [REDACTED] BUSINESS ADDRESS [REDACTED]
BUS. PHONE 563-0259 OCCUPATION [REDACTED]
DATE OF BIRTH 02-19-58 SOCIAL SECURITY NUMBER [REDACTED]
THIS STATEMENT IS GIVEN 11-10-02 (DATE) AT 0105 (TIME)
100 Sears St. St. George, SC. (LOCATION)

On 11-09-02 at approx. 2123 I received a call in reference to an attempted suicide at [REDACTED]. Upon my arrival Chief Smith was at his vehicle with Mr. Eric Brown sitting in the back seat with cuffs on. Chief Smith told me that while he was following Dep. Allston and they were headed to the crime scene when they saw Mr. Brown in the road. When they stopped Mr. Brown came up to Chief Smith's veh and said that we were looking for him for parole violations but he didn't care about that because his wife just shot her self and she needed help. Chief Smith told Mr. Brown to get in the veh. (in the front seat) Mr. Brown stated that was ok he wanted to get into the back seat. Chief Smith told me that when the subject was showing them the way to the residence he took them the wrong way at first. The subject told Chief Smith and Dep. Allston that he had taken the shotgun shell out of the shot gun and would show them where the he through it. at that time Chief Smith and myself took the subject out of the Chief's veh and put him in mine since mine had a cage. a short time later Chief Smith, Dep. Allston and myself took the subject out of my veh. and let him smoke a cigarette. While the subject was smoking his cigarette he started to say the he knew he was going to do time for doing this and at that time Chief Smith asked me if the subject was read his rights and I told him that he hadn't been. The chief then told the subject that he didn't need to say anything else and the subject said that he didn't care and then said that he didn't kill her but he knew that he was going to do time for it anyway. Chief Smith told the subject that if he didn't fire the shotgun he didn't have to worry that they could do a test on his hands to see if he had fired a gun. The subject said that wouldn't do any good because he had been shooting the same shotgun all day he then said that his wife was holding the shotgun by the barrel and up to her face and told him to leave and she must have hit the or bumped the shotgun against the wall and it went off. Chief Smith told the subject once again that he didn't need to say anything else but the subject kept talking. He also stated that he and his wife had a little argument and that he was going to leave when he heard a shot and saw his wife on the floor in the hall and he ran over to her Grandfather's house and told him that his wife had just shot herself. He then told us that he knew that he shouldn't have taken the shotgun shell out of the gun but he got scared, and he said that he wanted to show us where he put the shell. The subject finished his cigarette and we put the him back into my veh.

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

HOME ADDRESS

HOME PHONE

EMPLOYER

BUSINESS ADDRESS

BUS. PHONE

OCCUPATION

DATE OF BIRTH

10/16/63

SOCIAL SECURITY NUMBER

THIS STATEMENT IS GIVEN

11-13-02

(DATE)

AT

10:30 AM

(TIME)

DCSO ST GEORGE

(LOCATION)

X I WAS WORKING ON THE CLEAN UP CREW FOR THE JAIL
WHEN THIS GUY NAME ERIC BROWN ASKED ME MY
NAME & I TOLD HIM TONY RASBERRY. WHEN I TOLD
HIM THIS HE THEN SAID I'M SORRY & I DIDN'T DO THAT.
SO I ASKED HIM WHAT HAPPENED. HE THEN SAID
SAID WE WERE JUST PLAYING & THE GUN WENT OFF.
AFTER HE SAID THIS HE JUST WALKED AWAY.

LATER THAT SAME DAY AROUND 3:00 PM HE CAME
TO ME AGAIN & ASKED TONY DID YOU HIRE ME? ALL I
DID WAS LOOK AT HIM & HE SAID I DIDN'T DO IT I'M
ON PROBATION THAT'S WHY I'M HERE. THEN HE WALKED
AWAY.

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

DORCHESTER COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORT

CONFIDENTIAL

Page 7 of 7



CASE NUMBER: 02/219534

REPORTING OFFICER: Marshall

DISTRICT#

DATE/TIME	INVESTIGATIVE ACTION TAKEN
11/13/02	on this date this T/O + Det Vanderman found the store that the suspect brought the shotgun shells.
11/15/02 14:20	on this date this T/O + Det Miller drove back to Rosberry Lane to speak to Thomas James Murray brother of victim. he was ask question about him & suspect & victim talking & if the suspect pointed a gun at the victim. Thomas did say they were inside victim's trailer while the victim was removing some braids from her hair. The suspect pointed her shotgun at the victim & said something like "I can shot those things out your hair". Thomas did say that this was all said in a playful manner. Thomas did say the gun was pointed at the victim.

HOME ADDRESS

HOME PHONE

EMPLOYER

Nursery (Wayne Dukes)

BUSINESS ADDRESS

BUS. PHONE

OCCUPATION

TREE FARM

DATE OF BIRTH

SOCIAL SECURITY NUMBER

THIS STATEMENT IS GIVEN

11-13-02

(DATE)

AT

12:30 P.M.

(TIME)

DCSO ST. GEORGE

(LOCATION)

I ERIC L. BROWN REQUESTED DETECTIVE SGT. T.A. VANDORAN
WRITE THIS STATEMENT FOR ME WITH DET. SGT. T. MARSHALL
PRESENT. EB

THAT MORNING THOMAS MURRAY AND I WENT TO THE
STORE TO BUY SHOTGUN SHELLS AND A BELT FOR
HIS CAR. WE WENT TO MAX'S TO GET THE SHELLS
AND CAR QUEST TO GET THE BELT. WE WENT BACK
TO THE HOUSE AND PUT THE BELT ON AND REWIRED
THE TIRES. THEN WE WENT TO HIS AUNT'S HOUSE
AND PLANTED SUGAR CANE. WE TOOK OUR GUNS WITH
US AND WE WALKED DOWN THE ROAD SHOOTING BIRDS
AND TREES AND STUFF LIKE THAT. THEN WE CAME BACK
TO THE HOUSE AND I WAS LETTING THE KIDS SHOOT
THE GUN AT THE BLUE BARREL. I WAS HOLDING
THE GUN AND LET THEM PULL THE TRIGGER, ALL EXCEPT
SHAWN HE SHOT IT ON HIS OWN. WE SPENT THE
REST OF THE DAY COOKING OUT AND PLAYING WITH THE
KIDS. ABOUT 6 IN THE EVENING THOMAS, STACY AND
I WERE SITTING IN THE LIVING ROOM. SHE WAS
TAKING HER HAIR DOWN. I ASKED SHAWN TO GIVE

CONT.

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

79 ⁷⁹ TO TURNING THE STUFF OUT OF HER HAIR. THE DAG
AND SHELLS WERE ON THE RIGHT SIDE OF THE CHAIR
ON THE FLOOR. THE SHOTGUN WAS BREACHED BETWEEN
MY LEGS ON THE CHAIR. STACY WAS YANKING ON
HER HAIR TO GET THE LINES OUT. I TURNED AND
POINTED THE SHOTGUN AT HER IN A PLAYFUL MANNER AND
SAID, I GOT A BETTER WAY, I COULD SHOOT THAT
SHIT OUT. EVERYBODY STARTED LAUGHING. TIME WENT
BY AND WE WERE JUST TALKING. STACY WAS SAYING
ROOSEVELT RASBERRY WAS FUSSING ABOUT A LOT OF STUFF.
WE WERE ON THE PORCH TALKING ABOUT FIXING UP THE
TRAILER. I TOLD HER I WOULD GO TO ST. GEORGE
TONIGHT TO SEE IF I COULD GET UP SOME MONEY.
SHE WENT AND WASHED DISHES AND THEN COOKED AGAIN
(CHICKEN AND RICE AND STRING BEANS). ONE OF THE KIDS
AND I WERE SITTING OUT BACK SHOOTING AT BIRDS.
I HAD SOME CONGAC TO DRINK AND THEN IT WAS ABOUT
DARK. I THOUGHT, ALL MY FAMILY IS AT HOME, I
GOT HER TO GO TO ROOSEVELT'S HOUSE TO CALL MY BROTHER
TO COME GET ME. AFTER SHE GOT BACK SHE TOLD
ME TO GO PUT THE GUN UP. I SAID TO MYSELF IT'S
DARK - I THOUGHT IF A DEER COMES OUT I WILL
LOAD THE GUN AND PUT IT IN OUR ROOM IN THE CORNER.
I LOADED THE GUN WITH I THINK BUCK SHOT LOAD,
COCKED THE TRIGGER, PUT IT IN THE CORNER, THEN CLOSED
THE DOOR AND WENT BACK TO THE FRONT ROOM.

CONT.

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

I WAS THERE, AND THAT IS WHAT I TOLD HER SO I
COULD BE GONE FOR A COUPLE OF DAYS. I WAS REALLY
JUST TRYING TO MAKE SOME FAST MONEY TO HELP THINGS
OUT. STACY AND T-T WENT TO LAY DOWN IN
OUR BEDROOM. THEN I WAS BACK AND FORTH
FROM THE PORCH TO THE BEDROOM EXPLAINING
TO STACY WHY I WAS LEAVING. STACY WAS NOT
BELIEVING ME- SHE SAID YOU'RE GOING TO BE BACK
IN TROUBLE AGAIN. SHE WAS TRYING TO TALK ME
INTO NOT GOING. I WENT ON THE PORCH AND I
COULD HEAR HER TALKING TO HERSELF IN THE ROOM.
I REALLY COULD NOT HEAR WHAT SHE WAS SAYING, BUT
I KNOW IT WAS ABOUT ME LEAVING. I WENT BACK
TO THE BEDROOM AND COULD HEAR HER MUMBELING AND
I LEFT AND WENT BACK TO THE PORCH ONCE MORE.
THEN ON MY WAY BACK TO THE PORCH I WENT THROUGH
THE LIVING ROOM, I HEARD HER SAY YOU'RE GOING BACK
OUT THERE TO GET IN TROUBLE, KNOWING THEY DON'T
CARE ABOUT YOU - YOU DON'T GIVE A DAMN ABOUT
ME NEITHER THEN. ~~I REMEMBERED ABOUT THE LOADED GUN.~~
WELL HELL YOU WOULD NOT CARE IF I WAS TO KILL MYSELF.
I REMEMBERED ABOUT THE LOADED GUN AND THOUGHT ABOUT
WHERE SHE WAS. I WENT TO THE BEDROOM TO GET THE
GUN TO TAKE IT AND UNLOAD THE GUN. WHEN I PICKED
THE GUN UP TO WALK AWAY SHE GRABBED THE BARREL
(I DON'T KNOW WITH ONE HAND OR TWO) WITH ENOUGH

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

181 I dropped the gun at first then threw
the gun from off top of her. I tried
to grab her by both hands and pick her up.
I panic, picked up the shotgun, breached the
shotgun and threw the shell out the back
door. I then threw the gun back on the floor.
I took off out of the house and ran to Roswell's
house and told him that STACY had shot herself.
I ran back to the house. I woke Shawn up and
told him to get his brother's and sisters and go to
their grand father's. I went and got T-T and gave
her to Shawn and again told him to take them
to their grand father's. I went back outside and
Roswell was on the porch with 911 dispatch.
I told him I'm in trouble with the law -
they are already looking for me - He told me
to stay don't run, you are going to make matters
worse. I said I'm on parole I've got to go.
I ran down the road. Not too far away
I saw the flashing lights and siren's coming
and when they approached I stood in the road
waiving my hands for them to stop. I saw
Sammy Smith and Pee Wee. Sammy said get
in the front so I got in the back. I told
him I was on the run from parole - he said don't
worry about that now. We went back to court.

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

T. J. Smith

EMPLOYER Nursing (Wayne Dukes)

BUSINESS ADDRESS _____

BUS. PHONE _____

OCCUPATION Tree Farm

DATE OF BIRTH _____

SOCIAL SECURITY _____

THIS STATEMENT IS GIVEN 11/26/02

(DATE) AT 15:48

(TIME)

DCSO St George

(LOCATION)

I Eric L. Brown Requested Detective Sgt. TM Marshall
Write this Statement for me.

On 11/13/02 I gave a Statement to Det Van Doren
& Det Marshall about what happened when Stacy got shot.
Det Van Doren wrote the Statement for me as I told him
what to write. Everything I told him in that Statement
is the truth except for how Stacy got shot.

This is what happened. Stacy did say something
like you would not care if I shot myself. I then went
to the room to get the shotgun and Stacy said you were
more about hunting than me. She then said how would
you like it if someone would shoot you. (Referring to the deer).
I then pointed the gun at Stacy in a playful manner
and said how would you like it if someone shot you.
She then grabbed the barrel of the gun and it went off.

This is the truth on what happened.

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

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

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

Eric Brown,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2005-CP-18-1566

ORDER OF DISMISSAL

RECEIVED

JAN 02 2013

SC Court of Appeals

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 11, 2005. An evidentiary hearing into the matter was convened on March 3, 2010, at the Dorchester County Courthouse. The Applicant was present at the hearing and was represented by Donald Budman, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office. At the conclusion of the hearing, the record was left open for supplementation of documents from the investigative file in the case.¹

At the hearing, the Applicant testified on his own behalf. Also testifying were Marva Hardee-Thomas ("Counsel"), Kleiman Rasberry, and Roosevelt Rasberry. This Court had before it the records of the Dorchester County Clerk of Court, the guilty plea transcript, the Applicant's records from the South Carolina Department of Corrections, exhibits from hearing, and the investigative file.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of the Dorchester County Clerk of Court.

¹ At the time of the hearing, Counsel was no longer employed by the Public Defender's Office and efforts to locate her file in the case had been unsuccessful. The parties were able to locate the investigative file from the Dorchester

Applicant was indicted for Murder (2003-GS-18-0013). Marva Hardee-Thomas ("Counsel") represented him. On November 2, 2004, Applicant pled guilty to the lesser offense of Voluntary Manslaughter before the Honorable Steven H. John. Applicant was sentenced to twenty-five (25) years imprisonment. Applicant did not appeal his conviction and sentence.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Subject matter jurisdiction.

Applicant later submitted a Statement of the Issues setting forth the following grounds for relief:

1. Ineffective assistance of counsel in failing to investigate and interview fact and expert witnesses.
2. Ineffective assistance of counsel in advising Mr. Brown to plead guilty to Voluntary Manslaughter without discussing the defense of "accident" or the lesser included charge of Involuntary Manslaughter with Mr. Brown, or investigating facts which could have lead to a reasonable doubt on the charge of Voluntary manslaughter.
3. Ineffective assistance of counsel in failing to consult with an expert to investigate and report upon the findings of the State's forensic pathologist.
4. The trial court lacked subject matter jurisdiction to try Mr. Brown for Murder based upon a failure to charge all the essential elements of murder pursuant to S.C. Code Ann. §17-19-30 which requires that the allegation of murder state that it was committed "feloniously and willfully."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

County Sheriff's Office which consisted of investigators' notes and various reports.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735

(1997) (citing Strickland). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Summary of Facts from Plea and Investigative File

On November 9, 2002, Victim Stacy Fogle died of a shotgun blast to the face in the home she shared with Applicant and her six children. Five of the children were home, and a two year old was in the room when the fatal shot was fired. Law enforcement arrived at the scene to find Applicant 2.5 to 3 miles away. In interviews that day and over the course of the following month, Applicant offered varying, often conflicting, accounts of the events leading to Victim's death.

When law enforcement responded to the scene, Applicant was located, and he took them to the house but took them down a wrong road first. Applicant initially stated that Victim had shot herself, relating that he heard a gunshot as he sat outside on the porch and rushed in to find the Victim. Later that same day, Applicant told law enforcement that he came inside and saw Victim with the shotgun, and the gun went off as he came down the hall. Applicant then modified the story further, insisting that the truth was that Victim told him she was going to kill herself and held the gun to her face; he was about to knock it away when it went off.

On November 13, Applicant approached law enforcement to "tell the truth." In the November 13 statement, Applicant said that he and Victim had quarreled because he wanted to leave for a few days to "make some fast money." During the discussion, Victim said that Applicant would not care if she killed herself. Applicant stated that he remembered the shotgun in the bedroom and went to

retrieve and unload it. Applicant reported that he had the gun in his hand, Victim grabbed the gun, and it went off.

On November 14, Applicant stated that Victim had been upset with him because he was leaving to go sell drugs and was "nagging" him as he went back and forth to the front porch, waiting on his brother. Applicant stated that the shotgun was in the bedroom, loaded with buckshot and hammer cocked in case a deer came into the back yard. Applicant stated that he grabbed the gun, his hand on the lever and finger on the trigger, and began to leave the room when Victim grabbed the gun, pulling it toward her. Applicant stated that the discharge had been accidental.

On November 26, Applicant again informed law enforcement that he had not been truthful. Applicant stated that during the argument, Victim said Applicant cared more about deer hunting than her and asked how he would like it if someone shot him. Applicant reported that he then pointed the gun at Victim, albeit playfully, and asked how she would like it if he shot her. At that point, Applicant explained that she grabbed the gun, and it went off.

On December 3, 2002, an investigator heard Applicant tell the Victim's family at a bond hearing that he did not murder the victim and they were just "playing around." According to investigator's notes, after the bond hearing, Applicant once more spoke with law enforcement. On this occasion, Applicant stated that he and Victim argued about him taking the shotgun, and he tried to sneak it out of the house. Applicant stated that he was intoxicated and forgot the gun was cocked. He said he pointed the gun at Victim and it went off, but Victim had not grabbed the gun.

Failure to Investigate Fact Witnesses

Applicant asserts that Counsel was ineffective in failing to investigate fact witnesses Kleiman

Rasberry ("Kleiman") and Roosevelt Rasberry ("Roosevelt"). Kleiman, Victim's uncle, testified that he lived in a mobile home not far from the one that Victim and Applicant shared. Kleiman stated that he could hear people talking over the short distance between the homes. However, Kleiman testified that he did not hear the gunshot and had thought the noise was shoes in the dryer as the dryer was running at the time. Kleiman reflected that he could not hear anything with the dryer on. Kleiman stated that he had not heard arguing at the time of the incident and had not observed any discord between the two in the days leading up to Victim's death. Kleiman's father, Roosevelt, also lived on the property near the home Applicant and Victim shared. Roosevelt did not hear an argument either. Roosevelt heard a noise, but he had not known what the noise was. Neither recalled being interviewed by any investigator for the defense.

Counsel stated that she did have the Rasberrys on a list of potential witnesses. Counsel recalled that she had utilized an investigator, Oscar Douglas ("Douglas"), and that Douglas had spoken with some potential witnesses. While she did not have her file or a report from the investigator on hand, Counsel surmised that she must have listed the Rasberrys on her witness list because of information provided by the investigator.

Even assuming that Counsel did not interview Kleiman and Roosevelt Rasberry, I find that Applicant has failed to carry his burden of demonstrating that Counsel was ineffective. The Rasberrys' testimony has no bearing on Applicant's purported defense of accident. I find that proffered testimony would not have affected the outcome of the proceeding. "For a homicide to be excusable on the ground of accident, it must be shown the killing was unintentional, the defendant was acting lawfully, and due care was exercised in the handling of the weapon." State v. Burriss, 334

S.C. 256, 259, 513 S.E.2d 104, 106 (1999). Applicant was on parole from a charge of unlawful possession of a firearm at the time of the incident and was not permitted to have a firearm. The Rasberrys, at best, offer only that Applicant and Victim were not known to have arguments prior to the shooting. Nonetheless, by Applicant's own admissions, the two argued that day. As the Rasberrys' testimony offers no assistance to the defense, I find that Applicant has failed to demonstrate prejudice from any purported failure to interview these witnesses.

Applicant further asserts that Counsel was deficient in failing to contact additional expert witnesses such as a forensic pathologist to assist in the interpretation of the autopsy. Counsel did retain a firearms examiner, Kelly Fite ("Fite"). Fite reported that the muzzle had been between 3 and 4.5 feet from the Victim when the shot was fired. The forensic pathologist who performed the autopsy on Victim believed that the wound had been inflicted from a distance of no less than 2 feet and no more than 4 feet. Fite's report also found that gunshot residue did not negate the possibility of a struggle over the weapon. Applicant stated that Counsel did share Fite's report with him. Applicant asserts that Counsel should have additionally consulted with an expert to investigate and report upon the findings of the State's forensic pathologist. Under the circumstances of this case, I find that Counsel's performance was not outside reasonable professional norms. Moreover, as no expert testified at PCR hearing, any benefit additional experts may have yielded is merely speculative. Lorenzen v. State, 376 S.C. 521, 657 S.E.2d 771 (2008). Applicant has therefore failed to carry his burden in this regard.

Subject Matter Jurisdiction

Applicant further asserts that the court lacked subject matter jurisdiction to accept his plea

due to defects in the Murder indictment. Applicant asserts that the absence of the terms “willfully” and “feloniously” deprived the court of subject matter jurisdiction. At the time of Applicant’s plea, an indictment which included “malice aforethought” was found to be sufficient even in the absence of the words “willfully” and “feloniously.” State v. Joseph, 351 S.C. 551, 571 S.E.2d 280 (2002) (overruled by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)). In the present case, the indictment does contain the phrase “malice aforethought” and reference to the relevant code section. Therefore, Counsel’s failure to pose an objection on this basis at the time of Applicant’s plea would not have amounted to deficient performance pursuant to the case law at the time. Moreover, since Applicant’s plea, the Gentry case “abandoned the view that, in criminal matters, the circuit court acquires subject matter jurisdiction to hear a particular case by way of a valid indictment by either a county or state grand jury.” State v. Means, 367 S.C. 374, 381, 626 S.E.2d 348, 352 (2006). Gentry recognized that the subject matter jurisdiction of the court and the sufficiency of the indictment are separate concepts. The Gentry holding has been applied retroactively. Id.; Talley v. State, 371 S.C. 535, 640 S.E.2d 878 (2007). Finally, even if Counsel had made a successful objection, the solicitor could simply re-indict. Based on all the foregoing, I find this allegation to be without merit.

Failure to Discuss Accident and Involuntary Manslaughter

Applicant further maintains that Counsel failed to adequately discuss with him the potential application of the defense of accident and the offense of involuntary manslaughter. Counsel testified that she did discuss the offenses of murder, voluntary manslaughter, and involuntary manslaughter. Counsel recalled that Applicant had desired a plea to involuntary manslaughter, but such an offer was not made. Counsel also stated that she discussed the defense of accident. Counsel further noted

that she would have requested jury charges on the lesser offenses and the defense of accident had the matter proceeded to trial. However, Counsel reflected, quite reasonably, that Applicant's chances with a jury were far from certain. Counsel was concerned that Applicant's inconsistent statements would not play well before a jury, especially if he testified. Counsel felt that facts contained in Applicant's various statements could support a finding of murder or lesser offenses, and this was a chance that would be taken at trial. While Applicant maintained that he had not discussed these things with Counsel, he did comment at PCR hearing on seeing items of discovery such as the autopsy report, Fite's report, asking Counsel to speak to certain witnesses, and discussion of the defense of accident though minimally. I find Counsel's testimony that she did discuss lesser-included offenses and the defense of accident to be credible. I further find Counsel's assessment of the potentialities at trial to be within reasonable professional norms. Therefore, I find that Applicant has failed to carry his burden in this regard.

Sentence

Applicant further asserts that he entered his plea under the belief that he would be sentenced to seventeen (17) years. During the plea colloquy, Applicant was advised of the potential sentence of up to thirty (30) years for voluntary manslaughter. (Tr. p. 3, lines 6-11.) Applicant was specifically asked whether he understood "that the reduction of the charge from murder to voluntary manslaughter comes to the Court without negotiations or recommendations as to the sentences by the State," and Applicant responded in the affirmative. (Tr. p. 3, lines 18-23.) Applicant further affirmed that he understood the classification of the offense of violent and most serious. (Tr. p. 4, lines 1-20.) Understanding these things, Applicant elected to proceed with his plea. (Tr. p. 4, lines 21-23.) The

court reviewed Applicant's rights, including the right to proceed with a jury trial wherein he could cross-examine witnesses and present a defense. (Tr. p. 5, line 7 – p. 6, line 5.) Applicant denied that he had been promised anything, threatened, or coerced to plead. (Tr. p. 6, lines 17-20.) Applicant maintains that many of his answers were lies prompted by his attorney. However, Applicant assured the plea court that his answers had been truthful and that no one had told him how to answer the questions. (Tr. p. 10, line 22 - p. 11, line 1.) The sentencing sheet is notated at the top "up to 30 years." It appears that the box next to "negotiated sentence" was checked and subsequently marked out, and the box next to "without negotiations or recommendation" is checked. Counsel further noted that her request for leniency was inconsistent with any negotiated sentence. Applicant spoke to the court on his own behalf, stating that he wished to plead in part because he wished to spare the Victim's family the difficulty of a trial and that he was "not worrying about the Court term," only their forgiveness. (Tr. p. 12, lines 11-16; p. 13, lines 2-3.) Finally, while Applicant claims that he feared a life sentence if convicted of murder, Counsel's advice that such a sentence was possible following a murder conviction was correct.

I find Applicant's claims that his answers to the plea court's inquiries were furnished by his attorney to be without credibility. Applicant was clearly informed by the plea court of the potential sentence and the absence of any negotiations. Based on the foregoing, I find that while Applicant was undoubtedly hopeful for the least possible sentence, the plea court's colloquy corrected any misgivings he may have had about the potential sentence. Wolfe v. State, 326 S.C. 158, 165, 458 S.E.2d 367, 370 (1997); Holden v. State, 393 S.C. 565, 713 S.E.2d 611 (2011).

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

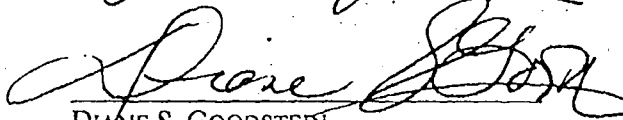
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8 day of March 2012



DIANE S. GOODSTEIN
Presiding Judge
First Judicial Circuit

Walter B. B. B., South Carolina.

STATE OF SOUTH CAROLINA) CERTIFIED COPY) COURT OF COMMON PLEAS
 COUNTY OF DORCHESTER) 2012 APR -4 PM 12:00) FIRST JUDICIAL CIRCUIT
)) CASE # 2005-CP-18-1566

ERIC BROWN, #272336,

APPLICANT,

Vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Cheryl Goodstein
 CLERK OF COURT
 DORCHESTER COUNTY

APPLICANT'S NOTICE OF
 MOTION AND MOTION TO
 AMEND, ALTER OR OBTAIN
 RELIEF FROM JUDGMENT
 (RULES 59e and 60b SCRCP)

TO: ALL PARTIES NAMED ABOVE:

PLEASE TAKE NOTICE that the undersigned will move before the Honorable Diane S. Goodstein, Judge of the Circuit Court, First Judicial Circuit, Dorchester County Court of Common Pleas, at the Dorchester County Courthouse, 5200 East Jim Bilton Blvd., St. George, South Carolina, 10 days after service hereof, or as soon thereafter as counsel may be heard, for an Order amending or altering the Order of Dismissal filed in this case on March 23, 2012 and received by counsel for Applicant on March 28, 2012. The grounds for such amendment or alteration are:

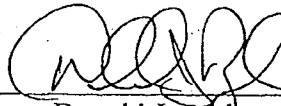
1. Based upon the evidence presented at the PCR hearing, the PCR court erred in ruling that the Applicant failed to demonstrate that he was prejudiced as a result of trial counsel's purported failure to interview certain fact witnesses.
2. The PCR court erred in failing to find that trial counsel for PCR Applicant was deficient in failing to contact and retain an expert witness, such as a forensic pathologist, to assist in his defense or mitigation, and that trial counsel's failure to do so was prejudicial to the Applicant.

3. The PCR court erred in failing to find that PCR Applicant suffered a presumption of prejudice as a result of trial counsel's failure to obtain the services of a forensic pathologist, as such failure entirely failed to subject the prosecution's case to meaningful adversarial testing.
4. The PCR court erred in finding that even if trial counsel for PCR applicant had made a successful objection to the court's subject matter jurisdiction, based upon the language of the indictment, the solicitor could simply re-indict, as said finding improperly surmises what the solicitor might have done if the indictment was struck down.

The effect of an amendment, alteration or relief from the judgment in this matter would be to grant Applicant the relief requested in his Petition for PCR relief resulting from the deprivation of his constitutional rights to effective assistance of counsel. This motion is based upon Rules 59-e and 60-b SCRPC and shall be based upon such affidavits, memoranda of law, transcripts of proceedings and evidence filed in this case.

PLEASE BE PRESENT IF SO MINDED.

SOLOMON, BUDMAN & STRICKER, LLP

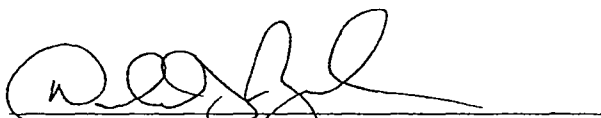


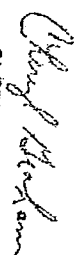
Donald J. Budman
Parkshore Centre
1 Poston Road, Suite 315
Charleston, SC 29407
(843) 763-1118
ATTORNEYS FOR APPLICANT
ERIC BROWN

Charleston, South Carolina
3rd day of April, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April, 2012, I have mailed a copy of the foregoing Motion to Amend, Alter or Obtain Relief from Judgment upon all counsel of record, and have mailed a copy of this motion to Judge Goodstein, in accordance with the South Carolina Rules of Civil Procedure.


DONALD J. BUDMAN

CERTIFIED COPY
2012 APR -4 PM 12:04

CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2005-CP-18-1566

Eric Brown,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN AND MOTION TO DISMISS
APPLICANT'S MOTION TO ALTER OR AMEND

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRCPP, in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

The Order of Dismissal of the Honorable Diane S. Goodstein, dated March 8, 2012, and filed March 23, 2012, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRCPP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

II.

The State therefore requests that the relief requested by the Applicant be denied and that his Motion be dismissed.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

Columbia, South Carolina.

April 5, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2005-CP-18-1566

ERIC BROWN,

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 Motion to Dismiss Applicant's Motion to Alter or Amend** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Donald J. Budman, Esquire
Solomon Budman & Stricker, LLP
Post Office Box 30280
Charleston, SC 29417

The Honorable Diane S. Goodstein
Presiding Judge, 1st Judicial Circuit
5200 East Jim Bilton Blvd.
Post Office Box 234
St. George, SC 29477

DATED this 5th day of April, 2012.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FILED - RECORDED FIRST JUDICIAL CIRCUIT

2012 DEC -3 PM 2: 52

2005-CP-18-1566

Eric Brown,

Applicant,

v.

State of South Carolina,

Respondent.

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

ORDER DENYING APPLICANT'S MOTION
MOTION TO ALTER OR AMEND

CERTIFIED COPY
2012 DEC -3 PM 4: 16
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

This post-conviction relief matter was filed October 11, 2005. An Order of Dismissal was dated March 8, 2012, and filed on March 23, 2012. Applicant filed a Motion to Alter or Amend dated April 3, 2012.

Having carefully reviewed the entire record in this matter, this Court finds that no basis for altering or amending is prior ruling.¹ Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court advises that if the Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Rule 59 Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 13 day of NOV, 2012.

Diane S. Goodstein, South Carolina
NOV 13, 2012

Diane S. Goodstein
Diane S. Goodstein
Presiding Judge, First Judicial Circuit

¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

WITNESSES

Marshall, Tom

DCSO

ARREST WARRANT NUMBER

H366218

Arrested: Dec 03, 2002

ACTION OF GRAND JURY

True Bill
Date 1-13-03
Rebecca K. Quirk

Foreperson of Grand Jury

Date: January 13, 2003

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2003GS18-0013

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

January 21, 2003 TERM

THE STATE
vs.

Eric Lester Brown

Indictment for

MURDER

SC Code: 16-03-10 / 16-03-20

CDR Code: 0116

Class: FEL-E

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

Defendant

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

Defendant

Witness:

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

FILED-RECORDED
2003 JAN 21 AM 8:41
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2003GS18-0013

At a Court of General Sessions, convened on January 21, 2003 the Grand Jurors
of Dorchester County present upon their oath:

MURDER

The defendant, Eric Lester Brown, did in Dorchester County on or about November 9,
2002, with malice aforethought, kill one: Stacy Fogle, by means of shooting victim in the
face, and the said victim did die as a proximate result thereof. This offense being in
violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

CERTIFIED COPY
2005 DEC -6 AM 11:07
Clerk of Court
DORCHESTER COUNTY

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

Robert D. Robbins

Robert D. Robbins, SOLICITOR

up to 30 years

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester

STATE VS.

Eric Lester Brown

AKA:

Race: R Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip _____

DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2003 -GS- 18 - 0013AW#: H344218Date of Offense: 11-9-02S.C. Code §: 16-3-10CDR Code #: 0 1 1 1 1 1 6☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Voluntary Manslaughterin violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0 1 2 1 1 1☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Jennifer C. Porter

Solicitor

Eric Brown

Defendant

Maria A. Harbison Thomas

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine:	\$	
\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$250
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$375
TOTAL	\$	\$1287.5

Court Reporter: Nick S. [Signature]

Clerk of Court Deputy Clerk

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: _____

Sentence Date: 11/2/04